

APPROVED

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved with amendments. See 8/20/2020 minutes.

Board/Commission:	LIQUOR CONTROL COMMISSION	Meeting Date	June 4, 2020
Location	Tele Conference via Microsoft Teams Audio +1 469-848-0234, Conference ID: 353 313 480#	Start of Meeting: 10:00 a.m.	End of Meeting: 12:40 p.m.
Tele Present	Chair Shirley Akita, Vice Chair Maryanne Kusaka, Members: Dee Crowell, William Gibson, Gerald Matsunaga, Randall Nishimura, Gary Pacheco Also: Liquor Control Staff: Liquor Control Director Gerald Rapozo, Liquor Clerical Assistant Malialani TM Kelekoma; Deputy County Attorney Todd Jenson; Ellen Ching, Boards and Commissions Administrator		
Excused			
Absent			
SUBJECT	DISCUSSION	ACTION	
Call To Order		Chair Shirley Akita called the meeting to order at 10:00 a.m. with 5 members present, constituting a quorum.	
Roll Call	Director Rapozo called roll, noting 5 members were present, constituting a quorum. Commissioner Crowell entered the tele-conference @ 10:08 a.m. Commissioner Pacheco entered the tele-conference @ 10:53 a.m.		
Approval of Agenda		Mr. Gibson move to approve the agenda. Mr. Matsunaga seconded the motion. Motion carried 5:0	

SUBJECT	DISCUSSION	ACTION
<p>1.</p>	<p><u>PUBLIC HEARING: PROPOSED AMENDMENTS TO RULES AND REGULATIONS OF THE LIQUOR CONTROL COMMISSION OF THE COUNTY OF KAUAI</u></p> <p>Chair Akita opened the Public Hearing.</p> <p>Director Rapozo asked if there was anyone from the Public on the tele-conference.</p> <p>There was no one from the Public on the tele-conference.</p> <p>Director Rapozo advised of the following proposed changes: Rule 2.5 B1 on Page 5-Removing the requirement of the federal internal revenue service. Rule 2.5 C4 on Page 6-Written clearance from the Department of Planning indicating approval use of the premises where licenses is being applied for.</p> <p>Vice Chair Kusaka asked does this relate to the situation up in Kapa`a where the Licensee wanted to sell alcohol and there was no approval on their land? Vice Chair Kusaka clarified when adding this with Commissioner Matsunaga they were unable to approve their Liquor Licenses unless they had a designated approval from the Department of Planning.</p> <p>Director Rapozo stated application would not be accepted unless there was a written clearance from the Department of Planning. He also stated that it was not only for that one application but there were other applicants that came in. After checking with planning they would need a use permit as to what they wanted to do because the property was being leased, the property owners, would not go thru the process to get a use permit. This is to prevent future problems with the applicant when not clearing the Planning Department. The planning department approved the form so that the Liquor Commission would be able to use.</p>	

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	<p>Vice Chair Kusaka agreed with Director Rapozo’s clarification of the written clearance from the Planning Department.</p> <p>Commissioner Matsunaga stated that he would like to recommend changing Rule 2.5 (d) (2) from Tax clearances to Tax clearance.</p> <p>Director Rapozo stated proposed changes to Rule 2.6. Page 8 Renewal of license. Change Current tax Clearances to Current tax clearance. Requested to remove and the federal internal revenue service.</p> <p>Director Rapozo stated proposed changes to Rule 2.13. Page 10. Application for a permit for trade shows, tasting event or other exhibitions. (f) Remove: Samples shall be served in its original form.</p> <p>Chair Akita asked if there were any questions, hearing none.</p> <p>Director Rapozo stated proposed changes to Rule 3.2. Page 13 Alteration of premises. Remove approval and add a permit. Licensees were under the impression that when they got their building permit they assumed all of their permits would transfer to the Liquor Department. They send in a request for alteration of premises then Liquor Control Department would issue a permit for alteration. Besides an approval the Licensee would require a permit from the Liquor Department.</p> <p>Chair Akita asked for clarification the licensee when doing an alteration they will need to get a permit.</p> <p>Chair Akita asked if there were any questions.</p> <p>Commissioner Matsunaga requested to go back to Rule 2.15(b). Page 11. Application and cost for a duplicate license. Requested to delete because of negligence on the part of the licensee. It would read (b) A fee of twenty-five dollars (\$25.00) will be charged for a duplicate license to</p>	

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	<p>replace a license that was lost or destroyed because of negligence on part of the licensee. Chair Akita asked if there were any objections, there were none.</p> <p>Director Rapozo stated proposed changes to Rule 3.17. Page 16. Restrictions or Conditions on Licenses. Requesting to add: including restrictions or conditions placed on the license by the Commission. This line item was recommended by Commissioner Matsunaga.</p> <p>Commissioner Nishimura asked is the Liquor Department requiring permit approval from Planning Department is that permit from the Planning Department a Commission Action. He asked Commissioner Crowell if he is able to assist with the question. If that is the case, maybe we should specify Liquor Commission and not be restricted by the Planning Commission. His response was that of the Liquor Commission. Any applicant needs to follow every condition and not only follow one and not the other.</p> <p>Director Rapozo responded to the Commission add Liquor Control Commission instead of just Commission. That is where the Liquor Control Commission would do the enforcements and place restrictions.</p> <p>Chair Akita responded they can do only Concerts that would require the Commission to get the license. Example instead of closing at 2:00 a.m. They would stop serving at 12:00 a.m. She has no objection with adding Liquor Control Commission. Chair Akita asked for feedback from the Commission.</p> <p>Commissioner Crowell asked Mr. Jenson when making any changes restrictions or conditions with a Permittee do we need go thru Chapter 91 or 92 in order to show cause.</p> <p>Director Rapozo requested to answer the question that Commissioner Crowell asked, if there is a condition placed at the time of approval to remove that condition the applicant would need to reapply with the Commission for a new license to have those conditions removed.</p> <p>Commissioner Crowell asked would the Commission be able to impose something stricter. An</p>	

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	<p>example would be instead of closing at 2:00 am, what about 12:00 a.m.</p> <p>Director Rapozo stated at the time of Public Hearing and based on Public testimonies their concerns might be the Kitchen is too noisy. The commission has in the past set conditions that the Kitchen would need to close at 10:00 p.m. That is placed on the license upon approval of the Commission.</p> <p>Commissioner Crowell asked once it is approved does the Commission go back and massage a condition based on Complaints?</p> <p>Director Rapozo responded the way the law is written, should there be complaints the Commission would be able to add or remove some of the conditions. Upon renewal time which is in June if the Commission has received a lot of noise complaints or anytime during the term of the license the Commission could call the Licensee in to impose new conditions.</p> <p>Commissioner Crowell stated there are proper procedures to amending conditions when making any changes and if it applies to the Liquor Commission.</p> <p>Chair Akita asked Mr. Jenson if the licensee wanted to amend the conditions that had been set forth earlier upon approval, would they have to resubmit to the Commission.</p> <p>Mr. Jenson responded yes there would be another hearing and an opportunity for the Public to comment. The Commission and the department at any time has the power to suspend or revoke licenses.</p> <p>Commissioner Crowell stated that with the Planning Commission they went through a Contested Case Hearing in order to amend the permit. Do we have to do the same thing with the Liquor Commission?</p> <p>Mr. Jenson responded there would have to be a Public Hearing and allowance if someone is</p>	

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	<p>trying to change the conditions of their license.</p> <p>Commissioner Crowell asked what if the Liquor Commission wanted to change the conditions of the license.</p> <p>Director Rapozo stated that there is a process in Section 281 which allows conditions on the licenses.</p> <p>Vice Chair Kusaka asked if the condition involves zoning or planning it would have to go back to planning and then it would come back to the Liquor Commission. Then it would go through the whole process of Public Hearings and then would it come back to the Liquor Commission. Is that correct?</p> <p>Commissioner Crowell responded he does not know, it depends on what is being amended.</p> <p>Vice Chair Kusaka stated that if it involves a planning approval, then the Commission would not have to handle it. It would go back to Planning. Should it fail there then that is it.</p> <p>Commissioner Crowell stated sometimes the permit is a Class 1 and over the counter permit. It would be in a commercial zone, they do not need a whole lot from planning. However that still creates a lot of problems from neighbors.</p> <p>Vice Chair Kusaka stated that's where Liquor Commission gets involved. Many of these licensees are in residential or partial areas.</p> <p>Chair Akita requested going back to Rule 3.17 does putting in the Liquor Control Commission clarify things?</p> <p>Commissioner Crowell responded yes, there is no definition of Commission either one would work.</p>	

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	<p>Chair Akita requested that if we find other areas in which there is Commission, we should inject Liquor Control Commission into Rule 3.17. Is there any objections. Chair Akita requested to move on.</p> <p>Commissioner Crowell stated at the top of the page Rule 3.12 Commission Orders.</p> <p>Director Rapozo responded when there is a violation or anything that results when finding of facts or decision in order that would be the lawful order of the Commission.</p> <p>Commissioner Crowell responded should it be Liquor Control Commission.</p> <p>Director Rapozo stated in the rule it does not have the definition of Commission, in Chapter 281 has the definition of Commission.</p> <p>Chair Akita stated Commissioner Crowell brings up a real good point. We are working with the Liquor Control Commission and we took it for granted. We can include in the definition section. Will that suffice?</p> <p>Commissioner Matsunaga suggested that it be defined as the Liquor Control Commission.</p> <p>Chair Akita stated that she was in agreement. That way we don't have to put in Liquor Control Commission.</p> <p>Director Rapozo stated proposed changes to Rule 5.1 (c). Page 20 Terms of licenses and permits. Applications approved prior to January 1, 2020 will be exempt from this rule.</p> <p>Chair Akita asked if there were any questions. There being none, she stated. How many do we have grandfathered in.</p>	

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	<p>Director Rapozo stated that there are two in which will be affected. Application was approved prior to the date.</p> <p>Director Rapozo stated proposed changes to Rule 7.1. Page 21. Number of drinks per person and liquor content of drinks, exception. Remove (a) {The stacking of liquor for consumption by patrons is prohibited. For the purpose of this rule, the word “stacking” is defined as more than two standard servings to a customer at one time. The rules shall not apply to authorize showroom facilities as defined in rule 1, which may serve the minimum drinks at the same time to lessen disturbance to the show.</p> <p>A standard serving shall be a drink containing distilled spirits and mixes not to exceed 10 ounces; five ounces; of wine or twelve ounces of beer. A drink in excess of a standard serving shall be limited to one drink per person at one time. }</p> <p>Director Rapozo stated that there was a lot of confusion with the stacking rule and the two standard servings. After meeting with the Representatives from the Licensees they are in support. Licensees would need to concentrate on the over service. The industry supports the rule change.</p> <p>Chair Akita asked if there were any questions, there were none.</p> <p>Director Rapozo stated proposed changes to Rule 7.2. Sanitary Conditions. Page 22 (b) Remove: {State Department of Health} and add Department of Public Works-Building Division.</p> <p>Director Rapozo stated that the State Department of Health is no longer regulating restrooms in restaurants and bars. Applicant would need to check with the Department of Public works for the requirements of the restrooms.</p> <p>Chair Akita asked if there were any questions, there were none.</p>	

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	<p>Director Rapozo stated proposed changes to Rule 7.4. Condition of premises. Page 22 (f) Remove Paragraph (d and e) above to the contrary notwithstanding, the Commission may waive this requirement for good cause. A request for a waiver shall be in writing and specifically state why an exception to this rule is justified.</p> <p>Chair Akita asked if there were any questions.</p> <p>Commissioner Nishimura asked for clarification in Rule 7.4 that there is no waiver for any cause, by deletion of this rule. Is there any means for the licensee to seek remedial action?</p> <p>Director Rapozo responded that they will not be able to waiver.</p> <p>Commissioner Crowell requested clarification on Rule 7.1 pitcher of beer or distilled drinks why did that happen.</p> <p>Director Rapozo stated that industry was unable to get 48 ounce pitchers, the industry standard is 64 ounces.</p> <p>Chair Akita asked if there were any questions, there were none.</p> <p>Director Rapozo stated proposed changes to Rule 7.8 Manager on duty, qualifications. Page 24 (a) Remove: {and who is duly registered by the licensee as a manager and approved by the Commission.} (b) [in the English language]. Add: and must be in the employee's [possession or be readily available on the premises for inspection at all times, while on duty. Remove: [Any blue card issued prior to April 15, 1983 shall remain valid until the holder, on or after April 15, 1983, changes his place of employment and is registered as a manager by the licensee of his new place of employment.]</p>	

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	<p>Director Rapozo stated that they are removing the requirements for Manager on Duty. Their Red or Blue card needs to be on premises. Removing “must” and add “shall” was recommended by Commissioner Matsunaga. Managers are to keep their cards with them while working.</p> <p>Chair Akita asked if there were any questions, there were none.</p> <p>Director Rapozo stated proposed changes to Rule 7.9. Page 24 (b) Remove: {A person does not qualify as a manager unless he is registered as a manager by the licensee}. Page 25 (d) Remove.</p> <p>Director Rapozo stated that they will not need to submit a list as required in the past. We were the only island in which required that list. Recommend that their card holders are current.</p> <p>Chair Akita asked if there were any questions, there were none.</p> <p>Director Rapozo stated proposed changes to Rule 7.13 Page 25. Fight and disturbance reports. An on premises licensee shall report all fights and disturbances, on the form provided or approved by the department that occurs in [his} <u>their</u> licensed premises. This report shall be typewritten and submitted to the department within seven days from the time of the incident. Hand written reports will not be accepted.</p> <p>Chair Akita asked if there were any questions, there were none.</p> <p>Director Rapozo stated proposed changes to Rule 10.2. Page 29 Manager on duty, qualifications. (a) Remove: [and who is duly registered by the licensee as a manager and approved by the commission] (b) Remove [in the English language] Add: and must be in the employee’s possession or be readily available on the premises for inspection at all times, while on duty.</p>	

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	<p>Chair Akita asked if there were any questions.</p> <p>Commissioner Matsunaga requested to remove “must” and add “shall be in the employee’s possession”. It would be consistent that which is in the other sections.</p> <p>Director Rapozo noted the change.</p> <p>Chair Akita asked if there were any questions or concerns, there were none.</p> <p>Director Rapozo stated proposed changes to Rule 10.3. Page 29 Manager registration (a) Remove: A person does not qualify as a manager unless the licensee registers the individual as a manager. (b) Remove: Every off premises licensee shall submit a typewritten list of all its managers to the department no later than July 31, of each year on the forms provided by the department.</p> <p>Chair Akita asked if there were any questions.</p> <p>Commissioner Matsunaga requested to go back to Rule 3.11 page 15 the last paragraph to be reworded. “The waiver of rights to a violation hearing shall not apply when the licensee has committed more than two violations of the Commission’s rules and regulations within the previous twelve months”.</p> <p>Commissioner Gibson asked for clarification, does this mean any violations or specifically the same violation.</p> <p>Commissioner Matsunaga stated the original language does not state that, it can be two separate or as long as the licensee has two priors.</p> <p>Director Rapozo stated the two priors would waive Rule 3.11 (1-9) those would be the violations that the licensee would be able to waive. The current rule may not waive its right to a hearing and would be required to appear before the Commission.</p>	

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	<p>Chair Akita asked if everyone is all together. Commissioners responded yes. Commissioner Matsunaga stated that the wording be no more than two violations in Rule 3.11 (1-9).</p> <p>Chair Akita asked if there were any comments or discussion.</p> <p>Director Rapozo asked Mr. Jenson would the Commission be able to approve the changes today. Or placed as an agenda item to be approved at the next meeting.</p> <p>Mr. Jenson responded under Administrative Rule procedure, HRS the Commission may approve the proposed changes today or if the Commission chooses to set out for a future date to take under advisement provisions then promulgate the final rules at a later date. Discretion is of the Commission to do either.</p> <p>Chair Akita asked if the Commission is ready to make a decision, Commission is in agreement and Mr. Jenson requested a roll call vote.</p> <p>Commissioner Crowell asked for clarification of acting or approving the rules.</p> <p>Chair Akita responded to approve the amendment of the rules.</p>	<p>Mrs. Kusaka moved to approve the Proposed Amendments to the Rules and Regulations of the Liquor Control Commission for the County of Kauai. Mr. Pacheco seconded the motion. Motion carried 7:0.</p>
<p>2.</p>	<p><u>DIRECTOR'S REPORTS:</u></p> <p>a) <u>INVESTIGATORS' REPORTS:</u></p> <p>b) <u>INCOMING COMMUNICATIONS:</u></p> <p>1) <u>Disturbance Report from Hilton Garden Inn Kauai Wailua Bay</u></p> <p>c) <u>INFORMATIONAL MATTERS</u></p>	<p>Mr. Gibson moved to approve Items 2 (a) through (c). Mr. Pacheco seconded the motion. Motion carried 7:0.</p>

SUBJECT	DISCUSSION	ACTION
3.	<p><u>CHANGE IN CORPORATE OFFICERS:</u></p> <p>a) <u>ALOHA PETROLEUM, LTD.: Removal of Robert Wai Fung as Primary Decision Maker; addition of Timothy Stephen Lum as Primary Decision Maker.</u></p> <p>b) <u>FOODLAND SUPER MARKETS, LTD.: Appointment of Patrick Joseph Sullivan as Director.</u></p>	<p>Mr. Pacheco moved to approve the change in Corporate Officers. Mr. Gibson seconded the motion. Motion carried 7:0</p>
4.	<p><u>TRANSFER OF LIQUOR INVENTORY:</u></p> <p><u>HOKUALA GOLF CLUB: Transfer of liquor Inventory from Timbers Kauai Golf LLC dba Hokuala Golf Club to Tower Lagoons 9B LLC, not for resale.</u></p>	<p>Mr. Gibson moved to approve Transfer of Liquor Inventory for Timbers Golf LLC dba Hokuala Golf Club to Tower Lagoons 9B LLC. Mr. Matsunaga seconded the motion. Motion carried 7:0.</p>
Executive Session	<p><u>EXECUTIVE SESSION:</u> Pursuant to Haw. Rev. Stat. ("H.R.S.") §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).</p>	<p>Mr. Matsunaga moved to enter into Executive Session. Mr. Gibson seconded the motion. Motion carried 7:0.</p>
5.	<p><u>DISCUSSION AND POSSIBLE DECISION-MAKING ON NAMING AN ACTING DIRECTOR OF LIQUOR CONTROL EFFECTIVE JULY 1, 2020.</u></p> <p>Chair Akita asked Ellen Ching if she had any comments.</p> <p>Ms. Ching responded the Commission makes the decision for an Acting Director of Liquor</p>	

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	<p>Control. It is the primary responsibility of the Commission to make sure that there is leadership and continuity within the Department. She urges the Commission to make a decision as soon as possible.</p> <p>Chair Akita asked Mr. Jenson should the Commission go into Executive Session.</p> <p>Mr. Jenson responded where you are considering hiring of an employee you may go into Executive Session.</p> <p>Chair Akita asked the Commission about going into Executive Session.</p> <p>Vice Chair Kusaka stated we have a Commission directive to see what could be done to meet with the Mayor. She requested to go into Executive Session to discuss as we were not able to fulfill that duty and need to report to the Commission of the outcome. She requested to discuss the process with the Commission as they have a right to know.</p> <p>Commissioner Matsunaga requested to go into Executive Session so Vice Chair Kusaka would be able to brief us with her meeting with the Mayor.</p>	<p>Upon returning to regular session, Mr. Matsunaga moved to approve the appointment of Cecil Baliaris as Acting Director of Liquor. Mr. Pacheco seconded the motion. Motion carried 7:0.</p>
<p>Return to Open Session</p>		<p>Returned to Open Session @ 12:24 p.m.</p>
<p>Announcements</p>	<p>Next Scheduled Meeting: Thursday, June 18, 2020 - 10:00 am, Microsoft Teams</p>	

SUBJECT	DISCUSSION	ACTION
Adjournment		Chair Akita adjourned meeting at 12:40 p.m.

Submitted by: _____
Malialani TM Kelekoma, Liquor Clerical Assistant

Reviewed and Approved by: _____
Shirley Akita, Chair

() Approved as circulated.

(X) Approved with amendments. See minutes of 8/20/2020 meeting.