

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission	LIQUOR CONTROL COMMISSION	Meeting Date	March 21, 2019
Location	Mo'ikeha Building, Liquor Control Conference Room 3	Start of Meeting: 4:00 p.m.	End of Meeting: 5:32 p.m.
Present	Vice-Chair Shirley Akita; Members: Jean Iida, William Gibson, Maryanne Kusaka, Gerald Matsunaga, Gary Pacheco Also: Liquor Control Staff: Director Gerald Rapozo, Private Secretary Cherisse Zaima; Deputy County Attorney Cameron Takamura		
Excused	Chair Paul Endo		
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Vice Chair Akita called the meeting to order at 4:00 p.m. with 6 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 6 members were present.	
Approval of Agenda		Mr. Pacheco moved to approve the agenda. Ms, Kusaka seconded the motion. Motion carried 6:0.
Approval of Minutes	<u>APPROVAL OF MEETING MINUTES:</u> Open Session minutes of March 7, 2019 Deputy County Attorney Takamura pointed out a correction to be made on Page 6, in the last paragraph of item 1(j) where it reads "...their absence could be considered a mitigating circumstance in rendering a decision." He stated for clarification that he intended to state that the licensee's absence would mean that they could not present mitigating circumstances, such as the current certificate of insurance. He requested that the record reflect the correction to his intended statement.	Mr. Pacheco moved to approve the minutes of the March 7, 2019 meeting, as corrected. Ms. Kusaka seconded the motion. Motion carried 6:0.
1. Public Hearing	<u>STOR:</u> Application No. 2019-062 was filed on January 3, 2019 by Caven K. Raco dba Stor for a New Retail Dealer General license at 1824 Haleukana Street, Līhu'e, Kauai, Hawaii. The Commission accepted Application No.	

	<p>2019-62 for publication and public hearing on January 17, 2019 and ordered to print notice of public hearing in The Garden Island newspaper on Wednesdays, January 23 & 30, 2019, scheduling the public hearing on March 21, 2019 at 4:00 p.m. or shortly thereafter in Meeting Room #3 of the Līhu‘e Civic Center, Mo‘ikeha Building, 4444 Rice Street, Līhu‘e, Kauai, Hawaii.</p> <p>Ms. Alicia Raco was present on behalf of the applicant.</p> <p>Commissioner Matsunaga noted the hours of operation as being Monday through Friday from 6:30 a.m. to 5:00 p.m. and asked to clarify that the establishment would not be open on the weekends. Ms. Raco explained that because of its location in an industrial area, there are not many people around during the weekend.</p> <p>The public hearing for Application No. 2019-062 was closed.</p>	<p>Mr. Matsunaga moved to approve Application No. 2019-062. Mr. Gibson seconded the motion. Motion carried 6:0.</p>
<p>2. Continuance of Violation Hearings</p>	<p><u>CONTINUANCE OF VIOLATION HEARINGS (continued from February 21, 2019 meeting):</u></p> <p>a) <u>7-ELEVEN STORES (LIHUE)</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>b) <u>7-ELEVEN STORES (HANAMAULU)</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Attorney Kenneth Hoo was present on behalf of the licensee along with Blake Yokotake, Director of Human Resources for 7-Eleven. The licensee agreed to waive the reading of the charges. The licensee denied the charges.</p> <p>Deputy County Attorney Maryann Sasaki was present on behalf of the County of Kauai.</p>	

Commissioner Matsunaga asked to clarify that Mr. Hoo's denial of the charges is based on the language of HRS 281-31(s) to which Mr. Hoo confirmed. Mr. Hoo stated that the licensee has been issued a violation for failure to keep a copy of the certificate of liability insurance on the premises. However, he argued that they are a Class 4 convenience mini mart, and there is no language that specifically states a convenience mini-mart is required to maintain liquor liability insurance in the amount of \$1,000,000.00. He further argued that the language stating that "Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours" only applies to those Class 4 licensees that are required to maintain a policy of not less than \$1,000,000.00.

Commissioner Matsunaga asked whether Mr. Hoo has prepared any memorandum of authorities to which Mr. Hoo replied he has only has what is common law, noting this statute is generally penal in nature, and must be strictly construed and interpreted; you cannot add meanings to words in the statute, and you cannot impose a violation unless it is clearly defined. He reiterated that there is nothing in 281-31(s) that specifically states a convenience mini-mart has to maintain proof of liquor liability insurance on its premises. He added that it covers other license classes, but convenience mini-marts are exempted under that statute.

Deputy County Attorney Sasaki responded by stating that 7-Eleven holds a Class 4 license, pointing out that the language states that the liability insurance shall be made available for inspection at any time during the licensee's regular business hours. 7-Eleven is a licensee, therefore, they must have the certificate of insurance available. She referenced the exemption Mr. Hoo brought up, and pointed out that in looking at the legislative history of this law, she found that when this language was initially drafted, there was language pertaining to "mom-and-pop" stores. She thinks the intent of the legislature was to give these types of "mom-and-

	<p>pop” convenience stores a little break on carrying a \$1,000,000.00 insurance policy. However, that does not apply to whether or not such evidence of insurance has to be maintained on the premises. Ms. Sasaki added that it is averse to public policy not have the evidence of insurance on the premises, and is not in keeping with the purposes and policies of the statute. She stated that Mr. Hoo seems to be arguing that Class 4 is not a kind of license, which would mean they are not covered under this statute at all, but she asserted that Class 4 is a kind of license, and all licensees are required to have this document on their premises. She feels that reading it any other way would result in an absurd reading of the statute.</p> <p>Commissioner Matsunaga addressed both counsels, and asked whether they are both satisfied with the actual facts of the case as cited in the liquor investigator’s report to which both parties replied yes. Commissioner Matsunaga then asked to clarify that the argument made by Mr. Hoo is a question of law to which Mr. Hoo replied yes.</p> <p>Deputy County Attorney Takamura explained that this is a contested case, and where the commission is exercising its adjudicatory functions, it is not bound by Sunshine Law under HRS 92-6. This means that the commission can close the open meeting, pursuant to HRS 92-6, and he can respond to the commission in a closed session.</p>	<p>Ms. Kusaka moved to enter into a closed session pursuant to HRS 92-6. Mr. Gibson seconded the motion. Motion carried 6:0.</p>
Return to Open Session	<p>Vice Chair Akita addressed Attorney Hoo and Attorney Sasaki, explaining that after some discussion with their counsel, the commission would like both parties provide written legal briefs on their positions for the commission to review, and to continue the hearing to a future date for decision-making.</p>	<p>The meeting resumed in open session at 4:41 p.m.</p>

	<p>Commissioner Matsunaga clarified that Mr. Hoo would be filing a motion to dismiss, and Ms. Sasaki would be filing a motion in opposition of the dismissal. In response to Commissioner Matsunaga, both counsels agreed to stipulate to the facts as stated in the investigator's report. Mr. Hoo further stipulated to the fact that 7-Eleven is a convenience minimart.</p> <p>After discussion on the timeframe, it was decided that Mr. Hoo would submit his motion by April 7, 2019 and Ms. Sasaki would provide her response by April 14, 2019. Mr. Hoo's rebuttal would be provided by April 21, 2019. The continuance of the hearing would be rescheduled to the May 2, 2019 meeting.</p>	<p>Mr. Matsunaga moved to continue the Violation Hearings for 7-Eleven Stores (Līhu'e), and 7-Eleven Stores (Hanamā'ulu) to May 2, 2019. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
<p>3. Continuance of Violation Hearing</p>	<p><u>RUTH'S CHRIS STEAK HOUSE: Violation of HRS 281-31(s) Licenses, classes.</u></p> <p>Amy Espinda, Director of Sales and Marketing was present to represent the licensee along with Kelly Harada, Manager; no counsel. The licensee agreed to waive the reading of the charges. The licensee admitted to the charges.</p> <p>Mr. Harada explained that the investigators came on the second day of his assuming the manager position, and he did not have all of the liquor paperwork consolidated. He was able to get all of the required documents except for the certificate of liability insurance. The following day he was able to obtain it from their corporate office, and has since filed it in their file along with all other liquor documents. Everything is now in order.</p> <p>Mr. Harada provided the certificate of liability insurance document. Director Rapozo noted for the record that while the certificate of liability insurance shows that the policy was in effect at the time of the violation, it does not reflect that they have the specific Liquor Liability coverage required. According to the document provided, the licensee is still not in compliance.</p>	

	<p>Ms. Espinda asked for a recess to allow her to contact their corporate office. It was suggested that this item be moved to the end of the violation hearings.</p> <p>Upon returning to the violation hearing, Mr. Harada informed the commission that they spoke to their corporate office who ensured them that the Liquor Liability portion of the insurance is included in the policy though it is not specified on the document. He stated that the corporate office will forward him the entire packet first thing in the morning, and he will provide the proper document to the department.</p> <p>Commissioner Matsunaga noted that the licensee was scheduled for violation hearing on March 7, 2019, and no one showed up. Mr. Harada acknowledged that it was his fault, explaining that they were just changing over the management, and during the shuffle of that, he was unable to attend due to lack of staff present on that day. Commissioner Matsunaga made it clear that having a liquor license is a privilege, not a right, and when a notice of hearing to appear before the commission is received, it should be taken very seriously. Mr. Harada acknowledged that, and ensured the commission that he does take it very seriously. He informed the commission that the following day, he instructed his staff to get their blue cards up to date, and got all the documents together so this does not happen again.</p>	<p>Mr. Matsunaga moved that a fine of \$500 be imposed with \$250 suspended provided that proof of liquor liability insurance is submitted to the department within one week, and provided there is no conviction of a similar offense within 1 year. Ms. Iida seconded the motion. Motion carried 6:0.</p>
<p>4. Violation Hearings</p>	<p>a) <u>TROY'S</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Troy Morikawa, General Manager, was present to represent the licensee; no counsel. The licensee agreed to waive the reading of the charges. The licensee admitted to the charges.</p> <p>Mr. Morikawa provided the certificate of liability insurance document. Director Rapozo noted for the record that the licensee had current liquor liability insurance at the time of the violation.</p>	<p>Mr. Matsunaga moved that a fine of \$250 be imposed with \$100 suspended provided there is no conviction of a similar offense within 1 year. Ms. Iida seconded the motion. Motion carried 6:0.</p>

	<p>b) <u>BOBBY V'S ITALIAN RESTAURANT</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Robert and Karen Valenti, owners were present to represent the licensee; no counsel. The licensee agreed to waive the reading of the charges. The licensee denied the charges.</p> <p>Commissioner Matsunaga explained that since the licensee is contesting the violation, the hearing would need to be rescheduled to the April 4, 2019 meeting.</p> <p>Mr. Valenti stated that the investigator's report said they did not have proof of insurance, but they did have it. The manager on duty just did not know where it was.</p> <p>Deputy County Attorney provided Mr. Valenti with a copy of the investigator's report, and pointed out the section that details HRS 281-31(s), which he read into the record. HRS 281-31(s) states, in part, "Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours."</p> <p>Mr. Valenti explained that it was on premises, and has always been in the same spot, but it was not made available because the manager on duty did not know where it was. Attorney Takamura asked the licensee if he still wished to contest the violation to which Mr. Valenti replied no.</p> <p>Vice Chair Akita recommended the licensee to advise his staff on the rules, and asked if the licensee did admit or deny the charges. The licensee admitted to the charges.</p>	<p>Mr. Matsunaga moved that a fine of \$250 be imposed with \$100 suspended provided there is no conviction of a similar offense within 1 year. Ms. Iida seconded the motion. Motion carried 6:0.</p>
	<p>c) <u>THE POINT AT POIPU</u>: Violation of HRS 281-31(s) Licenses, classes.</p>	

	<p>Attorney Robert Ueoka was present to represent the licensee along with Emelda Daligcon, Food & Beverage Director. The licensee agreed to waive the reading of the charges. The licensee admitted to the charges. (Plea of no contest)</p> <p>The licensee did not have a copy of the certificate of insurance with him, but stated it had been faxed over the day after the violation. Staff was unable to locate the document, but Director Rapozo did recall seeing it and noting the dates as current. Commissioner Matsunaga stated he would be satisfied with Mr. Ueoka's word as an officer of the court.</p>	<p>Mr. Matsunaga moved that a fine of \$250 be imposed with \$100 suspended provided there is no conviction of a similar offense within 1 year. Ms. Iida seconded the motion. Motion carried 6:0.</p>
	<p>d) <u>POIPU BAY CLUBHOUSE</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Michael Hutton, Restaurant Manager, was present to represent the licensee; no counsel. The licensee agreed to waive the reading of the charges. The licensee admitted to the charges.</p> <p>Mr. Hutton explained that they did not have the certificate of liability insurance at the time.</p> <p>Mr. Hutton provided the certificate of liability insurance document. Director Rapozo noted for the record that the licensee had current liquor liability insurance at the time of the violation.</p>	<p>Ms. Kusaka moved that a fine of \$250 be imposed with \$100 suspended provided there is no conviction of a similar offense within 1 year. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
	<p>e) <u>SAFEMART STORES #2894</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Director Rapozo noted that the attorney for the licensee submitted a letter requesting for a continuance of the violation hearing.</p>	<p>Mr. Matsunaga moved to continue the violation hearing to the April 4, 2019 meeting. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>

	<p>f) <u>KAUAI MARRIOTT RESORT</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Director Rapozo noted that the attorney for the licensee submitted a letter requesting for a continuance of the violation hearing.</p>	<p>Mr. Pacheco moved to continue the violation hearing to the April 4, 2019 meeting. Mr. Matsunaga seconded the motion. Motion carried 6:0.</p>
	<p>g) <u>RAINBOW GAS & MINI MART</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Dan Nishimura, Assistant Manager, was present to represent the licensee; no counsel. The licensee agreed to waive the reading of the charges. The licensee admitted to the charges.</p> <p>Mr. Nishimura explained that the certificate of liability insurance had been misplaced and never got posted, but the policy was current. He added that the department has a copy of the policy.</p> <p>Director Rapozo stated that the only time the department requires a licensee to submit a certificate of liability insurance is during the license renewal period. The renewals are then filed away, but the department does not, and is not responsible for keeping licensee's insurance policies on file throughout the year. He noted that when the Notice of Violation Hearing is delivered to the licensee, it is requested that the licensee appear with the proof of insurance. Additionally, a reminder call is made a day prior to the hearing to remind the licensees to bring the document with them.</p> <p>Mr. Nishimura did not have a copy of the certificate of liability insurance with him. Staff was instructed to pull the FY 2018-2019 renewals to try and locate the licensee's insurance policy, which was found and determined to be in effect at the time of the violation.</p>	<p>Mr. Matsunaga moved that a fine of \$250 be imposed with \$100 suspended provided there is no conviction of a similar offense within 1 year. Ms. Iida seconded the motion. Motion carried 6:0.</p>

	<p>h) <u>SHIVALIK INDIAN CUISINE</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Senthilvel Radhakrishnan, Manager, was present to represent the licensee; no counsel. The licensee agreed to waive the reading of the charges. The licensee admitted to the charges.</p> <p>Mr. Radhakrishnan explained that new management had taken over just a few weeks before, and they moved all of the files. Because of this, he was unable to find the document.</p> <p>Mr. Radhakrishnan provided the certificate of liability insurance document. Director Rapozo noted for the record that the certificate of liability insurance shows an effective starting date of January 30, 2019, which is after the violation occurred. However, staff was able to pull a certificate of liability insurance from the renewal files, which showed that the licensee's insurance policy was in effect during the time of the violation.</p>	<p>Mr. Matsunaga moved that a fine of \$250 be imposed with \$100 suspended provided there is no conviction of a similar offense within 1 year. Ms. Kusaka seconded the motion. Motion carried 6:0.</p>
	<p>i) <u>ALOHA SPIRITS</u>: Violation of HRS 281-31(s) Licenses, classes.</p> <p>Clyde Ajimura, owner, was present to represent the licensee; no counsel. The licensee agreed to waive the reading of the charges. The licensee admitted to the charges.</p> <p>Mr. Ajimura provided the certificate of liability insurance document. Director Rapozo noted for the record that the licensee had current liquor liability insurance at the time of the violation.</p>	<p>Mr. Matsunaga moved that a fine of \$250 be imposed with \$100 suspended provided there is no conviction of a similar offense within 1 year. Ms. Iida seconded the motion. Motion carried 6:0.</p>

	<p>j) <u>ALOHA SPIRITS</u>: Violation of Rule 10.2(a) Manager on duty, qualifications.</p> <p>Clyde Ajimura, owner, was present to represent the licensee; no counsel. The licensee agreed to waive the reading of the charges. The licensee admitted to the charges.</p> <p>Mr. Ajimura stated that the former Liquor Department secretary used to call to remind him that his red card had expired, and he forgot. He has since obtained a current red card.</p>	<p>Mr. Matsunaga moved that a fine of \$250 be imposed. Ms. Iida seconded the motion. Motion carried 6:0.</p>
	<p>k) <u>BIG WAVE DAVE'S</u>: Violation of Rule 7.13 Fight and Disturbance Reports.</p> <p>Director Rapozo stated that pursuant to Rule 2.11, the licensee has waived their rights to a violation hearing, and has paid a fine of \$150.</p>	
<p>5.</p>	<p><u>DIRECTOR'S REPORTS:</u></p> <p>a) <u>INVESTIGATOR'S REPORTS:</u></p> <p>b) <u>INCOMING COMMUNICATIONS:</u></p> <p>(1) Disturbance Reports from Rob's Good Times Grill, and Portofino Restaurant.</p> <p>c) <u>OUTGOING COMMUNICATIONS:</u></p> <p>(1) To All Wholesale Licensees, Re: Cancellation of Liquor Licenses Bamboo, and Sushi Bushido.</p>	

	<p>d) <u>EMPLOYEES IN LICENSED PREMISES:</u> Managers and Assistant Managers – See Attachment “A”</p> <p>e) <u>ACTIONS OF THE DIRECTOR:</u> (1) BEACH HOUSE RESTAURANT (2) PRINCEVILLE WINE MARKET (3) ROB’S GOOD TIMES GRILL (4) SAFEWAY LIHUE (5) THE WINE SHOP (6) WRANGLER’S RESTAURANT (7) PRINCEVILLE RESORT KAUAI (8) HANAIEI ELEMENTARY SCHOOL PTA (9) AMERICAN CANCER SOCIETY (10) HISTORIC WAIMEA THEATER AND CULTURAL ARTS CENTER</p> <p>f) <u>INFORMATIONAL MATTERS:</u></p>	<p>Mr. Pacheco moved to approve Items 5(a) through f. Ms. Iida seconded the motion. Motion carried 6:0.</p>
<p>6.</p>	<p><u>VIOLATION REPORTS:</u></p> <p>a) <u>KAUAI RAMEN: Violation of HRS 281-31(s) Licenses, classes.</u> b) <u>LA SPEZIA: Violation of HRS 281-31(s) Licenses, classes.</u> c) <u>ISLANDER ON THE BEACH: Violation of HRS 281-31(s) Licenses, classes.</u> d) <u>OASIS ON THE BEACH: Violation of HRS 281-31(s) Licenses, classes.</u> e) <u>SHERATON KAUAI RESORT LINK CAFÉ: Violation of HRS 281-31(s) Licenses, classes.</u> f) <u>SHERATON KAUAI RESORT (OCEAN): Violation of HRS 281-31(s) Licenses, classes.</u> g) <u>SHERATON KAUAI RESORT (GARDEN): Violation of HRS 281-31(s) Licenses, classes.</u></p>	

	<p>h) <u>GARDEN ISLAND GRILLE: Violation of HRS 281-31(s) Licenses, classes.</u></p> <p>i) <u>THE HANALEI DOLPHIN: Violation of HRS 281-31(s) Licenses, classes.</u></p> <p>j) <u>HANALEI LIQUOR STORE: Violation of HRS 281-31(s) Licenses, classes.</u></p>	<p>Mr. Pacheco moved to call licensees for Items 3(a) through (l) for violation hearing. Ms. Kusaka seconded the motion. Motion carried 6:0.</p>
7.	<p><u>PERMANENT INCREASE OF PREMISES:</u></p> <p><u>ROB'S GOOD TIMES GRILL:</u> Request for permanent increase of premises from 3,156 sq. ft. to 5,018 sq. ft., per diagram submitted, which will include changing the layout of the existing premises, and increasing the kitchen preparation and work areas.</p>	<p>Mr. Gibson moved to approve the permanent increase of premises. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
8.	<p><u>NEW LIQUOR LICENSE:</u></p> <p>a) <u>KAUAI DISTILLING COMPANY:</u> Application No. 2019-070 was filed on March 7, 2018 by LBD Coffee, LLC dba Kauai Distilling Company for a New Manufacturer Other Specified Liquor license at 5907 C Kawaihau Road, Kapaa, Kauai, Hawaii.</p>	<p>Mr. Gibson moved for publication and public hearing of Application No. 2019-070. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
	<p>b) <u>THE TASTING ROOM:</u> Application No. 2019-071 was filed on March 8, 2019 by O'Connell Enterprises LLC dba The Tasting Room for a New Dispenser General (live entertainment, no dancing) license at 5476 Kōloa Road, Kōloa, Kauai, Hawaii.</p>	<p>Mr. Pacheco moved for publication and public hearing of Application No. 2019-071. Ms. Kusaka seconded the motion. Motion carried 6:0.</p>
10.	<p><u>CHANGE IN CORPORATE OFFICERS:</u></p> <p><u>VAN WESCOMP HAWAII, INC. dba KOA KEA HOTEL & RESORT:</u> Removal of Nathan A. Tanner as Vice President.</p>	<p>Ms. Kusaka moved to approve the change in corporate officers. Mr. Pacheco seconded the</p>

		motion. Motion carried 6:0.
11.	<p><u>EXEMPTION OF RULE 7.12(b):</u></p> <p>a) <u>KAUAI MARRIOTT RESORT:</u> Kauai High School overnight event, Project Graduation, in the Kauai Ballroom from 9:00 p.m. on May 24, 2019 to 6:00 a.m. on May 25, 2019.</p> <p>b) <u>KAUAI BEACH RESORT:</u> Kapaa High School overnight event, Project Graduation, in the Jasmine Ballroom from 10:00 p.m. on May 24, 2019 to 6:00 a.m. on May 25, 2019.</p> <p>c) <u>GRAND HYATT KAUAI RESORT & SPA:</u> Waimea High School overnight event, Project Graduation, in the Grand Ballroom from 10:00 p.m. on May 24, 2019 to 6:00 a.m. on May 25, 2019.</p>	<p>Ms. Kusaka moved to approve the exemption of Rule 7.12. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
Announcements	Next Scheduled Meeting: Thursday, April 4, 2019 – 4:00 p.m., Mo’ikeha Building, Meeting Room #3.	
Adjournment		Vice Chari Akita adjourned the meeting at 5:32 p.m.

Submitted by: _____
 Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
 Shirley Akita, Vice-Chair

- () Approved as circulated.
- () Approved with amendments. See minutes of _____ meeting.