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November 27, 2018

MEMO TO: PEA-56 File

F R O M: Mike White
Council Chair



SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO
PERFORMANCE AUDIT OF THE DEPARTMENT OF LIQUOR
CONTROL** (PAF 18-090; PEA-56)

The attached informational document pertains to Item 56 on the Committee's agenda.

ocs:proj:audit:2017-18:liquor:audit transmittal

Attachment

Performance Audit of the Maui Department of Liquor Control

Submitted to the Maui County Council by

Harvey M. Rose Associates, LLC



**Harvey M. Rose Associates, LLC
1390 Market Street, Suite 1150
San Francisco, CA 94102**

October 23, 2018



October 23, 2018

Mr. Mike White
Council Chair
Maui County Council
200 South High Street, 7th Floor
Wailuku, HI 96793

Dear Chair White:

Harvey M. Rose Associates, LLC (HMR) is pleased to submit this report on our performance audit conducted for the Maui County Council of the Department of Liquor Control. This report presents our audit findings, conclusions, and recommendations pertaining to the operations of the Department of Liquor Control as requested in RFP-18-003OCS.

Thank you for the opportunity to serve the County Council and the County of Maui. Please contact us at any time if you have questions or would like further information about the contents of this report.

Sincerely,

A handwritten signature in blue ink that reads 'Fred Brousseau'. The signature is fluid and cursive, with a circular flourish at the end.

Fred Brousseau

Principal

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Executive Summary

Harvey M. Rose Associates, LLC was retained by the Maui County Office of Council Services to conduct a Performance Audit of the Department of Liquor Control as authorized by Section 3-6 of the Revised County Charter and Resolution 18-13. The performance audit was conducted in accordance with Generally Accepted Government Auditing Standards, 2011 Revision, issued by the Comptroller General of the United States, U.S. Government Accountability Office.

We submitted a draft report, with findings and recommendations, to the Office of Council Services on September 7, 2018 in order to solicit feedback. We submitted the draft report to the Director of Liquor Control to solicit feedback on the accuracy of findings and conclusions on September 12, 2018. We received additional feedback on the report from the Office of Council Services on October 12, 2018. This final report incorporates this feedback as appropriate.

This report is structured in five sections: (1) Oversight of Liquor Control; (2) Commission Responsibilities; (3) Staffing and Human Resource Issues; (4) License and Permit Processes; and, (5) Enforcement. Our findings and recommendations are summarized below.

Section 1: Oversight of Liquor Control

The oversight structure for liquor control in Maui County has not ensured that the Commission fulfills its mandated duties and that the Department of Liquor Control achieves high performance. There are several factors that have contributed to this outcome including, but not limited to, County Rules that hinder effective oversight, absence of meaningful long- and short-term performance goals for the Department, limited consultation with key stakeholders prior to the adoption of new and amended liquor control rules, and inadequate guidance by the Corporation Counsel.

Recommendations

The Mayor and County Council should:

- 1.1 Meet with the Liquor Control Commission to discuss the necessary steps in cases where no applicant for the Director position meets the job requirements and the Commission must consider additional candidates and agree to steps to add to the Maui County Liquor Control Rules to cover such situations.
- 1.2 Call a meeting with Liquor Control Commission members to discuss the various steps that can be taken by the Commission, the Mayor, and/or County Council if the Director demonstrates poor

performance, and amend the Maui County Liquor Control Rules to reflect the agreed upon steps.

- 1.3 Consult with the Corporation Counsel on how to amend County Liquor Control Rules to enable the Mayor and County Council to request specific improvements in the Department's performance upon receipt of the Department's annual report and the performance evaluation of the Director.
- 1.4 Consult with the Corporation Counsel on how to amend Maui County Liquor Control Rules to include an annual performance review of the Commission Chair by the Mayor and County Council.

The County Council should:

- 1.5 Consider a resolution that outlines the specific improvements that are expected from the Department, Liquor Control Commission, and Corporation Counsel as a result of this audit report.

The Corporation Counsel should:

- 1.6 Provide an in-depth required training each year to all members of the Liquor Control Commission and Director on: (i) the specifications of the Sunshine Law (Hawaii Revised Statutes Chapter 92); (ii) public noticing requirements for Commission meetings (Hawaii Revised Statutes Chapter 91); (iii) the availability of Corporation Counsel; (iv) Maui Charter mandated responsibilities for Commission members; and, (v) consequences for non-compliance with County rules and State laws. It is imperative that the Commission also receive the training so that they are able to ensure Departmental compliance with these County rules and State laws.
- 1.7 Verify and report to the Commission Chair that public noticing requirements have been met for all Commission hearings, including: timely posting of agendas that contain adequate information about proposed rule changes, and proper notification to the public of scheduled Commission hearings where rule changes would be considered and determined.

The Liquor Control Commission should:

- 1.8 Amend Maui County Liquor Control Rules Chapter 102 Section §08-102-36(5) to delete the provision that states, "Nothing contained herein shall prevent the commission from waiving the selection process and choosing a person to fill the vacancy who has not filed an application" so that the Commission is required to follow an established approach to selecting a director, thus ensuring a fair and just director selection process.
- 1.9 Direct the Director of Liquor Control to update the operations manual used by Department staff and consult with the Director of Liquor Control on a reasonable timeline for completion.

- 1.10 Request that Corporation Counsel prepare a factsheet available to the public and posted on the Department website with information on State Sunshine Laws and public noticing requirements for licensees and County residents, designed to educate the public on their rights to access information from the Department and the Commission, as outlined in the Hawaii Revised Statutes and County rules. The Commission should consult with Corporation Counsel on a reasonable timeline for completion.
- 1.11 Amend the Maui County Liquor Control Rules to require that the Director consult with licensees and key stakeholders prior to proposing new and amended rules as well as administrative changes.

The Director should:

- 1.12 Carry out the 1994 Deloitte & Touche report 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.
- 1.13 Select and report annually to the Commission and County Council on a 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
 - Percentage of total license applications processed each fiscal year
 - Percentage of total permit requests processed and granted each fiscal year
 - Number of annual operating under the influence (OUI) incidents for the current and past five years
 - Number of annual alcohol-related deaths for the current and past five years
 - Customer satisfaction rating from Department customer satisfaction survey
- 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.
- 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 questions and format of the survey.

Section 2: Commission Responsibilities

The Liquor Control Commission of Maui County is not fulfilling its mandated responsibilities, as defined by the Hawaii Revised Statutes and Maui County Liquor Control Rules. Poor attendance rates, failure to evaluate the performance of directors of the Department of Liquor Control annually, and rule changes enacted without proper noticing given to licensees and the general public all point to the need for improved performance and accountability by the Liquor Control Commission and better incentives for effective management over liquor control in Maui County.

Recommendations

The Mayor and County Council should:

- 2.1 Request that the Liquor Control Commission prepare a written report to them including possible solutions to the: (a) causes of commissioner absenteeism at meetings, (b) lack of mandated performance evaluations completed for directors of the Department of Liquor Control, and (c) any training or resources needed to ensure Commission members are knowledgeable of their responsibilities and capable of performing them.
- 2.2 Adopt a resolution to require that the Chair of the Liquor Control Commission submit quarterly attendance reports to the Mayor and County Council, along with formal written letters for any absences.
- 2.3 Require that the Liquor Control Commission consult with the Department of Management to develop: (a) a standardized set of criteria to evaluate the performance of directors of the Department of Liquor Control each fiscal year that includes specific short- and long-term goals, and (b) a timeline to complete the performance evaluation each fiscal year, including a date on which a report indicating that evaluation has been completed and its general outcome will be submitted to the Mayor and the County Council.
- 2.4 Require that the Mayor and County Council perform an annual performance evaluation of the Commission Chair to evaluate whether the Liquor Control Commission is fulfilling their mandated duties.

The Corporation Counsel should:

- 2.5 Assign the representative to the Liquor Control Commission to monitor compliance with public noticing requirements and require that on the date the agenda is published, Corporation Counsel issues a statement or a stamp to validate whether or not public noticing requirements are met (e.g., timeliness of posting as well as adequate details about any propose changes to liquor control rules), before authorizing the scheduling of the public hearing.

- 2.6 Provide annual training to members of the Liquor Control Commission and the Commission Secretary, or the staff member who is fulfilling the Commission Secretary responsibilities, on how to carry out meetings that are in compliance with all County and State laws, particularly how to comply with State Sunshine Laws and Hawaii Revised Statutes Chapter 91, which covers public noticing requirements.

The Liquor Control Commission should:

- 2.7 Implement Deloitte & Touche’s 1994 recommendations regarding the performance evaluation for directors of the Department of Liquor Control. This includes creating standardized criteria to evaluate the Director of the Department of Liquor Control, which should include measures of both licensee and public satisfaction with Department services as well as the efficiency and effectiveness of Department operations. These standardized criteria and completed forms should be authorized to be made available to internal and external auditors upon request.
- 2.8 Update Maui County Liquor Control Rules Chapter 102 to require that the Department of Liquor Control include a summary of all proposed rule changes in the agenda for the relevant Liquor Control Commission meetings.
- 2.9 Amend Maui County Liquor Control Rules Chapter 102 to require that the Department of Liquor Control post the full text of any proposed rule changes and descriptions of the nature of the changes online no later than 24-hours after the Department’s official 30-day advance notice of a public hearing scheduled to consider any proposed rule changes.
- 2.10 Amend Maui County Liquor Control Rules Chapter 102 to require that Commission members have no more than three unexcused absences during each year of their term on the Liquor Control Commission and that those out of compliance can be removed from the Commission by the Mayor, with the consent of County Council.

Section 3: Staffing and Human Resource Issues

The Department of Liquor Control’s authorized staffing levels are high relative to liquor control departments in other counties in Hawaii, particularly in the Licensing and Permitting Section.

The Department has had a consistently high vacancy rate between Fiscal Years 2016-17 and 2017-18, with an average of 6.9 out of 25 authorized positions vacant during that time, or 26.7 percent. While these vacancies have resulted in reduced performance in some areas, it appears that the Department has performed most of its functions with fewer positions than are currently authorized and could reduce its staffing to be closer to the norm in other counties without adverse impacts. While filling some of the vacant positions as proposed by the Department appears appropriate to improve services, we conclude that at least two of the vacant positions could be deleted at this time, and possibly a third within a year

after process improvements recommended in this report are made, reducing the Department's budgeted salary and benefits costs.

In confidential interviews, employees described the Department's culture as retaliatory, and employee dissatisfaction is further evidenced by a spike in employee grievances between Fiscal Year 2015-16 and 2016-17 as well as high turnover.

Recommendations

The County Council should request that the Liquor Control Commission:

- 3.1 Request that the Director develop and implement a departmental hiring and retention plan for FY 2018-19 and update it annually.
- 3.2 Direct the Director to prepare an annual report to be provided to the Liquor Control Commission, County Managing Director, and County Council annually on vacancy levels, turnover, and grievances, and clearly describe hiring and retention strategies to reduce vacancies, curb resignations, and improve employee morale.

The County Council should:

- 3.3 Explore the establishment of a formal policy on hiring family members and relatives and whether or not they can supervise one another with the Director of the Department of Personnel Services. The policy should explicitly state what reporting relationships are appropriate between family members such as eliminating direct reporting relationships.
- 3.4 Reduce the number of the Department of Liquor Control's authorized positions from 25.0 FTEs to 23.0 FTEs, by deleting one vacant LCO I position and one vacant LCO II position, at an annual salaries and benefits savings of \$135,815.
- 3.5 Deny the increase in salaries and benefits of approximately \$14,122¹ for the proposed reallocation of one Administrative Assistant II to an Administrative Officer position.
- 3.6 Consider reducing the number of authorized positions further to 22.0 FTEs by deleting one vacant LCO IV position within one year of this audit report, or during the FY 2019-20 budget process, pending implementation of process improvements and subsequent workload analysis for the Licensing and Permitting Section, at an annual salary and benefits savings of \$89,360.

¹ These savings are based on an estimated benefit rate of 66.22 percent.

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 reclassification of the auditor position to reflect clerical work performed by the employee.
- 3.8 Re-examine work experience requirements with the Department of Personnel Services and consider removing the requirement that trainees have enforcement experience.
- 3.9 Maximize use of staff resources by sending applications that need corrections via e-mail or certified mail instead of via delivery by enforcement staff and through implementing process improvements recommended in Section 4 (Licensing) and Section 5 (Enforcement) of this report, such as reducing case report requirements for minor violations.

Section 4: License and Permit Processes

The Maui Department of Liquor Control's (Department) administration of licensing is unnecessarily inefficient and its licensing and permitting processes are seen as inconsistent and arbitrary by many licensees. The Department provides limited forms and instructions for license and permit applicants on its website while also often requiring more information from applicants compared to other counties, with unclear benefits for many of these requirements.

Applicants must make an appointment and meet with Department staff to submit their applications, reportedly to ensure that application materials are complete. However, this requirement adds time and burden to the application process, particularly for applicants whose applications are complete. The Department reportedly finds that many applications are not complete, often for trivial errors such as incorrect punctuation according to some licensees, but the Department does not track the number of such incidences or time required to correct such applications.

Many licensees report that the reason many applications are not complete is that that application requirements change from year to year without notice. New or changed application requirements are not posted on the Department's website nor does the Department maintain a database or list of email accounts for electronic disbursement of updates related to the licensing process.

Although it appears that the Department's formal deadline for license renewal applications has consistently been June 15, several licensees have complained that the deadline was changed and the Department saw a spike in the number of licensees who did not or were unable to renew their licenses in 2017 due to missing the deadline. Apparently in the past, the Department provided a grace period of two weeks after the June 15 deadline during which applications were still accepted. A change in this policy, even if it was informal, was never announced by the Department.

The Department's performance measures do not adequately measure its goal of administering a "fair and efficient" licensing and permit process as the Department does not measure, analyze, or report on application processing timelines.

Recommendations

The Deputy Director of Liquor Control 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.
- 4.2 Review, update, and post the Department's Operations, Policies, and Procedures Manual on the Department's website.
- 4.3 Establish and maintain a database 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 the licensing and permit application processes.
- 4.4 Work with the supervisor of the 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.
- 4.5 Consult with the Director of Liquor Control and the Department of the Corporation Counsel to determine if it would be feasible to implement rolling deadlines for liquor license renewals.

The Director of Liquor Control should:

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

- 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.

Section 5: Enforcement

The Maui Department of Liquor Control's enforcement of State and County liquor laws is not appropriately focused on activities that reduce alcohol-related risks, and many licensees perceive enforcement as overly punitive and retaliatory.

The Department's strategic plans and annual reports do not measure or discuss the impact of enforcement operations on outcomes such as decreases in alcohol use by minors or driving under the influence of alcohol in Maui County. Additionally, outdated rules result in significant enforcement staff time spent on violations that do not pose major risk to public health and safety, and administrative requirements implemented since 2016 have resulted in decreased time and attention spent on enforcement field activities.

Recommendations

The Director should:

- 5.1 Solicit input from the Liquor Control Commission and the advisory committee, licensees, and public health organizations 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.
- 5.2 Update the Department Policies and Procedures Manual to explicitly define the goals and scope of enforcement activities and report on these changes to the Liquor Commission. The updated 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;
 - ii. How often each licensee should be inspected per year and how Enforcement Division staff should determine which licensees to inspect in any given week based on risk to public health or safety;
 - 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;

- iv. Guidelines for how long Enforcement Division inspectors should spend on a single inspection;
 - v. Steps for performing inspections and writing case reports; and,
 - vi. Criteria for when a detailed case report is necessary for minor violations (See recommendation 5.6)
- 5.3 Direct the Deputy Director to work with the Enforcement Liquor Control Officer IV (Enforcement Division supervisor) to adopt an electronic tracking system for inspections, instead of using manual paper logs.
- 5.4 Direct the Deputy Director to work with the Enforcement Liquor Control Officer IV to clarify the process for documenting inspections in the Policies and Procedures Manual to ensure that inspections are not double counted and that officers are tracking the same information consistently.
- 5.5 Direct the Enforcement Liquor Control Officer IV to separately track minor decoy operations, closing checks, and deliveries from inspections.
- 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 violation paper report (VR report), or an equivalent abbreviated report, for violations that do not meet the criteria to reduce staff time spent on violations that do not pose major risks to public health and safety.
- 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.
- 5.8 Improve communication with licensees and voluntary compliance by: (a) sending a quarterly newsletter that provides tips on complying with liquor rules and results from compliance checks; and (b) making it easier to take the certification examination.
- 5.9 Direct the Deputy Director to establish a process for licensees to submit anonymous feedback or complaints regarding enforcement and notify licensees of the process.
- 5.10 Provide Enforcement officers digital access to Application Extender, the Department's electronic system that contains important information for Liquor Control Officers such as licensee floor plans and permits, so that they may work on case reports during the night shift.
- 5.11 Establish a quarterly meeting between the Enforcement Liquor Control Officer IV and the Maui Police Chief to coordinate enforcement operations and to look for ways to decrease the investigative follow-up for Liquor Control Officers from police referrals.

Introduction

Harvey M. Rose Associates, LLC was retained by the Council of the County of Maui (Office of Council Services) to conduct a Performance Audit of the Department of Liquor Control. The Department of Liquor Control (Department) is responsible for the regulation and control of the importation, manufacture, sale and service of alcoholic beverages by providing services in liquor license and permit applications, licensees' education, site inspections, and enforcement of liquor laws and rules.

Per Chapter 13 of the County Charter, the Department consists of a Liquor Control Commission, a Liquor Control Adjudication Board, a Director of Liquor Control, and the necessary staff. The Liquor Control Commission is consisted of nine members appointed by the Mayor with the approval of the County Council and is responsible for:

1. Preparing and submitting a request for an annual appropriation for the operation of the Department;
2. Adopting rules having the force and effect of law for the administration of liquor control in the County and to carry out provisions of the liquor control laws of the State, including, but not limited to, the fixing of liquor license fees;
3. Granting, renewing, or refusing applications for licenses for the manufacture, importation, and sale of liquor in the County under applicable laws and regulations;
4. Annually reviewing and evaluating the performance of the Director of Liquor Control and submitting a report to the Mayor and the Council; and,
5. Having such other powers and duties as may be provided by law not in conflict with the provisions of Section 8.13.2 of the County Charter.

The Liquor Control Adjudication Board also consists of nine members appointed by the Mayor with the approval of the County Council. The Liquor Control Adjudication Board hears and determines administrative complaints of the Director regarding violations of the liquor control laws of the State or of rules of the Liquor Control Commission and imposes penalties for violations as provided by law.

The Department has 25.0 full time equivalent (FTE) authorized positions, all of which are funded by liquor license fees. In FY 2017-18, the Department had a budget of \$3.15 million, including \$1.55 million, or 49 percent, for salaries and associated benefits. The Department is organized into three divisions, including: (1) the Office of the Director; (2) the Administrative Services Division; and, (3) the Enforcement Division. The structure, responsibilities, and efficiency and effectiveness of these divisions are described in detail throughout this report.

Scope

The basic components of the performance audit, as defined by the Office of Council Services in RFP 18-003OCS, were to review the organizational structure and current policies of the Department and Commission, and at a minimum to:

1. Obtain confidential feedback on the Department's operations from various groups, including Department employees; County departments (for example, Police, Prosecuting Attorney, Corporation Counsel); other counties; liquor licensees, including those for special event fundraising; and business stakeholders.
2. Analyze the Department's overall staffing, including how positions are created, filled, and utilized.
3. Analyze the interpretation of State law and implementation by the Department for the past five years, and determine whether interpretations have changed. Specifically, review whether the County of Maui interprets statewide liquor laws differently than the City and County of Honolulu, County of Kauai, and County of Hawaii.
4. Determine whether the license applications and permitting process for both renewal and first-time applications are effective and efficient.
5. Review the internal organizational structure and span of control of the Department. Determine whether the separate responsibilities of the licensing and enforcement sections are appropriate, clearly delineated, and have the proper oversight.
6. Review the oversight and role of the Commission and determine whether it is sufficient and appropriate including:
 - a. Determine whether the Commission has been fulfilling its mandated responsibilities as set forth in the Hawaii Revised Statutes, the County Charter, Maui County Code, and Liquor Rules;
 - b. Analyze the Commission's operational relationship with the Department, and determine if its control over operations is appropriate; and,
 - c. Analyze the Commission's process for conducting an annual evaluation of the Director, starting with its most recent evaluation, and including any documents used in the evaluation. Also, determine whether any standards are followed in the evaluation process.

The scope of the performance audit included activities and business conducted from January 1, 2013 to the present.

Methodology

The performance audit was conducted in accordance with Government Auditing Standards, 2011 Revision, issued by the Comptroller General of the United States, U.S. Government Accountability Office. In accordance with these requirements and standard audit practices, we performed the following procedures:

- Conducted an entrance conference with the Director of Liquor Control.
- Conducted interviews with the Director of Liquor Control, the Department's Deputy Director, and the supervisors (Liquor Control Officer IV's) responsible for overseeing the Enforcement Division and the Administrative Services Division.
- Conducted interviews with several department heads and other County officials, including members of the County Council, Personnel Services Department staff, the Corporation Counsel and staff of the Corporation Counsel, the Prosecuting Attorney and staff of the Prosecuting Attorney, the Chief of Police, and other County staff.
- Conducted confidential interviews with numerous staff of the Department of Liquor Control, licensees, and other stakeholders.
- Received and considered confidential feedback at a focus group open to licensees and other community members and at a focus group of business stakeholders.
- Obtained and reviewed initial data and documentation submitted by the Department including internal policies and procedures; financial data; organizational charts; job vacancy information; annual reports; and, performance evaluations of the Director of Liquor Control.
- Conducted a risk assessment based on interviews, confidential feedback, and the review of initial data and documentation to identify the areas of highest risk to the organization and County.
- Obtained and reviewed additional data and documentation including enforcement records; licensing records; collective bargaining contracts; information related to the Liquor Control Commission; and, staff grievances.
- Submitted a draft report, with findings and recommendations, to the Office of Council Services on September 7, 2018 in order to solicit feedback.
- Submitted a draft report to the Director of Liquor Control and the Commission Chair to solicit further feedback on the accuracy of findings and conclusions on September 12, 2018.
- Submitted a final draft report to the Director of Liquor Control to solicit a formal written response on September 25, 2018.

- Submitted the revised final draft, incorporating comments and information provided from the Director of Liquor Control on September 28, 2018 to the Office of Council Services.
- Submitted the final report, incorporating additional feedback from the Office of Council Services on October 23, 2018.

Acknowledgements

Harvey M. Rose Associates, LLC (HMR) would like to acknowledge the Director of Liquor Control, Deputy Director, division supervisors, and the Private Secretary to the Director. Requests for information, records, and data were met promptly and thoroughly by these individuals throughout the performance review process. We would also like to acknowledge the directors of the Hawaii County and Kauai County liquor control departments and the Assistant Administrator of the City and County of Honolulu Liquor Commission for participating in interviews with our audit team and responding to our requests for information and data.

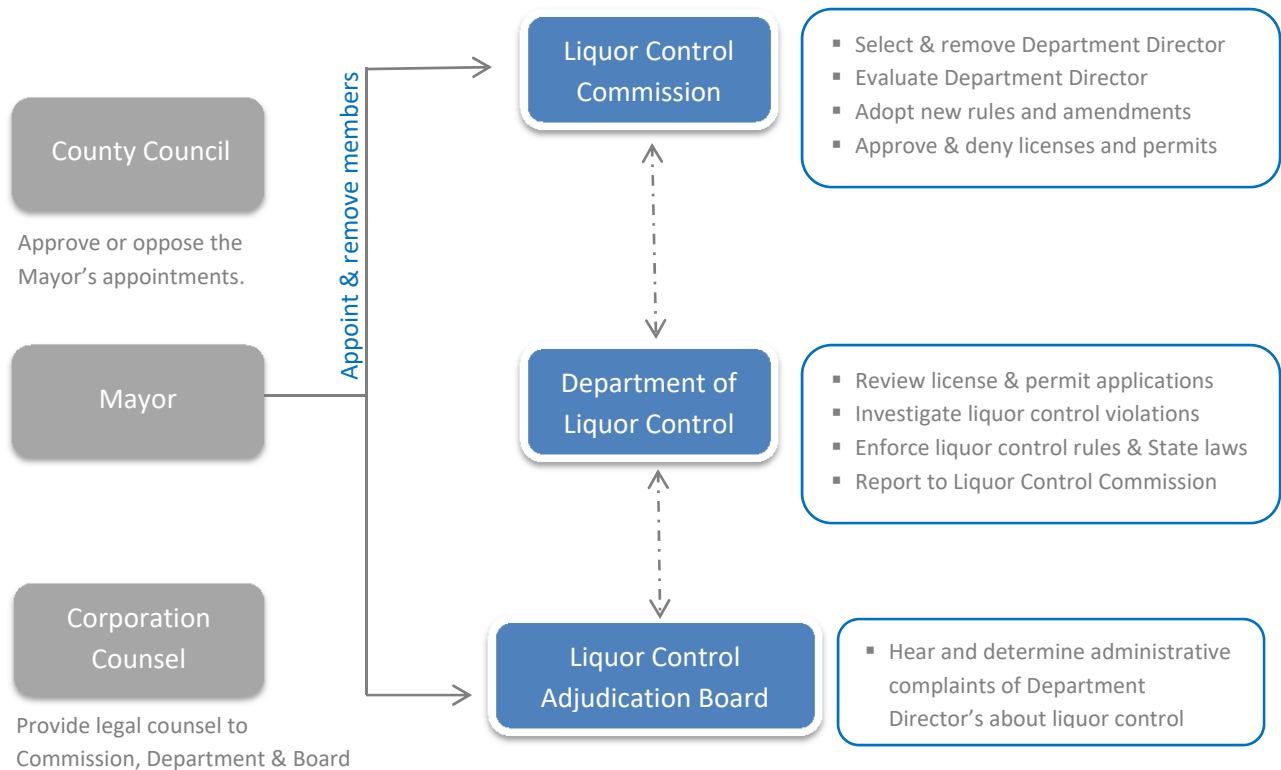
We would like to thank all the staff in the Department of Liquor Control who welcomed us during our on-site visits and spoke to and shared feedback with us during confidential interviews.

1 Oversight of Liquor Control

The oversight structure for liquor control in Maui County has not ensured that the Commission fulfills its mandated duties and that the Department of Liquor Control achieves high performance. There are several factors that have contributed to this outcome including, but not limited to, County Rules that hinder effective oversight, absence of meaningful long- and short-term performance goals for the Department, limited consultation with key stakeholders prior to the adoption of new and amended liquor control rules, and inadequate guidance by the Corporation Counsel.

The State of Hawaii enacts liquor control laws while each county within the State of Hawaii implements these State laws by creating and enforcing county-level liquor control rules. In Maui County, liquor control is managed by three key entities including the Department of Liquor Control (Department), the Liquor Control Commission (Commission), and the Liquor Control Adjudication Board (Board), as shown in Exhibit 1.1 below. The Mayor, County Council, and Corporation Counsel assume various oversight functions.

Exhibit 1.1: Key Liquor Control Actors in Maui County



Source: Hawaii Revised Statutes, Chapter 281-11

1. Oversight of Liquor Control

The Commission consists of nine members with the primary role of carrying out the provisions of State liquor control laws through the five functions outlined in the Maui County Charter Section §8-13.2:

1. Prepare and submit a request to the Mayor for an annual appropriation for the operation of the Department;
2. Adopt rules (referred to as ‘Commission rules’) having the force and effect of law for the administration of liquor control in the County and to carry out provisions of the liquor control laws of the State;
3. Grant, renew, or reuse applications for licenses for the manufacture, importation, and sale of liquor in the County under applicable laws and regulations;
4. Annually review the performance of the director of liquor and submit a report to the Mayor and the Council; and
5. Have such other powers and duties as may be provided by law not in conflict with the provisions of this section.

The Liquor Control Adjudication Board also consists of nine members and is required to hear and evaluate administrative complaints submitted by the Director regarding violations of State liquor control laws, or of Commission liquor control rules. The Director brings violations that cannot be resolved administratively to the Liquor Control Adjudication Board for quasi-judicial proceedings. The Liquor Control Adjudication Board also imposes penalties for violations, as provided by State law.

The Department administers liquor control rules adopted by the Liquor Control Commission, to whom the Department reports. The Hawaii Revised Statutes charges the Commission with selecting, evaluating, and if necessary, removing the Director.¹

As per Hawaii Revised Statutes, the Mayor of Maui County nominates the members of the Commission and the Board for a term of five years.^{2,3} The Commission members designate one of its members as chairperson, and another as vice chairperson per Maui County Rules⁴. With the consent of the Maui County Council, the Mayor may appoint or remove members of the Commission and the Board.⁵

The Corporation Counsel provides legal advice to the Commission, Board, and the Department. To execute this function, Corporation Counsel has assigned staff directly to each of these entities to ensure compliance with County rules and State laws. As a part of this role, Corporation Counsel staff attend all Commission and Board meetings.

¹ Hawaii Revised Statutes Section §281-17(a)(5)

² However, after a break of one year, former Commission members may return to the Commission.

³ Hawaii Revised Statutes Chapter 281-11

⁴ Maui County Administrative Rules Chapter 102 Section §08-102-81

⁵ Hawaii Revised Statutes Chapter 281 Section §281-11(a).

Liquor Control Rules and Regulations

At the State level, Hawaii Revised Statutes Chapter 281 outlines all laws related to liquor control in the State of Hawaii. Liquor control rules and regulations enacted at the County-level can be more stringent than the laws outlined in the Hawaii Revised Statutes, but cannot be less demanding.

In Maui County, there are three primary documents that detail liquor control rules and regulations at the County-level, including:

1. Maui County Charter (Chapter 8, Section §8.13-2);
2. Rules Governing Administrative Practices and Procedures of the Liquor Control Commission and Liquor Control Adjudication Board of the County of Maui (Title MC-08, Subtitle 01, Chapter 102); and
3. Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui (Title MC-08, Subtitle 01, Chapter 101).

Together, these three documents outline the roles of the key liquor control actors identified in Exhibit 1.1, requirements of public residents, as well as safeguards in place to enable public participation in the rulemaking process.

Existing County rules hinder effective oversight of liquor control

Although State law authorizes the Mayor to appoint and remove members of the Commission, neither the Hawaii Revised Statutes nor the Maui County Rules Governing the Manufacture and Sale of Intoxicating Liquor (Chapter 101) and the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board (Chapter 102),⁶ henceforward collectively referred to as the “Liquor Control Rules,” specify how the Mayor and/or County Council may re-direct Commission or Department operations if there is unsatisfactory performance.

Maui County rules enable Commission to nullify transparency in Director selection process

Through State law, the Commission is tasked with selecting the Department Director. Maui County Liquor Control Rules⁷ outline the process by which the Commission should select a candidate for the position, including notifying the public of the vacant position with the position requirements and a summary of the selection process.⁸ Maui County Rules Chapter 102 Section §08-102-36 also includes a provision that the deadline for applications can be no sooner than 30 calendar days after publishing the notice of the vacancy, and no later than 60 calendar days after. These steps would ensure a fair and

⁶ Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui (Chapter 101) and the Rules Governing Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui (Chapter 102),

⁷ Maui County Rules Governing Administrative Practices and Procedures of the Liquor Commission and the Liquor Adjudication Board Chapter 102 Section §08-102-36

⁸ Liquor Control Rules Chapter 102 Section §08-102-36

transparent process. However, as shown in Exhibit 1.2 below, Maui County Liquor Control Rules enable the Commission to disregard that entire process, deliberate and fill the position with a candidate of the Commission's choosing in closed session, whether or not that person filed an application.⁹

Exhibit 1.2: Maui County Rule on Selection of Director

Maui County Administrative Rule Chapter 102 Section §08-102-36(5) Nullifies Safeguards for Transparency in the Selection Process for the Director of the Department of Liquor Control

*“Pursuant to chapter 92, HRS [Hawaii Revised Statutes], the commission may meet in a closed session to deliberate the selection of a person to fill the vacancy. **Nothing contained herein shall prevent the commission from waiving the selection process and choosing a person to fill the vacancy who has not filed an application.** The selection of the new director shall be by majority vote of the entire commission.”*

Source: Maui County Administrative Rules

The Commission should amend Maui County Rules Chapter 102 to delete the provision that states, “Nothing contained herein shall prevent the commission from waiting for the selection process and choosing a person to fill the vacancy who has not filed an application.” Allowing the Commission to bypass a structured hiring process removes all transparency for selection of one of the most important liquor control officials in Maui County. Existing County rules already enable the Commission to invite candidates to apply, even after the deadline for receipt of all applications has passed, as well as to deliberate in closed session, which grants the Commission exceptional flexibility and freedom in the Director selection process.

No existing rule Authorizes the Mayor or County Council to require action in cases of poor performance by the Director

The Maui County Charter states that the Liquor Control Commission must annually review and evaluate the performance of the Director and submit a report to the Mayor and County Council stating that the evaluation has been conducted.¹⁰ However, there is no timeline or required process for this performance evaluation outlined in Maui County Liquor Control Rules. Furthermore, while the Commission is required to submit a report to the Mayor and County Council, Maui County Liquor

⁹ Maui County Rules Governing Administrative Practices and Procedures of the Liquor Commission and the Liquor Adjudication Board Chapter 102 Section §08-102-36(5)

¹⁰ Maui County Charter Chapter 8 Section §8-13.2

Control Rules do not specify how the Mayor and/or County Council may act in response to this performance evaluation report.

The Mayor has more direct oversight authority of other County Departments. Maui County Charter enables the Mayor to appoint and remove the directors of other County Departments, while the Department of Management, which supports the Office of the Mayor, conducts evaluations of the management and performance of County departments. The Mayor should call a meeting with Commission members and the County Council to discuss the various steps that can be taken if the Director demonstrates poor performance, and request that the Commission amend the Liquor Control Rules to reflect the agreed upon steps. The Mayor should also consult with Corporation Counsel on whether the agreed upon steps are compliant with State laws. There is a need for increased oversight over the operations of the Department, given that the Commission did not complete a performance evaluation of the Director between 2014 and 2018, and has not yet established long- and short-term goals for the Department despite recommendations from Deloitte & Touche to do so 24 years ago. Further details on the Deloitte & Touche report findings and recommendations are provided in Section 2 of this report.

Only the Commission can direct Department operations, despite its poor attendance and failure to fulfill mandated duties

Hawaii State law authorizes only the Commission to control, supervise, and regulate liquor control in Maui County.¹¹ Beyond the ability to remove Commission members as stated in County rules and State laws,¹² the Mayor and County Council have not been granted specific pathways to re-direct how the Department is being managed in cases of poor performance or other challenges. Section 2 of this report details several examples of the Commission not fulfilling its mandated duties. Therefore, with the sole entity tasked with overseeing the Department not appearing to perform its oversight function, there is an absence of guidance and accountability for the Department. It is critical that the Commission amend the County's Liquor Control Rules to enable the Mayor and County Council to request specific improvements in the Department when determined to be needed upon receipt of the Department's annual report and the performance evaluation of the Director of the Department.

Currently, the Mayor has broad authority to appoint and remove Commission members. To create a transparent process where performance expectations are clear, the Mayor and County Council should institute an annual performance evaluation process for the Commission Chair, where the Chair is assessed on whether the Commission fulfilled its mandated duties. The Mayor and County Council could consider whether the Commission has met: (1) attendance requirements, (2) public noticing requirements, and (3) whether the Director's performance evaluation was completed in a timely manner, among the other requirements of the Commission as detailed in State laws and County rules. If the Commission has not met its mandated responsibilities, the Mayor and County Council should be able to step in until the Commission undergoes a corrective action plan, the requirements for which should

¹¹ Hawaii Revised Statutes Chapter 281 Section §281-17

¹² Hawaii Revised Statutes Chapter 281 Section §281-11(a).

also be outlined in the liquor control rules. If removed from the Commission, poor performing Commission chairs and members should not be allowed to rejoin the Commission or Board at a later date. Commission members elect a Commission Chair annually, and this process should provide insight on the Commission Chair's leadership. However, the Mayor's evaluation of the Commission Chair would serve a distinct purpose and independently assess whether the Commission, as an oversight body, has fulfilled its mandated responsibilities.

Commission members come from a wide variety of backgrounds, some without any experience in liquor control or government administration. It is impractical that the County's Liquor Control Rules do not enable the Mayor and/or the County Council to intervene and provide direction when needed. Corporation Counsel should advise the Mayor and/or County Council on the extent to which these rule changes can be made. The Mayor's ability to simply remove Commission members is not adequate to ensure effective oversight of liquor control in Maui County.

Absence of meaningful performance goals & measures for liquor control

During interviews with Department management and staff and other stakeholders, several references were made to significant challenges with underage drinking and alcohol abuse locally. Despite these concerns, neither the Department's annual reports nor its strategic plans include any information on the prevalence of these issues, specific goals to tackle these alcohol-related issues or any performance measures to track the Department's progress. As the primary oversight body for the Department, the Commission should request that the Department update its annual report and strategic plan to include more information about the prevalence of underage drinking and alcohol abuse locally, general trends, as well as goals and performance measures to show how the Department is tackling these issues.

Annual Report in need of meaningful performance indicators

In the 2017 annual report, the Department's mission statement is reported to be:

to protect the health, safety and welfare of the general public by regulating and controlling the liquor industry in the importation, manufacture, sale and service of alcoholic beverages to provide a safe and healthy environment for the people of Maui County.

The Department has included this mission statement since at least 2013.

The 2017 Annual Report includes 10 performance measures, but they are generally not outcome-oriented and do not provide insightful information about the effectiveness of operations. For example, the Department reports outputs such as the total number of premises inspected during fiscal year 2016-17 as 12,429, compared to the 10,000 projected premise inspections. These numbers lack sufficient context as Annual Report readers including licensees, residents, and other key stakeholders would not know how many licensee premises exist in Maui County and what proportion had been inspected throughout the year. It is also unclear how often, on average, each premise was inspected during this period. Finally, projected outputs such as 10,000 inspections per year are not tied to any overarching goals such as reducing alcohol-related accidents of underage consumption of alcohol.

Another example on an inadequate performance measure is the reporting of the total number of license applications processed. This performance measure does not consider the number of license applications submitted, which would illustrate what proportion of submitted applications were processed. The Department does include the total number of applications processed in a later section of the annual report, but the percentage of applications processed is not included as a performance measure. The Department does not track or report how long the application process takes, including the time between when an application is first submitted until it is accepted by the Department to account for the time when applications are rejected by staff for problems such as spelling and grammatical errors until they are corrected and finally accepted for processing (see more about this issue in Section 4 of this report).

Additionally, the Department does not include historical figures when reporting on performance measures. Historical performance would enable the Commission to review trends and identify whether the Department's performance has been adequate over time, on an upward or downward path, or unchanged. Without more insightful performance measures and reporting, the Commission, the Maui County Council, and the Mayor are unable to adequately assess the Department's performance. Exhibit 1.3 below shows the various performance measures included in the annual report and how they can be adjusted to provide more helpful information.

Finally, the Department does not track any measures of customer satisfaction. As a public agency, it is critical that both the Department and the Commission remain knowledgeable about how licensees and residents view their performance and which Department operations need to be improved to meet the needs of the community. The Commission should require the Department to complete an annual survey on customer satisfaction, covering both licensees and the public at large, and incorporate these results in reports to the Commission and in the Department performance evaluation process.

As noted in Exhibit 1.3 below, two of the 10 performance measures provided meaningful information. However, the Department needs to adopt a better mix of outcome and output-oriented performance measures that are tied to stated goals and objectives. The recommendation section of this section offers some suggestions.

Exhibit 1.3: Performance Measures Included in 2017 Annual Report

Performance Measure in Annual Report	Revisions Needed	Auditor Comments & Recommendations
1) Total premises inspected	✓	Should include total number of licensee premises in Maui County and what proportion of total licensee premises were inspected each fiscal year. Should be tied to Department's overarching goals and objectives such as reducing underage consumption of alcohol.
2) Case reports (on-premises, or locations where liquor is dispensed)	Delete	This information is more appropriate for internal knowledge. The Department noted that these case reports are generated by Liquor Control Officers when inspecting licensee premises.
3) Case reports (off-premises or locations where packaged liquor is sold)	Delete	This information is more appropriate for internal knowledge. The Department noted that these case reports are generated by outside complaints.
4) Minor Decoy Operations conducted	✓	This should include how many minor decoy operations resulted in identified violations. The Department made this change in the FY 2018 Annual Report.
5) Total Case Reports	Delete	This item is simply a total of items 2-4 and does not add value in an annual report
6) Certification/Educational classes conducted	✓	This should include a waitlist, that is whether there are licensees and residents waiting to attend a certification/education class
7) License applications processed	✓	This should be revised to the percentage of total applications processed each fiscal year, and include average processing times for each application, including elapsed time between when an application is first submitted and when it is accepted by the Department for processing.
8) Permits issued	✓	This should include total number of permit requests submitted, what proportion was processed during the fiscal year, by type, and cycle time for the permit application to be approved.
9) Percentage of administrative actions per total violations		Helpful for the Commission and other oversight bodies
10) Percentage of violations adjudicated by Liquor Control Adjudication Board per total violations		Helpful for the Commission and other oversight bodies

Source: Department of Liquor Control 2017 Annual Report

Strategic Plan void of future planning and goals

In addition to an annual report, the Department publishes a strategic plan as each year is started that includes an expenditure summary and “success measurements” tied to the goals and expectations outlined in the annual report. However, similar to the Department’s annual report, the Department’s strategic plan does not provide adequate insight into the effectiveness of operations. The strategic plan does not address issues such as alcohol-related problems in Maui County that the Department should be helping combat. It does not include short- or long-term goals and objectives regarding how the Department has dealt with such issues such as underage drinking and alcohol abuse in Maui County, how Maui compares to other counties in Hawaii, and how the Department will address such issues in the future. The strategic plan simply repeats information provided in the Mayor’s budget document and the statistics provided in the annual report. The City and County of Honolulu is the only other county in Hawaii where the Department of Liquor Control has a strategic plan.¹³

1994 Deloitte & Touche assessment recommendation to establish clear goals ignored

In January 1994, Deloitte & Touche submitted an assessment of the policies and procedures used by Maui County’s Department in carrying out its operations, reviewing the period from November 23, 1993 through January 13, 1994. In their final report, Deloitte & Touche noted that part of the Commission’s responsibilities is to review the performance of the Director and in order to accomplish that, guidelines must be established and used to measure the Director’s performance. Based on interviews with the Director and the Commission during our audit, there are still no standardized criteria used to evaluate the Director. The Chair of the Liquor Control Commission reported to our audit team in June 2018 that there are neither standardized criteria nor processes used to evaluate the Director nor was it possible to share any details about the performance evaluation process, whether it included specific details about the current Director, or directors of the Department in general. However, Corporation Counsel subsequently submitted the set of performance evaluation criteria detailed in Section 2, Exhibit 2.1 of this report and advised that each Commission member used these criteria to evaluate the current Director.

Deloitte & Touche recommended that at the beginning of each fiscal year, the Director should establish short- and long-term goals for him/herself and the Department, and review them with the Commission. If the Director establishes these short- and long-term goals, they should be included in the strategic plan along with statistics or performance measures illustrating progress. These goals have not yet been established and the Commission did not complete an evaluation of the Director of the Department between 2014 and 2018. The Commission should require that the Department carry out the recommendations of the 1994 Deloitte & Touche report as soon as possible.

¹³ The City and County of Honolulu declined to share their Strategic Plan with Harvey Rose Associates, LLC as it was considered to be an internal document.

Inadequate consultation of key stakeholders prior to major changes

The Department did not adequately consult with stakeholders such as licensees, local residents, or the Police prior to proposing rule changes allowing: (i) 24-hour alcohol sales, (ii) removal of the cap on total local hostess bars, and (iii) delivery of alcohol to the home for those with physical challenges during the February 8, 2017 Commission hearing. The lack of public consultation has been an ongoing complaint about the current administration according to interviews and focus groups with licensees and the public conducted during this audit. While stakeholder engagement is not a stated requirement in the Hawaii Revised Statutes or in County Administrative Rules, it is a best practice and could help ensure a smooth process for rule changes in the future.

The Department's 2017 annual report includes a Goals and Expectations section that states that the "Department will meet and work in partnership with liquor licensees, neighborhood boards, governmental agencies, and the public to address and resolve various concerns while protecting the health, safety, and welfare of the public." Based on focus groups and interviews with licensees, Department staff, and key stakeholders, the Department did not provide adequate opportunity for discussion and review of proposed rule changes during that year. This approach conflicts with the Department's goal to be collaborative with the public and licensees.

The Director stated that the proposed amendments were shared and discussed with the Department's Small Business Review and Advisory Committee, which included licensees and key stakeholders. However, audit reviews revealed that the proposed rule changes regarding 24-hour liquor sales, removal of the cap on total local hostess bars, and alcohol delivery to the home were not discussed with the committee. Furthermore, there are no publicly available minutes or other documentation of proposed rule changes discussions with the Small Business Review and Advisory Committee.

According to interviews, the audit team was advised that the Police Department was not consulted on the proposed rule changes and did not view the proposed changes as beneficial to the local community. Given that the Police Department often works with liquor control officers to curb alcohol abuse and ensure compliance with Liquor Control Rules and laws, a lack of clear communication and collaboration between the two departments might contribute to ineffective operations and coordination.

Without an adequate consultation process, the Department is more likely to implement rules that conflict with the needs of County residents and key stakeholders. The absence of a consultation process also conflicts with the Department's stated goals.

Corporation Counsel not ensuring compliance with State laws and County rules

The Maui County Charter states that the Corporation Counsel shall "be the chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, and all boards and

commissions; and of all officers and employees in matters relating to their official duties.”¹⁴ The Corporation Counsel has assigned a Deputy Corporation Counsel to the Commission and another to the Department. These Corporation Counsel staff members are tasked with providing legal counsel to ensure that the Department and the Commission conduct their operations in compliance with State laws and County rules.

The findings in Section 2 of this report illustrate that the Commission has not fulfilled all of their mandated duties for several years, despite a Corporation Counsel staff member in attendance at all Commission meetings. Maui County Rules Chapter 102 specify multiple procedures for the Corporation Counsel to act as an internal control for Commission and Department to ensure compliance with County rules and State laws as detailed below:

Corporation Counsel Oversight Functions as Mandated by County Liquor Control Rules Chapter 102:

1. Review any complaints of the conduct against Commission or Board members (along with Mayor, Prosecuting Attorney, Section §08-102-71);
2. Review all decisions and orders adverse to a party by the Board to ensure that board’s decision complies with Hawaii Revised Statutes Chapter 92 (Section §08-102-94);
3. Advise Commission where any question of law is involved. The commission may also obtain the assistance of other agencies where necessary or desirable. Commission may request Corporation Counsel advice (Section §08-102-12(d));
4. Investigate all complaints sent to the Commission, should the complaint be ethical or procedural in nature (whether against Directors or Department employees or Commission or Board members, Sections §08-102-54, S08-102-70d(2), and §08-102-71); and
5. Corporation Counsel would actually represent the Department employee if they were sued or prosecuted (Section 101 §08-101-15).

Corporation Counsel provides training to new Commission members at the beginning of their term. However, based on an interview with Corporation Counsel staff, this training only provides a high level overview of Commission responsibilities and is not a rigorous training on the legal requirements of the Liquor Control Commissioner position. The Mayor and County Council should require that Corporation Counsel provide an in-depth training each year on at least: (i) the specifications of the Sunshine Law (Hawaii Revised Statutes Chapter 92); (ii) public noticing requirements for Commission meetings (Hawaii Revised Statutes Chapter 91); (iii) the availability of Corporation Counsel; (iv) Maui Charter mandated responsibilities for Commission members; and, (v) consequences for non-compliance with County rules and State laws. This annual training should be required for all active Commission members, regardless of whether they have experience on other County boards and commissions as well as Board members and Department management.

Corporation Counsel staff state that additional training may carry higher costs and coordination issues, as Corporation Counsel would have to create new training materials to meet this need. To alleviate coordination challenges, Corporation Counsel could consider delivering trainings via video conferences

¹⁴ Maui County Charter Section §8-2.3

or scheduling this annual training at a time when all relevant stakeholders are already convened to discuss other matters.

Outdated Operations Manual Used to Administer and Enforce Liquor Control

Maui County Liquor Control Rules state that the Director should “issue departmental orders describing in detail the operational procedures of the department, the general rules of conduct to be observed by all employees of the department and outline a guide for disciplinary actions.”¹⁵ Despite this mandate, the Department’s operations manual, which includes instructions on how to administer and enforce Liquor Control Rules in Maui County, has not been updated for 18 years, or since 2000. As a result, there are provisions in the operations manuals that are at odds with the Department’s mission and ethos as articulated in the annual report and modern practices regarding liquor control. Section 4 of this report includes examples of onerous application requirements that are, or were until recently, stipulated by Maui County, but not other Hawaiian counties. Further, Section 5 of this report details examples where the Department is still enforcing outdated rules, thereby creating difficulties for licensees and local residents without commensurate public benefits. While the issue pre-dates the current Department administration, the Director of the Department should prioritize the update of the Departmental Operations, Policies, and Procedures Manual as well as the Departmental Orders.

The Commission is responsible for ensuring that the Department operates in an effective and efficient manner, and should require that the Department prioritize the update of the liquor control operations manual and distribute the revised version to Department staff and licensees electronically, including by posting it on the Department’s website. The Department should also make hard copies available to the public at its offices and other appropriate County facilities.

CONCLUSION

The oversight structure for liquor control in Maui County is not effectively ensuring that the Liquor Control Commission fulfills its mandated duties and that the Department of Liquor Control achieves high performance. There are several factors that have contributed to this outcome including, but not limited to County Administrative Rules that hinder effective oversight, absence of meaningful long- and short-term performance goals and measurements, limited consultation with key stakeholders prior to the adoption of new and amended Liquor Control Rules, and ineffective guidance by the Corporation Counsel.

¹⁵ Maui County liquor control rules Chapter 102 Section §08-102-50(b)(2)

RECOMMENDATIONS

The Mayor and County Council should:

- 1.1 Meet with the Liquor Control Commission to discuss the necessary steps in cases where no applicant for the Director position meets the job requirements and the Commission must consider additional candidates and agree to steps to add to the Maui County Liquor Control Rules to cover such situations.
- 1.2 Call a meeting with Liquor Control Commission members to discuss the various steps that can be taken by the Commission, the Mayor, and/or County Council if the Director demonstrates poor performance, and amend the Maui County Liquor Control Rules to reflect the agreed upon steps.
- 1.3 Consult with the Corporation Counsel on how to amend County Liquor Control Rules to enable the Mayor and County Council to request specific improvements in the Department's performance upon receipt of the Department's annual report and the performance evaluation of the Director.
- 1.4 Consult with the Corporation Counsel on how to amend Maui County Liquor Control Rules to include an annual performance review of the Commission Chair by the Mayor and County Council.

The County Council should:

- 1.5 Consider a resolution that outlines the specific improvements that are expected from the Department, Liquor Control Commission, and Corporation Counsel as a result of this audit report.

The Corporation Counsel should:

- 1.6 Provide an in-depth required training each year to all members of the Liquor Control Commission and Director on: (i) the specifications of the Sunshine Law (Hawaii Revised Statutes Chapter 92); (ii) public noticing requirements for Commission meetings (Hawaii Revised Statutes Chapter 91); (iii) the availability of Corporation Counsel; (iv) Maui Charter mandated responsibilities for Commission members; and, (v) consequences for non-compliance with County rules and State laws. It is imperative that the Commission also receive the training so that they are able to ensure Departmental compliance with these County rules and State laws.

- 1.7 Verify and report to the Commission Chair that public noticing requirements have been met for all Commission hearings, including: timely posting of agendas that contain adequate information about proposed rule changes, and proper notification to the public of scheduled Commission hearings where rule changes would be considered and determined.

The Liquor Control Commission should:

- 1.8 Amend Maui County Liquor Control Rules Chapter 102 Section §08-102-36(5) to delete the provision that states, “Nothing contained herein shall prevent the commission from waiving the selection process and choosing a person to fill the vacancy who has not filed an application” so that the Commission is required to follow an established approach to selecting a director, thus ensuring a fair and just director selection process.
- 1.9 Direct the Director of Liquor Control to update the operations manual used by Department staff and consult with the Director of Liquor Control on a reasonable timeline for completion.
- 1.10 Request that Corporation Counsel prepare a factsheet available to the public and posted on the Department website with information on State Sunshine Laws and public noticing requirements for licensees and County residents, designed to educate the public on their rights to access information from the Department and the Commission, as outlined in the Hawaii Revised Statutes and County rules. The Commission should consult with Corporation Counsel on a reasonable timeline for completion.
- 1.11 Amend the Maui County Liquor Control Rules to require that the Director consult with licensees and key stakeholders prior to proposing new and amended rules as well as administrative changes.

The Director should:

- 1.12 Carry out the 1994 Deloitte & Touche report 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.
- 1.13 Select and report annually to the Commission and County Council on a 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
 - Percentage of total license applications processed each fiscal year
 - Percentage of total permit requests processed and granted each fiscal year
 - Number of annual operating under the influence (OUI) incidents for the current and past five years
 - Number of annual alcohol-related deaths for the current and past five years
 - Customer satisfaction rating from Department customer satisfaction survey
- 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.
- 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 questions and format of the survey.

SAVINGS, BENEFITS and COSTS

Implementation of the proposed recommendations would save the Commission, Department, Mayor, and County Council time by strengthening the County’s ability to prevent violations of County rules and State laws, which often result in additional Commission meetings and County staff time to resolve the problems created.

Implementation of the proposed recommendations will require increased staff time, particularly for Corporation Counsel to design and execute more robust trainings for Commission and Board members, and for the Office of the Mayor and County Council to conduct a performance evaluation of the Commission Chair each year, and be more engaged in the annual evaluation of the Director. While the Corporation Counsel may need to dedicate some time for developing new training materials initially, the ongoing maintenance of training materials would be less demanding.

2 Commission Responsibilities

The Liquor Control Commission of Maui County is not fulfilling its mandated responsibilities, as defined by the Hawaii Revised Statutes and Maui County Liquor Control Rules. Poor attendance rates, failure to evaluate the performance of directors of the Department of Liquor Control annually, and rule changes enacted without proper noticing given to licensees and the general public all point to the need for improved performance and accountability by the Liquor Control Commission and better incentives for effective management over liquor control in Maui County.

Hawaii Revised Statutes tasks the Liquor Control Commission (Commission) with 14 responsibilities, which have been condensed into five functions in the Maui County Charter¹ as listed below²:

1. Prepare and submit a request to the Mayor for an annual appropriation for the operation of the Department;³
2. Adopt rules having the force and effect of law for the administration of liquor control in the County and carry out provisions of the liquor control laws of the State, including, but not limited to, the fixing of liquor license fees;
3. Grant, renew, or refuse applications for licenses for the manufacture, importation, and sale of liquor in the county under applicable laws and regulations;
4. Annually review and evaluate the performance of the director of liquor control and submit a report to the mayor and the council; and,
5. Have such other powers and duties as may be provided by law not in conflict with the provisions of this section.

These five functions outline the core responsibilities of the Commission, while the Maui County Liquor Control Rules⁴ provides further details on the duties and responsibilities of Commission members.

¹ County Charter Chapter 8 Section §8-13.2

² Hawaii Revised Statutes Chapter 281 Section §281-17

³ While this Charter section does not state it specifically, the Commission would submit the Department's proposed budget appropriation request to the Mayor. This would be a part of the County's annual budget review process where Mayor proposes the County budget while the County Council reviews and approves a balanced budget by June 10 (Maui County Charter Article 9).

⁴ Maui County's "Liquor Control Rules" are composed of: (1) Rules Governing Administrative Practices and Procedures of the Liquor Control Commission and Liquor Control Adjudication Board of the County of Maui (Title MC-08, Subtitle 01, Chapter 102); and (2) Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui (Title MC-08, Subtitle 01, Chapter 101).

Infrequent evaluation of the Director of the Department of Liquor Control

According to the Maui County Charter Section §8-13.2, the Commission is required to annually evaluate the performance of the directors of the Department of Liquor Control (Department) and submit a report to the Mayor and the County Council. Despite this Charter-mandated annual review, the Commission has not completed a performance evaluation each year for the director of the Department.

Before completing the performance evaluation of the current Director of the Department of Liquor Control in January 2018, the Commission had not completed this Charter-mandated annual review since 2014, according to the current Director of the Department.⁵ Both the Corporation Counsel and the Department confirmed that the 2014 evaluation of the Director was the only other instance in which the Commission completed a performance evaluation of the director. While a performance evaluation of the director was not required prior to 2012,⁶ it is a best practice and was recommended by a 1994 Deloitte & Touche assessment⁷ of the Department. Without consistent performance evaluations each year, directors of the Department will have limited accountability for their actions and poor incentives for high performance. Furthermore, by not executing this function annually, the Liquor Control Commission is out of compliance with the Maui County Charter.

We recommend that the Mayor and County Council issue a proposed timeline for the Commission to complete the annual performance evaluation of directors of the Department of Liquor Control and send a formal request for the performance evaluation report to the Chair and Vice Chairperson of the Commission ahead of the agreed upon deadline.

Additionally, to provide an incentive for compliance on the part of the Commission, the Mayor should recommend an amendment to Maui County Liquor Control Rules Chapter 102 that institutes an evaluation of the Chair of the Liquor Control Commission each year. This can be part of the basis for decisions made by the Mayor and County Council to remove any Commission Chair for unsatisfactory performance.

Current Director evaluation results at odds with performance

While the Commission did create a set of criteria to evaluate the current Director, the results of the performance evaluation appear to be at odds with the current Director's performance. The Liquor Control Commission provided the current Director with a positive performance evaluation in January 2018 stating that the Director received a rating that was "above average, satisfactory in all categories of

⁵ Cover letter, Director of Department of Liquor Control, August 16, 2018.

⁶ Maui County Charter Section §8-13.2(4) was amended in 2012.

⁷ Deloitte & Touche, Assessment of the Policies and Procedures Used by Maui County's Department of Liquor Control, January 13, 1994.

2. Commission Responsibilities

the evaluation” for the period June 1, 2016 through December 31, 2017.⁸ The performance evaluation used included five categories, each with a set of required actions as outlined in Exhibit 2.1 below.

⁸ Letter from Chair of the Maui County Liquor Control Commission to the Mayor of Maui County, January 11, 2018.

Harvey M. Rose Associates, LLC

Exhibit 2.1: Performance Evaluation Criteria for Current Director of Department of Liquor Control

Performance Evaluation Category	Required Actions
1) Provide Leadership	<ul style="list-style-type: none"> • Develops, communicates, and implements a shared vision for achieving high morale within the Department • Advocates high expectations of communication between liquor enforcement officers and licensees • Pursues departmental improvement and demonstrates commitment to attain high levels of staff achievement and performance • Utilizes multiple assessment tools and strategies to support the achievement of the performance standards by every member of the Department
2) Promote a Positive Climate for Employees of the Department and Respect for all Members of the Community	<ul style="list-style-type: none"> • Models and promotes trust, enthusiasm, rapport, respect, and openness among members of the community • Seeks input from stakeholders • Encourages and establishes open, effective communication • Utilizes effective strategies in setting performance expectations, planning, decision making • Encourages the development of interagency and community partnerships • Recognizes the contributions of employees
3) Maintains High Standards of Professionalism	<ul style="list-style-type: none"> • Demonstrates and promotes high standards of ethics, honesty, and integrity • Pursues professional improvement activities to strengthen leadership • Manages problems and implements solutions effectively • Demonstrates ability to self-assess and to reflect on administrative practices • Communicates and interacts effectively with supervisors, employees, colleagues, and Liquor Commission
4) Manages the Full Scope of Liquor License Application, Enforcement, and Administrative Responsibilities	<ul style="list-style-type: none"> • Complies with applicable State statutes, federal laws, commission rules, regulations, procedures, contractual provisions, and other governance parameter • Manages available resources for optimum benefit of the Department • Maintain standards for a safe, orderly, effective work environment
5) Personal and Professional Traits	<ul style="list-style-type: none"> • Willingness to improve job knowledge • Accepts feedback in cooperative and honest fashion • Gains trust and confidence of others • Displays positive attitude and self-confidence and is perceived that way by others • Shows good work habits regarding attendance, timeliness, appearance and business-like demeanor • Shows professional ethics, sincerity, loyalty, honesty, integrity, humor, respect, and concern for others

Source: Corporation Counsel Correspondence, August 23, 2018.

Based on audit research, interviews, document reviews, and focus groups, the Director has demonstrated difficulties performing in at least three of the five categories. The first category is focused on leadership and has four required activities, one of which requires implementing a vision for achieving high morale within the Department. There has been an increase in grievances filed by Department employees since the start of the current administration as well as a violence in the workplace claim. Some of these issues are still ongoing. Given that these developments occurred prior to and possibly during the current Director's evaluation, it is unclear how the Commission arrived at an above satisfactory performance in this area. Furthermore, during audit interviews with Department staff, many interviewees expressed low morale within the office. This leadership category also requires two activities where the Director must achieve high performance standards and achievement among staff members, yet the Department does not have specific goals such as tackling underage drinking nor clear direction to staff on how they can work to address such issues. Many of the performance measures included in the Department's Annual Report are not outcome-based and do not provide adequate insight into the quality of Department operations. Without clear performance goals and meaningful performance measures, it is unclear how the Director could obtain an above satisfactory rating for these activities. Within this category, the Director appears to have difficulties with at least three of the four required activities.

The second performance evaluation category used in the Director's 2018 performance evaluation was promoting a positive climate for both Department employees and members of the community. Seeking input from stakeholders is one of the six required activities for this category, yet Section 1 of this report details how the lack of adequate consultation between the Department and key liquor control stakeholders, such as the Police Department and licensees, prior to enacting new and amended Liquor Control Rules. The lack of communication has contributed to distrust within the community, as shared during focus groups conducted by the audit team with licensees and community members. Without the trust of the community, the Director could not obtain high scores for at least two of the required activities in this category. Another required activity for the promoting a positive climate category is to encourage and establish open and effective communication within the Department and with the community. Section 4 of this report details how the Department has enacted policies that create barriers to information on liquor control rules and regulations. This category also requires development of interagency and community partnerships, yet the Police Department was not consulted prior to liquor control changes. This is another instance where the actions of the Director have not do not appear consistent with the performance evaluation results.

The fourth performance evaluation category, the Director's management of the full scope of liquor license applications, enforcement, and administrative responsibilities, requires compliance with all laws, rules, and regulations regarding liquor control. As detailed in sections below, the Department has violated State laws and County rules regarding public noticing requirements on changes in liquor control rules. In these cases, the Department did not provide adequate details to the public about proposed rule changes. Another required activity is to maintain standards for a safe, orderly, and effective work

environment, yet the Department is using an operations manual that has not been updated since calendar year 2000.

The audit team is unable to sufficiently assess the remaining two performance evaluation categories, maintains high standards of professionalism, and personal and professional traits, as they are subjective in nature.

As mentioned in Section 1 of this report, the Chair of the Liquor Control Commission reported to our audit team in June 2018 that there are no standardized criteria nor processes used to evaluate the Director nor was it possible to share any details about the performance evaluation process, whether it included specific details about the current Director, or directors of the Department in general. However, Corporation Counsel subsequently submitted the set of performance evaluation criteria detailed in Exhibit 2.1 above to the audit team and advised that each Commission member used these criteria to evaluate the current Director. However, if all Commission members used this set of criteria, the evaluation results are at odds with the Director's performance.

1994 report highlighted a need for clear short- and long-term Department goals as performance evaluation criteria

While many of the criteria used to evaluate the current Director are useful, none are tied to specific short- and long-term goals for the Director and the Department. In January 1994, Deloitte & Touche completed an assessment of the policies and procedures used by Maui County's Department of Liquor Control to carry out its operations and made recommendations for improvement.⁹ The final report noted that one of the Commission's responsibilities is to review the performance of the Director of the Department and recommended that guidelines be established and used to evaluate the Director on clear short- and long-term goals. In this report, Deloitte & Touche specifically recommended that at the beginning of each fiscal year:

The Director should establish short-term and long-term goals for himself [or herself] and the Department, and should review them with the Commission. [...] Then, at certain intervals, say semi-annually, the Director should prepare a written report which compares his [or her] and the Department's accomplishments with the approved goals.

Creating performance measures tied to specific Department goals would allow for more objective evaluation criteria. For example, the Department could set a goal to ensure that all licensee premises are inspected each fiscal year, or that the Director must always host public forums with licensees and key stakeholders prior to proposing Liquor Control Rule changes. The Commission should include clearer short- and long-term goals for the Director in addition to leadership and management standards.

During the course of our audit, the current Director of the Department of Liquor Control stated that the Department does not participate or have any knowledge relating to the review and evaluation of the

⁹ Deloitte & Touche, Assessment of the Policies and Procedures Used by Maui County's Department of Liquor Control, January 13, 1994.

Director.¹⁰ Corporation Counsel confirmed that the Commission did not share the performance criteria used with the current Director prior to completing the evaluation. Involving the Director in the development of long- and short-term goals would increase accountability and help ensure that the selected performance criteria are practical and in line with business needs. Engaging the Director in this process would also be an opportunity to discuss and proactively address any operational issues by setting clear goals to resolve them. It is unclear why the Commission has not enacted these recommendations during the 24 years that have passed since the Deloitte & Touche report.

Some Commission members have poor attendance records

The Commission convenes once each month, and may schedule additional meetings as needed. Maui County Liquor Control Rules states that the:

“...commission may recommend to the mayor and the county council the removal of any board member who has three unexcused absences, or a total of four absences, from any regular scheduled meetings in any County fiscal year. Excused absences shall be determined by the chairperson at each regular meeting.”¹¹

From July 2016 to June 2018, no Commission member attended all Commission meetings during any fiscal year. At least four of the total nine Commission members had six or more absences each fiscal year. Thus far, no Commission members have been recommended for removal from the Liquor Control Commission due to absenteeism. Exhibit 2.2 below illustrates the attendance rate of Commission members during FY 2016-17 and FY 2017-18.

The Department of Liquor Control has acknowledged the Commission’s poor attendance record and the resulting challenges in obtaining a quorum.¹² The Director advised that the Department submits semi-annual attendance records for members of the Liquor Control Adjudication Board and the Commission to the Office of the Mayor. According to the Director, the Office of the Mayor has contacted Commission members on their poor attendance record, and has recommended that members resign if they are unable to fulfill their obligations as Commissioners. Despite the challenges with Commission member attendance, no members of the Commission have been removed as a result of poor attendance since at least 2015. Only the Mayor and the Commission may initiate the removal of Commission members.

¹⁰ Cover Letter, Director of the Department of Liquor Control, July 26, 2018.

¹¹ Maui County Rules Chapter 102, Section §08-102-22(b)

¹² Director of Department of Liquor Control, Cover Letter, August 16, 2018.

**Exhibit 2.2: Commission Member Attendance at Public Hearings
FY 2016-17 and FY 2017-18**

Commission Member	FY 2016-17	FY 2017-18
Commission Member 1	11	11
Commission Member 2	12	10
Commission Member 3	9	4
Commission Member 4	9	11
Commission Member 5	0^a	4
Commission Member 6	3 ^b	9
Commission Member 7	2^b	6
Commission Member 8	n/a	3 ^c
Commission Member 9	n/a	4 ^d
Commission Member 10	5	5^e
Commission Member 11	9	n/a
Commission Member 12	10	2^f
Commission Member 13	5	n/a
Commission Member 14	5	4^g

Source: Maui County Liquor Control Commission minutes posted on the Liquor Control Commission website.

- a) This Commissioner’s term began in February 2017, and was therefore active for five months.
- b) This Commissioner’s term began in April 2017 and was therefore active for three months.
- c) This Commissioner’s term began in April 2018 and was therefore active for three months.
- d) This Commissioner’s term began in March 2018 and was therefore active for four months.
- e) This Commissioner’s term ended in March 2018 and was therefore active for nine months.
- f) This Commissioner’s term ended in January 2018 and was therefore active for seven months.
- g) This Commissioner’s term ended in November 2017 and was therefore active for five months.

Even though the Commission members serve terms starting in April through the following March, Maui County Liquor Control Rules Chapter 102 currently dictates Commission member attendance requirements by the County’s fiscal year, which begins on July 1st each year. Even if Commission attendance is tracked by Commission member terms (April through March), there is still a high level of absenteeism among Commission members as shown in Exhibit 2.3 below. The Commission should amend Maui County Liquor Control Rules Chapter 102 to require that Commission members have no more than three absences during each year of their term and that those out of compliance can be removed from the Commission by the Mayor, with the consent of County Council.

**Exhibit 2.3: Commission Member Attendance at Public Hearings
By Commission Term, April 2016 to June 2018**

Commission Member	Attendance April 2016 to March 2017	Attendance April 2017 to March 2018	Attendance April 2018 to June 2018 (3 months)
Commission Member 1	11	11	3
Commission Member 2	12	11	2
Commission Member 3	7	7	0
Commission Member 4	9	11	3
Commission Member 5	0*	2	2
Commission Member 6	n/a	10	2
Commission Member 7	n/a	7	1
Commission Member 8	n/a	n/a	3
Commission Member 9	n/a	1**	3
Commission Member 10	6	6	n/a
Commission Member 11	12	n/a	n/a
Commission Member 12	11	4***	n/a
Commission Member 13	7	n/a	n/a
Commission Member 14	5	6	n/a

Source: Maui County Liquor Control Commission minutes posted on the Liquor Control Commission website.

*This Commissioner was an active Commissioner for only 2 months during this 12-month term.

**This Commissioner was an active Commissioner for only 1 month during this 12-month term.

***This Commissioner was an active Commissioner for only 10 months during this 12-month term.

Serving as a Commission member is a volunteer position and it is in the County’s interest to create an environment where County residents would want to serve. However, those who are appointed and commit to this post should comply with attendance requirements. The Mayor and County Council should call a meeting with Commission members to discuss the obstacles that have impeded Commission member attendance and solicit recommendations for solutions.

Despite the poor attendance rates, Commission members have complied for the last two years with the Hawaii Revised Statutes requirement that “a majority of all the members of the commission or board shall constitute a quorum for the transaction of business, but the affirmative vote of a majority of all of the members shall be necessary to determine any matter before it.”¹³ From April 2016 through June 2018, there were at least five of the total nine commissioners in attendance at all monthly meetings, thus technically meeting the quorum and voting requirements codified in State law. On average, six commission members attended public hearings during this period. While this satisfies the technical

¹³ County Charter Chapter 281, Section §13

requirement of the County’s Liquor Control Rules, the purpose of having nine members on the Commission is to have broad representation and oversight of the Department of Liquor Control. Repeated absences by some commissioners hamper achievement of this goal.

Non-Compliance with public noticing requirements

The Hawaii Revised Statutes and the Maui County Liquor Control Rules detail a series of required steps to be taken by the Commission and the Department to ensure that the public is given adequate information about how the Commission conducts its business and provided with an opportunity to review any proposed liquor control rule changes prior to adoption. Chapter 91 of the Hawaii Revised Statutes details requirements such as timelines to allow advance notice to the public on Liquor Control Rule changes and the type of information that should be provided on Liquor Control Rule changes, as well as how this information should be disseminated.

Some of the key requirements outlined in Hawaii Revised Statutes Chapter 91¹⁴ state that:

1. The Department must give at least 30 days of notice for a public hearing;
2. The “notice” should include a statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and
3. The notice should state when and where the proposed rule changes can be viewed in-person and online.

Distinct from and complementary to these rules are a set of guidelines to help the public understand the ways in which government meetings and proceedings should be accessible to the public. These guidelines are often referred to as “Sunshine Laws” or open meeting guidelines, and are detailed in Chapter 92 Part 1 of the Hawaii Revised Statutes. The State Office of Information Practices has administered the Sunshine Law since 1998.

Inadequate information about new rules and amendments under consideration

While the Department published announcements in local newspapers for Commission public hearings that comply with this 30-day rule from January 2015 through December 2017, these announcements were only included in the newspaper for one day. Therefore, if local residents and/or key stakeholders did not purchase or read the newspaper on that particular day, they may not have been aware that a hearing had been scheduled, or of the details regarding the proposed liquor control rule changes. In addition, the Department does not consistently post a copy of the proposed rule amendments on the County website with clear indications of which sections and provisions will be changed. This would provide broader access to the details of rule changes.

Hawaii Revised Statutes Section §91-2.6(a) states that:

¹⁴ Hawaii Revised Statutes Chapter 91, Sections §91-3 and Section §91-2.6.

2. Commission Responsibilities

Beginning January 1, 2000, all state agencies, through the office of the lieutenant governor, shall make available on the website of the office of the lieutenant governor each proposed rulemaking action of the agency and the full text of the agency's proposed rules or changes to existing rules.

"Agency" in this chapter is defined as "state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases except those in the legislative or judicial branches." This State law requires that proposed rule changes should be made available online, which would increase accessibility to the public. However, this State law does not specify when these documents should be made available online.

The Commission should amend Maui County Liquor Control Rules to require that the Department post a copy of proposed new rules and rule amendments on the County website no later than 24 hours after the Department issues their 30-day advance notice of a public hearing to consider such proposed rule changes. The online posting should include the date on which the public hearing is scheduled, the time and location for the hearing, and the full text of the proposed rule changes. The Department should also maintain a list of all licensees and send an e-mail to all licensees on their e-mail list notifying them of the upcoming public hearing on proposed rule changes.

During the last three years, there were at least two occasions when the Department did not comply with public noticing requirements when proposing and adopting new and/or amended liquor control laws. In these cases, the Commission did not fulfill its mandate to ensure that appropriate advance notice was given to the public prior to the consideration or adoption of new and/or amended liquor control rules.

For the February 8, 2017 Commission hearing, the Department did not comply with the public noticing requirements of Hawaii Revised Statutes Chapter 9, Sections §91.3 and §92. There was inadequate information provided on the proposed rule changes in the agenda and other submitted documents for that hearing. The only information provided in the agenda regarding the proposed rule changes was an agenda item entitled:

Proposed amendments to the Rules of the Liquor Commission, County of Maui, relating to Title 08, Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui.

While the description of the proposed rule changes included the Maui County Liquor Control Rules chapter number relevant to the changes, it did not specify the nature or topic of the proposed changes or where licensees and local residents could access the specific details of the proposed rule changes. Further, based on the minutes for this hearing, the Commission members in attendance did not ask any questions about the details of the proposed rule changes during the hearing, which further limited public discussion and awareness of the specific rule changes proposed.¹⁵ During this meeting, the Commissioners voted to approve the rule changes. This February 2017 public hearing was the date on

¹⁵ Minutes for the February 8, 2017 Liquor Control Commission public hearing

which the Department proposed several rule changes including, but not limited to, authorizations for 24-hour liquor sales, a removal of the cap on total hostess bars in Maui County, and home delivery of alcohol to physically challenged individuals.

The Hawaii Revised Statutes state that if public noticing requirements are not met, the Liquor Control Commission must postpone the public hearing or discussion of that agenda item until public noticing requirements are met. The Commission's decision to consider and vote on these rule changes despite an insufficiently detailed agenda was in violation of the Hawaii Revised Statutes as the Commission held the hearing even though the Department did not meet public noticing requirements. These issues point to inadequate internal controls to ensure that both the Department and the Commission fulfill their mandated responsibilities appropriately.

One of the core responsibilities of the Commission according to Maui County's Charter and Liquor Control Rules is to oversee the adoption of new and amended liquor control rules yet the Commission displayed poor performance in this area.¹⁶ At this time, the only other entity in place to provide additional safeguards to ensure compliance with County rules and State laws is the Corporation Counsel. However, in this case, the Corporation Counsel did not provide appropriate counsel to the Commission to avoid violation of State law. While the Department does have a Secretary to the Commission, who assists with assembling and posting agendas for Commission public hearings, it is technically not within the scope of his/her duties to ensure that public noticing requirements are met. Furthermore, the Secretary to the Commission is a Department of Liquor Control staff member. It is critical that oversight tasks remain with the oversight bodies, which in this case include the Commission and Corporation Counsel. Tasking the Secretary to the Commission would be, in effect, tasking the Department with oversight of themselves.

Despite ongoing public complaints about the lack of transparency on Department operations, the Department continues to violate public noticing requirements. For the July 11, 2018 Commission public hearing, the Department sought to enact additional changes to Liquor Control Rules without providing any details to the public on the proposed rule changes. The agenda simply read "Proposed Rule Amendments." The State Office of Information Practices issued a statement to our audit team that the agenda appeared to violate State Sunshine Law requirements.¹⁷ The proposed rule changes item was subsequently deleted from the agenda for the July 11, 2018 Liquor Control Commission public hearing.

This incident points to the need for better oversight over the Department and improved systems to ensure that public noticing requirements are consistently met. Without these improvements, County residents and licensees will not have the opportunity to comment on proposed rule changes or be aware of the changes enacted. Furthermore, the Department as well as the Commission would continue to violate the Hawaii Revised Statutes as well as County Liquor Control Rules.

¹⁶ Maui County Charter Section §8-13.2 and Maui County Administrative Rules §08-102-21

¹⁷ Hawaii State Office of Information Practices Statement on public noticing for the July 11, 2018 Liquor Control Commission hearing.

CONCLUSION

Members of the Liquor Control Commission have not been fulfilling their mandated responsibilities. Poor attendance rates, failure to evaluate the performance of directors of the Department of Liquor Control, absence of established criteria for that performance evaluation, and rule changes enacted without proper noticing given to licensees and the general public all point to an urgent need for better oversight of the Commission and improved incentives for effective management over liquor control in Maui County.

RECOMMENDATIONS

The Mayor and County Council should:

- 2.1 Request that the Liquor Control Commission prepare a written report to them including possible solutions to the: (a) causes of commissioner absenteeism at meetings, (b) lack of mandated performance evaluations completed for directors of the Department of Liquor Control, and (c) any training or resources needed to ensure Commission members are knowledgeable of their responsibilities and capable of performing them.
- 2.2 Adopt a resolution to require that the Chair of the Liquor Control Commission submit quarterly attendance reports to the Mayor and County Council, along with formal written letters for any absences.
- 2.3 Require that the Liquor Control Commission consult with the Department of Management to develop: (a) a standardized set of criteria to evaluate the performance of directors of the Department of Liquor Control each fiscal year that includes specific short- and long-term goals, and (b) a timeline to complete the performance evaluation each fiscal year, including a date on which a report indicating that evaluation has been completed and its general outcome will be submitted to the Mayor and the County Council.
- 2.4 Require that the Mayor and County Council perform an annual performance evaluation of the Commission Chair to evaluate whether the Liquor Control Commission is fulfilling their mandated duties.

The Corporation Counsel should:

- 2.5 Assign the representative to the Liquor Control Commission to monitor compliance with public noticing requirements and require that on the date the agenda is published, Corporation Counsel issues a statement or a stamp to validate whether or not public noticing requirements are met (e.g., timeliness of posting as well as adequate details about any propose changes to liquor control rules), before authorizing the scheduling of the public hearing.

- 2.6 Provide annual training to members of the Liquor Control Commission and the Commission Secretary, or the staff member who is fulfilling the Commission Secretary responsibilities, on how to carry out meetings that are in compliance with all County and State laws, particularly how to comply with State Sunshine Laws and Hawaii Revised Statutes Chapter 91, which covers public noticing requirements.

The Liquor Control Commission should:

- 2.7 Implement Deloitte & Touche’s 1994 recommendations regarding the performance evaluation for directors of the Department of Liquor Control. This includes creating standardized criteria to evaluate the Director of the Department of Liquor Control, which should include measures of both licensee and public satisfaction with Department services as well as the efficiency and effectiveness of Department operations. These standardized criteria and completed forms should be authorized to be made available to internal and external auditors upon request.
- 2.8 Update Maui County Liquor Control Rules Chapter 102 to require that the Department of Liquor Control include a summary of all proposed rule changes in the agenda for the relevant Liquor Control Commission meetings.
- 2.9 Amend Maui County Liquor Control Rules Chapter 102 to require that the Department of Liquor Control post the full text of any proposed rule changes and descriptions of the nature of the changes online no later than 24-hours after the Department’s official 30-day advance notice of a public hearing scheduled to consider any proposed rule changes.
- 2.10 Amend Maui County Liquor Control Rules Chapter 102 to require that Commission members have no more than three unexcused absences during each year of their term on the Liquor Control Commission and that those out of compliance can be removed from the Commission by the Mayor, with the consent of County Council.

SAVINGS, BENEFITS and COSTS

Implementation of the proposed recommendations would improve the functioning of the Commission, prevent violations of State laws and County rules, and ultimately, save the County’s time and resources when correcting these issues.

Implementation of the proposed recommendation for Corporation Counsel to design and execute more robust trainings for Commission and Board members will require increased staff time. While the Corporation Counsel may need to dedicate some time for developing new training materials initially, the ongoing maintenance of training materials should be less demanding.

3 Staffing and Human Resource Issues

The Department of Liquor Control's authorized staffing levels are high relative to liquor control departments in other counties in Hawaii, particularly in the Licensing and Permitting Section.

The Department has had a consistently high vacancy rate between Fiscal Years 2016-17 and 2017-18, with an average of 6.9 out of 25 authorized positions vacant during that time, or 26.7 percent. While these vacancies have resulted in reduced performance in some areas, it appears that the Department has performed most of its functions with fewer positions than are currently authorized and could reduce its staffing to be closer to the norm in other counties without adverse impacts. While filling some of the vacant positions as proposed by the Department appears appropriate to improve services, we conclude that at least two of the vacant positions could be deleted at this time, and possibly a third within a year after process improvements recommended in this report are made, reducing the Department's budgeted salary and benefits costs.

In confidential interviews, employees described the Department's culture as retaliatory, and employee dissatisfaction is further evidenced by a spike in employee grievances between Fiscal Year 2015-16 and 2016-17 as well as high turnover.

The Department of Liquor Control (Department) is a relatively small County department with 25.0 full time equivalent authorized positions (FTEs), all of which are funded by liquor license fees. In FY 2017-18, the Department had a budget of \$3.15 million, including \$1.55 million—or 49.2 percent—for salaries and associated benefits. The Department has a responsibility to allocate staff efficiently within the Department to ensure that liquor license fees are not set above what is necessary for Department operations. The Department's FTEs decreased from 26.0 FTEs to 25.0 FTEs in FY 2017-18 when the County Council deleted one Chief Liquor Control Officer position, which had been vacant for more than 10 years, in June 2017. The Department did not add any new positions in the last five fiscal years.

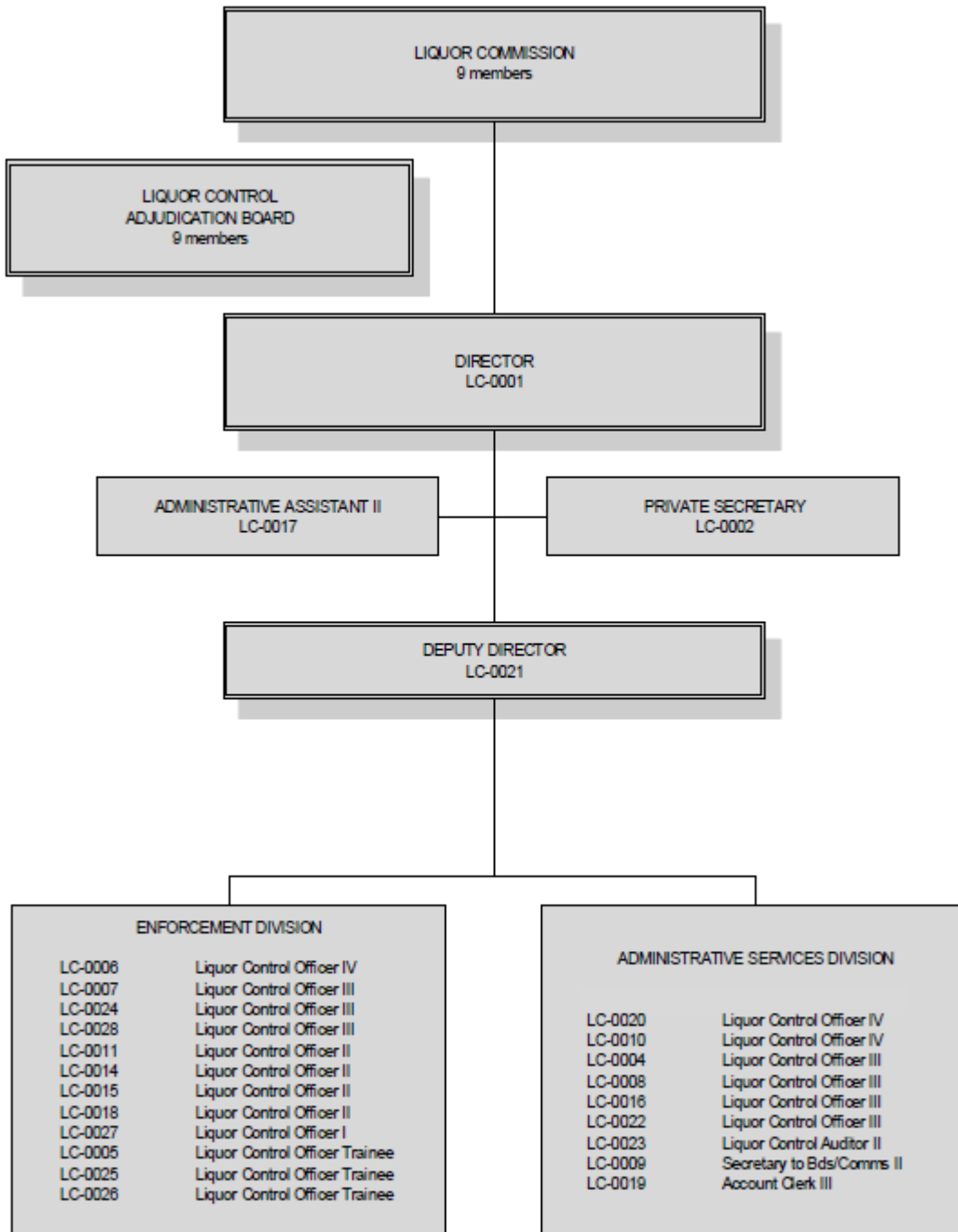
As of June 2018, there were 25.0 authorized FTEs in the Department, including 4.0 FTEs in the Office of the Director, 12.0 FTEs in the Enforcement Division, and 9.0 FTEs in the Administrative Services Division. The responsibilities of each division are shown in Exhibit 3.1 below. The Department's Organizational Chart is shown below in Exhibit 3.2.

Exhibit 3.1: Department of Liquor Control Division Responsibilities

Division	Responsibilities	Authorized FTEs
Office of the Director	The Director is the administrative head of the Department and is responsible for oversight of day-to-day operations, as well as providing information and support services to the Liquor Commission and the Liquor Control Adjudication Board. The Director is supported by a Deputy Director, who serves as the administrative head when the Director is unavailable, and two administrative employees.	4
Administrative Services Division	The Administrative Services Division processes applications for liquor licenses and permits and also performs audits and financial and administrative tasks for the Department, the Liquor Control Commission, and the Liquor Control Adjudication Board.	9
Enforcement Division	The Enforcement Division conducts inspections of licensed premises to ensure compliance with liquor laws and investigates potential liquor law violations. As of September 2017, the Enforcement Division also administers the certification examination for licensees' employees.	12
Total		25

Source: Auditor's review of the Department's Organization Chart and Annual Reports

**Exhibit 3.2: Department of Liquor Control Organization Chart
FY 2016-17**



Source: Department of Liquor Control, FY 2017 Annual Report

Proposed Department Reorganization

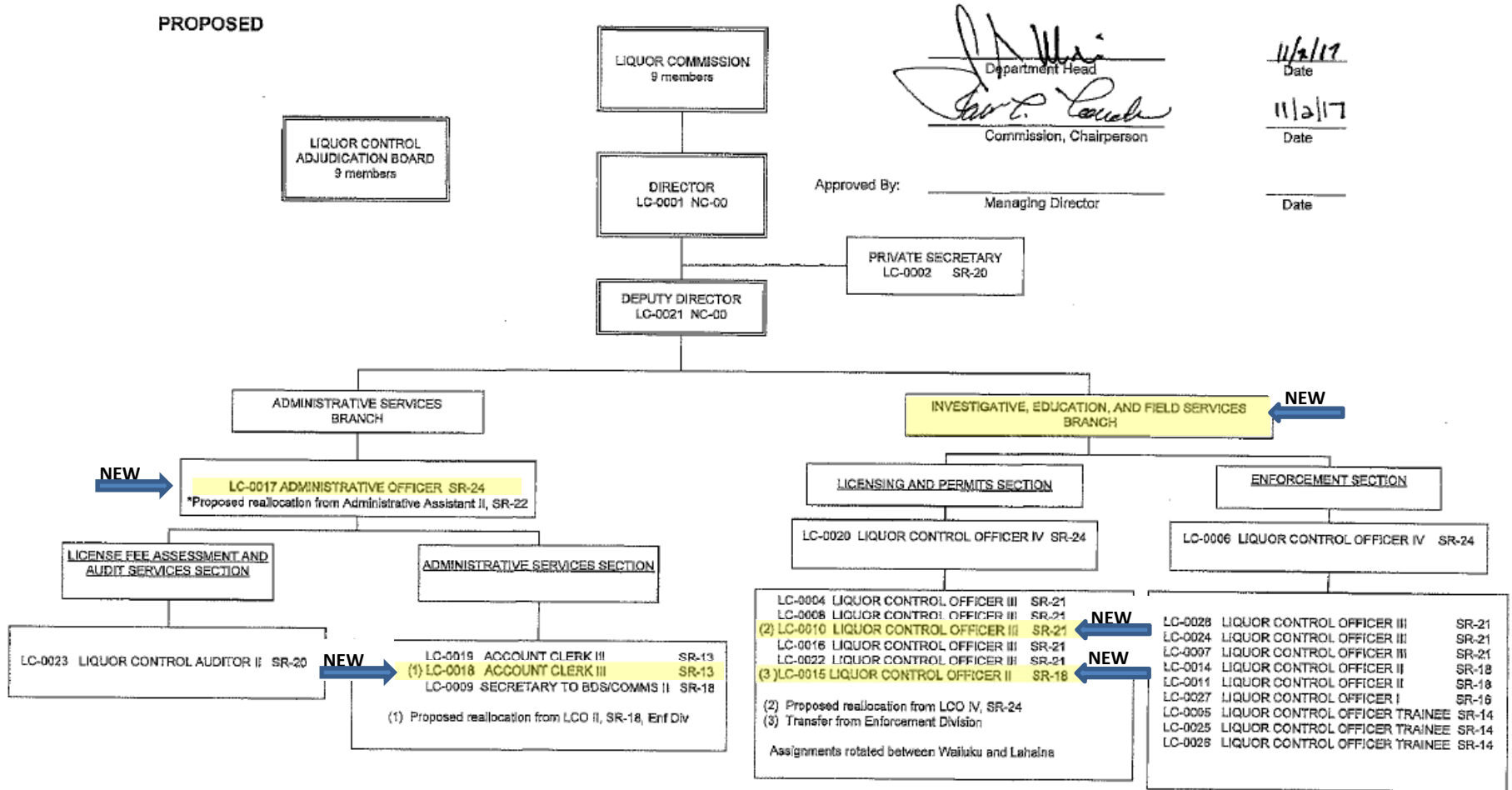
The Director submitted a reorganization proposal to the County's Department of Management in November 2017. Though still not approved, the proposed reorganization would reallocate four vacant positions and remove the Licensing and Permits Section from the Administrative Services Branch to a proposed new Field Services Branch, which would also include the existing Enforcement Division, as shown in Exhibit 3.3 below.

According to Department management, the reorganization was requested for the following reasons: (1) to provide additional capacity in the Licensing and Permits Section, in light of feedback from licensees that service was inadequate; (2) to create a supervisor position to oversee staff responsible for audits, accounting, and administrative tasks; (3) to provide additional support for the front desk and cash handling duties; and, (4) to reduce the Private Secretary's administrative burden related to licensing, such as preparing and printing licenses.

Management's decision to propose a reallocation of vacant positions to achieve the above goals instead of requesting new positions was in response to two actions by County Council. As mentioned above, County Council deleted one Chief Liquor Control Officer position, which had been vacant for more than 10 years, from the Administrative Services Branch in June 2017 because the job duties of the Chief Liquor Control Officer were too similar to that of the Deputy Director. The proposed reorganization adds an Administrative Officer to take on some of the tasks of the deleted Chief Liquor Control Officer, including supervision of staff responsible for audits, accounting, and administrative tasks. Additionally, County Council did not approve the Department's budget request for a new Account Clerk III position in June 2018. Proposed changes are highlighted in Exhibit 3.3.

As of August 2018, the County's Department of Management was still reviewing the Director's reorganization proposal.

Exhibit 3.3: Proposed Department of Liquor Control Reorganization November 2017



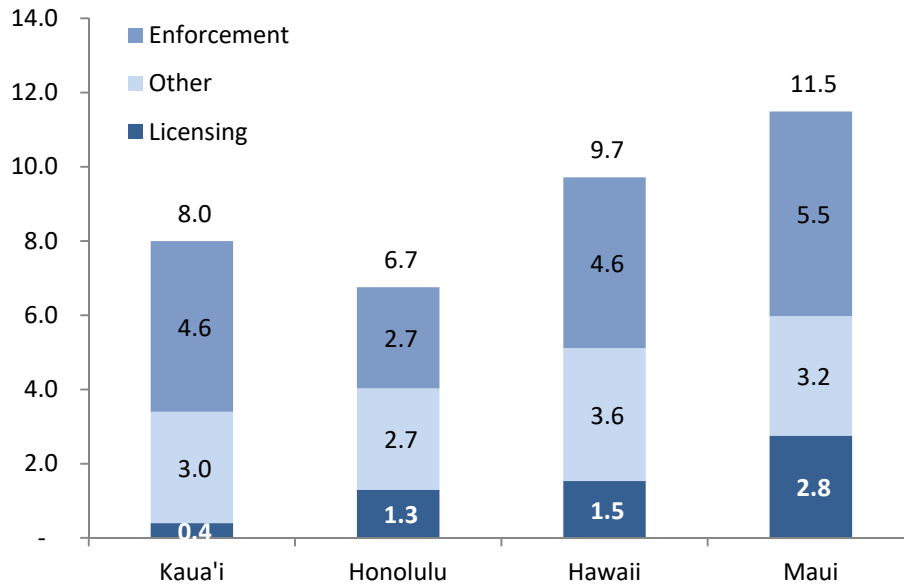
Source: Proposed Reorganization provided by Department. Reallocated and new positions highlighted in yellow.

Staffing levels are high relative to peer counties

The Department's staffing levels are high relative to liquor control departments in other counties in Hawaii, particularly in the Licensing and Permitting Section. Staffing levels in excess of what is necessary for Department operations can result in unnecessarily high liquor license fees. Due to the current licensing workload and high level of licensing staff relative to other counties in Hawaii, we recommend against one of the proposed reallocations in the Department's reorganization proposal, which would increase the number of licensing staff, and we recommend at least delaying reallocation of a vacant LCO IV position in the Licensing and Permitting Section that is no longer needed, as discussed later in this section. We also recommend against the proposed reallocation of one vacant Administrative Assistant II to an Administrative Officer position that would increase the number of supervisory staff despite no change to the total number of FTEs in the Department. Further, we recommend that the County consider reducing the Department's number of authorized positions since most core functions have been adequately performed over the last two years with an average of 6.9 authorized positions vacant, as discussed further below. This is explained in part by the Department's staffing level being substantially higher than its counterpart departments in the other counties in Hawaii that perform the same functions.

At 11.5 authorized FTEs for every 200 licensees, the Department's staffing levels are 72 percent higher than the City and County of Honolulu, 44 percent higher than Kaua'i County, and 19 percent higher than Hawaii County, as shown in Exhibit 3.4 below. In particular, the Department has the highest licensing staffing level out of all counties in Hawaii. At 2.8 authorized licensing FTEs for every 200 licenses issued, the Department has nearly double the number of authorized licensing FTEs as Hawaii County, which has the second highest licensing staffing level. The Department's number of enforcement staff per 200 licenses is slightly higher than that of Kaua'i County and Hawaii County but more than double that of the City and County of Honolulu. Reducing the Department's licensing staffing by two positions and enforcement staffing by two positions would bring staffing levels roughly in line with Hawaii County, which has the second highest staffing level of all counties in the state.

**Exhibit 3.4: Number of Positions per 200 Licensees in Peer Counties
July 2018**



Authorized Staff	Kaua'i	Honolulu	Hawaii	Maui
Licensing	0.4	10	3	6
Enforcement	4.6	21	9	12
Other	3	21	7	7
Total	8	52	19	25
Number of Licensees	200	1,539	391	435

Staff per 200 licensees*	Kaua'i	Honolulu	Hawaii	Maui
Licensing	0.4	1.3	1.5	2.8
Enforcement	4.6	2.7	4.6	5.5
Other	3.0	2.7	3.6	3.2
Total	8.0	6.7	9.7	11.5

Source: Department organization charts submitted by peer counties

*Staff per 200 licensees calculated as: authorized staff x 200 licensees / number of licensees

The Department's organizational structure is similar to peers

The Department's structure, delineation of duties, and spans of control between licensing and enforcement is similar to other counties in Hawaii. The Department's structure, as of August 2018, is similar to Hawaii County, with separate enforcement and licensing divisions that report to an intermediary (i.e. deputy director) before the Director. The Department's proposed structure according to its reorganization request is similar to the City and County of Honolulu, with a Field Services Branch that includes both Licensing and Enforcement staff. Due to the size of Kauai's

Department of Liquor Control, it does not have a separate licensing division. However, the Supervising Investigator (head of enforcement) spends approximately 40 percent of their time on licensing duties.

Duties are appropriately separated between Enforcement and Licensing

We reviewed duties performed by the Enforcement Division and the Licensing and Permitting Section and compared them to practices in peer counties. We did not find the separation of duties to be inconsistent with liquor control departments in other counties in Hawaii. Enforcement Liquor Control Officers perform two duties that are not strictly enforcement related, including delivery of licensing materials and proctoring certification examinations for the employees of licensees. However, these duties were also performed by enforcement staff in at least one other county in Hawaii.

Enforcement staff may deliver materials to licensees in all three other counties, but the Department should consider limiting the number of deliveries conducted by enforcement staff as it is not an efficient use of staff resources. Sending applications that need corrections via e-mail or certified mail would result in decreased costs for the Department and would provide these materials to licensees more quickly. As of July 2018, the Department does not collect e-mail addresses from licensees or conduct correspondence with licensees regarding applications via e-mail. Additionally, enforcement staff proctor exams in one other county. However, we note in Section 5 of this report, that this responsibility was transferred from Administrative Services to Enforcement without any additional staff resources, and resulted in examination cancellations in January 2018 due to staffing shortages and decreased the number of people that could take the exam by at least ten per week. As of August 2018, the Department offers the certification examination three times per week at its main office in Wailuku, and the examination takes approximately 3.5 hours, including registration and the education session, which is offered immediately following the examination to employees with a passing score. The Department offers the certification examination four times per year in Lanai and Molokai.

The Department has had a high vacancy rate with minimal impact on operational capacity

As of August 2018, the Department had six vacancies out of 25 positions, or a vacancy rate of 24 percent, which is high relative to other County departments (as discussed below). Three positions had been vacant for longer than one year, and the average length of Department vacancies was 12.5 months as shown in Exhibit 3.5 below.

As discussed above, the Department is overstaffed relative to peer counties. However, long-term vacancies can diminish some operational capacity relative to what the Department could accomplish at full staffing. Further, long-term vacancies can increase the workload of staff that take on the duties of vacant positions or reduce performance relative to how the Department performed before a position was vacated. As discussed in Section 5 of this report, staff turnover and vacancies in the Enforcement Division appear to have some impact on the annual number of inspections conducted. Additionally, in

3. Staffing and Human Resource Issues

January 2018, the Department issued a press release that announced the cancellation of liquor certification examinations at the Lahaina office due to staffing shortages, meaning that individuals taking the examination now all had to travel to Wailuku. Further, as of August 2018, the Licensing and Permitting LCO IV was performing duties of the Secretary to the Boards/Commissions II position, which had been vacant for more than a year, and the Director's private secretary appears to have accrued 270.5 hours of overtime performing the duties of this position between July 2017 and December 2017, as discussed below.

Based on analysis of the Department's six vacancies and staffing in peer counties, we recommend that the County reduce the authorized FTEs in the Department by two to three positions, for annual savings of \$135,815 to \$225,175¹ in salary costs plus associated benefits. Of the six vacant positions, we recommend filling two positions, filling and reallocating one other vacant position (as proposed by the Director), and deleting two positions. As discussed later in this section, we recommend delaying filling and reallocation of the remaining sixth vacant position—an LCO IV position in the Licensing and Permitting Section that is no longer needed—pending the filling of three vacant positions, streamlining of business processes, and a subsequent workload analysis before the FY 2019-2010 budget is adopted to determine if that position is still needed.

¹ These savings are based on an estimated benefit rate of 66.22 percent.

Exhibit 3.5: Department Vacancies as of August 2018

Division	Position	Vacant Since Date	Months Vacant	Auditor's Recommended Action
Admin Svcs	Secretary To Boards/Commissions II	6/23/2017	13.7	Fill position
Admin Svcs	Liquor Control Officer IV*	8/31/2016	23.5	Delay reallocation until FY 2019-20 budget process, pending process improvements and subsequent workload analysis; Delete position for annual savings of \$89,360 if not needed
Enforcement	Liquor Control Officer I	3/25/2018	4.7	Delete position for annual savings of \$65,205
Enforcement	Liquor Control Officer II*	4/30/2017	15.5	Deny reallocation request and delete position for annual savings of \$70,610
Enforcement	Liquor Control Officer II*	8/31/2017	11.5	Reallocate to Account Clerk III (as proposed)
Office of the Director	Administrative Assistant II*	2/11/2018	6.1	Deny reallocation to Administrative Officer request and fill existing position

Average	12.5
Median	12.6

Source: Department of Liquor Control

*Department requested reallocation of these four vacant positions

Note: Estimated savings for position deletions includes salaries and associated benefits

One vacant position may have generated 71% of all overtime hours worked in FY 2017-18

In FY 2017-18, the Director's private secretary appears to have accrued 270.5 hours of overtime, or 71 percent of the Department's total overtime hours for the fiscal year, while performing the duties of the vacant Secretary to the Boards/Commission II position between July 2017 and December 2017 according to overtime reports provided by the Department. However, the Department asserted that the private secretary accrued these hours while updating the liquor license database and maintaining licensing files after reviewing the draft of this audit report in contrast to notations on overtime reports previously provided by the Department. Overtime hours in the Enforcement Division and Administrative Services Division declined after July 2017, when the Mayor issued a directive on overtime use, which required employees to acquire pre-approval for overtime and required department managing directors to notify the Director of Finance when employees accrue eight or more hours of overtime in one week and provide a justification. Overtime hours by division are shown in Exhibit 3.6 below.

**Exhibit 3.6: Department Overtime by Division
FY 2016-17 & FY 2017-18**

Overtime by Division	FY 2016-17	FY 2017-18	Two Year Total	% of 2 Year Total
Enforcement	142.72	82.50	225.22	30.1%
Admin Svcs	151.50	30.00	181.50	24.3%
Office of the Director	70.00	270.50	340.50	45.6%
Total	364.22	383.00	747.22	100.0%

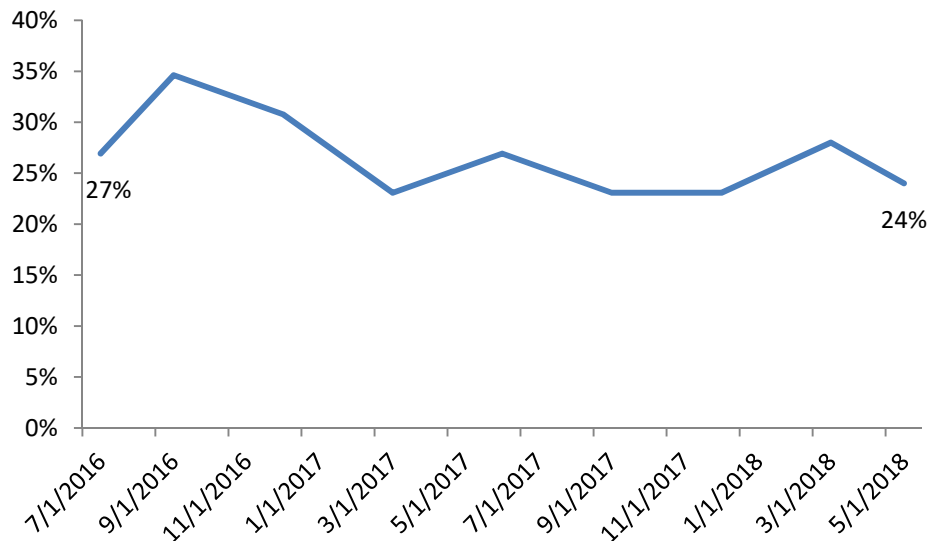
Overtime per FTE	FY 2016-17	FY 2017-18	Two Year Total	Authorized FTEs
Enforcement	11.9	6.9	18.8	12
Admin Svcs	16.8	3.3	20.2	9
Office of the Director	17.5	67.6	85.1	4
Total	14.6	15.3	29.9	25

Source: Auditor’s analysis based on overtime data provided by the Department of Liquor Control

During FY 2016-17 and FY 2017-18, the Department never had fewer than six vacancies, or a vacancy rate less than 23 percent

The Department’s vacancy rate was consistently high between FY 2016-17 and FY 2017-18 as shown in Exhibit 3.7 below. The Department had an average of 6.9 vacancies, or an average vacancy rate of 26.7 percent, over the period and never had fewer than six vacancies, as shown in Exhibit 3.8 below. The Enforcement Division had an average of 3.3 vacancies, and the Administrative Services Division had an average of 3.1 vacancies over the period, indicating that vacancies impact both licensing and enforcement functions.

**Exhibit 3.7: Department of Liquor Control Vacancy Rate
FY 2016-17 & FY 2017-18**



Source: Department of Personnel Services, Bimonthly Vacancy Reports

**Exhibit 3.8: Department of Liquor Control Vacancies
FY 2016-17 - FY 2017-18**

Report Date	Vacancies by Division			Total Vacancies	Authorized FTEs	Total Vacancy Rate
	Office of the Director	Admin Svcs	Enforcement			
7/27/2016	1	2	4	7	26	26.9%
9/27/2016	1	3	5	9	26	34.6%
12/29/2016	0	3	5	8	26	30.8%
3/15/2017	0	3	3	6	26	23.1%
6/22/2017	0	3	4	7	26	26.9%
9/17/2017	0	4	2	6	26	23.1%
12/20/2017	0	4	2	6	25	23.1%
3/20/2018	1	4	2	7	25	28.0%
5/21/2018	1	2	3	6	25	24.0%
Average	0.4	3.1	3.3	6.9	25.6	26.7%

Source: Department of Personnel Services, Bimonthly Vacancy Reports

Note: Each date represents a snapshot in time. Changes that occur between dates may not be captured.

The Department’s vacancy rate in December 2017 was more than double the average for all County departments

The Department of Liquor Control, with six out of 25 positions vacant on May 25, 2018, had the third highest vacancy rate (24.0 percent) out of all County departments as shown in Exhibit 3.9 below. While the Mayor’s Office had the highest vacancy rate (31.4 percent), and the Emergency Management Agency, had the second highest vacancy rate (25.0 percent), the Department of Liquor Control was third highest and significantly above the countywide average of 11.2 percent.

According to the Department of Personnel, the positions in the Mayor’s Office are appointed, and the Office may have had a large number of vacancies in December 2017 because vacant positions are often left unfilled as a mayoral administration winds down. A new Mayor will take office in January 2019. Additionally, the Emergency Management Agency is a small department—it only has eight authorized FTEs—and the two vacancies were due to recent turnover in the Department and not by long-term vacancies.

Exhibit 3.9: County Department Vacancies as of December 2017

Department	FTEs	Vacancies	Vacancy Rate
Mayor's Office	57	18	31.4%
Emergency Management Agency	8	2	25.0%
Liquor Control	25	6	24.0%
Police	543	83	15.3%
Housing & Human Concerns	155	21	13.5%
Transportation	8	1	12.5%
Parks & Recreation	346	40	11.6%
Water Supply	222	24	10.8%
Fire	383	41	10.7%
Environmental Management	229	23	10.0%
Corporation Counsel	38	3	8.0%
Management	57	4	7.0%
Prosecuting Attorney	84	5	6.0%
Planning	69	4	5.8%
Personnel Services	18	1	5.6%
Finance	165	9	5.5%
Public Works	276	15	5.4%
All County Departments	2,682	300	11.2%

Source: Department of Personnel Services

The Department's proposed reorganization would increase licensing staff unnecessarily

While the Department's proposed reorganization would not change the overall number of positions in the Department, it would change the allocation of positions between divisions and increase the number of positions in the Licensing and Permitting Section unnecessarily. Specifically, it would result in two additional positions in the Administrative Services Section and one additional position in the Licensing and Permitting Section, offset by two fewer positions in the Enforcement Division and one fewer position in the Office of the Director, as shown in Exhibit 3.11. The proposed reorganization would also increase the number of supervisory positions from three to four and decrease the Department's annual expenditure on salaries by \$27,612, as shown in Exhibit 3.10.

The Department's reorganization plan calls for filling four of the six currently vacant positions and, reallocating two of them to different divisions. We recommend against two of the proposed reallocations (transfer of one LCO II from the Enforcement Division to the Licensing and Permits Section and reallocation of Admin Assistant II to Administrative Officer), which would increase the number of authorized FTEs in the Licensing and Permitting Section from six to seven FTEs and increase the number of supervisory staff from three to four despite no change to the total number of FTEs in the Department. We also recommend at least delaying until the FY 2019-20 budget process the proposed filling of a vacant LCO IV position in the Licensing and Permitting Section and reclassifying it to an LCO III until other process changes in the licensing and permitting functions recommended in this audit report are implemented and the results assessed. As mentioned above, the Department already has the highest licensing staffing level of any county liquor control department in the State. Further, the proposed filling of a vacant LCO II position and reallocation from the Enforcement Division to the Licensing and Permitting Section is unnecessary as the administrative functions proposed for the position could be performed by the Department's proposed new Account Clerk III in the Administrative Services Section, an addition with which we agree. Finally, we note that the Chief Liquor Control Officer position was deleted by County Council after it had been vacant for more than 10 years because the job duties were similar to that of the Deputy Director. Therefore, replacing this supervisor position with the proposed Administrative Officer position is not an appropriate use of County resources.

Implementing process improvements, reducing unnecessary requirements for licensing and permitting, and filling vacant administrative positions would reduce the workload for the Licensing and Permitting Section. The LCO IV in the Licensing and Permitting Section has been performing duties of one of the vacant positions, as discussed above. We recommend that the Department make the recommended process improvements in Section 4 of this report and fill remaining vacant positions before adding new or filling vacant positions for the Licensing and Permitting Section. Details on proposed reallocations are shown in Exhibit 3.10.

**Exhibit 3.10: Recommended Position Reallocations
for Department Reorganization**

Current Position	LCO II	Admin Assistant II	LCO II	LCO IV
Current Division	Enforcement	Office of the Director	Enforcement	Licensing
Status	Vacant	Vacant	Vacant	Vacant
New Position	Account Clerk III	Administrative Officer	LCO II (no change)	LCO III
New Division	Admin Svcs	Admin Svcs	Licensing	Licensing (no change)
New annual Salary	\$33,636	\$76,692	\$43,368 (no change)	\$51,792
Net Annual Salary Change	(\$9,732)	\$8,496	\$0	(\$26,376)
Justification	Account Clerk III would provide additional support to existing Account Clerk III to handle cash and service the public when existing staff is unavailable.	Replaces supervisor position (Chief LCO) deleted by County Council in June 2017. At the time of deletion, position had been vacant for more than 10 years.	LCO II would take on administrative responsibilities related to licensing from Private Secretary and perform other licensing tasks to free up Private Secretary and provide better service to licensees.	LCO IV no longer needed due to closing of Lahaina Office. LCO III would help with licensing backlog.*
Auditor's Comments	Agree with proposed change: Additional front desk support could improve customer service and take on administrative duties related to licensing from Private Secretary if necessary.	Recommend against: This reallocation would increase the number of supervisory staff from 3 to 4 with no change in total FTEs. Additionally, the Chief LCO position was deleted because its job duties were too similar to that of the Deputy Director. The Deputy Director can continue to supervise administrative staff.	Recommend against: Reallocating and filling the vacant LCO IV to LCO III in licensing would already increase the number of filled positions by one. Further, duties described above could be performed by the proposed Account Clerk III in Admin Svcs and existing LCOs. Vacant LCO II can be deleted.	Recommend delaying reallocation for one year, pending process improvements and subsequent workload analysis. The LCO IV position is no longer needed. This LCO III could help with existing duties if workload analysis demonstrates need for additional support in these areas.

Source: Reorganization Proposal and Justification provided by Department

*The Department reports that there is a backlog in the Licensing & Permitting Section that consists of appointments for reviewing and submitting liquor and permit applications, as well as appointments for fingerprinting, and performing other licensing tasks, such as scanning documents and processing applications. However, the Department could not describe the extent of the backlog, including the number of items in the backlog or how long items have been backlogged.

Exhibit 3.11: Proposed Reorganization by Department Section

Division	Authorized FTEs	Proposed FTEs	Reorg Impact	Auditor Recommended FTEs*
Office of the Director	4	3	(1)	3
Administrative Services Division	9	12	3	9 - 10
<i>Administrative Svcs Section (finance and admin)</i>	3	5	2	5
<i>Licensing & Permitting Section</i>	6	7	1	4 - 5
Enforcement Division	12	10	(2)	10
Total	25	25	0	22 - 23

Source: Reorganization Proposal and vacancy list provided by Department

*Auditor recommendations includes deletion of 2 to 3 vacant positions as discussed earlier in this section

New hires between FYs 2015-16 and 2017-18 did not curb vacancies due to high turnover and difficulty hiring trainees

At 15.8 percent, the Department’s average turnover rate² between FY 2015-16 and FY 2017-18 was double the 7.8 percent average of all County departments and the second highest of any County department’s rate, as shown in Exhibit 3.13 below, along with terminations and the average number of filled FTEs by fiscal year.

Higher turnover rates impact Department operations as more Department staff time and resources are allocated to recruiting and training new employees. Employee institutional knowledge such as familiarity with licensees and State and County laws is lost when longer-term employees depart. High turnover can also be a sign of inadequate compensation, poor opportunities for advancement, and/or low employee morale, the latter of which is discussed further in this section on the Department’s high grievance rate in the last two years.

The Department had nine employee terminations over the period, including four retirements, four resignations, and one other termination, as shown in Exhibit 3.12 below. Two of the employees who resigned were LCO trainees.

² We calculated turnover rate as the number of terminations divided by the average number of filled FTEs for each fiscal year and we report the average turnover rate for all three fiscal years.

**Exhibit 3.12: Department Terminations
FY 2015-16 through FY 2017-18**

Year	Retired	Resigned	Other	Total
FY 2015-16	2	1	1	4
FY 2016-17	1	2		3
FY 2017-18	1	1		2
Total	4	4	1	9

Source: Department of Personnel Services

**Exhibit 3.13: County Department Terminations
FY 2015-16 through FY 2017-18**

Department	FY 2015-16		FY 2016-17		FY 2017-18		Average Turnover Rate ¹
	Avg Filled FTEs	Terminations	Avg Filled FTEs	Terminations	Avg Filled FTEs	Terminations	
Emergency Management Agency	6	0	5	2	5	1	20.0%
Liquor Control	19	4	19	3	19	2	15.8%
Housing & Human Concerns	170	17	171	18	167	18	10.4%
Management	51	8	52	4	53	4	10.3%
Parks & Recreation	379	34	327	32	325	32	9.5%
Prosecuting Attorney	72	10	79	5	77	6	9.3%
Environmental Management	202	26	210	11	207	18	8.9%
Mayor's Office	44	3	43	2	43	5	7.7%
Personnel Services	17	2	18	2	18	0	7.6%
Planning	64	4	66	7	66	4	7.6%
Water Supply	194	15	201	15	195	14	7.5%
Police	509	24	510	37	484	43	7.0%
Finance	151	11	157	11	153	10	6.9%
Public Works	252	23	252	13	258	14	6.6%
Fire	302	14	364	22	359	27	6.1%
Corporation Counsel	33	0	34	1	37	4	4.6%
Transportation	6	0	8	0	8	1	4.2%
Total	2,471	195	2,516	185	2,474	203	7.8%

Source: Auditor's analysis based on turnover data from the Department of Personnel Services

¹ We calculated turnover rate as the number of terminations divided by the average number of filled FTEs for each fiscal year and report the average turnover rate for all three fiscal years.

In FY 2016-17 and FY 2017-18, it took six months on average to hire trainees

According to the Department of Personnel Services, hiring in Maui County is challenging given the County’s low unemployment rate, but hiring LCO Trainee positions, which eventually fill vacant Liquor Control Officer positions, may be particularly challenging given the experience requirements and level of pay. In FY 2016-17 and FY 2017-18, it took six months on average to hire trainees, as shown in Exhibit 3.14 below.

Liquor Control Officer Trainees hired in to the Department must have two years of work experience, including one year of enforcement experience, and are hired through the County’s Civil Service process. Two of the other three Hawaii counties surveyed do not require trainees to have enforcement experience. One county allows experience in the alcohol industry in lieu of enforcement experience, and the other county requires general work experience but does not require experience in a particular field. Adjusting the experience requirements could result in additional qualified applicants being forwarded to the Department for interviews. Over the three-year period between FYs 2015-16 and 2017-18, at least three candidates that were offered trainee positions declined the offer and two trainees resigned before being promoted to LCO I.

**Exhibit 3.14: LCO Trainees Hired
FY 2015-16 through FY 2017-18**

Source of Hire	Request to Fill Date	Hire/Transfer Date	Months to Hire
Transfer from Police	2/10/2016	11/16/2016	9.2
External	11/18/2016	2/1/2017	2.4
External	11/18/2016	2/1/2017	2.4
Transfer from Env Mgmt	11/18/2016	8/10/2017	8.7
Transfer from Police	11/18/2016	8/10/2017	8.7

Average	6.3
Median	8.7

Source: Auditor’s analysis based on hiring data from Department of Personnel Services

Many employees perceive the Department’s culture as retaliatory and not open to new ideas; grievances have recently spiked

Several employees reported in confidential interviews that they feared retaliation from Department management for providing information or data to our audit team. Towards the end of our field work, the Director sought to obtain the auditors’ information requests from employees and all records obtained by auditors, but Council Services denied this request since this requirement was not established as part of the original protocols about how information would be provided to our audit team.

Several employees also reported that they proposed new processes or ideas to improve the efficiency of the Department or the experience of licensees, but management did not implement the proposals or otherwise address the underlying issues. Poor Department culture and a lack of openness to new ideas may increase employee turnover or dissuade qualified persons from seeking employment with the Department.

Additionally, the Department has seen a spike in Step 2 employee grievances³ under the new Director and has the highest rate of Step 2 grievances of any County Department. Department employees filed four Step 2 employee grievances between November 2017 and June 2018, but no employees filed Step 2 grievances in the preceding 5.5 years. Prior to November 2017, the last Step 2 grievance was filed in February 2012. Of the four Step 2 grievances, two resulted in policy changes, one was denied, and one was still pending as of August 2018, as shown in Exhibit 3.15 below. None of the four grievances progressed to Step 3 (arbitration).

**Exhibit 3.15: Department of Liquor Control Step 2 Grievances
FY 2017-18**

File Date	Status	Action
11/7/2017	Denied	n/a
2/22/2018	Resolved	Policy Change
3/6/2018	Resolved	Policy Change
6/20/2018	Pending	

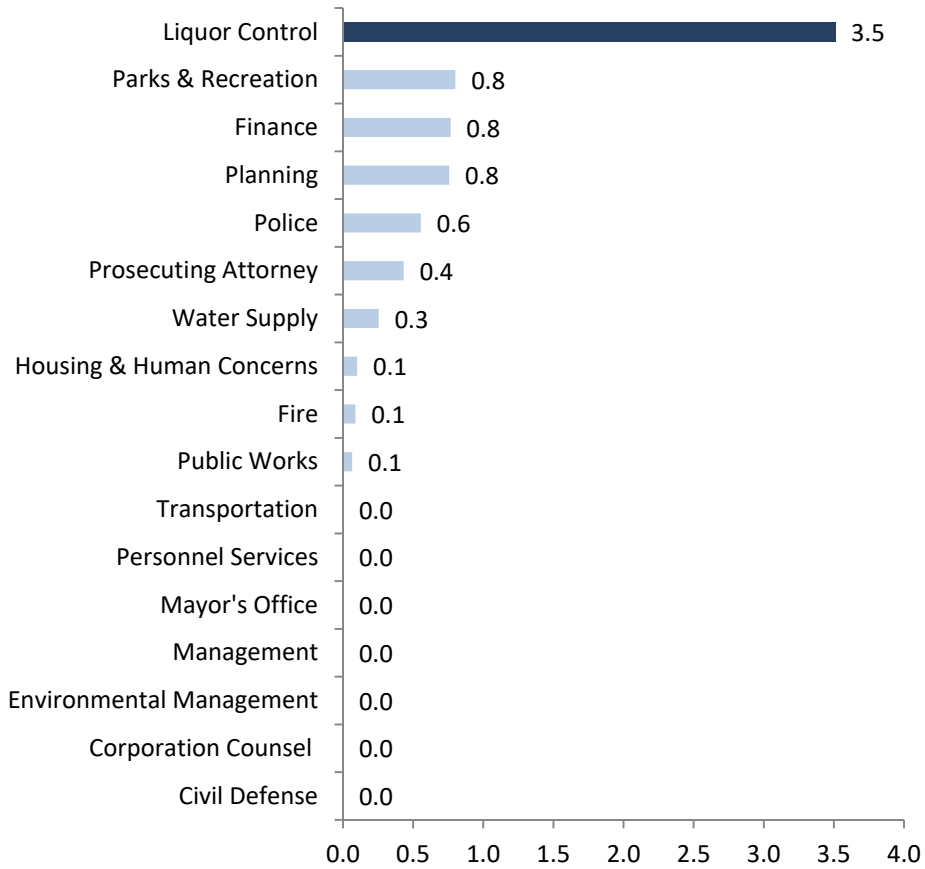
Date of Last Grievance filed before November 2017	2/29/2012
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Source: Department of Personnel Services

At 3.5 grievances annually per 50 filled FTEs, the Department’s average rate of Step 2 employee grievances between FY 2015-16 and FY 2017-18 was the highest of any County department and nearly ten times the average of 0.4 grievances per 50 FTEs for all County departments, as shown in Exhibit 3.16 below. However, we note that not all grievances are substantiated, indicating that the claim of the grievance may not be an accurate representation of what has occurred. However, whatever the circumstances, the increase in the number of grievances filed is an indication of employee discontent. Step 2 grievances by fiscal year are shown in Exhibit 3.17 below.

³ The employee grievance process begins at Step 1 when an employee submits their grievance in writing to the Department. If the grievance is not resolved within the Department at Step 1, it progresses to Step 2 and is forwarded to the Department of Personnel Services for resolution. If the grievance is not resolved at Step 2, it may progress to arbitration (Step 3).

Exhibit 3.16: Annual County Department Average Number of Step 2 Grievances per 50 FTEs, FY 2015-16 –FY 2017-18



Source: Auditor's analysis based on turnover data from the Department of Personnel Services

**Exhibit 3.17: Annual County Department Step 2 Grievances¹
FY 2015-16 –FY 2017-18**

Department	Average Number of filled FTEs	Number of Grievances				Annual Grievances per 50 filled FTEs ²
		FY 2015-16	FY 2016-17	FY 2017-18	Total	
Liquor Control	19	0	0	4	4	3.5
Parks & Recreation	333	5	10	1	16	0.8
Finance	152	5	0	2	7	0.8
Planning	66	3	0	0	3	0.8
Police	481	9	2	5	16	0.6
Prosecuting Attorney	77	1	0	1	2	0.4
Water Supply	196	2	1	0	3	0.3
Housing & Human Concerns	166	0	0	1	1	0.1
Fire	380	0	1	1	2	0.1
Public Works	256	1	0	0	1	0.1
Emergency Management Agency	5	0	0	0	0	0.0
Corporation Counsel	36	0	0	0	0	0.0
Environmental Management	211	0	0	0	0	0.0
Management	53	0	0	0	0	0.0
Mayor's Office	42	0	0	0	0	0.0
Personnel Services	17	0	0	0	0	0.0
Transportation	8	0	0	0	0	0.0
Total	2,498	26	15	13	54	0.4

Source: Auditor's analysis based on grievance data provided by Personnel Services

¹ Step 2 Employee Grievances are forwarded to the Department of Personnel Services for resolution if they are not resolved internally by the Employee's Department

² Annual Grievances per 50 filled FTEs is calculated as (Total Grievances / 3 years) x (50 filled FTEs/Total filled FTEs)

The Department is not appropriately utilizing all positions, and County policies do not prevent employees from supervising family members

By comparing employee job descriptions with current job duties as of July 2018, we identified two employees that were performing duties outside of their job description. As mentioned previously, the

Licensing and Permitting LCO IV was performing duties of the Board Secretary (as of August 2018), which had been vacant for more than a year. In addition, the Liquor Control Auditor was not completing audits or reviewing gross sales reports for accuracy, which should constitute 30 percent of the auditor's time according to the position description. As of June 2018, the auditor was cashiering, checking applications for completion, and staffing the front desk, which is a misuse of that position's skills and abilities. As a result of audits not being conducted, the Department may not be accurately collecting fees associated with gross liquor sales from all licensees.

Three employees are the children of the Director or a former Director, but this does not violate any existing County policies

Several employees in the Department are related, but the County does not have a formal policy on hiring family members or restricting them from being in a direct reporting relationship if they work in the same agency. Although none of the employees who are related were in a direct reporting relationship as of August 2018, it is important to avoid such an occurrence in the future to prevent favoritism or the appearance of favoritism among staff. Additionally, three employees are the children of the Director or a former Director, but none were hired or promoted during the last five fiscal years.

CONCLUSION

The Department's staffing levels are high relative to liquor control departments in other counties in Hawaii, particularly in the Licensing and Permitting Section. Staffing levels in excess of what is necessary for Department operations can result in unnecessarily high liquor license fees. Additionally, the Department has had a consistently high vacancy rate—24 percent as of August 2018, resulting in reduced performance in some cases. Further, low employee morale may have also contributed to the Department's hiring challenges. In confidential interviews, employees described the Department's culture as retaliatory, and employee dissatisfaction is further evidenced by a spike in employee grievances under the new Director and high turnover.

RECOMMENDATIONS

The County Council should request that the Liquor Control Commission:

- 3.1 Request that the Director develop and implement a departmental hiring and retention plan for FY 2018-19 and update it annually.
- 3.2 Direct the Director to prepare an annual report to be provided to the Liquor Control Commission, County Managing Director, and County Council annually on vacancy levels, turnover, and grievances, and clearly describe hiring and retention strategies to reduce vacancies, curb resignations, and improve employee morale.

Harvey M. Rose Associates, LLC

The County Council should:

- 3.3 Explore the establishment of a formal policy on hiring family members and relatives and whether or not they can supervise one another with the Director of the Department of Personnel Services. The policy should explicitly state what reporting relationships are appropriate between family members such as eliminating direct reporting relationships.
- 3.4 Reduce the number of the Department of Liquor Control's authorized positions from 25.0 FTEs to 23.0 FTEs, by deleting one vacant LCO I position and one vacant LCO II position, at an annual salaries and benefits savings of \$135,815.
- 3.5 Deny the increase in salaries and benefits of approximately \$14,122⁴ for the proposed reallocation of one Administrative Assistant II to an Administrative Officer position.
- 3.6 Consider reducing the number of authorized positions further to 22.0 FTEs by deleting one vacant LCO IV position within one year of this audit report, or during the FY 2019-20 budget process, pending implementation of process improvements and subsequent workload analysis for the Licensing and Permitting Section, at an annual salary and benefits savings of \$89,360.

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 reclassification of the auditor position to reflect clerical work performed by the employee.
- 3.8 Re-examine work experience requirements with the Department of Personnel Services and consider removing the requirement that trainees have enforcement experience.
- 3.9 Maximize use of staff resources by sending applications that need corrections via e-mail or certified mail instead of via delivery by enforcement staff and through implementing process improvements recommended in Section 4 (Licensing) and Section 5 (Enforcement) of this report, such as reducing case report requirements for minor violations.

⁴ These savings are based on an estimated benefit rate of 66.22 percent.

SAVINGS, BENEFITS and COSTS

Implementation of all recommendations is feasible within the Department's existing budget. Regular review of vacancies and hiring processes could lead to a more efficient allocation of staff resources and improve the effectiveness of the Department. Enhanced retention efforts can reduce hiring costs over time and lead to higher levels of job satisfaction among staff. Reducing the Department's authorized positions by two to three authorized positions would generate annual savings of \$135,815 to \$225,175 in salary costs plus associated benefits.

4 License and Permit Processes

The Maui Department of Liquor Control's (Department) administration of licensing is unnecessarily inefficient and its licensing and permitting processes are seen as inconsistent and arbitrary by many licensees. The Department provides limited forms and instructions for license and permit applicants on its website while also often requiring more information from applicants compared to other counties, with unclear benefits for many of these requirements.

Applicants must make an appointment and meet with Department staff to submit their applications, reportedly to ensure that application materials are complete. However, this requirement adds time and burden to the application process, particularly for applicants whose applications are complete. The Department reportedly finds that many applications are not complete, often for trivial errors such as incorrect punctuation according to some licensees, but the Department does not track the number of such incidences or time required to correct such applications.

Many licensees report that the reason many applications are not complete is that that application requirements change from year to year without notice. New or changed application requirements are not posted on the Department's website nor does the Department maintain a database or list of email accounts for electronic disbursement of updates related to the licensing process.

Although it appears that the Department's formal deadline for license renewal applications has consistently been June 15, several licensees have complained that the deadline was changed and the Department saw a spike in the number of licensees who did not or were unable to renew their licenses in 2017 due to missing the deadline. Apparently in the past, the Department provided a grace period of two weeks after the June 15 deadline during which applications were still accepted. A change in this policy, even if it was informal, was never announced by the Department.

The Department's performance measures do not adequately measure its goal of administering a "fair and efficient" licensing and permit process as the Department does not measure, analyze, or report on application processing timelines.

Department of Liquor Control website provides limited information

The Department of Liquor Control (Department) provides significantly less information and application forms on its website compared to other counties in Hawaii. Specifically, the Department does *not* post application forms and associated guidance materials for most classes of licenses nor for permits of

licensed premises.¹ Maui is an outlier in this regard as compared to the City and County of Honolulu, the County of Hawaii, and the County of Kauai, all of which provide much more application forms and associated guidance materials on their websites. Further, the Department does not post a copy of its Operations, Policies, and Procedures Manual, which if updated to reflect current practices, could provide a useful resource to applicants in understanding the licensing process and minimizing delays.

As of July 2018, the Department's website provides only five license and permit application forms and accompanying instructions.² The website provides information, including checklists of items required for filing, and applications for the following types of licenses or permits:³

- Transient Vessel License (Class 8)
- Direct Shipments of Wine Permit
- Renewal of Liquor License
- Solicitor's Permit
- Individual permit to receive liquor shipment

The Department's website does *not* provide any application forms or substantive information on the following types of licenses or permits:

- Manufacturer License (Class 1)
- Restaurant License (Class 2)
- Wholesale Dealer License (Class 3)
- Retail Dealer License (Class 4)
- Dispenser License (Class 5)
- Club License (Class 6)
- Tour or Cruise Vessel License (Class 9)
- Special License (Class 10)
- Cabaret License (Class 11)
- Hotel License (Class 12)
- Caterer License (Class 13)
- Brewpub License (Class 14)
- Condominium Hotel License (Class 15)
- Winery License (Class 16)
- Bring-your-own-beverage License (Class 17)
- Small Craft Producer Pub License (Class 18)
- Permits for trade shows or other exhibitions
- Permits for licensed premises
- License Transfers

¹ Permits allow for various privileges to be exercised within a liquor licensed premises and do not require public hearing for approval.

² The Department website also provides a form and accompanying instructions for registration of minors under 18 years of age who are employed in a liquor licensed business where liquor is sold, stored, served, consumed, or readily available. The website also provides information on the County's certification exam for employees of licensed premises.

³ In addition, the Department website includes a form for registering minors for employment in a liquor licensed business where liquor is sold, stored, served, consumed, or readily accessible or available.

Exhibit 4.1 below summarizes the license types, the number and percent of applications submitted⁴ in FY 2016-17 and whether the applications and associated guidance materials, such as checklists or required application items, are available on the Department's website. As shown in Exhibit 4.1, the Department provides materials for all classes of renewals, but does not provide application and associated guidance materials for approximately 70 percent of the non-renewal⁵ applications that were received in FY 2016-17. Besides renewals, materials are provided on the website for transient vessel applications only, but none of the 19 other license types. While applications were not received for all license types in FY 2016-17, the Department has forms for all types and should make those available on line to facilitate the application process.

⁴ The number of applications that the Department reports as received may understate the number of applicants as the Department does not count rejected applications for incompleteness or other reasons.

⁵ Renewal applications are processed annually between April and June, require limited materials from applicants, and are not administered by the Administrative Services Division.

Exhibit 4.1: Summary of License Application Materials Available on Liquor Control Website and the Volume of Applications in FY 2016-17

License Type	Number of Applications	Percent of All Applications	Percent of Applications (Excluding Renewals)	Materials on Website?
Renewal (All Classes)	435	70.62%	N/A	Yes
Transient Vessel	55	8.93%	30.39%	Yes
License types for which no materials provided on Department website:				
Special (All Kinds)	54	8.77%	29.83%	No
Dispenser	24	3.90%	13.26%	No
Other ⁶	20	3.25%	11.05%	No
Temporary (All Classes)	15	2.44%	8.29%	No
Tour or Cruise Vessel	4	0.65%	2.21%	No
Transfer (All Classes)	3	0.49%	1.66%	No
Hotel	2	0.32%	1.10%	No
Manufacturer	1	0.16%	0.55%	No
Restaurant	1	0.16%	0.55%	No
Retail Dealer	1	0.16%	0.55%	No
Small Craft Producer Pub	1	0.16%	0.55%	No
Wholesale Dealer	0	0.00%	0.00%	No
Club	0	0.00%	0.00%	No
Cabaret	0	0.00%	0.00%	No
Caterer	0	0.00%	0.00%	No
Brewpub	0	0.00%	0.00%	No
Condominium Hotel	0	0.00%	0.00%	No
Winery	0	0.00%	0.00%	No
Bring-your-own-beverage	0	0.00%	0.00%	No
Total	616	100%	100%	

Source: 2017 Maui Department of Liquor Control Annual Report and Auditor Review of Department website

Exhibit 4.2 below summarizes the permit types, the number and percent of permits issued⁷ in FY 2016-17 and whether the applications and associated guidance materials, such as checklists or required application items, are available on the Department's website. As shown in Exhibit 4.2, the Department does not provide application and associated guidance materials for licensed premises permits, which accounted for approximately 45 percent of the permits that were issued in FY 2016-17.

⁶ Includes change in category/class & kind, change in trade name, and change in licensee name.

⁷ The number of permits that the Department reports as issued may understate the number of applicants as the Department may reject applications for incompleteness or other reasons, even after the applicants and/or their representatives have initiated the application process.

Exhibit 4.2: Summary of Permit Application Materials Available on the Liquor Control Website and the Volume of Permits Issued in FY 2016-17

Permit Type	Number of Permits Issued	Percent of All Permits Issued	Materials on Website?
Direct shipment of wine	455	53.78%	Yes
Licensed premises	383	45.27%	No
Importation of liquor	5	0.59%	Yes
Solicitor's permit	3	0.36%	Yes
Alcohol purchase permits	0	0.00%	No
Total	846	100%	

Source: 2017 Maui Department of Liquor Control Annual Report and Auditor Review of Department website

The Department does not maintain a database or list of licensees for electronic communications

During the course of our audit, it became apparent that in addition to not posting key information on their website, the Department does not maintain a database or list of licensee and other stakeholder⁸ email addresses for electronic disbursement of information on topics such as changes in Department rules and policies. The Department should consider maintaining a list of licensee email addresses for efficient disbursement of information related to changes to the license and permit application processes.

Limited application materials are provided online compared to other counties

Our review of other county liquor control websites, as shown in Exhibit 4.3 below, found that other Hawaiian counties⁹ provide significantly more licensing materials than Maui County. We found that Maui provides six different types of application and registration forms with associated guidance. This compares to the City and County of Honolulu, which provides 17 different application packets covering all license classes, categories, and kinds as well as 31 other license and permit forms; the County of Hawaii, which provides 40 different types¹⁰ of applications and other forms; and, the County of Kauai, which provides 20 different types of applications and other forms. Several stakeholders have provided feedback to our audit team that application materials are difficult if not impossible, to obtain without scheduling an appointment, which they say slows down the application process.

⁸ These stakeholders include, but are not limited to, certain law firms and consultants that frequently assist applicants with the liquor license and/or permit application processes.

⁹ Kalawao County was not included in our comparison as it does not have a county-level government and county functions are administered by Maui County.

¹⁰ The actual number of application and other forms posted on the Hawaii County website is 71, but 31 of these are duplicate forms (pdf form and pdf fillable forms).

Exhibit 4.3: License Application Materials Available on Liquor Control Website vs. Other Counties¹¹

License/Action	City and County of Honolulu	Hawaii	Kauai	Maui
New Liquor License (Other than Transient Vessels)	✓	✓	✓	
New Transient Vessel Liquor License	✓	✓	✓	✓
License Renewal	✓	✓	✓	✓
Transfer Liquor License	✓	✓	✓	
Temporary Liquor License	✓	✓	✓	
Special License	✓	✓	✓	
Change in License Category/Class & Kind	✓	✓	✓	
Change in Licensed Trade Name	✓		✓	
Change in Licensee Name	✓		✓	

Source: Auditor review of Hawaiian county websites

License applicants are required to meet Department staff in person to initiate process

Unlike other Hawaiian counties, the Maui Department of Liquor Control requires new license applicants to make in-person appointments with Administrative Services Division staff in the Wailuku office to obtain and walk through application forms in order to initiate the application process. Once applicants are ready to submit their applications they are required to schedule another in-person appointment with Administrative Services Division staff to review the application and confirm completeness. Appointments were previously available in the Department's Lahaina office, but the Department pulled staff from the satellite office in May 2017. All applicants for new licenses are therefore required to meet Department staff at the Wailuku office. Although the Lahaina office previously provided convenience for West Maui applicants and licensees, we believe that the implementation of our recommendations, including posting application materials online and eliminating the requirement for pre-application appointments, could provide greater convenience than simply re-opening the satellite office.

¹¹ These do not include permit applications, related materials, and other miscellaneous forms.

Maui's application process typically requires more in-person appointments than Honolulu and Hawaii, which allow for electronic download and/or submission of applications. The City and County of Honolulu allows for email submission of applications, which are available online. The City and County of Honolulu is working on a system to allow for completion and submission of forms online, including online payment of application fees. The Hawaii County Department of Liquor Control has set up online forms for applicants to initiate new liquor license applications as well as apply for direct wine shipment permits. Hawaii County's website also allows for online payment of application and service fees. However, once the initial applications and associated fees are received by the County, applicants are contacted by a licensing officer to schedule an in-person interview. Kauai County has online forms for download, but these forms must be submitted in person.

Stakeholder feedback suggest that applications are often slowed by technicalities and poor responsiveness

Several stakeholders provided feedback to our audit team that they perceive slowdowns in the license application process resulting from minor technical issues and poor responsiveness from Department staff. Specifically, several stakeholders noted that their applications were rejected and thus delayed due to missing commas or other punctuation errors on application forms as compared how they are listed on official government registries such as the Hawaii Department of Commerce and Consumer Affairs and the U.S. Internal Revenue Service. Discussions with other counties found that these technical differences are errors are sometimes handled over the phone to confirm and correct typographical errors. Several Maui County licensees and stakeholders also provided feedback that their applications were slowed due to unresponsiveness of Department staff (i.e. phone calls and/or emails that were not promptly responded to).

Maui enforces more onerous rules for license applicants vs. other counties

The Department has tended to implement Hawaii Revised Statutes more strictly, imposed more onerous rules, and required more application items compared to other Hawaiian counties. Our review and comparison of general¹² and special¹³ Maui Liquor Control Commission rules and license application requirements with rules and application requirements of other counties found additional required items, steps, and information as detailed below.

Maui requires more items for general license applications vs. other counties

Our review of the Maui liquor control requirements for new permanent licenses¹⁴ found that 10 of 22, or 45 percent, of major items that are required by the Department are either not required by at least two of the three other counties in Hawaii or at least two of the other counties require less detailed information on the same item. As detailed in Exhibit 4.4 below, the items that Maui requires that at least two of the other three Hawaiian counties don't require include:

¹² General, meaning requirements common to all classes of new permanent licenses.

¹³ Special licenses allow licensees to sell liquor for a period not to exceed three days.

¹⁴ Ibid (see footnote 11)

- (1) a copy of Social Security cards for officers/directors/partners/members/managers and/or persons owning or controlling 25 percent or more of outstanding capital stock;
- (2) certificate of mailing for public hearing notices as verified by the United States Postal Service;
- (3) corporate minutes;
- (4) bond or personal guaranty;
- (5) 8 ½" x 11" site plan drawn to scale;
- (6) certificate of occupancy;
- (7) miscellaneous inspection reports;
- (8) clearance from the Fire Department; and,
- (9) wastewater clearance.

Additionally, Maui County appears to require more detail on floor plans than other counties.

It appears that many of the items required by Maui County, but not by at least two of the other counties are either redundant or only tangentially related to liquor control. For instance, the information required in item number five (corporate minutes) should, in most cases, be covered by item number three (DCCA verification). Further, many of the other items, such as a certificate of occupancy and other building clearances are land use issues and are not directly related to liquor control. The Department should review the items that are not required by at least two of the other three counties to determine if they should continue to be required or whether the application process could be streamlined without significantly increasing health and safety risks to the public.

**Exhibit 4.4: Maui General New Permanent License Requirements vs. Other Counties
As of May 2018**

	Summary of Maui Required Item	City and County of Honolulu	Hawaii	Kauai
1	Authorized agent notarized document (if applicable)	✓	✓	✓
2	List of stockholders owning or controlling 25% or more of the outstanding capital stock	✓	✓	✓
3	State Department of Commerce & Consumer Affairs (DCCA) verification (articles of incorporation, organization, partnership, etc.)	✓	✓	✓
4	DCCA current certificate of good standing	✓	✓	

4. License and Permit Processes

	Summary of Maui Required Item	City and County of Honolulu	Hawaii	Kauai
5	Corporate minutes or secretary certification (to verify ownership/management of entity)		✓	
6	Personal History Statement with photocopy of government-issued picture ID card and Social Security card	Social Security Card not Required	Govt ID and Social Security Card not Required	Social Security Card not Required
7	Affidavit of mailing of public hearing notices and US Postal Services certificate of mailing	Only affidavit is required	✓	
8	Bond or Personal Guaranty			
9	Criminal History Record Check or Fingerprinting	✓	Affidavit Only	✓
10	Executed copy of agreement/sale/ lease/ etc. stating effective dates and exclusive control of premises or letter of intent	✓	✓	✓
11	Tax Maps with two radius drawn on maps (100 ft & 500 ft from proposed premises); Lists of property owners, lessees, and owners of shares in a coop apartment with their mailing address within 100 ft and 500 ft radius of proposed premises	✓	✓	✓
12	8 ½" x 11" site plan drawn to scale			
13	8 ½" x 11" floor plan drawn to scale ¹⁵	Less detail required	Less detail required	Less detail required
14	State and Federal tax clearances or Certificate of Compliance	✓	✓	✓
15	Zoning clearance	✓	✓	Recommended (Not Required)

¹⁵ The Department's checklist for new liquor license applications states the following regarding the floor plan: "No construction plans; all permanent structural elements including interior and exterior walls, doorways, restrooms, built-in components, etc. shall be included. Label with premises name, directional arrows (mauka, makai, etc.), and identify rooms."

Maui Required Items for Issuance of Permanent Liquor License (can be submitted post-hearing)				
	Summary of Maui Required Item	City and County of Honolulu	Hawaii	Kauai
16	Certificate of Occupancy			Recommended (Not Required)
17	Miscellaneous Inspection			
18	Fire Clearance			
19	Wastewater Clearance			
20	Health Clearance (State Department of Health) ¹⁶	Only if liquor is consumed on site	✓	Recommended (Not Required)
21	Liquor Liability Insurance	✓	✓	✓
22	Registration of Trade Name or Assignment of Trade Name	✓	✓	

Source: Auditor review of Hawaiian county license requirements

✓ : Maui requirements are mirrored by the neighbor county for new permanent licenses

☐ : Neighbor county rules either do not require the item or imposes a less restrictive requirement for the item (less restrictive requirement noted)

Maui continues to enforce more requirements on special license applicants vs. other counties despite recent revisions

Although the Department revised its special license (Class 10)¹⁷ application checklist in February 2018 to reduce the number of requirements to obtain such licenses, Maui still has a more onerous process versus other counties in the State. Our analysis of the special license application process included a review of Maui’s application forms (in use prior to February 2018 and as revised in February 2018), including the application checklist, and rules compared to the application forms, checklists, and rules from the City and County of Honolulu, Hawaii County, and Kauai County.

Despite revisions made in February 2018 (described further below), the Department continues to enforce a more onerous application process as compared to the other counties in Hawaii. Our review of the special license application checklist as revised in February 2018 found that nine of 19, or 47 percent, of major items required to obtain a special license in Maui are not required by at least two of the other

¹⁶ The Department reported that it no longer requires applicants to submit sanitation health clearances as the Department of Health advised on June 5, 2018 that it repealed its sanitation requirements.

¹⁷ Special licenses allow licensees to sell liquor for a period of up to three days.

three¹⁸ Hawaiian counties. As shown in Exhibit 4.5 below, the items the Department requires that at least two of the other three Hawaiian counties don't require include: (1) corporate minutes; (2) organization by-laws; (3) affidavit attesting that no prohibited items will be auctioned at the event; (4) 8 ½" x 11" site plan; (5) organizational report filed with State Campaign Spending Commission for political parties of candidates seeking public office; (6) building permit(s) for tents or other structures erected for the function; and, (7) Fire Department clearance. Further, also as shown in Exhibit 4.5 below, at least two of the other three counties have less restrictive requirements for nine of 19, or 47 percent of major application items, including: (1) notarization of the application form; (2) *executed* copy of agreement of sale, lease, rental agreement, etc.; (3) separate letter describing details of the proposed function; and, (4) 8 ½" x 11" floor plan.

**Exhibit 4.5: Maui County Special License Requirements vs. Other Counties
As of May 2018**

	Summary of Maui Required Item ¹⁹	City and County of Honolulu	Hawaii	Kauai
1	Six week deadline prior to event for submittal of application	15 days (non-profit) 6 weeks (for profit)	Up until time of event if documentation is complete and correct	4 weeks
2	Notarized application form	Not required for non-profit 1-day events		Not required for non-profit 1-day events
3	State Department of Commerce & Consumer Affairs (DCCA) verification (articles of incorporation, organization, partnership, etc.)	✓		✓
4	DCCA current certificate of good standing	✓		
5	Corporate minutes (to verify ownership/management of entity)			Only at time officers or directors are added

¹⁸ Kalawao County was not included in our comparison as it does not have a county-level government and county functions are administered by Maui County.

¹⁹ As revised in February 2018 and still in effect as of August 2018.

	Summary of Maui Required Item	City and County of Honolulu	Hawaii	Kauai
6	U.S. IRS Exemption Letter or Affirmation Letter (certifying non-profit status)	Required if administrative approval desired (Commission can approve alternate documentation)	Only need some proof of non-profit status (doesn't have to be IRS letter)	Not required for 1-day events
7	By-laws of Organization (if applicable)		✓	
8	Executed agreement/ sale/ lease/ etc. stating effective dates and exclusive control of premises or letter of intent	✓	Document doesn't have to be executed	A letter is allowed
9	Letter that includes details on the proposed function ("Type and purpose of function, how supervision and control is to be carried out, how borders of the proposed premises will be identified, how funds will be distributed, etc.")	Specific information requested on separate form		Information is requested within application
10	Affidavit stating that no prohibited items shall be included in auction			
11	8 ½" x 11" Site Plan ("label with applicant's name, directional arrows – mauka, makai, etc. -, show surrounding area so location can be easily found, identify prominent businesses and easily recognizable features")		Location map requested only if site is unfamiliar to Department staff	

4. License and Permit Processes

	Summary of Maui Required Item	City and County of Honolulu	Hawaii	Kauai
12	8 ½" x 11" Floor Plan ("No construction plans; all permanent structural elements including interior and exterior walls, doorways, tents, identify areas for portable bars- include dimensions- identify rooms, music, entertainment and dancing areas- include dimensions-, separate men and women restrooms, identify consumption area, etc., shall be included. Label with applicant's name, directional arrows- mauka, makai, north, south, etc.")	Less detail required	Less detail required	Less detail required
13	State and Federal (prior to SB 2945) tax clearances or Certificate of Compliance	Not required for non-profits	✓	Not required for 1-day non-profit events
14	Zoning Clearance	✓		
15	License Fee	Free for 1-day non-profit events	Free for 1-day non-profit events	Free for 1-day non-profit events
16	Copy of organizational report filed with the state Campaign Spending Commission (Political Parties only)			
Items below are required to be submitted no later than 14 calendar days prior to the scheduled start date of the event.				
17	Building permit for tents or other structures erected for the function or Exemption letter from DPW Director			
18	Fire Clearance (if applicable)			Recommended (Not Required)
19	Final list of employees who will be serving liquor at the function (including full legal name, age, and certification card number)		Names can be provided up until the event	Names and ages can be provided up until the event

Source: Auditor review of Hawaiian county special license requirements

✓: Maui requirements are mirrored by the neighbor county for special licenses (i.e. require the same form or the same level of detail)

■: Neighbor county rules either do not require the item or imposes a less restrictive requirement for the item (less restrictive requirement noted)

Under newly adopted State law (SB 2612), counties are to waive hearings, fees, notarization of documents, submission of floor plans, and other governmental clearances, and other requirements for the issuance of special licenses for fundraising events by non-profit organizations. Department staff has stated their intention to revise the special license application requirements to conform to the new State standards, but as of the writing of this report, it has not done so. We found that other counties already have streamlined processes for one-day special licenses for fundraising events by non-profit organizations, specifically:

- The City and County of Honolulu Liquor Commission rules provide exemptions from hearings, fees, and notarizing of documents for one-day special licenses. Further, the deadline for submission of one-day non-profit special liquor license applications is 15 days prior to the proposed event date vs. six weeks for for-profit organizations.
- Hawaii County, which restricts special licenses to non-profit organizations, political parties, and/or political candidates, does not assess fees for one-day special licenses (for the first four applications in a license year). Hawaii County's Liquor Commission rules also permit the Director to approve and issue special licenses subject to subsequent ratification by the Liquor Control Commission, which allows the County to accept special license applications up until the day of the event.
- Kauai County Liquor Commission rules provide exemptions from hearings and fees for one-day non-profit special licenses. Kauai County does not require notarized applications for special licenses. Further, Kauai County's deadline for submission of special license applications is four weeks prior to the proposed event.

Maui was only county to require background checks for non-profits previous to HRS revisions

SB 2612, which became law in July 2018, amended the Hawaii Revised Statutes to prohibit county liquor commissions from requiring background checks on non-profit officers or directors applying for special licenses. Prior to this revision, Maui was the only county in the State of Hawaii to require such checks. Further, Maui also required personal history statements from non-profit officers and directors, which only the City and County of Honolulu also required.

Similarly, SB 2945 amended the Hawaii Revised Statutes to prohibit county liquor control commissions from requiring non-profit special licenses to obtain IRS tax clearances. Prior to the passage of SB 2945, Maui and Hawaii counties required IRS clearances, while the City and County of Honolulu and Kauai County did not require such clearances.

Licensees perceive renewal process as unfair as rejections spiked

Throughout our audit, including during focus groups held with licensees, business stakeholders, and the general public, we received numerous complaints regarding the annual license renewal process. Many complaints focused on the Department's deadline; specifically that the June 15th deadline had become a "hard deadline" in 2017 as opposed to previous years when applicants were still able to make corrections up until June 30th. Many complaints also pointed to the Department's requirement for federal tax clearance, which they claim is difficult to obtain on short notice.

Although the Department's liquor control rules and its formal communications regarding license renewals have consistently stated that the deadline for submission of renewal applications is by 4:30 pm on June 15th, there was a considerable increase (144 percent) in the number of licensees who were unable, or chose not, to renew between 2015 and 2017. As shown in Exhibit 4.6 below, the number of licensees who were unable, or chose not, to renew their licenses rose from nine in 2015 (for FY 2015-16) to 17 in 2016 (for FY 2016-17) and rose again to 22 in 2017 (for FY 2017-18). Further, the number of licenses that were not renewed because the licensee missed the application deadline rose from one in 2016 to 13 in 2017. For one 2017 applicant, the Department noted that the license wasn't renewed because the licensee missed the renewal deadline by one minute.

Given the spike in licenses that were not renewed in 2017 due to missing the deadline, it appears likely that the Department made a change in the way it interpreted the renewal deadline and that many licensees were unaware of the change. Some licensees identified this imposition of a hard June 15th deadline as an unannounced change in Department policy, even if allowing a grace period through the end of June was an informal practice.

**Exhibit 4.6: License Renewal Trends
2015 to 2017**

Year Renewed	Year to be Used	Number of Non-Renewals	Reasons (provided by Department)
2015	FY 2015-16	9	9- "Do not recall"
2016	FY 2016-17	17	8- "Do not recall"
			5- Premise Closed
			2- Chose not to renew
			1- Officer Listing Issue
			1- Tax Issues/Missed Deadline
2017	FY 2017-18	22	13- Missed Deadline
			3- New entity
			2- Officer Listing Issues
			2- Premises Closed
			1- Licensee withdrew
			1- Chose not to renew

Source: Department response to auditor inquiry

Performance measures don't measure licensing efficiency

The Department's performance measures do not adequately measure its stated goal of controlling "the conditions associated with the importation, manufacture, sale, and services of alcoholic beverages through a fair and efficient licensing and permit process."²⁰ Although the Department annually reports the number of license applications processed and permits issued, the Department does not measure the elapsed time from when an application is received (time stamped) to when a license or permit is issued.

The Department is not currently able to measure the time from when an application is first submitted as the Department does not time stamp an application until after the first in-person staff review with the applicant. Even if the Department were to start tracking from the date when the applicant first submits an application (generally required at the second appointment with the Department and not time stamped unless the application is fully complete and needs no corrections), the performance measure would not capture the amount of time applicants wait for appointments to obtain licensing application materials and the amount of time applicants wait for the second appointment for the first attempted submittal of application materials.

Applications are not assigned a consistent point of contact

The Department does not assign applications to specific liquor control officers to shepherd through the process. Rather, applications are reviewed by whichever liquor control officer has the most availability when it is received. If applicants return for additional consultation with the Department their application will again be reviewed by the liquor control officer that has the most availability, which is not necessarily

²⁰ 2017 Department of Liquor Control Annual Report, page 5.

the same liquor control officer that initially reviewed the application. The lack of an assigned point of contact for license applications further complicates the Department's ability to track the efficiency of the licensing process.

CONCLUSION

The Maui Department of Liquor Control (Department) administration of licensing is unnecessarily inefficient and its licensing and permitting processes are seen as inconsistent and arbitrary by many licensees. The Department provides limited forms and instructions for license and permit applicants on its website while also often requiring more information from applicants compared to other counties. Further, the Department does not maintain a database or list of email accounts for electronic disbursement of updates related to the licensing process. Although it appears that the Department's formal deadline for license renewal applications has consistently been June 15, several licensees have complained that the deadline was changed. The Department saw a spike in the number of licensees who did not or were unable to renew their licenses in 2017 due to missing the deadline. The Department's performance measures do not adequately measure its goal of administering a "fair and efficient" licensing and permit process as the Department does not measure, analyze, or report on application processing timelines.

RECOMMENDATIONS

The Deputy Director of Liquor Control 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.
- 4.2 Review, update, and post the Department's Operations, Policies, and Procedures Manual on the Department's website.
- 4.3 Establish and maintain a database 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 the licensing and permit application processes.

- 4.4 Work with the supervisor of the 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.
- 4.5 Consult with the Director of Liquor Control and the Department of the Corporation Counsel to determine if it would be feasible to implement rolling deadlines for liquor license renewals.

The Director of Liquor Control should:

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

SAVINGS, BENEFITS and COSTS

Implementation of the proposed recommendations would save Department staff and applicants time by providing application forms and associated guidance online thereby allowing applicants and other stakeholders complete the initial stage of the application without setting up an appointment with staff. Further, focusing on streamlining the application process will provide additional time savings for Department staff and applicants.

Implementation of the proposed recommendations would require some staff time, particularly from the Deputy Director and the supervisor of the Administrative Services Division, to review, update, and post relevant materials related to the application process and the Department's Operations, Policies, and Procedurals Manual. Modest staff time would be required to build and maintain a list of licensee and other stakeholder emails. A modest amount of time would also be required by the Director and other staff to revise the Department's rules regarding Commission approval of special licenses for non-profit organizations.

5 Enforcement

The Maui Department of Liquor Control’s enforcement of State and County liquor laws is not appropriately focused on activities that reduce alcohol-related risks, and many licensees perceive enforcement as overly punitive and retaliatory.

The Department’s strategic plans and annual reports do not measure or discuss the impact of enforcement operations on outcomes such as decreases in alcohol use by minors or driving under the influence of alcohol in Maui County. Additionally, outdated rules result in significant enforcement staff time spent on violations that do not pose major risk to public health and safety, and administrative requirements implemented since 2016 have resulted in decreased time and attention spent on enforcement field activities.

The Enforcement Division conducts inspections of licensed premises to ensure compliance with liquor laws and investigates potential liquor law violations. As of May 2018, the Division had 12 authorized full time equivalent (FTE) positions, nine of which were filled. Of the filled positions, one was a Liquor Control Officer IV (Division Supervisor), who is responsible for overseeing Division operations and supervising enforcement staff, two were Liquor Control Officer Trainees, who shadow other Liquor Control Officers during their one year training period and cannot conduct inspections on their own, and the remaining six filled positions are Liquor Control Officers I-III, who are primarily responsible for conducting inspections and investigations for the Department. Division staffing is shown in Exhibit 5.1 below.

**Exhibit 5.1: Enforcement Division Staffing
May 2018**

Position	Filled Positions	Vacant Positions	Total Authorized Positions
Liquor Control Officer IV	1		1
Liquor Control Officer III	3		3
Liquor Control Officer II	1	2	3
Liquor Control Officer I	2	1	3
Liquor Control Officer Trainee	2		2
Total	9	3	12

Source: Staff Listing and List of Vacancies provided by the Department

Outdated rules result in significant time spent on violations that do not pose major risk to public health and safety

The Department has not conducted a comprehensive review of County Liquor Rules, which were adopted by the Maui County Liquor Commission in 1933,¹ within the last 20 years although the Department may add, repeal, or revise individual rules on an ad-hoc basis. As a result, some of the County Liquor Rules are outdated and do not reflect modern values or changes in the liquor industry within the last 20 or more years, and enforcement personnel must spend time investigating violations that pose little risk to public safety. For example, rappers may not perform at licensed premises because the rules prohibit obscene language and songs,² and breweries or bars may not serve beer flights because the rules prohibit serving multiple drinks at once to an individual³ (even if total ounces of beer flights are equivalent to one beer in a standard glass). The Rules of the Liquor Commission require Enforcement personnel to issue violations to licensees for these incidents who must complete an investigation, including interviews and evidence gathering, and a detailed case report documenting the incident. As discussed in further detail below, nearly three-quarters of all violations issued by enforcement personnel in FY 2017-18 were for minor offenses, such as failing to clear tables in a timely manner and dancing while holding an alcoholic drink.

In contrast to Maui County, two other counties in Hawaii have conducted comprehensive reviews of their rules in the last five years, including deletion of old, outdated rules. One County has conducted such a review three times since 1998 and conducts major rule making changes, which may not include a full review of all existing rules but is more substantial than ad-hoc rule changes, every three years, as shown in Exhibit 5.2 below.

¹ The Liquor Commission adopted the Liquor Commission Rules relating to the manufacture and sale of alcohol (Chapter 101) in 1933 and subsequently adopted the Rules of Administrative Practice and Procedure (Chapter 102) in 1962.

² §08-101-23 (c), Department of Liquor Control Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui

³ §08-101-69 and §08-101-84 (b)

Exhibit 5.2: Liquor Rule Review by Counties in Hawaii

County	Last Year of Comprehensive County Liquor Rules Review (including rule deletion)	County Liquor Rules reviewed on a regular basis
County A	2015	No
County B	2018 (in progress) Also reviewed in 1998 and 2005	Yes, every 3 years (but may not review all existing rules)
County C	Never deleted old rules	No
Maui County	Never deleted old rules	No

Source: Interviews with Hawaii Counties' Liquor Control Departments in July 2018

Note: Feedback provided in interviews was considered confidential.

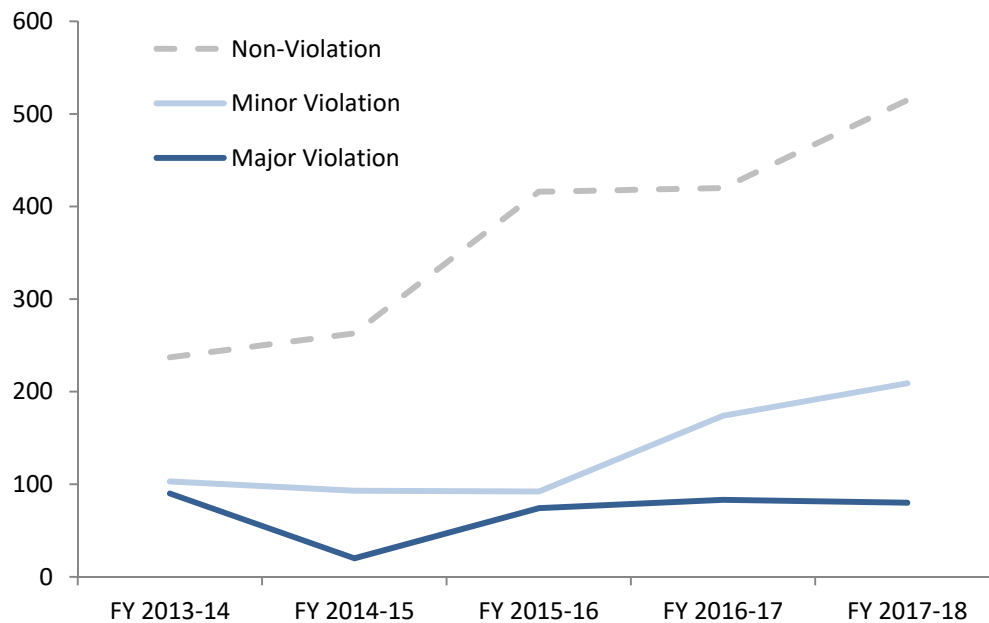
Enforcement personnel spend significant time on minor violations and non-violation investigations

Seventy-two percent of all violations in FY 2017-18 were for minor violations,⁴ such as failing to clear tables in a timely manner and dancing while holding an alcoholic drink. Additionally, issuance of minor violations has increased by 103 percent between FY 2013-14 and FY 2017-18, while the issuance of major violations, such as selling liquor to a minor or an intoxicated person, has decreased by nine percent as shown in Exhibit 5.3 below. "Non-violations," or cases where a Liquor Control Officer responds to a referral or complaint, such as from the Police Department or a citizen, but does not find a violation, increased by 117 percent between FY 2013-14 and FY 2017-18.

In summary, the Enforcement Division has been allocating more of its time over the last five years to less serious offenses or investigations that do not ultimately entail a violation, none of which pose major alcohol-related risks. The number of cases adjudicated by the Liquor Control Adjudication Board, which hears more major cases not disposed of administratively by the Director, also decreased during the five year period (FY 2012-13 to FY 2016-17). According to the Enforcement Division, issuance of minor violations and non-violations is consuming nearly one-third of the Enforcement Division's staff time. The decrease in major violations between FY 2013-14 and FY 2017-18 may reflect a higher rate of compliance by licensees, but the Department of Liquor Control (Department) does not measure the outcomes of its work to capture such results, such as compliance rates for licensees previously cited for violations. This could also mean that staff time spent on minor violations could be better focused on licensees and/or locations at higher risk of major violations, which may be occurring undetected due to enforcement staff allocating more time to minor violations and non-violations cases.

⁴ We define minor violations as those that were previously reported using a one-page notice of violation paper report (VR report, shown in Exhibit 5.14) instead of a detailed case report. The Enforcement Division determined at the time that these violations did not pose major risks to public health or safety and did not warrant full case reports.

**Exhibit 5.3: Violations Issued
FY 2013-14 through FY 2017-18 (as of June 25, 2018)**



Year	Minor Violation	Major Violations	Non-Violations ¹	Total
FY 2013-14	103	90	237	430
FY 2014-15	93	20	263	376
FY 2015-16	92	74	416	582
FY 2016-17	174	83	420	677
FY 2017-18	209	82	515	806
Five Year Change	106	-8	278	376
Five Year Change (%)	103%	-9%	117%	87%

Source: Auditor's analysis based on Department Annual Reports and FY 2017-18 Classification Summary Report as of June 25, 2018

¹Liquor Control Officers may identify violations during inspections or through investigations based on referrals from the Maui Police Department or complaints from private citizens. If a Liquor Control Officer investigates a referral or complaint and determines that no violation occurred, the case is classified as a non-violation.

The four most frequently cited violations last year were all considered to be "minor" violations by auditors because they were previously reported using a one-page notice of violation paper report (VR report, shown in Exhibit 5.14) instead of a detailed case report,⁵ as shown in Exhibit 5.4 below. In FY

⁵ The Enforcement Division determined at the time that these violations did not pose major risks to public health or safety and did not warrant full case reports.

2017-18, 57 out of 291 total violations, or 20 percent, were for failing to have an employee on duty that was approved by the Director of Liquor Control (i.e. a manager that had passed the certification exam and demonstrated knowledge of State and County liquor laws). Eight percent of violations were for failing to clear tables in a timely manner and seven percent of violations were for having drinks in non-consumption areas (e.g. holding drinks while on a dancefloor). A further seven percent of violations were for violation of the terms of an issued permit.

**Exhibit 5.4: Violations in FY 2017-18
As of June 25, 2018**

Violation	Number	Percent of Total
<i>Minor Violations</i>	209	72%
Employee not approved by the director to manage areas where alcohol served	57	20%
Preparation of drinks; tables not cleared timely	22	8%
Permit violation	20	7%
Non-consumption areas (e.g. drinks on a dancefloor)	19	7%
Entrances, aisles, or walkways obstructed	17	6%
Price list not posted	13	4%
Condition of license violated	10	3%
Practice to promote excessive consumption of liquor	8	3%
Unsanctioned modification or extension of licensed premises	7	2%
No employee approved by the director designated to maintain order during public dancing and/or live entertainment	6	2%
Unauthorized use of trade name	6	2%
Employment of minor not approved by the director	5	2%
Temporary or permanent closing of licensed premises without surrendering license	5	2%
License not posted	5	2%
Hostess bar employee not registered with Department	4	1%
Restrictions or conditions on licenses violated	2	1%
Special conditions for retail liquor sales violated (e.g. no signs posted to notify customers that liquor sales are prohibited during black-out hours)	1	0%
Inadequate interior or exterior lighting	1	0%
Inadequate or sanitized liquor dispensing system	1	0%
<i>Major Violations</i>	82	28%
Over-service (service to an intoxicated person)	12	4%
Failure to check personal identification of minor	12	4%
Other prohibition violated (e.g. failure to eject disorderly persons from premises)	11	4%
Liquor sales to minor	11	4%
Special conditions violated (e.g. dancing outside of designated areas)	10	3%
Inappropriate employee conduct (e.g. consuming alcohol while on duty)	8	3%
Hours for liquor sales violated (i.e. sale of liquor during black-out hours)	8	3%
Other violations related to minors	3	1%
Illegal liquor on licensed premises	3	1%
Obstructing departmental operations	2	1%
Refusal of evidence requested or tampering with evidence	1	0%
Inadequate premise conditions	1	0%
<i>Total</i>	291	100%

Source: Auditor's analysis based on violation data from Classification Summary Report FY 2017-18, as of June 25, 2018

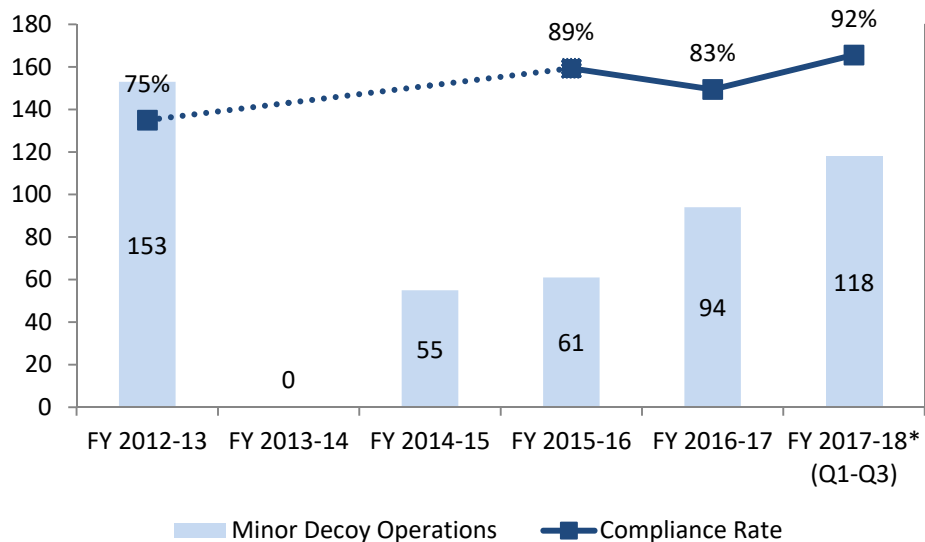
Note: We define minor violations as those that were previously reported using a one-page notice of violation paper report (VR report, shown in Exhibit 5.14) instead of a detailed case report.

The compliance rate for minor decoy operations has increased since FY 2012-13

The percentage of licensees that refused to sell or serve to minors during minor decoy operations increased from 75 percent in FY 2012-13 to 92 percent in FY 2017-18 (as of the third quarter), an increase of 17 percentage points or 22 percent, as shown in Exhibit 5.5 below. According to Enforcement Division staff, licensees have become more familiar with the Department's minor decoy operations and know that the minor decoys are not permitted to lie about their age. As a result licensees may be getting better at asking patrons their age to avoid failing compliance checks, but they may not be checking identification of minors who lie about their age.

While increases in minor decoy compliance appears to represent improvement, the Department's current enforcement approach is not risk-based, so if there are businesses with a higher likelihood of selling alcohol to minors, it is possible they are not being identified by the Department and singled out for further minor decoy operations. Further, minor decoy operation results are not systematically analyzed with external data about underage drinking in Maui County to see if Department trends are consistent with overall trends in the County. Such comparison could provide insight for where and how future minor decoy operations should be executed.

**Exhibit 5.5 Minor Decoy Operations Compliance
FY 2012-13 through FY 2017-18 (As of March 31, 2018)**



Year	Minor Decoy Operations	Number of licensees that refused to sell or serve to minors	Number of licensees that sold or served to minors	Compliance Rate
FY 2012-13	153	115	38	75%
FY 2013-14	0	n/a	n/a	n/a
FY 2014-15	55	unknown	unknown	unknown
FY 2015-16	61	54	7	88%
FY 2016-17	94	78	16	83%
FY 2017-18* (Q1-Q3)	118	109	9	92%

Source: FY 2015-16 provided by Enforcement Staff; FY 2017-18 data from Department quarterly report; data for all other fiscal years from Department annual reports

*FY 2017-18 data includes minor decoy operations conducted between July 2017 and March 2018

Enforcement work resulting in Non-Violations is increasing

As shown above in Exhibit 5.3, non-violations⁶ have increased by 117 percent between FY 2013-14 and FY 2017-18 largely due to increases in police referrals that do not result in violations and increases in “other reports”, which document investigations that do not lead to violations of the Rules of the Liquor Commission other than investigations based on police referrals and complaints, as shown in Exhibit 5.6

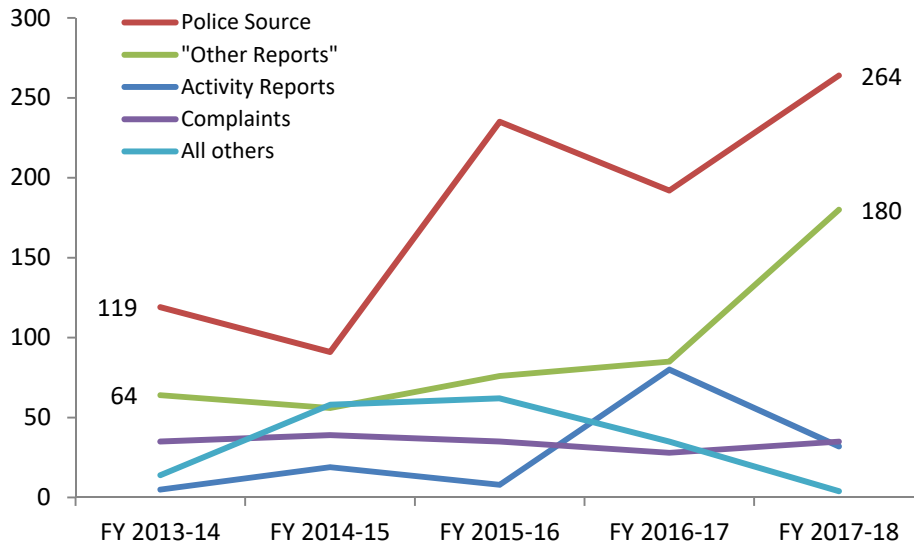
⁶ Liquor Control Officers may identify violations during inspections or through investigations based on referrals from the Maui Police Department or complaints from private citizens. If a Liquor Control Officer investigates a referral or complaint and determines that no violation occurred, the case is classified as a non-violation.

below. According to Enforcement Division staff, Liquor Control Officers conduct investigations on police referrals that are most likely to lead to violations and do not conduct investigations on referrals that are not likely to result in violations, but they do not always have the resources to investigate police referrals that are questionable. Further, they report that if Maui police officers asked individuals charged with operating under the influence (OUI) where they were drinking and included the information in their reports, Liquor Control Officers may be better able to generate over-service violations from OUI referrals. Improved coordination between the Enforcement Division and the Police Department could improve the quality of police referrals and reduce the amount of time associated with investigative tasks for Liquor Control Officers.

High-level coordination between the Department of Liquor Control and the Police Department has decreased under the new Liquor Control Director according to confidential interviews with staff. Under the previous Director, management staff in the Department of Liquor Control and Police Department met on a quarterly basis to share updates and discuss concerns. However, Liquor Control Officers and police officers interact on a regular basis regarding potential liquor rule violations and minor decoy operations. The Maui Police Department notifies the Department if they arrest someone operating under the influence, sends police reports to the Department when they respond to other incidents involving alcohol, and works with enforcement staff on minor decoy operations. According to the Department's Departmental Orders, Liquor Control Officers are expected to visit or check with police stations during their shifts to obtain "information of interest and concern."

The Enforcement Division reports that one of the reasons "other reports" have increased as a source of the Department's increased non-violation reports is due to increases in the rate of compliance for minor decoy operations. When a licensee fails a compliance check for serving to minors (i.e. serves alcohol to a minor decoy), a Liquor Control Officer issues a violation. When a licensee passes a compliance check (i.e. doesn't serve alcohol to a minor decoy), a Liquor Control Officer generates a non-violation "other report" and writes a report documenting the event.

Exhibit 5.6: Non-Violations by Type*
FY 2013-14 through FY 2017-18 (As of June 25, 2018)



Non-Violation Type	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Police Source	119	91	235	192	264
Other reports	64	56	76	85	180
Complaints	35	39	35	28	35
Activity Reports	5	19	8	80	32
All others	14	58	62	35	4
Total	237	263	416	420	515

Source: Auditor’s analysis based on Department Annual Reports and Classification Summary Report as of June 25, 2018

*Liquor Control Officers may identify violations during inspections or through investigations based on referrals from the Maui Police Department or complaints from private citizens. If a Liquor Control Officer investigates a referral or complaint and determines that no violation occurred, the case is classified as a non-violation.

As shown in Exhibit 5.7 below, of the 515 non-violation cases in FY 2017-18, police referrals that did not result in violations represented 264 non-violations, or 51 percent, and “other reports”, which include the results of minor decoy operations in which the licensee was found compliant, represented 180 non-violations, or 35 percent.

**Exhibit 5.7: Non-Violations by Type
FY 2017-18 (As of June 25, 2018)**

Non-Violations	Number	Percent of Total
<i>Police Source of Non-Violations</i>	264	51%
Police source-operating under the influence	128	25%
Police source-other	83	16%
Police source-service to minor	42	8%
Police source-disorderly conduct / assault	11	2%
Other reports	180	35%
<i>Complaint Source of Non-Violation</i>	35	7%
General complaint about licensed premise	22	4%
Noise complaints about licensed premise	13	3%
Activity report (e.g. report documenting event that does not qualify as a violation, such as a fight)	32	6%
Manner of operations / final inspection	4	1%
Surveillance of licensed premise	0	0%
Sound study conducted but no violation generated	0	0%
Total	515	100%

Source: Auditor's analysis based on Classification Summary Report as of June 25, 2018

Cases adjudicated by the Liquor Control Adjudication Board are decreasing

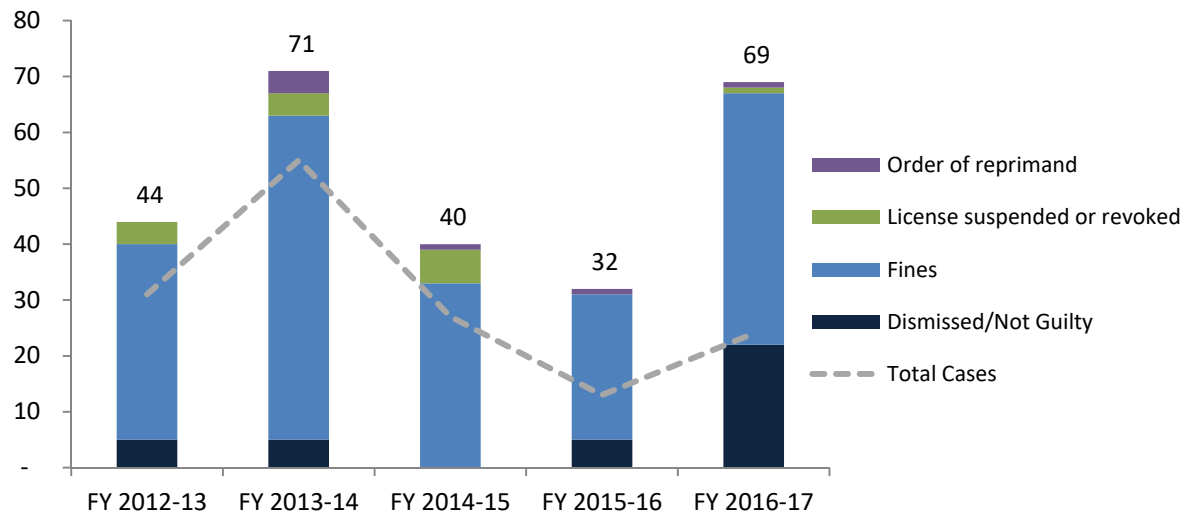
The director reviews enforcement case reports detailing liquor law violations and typically takes one of two actions at his discretion: he either (1) issues an administrative notice of written caution to the licensee; or (2) forwards the case to the Prosecuting Attorney for adjudication. The Liquor Control Adjudication Board, a nine-member body appointed by the Mayor, hears complaints of the Director regarding more major violations of State or County liquor laws and imposes penalties for those violations.

As shown in Exhibit 5.8 below, the number of cases adjudicated has decreased by 23 percent between FY 2012-13 and FY 2016-17 which is likely due to the decrease in major violations discussed above. However, the average number of charges per case⁷ doubled over the same period and the number of charges dismissed or with a not guilty finding increased three-fold. These trends may indicate that the Department referred charges to the Prosecuting Attorney's Office for adjudication in FY 2016-17 with less strong evidence and that may not have been referred in prior years and that some of these charges were associated with minor violations. The Prosecuting Attorney's Office reports that penalties may vary based on: (1) the type of charge involved; (2) the underlying facts of the particular charge; (3) the licensee's prior violation history; and, (4) inclinations of the members of the Liquor Control Adjudication

⁷ Some cases brought to the Liquor Control Adjudication Board have multiple charges.

Board. The Department reports that the increase in the number of charges dismissed was due to “no contest” plea bargains between the Prosecuting Attorney and the licensee, in which the licensee pled guilty to one or more charges and the Prosecuting Attorney dismissed other charges.⁸

**Exhibit 5.8: Charges Adjudicated by Board of Adjudication by Outcome
FY 2012-13 through FY 2016-17**



	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	5 Year Change	Percent Change
Cases Adjudicated	31	55	27	13	24	-7	-23%
Charges Adjudicated	44	71	40	32	69	25	57%
Fines	35	58	33	26	45	10	29%
Dismissed/Not Guilty	5	5	-	5	22	17	340%
License suspended or revoked	4	4	6	-	1	-3	-75%
Order of reprimand	-	4	1	1	1	1	
Charges per Case	1.42	1.29	1.48	2.46	2.88	1.46	103%

Source: Auditor’s analysis of Department Annual Reports

⁸ In 2016, the Prosecuting Attorney began reviewing charges and recommending penalties to the Adjudication Board or conducting plea bargains with licensees to comply with County Charter and State laws. Previously, the Director engaged in these activities.

The Division has weak and outdated procedures for conducting inspections and investigations

The Department of Liquor Control's Policies and Procedures Manual, which has not been updated since 2000, does not provide adequate guidance on how to conduct inspections and investigations and does not appropriately limit the scope of enforcement activities. As a result, Liquor Control Officers have wide discretion in enforcement activities without sufficient checks and balances, and enforcement may be inconsistent between officers. The Manual does not provide adequate guidelines on which type of licensees to inspect and how long inspections should take. The Manual requires enforcement officers to inspect all premises located within a "specific area" unless other duties (such as investigations) prevent them from doing so. However, the manual does not explain how officers are assigned to "specific areas" or how these areas should be defined. In addition, Enforcement Division procedures do not contain specific tasks for officers to complete as they inspect licensees, conduct investigations, or write case reports, and new Liquor Control Officers (trainees) do not receive any specific training on how to conduct inspections or investigations. Staff reports that trainees are expected to acquire this knowledge through learning on the job.

Division policies give wide latitude to individual enforcement officers and do not appropriately limit the scope of enforcement. While some employee discretion is required for enforcement activity, the Manual stipulates that officers can conduct multiple inspections of one licensee during the same shift if "they feel it is warranted" but does not define situations that may warrant multiple inspections. Similarly, the length of inspections is up to the discretion of officers. The Manual states that officers must submit reports when they remain within an establishment for an "extended period of time" but does not define what qualifies as an extended period of time. According to Enforcement Division staff, these reports are rarely submitted. In contrast, one of the other three counties in Hawaii explicitly limits the duties of Liquor Control Officers in the employee manual. As shown in Exhibit 5.9 below, the manual of the peer County states that Liquor Control Officers are not permitted to: (1) interfere with the operations of licensees except to point out violations or suggest ways to prevent them, (2) work in a stealthy manner (unless on special assignment), or (3) get involved with patrons of any licensee.

Exhibit 5.9: Peer County Employee Code of Conduct
(As of July 2018)

Performance of duties:

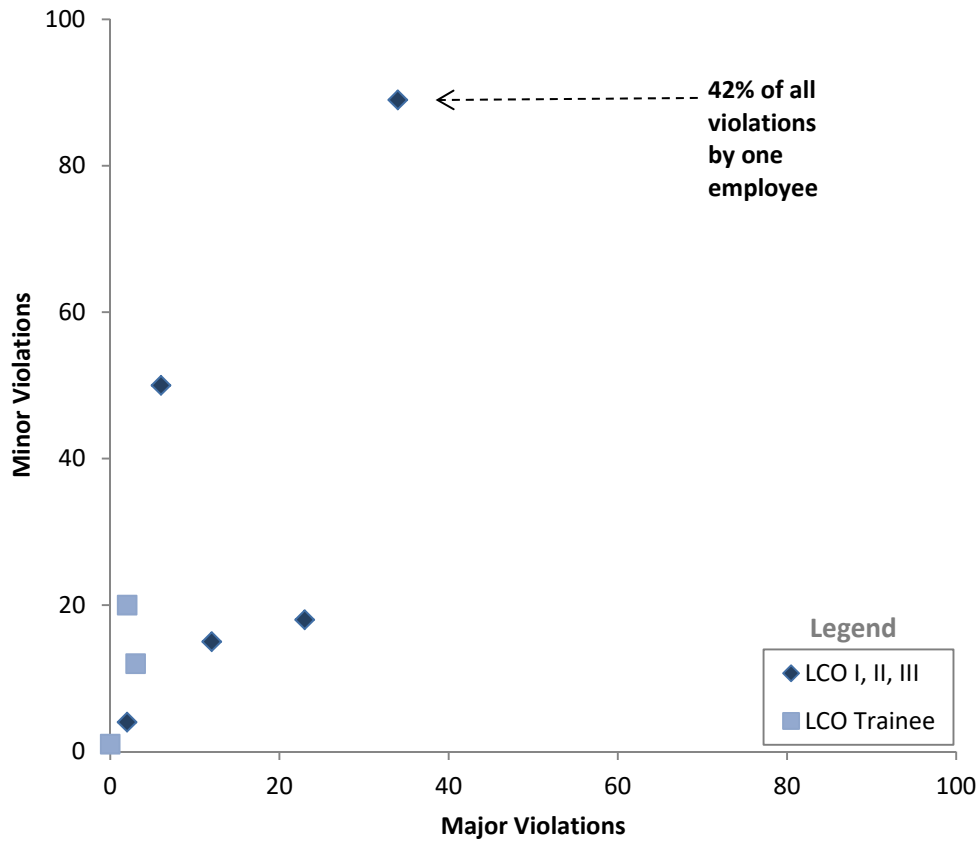
- a. Employees shall report to work at their scheduled times and complete their work shift as scheduled.
- b. Employees shall perform their duties efficiently, courteously, fairly, and without favoritism and injustice.
- c. Employees shall at all times keep themselves informed of all liquor laws, Commissioner's rules and regulations and policies.
- d. Employees shall not interfere with the operation of any licensee, except to suggest ways to prevent violations or to point out violations.
- e. Employees shall not work in any stealthy manner in or about any licensed premises, except when on special assignment which requires the use of stealth.
- f. Employees shall not get involved with patrons of any licensee. If a patron is involved in a violation, the licensee shall be informed and the licensee shall be responsible to make the necessary corrections.
- g. Employees shall not transport any person who is not connected with their duties.
- h. Employees shall assist each other in the performance of their duties whenever possible, but at no time shall an employee interfere with the duties of any other employee.
- i. Employee shall treat the business of the Commission as confidential and shall only release information, which is classified as public record.

Source: Employee Manual provided by Peer County, July 2018

Enforcement of rules appears inconsistent among staff

Enforcement, as measured by the number of major and minor violations cited by Liquor Control Officers, appears to be inconsistent among staff. A review of FY 2017-18 violations as of June 25, 2018 found that, of the eight Liquor Control Officers, one was responsible for 123 out of 291 violations, or 42 percent of all violations in FY 2017-18, as shown in Exhibit 5.10 below. Further, a second Liquor Control Officer issued 50 minor violations, which is more than double the next highest Liquor Control Officer's amount of minor violations. The average number of minor violations cited per officer was 26.1 and the median was 16.5.

**Exhibit 5.10: Minor and Major Violations by Liquor Control Officer
FY 2017-18 (As of June 25, 2018)**



Position	Minor Violations	Major Violation	Total Violations	Percent of Total
Liquor Control Officer	89	34	123	42%
Liquor Control Officer	50	6	56	19%
Liquor Control Officer	18	23	41	14%
Liquor Control Officer	15	12	27	9%
Liquor Control Officer Trainee	20	2	22	8%
Liquor Control Officer Trainee	12	3	15	5%
Liquor Control Officer	4	2	6	2%
Liquor Control Officer Trainee	1	0	1	0%
Total	209	82	291	100%
Median	16.5	4.5	24.5	
Average	26.1	10.3	36.4	

Source: Auditor’s analysis based on Classification Summary Report as of June 25, 2018

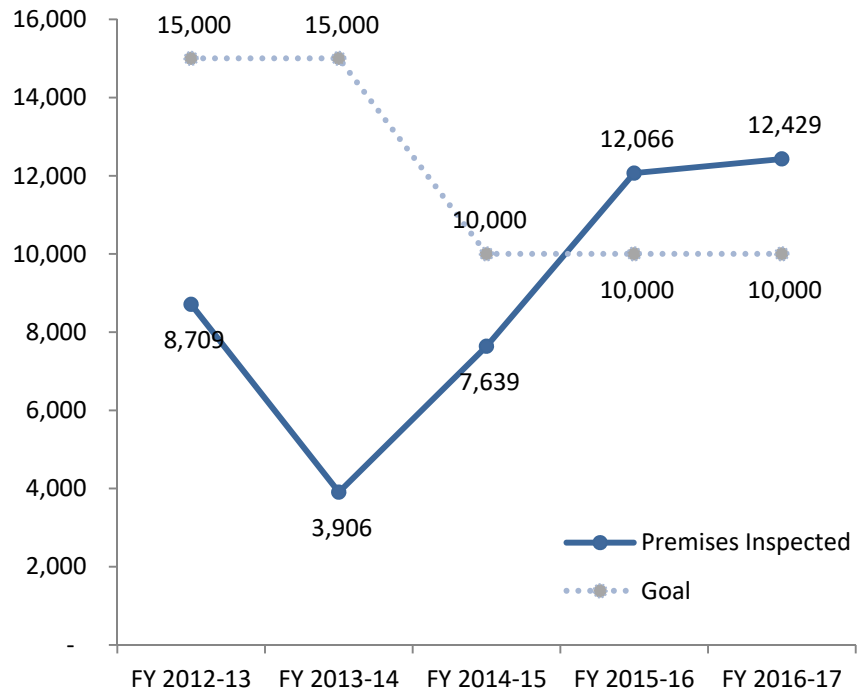
Enforcement goals, including the number of inspections, are not tied to public health outcomes

The Department's strategic plans and annual reports do not set goals or measure or discuss the impact of enforcement operations on outcomes such as decreases in alcohol use by minors or driving under the influence of alcohol in Maui County. Further, these reports do not consistently include compliance rates for minor decoy operations, an outcome that enforcement staff could easily track.⁹ Additionally, the Department's enforcement goals, such as the number of inspections, are not tied to public health outcomes. For example, the Department goal of 10,000 inspections in FY 2016-17 is based on the assumption that one Liquor Control Officer should be able to conduct 1,250 inspections in a given year, and not on what is optimal to reduce the incidence of alcohol use by minors or over-service. Failing to track key outcomes and tie enforcement goals to public health outcomes means that Department efforts may not be maximizing their impact on key alcohol-related issues such as underage drinking and alcohol-related traffic accidents and fatalities.

The number of inspections increased by 42.7 percent between FY 2012-13 and FY 2016-17, from 8,709 to 12,429, as shown in Exhibit 5.11 below, and in FY 2016-17, the number of inspections exceeded the Department goal of 10,000 inspections by 2,429, or 24.3 percent. Enforcement Division staff report that fluctuations in the number of inspections are driven by changes in staffing (such as staff turnover) and changes in workload, such as the number of open investigations. While staff turnover appears to have some impact on the number of inspections, as evidenced by the dip in inspections and staffing in FY 2013-14, it does not account for the increase over the five year period. Enforcement staff conducted 3,720 more inspections in FY 2016-17 than in FY 2012-13, despite having the same number of filled Liquor Control Officer positions (excluding trainees who do not conduct inspections on their own) in FY 2012-13 and in FY 2016-17, as shown in Exhibit 5.12.

⁹ The Department reported rates of compliance with minor decoy operations in the text of two of its annual reports from the last five fiscal years (FY 2012-13 and FY 2016-17), but the two reports did not highlight compliance rates along with other performance measures, such as number of premises inspected and number of permits issued.

**Exhibit 5.11: Goal vs. Actual Premises Inspected
FY 2012-13 through FY 2016-17**



Source: Premises Inspected and Goals from Department Annual Reports

Exhibit 5.12: Enforcement Division Filled Positions* (as of last day of fiscal year)

Enforcement Staff	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Liquor Control Officer (I-III)	6	4	5	6	6
Liquor Control Officer Trainee	0	0	3	0	1
Total Filled Positions	6	4	8	6	7

Inspections	8,709	3,906	7,639	12,066	12,429
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Source: Department Annual Reports

*Fluctuation in the number of filled positions during the five-year period was due to staff turnover. The Division’s number of authorized LCO I-III positions was 11 FTEs throughout the period.

The Enforcement Division does not track inspections

While Enforcement Division staff report that police referrals, complaints, and the degree of activity at a given establishment (such as major events or the presence of large crowds) all influence which licensees they inspect, the Department cannot provide any reports or documents that show how licensees

selected for inspection reflect perceived risk to public health and safety. Additionally, neither the Maui County Rules nor any other Department documents provide guidance on how often each licensee should be inspected. A Liquor Control Officer may inspect one licensee multiple times in one night and may not inspect a nearby licensee at all during their shift.

The Division's ability to review trends in inspections and develop a risk-based strategy is limited because the Department does not track inspections electronically. The Division tracks inspections manually, and enforcement staff cannot readily determine which licensees were inspected the previous week in a given area to identify licensees that were not inspected or determine if the licensees inspected pose the highest risk to public health and safety. Liquor Control Officers complete manual inspection logs, which include a list of all the licensees inspected and the amount of time spent in each licensed premise. A Liquor Control Officer III gathers inspection totals from these logs to compute inspection statistics for the Department's Annual Reports. Implementing an electronic tracking system for inspections would allow the Division to easily generate statistics to inform a risk-based strategy on an ongoing basis.

The Department completed over 12,000 inspections in FY 2017-18, but Enforcement Division staff may not have inspected all licensees that year. Due to the Department's current recordkeeping systems, we could not ascertain what percentage of licensees the Division inspected. Department staff reports that they inspect most licensees each year, with the exception of some vessels, which Liquor Control Officers can only inspect when they are docked, but we were unable to verify this assertion.

Based on a review of inspection logs, the inspections data appear to be inflated

Our review of Liquor Control Officer inspection logs revealed that some inspections are double counted and other activities involving licensees (such as deliveries and minor decoy operations) are treated inconsistently, which results in inflated and unreliable inspection statistics. Inspection log issues that impact statistics are shown in Exhibit 5.13 below.

Exhibit 5.13: Inspection Log Issues that Inflate Inspection Statistics

Issue	Description
1. Double Counting of Some Inspections	<p>When two or more enforcement officers conduct an inspection together, the inspection is counted once per officer. For example, if three officers conduct an inspection, it is counted as three inspections.</p> <p>We estimate that this inflates the number of inspections by at least 22%.¹⁰</p>
2. Deliveries Counted as Inspections	<p>Management requires LCOs to deliver documents to licensees, and these deliveries are included in inspection totals. While some officers appear to also conduct inspections during these deliveries, others do not but still count them as inspections at least in some cases.</p>
3. Visits to Closed Establishments Counted as Inspections	<p>Some officers count visits to closed establishments as inspections while others do not. Inconsistent treatment of these operations impacts the accuracy and usefulness of inspections data.</p> <p>Officers may conduct “closing checks” to ensure establishments are not selling alcohol after hours, but they are not able to conduct a full inspection on a closed establishment. Closing checks should be counted but classified as a separate stand-alone category of inspections.</p>
4. Inconsistent Treatment of Minor Decoy Operations	<p>Some officers count minor decoy operations as inspections while others do not. Inconsistent treatment of these operations impacts the accuracy and usefulness of inspections data. Minor decoy operations should be separately tracked.</p>

Source: Auditor’s analysis based on inspection logs provided by Department

¹⁰ We assumed that LCOs with the same number of inspections on the same day during the same shift conducted inspections together. Under this assumption, there were 2,368 unique inspections and 664 duplicate inspections (22%), for a total of 3,032 inspections counted by the Division between October 2017 and December 2017. We note that LCO trainees cannot perform inspections on their own, but LCO trainees and LCOs I-III each submit inspection logs which are counted in inspection totals. Over the period reviewed, LCO trainees conducted 1,340 inspections (44%) out of 3,032 counted by the Enforcement Division, but we could not determine whether all 1,340 inspections conducted by LCO trainees represented duplicates.

New administrative requirements have decreased time and attention spent on enforcement field activities

Since 2016, Department management introduced three requirements for the Enforcement Division that have resulted in increased time spent on administrative tasks. First, in the fall of 2016 the Director reinstated the practice of Enforcement Division staff preparing detailed multi-page reports for minor violations, such as failing to clear tables in a timely manner, which decreased time and attention spent on enforcement field activities. Second, management transferred responsibility of the licensee manager certification from the Administrative Services Division to the Enforcement Division without any additional resources. Third, and finally, management has limited communication and information transfer between the Divisions, which can result in delays and increased time spent writing case reports.

The Director requires Enforcement staff to complete detailed case reports for minor violations

As of 2016, the Director of Liquor Control reinstated the practice of Enforcement Division staff preparing detailed multi-page reports for minor violations, such as failing to clear tables in a timely manner and dancing while holding an alcoholic drink, resulting in an increase in case reports and decreased time and attention spent on enforcement field activities. This practice had been discontinued for approximately three years prior to that. Enforcement Division staff previously implemented a one-page notice of violation paper report (VR report) onsite for minor violations to increase efficiency in the division, as shown in Exhibit 5.14 below. The Department's Operations Policies and Procedures require enforcement staff to give notice of violations to licensees, but report requirements are left to the discretion of the Director or his designee. As of July 2018, Department management required detailed case reports for all violation types, and enforcement staff discontinued issuing the one-page notice of violation paper report (VR report) for any violations, though enforcement staff did provide notices of violation to licensees using a different notice form. Department management reports that they require detailed case reports for all violations to ensure that all alleged violations are treated equally and investigated and processed fairly and that they discontinued the use of the VR reports for some violations because they did not provide sufficient information, such as witness statements and evidence recovered, and due to challenges in tracking the paper reports.

The new report requirement adds staff time to each minor violation as the more detailed reports have to be reviewed by the Enforcement Division supervisor before they are submitted to the Director, who also reviews them. In FY 2015-16, Department staff prepared 24 detailed reports for minor violations; in FY 2016-17, that number had increased to 170, a six-fold increase, as shown in Exhibit 5.15 below. The detailed reports include evidence logs, summaries of interviews with employees, research on licensees, and premises' floor plans. Reports for major violations may also include additional evidence, such as photographs or receipts, and summaries of interviews with patrons or other persons involved in the case. While the written reports contain more details about each violation, the benefits of collecting this information relative to the costs in staff time of preparing them is not apparent since it is not compiled into summary reports or to analyze trends.

Exhibit 5.14: Discontinued Notice of Violation Report for Minor Violations

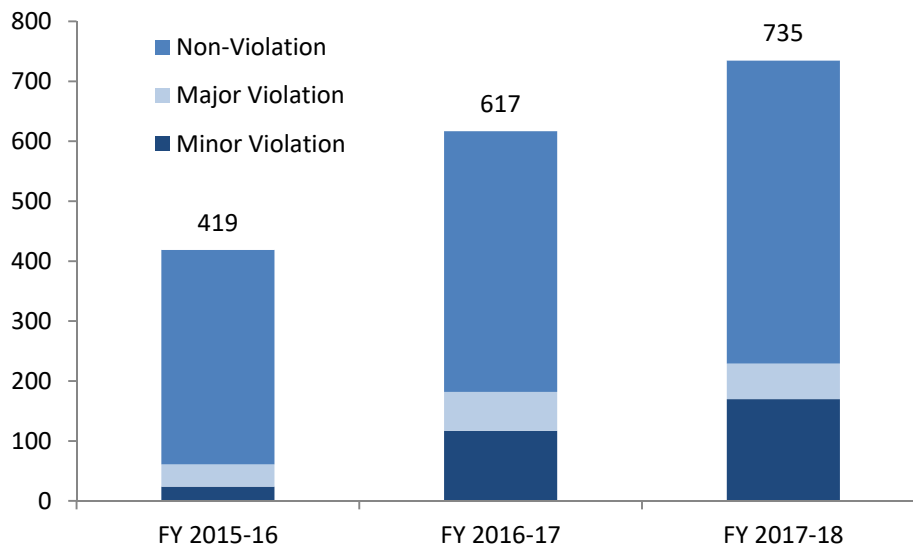
Department of Liquor Control
County of Maui
Notice of Violation Report

Report No. VR- - 0041

RESPONSIBLE LICENSEE		DETAILS REGARDING VIOLATIONS		
LICENSEE	DBA	DATE (M / D / Y)	TIME	DISTRICT
ADDRESS (Street, City, State, Zip Code)		LIQUOR CONTROL OFFICER'S SUMMARY:		
LICENSE #	BUSINESS PHONE #			
EMPLOYEE APPROVED BY THE DIRECTOR	EMPLOYEE APPROVED BY THE DIRECTOR #			
VIOLATION		REPORTING OFFICER'S INFORMATION		
<input type="checkbox"/> HRS 281-44 (a) ___ Advertisement and signs upon a licensed premises <input type="checkbox"/> HRS 281-71 ___ Posting of license <input type="checkbox"/> RLC 08-101-26 ___ Restrictions or Conditions on Licenses <input type="checkbox"/> RLC 08-101-27 ___ Permits <input type="checkbox"/> RLC 08-101-28 ___ Special conditions for class 4, retail dealer's license <input type="checkbox"/> RLC 08-101-35 ___ Temporary or permanent closing of a licensed premises <input type="checkbox"/> RLC 08-101-36 ___ Unauthorized use of a trade name; Change <input type="checkbox"/> RLC 08-101-40 ___ Condition of license <input type="checkbox"/> RLC 08-101-66 ___ Labeling <input type="checkbox"/> RLC 08-101-69 ___ Practice to promote excessive consumption of liquor, prohibited <input type="checkbox"/> RLC 08-101-70 ___ Employee approved by the director <input type="checkbox"/> RLC 08-101-71 ___ Registration of employees of class 5, category D, Licensees <input type="checkbox"/> RLC 08-101-73 ___ Employment and registration of minors <input type="checkbox"/> RLC 08-101-81 ___ Approved Employee designated to maintain order <input type="checkbox"/> RLC 08-101-82 ___ Rules available at all times <input type="checkbox"/> RLC 08-101-84 ___ Preparation of drinks; clearing of tables <input type="checkbox"/> RLC 08-101-85 ___ Liquor dispensing system <input type="checkbox"/> RLC 08-101-86 ___ Price list posted <input type="checkbox"/> RLC 08-101-90 ___ Entrances, aisles, or walkways <input type="checkbox"/> RLC 08-101-91 ___ Partitions <input type="checkbox"/> RLC 08-101-92 ___ Lighting <input type="checkbox"/> RLC 08-101-93 ___ Posters, signs, displays, and advertisements <input type="checkbox"/> RLC 08-101-94 ___ Sanitation <input type="checkbox"/> RLC 08-101-95 ___ Interior rooms <input type="checkbox"/> RLC 08-101-96 ___ Unauthorized Access <input type="checkbox"/> RLC 08-101-97 ___ Exclusive control <input type="checkbox"/> RLC 08-101-98 ___ Modification or extension of Premises <input type="checkbox"/> RLC 08-101-99 ___ Non-consumption areas		PRINT NAME DATE OF ISSUANCE		
HRS / RLC CLASSIFICATION		SIGNATURE TIME OF ISSUANCE		
HRS / RLC CLASSIFICATION		ASSISTING OFFICER		
		NOTICE TO LICENSEE: <input type="checkbox"/> Licensee Refused to sign This notice is being issued in accordance with Sec. 281-91, Hawaii Revised Statutes, to notify you that the above signed Liquor Control Officer observed the listed violation(s). Said violation(s) may result in a Complaint and Accusation to appear at a hearing to show cause why your license should not be suspended or revoked, or a fine imposed.		
		SIGNATURE X _____		
		FOR DIRECTOR'S OFFICE ONLY: <input type="checkbox"/> Issue Oral Caution <input type="checkbox"/> Issue Administrative Notice of Written Caution <input type="checkbox"/> File for Records – Insufficient Evidence <input type="checkbox"/> File for Records – No Violation <input type="checkbox"/> Other : _____		
		Director's Signature : _____		

Department Copy

**Exhibit 5.15: Case Reports by Violation Type
FY 2015-16 through FY 2017-18**



Violation Type	FY 2015-16	FY 2016-17	FY 2017-18	3 Year Change	Percent Change
Minor Violation	24	117	170	146	608%
Major Violation	37	65	59	22	59%
Non-Violation	358	435	506	148	41%
Total	419	617	735	316	75%

Source: Auditor's analysis based on Case Report logs

We estimate that five enforcement Liquor Control Officers spent 1,340 hours, or slightly less than a full-time staff person's productive hours, on case reports (including investigative follow-up) for minor violations, as shown in Exhibit 5.16 below. The Enforcement Division estimates that Liquor Control Officers spent 12.9 percent of their total time on investigative tasks and case report writing for minor violations.¹¹

¹¹ The Enforcement Division estimates that Enforcement LCOs spend 70% of their time on investigations and case reports, and of the time spent on case reports, they estimate that 23% is spent on minor violations, 49% is spent on major violations, and 28% is spent on non-violations. Therefore, we estimate that LCOs spend 12.9% of their total time on investigations and case reports for minor violations (70% x 23% x 80% productive time = 12.9%) after accounting for vacation, sick, and other leave time. We assume 80% of total hours are spent on productive tasks for the Department and 20% of total hours are spent on vacation, sick, and other leave.

**Exhibit: 5.16: Estimated Enforcement Staff Time Spent on Case Reports
FY 2017-18**

Enforcement Task	Case Reports	LCO Percent of Time	LCO hours per week	Annual hours¹ for five LCOs
Investigations & Case Report Writing	735	56.0%	22.40	5,824
Minor Violations	170	12.9%	5.15	1,340
Major Violations	59	27.4%	10.98	2,853
Non-Violations	506	15.7%	6.27	1,631
Vacation and Leave	-	20.0%	8.00	2,080
Remaining time for inspections, other enforcement tasks	-	24.0%	9.60	2,496
Total	-	100.0%	40.00	10,400

Source: Auditor's analysis based on percent of time estimations from the Enforcement Division

¹ Calculated as: LCO hours per week x 52 weeks x 5 LCOs

Management transferred examination proctoring responsibilities to the Enforcement Division in September 2017 without any additional resources

Until September 2017, the Administrative Services Division proctored certification examinations to authorize licensee staff to manage venues where liquor is served, but Department management transferred this responsibility from the Licensing and Permitting Section to the Enforcement Division and did not provide additional staff resources to proctor the exams. Enforcement Division staff spent approximately 743 hours administering 132 examinations in FY 2017-18.¹² Prior to this transfer, the Administrative Services Division allocated approximately 0.5 full-time equivalent positions to this function.¹³ This change resulted in exam cancellations in FY 2017-18. In January 2018, the Department issued a press release that announced the cancellation of liquor certification examinations from the Lahaina office due to staffing shortages. While the Department added an additional exam at its Wailuku office after closing the Lahaina office, the change required the employees of licensees to travel to Wailuku and reduced the total number of individuals that could take the exam in a given week by at least ten as the exam rooms at the Lahaina office were larger and could hold at least ten more people compared to the Wailuku office. As a result, Enforcement Division staff have reported an increase in the

¹² Estimate assumes the Department administered 167 exams in FY 2017-18 (the average of the five previous fiscal years) and that the Licensing and Permitting Section conducted exams for 2.5 months and Enforcement conducted exams for 9.5 months. Our estimate also assumes that each exam took approximately 4.5 hours to administer and that one LCO administered the exam in 75% of all cases and two LCOs administered the exam in 25% of all cases.

¹³ Based on the assumptions described above, we estimate that the Administrative Services Division spent approximately 939 hours administering 167 exams on an annual basis prior to the transfer of this responsibility to the Enforcement Division. This represents approximately 56% of one LCO III's productive time. (We assume 80% of total hours are spent on productive tasks for the Department and 20% of total hours are spent on vacation, sick, and other leave.)

number of onsite exam requests, which require additional staff time to proctor and travel to the exam site.

Enforcement Division staff do not have adequate access to information to timely complete required case reports

Barriers to information access result in delays and increased time spent writing case reports. Enforcement Division staff report that they do not have online access to Application Extender, the Department's system that contains important information for Liquor Control Officers such as licensee floor plans and permits. As a result, Enforcement staff cannot complete case reports during the night shift and must wait until their next day shift to obtain the necessary information. Additionally, Enforcement staff is not permitted to contact Administrative Services Division Liquor Control Officers directly for information on licensees. Instead management requires the enforcement staff to send requests for information through the chain of command (i.e. through the Division supervisor). The Departmental Orders specify that employees that wish to register a grievance, make suggestions for the improvement of administration, or call to attention neglect of duty shall communicate in writing through "official channels" only, but the Orders do not stipulate that requests for information pertinent to job duties, such as information on licensees necessary for completing investigations, must occur through official channels.

The Department does not adequately enable voluntary compliance with liquor laws, and many licensees perceive enforcement as overly punitive

In 2016, management discontinued a quarterly newsletter, which provided tips to pass compliance checks for serving alcohol to minors and compliance rates for minor decoy operations, changes in Department operations, and Liquor Control Adjudication Board decisions with detailed information on the violation and penalty. Implementation of a newsletter to licensees was one of the recommendations from a 1994 audit of the Department conducted by Deloitte and Touche. An excerpt from an April 2012 newsletter, shown in Exhibit 5.17 below, informs licensees of Department procedures regarding minor decoy operations and the outcomes of these operations in 2011 (the full newsletter is provided in Appendix A). Communicating the results of compliance checks for underage drinking to businesses and the community is considered a best practice.¹⁴

Besides the one-hour training session offered to licensee management staff after successfully passing the certification exam, the Department does not otherwise provide educational opportunities for licensees on rules and regulations. Violations may occur due to a licensee's lack of awareness of specific State and County liquor rules, and providing educational opportunities for licensees can improve

¹⁴ *Alcohol Compliance Checks: a procedures manual for enforcing alcohol age of sale laws*, University of Minnesota Alcohol Epidemiology Program (2013).

compliance with liquor rules. Additionally, promoting liquor control through education and voluntary compliance is one of the Department's goals as stated in its annual reports. The Department provides the Rules of the Liquor Commission and State liquor laws on its website, but the Department does not provide handbooks or other resources to prepare licensee management staff for the certification exam. Inadequate education or efforts to enable voluntary compliance with liquor laws can result in increased numbers of violations and a perception among licensees that enforcement is unfair and not transparent.

**Exhibit 5.17: 2011 Minor Decoy Summary from Discontinued Newsletter
April 2012**

MINOR DECOY OPERATIONS

The enforcement staff conducts minor decoy operations throughout the year. Persons under twenty-one years of age serve as volunteer minor decoys and attempt to purchase alcoholic beverages from licensees. The minor decoys, who display the appearance generally expected of someone under the age of twenty-one, carry his or her own valid governmental identification showing his or her correct date of birth. (An incorrect statement appeared in a Maui News article on April 7, 2012. Minor Decoys never use fake identification.) Upon request, the identification is presented to the seller. The minor decoys are also instructed to answer any questions about their age truthfully.

In 2011 minor decoys entered 187 licensed premises. Forty-five of those licensed premises sold liquor to the minor decoys. Twenty-three of those licensed premises failed to check the identification of the minors. Twenty-two of those licensed premises checked the identification of the minors and still sold liquor to the minors. Licensees caught selling liquor to the minor decoys have appeared (or will appear) before the Liquor Control Adjudication Board.

Source: Department of Liquor Control Newsletter, April 2012.

Feedback obtained from members of the public, numerous licensees, and other stakeholder organizations revealed that many licensees perceive enforcement as overly punitive and retaliatory. Many licensees reported instances of harassment by officers that interfered with their business activities, and others reported that they were afraid that providing feedback for the audit could result in retaliation from the Department. Although we cannot verify the claims of individual licensees, the number of licensees that reported these concerns indicates that the Department has a public perception problem at the very least. Establishing a process for licensees to submit anonymous feedback to the Department regarding enforcement could improve the Department's relationship with licensees if Department management investigates complaints and holds enforcement staff accountable in cases where the allegations have merit.

CONCLUSION

The Department of Liquor Control's approach to enforcement could be better focused on tasks that reduce alcohol-related risks. Outdated rules result in significant enforcement staff time spent on violations that do not pose major risk to public health and safety. While departments in two other counties in Hawaii have conducted comprehensive reviews of their county liquor

Harvey M. Rose Associates, LLC

rules in the last five years, Maui County's Department of Liquor Control has not conducted a comprehensive review and update of its rules in 20 years or more. Further, the Department's strategic plans and annual reports do not set goals or measure or discuss the impact of enforcement operations on outcomes such as decreases in alcohol use by minors or driving under the influence of alcohol in Maui County. Additionally, administrative requirements implemented after 2016 have diminished efficiency and resulted in decreased time and attention spent on enforcement field activities.

Many licensees perceive enforcement as overly punitive and retaliatory, and management could enhance its educational offerings and communication with licensees to better encourage voluntary compliance with liquor rules. Additionally, the Department's Policies and Procedures Manual, which has not been updated since 2000, does not provide adequate guidance on how to conduct inspections and investigations and does not appropriately limit the scope of enforcement activities. As a result, Liquor Control Officers have wide discretion in enforcement activities without sufficient checks and balances.

RECOMMENDATIONS

The Director should:

- 5.1 Solicit input from the Liquor Control Commission and the advisory committee, licensees, and public health organizations 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.
- 5.2 Update the Department Policies and Procedures Manual to explicitly define the goals and scope of enforcement activities and report on these changes to the Liquor Commission. The updated manual should address the following:
 - 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;
 - How often each licensee should be inspected per year and how Enforcement Division staff should determine which licensees to inspect in any given week based on risk to public health or safety;

- 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;
 - Guidelines for how long Enforcement Division inspectors should spend on a single inspection;
 - Steps for performing inspections and writing case reports; and,
 - Criteria for when a detailed case report is necessary for minor violations (See recommendation 5.6)
- 5.3 Direct the Deputy Director to work with the Enforcement Liquor Control Officer IV (Enforcement Division supervisor) to adopt an electronic tracking system for inspections, instead of using manual paper logs.
- 5.4 Direct the Deputy Director to work with the Enforcement Liquor Control Officer IV to clarify the process for documenting inspections in the Policies and Procedures Manual to ensure that inspections are not double counted and that officers are tracking the same information consistently.
- 5.5 Direct the Enforcement Liquor Control Officer IV to separately track minor decoy operations, closing checks, and deliveries from inspections.
- 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 violation paper report (VR report), or an equivalent abbreviated report, for violations that do not meet the criteria to reduce staff time spent on violations that do not pose major risks to public health and safety.
- 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.
- 5.8 Improve communication with licensees and voluntary compliance by: (a) sending a quarterly newsletter that provides tips on complying with liquor rules and results from compliance checks; and (b) making it easier to take the certification examination.
- 5.9 Direct the Deputy Director to establish a process for licensees to submit anonymous feedback or complaints regarding enforcement and notify licensees of the process.
- 5.10 Provide Enforcement officers digital access to Application Extender, the Department's electronic system that contains important information for Liquor Control Officers such

as licensee floor plans and permits, so that they may work on case reports during the night shift.

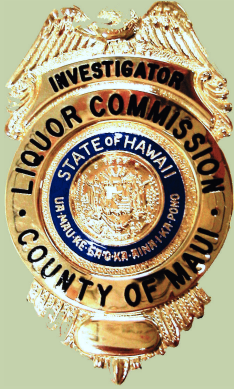
- 5.11 Establish a quarterly meeting between the Enforcement Liquor Control Officer IV and the Maui Police Chief to coordinate enforcement operations and to look for ways to decrease the investigative follow-up for Liquor Control Officers from police referrals.

SAVINGS, BENEFITS and COSTS

Implementation of the proposed recommendations would improve the Department's impact on key alcohol-related risks, such as underage drinking and alcohol-related traffic accidents and fatalities. Process documentation and enhancements to encourage voluntary compliance and communication with licensees would increase transparency of enforcement operations and improve the Department's public image. Adoption of an electronic tracking system for inspections would generate one-time costs but would increase the Enforcement Division's capacity to develop a risk-based inspection strategy and measure division performance.

Appendix A: April 2012 Department of Liquor Control Newsletter

As discussed in *Section 5: Enforcement*, the Department previously published quarterly newsletters, which provided tips to pass compliance checks for serving alcohol to minors and compliance rates for minor decoy operations, changes in Department operations, and Liquor Control Adjudication Board decisions with detailed information on the violation and penalty.



County of Maui Department of Liquor Control Newsletter

IN THIS ISSUE:

- New Liquor Rules
- Liquor License Renewals
- Minor Decoy Operations
- New Temporary Driver's Licenses
- Ask Liquor
- "Be A Jerk" Campaign



Franklyn L. Silva
Director



Traci Fujita Villarosa, Esq.
Deputy Director



NEW LIQUOR RULES

The Department will be holding an informational meeting for licensees and their employees on the newly revised liquor rules and to answer any questions people may have. The meeting will be on Tuesday, April 24 at 1pm at The Westin Maui Hotel, 2365 Kaanapali Pkwy., Kaanapali. A second meeting in South Maui is being planned in the near future. Please look for another announcement from the Department soon. A big mahalo to The Westin Maui Hotel for holding the meeting on their property and also to the Maui Hotel & Lodging Association for assisting the Department with coordinating these meetings. The new rule amendments may be accessed via the Department's webpage at www.mauicounty.gov.

LIQUOR LICENSE RENEWALS

The liquor license renewal period for FY2012-2013 began on April 1, 2012. To assist licensees with the renewal process, we would like to share with you the top 5 reasons a renewal application is returned by the Department:

1. Incomplete and/or incorrect listing of Officers, Directors, Members, Managers, etc. and their position(s) held.
2. Missing/incomplete personal information, i.e., residence/mailling address, non-business phone numbers.
3. No Tax Clearance submitted.
4. No Certificate of Liquor Liability Insurance submitted.
5. Mailing address differs from our records.

We strongly urge you to read the memo that

was attached to your Application for Renewal of Liquor License form (blue form). The last day to renew your liquor license is 4:30 p.m. on June 15, 2012.

Please keep in mind that your renewal application must be complete, correct and accepted by this department to be considered filed.



Sample Temporary Driver's License from Department of Motor Vehicles



BEND PAPER BACK SHARPLY AT ARROW, GRASP CARD EDGE AND PEEL

Hawaii Temporary Card/Receipt

If you intend to use your temporary card for identification purposes, we recommend that you also carry a secondary form of identification (passport, birth certificate, military ID, etc.)

***“A Temporary
Driver’s License
is an acceptable
form of
personal
identification
that may be
used to verify
age for liquor
purposes”***

NEW TEMPORARY DRIVER’S LICENSES

Effective March 5, 2012, an applicant for an original or renewal Hawaii driver's license or permit may be issued a Temporary Driver's License or Permit which will have an expiration date no greater than sixty days. The Temporary Driver's License or Permit is laminated on the back with clear plastic. If the applicant is under the age of twenty-one, the Temporary Driver's License or Permit will be printed in a vertical format. Temporary Driver's Permits are printed with the words "PROVISIONAL" on the right side.

A Temporary Driver's License or Permit is an acceptable form of personal identification that may be used to verify age for liquor purposes in accordance with §08-101-61(c), Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui. While it is recommended by the Department of Motor Vehicles that a secondary form of identification be carried when using a Temporary Driver's License or Permit for identification purposes, the Department of Liquor Control does not require a second form of identification for liquor purposes. See sample above.

MINOR DECOY OPERATIONS

The enforcement staff conducts minor decoy operations throughout the year. Persons under twenty-one years of age serve as volunteer minor decoys and attempt to purchase alcoholic beverages from licensees. The minor decoys, who display the appearance generally expected of someone under the age of twenty-one, carry his or her own valid governmental identification showing his or her correct date of birth. (An incorrect statement appeared in a Maui News article on April 7, 2012. Minor Decoys never use fake identification.) Upon request, the identification is presented to the seller. The minor decoys are also instructed to answer any questions about their age truthfully.

In 2011 minor decoys entered 187 licensed premises. Forty-five of those licensed premises sold liquor to the minor decoys. Twenty-three of those licensed premises failed to check the identification of the minors. Twenty-two of those licensed premises checked the identification of the minors and still sold liquor to the minors. Licensees caught selling liquor to the minor decoys have appeared (or will appear) before the Liquor Control Adjudication Board.

ASK LIQUOR

Question: What is a Notice of Violation and what happens after one is issued?

Answer: A Notice of Violation is not a citation or summons. Liquor inspectors are required to issue a Notice of Violation when a liquor inspector observes a violation of liquor regulations. After the Notice of Violation is issued the liquor inspector produces an investigation report. The investigation report is then thoroughly reviewed by supervisors within the Department. There are several actions that can be taken on the Notice of Violation:

- 1) The Notice of Violation may be filed and no further action taken.
- 2) The Licensee may receive an oral warning.
- 3) The Licensee may receive a written letter of caution.
- 4) The Licensee may be served with a Complaint & Accusation which will be heard by the Liquor Adjudication Board (Board) . After the Licensee has an opportunity to be heard, the Board may dismiss the matter, issue a letter of reprimand, impose a fine of up to \$2,000, suspend, or revoke the liquor license.

Have a question for the Department? Email your question to liquor@mauicounty.gov.



**DEPARTMENT OF LIQUOR CONTROL
COUNTY OF MAUI**

NOTICE OF VIOLATION

4318

DATE: _____

TO: _____
(Licensee)

(DBA)

(Address)

This notice is being issued in accordance with Sec. 281-91, Hawaii Revised Statutes, to notify you that the undersigned L.C.O. observed the following violation(s)

on _____ at _____ m.
(Date) (Time)

Said violation(s) may result in a citation to appear at a hearing to show cause why your license should not be suspended or revoked, or a fine imposed.

Violation: _____

Rule / Section: _____

I acknowledge receipt of this notice:

(Licensee or Agent / Employee)

Liquor Control Officer
County of Maui

Licensee Copy

COUNTY OF MAUI
DEPARTMENT OF
LIQUOR CONTROL

David K. Trask Jr.
Office Building
2145 Kaohu Street
Room 105
Wailuku, HI 96793

Phone: 808-243-7753
Fax: 808-243-7558
E-mail: liquor@mauicounty.gov

We're on the web!
www.mauicounty.gov

This newsletter is available
on the Department of Liquor
Control's webpage at
www.mauicounty.gov.

Mission Statement:

To protect the health, safety and welfare of the general public by regulating and controlling the liquor industry in the importation, manufacture, sale and service of alcoholic beverages.



When kids under 21 ask you to buy them alcohol, say no.

BE A JERK.
MAUI COUNTY

www.beajerk.org

"Be A Jerk" is a campaign started by the City and County of Honolulu to stop underage drinking by urging parents and other adults to Be A Jerk when it comes to letting teens drink alcohol. The campaign is geared towards getting the whole community involved in changing the environment that contributes to alcohol abuse.

Join us. Be a Jerk. Save lives.

SCHEDULE OF EVENTS

April 1 - May 31
Community empowerment murals focusing on the Be A Jerk theme will be created on Maui, Lanai and Molokai in gardens started by the Community Work Day Program. Sites include Pomaika'i Elementary, Lahaina Intermediate, Hui Malama Learning Center, Molokai High School and Lanai Elementary.

April 2
Wailuku, Maui. Mayor Alan Arakawa officially proclaims April as Alcohol Awareness Month for the County of Maui.

April 4
Kahului, Maui. AKAKU Mayor Talk Show, Mayor Alan Arakawa will do a Public Service Announcement on Be A Jerk, reminding adults not to give alcohol to anyone under 21.

April 5
Wailuku, Maui. Worksite Wellness Fair; Kalana O Maui County Building 10am - 2pm, Department of Housing and Human Concerns.

April 11, 18
Maui. Be A Jerk Sticker Shock, at Minit Stop, Maui Economic Opportunity

April 14
Wailuku, Maui. Keiki Fest, informational booth on Be A Jerk campaign, Department of Housing and Human Concerns.

April 20
Kaunakakai, Molokai. Molokai Earth Day event, information on Be A Jerk campaign; Hui Aloha 58, Hui Hookupono.

April 1-30
Molokai. Island-wide store checks to ensure less visibility of alcohol for youth; Hui Aloha 58, Hui Hookupono

April 16-21
Maui. Be A Jerk week, Ke Hale A Ke Ola

April 21
Maui. Be A Jerk Banner project, Maui Economic Opportunity

April 21
Maui. Be A Jerk, Sticker Shock at Minit Stop, Hawaii All Stars Cheerleaders

April 28
Maui. Be A Jerk, Sign Waving and Car Wash, Maui Economic Opportunity

April
Kihei, Maui. I Love Me Alcohol and Drug Free, Pledges and Sign Waving, Kihei Youth Center

March 1 - May 11
Maui. National Institute of Health, Media Smart Youth curriculum, Hui Malama Learning Center.

May 4
Wailuku, Maui. First Friday, Be A Jerk Campaign, Wailuku Town, 6pm - 9pm, Tri-Isle Resource Conservation & Development Council, Inc.

May 25
Maui. Teen Expo, Boys and Girls Central Club

Be a Jerk community partners include Maui Economic Opportunity; Tri-Isle Resource Conservation & Development Council, Inc.; Community Work Day; Kihei Youth Center; Hoaloaha 58 and Hui Hookupono; Hui Malama Learning Center; Ke Hale A Ke Ola Homeless Shelter; Hawaii All Stars; Baldwin High School, Peer Education Program, Boys and Girls Club of Maui and Maui Police Department.

Additional supporters include the County of Maui's Department of Housing and Human Concerns, Department of Liquor Control, Department of Police, City and County of Honolulu, Menehune Water, Anheuser-Busch, Minit Stop, State of Hawaii Department of Education.

Funded by the State of Hawaii, Department of Health, Alcohol and Drug Abuse Division through the Substance Abuse and Mental Health Services Administration - Center for Substance Abuse Prevention Strategic Framework-State Incentive Grant. No. 10-191

For more information or to sign a pledge to Be A Jerk, contact Yuki Lei Sugimura, Community Organizer, yuki@connecmaui.com or call 878-1888.



What: A second informational meeting on the newly revised liquor rules

Who: Liquor licensees and their employees

When: Friday, April 27, 2012 at 1pm

Where: Grand Wailea Resort Hotel & Spa, 3850 Wailea Alanui Drive, Wailea

Appendix B: 1994 Deloitte & Touche Policies and Procedures Assessment

As discussed in *Section 1: Oversight of Liquor Control*, *Section 2: Commission Responsibilities*, and *Section 5: Enforcement*, Deloitte and Touche provided an assessment of the Department's policies and procedures used in carrying out its operations with a report provided in January 1994.



January 13, 1994

Liquor Control Commission
Department of Liquor Control
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Sirs:

INTRODUCTION

Deloitte & Touche was engaged to perform an assessment of the policies and procedures used by the Department of Liquor Control, County of Maui ("Department") in carrying out its operations, and to recommend possible improvements. Deloitte & Touche performed such an assessment during the period from November 23, 1993 to January 13, 1994.

The procedures we performed, our findings, and our recommendations for improvement are as follows:

PROCEDURES PERFORMED

- We read pertinent literature relating to the operations of the Department, including the following: Chapter 281, Hawaii Revised Statutes; Rules & Regulations, Liquor Control Commission, County of Maui; Operation & Procedure Manual, Department of Liquor Control, County of Maui; Departmental Orders, Department of Liquor Control, County of Maui; proposed revisions to the Rules & Regulations, Liquor Control Commission, County of Maui; proposed revisions to the Operation & Procedure Manual, Department of Liquor Control, County of Maui; proposed Policies & Procedures for the Liquor Control Commission, County of Maui; proposed Policies & Procedures for the Liquor Control Adjudication Board, County of Maui; and proposed Policies & Procedures for the Department of Liquor Control Staff, County of Maui.
- We interviewed employees of the Department as follows: John Tam, Acting Director; Wayne Pagan, Chief Liquor Control Officer; Glenn Mukai, Senior Investigator; Paul Akiona, Charles Bunch, Richard Cherry, Arthur Delima, Cliff Kahoohanohano, J. D. Lloy, Bill Pacheco, Cynthany Pickner, Liquor Control Officers ("LCOs"); Diane Wong, Secretary to Boards/Commissions; and Eleanor Poaipuni, Private Secretary.
- We interviewed members of the Liquor Control Commission ("Commission") and Liquor Control Adjudication Board ("Board") as follows: Mary Cabuslay, Chairwoman, and Clarence Chow, Vice Chairman, of the Commission; and Shigeto Murayama, Chairman of the Board.

DEFINITION
FEB -9 4 3 28
SECTION

- We interviewed employees of the County of Maui who have dealings with the Department as follows: Travis Thompson, Director of Finance; James Takayesu, Deputy Prosecutor; John Rapacz, Deputy Corporation Counsel for the Commission; and J. P. Schmidt, Deputy Corporation Counsel for the Board.
- We obtained an organization chart of the Department, and assessed the effectiveness of the Department's organization in carrying out its mission.
- We obtained a history of the number of licensees for the years 1983, 1988, and 1993 to analyze the Department's workload.
- We tested certain licensee applications for compliance with the Operation & Procedure Manual guidelines pertaining to forms and related documentation that must be submitted for a new license, transfer of a license, temporary license, special license, transient vessel license, change of location, change (upgrade) in kind or category, and renewal of license.

Because the procedures that we performed were not sufficient to constitute an audit made in accordance with generally accepted auditing standards, we do not express an opinion on the items discussed in the report for the period November 23, 1993 to January 13, 1994. In connection with performing the procedures described above, certain matters came to our attention that we have reported in the following sections of this report. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified herein, and does not extend to the financial statements of the Department of Liquor Control, County of Maui taken as a whole for any date or period.

FINDINGS

OPERATIONS

Rules and Regulations of the Liquor Control Commission

The Rules and Regulations are used by the LCOs in determining whether violations have occurred and the nature of the corrective action required.

In several areas, the Rules and Regulations are very broad in definition, and more specific guidance would be helpful. For example, information about potential violations could be summarized to include the specific statute, rule or regulation involved; criteria used to determine that a violation has occurred; and recommended action (e.g., written reprimand, referral to Deputy Prosecutor, etc.) based on the nature of the violation and frequency of occurrence. This would help to ensure that proper notices are given to the licensees regarding potential violations and related penalties.

Consideration should be given to adding a section to the Rules & Regulations which specifies the range of potential penalties for specific types of violations. This may provide consistency in the penalties meted out for similar types of violations.

Operation & Procedure Manual of the Department of Liquor Control

The Operation & Procedure Manual is used by the Department's employees in carrying out their functions. While the Manual is a useful tool, it could include more guidance in certain areas. For example, more specific procedures could be included for areas such as investigation techniques, report writing instruction and formats, public hearing procedures, and final inspection procedures. We also noted that many recent policies and procedures have been issued in the form of memos. Some of these memos are retained in the form of a "training packet" which is provided to each new employee.

Consideration should be given to incorporating all memos in to a revised Operation & Procedure Manual on a timely basis.

Departmental Orders of the Department of Liquor Control

The Departmental orders consist of policies and procedures that must be followed by the Department's employees in carrying out their day-to-day responsibilities. Such orders have been developed over a period of time, and are promulgated when a perceived need arises. There are no formal guidelines for the Director to follow in promulgating such orders.

Consideration should be given to having a knowledgeable person (e.g., someone with a legal background) review all of the Departmental orders to ensure that they are clear, concise, and consistent in their intent and approach.

Also, consideration should be given to establishing formal guidelines for promulgating Departmental Orders.

Continuing Education for LCOs

There is no requirement that LCOs take continuing education classes on a regular basis. Since LCOs cannot enforce the State statutes, rules and regulations unless they are fully aware of them, it is imperative that LCOs are kept abreast of all changes.

In addition, classes on dealing with the public, and written and oral communication would be of benefit to the LCOs.

We understand that some of the senior members of the Department and LCOs attend workshops on a rotating basis, but that they are not required to present a class for the other employees upon their return.

Licensing Procedures

Due to the recent controversy surrounding the issuing of a license to a prior felon, there is a possibility that the current licensing procedures need to be revised. For example, fingerprint identification could be required. The fingerprints could be sent to the FBI in Washington, D.C. to determine if the applicant has a criminal record. The cost for doing this could be included as part of the licensing fee.

Handling of Cash Receipts

Recent publicity concerning the Department has revealed that LCOs allegedly have picked up cash from licensees for various reasons. In order to prevent a conflict of interest situation, a Departmental Order should be implemented which would prohibit a Department employee from picking up funds from a licensee. Further, the licensees should be instructed to make all payments directly to the Department's administrative office.

Molokai and Lanai Inspections

Due to the current shortage of manpower, liquor establishments on Molokai and Lanai are inspected on an infrequent basis. In order to make the inspections more meaningful, such inspections should be made on a surprise basis, i.e., on different days of the week and on different times during the day and night.

Daily Inspection Reports

LCOs must complete Daily Inspection Reports which document their activities during their shifts. The Reports indicate the licensee visited, the time the LCO enters the establishment, the number of patrons present, and the time the LCO leaves the establishment. The signature of the licensee's manager on duty must also be obtained.

The Daily Inspection Report serves as a useful tool for the Department's management in monitoring the workload of each LCO, and also can serve as part of the documentation required when a violation is found. However, the Report is meaningful only if it is accurate. Allegations have been made that it is possible for LCOs to obtain several managers' signatures in a relatively short period of time, attend personal business, then falsify the time spent at each establishment.

If the allegations are found to be true, then procedures need to be changed in completing the Reports. For example, a licensee's manager can be instructed to record the time of day next to his or her signature when signing the Report, or a senior member of the Department, such as a Night Supervisor, could make spot checks of the LCOs.

LCOs' Duty Hours

Currently, the LCO assigned to the night shift for the Lahaina area must leave the area before most bars are closed (i.e., 2:00 a.m.) in order to clock out at the end of the shift (6:00 p.m. to 2:45 a.m.) Since it is important for the LCOs to observe the licensees' closing procedures, consideration should be given to changing the time for the night shift for the Lahaina area, e.g., 7:00 p.m. to 3:45 a.m. The Operation & Procedure Manual allows a third shift from 9:00 p.m. to 5:00 a.m. for the West Maui area, but this shift is primarily used on weekends.

Intradepartmental Communications

In order for the Department to operate efficiently and effectively, its employees must be able to communicate openly with management and their peers. The employees' concerns and suggestions for improvement should be addressed by senior management.

Consideration should be given to establishing a forum for the Department's employees to communicate with one another and with management. For example, staff meetings could be held on a monthly or quarterly basis.

Information to Licensees

Violations of State statutes and Liquor Commission Rules and Regulations may occur as a result of a licensee's lack of awareness of a specific statute, rule, or regulation. Adherence to such items could be improved if the licensees were provided with an information sheet or a regular newsletter which summarized the pertinent statutes, rules, and regulations and the different items requiring Commission approval. As an example, the procedures and timetable to be followed by a licensee upon receiving a notice of violation should be spelled out in such information sheet.

Consideration should be given to holding classes for licensees to explain changes in rules, regulations, operating procedures, and other pertinent information. This would also aid in keeping licensee managers informed of current requirements, as they are not required to attend continuing education classes or to renew their registration periodically.

ADMINISTRATION

Review of Director's Performance

Part of the responsibilities of the Commission is to review the performance of the Director of the Department. In order to accomplish this, guidelines must be established against which the Director's and the Department's accomplishments can be measured.

At the beginning of each fiscal year, the Director should establish short-term and long-term goals for himself and the Department, and should review them with the Commission. To the extent possible, such goals should be quantifiable or measurable in some form. Then, at certain intervals, say semi-annually, the Director should prepare a written report which compares his and the Department's accomplishments with the approved goals.

Selection of Director

The Operation & Procedure Manual does not include the procedures to be followed by the Commission when selecting a new Director.

Consideration should be given to adopting such procedures in order to avoid potential problems or misunderstandings.

Training for Commission and Board Members

Members of the Commission and the Liquor Control Adjudication Board are appointed by the Mayor, with the approval of the County Council. The personal and business backgrounds of the members are diverse, and not all of them are knowledgeable about liquor laws, rules and regulations. Such members are not given specialized training upon their appointments, and they attempt to become knowledgeable by reading pertinent documents, by gaining experience through working with Commission and Board members, and by relying upon the advice of the Deputy Corporation Counsel.

The Commission and Board members would probably be more effective in carrying out their responsibilities if they received training about liquor laws, rules and regulations shortly after being appointed, and then on an annual or as-needed basis thereafter.

Duties and Responsibilities of Commission and Board Members

There are no specific guidelines or procedures relating to the duties and responsibilities of Commission and Board members.

It would be helpful if the duties and responsibilities of the members were included in a manual which could be distributed to them, along with the Rules & Regulations and the Operation & Procedure Manual. As an example, one of the responsibilities of a member is to attend scheduled meetings. If a member misses a certain number of meetings during a year, that member should be asked to resign in order to allow another candidate with more available time to be able to serve. Consideration could also be given to holding evening meetings if this would allow more members to attend.

Additional Administrative Personnel

During the past 10 years, the number of licensees have increased from 290 to 392. This increase in licensees has increased the volume of paper work that the Department must process. However, the number of approved secretarial positions during the 10 years has remained at two. As a result, there is a backlog of administrative work which may have a negative impact on the Department's, Commission's and Board's operating activities.

Consideration should be given to hiring additional personnel to take on some of the fiscal or administrative duties from the secretaries.

Night Supervisors

Due to the nature of the business of the licensees, much of the Department's activities take place at night. As an example, eight of the nine LCOs employed by the Department are assigned to the night shift. However, since the Senior Investigator and the Chief Liquor Control Officer work during the day, there is no supervisor that the LCOs can turn to during the night shift if they have any questions or encounter any problems. While these two senior people are available by telephone at night, the LCOs have expressed some reluctance in calling them during the late night hours.

Consideration should be given to having a Night Supervisor be out in the field to supervise the LCOs and to assist them with any problems encountered.

Vacant LCO Positions

Over the past 10 years, the ratio of licensees to LCOs was approximately 32 to one. However, due to two vacant LCO positions and to two LCOs on long-term stress leave, the ratio is now 49 to one. As a result, the amount of monitoring or assistance provided to each licensee has decreased.

Consideration should be given to filling the two vacant positions and to hiring temporary or emergency personnel to fill in for the LCOs on stress leave.

Duties of the Day Shift LCO

The activities of the LCOs on night shift are primarily focused on the monitoring or inspecting of licensee establishments. However, during the day shift, the LCO is required to perform administrative duties which take away from the monitoring and investigating activities. For example, the day shift LCO makes deliveries to licensees, delivers work orders, and follows up on unfinished activities

performed by the previous night shift LCOs. Some of these activities would be more appropriately performed by an administrative person.

Consideration should be given to transferring some of the administrative or non-monitoring activities of the day shift LCO to administrative personnel of the Department.

RECOMMENDATIONS

OPERATIONS

- Review the Rules and Regulations of the Commission and provide more specific guidance in subject matters which are considered to be too broad or vague.
- Review the Operation & Procedure Manual of the Department and include more specific procedures in areas such as investigation techniques, report writing instruction and formats, public hearing procedures, and final inspection procedures. Incorporate all informal memos in the Manual.
- Review the Departmental Orders to ensure that they are clear, concise and consistent. Also, establish formal guidelines for promulgating Departmental Orders.
- Provide continuing education classes to LCOs and other Department employees.
- Consider adding a fingerprinting requirement to the licensing procedures.
- Implement a Departmental Order which would prohibit Department employees from picking up funds from a licensee.
- Instruct all licensees to make required payments directly to the Department's administrative office.
- Monitor licensees on Molokai and Lanai on a surprise basis.
- Investigate the need to check on the accuracy of the Daily Inspection Reports.
- Change the duty hours for the Lahaina area night shift from the hours of 6:00 p.m. to 2:45 a.m. to the hours of 7:00 p.m. to 3:45 a.m.
- Hold information meetings for Department employees on a monthly or quarterly basis.
- Provide applicants and licensees with information sheets which summarize the pertinent statutes, rules, and regulations and the different items requiring Commission approval. In addition, hold classes for licensees to explain changes in rules, regulations, operating procedures, and other pertinent information.

ADMINISTRATION

- Have the Director prepare short-term and long-term goals for himself and the Department, and measure performance on a semi-annual basis.

- Develop procedures for selecting a new Director.
- Provide training to Commission and Board members upon their appointment and on an annual or as-needed basis thereafter.
- Provide the Commission and Board members with a manual which summarizes their duties and responsibilities.
- Consider holding Commission and Board meetings in the evening in order to accommodate individuals who have scheduling conflicts during the day.
- Hire additional personnel to take on some of the fiscal and administrative duties from the secretaries.
- Hire Night Supervisors.
- Fill the two vacant LCO positions and hire temporary or emergency hire personnel to fill in for the two LCOs on stress leave.
- Transfer some of the administrative or non-monitoring activities of the day shift LCO to administrative personnel.

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We would be pleased to assist you in implementing any of the recommendations noted above. Please call Mr. Gary T. Nishikawa at 543-0751 should you have any questions or need additional information.

Yours truly,

Deloitte & Touche

ROCKETT LINGLE
MAYOR



FRANKLYN L. SILVA
DIRECTOR

DEPARTMENT OF LIQUOR CONTROL

COUNTY OF MAUI
2145 KAOHU STREET, ROOM 107
WAILUKU, MAUI, HAWAII 96793
PHONE 243-7753 FAX 243-7668

January 28, 1994

Liquor Control Commission
Department of Liquor Control
2145 Kaohu Street, Room 107
Wailuku, Maui, Hawaii 96793

Dear Chairperson and Members;

Deloitte and Touche was contracted to conduct a management audit of the Department of Liquor Control, County of Maui, and have submitted their written report for presentation before the Liquor Control Commission, County of Maui.

The Department have reviewed the management audit report and met with the management personnel of Deloitte and Touche. The Department is in general agreement with and have the following responses to their findings.

OPERATIONS

Review the Rules and Regulations of the Commission and provide more specific guidance in subject matters which are considered too broad or vague. We agree. The Liquor Control Commission has been reviewing, formulating and proposing changes in the Rules and Regulations in accordance with the suggested recommendation. A new section will be developed in the Rules and Regulations discussing gradation of penalties, such as oral reprimands, written reprimands, fines, suspension of license for set period of time and revocation of license for various common violations. In addition, procedures are being developed to expand the education of managers and employees. Mandatory education for managers and voluntary education for bartenders and servers are being considered. Education of licensees and employees is limited by Section 281-17 (3) of the Hawaii Revised Statutes to money collected from the assessment of fines against licensees. This provision must be deleted or amended to allow allotment of necessary monies needed for effective education programs.

Review the Operation & Procedure Manual of the Department and include more specific procedures in areas such as investigation techniques, report writing instruction and formats, public hearing procedures and final inspection procedures. Incorporate all informal memos in the manual. We agree. The Department has drafted new Policies and Procedures that address many of those concerns. Training materials on investigation techniques, report writing instruction and formats, etc., are given to each LCO. Update and on-going training are provided by the Chief Liquor Control Officer. A formal training manual will be developed, in lieu of a training packet, to include all relevant and updated materials.

Review the Departmental Orders to insure that they are clear, concise and consistent. Also establish formal guidelines for promulgating Departmental Orders. We agree. Corporation Counsel shall be consulted to review and revise the Department Orders in its entirety. If Corporation Counsel staff is not available, legal counsel can be contracted to review the Department Orders in its entirety. The Department have established guidelines for promulgating Department Orders.

Provide continuing education classes to LCOs and other Department employees. We agree. The Department has provided on-going education classes to the Department employees. LCOs, on a rotating basis, have been sent to the State Investigators Workshop for Liquor Control Investigators, certification classes and other job related classes. Staff members have attended many County and State programs and Maui Community College classes to further educate and update their skills. The Department holds education and information meetings with all staff members on a quarterly basis during the day. Additional meetings are held on an as-needed basis.

Consider adding a fingerprinting requirement to the licensing procedures. We agree. The Department is implementing a mandatory fingerprinting procedure. Procedures have been established with the Hawaii State Criminal Justice Data Center for background checks. Equipment has been requested and ordered for fingerprinting.

Implement a Departmental Order which would prohibit Department employees from picking up funds from a licensee. We agree. Department policy prohibits employees from picking up funds, registration forms, etc, from licensees. A new section will be developed in the Departmental Orders to reflect this concern.

Instruct all licensees to make required payment directly to the Department's administrative office. We agree. All licensees and applicants will be instructed that all payments shall be made directly to the Department. A notice will also be placed on all billings.

Monitor licensees on Molokai and Lanai on a surprise basis. We agree but extremely difficult to implement. The Department inspection schedule of Molokai and Lanai has been reviewed in the

past. The Department implemented scheduling other than Fridays and learned due to the unique characteristic of these islands, the majority of the licensee knew of the investigators arrival in advance, possibly through rental car, airline or hotel employed relatives of the Molokai and Lanai licensees. Fridays were selected due to the activities within licensed premises, and the availability of witnesses and employees for follow-up case investigation and applicants for permits and licenses.

Investigate the need to check on the accuracy of the Daily Inspection Reports. We agree. The daily inspection reports are a weak substitute for the lack of night supervisors. For now, a procedure is being considered where the LCO enters the premises, writes premises name and time entered on his daily inspection report. The LCO conducts inspection of the premises, then upon leaving, the manager on duty signs the daily inspection report and enters the time the investigator leaves the premises.

Change the duty hours for the Lahaina area night shift from the hours of 6:00 p.m. to 2:45 a.m. to the hours of 7:00 p.m. to 3:45 a.m. We agree but this may be difficult to implement due to collective bargaining contract. The Department did initiate proceedings to implement two additional shifts - 4:00 p.m. to 12:45 a.m. and 7:00 p.m. to 3:45 a.m. Discussion was conducted with Liquor Control Officers and the majority were in favor but requested to eliminate lunch period. The Hawaii Government Employees Association objected citing the union contract. The plan was put on hold until further discussion between the Union, Personnel Services and this Department could be held. Several options are now being considered.

Hold information meetings for Department employees on a monthly or quarterly basis. We agree. The Department is examining plans to hold monthly information and staff meetings during the night hours.

Provide applicants and licensees with information sheets which summarize the pertinent statutes, rules and regulations and the different items requiring Commission approval. In addition; hold classes for licensees to explain changes in rules, regulations, operation procedures, and other pertinent information. We agree. Applicants and licensees are currently provided with instruction sheets, check lists of items needed and necessary forms. The Senior Investigator also provides individual oral explanations to applicants and licensees. The notice of hearing and Complaint and Accusation does contain date, time, charges, rule or section of the Hawaii Revised Statutes violated, place of hearing and other information. A monthly newsletter procedure is being developed to notify licensees of pertinent information on a regular basis, eg., changes in liquor laws, new rulings by the Commission, and action taken by Adjudication Board. In addition, the Department is planning an increase of educational and information classes provided to licensees and their employees that addresses changes in rules, regulations, operation procedures, interpretations, and other pertinent information.

ADMINISTRATION

Have the Director prepare short-term and long term goals for himself and the Department, and measure performance on a semi-annual basis. We agree. The Director does provide short and long term goals to the Administration. This appears to be an excellent suggestion and would provide the Commission with information and guidelines for an annual evaluation of the Director by the Commission.

Develop procedures for selecting a new Director. We agree. The Liquor Control Commission has proposed and is currently reviewing the Operation and Procedure Manual, which includes a clearly defined selection procedure of a new Director.

Provide training to Commission and Board members upon their appointment and on a annual or as needed basis thereafter. We agree. Discussions were implemented with the Office of Corporation Counsel and Personnel Services. Plans have been formulated for Corporation Counsel and Personnel Services to provide the necessary staff to educate the Commission and Board members in areas of "Sunshine Law", confidential materials received, Robert's Rules, ethics, etc. The Director and necessary staff members are to educate the members on policy and procedures. This will be a required workshop where all members must attend. It was agreed that this should be implemented at workshop meeting soon after the new appointees are on board. This will serve as a refresher class to current members. Proposed Operation and Procedure Manuals that have been prepared can be reviewed by the Commission and Board members. A specific item in the Operation and Procedure Manuals will refer to attendance at meetings and the consequences of absences from meetings.

Provide the Commission and Board members with a manual which summarizes their duties and responsibilities. The Commission and Board members' duties and responsibilities are clearly defined by the Maui County Charter and the Hawaii Revised Statutes. The Hawaii Revised Statutes, the Rules and Regulations of the Liquor Commission, the Maui County Charter, Department Policy and Procedure Manual are provided to all members of the Commission and Adjudication Board.

Consider holding Commission and Board meetings in the evening in order to accommodate individual who have scheduling conflict during the day. We agree. This is an excellent suggestion and may resolve scheduling conflict and increase public participation and input. The Liquor Control Commission and Liquor Control Adjudication Board sets the time and place of their hearings. The Commission and the Board will be presented with the proposal.

Hire additional personnel to take on some of the fiscal and administrative duties from the secretaries. We agree. The Department and the Liquor Control Commission have been actively pursuing additional administrative staff positions and the updating of the additional duties and responsibilities, for submittal for

personnel action, that are assigned and performed by the Senior Investigator. The Department have met and conferred with the Office of the Mayor, Managing Director and Personnel Services. It appears there is a general agreement that an Account Clerk position should be the number one priority in the Department expansion effort. The Liquor Commission budget for FY 1994 - 1995 requests this position and provides justification. In addition, it appears the hiring of a Hearings Reporter or a clerk-steno to take and transcribe the minutes of the Boards and Commission is very much needed, also.

Hire Night Supervisors. We agree. The Department and the Commission have been expressing the critical need for at least two night supervisor positions for many years. The Department has been consulting with the Office of the Mayor and Personnel Services. Personnel Services suggested that Liquor Control Officer III - Working Supervisors, should be requested to fill the need. There has been a general agreement that the present administrative staff is in need of at least two additional L.C.O. III staff positions for licensing and permits, and one additional staff position for enforcement.

Fill the two vacant LCO positions and hire temporary or emergency hire personnel to fill in for the two LCOS on stress leave. We agree, but there are problems with immediate implementation. Administrative and personnel policies and decisions, as well as Union contract, determines the filling of the positions.

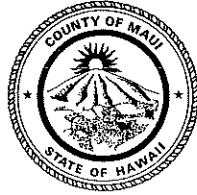
Transfer some of the administrative or non-monitoring activities of the day shift LCO to administrative personnel. We disagree. Day and night shift LCOs primary duties are case and follow-up investigation. Case and follow up investigations takes precedence over other duties. The Chief Liquor Control Officer fills out the work orders and is responsible for the maintenance and up keep of the vehicles, not the LCOs. Deliveries are made to insure the licensees have been served with the document and to recover other information, eg., who received and signed for the document and who delivered the document. This information is critical when licensees are held accountable by set deadlines for payments, filing of reports, etc. LCOs are currently performing required duties as prescribed by their job and position descriptions.

Sincerely,


Franklyn Silva, Director

List of Accomplishments and Written Response from the Department of Liquor Control

ALAN M. ARAKAWA
MAYOR



GLENN MUKAI
DIRECTOR

GEORGETTE C.R. TYAU
DEPUTY DIRECTOR

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

2145 KAOHU STREET, ROOM 105 • WAILUKU, MAUI, HAWAII 96793
PHONE (808) 243-7753 • FAX (808) 243-7558

September 27, 2018

Dan Goncher, Senior Manager
Harvey M. Rose Associates, LLC
1390 Market Street, Suite 1150
San Francisco, CA 94102

Re: Confidential Final Draft as of September 25, 2018 of the
Performance Audit of the Maui Department of Liquor Control

Dear Mr. Goncher:

As requested in your September 25, 2018 communication, this is a separate list of accomplishments that the Department is submitting to be included in the Introductions of your audit report that will be submitted to the Maui County Council.

The below topics were presented and discussed during the audit process with your auditors:

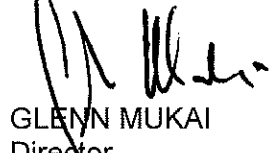
1. Provided a level playing field for all applicants and licensees.
2. Provided accessibility and transparency to all stakeholders.
3. Updated Operations, Policies and Procedures Manual, and Departmental Orders that were not addressed over 15 years and 10 years, respectively, prior to this administration.
4. Systematically reviews the Rules of the Liquor Commission with SBRA and other stakeholders and submit proposed rule amendments to the Liquor Commission for their review and action.
5. The Department established a Small Business Review and Advisory Committee (SBRA) consisting of licensees of various license classes and other stakeholders. The Department initiated state legislations through its SBRA that resolved two major concerns for applicants, licensees, and not-for-profit organizations.
6. Replaced equipment as well as furniture that was inoperable, irreparable, a safety hazard, and/or inefficient.

Dan Goncher, Senior Manager
Harvey M. Rose Associates, LLC
September 27, 2018
Page 2

7. Reduced the timeline for processing of liquor license applications by reducing requirements through rule amendments, State laws, and implementing a more efficient process, eg: acquired an electronic fingerprint scanner.
8. Amended the processing of cases recommended for prosecution before the Liquor Adjudication Board to comply with State laws and Maui County Charter.
9. Provided funds to a not-for-profit organization for a public liquor related education program addressing underage drinking prevention pursuant to Chapter 281 Hawaii Revised Statutes.

Thank you.

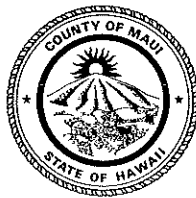
Sincerely,



GLENN MUKAI
Director

GM/ls

ALAN M. ARAKAWA
MAYOR



GLENN MUKAI
DIRECTOR

GEORGETTE C.R. TYAU
DEPUTY DIRECTOR

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

2145 KAOHU STREET, ROOM 105 • WAILUKU, MAUI, HAWAII 96793
PHONE (808) 243-7753 • FAX (808) 243-7558

September 27, 2018

Dan Goncher, Senior Manager
Harvey M. Rose Associates, LLC
1390 Market Street, Suite 1150
San Francisco, CA 94102

Re: Confidential Final Draft as of September 25, 2018 of the
Performance Audit of the Maui Department of Liquor Control

Dear Mr. Goncher:

Thank you for the opportunity to submit a formal written response to your Confidential Final Draft of the Performance Audit of the Maui Department of Liquor Control dated September 25, 2018.

The Department disagrees with many of the factual findings, and the Department believes that others lack context. However, with regard 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 Hawaii State statutes, Rules of the Liquor Commission, or the Maui County Charter.

Due to time constraints, the Department was able to address several but not all of the factual findings that the Department disagrees with.

The Department would like to request a copy of the final report that will be sent to the County Council.

Thank you.

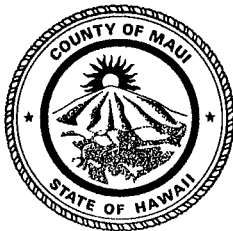
Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Mukai".

GLENN MUKAI
Director

GM/ls

ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

September 20, 2018

Via: Fax (415-252-0461) and regular mail

Harvey M. Rose Associates, LLC
1390 Market Street, Suite 1150
San Francisco, CA 94102

Attention: Mr. Dan Goncher

Subject: Comments/Responses to Performance Audit of the Maui
Department of Liquor Control (Confidential Draft, dated
September 12, 2018)

Dear Mr. Goncher and Associates:

Thank you for the opportunity to comment/respond to the above-referenced draft. On behalf of this office, we respond to the "RECOMMENDATIONS" that pertain to and reference our role in advising the Department of Liquor Control (the "Department"), the Liquor Control Commission (the "Commission"), and the Liquor Control Adjudication Board (the "Board") as follows:¹

¹ It is our understanding that the Director of the Department of Liquor Control, as well as the Chair of the Liquor Control Commission, will submit separate response/comments.

1) Oversight of Liquor Control (page 1-13)

“The Corporation Counsel should:

1.3 Provide an in-depth required training each year to all members of the Liquor Control Commission and Director on: (i) the specifications of the Sunshine Law (Hawaii Revised Statutes Chapter 92); (ii) public notice requirements for Commission meetings (Hawaii Revised Statutes Chapter 91); (iii) the availability of Corporation Counsel; (iv) Maui Charter mandated responsibilities for Commission members; and (v) consequences for non-compliance with County rules and State laws.”

RESPONSE:

Our office, in conjunction with the Department, does provide orientation sessions for all new-incoming Commission and Board members covering the Sunshine Law, the Maui County Charter requirements, as well as the County’s ethics code. Currently, we do not regularly provide annual/refresher training sessions for the entire sitting Commission or Board, but time permitting, this would be a good/positive step.

The Director, as well as his staff, and the respective chairs of the Commission and the Board know our phone numbers/contact information at all times.

The training regarding public noticing requirements pursuant to Chapters 91 and 92, HRS, is best directed to the Department’s staff, as said staff, not the Commission, is responsible for the drafting, posting, publishing of required/relevant notices.

“1.4 Verify and report to the Commission Chair that public noticing requirements have been met for all Commission hearings, including: timely posting of agendas that contain adequate information about proposed rule changes, and proper notification to the public of scheduled Commission hearings where rule changes would be considered and determined.”

RESPONSE:

Done.

2) Commission Responsibilities (page 2-7)

“The Corporation Counsel should:

2.5 Assign the representative to the Liquor Control Commission to monitor compliance with public noticing requirements and require that on the date the agenda is published, Corporation Counsel issues a statement or a stamp to validate whether or not public noticing requirements are met (e.g., timeliness of posting as well as adequate details about any propose changes to liquor control rules), before authorizing the scheduling of the public hearing.”

RESPONSE:

Except for “. . . a stamp to validate . . .”, done.

“2.6 Provide annual training to members of the Liquor Control Commission and the Commission Secretary, or the staff member who is fulfilling the Commission Secretary responsibilities, on how to carry out meeting that are in compliance with all County and State laws, particularly how to comply with State Sunshine Laws and Hawaii Revised Statutes Chapter 91, which covers public noticing requirements.”

RESPONSE:

Except for annual trainings, our office advises and responds to any and all inquiries from Department staff regarding Sunshine Law matters, as well as having a Deputy Corporation Counsel present at all Commission and Board meetings.

3) Staffing and Human Resources Issues

No recommendation.

4) License and Permit Processes

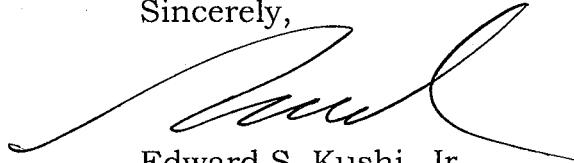
No recommendation.

5) Enforcement

No recommendation.

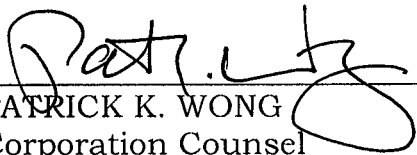
Call if further discussion/clarification is needed.

Sincerely,



Edward S. Kushi, Jr.
First Deputy Corporation Counsel
County of Maui

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel
County of Maui

cc: Glenn Mukai, Director, Department of Liquor
Robert Tanaka, Chair, Liquor Control Commission