



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 22-207

RESOLUTION

URGING THE CITY ADMINISTRATION AND THE LIQUOR COMMISSION TO TAKE ACTION TO RESTORE PUBLIC TRUST IN THE LIQUOR COMMISSION.

WHEREAS, pursuant to Chapter 281 of the Hawai'i Revised Statutes ("HRS") and Section 6-207 of the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition), as amended, the Honolulu Liquor Commission ("Commission") has the sole jurisdiction, power, authority, and discretion to grant, refuse, suspend, and revoke any license for the manufacture, importation, or sale of liquors within the City and County of Honolulu ("City"); and

WHEREAS, HRS Section 281-17 lists the powers of the Commission, recognized by the Hawai'i Supreme Court as "exceptionally broad" in *Hyatt Corporation v. Honolulu Liquor Commission*, 69 Haw. 238 (1987); and

WHEREAS, given the significant revenue that Honolulu's restaurants, bars, and other establishments serving liquors generate for Honolulu's economy and the number of employees that Honolulu's restaurants employ, a properly functioning Commission is essential for public health and safety, as well as the fair regulation of an industry that is critical to the City's economy; and

WHEREAS, for the last two decades, the Commission has been plagued with negative public media reports, news articles, and complaints regarding alleged corruption and unethical behavior within the Commission; and

WHEREAS, from 2002 through 2021, a number of Commission employees were indicted and prosecuted for bribery, extortion, and other serious crimes, and the Commission has been the subject of civil lawsuits alleging federal civil rights violations and discrimination, among other things; and

WHEREAS, during the same period, the Commission has experienced significant turnover in leadership; and

WHEREAS, in 2003, the City Council ("Council") adopted Resolution 03-223, requesting the City Auditor ("Auditor") to review the Commission's investigative and enforcement functions and its management by the Commission's Administrator ("Administrator"), including the management controls used by the Commission to safeguard its investigative and enforcement functions from abuse, misconduct, and criminal acts; and



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WHEREAS, in 2005, the Auditor published Report No. 05-02, "Audit of Selected Management Issues of the Honolulu Liquor Commission" ("Audit"), finding that the Commission's oversight and management were inadequate and that effective management was hampered by ineffective operational practices, and making 15 recommendations for improvement; and

WHEREAS, in 2019, the Auditor published Report No. 19-05, "Follow-Up on Recommendations from Report No. 05-02, Audit of Selected Management Issues of the Honolulu Liquor Commission" ("Follow-Up Report"), finding that implementation of four of the 15 Audit recommendations had not yet been completed, including:

1. Establishing an appropriate timeframe for implementation of a proposed reorganization plan;
2. Working with the City's Department of Budget and Fiscal Services ("BFS") to conduct a thorough review of the Commission's processes and practices relating to the auditing of licensees and the allocation and utilization of funds received from liquor violation fines;
3. Identifying and filling necessary vacant staff positions; and
4. Ensuring that the administrative directives and other policies and procedures of the Commission are reviewed and updated, including "[a] clear rationale and program for selection of licensees to be audited, a plan to achieve full review of licensees implemented, and necessary resources secured to achieve these objectives"; and

WHEREAS, after a review of the Liquor Commission's 154 then-existing policies and procedures, the Follow-Up Report indicated that: "all the policies and procedures needed to be updated," and "[m]any had not been revised since the 1990's and there was no indication the existing policies had been reviewed to ensure they were still current and relevant"; and

WHEREAS, it is unclear whether other Auditor recommendations from the original Audit were fully implemented, as they were not reviewed by the Follow-Up Report, including a review of the following:

1. Thorough and consistent implementation and documentation of formal training programs;
2. Implementation of effective open management and communication practices of senior management; and



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3. The feasibility of transferring the liquor enforcement investigatory responsibilities to the Honolulu Police Department; and

WHEREAS, unfortunately, legal convictions and settlements of civil lawsuits continued in the last decade, and recent reports of alleged criminal and unethical actions by Commission employees ("public trust concerns") continue to be received, including reports made directly to Councilmembers alleging that employees and Commissioners have abused their authority by investigating, limiting, or shutting down licensed businesses without sufficient cause; and

WHEREAS, in late 2021, Scarlet Honolulu, Inc., and Gay Island Guide brought suit in the U.S. District Court for the District of Hawai'i against the Commission and others, alleging violations of equal protection guarantees and unlawful discrimination under the United States and Hawai'i Constitutions and requesting that the Court enjoin the Commission from targeting, intimidating, and retaliating against LGBTQ+ businesses; and

WHEREAS, at its meeting on February 10, 2022, the Commission proposed to amend Commission Rules to expand the authority of the Commission investigators in several ways, including Commission Rule 3-82.1-38.10(c) which would allow Commission investigators to close licensed establishments and suspend the licensee's license for 24 hours without prior notice or opportunity for a hearing if a Commission inspector believes that a licensee has violated an emergency order, proclamation, rule, or similar statement pursuant to HRS Chapter 127A, even though the Mayor had revoked such emergency orders for Honolulu in November 2021; and

WHEREAS, pursuant to HRS Section 281-17(a)(4), the Commission may adopt, amend, and repeal rules consistent with HRS Chapter 91, subject to the Mayor's approval under HRS Section 91-3(d); and

WHEREAS, the Council believes that public trust in the performance of the Commission has been seriously eroded and there may be insufficient safeguards in the Commission's rules, policies, and procedures to prevent misbehavior and further abuse of the public trust; and

WHEREAS, the Council believes that it is critical for the Commission to address the concerns expressed in the Audit and the Follow-up Report, as well as the public trust concerns, in order to mitigate opportunities for abuse of power and criminal or unethical behavior by Commission officers and employees; now, therefore,



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BE IT RESOLVED by the Council of the City and County of Honolulu that the City Administration is urged to work with the Liquor Commission to establish:

1. An internal affairs unit or ombudsman within a department selected by the City Administration to quickly, thoroughly, and impartially review allegations of inappropriate behavior by officials and employees of the Honolulu Liquor Commission; and
2. An internal control division within the Department of Budget and Fiscal Services, as had been recommended by the City Auditor, dedicated to conducting a thorough review of the Commission's processes and practices relating to auditing licensees and the allocation and utilization of funds received from liquor violation fines; and

BE IT FURTHER RESOLVED that the moneys in the Liquor Commission Fund may be used for the operational and administrative costs of the Liquor Commission, including the internal affairs unit and internal control division described herein, pursuant to ROH Section 6-30.2 and HRS Section 281-17.5; and

BE IT FURTHER RESOLVED that the Honolulu Liquor Commission is requested to adopt Commission policies and procedures necessary to restore public trust in the Commission by mitigating opportunities for abuse of power and criminal or unethical behavior by officers and employees of the Commission; and

BE IT FURTHER RESOLVED that the City Administration and the Honolulu Liquor Commission are requested to provide to the Council, no later than 60 days following the adoption of this resolution, written reports on the plans to establish an internal affairs unit or ombudsman and an internal control division, and of the Commission's implementation of the Auditor's recommendations and other safeguards to address public trust concerns, specifically including, but not limited to, a description of the following:

1. The status of the Commission's reorganization plan, including the supporting rationale for the reorganization of the Commission's Field Services Branch (i.e., vacancy rates, classification of Field Services Branch positions, adjustments to minimum qualifications and correlated pay scales, and disqualification criteria);
2. The Commission's formal policies and procedures for training employees of the Field Services Branch;



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3. The Commission's methods of overseeing the work performance of Commission managers, including how the Commission:
 - (a) Ensures that senior management implements effective, open management and communication practices;
 - (b) Develops procedures to independently evaluate management's implementation efforts;
 - (c) Adopts goals and objectives for the Administrator's job performance; and
 - (d) Regularly evaluates the Administrator;
4. The status of the review with the Department of Budget and Fiscal Services of the Commission's processes and practices relating to the auditing of licensees and the allocation and utilization of funds received from liquor violation fines;
5. The status of the review and update of the Commission's administrative rules, including any provisions that allow Commission investigators to close licensed establishments for 24 hours without prior notice or opportunity for a hearing;
6. A plan for formulating new policies and procedures to address public trust concerns as described herein; and
7. A detailed history and outcome of the Commission's consideration of transferring the Commission's liquor enforcement investigatory responsibilities to the Honolulu Police Department; and

BE IT FURTHER RESOLVED that the Council urges the Mayor to protect the rights of licensees by disapproving of any rule that allows, or could be interpreted by the Commission to allow, the Commission to shut down licensed businesses without giving prior notice to the licensee and an opportunity for a hearing as required by HRS Section 281-61; and



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BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor, the Managing Director, the Director of Budget and Fiscal Services, the Acting Administrator of the Honolulu Liquor Commission, the Chair of the Honolulu Liquor Commission, and the City Auditor.

INTRODUCED BY:

Keith Uliaina
Tony Watson

DATE OF INTRODUCTION:

AUG 24 2022

Honolulu, Hawaii

Councilmembers