

Draft to be Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

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| Board/Commission: | LIQUOR CONTROL COMMISSION | Meeting Date | May 20, 2021 |
| Location | Tele Conference via Microsoft Teams Audio +1 469-848-0234, Conference ID: 710 633 675# | Start of Meeting: 10:03 a.m. | End of Meeting:11:51 a.m. |
| Tele Present | Chair William Gibson, Vice Chair Dee Crowell Members: Leland Kahawai, Randall Nishimura, Lorna Nishimitsu, Gary Pacheco Also: Liquor Control Staff: Acting Director Cecil Baliaris Jr., Liquor Clerical Assistant Malialani TM Kelekoma; Ellen Ching Administrator Boards & Commission, Deputy County Attorney Charles Foster | | |
| Excused | | | |
| Absent | | | |
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| SUBJECT | DISCUSSION | ACTION | |
| Call To Order | | Chair Gibson called meeting to order 10:03 a.m. | |
| Roll Call | Acting Director Cecil Baliaris Jr., called roll, noting 6 members were present constituting a quorum. | | |
| Announcements | Next Scheduled Meeting: Thursday, June 3, 2021 – 10:00 a.m. via Tele-Conference. | | |
| Approval of Agenda | | Mr. Pacheco moved to approve the agenda. Mr. Nishimura seconded the motion. Motion carried 6:0. | |
| Approval of Minutes | a. <u>Special Session Minutes of February 11, 2021</u> b. <u>Special Session Minutes of February 18, 2021</u> c. <u>Special Session Minutes of February 20,2021</u> d. <u>Open Session Minutes of March 4, 2021 - Deferred to June 3,2021</u> e. <u>Open Session Minutes of March 18, 2021</u> | <u>Motion #1</u> Mr. Kahawai moved to approve minutes from a through h. Mr. Pacheco seconded the motion. | |

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| | <p>f. <u>Open Session Minutes of March 26, 2021</u></p> <p>g. <u>Open Session Minutes of April 1, 2021</u></p> <p>h. <u>Open Session Minutes of April 15, 2021 – Deferred to June 3, 2021</u></p> <p>Commissioner Nishimura requested to defer Open Session Minutes of March 4, 2021 and April 15, 2021.</p> <p>Commissioner Nishimitsu requested since she was not a Commissioner during any of those meetings. She will recuse herself from voting from that motion.</p> | <p>Mr. Kahawai rescinded his motion and Mr. Pacheco rescinded his second.</p> <p><u>Motion #2</u> Mr. Kahawai moved to defer minutes of March 4, 2021 and April 15, 2021 and to approve minutes of a, b, c, e, f, g. Mr. Pacheco seconded the motion. Motion carried 5:0.</p> |
| <p>1.</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 Royal Sonesta Kauai Resort-Dukes Canoe Club.</u></p> <p>2) <u>Disturbance Report from Nawiliwili Tavern.</u></p> <p>3) <u>Sonor Wines America, Maximilian Bachmann RE: Non-Resident Dealer Application</u></p> <p>c) <u>EMPLOYEES IN LICENSED PREMISES:</u></p> <p>Managers and Assistant Managers – See Attachment “A”</p> <p>d) <u>ACTIONS OF THE DIRECTOR:</u></p> <p>1) <u>KAUAI CHAMBER OF COMMERCE: Approval of Special Free 1-Day License No.</u></p> | <p><u>Motion#1</u> Mr. Nishimura moved to accept 1. a) Investigator’s Report 1. b) Incoming Communications 1 and 2, 1. c) Employees in Licensed Premises, 1. d) Actions of the Director d) 1. Mr. Kahawai seconded the motion. Motion carried 6:0.</p> |

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| | <p><u>2021-012 to be held at Poipu Bay Clubhouse, 2250 Ainako St., Koloa, Kauai, Hawaii on May 16, 2021 from 6:30am through 2:00pm.</u></p> <p>2) <u>PIETER VISMANS: Approval of Application No. 2021-024 which was filed on May 5, 2021 by Pieter Vismans for a Household Goods Permit in the County of Kauai.</u></p> <p>Commissioner Nishimura requested for an explanation of a Non-Residential wine dealer. There was nothing in his packet</p> <p>Acting Director Cecil Baliaris Jr. responded that was an incoming communications that was sent to the department, requesting a Non-Resident Dealer Application. They were told that there was no Non-Resident Dealer for the State. He should confer with KPD and other State Representatives, this is not part of our License Application. You have to be a resident to deal within the State of Hawaii. We told him he could not do that.</p> <p>Chair Gibson asked is that explanation included in our packet.</p> <p>Acting Director Cecil Baliaris Jr. replied no, the in-coming communications is just tells you what the communications was about, none of the other ones 1 and 2 pertains to things that happened here that was sent in by the Licensees. This was just a request to see if he could get a license or what the application process was.</p> <p>Chair Gibson asked Commissioner Nishimura does that answer your question.</p> <p>Commissioner Nishimura responded was that a formal request or just an informal off the record request.</p> <p>Acting Director Cecil Baliaris Jr. replied it was an informal request.</p> | <p><u>Motion #2</u> Mr. Nishimura moved to approve d) Actions of the Director Application No. 2021-024 by Peter Vismans for a Household Goods Permit. Mr. Pacheco seconded the motion. Motion carried 6:0.</p> <p><u>Motion #3</u> Ms. Nishimitsu moved to accept item #b) 3 Sonor Wines America, Maximilian Bachmann Re: Non-Resident Dealer Application. Mr. Pacheco seconded the motion. Motion carried 6:0.</p> |

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| | <p>Commissioner Nishimura commented I am wondering if it should be listed on the Agenda if it's an informal inquiry. Mr. Foster can you help us with that.</p> <p>Mr. Foster commented I can appoint to "must be", it does not indicate that it "must be" there. It is the body's choice what they want, that communications included or not. Does that make sense?</p> <p>Commissioner Nishimura replied yes and no, I think it's important to note as an informal inquiry and what the response was. It is on the agenda and was it responded to. If it wasn't on the agenda no big deal, I don't know what the other Commissioners feel.</p> <p>Vice Chair Crowell replied if the request was in writing it should be on the agenda and if there was a response it should be on the agenda. If it was a verbal kind of question and response then I don't think it should be on the agenda.</p> <p>Chair Gibson asked are there any other comments.</p> <p>Commissioner Kahawai asked Acting Director Cecil Baliaris Jr. just to confirm, was it a non-written request and a non-written response.</p> <p>Acting Director Cecil Baliaris Jr. replied correct.</p> <p>Commissioner Nishimitsu commented my only concern would be that if these communications are not required to be in written, the applicant might come back and say I was told by so and so that I could do something to that effect.</p> <p>There is not enough record of the type of information that was given out that there could be protection for the department.</p> | |

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| | <p>Chair Gibson asked are there any further comments.</p> <p>Vice Chair Crowell commented if it's clear in our HRS or in our Rules what section applies, I don't think we need written. If it's a gray area then we should ask for a written request, so it can be responded in writing. Otherwise what Commissioner Nishimura said is true.</p> <p>Acting Director Cecil Baliaris Jr. replied on a request we do confer with Legal Mr. Foster.</p> <p>Vice Chair Crowell commented it's for the potential licensee to understand, he should have something in writing that he can go on.</p> <p>Acting Director Cecil Baliaris Jr. replied we can do that.</p> <p>Chair Gibson replied Mr. Foster what we need is some direction on this question as far as how we should handle these request, if it's a written request we can act on it. However if it's just a phone communication then we should not include it in the agenda.</p> <p>Mr. Foster replied I agree with Vice Chair Crowell, I agreed it could be a policy to require certain written request and response and could even be emailed, if you wanted to make it a hard order to the department at this point make a motion and vote on it.</p> <p>Vice Chair Crowell replied I do not know what kind of request comes into the department besides request for clarification. I do not know where to draw the line.</p> | |

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| | <p>If it's a gray area to avoid misunderstanding by all concerned we should have stuff in writing. If it's fairly obvious with the provision in the law or rules, maybe you don't need something in writing.</p> <p>Chair Gibson asked Mr. Foster where are we with this?</p> <p>Commissioner Nishimura moved to table this matter indefinitely.</p> <p>Mr. Foster commented this started out as a discussion out of the Director's Reports, there is no motion, there is nothing to table it was discussion and we can move on from here fi that' the pleasure of the body.</p> <p>Commissioner Nishimura replied okay.</p> <p>Chair Gibson asked Commissioner Nishimura about:</p> <p>d) <u>ACTIONS OF THE DIRECTOR:</u></p> <p>2) <u>was filed on May 5, 2021 by Pieter Vismans for a Household Goods Permit in the County of Kauai.</u></p> <p>Commissioner Nishimura replied when I skimmed thru there, approximately it was over a 100 items that are listed on the application. In my mind, this is enough to spark a bar.</p> <p>Acting Director Cecil Baliaris Jr., I took the application on May 7, 2021. Mr. Vismans did come into the office and gave the application to Acting Director Cecil Baliaris Jr. I noticed there were a lot of items 3 pages, I asked how come there was so much liquor. Mr. Vismans answered it was for personal use and some he is collecting.</p> | |

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| | <p>He checked with some of the distributors and a lot of the items had to be special ordered, it is not available in the State it needs to be special ordered by a Salesman. As far as the amount he came in and spoke with Investigator Herman and he said most of the bottles are opened, they been using and drinking it was for home consumption and when he has parties. He was also reminded that when these items come in it can't be sold, it is against the law. Mr. Vismans acknowledged that fact. The reason why I approved the permit when I asked Mr. Vismans when will these items arrive he responded it's either here already or should be here shortly. That is why I did not wait for the Commission to approve this permit as it was on its way or arriving shortly. He needed the permit to take it off the shippers.</p> <p>Chair Gibson asked Acting Director Cecil Baliaris Jr. did you check the legality with anyone.</p> <p>Acting Director Cecil Baliaris Jr. replied I spoke with Mr. Foster on what he did with it. Maybe he can answer that.</p> <p>Mr. Foster replied Acting Director Cecil Baliaris Jr. did come to me after the fact and discussed, I asked him all the questions from the Statue 281-33.1 individual permits to receive shipment of liquor. I determined that it was claimed to be household personal property and that the intent of the Statue is to allow persons taking up residency in the State the free movement of their household goods into the State. This is a detail that Acting Director Cecil Baliaris Jr. left out, as I recall there is also a claim by the applicant that he is indeed moving here and moving all his household goods that is included in the household goods. It sounds to me if all the facts are believed, that this is proper it does not violate the rules or the statue.</p> | |

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| | <p>It is the Commissions call to in discussing with the applicant they make the determination whether to believe the applicant or not and to make that final call. Acting Director Cecil Baliaris Jr. does have the authority under 2.16 to act when timeliness is of the essence and it can't be put on an agenda. So nothing here is a violation, is my opinion.</p> <p>Chair Gibson asked Commissioner Nishimura does that answer your question.</p> <p>Commissioner Nishimura replied yes, the only concern that I have was whether they kept under the 5 gallon maximum.</p> <p>Mr. Foster responded that applies so that the way sub-section 33.1 of 281 (a) Notwithstanding any other provisions of law, any unlicensed adult person may apply to the liquor commission and be issued, for a nominal fee, except as hereinafter provided, a permit to receive a single shipment of liquor from outside the State, not to exceed five gallons, (19 liters), for use and consumption by the applicant and the applicant's household and not for sale in any form. (c) In the case of a shipment in respect of which the applicant shows to the liquor commission that the liquor was prior to the date of the application the personal property of the applicant, formed a part of the applicant's household goods, was used and stored outside the State, and was originally acquired (or made by the applicant) outside the State, the quantity of wine, or other liquor capable of aging and originating from grapes or other fruit, which shall be permitted to be received under subsection (a) may exceed the limit there stated if the commission finds that it is reasonable to do so consistent with the intent of this statute to allow persons taking up residency in the State the free movement of their household goods into this State. So in other words if the 5 gallon limit does not apply provided that it is reasonable. A truckload of alcohol is not going to be reasonably to be someone's household goods.</p> | |

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| | <p>So your question is can these three pages of alcohol can this reasonably be considered someone's personal goods. This person my understanding is claiming to be a connoisseur, collector someone who enjoys various whiskeys with friends. So again the reasonable of that is your call.</p> <p>Commissioner Nishimura replied the big thing that he is concerned about we are not setting any kind precedent for allowing large quantities to be brought in without any oversight from the Department.</p> <p>Mr. Foster replied that can be addressed the one element of this whole case is the Directors actions rather than forcing this to be before the Commission. The Director arguably has the authority to do that. This body could require that under this Statue, personal property statue that such questions have to come before the body and cannot be handled by the Director. I would want to look whether or not that would require a rule change or a mere interpretation of the rule. The rule says in the event any licensees or persons a written application for a permit and the application cannot be brought before the Commission at a regular meeting or prior to the date of event or function the Director may approve the application. So the phrase "event" or "function" makes me think the intent of the rule is to apply to special permits. Arguably might not apply to a personal property permit as there is no event or function. I think the body can interpret that as such by motion here instruct the Director that personal property permits do not fall under his authority. Or we could readdress this at a later time and provide a more thorough legal analysis.</p> <p>Commissioner Nishimura replied I would prefer the latter.</p> <p>Chair Gibson asked Mr. Foster do we need to revoke that permit that was already executed.</p> | |

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| | <p>Mr. Foster replied no, going forward the question was we don't want to set a precedent. My suggestion was that could be avoided by going forward requiring these to come before the Commission rather than the Director exercising discretion over them. The Commission at this point may grant or deny the application, the permit hasn't been turned over. In my view it has not completed, this body has before it can start from scratch and determine whether it wants to grant this permit or not.</p> <p>Chair Gibson asked has the permit been granted.</p> <p>Mr. Foster asked Acting Director Cecil Baliaris Jr. what is the status of the permit application.</p> <p>Acting Director Baliaris Jr. replied I still have the permit it has not been issued. I was told there were a lot of questions that is why I held it back. If the Commission wants to re-establish and look at the permit it is up to them.</p> <p>Mr. Foster commented so the permit has not been issued yet.</p> <p>Acting Director Cecil Baliaris Jr. replied no, but you will have to realize if the items are on the dock, who is going to tell the applicant they can't take it off yet.</p> <p>Commissioner Nishimura commented their inability to understand the rules or assume they can just pull it off the dock and they did not do their homework does not create a problem for us. They should have checked it out. As someone who appreciates the value of good hard liquor I can tell you it's gonna hurt a lot. IF there is money tied up into it they should have been aware of some of the laws.</p> | |

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| | <p>Mr. Foster asked Acting Director Cecil Baliaris Jr. when the applicant came to you was he asking before he put it into shipment or had he already put it into shipment when he came and asked you.</p> <p>Acting Director Cecil Baliaris Jr. replied when he came into the Department I asked him when he expected the items to get here. He responded they were already here or on its way and should be here shortly.</p> <p>Mr. Foster stated he shipped the items before coming to the department for the permit. Is that correct?</p> <p>Acting Director Cecil Baliaris Jr. replied that is correct.</p> <p>Mr. Foster replied that's the end of my questions I thought those were important facts for your consideration.</p> <p>Ms. Ching requested to Chair Gibson to entertain a motion to go into Executive Session.</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> | <p>Mr. Pacheco moved to go into Executive Session and to discuss Actions of the Director Item d) 2. Peter Vismans request. Ms. Nishimura seconded the motion. Motion carried 6:0.</p> <p>At 10:35 a.m. went to Executive Session.</p> |

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| 2. | <p><u>UPDATE AND PRESENTATION ON RECCOMENDATIONS BY THE PERMITTED INTERACTION GROUP ON THE DRAFT GOALS AND OBJECTIVES FOR THE DIRECTOR OF LIQUOR CONTROL</u></p> <p>Vice Chair Crowell stated the PIG (Permitted Interaction Group) met, thanks to Ms. Ching for organizing do you all have the goals matrix that was sent out. The goals are broken down into four categories:</p> <ol style="list-style-type: none"> 1. Administrative responsibilities for internal and external 2. Operational Goals 3. Personnel and HR Goals 4. Future Planning and Strategic Plan Goals <p>1st Goal is the Orientation of the internal and external operations of the Liquor Control Department.</p> <p>G1A - Complete Liquor Control Administrative, Enforcement and Regulatory Branch Orientation.</p> <p>G1B – Complete Commission orientation G1C – Complete County Executive and Legislative Branch orientation G1D – Complete the review and study of relevant laws and rules.</p> <p>2nd Goal- Provide Leadership in all Liquor Control Department and Liquor Control Commission Operations to stimulate improvements.</p> <p>G2A – Improve Liquor Control Department operations G2B – Improve Liquor Control Commission operations</p> | |

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| | <p>3rd Goal- Identify training and resource priorities for the Department of Liquor Control</p> <p>G3A –Assess the Department’s and Commissions training and resource needs to address gaps in knowledge/skills. G3B – Based on assessment, develop a plan to provide the raining and/or resources to address improvements in knowledge/skills.</p> <p>4th Goal Develop a Draft Strategic Pal for Improvement for 1-5 years. G4A – Initiate and develop a draft strategic plan.</p> <p>Vice Chair Crowell went over the Success Measurements, Desired Outcome for each of the Goals.</p> | |
| <p>3.</p> | <p><u>UPDATE, DISCUSSION AND POSSIBLE DECISION-MAKING ON MATTERS RELATED TO THE HIRING OF THE DIRECTOR OF LIQUOR CONTROL</u></p> <p>Ms. Ching advised the Commission that the New Director will be here next week, I have communicated with the Department. They can update you on email, key fob as they are working on those arrangements.</p> <p>Chair Gibson asked is his office ready.</p> <p>Ms. Ching replied it will be done on Monday May 31, 2021.</p> <p>Investigator Herman asked he will be here next week.</p> <p>Ms. Ching replied he will be on the island.</p> | |

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| | <p>Commissioner Pacheco requested that the next Commission Meeting that we have a live meeting possibly in the meeting room where we had the live interview? If at all possible we can all see him again, and to meet our new Commissioner.</p> <p>Ms. Ching replied will check on that.</p> <p>Chair Gibson asked will you change the announcement or will you be announcing if you are able to secure the meeting room.</p> <p>Ms. Ching replied if we are going to be meeting in person then I will email the Commission and it would be posted on the agenda.</p> <p>Chair Gibson replied the next scheduled meeting is June 3, 2021 via tele-conference. So you will take care of that via email.</p> <p>Ms. Ching responded right now we are not having any in-person meetings unless is absolutely necessary. So normally I would have to get that cleared and I will work on that.</p> <p>Investigator Herman asked will that be open to the Public.</p> <p>Ms. Ching replied that is another question that I will have to reconcile, if it is open to the Public that's another issue.</p> <p>Chair Gibson commented it would have to be a controlled situation.</p> <p>Ms. Ching replied, exactly.</p> | |

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| | <p>EXECUTIVE SESSION: 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><u>RETURN TO OPEN SESSION</u></p> <p>Returned to Open Session @ 11:21 a.m.</p> | |
| | <p><u>ROLL CALL FOR THE RETURN TO OPEN SESSION</u></p> <p>Acting Director Cecil Baliaris Jr. called roll 6 members online, constituting a quorum.</p> | |
| | <p><i>Deputy County Attorney Mr. Charles Foster left the meeting @ 11:25 a.m.</i></p> <p>Investigator Herman advised Chair Gibson he will follow up with what was discussed in Executive Session and report back.</p> | |
| | <p><u>RATIFY THE ACTIONS TAKEN IN EXECUTIVE SESSION</u></p> | |

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| Adjournment | With no further business to conduct, Chair Gibson called for a motion and a second to adjourn the meeting. | Mr. Nishimura moved to adjourn the meeting. Mr. Pacheco seconded the motion. Motion carried 6:0. At 11:51 a.m. the meeting was adjourned. |

Submitted by: _____
Malialani TM Kelekoma, Liquor Clerical Assistant

Reviewed and Approved by: _____
William Gibson, Chair

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