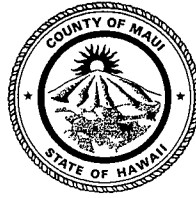


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ALAN M. ARAKAWA
MAYOR



GLENN MUKAI
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DEPUTY DIRECTOR

DEPARTMENT OF LIQUOR CONTROL
C O U N T Y O F M A U I

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December 3, 2018

Yuki Lei K. Sugimura, Chair
Policy, Economic Development, and Agriculture Committee
County Council
Maui County of Maui 200 High Street
Wailuku, Maui, Hawaii

Dear Chair Sugimura and members,

Harvey M. Rose, Associate, LLC submitted their written final performance audit conducted for the Maui County Council of the Department of Liquor Control.

The Department has reviewed the performance audit report and disagrees with many of the factual findings, however, with regards to the recommendations directed to the Director of the Department of Liquor Control, several of the recommended changes have already been made; other recommendations are in the process of being implemented or will be subject to consultation with public employee unions, amendments to the Hawaii Revised Statutes, Rules of the Liquor Commission, or the Maui County Charter. The Department has the following responses to their recommendations:

Section 1. OVERSIGHT OF LIQUOR CONTROL

The Director should:

1.12 Carry out the 1994 Deloitte & Touche recommendations by creating short and long-term goals for him/herself and the Department, and then reviewing these goals with the Commission before their adoption in the annual strategic plan. These goals should cover administration, enforcement, overall Department operations, and customer satisfaction.

The Department is in compliance with Deloitte & Touche Administration recommendations. The Director has ensured that the LCO III's in Enforcement serve as "working supervisors".

1.13 Select and report annually to the commission and County Council on mix of output and outcome oriented performance measures that tracks the short and long term goals agreed upon with the Commission. Examples of performance measures could include:

Average license application processing times each year

The amount of time elapse from when an application (complete or not) is first submitted and/or when the applicant first make contact with the Department to initiate the application process is entirely dependent of the applicant or the applicant's representative. Application may not be submitted or

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(DEPARTMENT OF LIQUOR CONTROL)

applicant or the applicant's representatives may submit the applications months after initial contact with the Department or the application is returned for correction or application is incomplete to the applicant.

A complete application submitted by the first Friday of the month will be considered for placement on the Commission's agenda for the following month for Preliminary hearing and if approved at the preliminary hearing by the Liquor Commission, the application will be set for public hearing not less than 45 days thereafter pursuant to state law.

Percentage of total license application processed each fiscal year

Total license applications processed each fiscal year is provided in Department's annual report.

Percentage of total permit requests processed and granted each fiscal year

Total permit requests processed and granted each fiscal year is provided in Department's annual report

Number of annual operating under the influence incidents for the current and past five years

Department's Annual Report provides Police source – OUI (off premises generated) incidents.

Number of annual alcohol related deaths for the current and past five years

Number of annual alcohol related deaths for the current and past five years may be statistics for Maui Police Department, other governmental agencies or public organizations. The Department will note within its annual report should there be any alcohol death relating to license premises.

Customer satisfaction rating from Department customer satisfaction survey

Working with Advisory Committee and Commission on design and questions.

1.14 Include historical statistics on the prevalence of underage drinking and alcohol abuse in Maui County in the Department's annual report and strategic plan. The Director should also include these historical statistics for other Hawaiian counties as well as the US average for comparison.

The Department as well as other liquor administrators from other counties do not have access or able to obtain accurate statistics on the prevalence of underage drinking and alcohol abuse.

1.15 Undertake an annual customer satisfaction survey of licensees and the general public and share the results with the Commission. The Director should work together with the Commission to design the question and format of the survey.

Department continues to work with Commission and its Advisory Committee to design the question and format of the survey and continue to work with Office of Management to be included in County's customer satisfaction survey as well as other surveys and programs.

Section 3 Staffing and Human Resource Issues

The Director should:

3.7 Reassign or assign job duties to appropriate staff to align with job descriptions:

Specifically, the Director should:

Instruct the Liquor control Auditor to perform quarterly random audits of licensees or else request a reclassifications of the auditor position to reflect clerical work performed by the employee.

Currently, this position is performing duties that have been in effect since 2002.

The Department continues to work with the Department of Personnel Services and Office of Management in addressing this issue.

3.8 Re-examine work experience requirements with the Department of Personnel Services and consider removing the requirement that trainees have enforcement experience.

The Department of Personnel sets the minimum qualification requirements for each position through class specifications. LCO Trainee minimum qualification includes "one of which shall have involved the examination, enforcement, interpretation and/or applications of laws, ordinances, rules and regulations, and/or policies and procedures", thus applicant may not be required to have enforcement experience.

3.9 Maximize use of staff resources by sending application that need correction via e-mail or certified mail instead of via delivery by enforcement staff and through implementing process improvement recommended in Section 4 (Licensing) and Section 5 (Enforcement) of this report such as reducing case report requirements for minor violations.

Enforcement staff does not deliver application that need corrections. Applicant(s) are contacted and come to the Department to retrieve incomplete application or address the shortfall. Licensing staff email areas of concern to the applicant or their representatives which they can address and make the necessary amendments prior to submitting original corrections or additions to complete the application.

Section 4. Licensing and Permit Process

Deputy Director should:

4.1 Work with the supervisor of the Administrative Services Division (Liquor Control Officer IV) to review, collect, and post up to date application materials, including application forms, checklists of required items, and other guidance materials for all application types to the Department's website

LCO IV has posted application materials on the website, working with Information Technology Services, and awaiting Commission action to post new or amended application materials on the Department's website.

4.2 Review, update, and post the Department's Operations, Policies, and Procedures Manual on the Department's website.

When taking office in June 2016, the Director reviewed and noticed that the Department's Operations, Policies, and Procedures Manual last revision was November 8, 2000. This administration updated the Operations, Policies, and Procedures Manual and has submitted the 2nd update to Hawaii Government Employees Association for consultation pursuant to collective bargaining agreements.

4.3 Establish and maintain a data base or list of email addresses of licensees and other stakeholders, including law firms and other consultants that frequently assist applicants with the license and permit application process, in order to quickly and efficiently disseminate information about updates to licensing and permit application processes.

The Liquor Control Officer IV immediately disseminates any new information to all attorneys representing applicants and stakeholders. The Department does post on its website any new information in a timely manner. Information Technology Services Division is currently working to establish a separate Department electronic data base email program for list of email addresses.

4.4 Work with the supervisor of Administrative Services Division (Liquor Control Officer IV) to review license application requirements and make recommendations to the Liquor Control Commission to eliminate unnecessary requirements so that the application process can be streamlined while still obtaining the minimum necessary information.

The Department and the Commission have been pro-active in reducing and streamlining the requirements for applicants, but changes to state liquor laws or County ordinances are needed to further reduce requirements.

The Commission Chair and the Director met with Directors from other Departments to address requirements and concerns.

The Department have been proactive in state legislation to reduce or streamline the requirements.

The Director is able to administratively to approve applications which does not require public hearing by the Commission, which greatly streamlined the approval process and the appearance requirement by the applicant or the applicant's representative.

Obtaining and providing the service of the electronic fingerprint scanner greatly reduced the amount of time for processing and submitting applications for preliminary hearing before the Commission.

The Department inform all interested persons that they may petition the Commission for any adoption, amendment, or deletion of any Rules of the Commission, or contact their state legislature to introduce a bill to adopt, amend, or delete any state law. At least four individuals have done.

Department's Advisory Committee, consisting of liquor licensees from various classes of licenses, executive director of Maui Hotel & Lodging Association, and representative of not for profit organization

has been able to provide invaluable insight of constant evolving of the liquor industry; reviewed of all Administrative Rules of the Liquor Commission and any proposed rules submitted for consideration by the Commission; has proposed new, amended, and or the deletion of the Rules after its review; worked in partnership with the Department to institute changes in state laws; etc.

4.5 Consult with the Director of Liquor Control and the Department of Corporation /counsel to determine if it would be feasible to implement rolling deadlines for liquor license renewal.

Rolling deadlines for will not provide the level playing field for all licensees. The major issues for renewals have been resolved or eliminated. This past renewal, all licensees were able to renew their licenses. Renewal applications are distributed in March and application for renewal are accepted during the period of April 1 to June 15.

The Department of Liquor Control should:

4.6 Eliminate the requirement that applicants must meet with Department staff in order to obtain application materials and make appointment optional instead.

The requirement is time tested and found to be the most effective and efficient process.

4.7 Recommend to the Commission to revise the Liquor Control rules to conform with the new restrictions on what liquor control departments may require from non-profit special license applicants in order to shorten the amount of time needed to process such applications.

The Director of this and past administrations have authority and have been administratively approving special license applications. The Department through its Small Business Review and Advisory Committee introduced state legislation which greatly reduced the majority of the requirements for not for profit organization Class10, special licenses . The Department working in partnership with liquor administrators from the other counties, organizations and legal counsels representing licensees, and licensees were successful in amending state law to eliminate many of the requirements for Class 10, Special License, and the elimination of the federal tax requirement for all license applications.

4.8 Review and revise the Department's performance measures by adding a measure of the amount of time required to approve license applications. This should at least measure the amount of time elapsed from when an application is considered complete, but the Department should also record the amount of time elapsed from when an application (complete or not) is first submitted and/or when the applicant first makes contact with the Department to initiate the application process.

The amount of time elapsed from when an application (complete or not) is first submitted and/or when the applicant first make contact with the Department to initiate the application process is entirely dependent on the applicant or the applicant's representative. Application may not be submitted or

applicant or the applicant's representatives may submit the applications months after initial contact with the Department.

A complete application submitted by the first Friday of the month is considered for placement on the Commission's agenda of the following month for Preliminary hearing and if approved at the preliminary hearing by the Liquor Commission, the application will be set for public hearing not less than 45 days thereafter pursuant to state law.

The Liquor Commission is holding its Public hearing to amend the Rules of the Liquor Commission to comply with all state laws passed by the State Legislature, on December 12, 2018.

4.9 Direct the supervisor of the Administrative Services Division (Liquor Control Officer IV) to assign a consistent point of contact (liquor control officers) for all license applications.

The applicant's consistent point of contact is the Liquor Control Officer III that the applicant makes initial contact with. When that LCO III is on leave or services not readily available, the applicant will be assigned to meet with another Liquor Control Officer to insure the application is process in a timely manner.

Section 5. Enforcement

The Director should:

5.1 Solicit input from the Liquor Control Commission and the advisory committee, licensees, and public health organization and use it to update County liquor rules to eliminate or refine rules that pose little risk to public health or are outdated given industry changes since the rules were first adopted.

The Department has received input from the Office of Management, County Council, Department of Prosecuting Attorney, Department of Corporation Council, other governmental agencies, the Liquor Commission, Liquor Control Adjudication Board, Department's advisory committee, licensees, organization representing licensees, not for profit organizations and the public which have resulted in the Commission holding five public hearing, August 10, 2016, February 8, 2017; July 12, 2017; and September 13, 2017. The Commission is holding a public hearing on December 12, 2018 to amend additional rules. The Commission has amended, adopted or deleted over one hundred rules within thirty-nine sections of the Rules of the Liquor Commission to address changes in the liquor industry, state laws and concerns addressed by participants. The Commission and the Department of Corporation Counsel is currently reviewing twenty plus proposed rule amendments for consideration.

5.2 Update the Department Policies and Procedures Manual to explicitly define the scope of enforcement activities. The update manual should address the following:

- i. Key goals and objectives for the Department, such as which alcohol-related problems and risks are the highest priority and to define how the Enforcement Division staff should allocate most of their inspection time;**

The Department has and will continue to find new or innovative ways to address these issues and assign the placement in appropriate manual, directives, orders, policies, etc.

- ii. How to determine which licensees to inspect based on risk to public health or safety;**

All premises are inspected in a fair and equal manner. The Liquor Control Officer IV may require the Liquor Control Officer(s) to conduct additional checks or special operations on premises based on information available, or conduct a joint operation based on request from other law enforcement or governmental agencies.

- iii. Areas outside scope of liquor control enforcement activities, such as actions that interfere with business operations or patrons and do not pose a risk to the public;**

Liquor Control Officer do not interfere with business operation of a licensee unless there is a violation.

Patron at best is utilized as witnesses and patron is not required or may decline at any time to give a statement to the Liquor Control Officer. The Department jurisdiction is over licensee only.

- iv. Guidelines for how long Enforcement Division inspectors should spend on a single inspection;**

Guidelines for how long Enforcement Division personnel spend on a single inspection may be addressed during training, policies and procedures manual, Training Manual, Departmental Orders, Directives and by instructions during special operations.

Steps for performing inspections and writing case reports; and,

Steps for performing inspections and writing case reports are address during training, the Enforcement's training manual, the Operations, Policies, and Procedures Manual, and Departmental Orders. The Enforcement Division is currently being re-trained by the LCO IV.

- iv. Criteria for when a detailed case report is necessary for minor violations (See recommendation 5.6).**

Disagree. See attachment regarding VRreports.

5.3 Direct the Deputy Director to work with Enforcement Liquor Control Officer IV (Enforcement Division supervisor) to adopt an electronic tracking system for inspections, instead of using manual paper logs.

The Department have been working with County's Information Technology Services Division to obtain the latest technology to assist the Enforcement Division to carry out their duties and responsibilities in efficient and effective manner.

5.4 Direct the Deputy Director to work with the Enforcement Liquor Control Officer IV to clarify the process for documenting inspection in the Policies and Procedures Manual to ensure that the inspections are not double counted and that officers are tracking the same information consistently.

Deputy Director have been constantly working with the Liquor Control Officer IV to address and improve the operations of the Enforcement Division and any issue that may arise.

5.5 Direct the Enforcement Liquor Control Office IV to separately track minor decoy operations, closing checks, and deliveries from inspections.

Liquor Control Officers conducts inspections of the premises during minor decoy operations, closing checks, and deliveries.

5.6 Direct the enforcement Liquor Control Officer IV to establish criteria that would determine when detailed case reports are required for minor violations and re-implement the one page notice of violations paper report (VR report), or an equivalent abbreviated report, for violations that do not meet the criteria to reduce staff time spend on violations that do not pose major risks to public health and safety.

Disagree. See attachment regarding VR reports.

5.7 Direct the Enforcement Liquor Control Officer IV to develop a process for tracking minor violations that do not require detailed case reports in the Department's case report tracking system.

Disagree. See attachment regarding VR reports.

5.8 Improve communication with licensees and voluntary compliance by (a) sending a quarterly newsletter that provides tips on complying with liquor rules and result from compliance checks; and (b) making it easier to take the certification examination.

Information is shared through the Department's website section "New/Announcement" provides similar information on a timely basis. The Department has been working with licensees and organizations representing licensees to increase the flow of information and education programs, eg: town hall type meeting for licensees and applicants; meeting with executive board of various organizations; increased to be certification exams and liquor education classes by conducting it at various premises or locations per licensee request beside conducting it at the Department three times a week, etc. The quarterly newsletter was delivered by LCOs and Licensees expressed their concerns with the use of LCO time and waste of paper because they threw it away.

5.9 Direct the Deputy Director to establish a process for licensees to submit anonymous feedback or complaints regarding enforcement.

The Department has a process for licensees, applicants, and the public to submit anonymous feedback, concerns, and complaints on the overall operations of the Department.

5.10 Provide Enforcement officer digital access to Application Extender, the Department's electronic system that contains important information for Liquor Control Officer such as licensee floor plans and permits, so that they may work on case reports during the night shift.

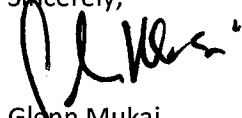
The Enforcement Liquor Control Officer has access to and have continue same access to utilize the Application Extender during the past and the current Administration since 2014. The Department have been working with the County's Information Technology Services Division to provide electronic tablets to the Enforcement staff which they may utilized in the field to access the information, as well as, exploring the use of laptops to submit their reports from the field.

5.11 Establish a quarterly meeting between the Enforcement Liquor Control Officer IV and the Maui Police Chief to coordinate enforcement operation and to look for ways to decrease the investigative follow-up for Liquor Control Officers from police referrals.

The Enforcement Liquor Control Officer IV always had the ability to and does meet or communicate with his counterparts within the Maui Police Department to coordinate joint operations, minor decoy operation, look ways to decrease the investigative follow-ups, etc.

The Director and Deputy Director have excellent relationship with and have been in contact on regular basis with the Chief of Police, Deputy Chief or Assistant Chiefs.

Sincerely,



Glenn Mukai
Director

VR reports.

All alleged violations minor(?) and/or major (?) offense of the Rules of the Liquor Commission and/or State liquor laws are treated equally and are to be investigated and processed in a fair and equitable manner. One exception is the sale, service or furnishing any liquor to, or allow the consumption of any liquor by any minor or any person at the time under the influence of liquor, drugs, or any combination thereof which are considered high priority cases and are to be investigated and processed in a timely manner.

The Liquor Gladiator computer data base program was developed years prior to my arrival to address concerns and issues of the numbering and tracking of reports, storage, accessibility, oversight, prevented lost or misplaced reports, manual logging and counting of statistical information, backlog of reports, determination of workload of investigators, etc. of all enforcement investigation reports as well as having the ability to sort, segregate and provided statistical data and information that may be requested and/or needed for other required reports (Budget, Quarterly and Annual Reports, etc.). Full case reports are entered, automatically numbered, tracked and retained on the Liquor Gladiator computer system which also automatically segregates information in subcategories to provide required information to monitor the active cases, statistical analysis, etc., and provide a standardized and systematic report system. This allows the instant review, status, and accessibility of the cases by proper authority to address any issue or inquiry and provide instant access by the Liquor Control Officer IV for review and status of all reports and follow up assignments as well as for Liquor Control Officers to make corrections, review the entire case prior to conducting follow up investigation, etc. since it is retained on the County's network system. All reports are entered on fillable forms, automatically logged and issued a case number and retained on the Gladiator which is on the County of Maui's computer network.

The Liquor Gladiator creation was based on the Maui Police Department system which has proven to be effective and efficient and addresses all previous concerns and issues.

The VR reports were discontinued due to but not limited to the following reasons: the space allocated to enter optional information was limited which may prevent the including of the facts of a full scope of investigation report, required elements to establish the violations, witness statements, evidence recovered, etc.; multiple violations entered on a VR report would encounter additional challenges to include the required elements and circumstances to establish the violations, witness statements, evidence obtained, etc. due to the limited space available; there were no tracking of or accountability of the VR reports generated, VR reports are hard copy reports that could be misplaced, misfiled, or lost very easily; VR reports are handwritten and dependent on the investigator's penmanship it may be at times challenging to read; correction to and on VR report would be a major challenge; the review or follow-up investigations did not provide a system for status report or accountability and tracking; submittal of follow up investigation reports and evidence obtained would require the Liquor Control Officer IV to manually log, track and account for each VR report as well as to manually review each report to provide statistical data required for other required reports which would be labor intensive, time consuming, and may lead to a large margin of human error where the Liquor Gladiator would automatically do those functions; the VR reports are hard copy reports and accessibility would be a major challenge since the VR reports were stored in boxes or filing cabinets that may be at

various locations. Investigation reports on minor violation cases submitted on the Liquor Gladiator can consist of more than ten or more pages. There may have been hundred(s) of VR reports not logged and/or readily accounted for.

The requirement of submitting all reports on the Liquor Gladiator on a "minor violation" has resulted in the Department of the Prosecuting Attorney bringing charges against and prosecuting licensees before the Liquor Control Adjudication Board, while previously on the VR reports there were few, if any, written cautions issued. Licensee and or their legal counsel are provided the entire violation report along with any evidence which are attached to the Complaint and Accusation that is hand delivered to the licensee and or their legal counsel. The licensee may appeal any decision of the Board to the State Second Circuit Court, thus, all investigation reports submitted must at all times be able to meet a high standard to meet the challenges of the adjudicatory and appeal process.

Although VR reports may appears to be a quick way to submit minor violations with limited information, it does not provide the quality of investigation reports that is required. VR reports generate the same issues and concerns that were resolved by the creation of the Liquor Gladiator data base program.

The Deputy Prosecutor could not recall any Complaint & Accusation generated from a VR report and maybe, at best, one Administrative Written Caution was issued.