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Mayor

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DEPARTMENT OF LIQUOR CONTROL
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March 21, 2019

Mr. Sandy Baz
Managing Director, County of Maui
200 South High Street
Wailuku, Hawaii 96793

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 3/22/2019
Mayor Date

For Transmittal to:

Honorable Mike Molina
Chair, Governance, Ethics, and Transparency Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

SUBJECT: PRE-BUDGET SESSION PRESENTATION (DEPARTMENT OF LIQUOR CONTROL); GET -18(2)

Dear Chair Molina:

We respond to your request of March 11, 2019, wherein you asked "Please explain why the Department is regulated by the State, yet is operated by the County."

Subject to certain discretionary powers given to the county liquor commissions, State law, through Chapter 281, Hawaii Revised Statutes ("HRS") preempts the field and regulations with respect to liquor laws within the State of Hawaii.

Various and specific sections in Chapter 281 confirm this preemption, to-wit:

Section 281-11 County liquor commissions and liquor control adjudication boards; qualifications; compensation. (a) A liquor commission or liquor control adjudication board, consisting of not less than five members, no more than the minimum required for a quorum

of whom shall belong to the same political party at the time of appointment, may be created for each of the counties. The elected executive head of each county may nominate, and by and with the advice and consent of the legislative body of the county, shall appoint the members of the commissions and boards. The elected executive head of each county, by and with the advice and consent of the legislative body of the county, may remove from office any of the members. The commission or board shall designate one of its members as chairperson. Each member shall be a citizen of the United States and shall have resided in the county for which appointed for at least three years immediately preceding the date of the member's appointment. (emphasis added)¹

Section 281-11.12 Commission and board office. The council of each county shall furnish the liquor commission and the liquor control adjudication board of the county suitable quarters for its meetings, the transaction of its business, and the keeping of its records. The office of the commission and board shall at all times be open for the transaction of its business during its prescribed business hours.

Section 281-17 Jurisdiction and powers. (a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures, sells or purchases any liquor without being authorized pursuant to this chapter; provided that in counties which have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education; provided that any educational program shall be limited to the commission staff, commissioners, liquor control adjudication board members, licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees; provided that fine moneys, not to exceed ten per cent a year of fines accumulated, may be used to fund public liquor related educational or enforcement programs;
- (4) From time to time to make, amend, and repeal such rules, not inconsistent

¹ Section 8-13.2(2), Charter.

with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;

- (5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;
- (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
- (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
- (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
- (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
- (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee; provided that a liquor commission in a county with a population of seven hundred thousand or

greater may establish a pilot program that employs both a dBA and a dBC sound level measurement system for purpose of community noise control; provided further that the dBC sound level measurements shall be in accordance with the following maximum permissible sound levels in dBC:

- (A) Zoning districts that include all areas equivalent to lands zoned residential, conservation, preservation, public space, open space, or similar type shall have a maximum dBC sound level of fifty-five from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of forty-five from 10:00 p.m. to 7:00 a.m.;
 - (B) Zoning districts that include all areas equivalent to lands zoned for multi-family dwellings, apartment, business, commercial, hotel, resort, or similar type shall have a maximum dBC sound level of seventy from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of fifty from 10:00 p.m. to 7:00 a.m.; and
 - (C) Zoning districts that include all areas equivalent to lands zoned in agriculture, country, industrial, or similar type shall have a maximum dBC sound level of seventy from 7:00 a.m. to 10:00 p.m. and a maximum dBC level of seventy from 10:00 p.m. to 7:00 a.m.
- (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;
 - (12) To prescribe, by rule, the term of any license or solicitor's and representative's permit authorized by this chapter, the annual or prorated amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees; and
 - (13) To prescribe, by rule, regulations on dancing in licensed premises; and
 - (14) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.

(b) Subject only to this chapter, the commission or board and each member thereof shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining the witnesses as are possessed by a circuit court, except that the commission or board and each member thereof shall not be bound by the strict legal rules of evidence. In addition, the commission or board shall have the power to require the production of, and to examine any books, papers, and records of any licensee which may pertain to the licensee's business under the license or which may pertain to a matter at a hearing before the commission or board or to an investigation by the commission or board.

Honorable Mike Molina
Chair, Governance, Ethics,
and Transparency Committee

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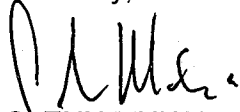
The exercise by the commission or board of the power, authority, and discretion vested in it pursuant to this chapter shall be final and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in this chapter or chapter 91. (emphasis added)²

This acknowledgement of State preemption is further codified in the Revised Charter of the County of Maui (1983), as amended ("Charter"), wherein under the powers of the Liquor Control Commission it states:

"2. Adopt 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." (emphasis added)³

Call if further clarification and/or discussion is needed.

Sincerely,



GLENN MUKAI
Director

cc: Chair Nane Aluli, Liquor Commission
Edward Kushi, Jr., Corporation Counsel

GM/ls

² Section 8-13.2(2), Charter.

³ Section 8-13.2(2), Charter.