

APPROVED

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved with amendments see minutes of 6/3/21.

Board/Commission:	LIQUOR CONTROL COMMISSION	Meeting Date	March 4, 2021
Location	Tele Conference via Microsoft Teams Audio +1 469-848-0234, Conference ID: 883 523 854#	Start of Meeting: 10:01 a.m.	End of Meeting: 11:43 a.m.
Tele Present	Chair William Gibson, Vice Chair Dee Crowell Members: Shirley Akita, Leland Kahawai, Gerald Matsunaga, Randall Nishimura, Gary Pacheco Also: Liquor Control Staff: Acting Director Cecilio Baliaris Jr., Liquor Clerical Assistant Malialani TM Kelekoma; Ellen Ching Administrator Boards & Commission, Deputy County Attorney Charles Foster		
Excused			
Absent			
SUBJECT	DISCUSSION	ACTION	
Call To Order		Chair Gibson called meeting to order @ 10:01 a.m.	
Roll Call	Acting Director Cecil Baliaris Jr. called roll, noting 7 members were present constituting a quorum.		
Announcements	Next Scheduled Meeting: Meeting Thursday, March 18, 2021 – 10:00 a.m. via Tele-Conference	Mr. Kahawai moved to accept the announcements. Mr. Pacheco seconded the motion. Motion carried 6:0.	
Approval of Agenda		Mr. Pacheco moved to approve the Agenda. Mr. Matsunaga seconded the motion. Motion carried 6:0.	

SUBJECT	DISCUSSION	ACTION
1.	<p><u>PUBLIC HEARING</u></p> <p><u>KBR MANAGER, LLC dba KAUAI BEACH RESORT:</u> Application No. 2021-015 was filed on January 6, 2021 by KBR Manager, LLC dba Kauai Beach Resort for a transfer of Hotel License No. 12G-003 from TEAM FILAMENT, LLC to KBR Manager, LLC dba Kauai Beach Resort located at 4331 Kauai Beach Drive, Hanamaulu, Kauai, Hawaii. The Commission accepted Application No. 2021-015 for publication and public hearing on February 4, 2021 and ordered to print notices of public hearing in the Garden Island on February 10 scheduling the public Hearing on March 4, 2021 at 10:00 a.m. or shortly thereafter via-Tele-Conference.</p> <p>Acting Director Cecil Baliaris Jr. stated all legal requirements for today's Public Hearing have been met. Since the date of the publication and up until the time of the Public Hearing, the Department has not received any letters in support or in opposition of this application.</p> <p>Craig Nakamura, Attorney was present to represent the applicant.</p> <p>Chair Gibson advised Mr. Nakamura to hold on, he then proceeded to open the Public Hearing Application No. 2021-015. Is there a Department's report on this application?</p> <p>Acting Director Cecil Baliaris Jr. asked Investigator Herman to reply.</p> <p>Investigator Herman responded the report is what Acting Director Cecil Baliaris Jr. just read.</p> <p>Chair Gibson thanked Investigator Herman, and asked who is representing the applicant.</p> <p>Craig Nakamura, Attorney and Robert Menicola, General Manager of the Kauai Beach Resort was present to represent the applicant.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Gibson asked did you receive a copy of the Investigators Report and do you have any questions.</p> <p>Mr. Nakamura replied yes and we have reviewed and have no changes.</p> <p>Chair Gibson asked is there anyone here who wishes to object to this application, is there anyone here who wishes to speak on behalf of this application.</p> <p>Mr. Menicola, General Manager commented wanted to thank the Commission and everyone for their hard work in helping us in moving forward with their permanent License and the assistance with the temporary License. We are excited about the Mayor’s Plan to re-open most of Kauai on April 5, pending the Governor’s approval. Just wanted to express his appreciation.</p> <p>Chair Gibson thanked Mr. Menicola and asked the Commissioners are there any questions. Hearing none, the Public Hearing for Application No. 2021-015 is now closed.</p>	<p>Mr. Matsunaga moved that Application No. 2021-015 for transfer of Liquor License be approved. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
<p>2.</p>	<p><u>DIRECTOR’S REPORTS:</u></p> <p>a) <u>INVESTIGATORS’ REPORTS:</u></p> <p>b) <u>ACTIONS OF THE DIRECTOR:</u></p> <p>c) <u>INFORMATIONAL MATTERS:</u></p>	<p>Mr. Pacheco moved to accept the Director’s Reports a through c. Mr. Kahawai seconded the motion. Motion carried 6:0.</p>

SUBJECT	DISCUSSION	ACTION
<p>3.</p>	<p><u>REQUEST FOR DRIVE-IN LIQUOR SALES, NOTWITHSTANDING LIQUOR CONTROL COMMISSION RULE 10.1 (C).</u></p> <p><u>SAFEWAY, INC. SAFEWAY STORES, NO. 2894 (Lic #4G-011) and Kapa'a Safeway Store #1209 (Lic #4G-051) are requesting a waiver of Rule 10.1 (c) to aide in their sales and social distancing during the Covid-19 pandemic.</u></p> <p>Mr. Robert Ichikawa, Counsel and Ms. Lisa Merrit, Store Manager for the Lihue Store were present to represent Safeway Stores.</p> <p>Chair Gibson stated you are requesting for the Safeway Stores Kapaa and Lihue stores requesting a waiver of Rule 10.1 (c) to aide in their sales and social distancing during the Covid-19 pandemic.</p> <p>Mr. Ichikawa commented wanted to give a brief background on the materials they provided. Safeway has been responding to Community demand and concerns, by having drive-up and go services, curbside pick-up. In response to that Safeway Stores and Albertsons Stores on the mainland put together a strict compliance and standards of procedure that all the stores will follow. They have developed one specifically for Hawaii and have included the standard operating procedures as well in the materials. A little bit of background we proceeded to make this request to the County of Hawaii work with their Department, as well as with Investigator Herman to get their input. We addressed any types of concerns for this process, in doing so we developed a procedure to identify and to complete the transaction in a safe manner. Included in your packet is a letter from the County they are pleased with the Safeway Store in Hilo with their compliance, in doing a compliance check. Based on our request on the Big Island (Hawaii Island) it has been approved and have been operating there and we are now requesting the opportunity to do so in the County of Kauai.</p> <p>Chair Gibson asked Mr. Ichikawa did they set any limit on the time for this waiver.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Ichikawa responded they approved it to December 31, 2021, just to have a date. I'll definitely confirm that again, there was a date that was set and they could terminate it at any time based on their discretion. Basically as the community demands are still there, they would allow us to operate for a drive-up and go.</p> <p>Chair Gibson thanked Mr. Ishikawa and asked the Commission are there any questions.</p> <p>Commissioner Matsunaga asked Mr. Ishikawa you have an approval from the Big Island, have you tried obtaining an approval from the City and County of Honolulu as well as Maui County?</p> <p>Mr. Ichikawa replied we have submitted a request to Maui County, I need to follow up as he did not hear back. The Director of Liquor Layne Silva said to send it, they would consider it, so that's what we did there. The City and County of Honolulu has said that as long as the Pandemic is going on they will allow it, with no formal approval. We have operated based on their guidance.</p> <p>Commissioner Matsunaga asked are you working out an agreement with the City and County of Honolulu on an amendment for a waiver.</p> <p>Mr. Ichikawa replied, I have not personally been working on it with Anna, but I am aware of an amendment that they are going to be considering. I can follow up and work with her on some of the comments that they have been receiving. She is aware of what we have been doing in the County of Hawaii and I will update her about the County of Kauai, if we are able to do so.</p> <p>Chair Gibson asked Commissioner are there any further questions.</p> <p>Mrs. Akita commented she noticed in our Department's Report, it says Mr. Ishikawa and</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Investigator Herman agreed that the waiver will be only for the period that the Governor's Emergency Orders are in place. Is that correct Mr. Ichikawa?</p> <p>Mr. Ichikawa replied, yes I guess to the extent there is an Emergency Orders of Pandemic that was kind of my understanding. We would be flexible as far as what the Commission is comfortable with, I told Mr. Herman, whichever works for the Commission, again having the date would be helpful so that everyone will know what that date would be. It could be extended if the Executive Orders is still going or also would be terminated. I think as we go, it's somewhat new under this COVID situation, if the procedures are working and the Committee supports it and I believe the Commission also can consider. What they want to do in the future. Again we are open to whatever the Commission is comfortable with.</p> <p>Commissioner Akita thanked Mr. Ishikawa.</p> <p>Chair Gibson asked are there any further questions.</p> <p>Commissioner Matsunaga asked Mr. Ichikawa Honolulu is now in Tier 3, should they move to Tier 4 would the waiver be necessary.</p> <p>Mr. Ichikawa replied not too sure what the Commission would do base on the Tier System I would check with Anna Hirai see what their position will be. In our discussion the Tier System was never really discussed as far as the measure. I'm not sure what the steps would be, good question.</p> <p>Chair Gibson asked are there any further questions.</p> <p>Commissioner Matsunaga asked Mr. Ichikawa, on your agreement with the County of Hawaii you set a date of December 31, 2021.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Ichikawa replied, it was a date that I put out there, so everyone could have a date that could be remembered. Again if it's terminated sooner on whatever the Commission decides or the Department recommends, we understand that it is in your discretion and will abide by whatever end date will be.</p> <p>Commissioner Matsunaga asked, what is the language that is contained in your agreement with the County of Hawaii?</p> <p>Mr. Ichikawa replied there is an approval letter in which we received, apologized he does not have the letter with him now. He will forward the letter to the Department, basically they would allow, there was a December 31, 2021 date or it was just open ended and they were going to allow it as far as they felt comfortable allowing it. He will have to double check that.</p> <p>Commissioner Matsunaga stated he wanted to know what the language was in the agreement that you have with the Island.</p> <p>Mr. Ichikawa replied it wasn't a formal agreement that was entered into, it was the Commission approving the ability for us to sell by, drive-up and go. It was an approval by the Commission, not too sure if it was open ended or was December 31, 2021.</p> <p>Commissioner Matsunaga replied what I am trying to get from you, I would like to know what date we can set as a termination date for the waiver.</p> <p>Mr. Ichikawa replied what is acceptable to us, whatever you are comfortable with, at the end of the year but can be terminated before then. We are comfortable with that, or June 30, 2021 then we come in for an extension of that we could do that as well. Because it is so different from what is normally done because of the Pandemic, we are open to what the Commission is comfortable with.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Matsunaga replied you would be comfortable with a month-to-month waiver.</p> <p>Mr. Ichikawa replied that would be hard to plan ahead, but we could do that, if we have to come before the Commission every month to extend it we could do that as well. Based on everything that is set forth and the history that Safeway has been very good in compliance, I was hoping we could have it for a certain period of time. Again, always terminable by the discretion of the Commission.</p> <p>Chair Gibson asked are there any further questions.</p> <p>Mr. Foster asked Mr. Ichikawa, do you have any analysis of the legal authority for the Commission to waive the rule without amendment or without any action on any part of the Mayor.</p> <p>Mr. Ichikawa replied, I have not I have relied on the Department and their interpretation.</p> <p>Mr. Foster thanked Mr. Ichikawa.</p> <p>Chair Gibson asked are there any other questions or comments.</p> <p>Investigator Herman mentioned to Commissioner Matsunaga, the other waivers that has been done, like extensions of premises have been three month increments. That is at your discretion.</p> <p>Mr. Ichikawa commented would like to add if the Department and Investigator Herman is comfortable with the waiver being effective until the Executive Orders are terminated. We are fine with that as well. It doesn't have to be a day, in can be an event.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Lisa Merrit Store Manager at the Lihue Safeway asked to elaborate on the service itself, so you are aware of the whole process is.</p> <p>Chair Gibson replied yes.</p> <p>Ms. Merrit stated it is an online ordering service, customer goes on-line they place their order. They have a time frame that they are allowed for us to pick the order. They put their credit card on-line. Once there order has been completed their credit card is charged. They come up to the store and there is designated parking stalls, they call from the parking stall and we take their groceries out to them. Currently there are four people who are computer trained. We are not putting anyone in the department, they have to know what to look for as far as refunds or substitutions or out of stock.</p> <p>If this is approved we will have a shield too take out with us to protect us from the customer and their cars to ask for their ID. It has been working out great, we have between 8-25 orders a day. It comes periodically throughout the day, we have to keep checking, everyone is loving the service. Families with small children are taking advantage of the service, they do not have to bring their family in the store. Or working people who work all day they give us their order, they just swing by to pick up their order and go home. Hopefully you consider it, this is a great service we have for our community especially during this time.</p> <p>Chair Gibson thanked Ms. Merrit.</p> <p>Mr. Ichikawa advised that is grocery only for pick-up at this time. Would like to add one other thing, this is similar to a third party delivery, just they are delivering to curb-side. Third party deliveries are already acceptable in the County of Kauai.</p> <p>Investigator Herman asked are you requiring the person who's making the order at the time of the order to be the same person picking up the items.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Merrit replied no, not necessarily.</p> <p>Mr. Ichikawa commented to Investigator Herman, let me clarify, for groceries it may be different as what they may be doing, for liquor it will be.</p> <p>Investigator Herman replied we are insuring the person making the purchase is 21 is the same person picking up the items.</p> <p>Mr. Ichikawa replied correct.</p> <p>Investigator Herman the 2nd follow up on that are the people that are trained, are they also trained in identifying signs of intoxication of somebody sitting in the car.</p> <p>Ms. Merrit replied yes.</p> <p>Mr. Ichikawa replied yes, the training will be similar as making a point of sale in the store.</p> <p>Investigator Herman thanked Mr. Ichikawa.</p> <p>Chair Gibson asked Mr. Foster is there a question in your mind, when you asked about whether this would require the Mayor's approval.</p> <p>Mr. Foster replied yes, I would like to follow up with Mr. Ichikawa. Without getting the powers and duties, etc. right now. My question is to the other counties are you aware of their legal authority they have relied on too waive or choose not to enforce.</p> <p>Mr. Ichikawa replied they have relied on their rules, like any other waiver of the rule they follow the same procedure.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Foster asked are you aware of what waiver rules they have, that they have been following.</p> <p>Mr. Ichikawa replied off the top I would not be able to cite it. I will be able to find it for you.</p> <p>Mr. Foster asked have you looked at the Kauai Rules of the Commission.</p> <p>Mr. Ichikawa replied his correspondence with you and Mr. Herman was basically what I relied on. If there is a need to, I can do that as well. Again my understanding was a rule can be waived or amended. The same procedure would follow for this request.</p> <p>Mr. Foster replied so your understanding is the amendment of a rule, a rule would need to be followed for this request.</p> <p>Mr. Ichikawa replied no this is a waiver, I was just grouping it together. When a rule is changed or amended each county has their procedures and rules. We are just asking to waive that rule, so it's a waiver request. We would follow the procedures that the County of Kauai and Liquor Commission follows.</p> <p>Mr. Foster have you looked at the Kauai rules and is there a waiver.</p> <p>Mr. Ichikawa replied no I have relied on my discussion and County's do a lot for waivers. So I did not go into the legal analysis, I do apologize and I can do that, if that is something I need to do. The waiver procedure that Kauai has.</p> <p>Mr. Foster commented to Chair Gibson that is all the questions that he has, and if the Commission wants to discuss in Executive Session. I will be happy to do that, or if the Commission is comfortable with moving ahead, that is fine as well.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Gibson asked is this within our authority and what the Commission feels.</p> <p>Commissioner Akita replied did we not give a waiver to restaurants that were serving alcohol and allowing pick-up at one point?</p> <p>Mr. Foster addressed the Commission yes that was under the authority of the Governor's 18th proclamation it was originally in an earlier proclamation and was carried through the 18th proclamation. Suspension of laws, Chapter 281 to the extent as follows: 281-31 licenses classes to enable the County Liquor Commission to allow licensees to sell unopen beer, unopened wine or unopened pre-packaged cock-tails with food for pick-up delivery or take-out or other means to be consumed off-premises. Enable counties Liquor Commissions to waive or postponed any deadlines or administrative procedures. It also says, provided that Liquor Licensee's to comply at all times all State and County laws not specifically suspended herein. So in that case the Governor specifically authorized the Counties to allow for unopened beer and wine from restaurants. What I was hoping to hear from the applicant similar to this, I would feel more comfortable with.</p> <p>Mr. Ichikawa thanked Mr. Foster and will try and pull up something that references the Governor's Executive Orders.</p> <p>Commissioner Akita recalled we did not go to the Mayor for authorization and provided that waiver, so when this came I connected with the waiver we already provided for the restaurants. It will be unopened bottles and so forth. I just wanted to clarify on how had we done it at that time, I don't remember all of this discussion in place.</p> <p>Chair Gibson asked Mr. Foster do you think that the Governor's waiver would also pave the way Commission to approve this request.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Foster replied it cites 281-31 it does not limit which class of licenses it is talking about, so it's saying Liquor Commissions can allow licensees to sell un-opened beer, un-opened wine or un-opened pre-packaged cocktails with food or pick-up delivery take-out or other means to be consumed off-premises and to enable County Liquor Commissions to waive, suspend or post-pone any deadlines or administrative procedures. Reading that literally It could encompass a grocery store allowing alcohol pick-up with food orders. The spirit was clearly for restaurants, it seems to have room for something like this.</p> <p>Vice Chair Crowell commented you are forcing them to buy a bag of chips with their beer.</p> <p style="text-align: center;"><i>Commissioner Nishimura entered meeting @ 10:38 a.m.</i></p> <p>Mr. Foster commented to be in compliance, I think so.</p> <p>Mr. Ichikawa replied we would be in favor of that.</p> <p>Chair Gibson asked the Commission are you willing to grant a waiver.</p> <p>Investigator Herman reminded the Commission there are two stores.</p> <p>Mr. Ichikawa commented that these procedures are in the packet that has been provided.</p> <p>Vice Chair Crowell requested to amend the motion.</p> <p>Mr. Foster commented are you interested in the food requirement or not.</p> <p>Chair Gibson asked Mr. Ichikawa is food required as a requirement.</p>	<p><u>Motion #1</u> Mrs. Akita moved to approve the request for waiver for Safeway Stores Lic 4G-051 and Lic # 4G-011 will be for the period that the Governor's orders are in place. Mr. Matsunaga seconded the motion. Motion carried 7:0.</p> <p><u>Amendment to the Motion</u> Mr. Crowell moved to amend the motion to include the purchasing the liquor be the person picking up the liquor. Mr. Nishimura seconded the motion.</p> <p><i>Vice Chair Crowell withdrew his first amendment and Commissioner Nishimura his second to the first amendment.</i></p>

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Akita commented we do not need to add standard operating procedures at this point. She is speaking against the amendment.</p> <p>Commissioner Nishimura commented I think this is important to address this matter, the person ordering and the person picking up are indeed the same party.</p> <p>Chair Gibson we are talking about the Standard Operating Procedures that was submitted to the Commission.</p> <p>Vice Chair Crowell replied, other than their saying its Standard Operating Procedures, there is no requirement by us to do that.</p> <p>Chair Gibson asked any further discussion.</p> <p>Commissioner Akita replied, I can go with that, but I don't see to check, the Standard Operating Procedures, you wouldn't sell it to an intoxicated person or anyone that is high on anything or the age limit and all those things. Maybe you should make your amendment more specific to what you originally said.</p> <p><i>Vice Chair Crowell withdrew his first amendment and Commissioner Nishimura withdrew his second to the first amendment.</i></p> <p>Vice Chair Crowell commented his reasons for the amendment, to set the bar for other establishments that will be coming in for this kind of stuff? That they realize there are more things then just brining the bags out to the car.</p> <p>Chair Gibson thanked Safeway and this is effective immediately.</p>	<p><u>2nd Amendment to the Motion</u></p> <p>Mr. Crowell moved to amend the motion to include as conditions all of their representations in their letter of February 12, 2021. Mr. Nishimura seconded the motion. Motion carried 7:0.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Investigator Herman would like to clarify are they allowed to buy groceries.</p> <p>Mr. Foster replied yes.</p>	
	<p><u>EXECUTIVE SESSION:</u> Pursuant to Haw. Rev. Stat. ("H.R.S.") §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the deliberation and decision-making by the Commission relating to the recommendations as presented by the Permitted Interaction Group on the hiring of a new Director of Liquor Control and other related items, and to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities as they may relate to this agenda item.</p>	<p>Mr. Pacheco moved to go into Executive Session. Mr. Kahawai seconded the motion. Motion carried 7:0.</p>
<p>4.</p>	<p><u>DIRECTOR OF LIQUOR CONTROL INTERVIEWS:</u> Amendment of the approval of the number of interviews to be conducted for the Liquor Control Director Position.</p>	
<p>5.</p>	<p><u>PRESENTATION ON THE RECOMMENDATIONS FROM THE PIG (PERMITTED INTERACTION GROUP) ON THE SCORING IN THE INTERVIEW PROCESS</u></p>	
<p>6.</p>	<p><u>UPDATE, DISCUSSION AND POSSIBLE DECISION-MAKING ON MATTERS RELATED TO THE HIRING OF THE DIRECTOR OR LIQUOR CONTROL</u></p>	
	<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>	

SUBJECT	DISCUSSION	ACTION
	<p><u>RETURN TO OPEN SESSION</u></p> <p>Returned to Open Session @ 11: 41 p.m.</p>	
	<p><u>ROLL CALL FOR THE RETURN TO OPEN SESSION</u></p> <p>Ms. Ching called roll noting 7 members were present.</p>	
	<p><u>RATIFY THE ACTIONS TAKEN IN EXECUTIVE SESSION</u></p>	<p>Mr. Nishimura moved to ratify the actions taken in Executive Session. Mr. Matsunaga seconded the motion. Motion carried 7:0.</p>
<p>Adjournment</p>	<p>With no further business to conduct, Chair Gibson called for a motion and a second to adjourn the meeting.</p>	<p>Mr. Nishimura moved to adjourn the Meeting. Mr. Pacheco seconded the motion. Motion Carried 7:0</p> <p>At 11:43 a.m. the meeting was adjourned.</p>

Submitted by: _____
 Malialani TM Kelekoma, Liquor Clerical Assistant

Reviewed and Approved by: _____
 William Gibson, Chair

- () Approved as circulated.
- (X) Approved with amendments. See minutes of 6/3/21 meeting.