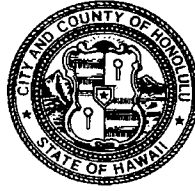


**LIQUOR COMMISSION  
CITY AND COUNTY OF HONOLULU**

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COMMISSIONER

ANNA C. HIRAI  
ACTING ADMINISTRATOR

October 3, 2022

The Honorable Esther Kia'aina  
and Members  
Committee on Housing and the Economy  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawaii 96813

Dear Councilmember Kia'aina and Councilmembers:

SUBJECT: Interim Summary Information Relating to Resolution 22-207

As requested, please find attached our interim summary information relating to Resolution 22-207, CD1. The update provides information on progress made on the four outstanding recommendations, as well as information on the public trust concerns raised by the Council. A more definitive report will be provided to Council at a later date.

Should you have any questions, please call me at 768-7302.

Sincerely,

Digitally signed by  
Hirai, Anna C.  
Date: 2022.10.03  
15:26:36 -10'00'

Anna C. Hirai  
Acting Administrator

Attachment

APPROVED:

A handwritten signature in black ink, appearing to read "Michael D. Formby", is written over a horizontal line.

Michael D. Formby  
Managing Director

DEPT. COM. 717

At the September 20, 2022, meeting of the Committee on Housing and the Economy, the committee requested a summary update of progress made on the four outstanding recommendations in the November 2019 Follow-Up on Recommendations from Report No. 05-02 (November 2019 Audit Follow-Up), which are included in the fourth “resolved” paragraph of Resolution 22-207, CD1 (Resolution). Currently, the Liquor Commission of the City and County of Honolulu (Commission) is undergoing recruitment to fill the Liquor Control Administrator (Administrator) position that was vacated by the incumbent on April 29, 2022. As such, the below update will provide *interim* summary information on progress made on the four outstanding recommendations, as well as summary information on the public trust concerns raised by the Council, with the understanding that a more definitive report will be provided to Council 90 days following adoption of Resolution 22-207, CD1 (Resolution) and the appointment of the Administrator.

As a preliminary matter, the Resolution does not make a clear distinction between duties and responsibilities assigned to the Commission and those assigned to the Administrator. For purposes of this update, the Commission refers to the five-member panel appointed by the Mayor, under HRS §281-11(a), and the Administrator refers to the Liquor Control Administrator, who is appointed by the Commission, under HRS §281-17(a)(5) and RCH §6-207. Depending on context, the appropriate designation of Commission or Administrator will be used, regardless of actual designation used in the fourth “resolved” paragraph.

Summary information on progress made on the four outstanding recommendations in the Follow-Up on Recommendations from Report No. 05-02 (November 2019 Audit Follow-Up).

**1. Establish an appropriate timeframe for the proposed reorganization plan.**

Response: The reorganization effort for the Field Services Branch is actively in process. The draft organization chart and position descriptions were submitted in November 2020 to the Department of Human Resources (DHR), and again in June 2021 for review to DHR and the Department of Budget and Fiscal Services (BFS). However, due to the COVID pandemic and the resignation of the former Administrator, the process was temporarily paused. Once appointed, the new Administrator will make the determination whether the submitted reorganization, or a revised reorganization, will be the most efficient for the agency’s operations.

**2. Work with the Department of Budget and Fiscal Services to have the Internal Control Division conduct a thorough review of the Commission’s processes and practices relating to: 1) Auditing of licensees, and 2) Allocation and utilization of funds received from liquor violation fines.**

Response: **Auditing of licensees.** The current Liquor Control Auditor II (supervisor) implemented changes to the processes and practices relating to the auditing of licensees. Those changes, including an educational component for licensees to increase understanding of gross liquor sales reporting, and having a

total of four auditors as of FY20, increased the number of licensee audits performed annually. These changes have enabled the agency to improve its regulatory function over its 1,400+ liquor licensees.

Response: ***Allocation and utilization of funds received from liquor violation fines.*** In May 2017 and again in May 2018, Commission Administration submitted a request to create a separate fund account for fine monies. BFS division representatives from Budget, Accounting, and Fiscal Services met with our agency personnel, but the request was ultimately rejected, even though the City Auditor previously noted a concern that the use of fine monies is restricted by HRS §281-17(3), and combining both fine and fee monies in the same account potentially could result in expenditures of fine monies that are prohibited by law. In November 2020, agency personnel sought assistance from the Internal Control Division to remedy this situation. Due to the COVID pandemic and the lack of availability of Internal Control Auditors, we were asked to postpone our request until a later date.

**3. *Identify and fill necessary vacant staff positions.***

Response: As of October 2022, we are in process of recruiting the following positions for our agency: Senior Clerk Typist (2 vacancies); Liquor Licensing Clerk (1 vacancy); Liquor Commission Support Technician (1 vacancy); and Liquor Control Investigator (3 vacancies). Throughout its history, the agency has found it challenging to find qualified Liquor Control Investigators to enforce our state liquor laws and the Rules of the Liquor Commission. Predictably, this recruitment effort will be even more difficult given recent events.

**4. *Ensure that the administrative directives and other appropriate policies and procedures 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.***

Response: ***Directives, policies and procedures.*** On August 2022, the Commission implemented the revised Standards of Conduct of the Honolulu Liquor Commission. All agency staff received training.

The proposed Liquor Commission rule amendments went to public hearing in February 2022. The proposed amendments are with the Commission for decision making, which decision making will be conducted in a public meeting as required by HRS Chapter 91.

HB137 HD1 SD2 CD1 was signed into law on June 17, 2022. Act 076, SLH 2022, will become effective on January 1, 2023. Act 076 clarifies a number of procedures applicable to both licensing and enforcement sections of our field services branch: Removes the authority of the county liquor commissions to

enforce the liquor tax law and requires violations of the liquor tax law to be referred to the director of taxation for investigation; repeals the discretionary power of the liquor commission to deny a license to any person the liquor commission investigator finds is not fit and proper to hold a license; and repeals the requirement that investigative reports to the liquor commission include any and all matters that are relevant to the application or license in the judgment of the investigator.

The Administrator will continue to update the policies and procedures on file as needed.

Response: ***Selection of licensees to be audited.*** The agency currently performs three types of audits: Audit Inspection; Pre-Audit; and Full-Audit. An Audit Inspection is geared towards new licensees, with the goal of educating them on liquor laws and rules which pertain to the filing of the annual gross liquor sales. The audit selection process utilizes various criteria to identify selection for a Pre-Audit and Full-Audit, including but not limited to, gross margin analysis, comparable sales analysis, food sales percentage analysis (for the restaurant class license), incomplete report, late filing, complaints, and reselection due to prior audit findings.

Summary information on the public trust concerns raised by the Council.

1. **The status of the Administrator'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).**
  - a. The reorganization effort for the Field Services Branch is actively in process. The draft organization chart and position descriptions were submitted in November 2020 to the Department of Human Resources (DHR), and again in June 2021 for review to DHR and the Department of Budget and Fiscal Services (BFS). However, due to the COVID pandemic and the resignation of the former Administrator, the process was temporarily paused. Once appointed, the new Administrator will make the determination whether the submitted reorganization, or a revised reorganization, will be the most efficient for the agency's operations.
  - b. Under the Acting Administrator, a draft supplemental agreement regarding a pay differential specific to Field Services Branch personnel was submitted to DHR in July 2022. This agreement is still pending with DHR in draft form, and has yet to go to consultation with HGEA.

**2. The Commission's formal policies and procedures for training employees of the Field Services Branch.**

- a. During the Council Committee hearing on 9/20/22, the issue of training was raised in the context of the term "police powers." In part, HRS §281-17(5) states, "Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer."

For a Liquor Control Investigator, statutorily granted "police powers" gives the investigator the right to investigate possible liquor-related crimes; stop and detain individuals for the purpose of furthering a liquor-related investigation; seize evidence; and issue notices of violations and complaint and summons.

As of March 6, 2012, in a directive issued by the then-Administrator, the authority to effect any (physical) arrest was suspended. Investigators were also prohibited from carrying "secondary defensive weapons," including, but not limited to, batons, handcuffs, and pepper spray. To date, this directive remains in place as issued. Should a physical arrest be required, the investigator is instructed to call "911" for assistance.

While the Liquor Control Investigator is a sworn officer of the City and County of Honolulu, the investigator is not a sworn law enforcement officer who carries a firearm and can effect physical arrests. The training investigators receive is based on their investigative duties, as prescribed by law and rule. Their training should not be equated to the extensive training required for a Honolulu Police Officer.

- b. Each newly-hired Liquor Control Investigator in the Field Services Branch, Enforcement Section, goes through six-months of training conducted by various personnel in the agency. See **Attachment A** for training details.

**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.**

In accordance with HRS §281-17(a)(5), the Commission-appointed administrator "... shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require ..." Therefore, the Commission's oversight of senior management and managers is through its oversight of and direction given to the appointed administrator.

**b. Develops procedures to independently evaluate management's implementation efforts.**

In accordance with the HRS §281-17(a)(5) delegation of responsibility, the Commission evaluates management's implementation efforts through its oversight of the appointed administrator.

**c. Adopts goals and objectives for the Administrator's job performance.**

In addition to goals and objectives identified in the position's class specifications and job description, this information typically is communicated to the administrator in conjunction with his or her formal annual performance evaluation and informally, usually through the Commission Chairperson.

**d. Regularly evaluates the Administrator.**

Annually, the Deputy Corporation Counsel (DCC) assigned as legal counsel to the Commission prepares an evaluation sheet, which is given to each Commissioner to complete. The DCC collects the evaluations, combines the scores and responses, and provides a consolidated evaluation sheet to the Commission and the Administrator.

**4. The status of the review with the Department of Budget and Fiscal Services of the Commission's processes that allow Commission investigators to close licensed establishments for 24-hours without prior notice or opportunity for a hearing.**

During the COVID pandemic, authority given to investigators to close licensed establishments for 24-hours for infractions of a Mayoral emergency order came directly from the Mayor under the Mayor's emergency management authority under HRS Chapter 127A.

**5. A plan for formulating new policies and procedures to address public trust concerns as described herein.**

This Resolution, which will include this specific directive, will be provided to the new Administrator who will be able to provide a preliminary report to the Council.

**6. A detailed history and outcome of the Commission's consideration of transferring the Commission's liquor enforcement investigatory responsibilities to the Honolulu Police Department.**

Since the early 2000's, preliminary discussion regarding transferring liquor enforcement investigator responsibilities to the Honolulu Police Department (HPD) has been conducted with three Honolulu Police Chiefs (Donohue, Correa, and Kealoha). While the Liquor Commission received a courteous reception from each individual, those discussions highlighted some of the legal, procedural,

and logistical challenges that would need to be addressed in order to effect this type of transfer, to wit:

- HPD's existing workload and own staffing challenges.
- Liquor enforcement investigators' civil service status and membership in HGEA.
- If Liquor Commission funds are needed to support activities conducted by HPD personnel, whether that use is prohibited by HRS §281-17.5(b).

## **ATTACHMENT A: Honolulu Liquor Control Investigator Training**

**A. Classroom Training.** This consists of pertinent subjects and topics concerning law enforcement/liquor control procedures directly related to the functions of the Honolulu Liquor Commission. Topics are taught by the Chief Liquor Control Investigator, as well as Liquor Control Investigators who are in a supervisory or designated training role. The duration of Classroom Training will depend on the individual's ability to comprehend the complexities of the subject matter given. Upon completion of Classroom Training, the investigator is sworn-in by the Administrator and begins Field Training with the Enforcement Supervisor.

### **B. Classroom Curriculum.**

#### **1. City and County of Honolulu New Employee Orientation**

Overview of the City and County of Honolulu. Discussion of policies:

- Prevention of Sexual Harassment
- Workplace Violence Prevention
- Respectful Workplace
- Ethics
- DIT Security Policy and Guidelines
- Personal Use of Social Media by City Employees.

#### **2. Standards of Conduct of the Honolulu Liquor Commission**

Understanding the control, disposition and governance of the personnel of Liquor Commission of the City and County of Honolulu.

#### **3. Rules of the Honolulu Liquor Commission**

Understanding the various rules and regulations as prescribed by the Honolulu Liquor Commission for all licensed liquor establishments.

#### **4. Liquor Laws of Hawaii**

Understanding the liquor laws of the State of Hawaii, HRS §281.

#### **5. Ethics**

Understanding the expectations of City and County employees and the ethical conduct expected of them both on-duty and off-duty.

#### **6. Fire Extinguisher/Fire Codes**

Learning the proper usage of a fire extinguisher, the types of fire extinguishers and the various fire code violations one may encounter at a liquor establishment.



**7. Server Training**

Participate in the agency's Server Training, which is a mandatory class for all managers and bartenders at licensed premises. Provides a brief overview of the common violations encountered in a liquor establishment; and licensee/employee responsibilities in regards to the Laws and Rules of the Honolulu Liquor Commission and State of Hawaii.

**8. Testifying in Court/Hearings**

Understanding one's conduct, demeanor, and appearance when testifying in court/hearings and how it is perceived by others.

**9. Brady Rule for Law Enforcement**

Understanding the significance of being truthful at all times, as well as the requirement to disclose any and all material exculpatory evidence early enough so the defense can make use of the information.

**10. Criminal Citation Arrest & Summons/Notice of Violation**

Understanding the criminal offenses in violation of the Hawaii Revised Statutes (HRS), the Hawaii Administrative Rules (HAR) or the Revised Ordinances of Honolulu (ROH). Learning the proper way to fill out and issue such citations.

**11. Violation/Investigative Report Writing**

Learning how to write complete comprehensive reports based on facts and circumstances encountered in the field.

**12. Notice of Hearings/Decision & Order Service**

Learning how to properly serve Notice of Hearings and Decision and Orders to licensee's, attorneys, and/or authorized agents of liquor establishments.

**13. Evidence Collection/Submitting**

Understanding the significance of evidence; the proper collection and chain of custody; how to properly fill out an evidence report with pertinent information.

**14. Radio Communication**

Radio demeanor, FCC rules and regulations, and the usage of the ten code.

**15. HLC Vehicle Orientation**

How to fill out the Vehicle Records form; and City procedures should one become involved in a motor vehicle accident.

### **C. Field Training**

For the remainder of the investigator's six-month probation period, they will undergo Field Training. While being partnered and evaluated by an Enforcement Field Supervisor, the investigator will use the teachings learned from the classroom training to further learn to: conduct inspections and investigations; complete a complaint-based investigation; write investigative reports and citations; operate a sound meter; serve various legal documents; obtain and process evidence; communicate with licensees about matters concerning liquor laws and rules with confidence; and educate the public/licensees on the liquor laws and rules. Annual statewide investigator training is also available for all enforcement investigators who can attend. Also, when applicable training is offered, investigators may be sent based on funding and availability.