

APPROVED

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

See Open Session Minutes of 7/28/2022.

Board/Commission:	LIQUOR CONTROL COMMISSION	Meeting Date	July 14, 2022
Location	Pi`ikoi Building, Suite 300 4444 Rice Street, Lihue, HI 96766	Start of Meeting: 4:05 p.m.	End of Meeting: 5:02 p.m.
Present	Chair Dee Crowell, Vice Chair Kahawai, Members: Gerald Matsunaga, Randall Nishimura, Lorna Nishimitsu and Tess Shimabukuro Also: Liquor Control Staff: Director Leo Sandoval-Reyes, Assistant Chief Investigator Stacy Iwasaki, Liquor Private Secretary: Malialani Kelekoma, Boards & Commission Administrator: Ellen Ching, Deputy County Attorney Aaron Larrimore		
Excused			
Absent			
SUBJECT	DISCUSSION	ACTION	
A.	<u>CALL TO ORDER</u>	Chair Crowell called meeting to order @ 4:05 p.m.	
B.	<u>ROLL CALL</u> Director Sandoval-Reyes called roll, noting 5 members were present. Commissioner Nishimura is absent constituting a quorum.		
C.	<u>ANNOUNCEMENTS:</u> Next Scheduled Meeting: Thursday, July 28th, 2022 – 4:00 p.m. or shortly thereafter. Details on the meeting will be forthcoming.		
D.	<u>APPROVAL OF AGENDA</u> Director Leo Sandoval requested corrections to the minutes that was submitted and remove item P. from the agenda, duplicate item.	<u>Motion:</u> Mr. Matsunaga moved to approve the agenda as amended. Mr. Kahawai seconded the motion. Motion carried 5:0.	

SUBJECT	DISCUSSION	ACTION
<p>E. <u>CONSENT AGENDA</u></p>	<ol style="list-style-type: none"> 1. <u>APPROVAL OF MINUTES: June 23, 2022</u> 2. <u>DIRECTORS REPORT: June 15, 2022 – July 6, 2022</u> 3. <u>EMPLOYEES IN LICENSED PREMISES:</u> Managers and Assistant Managers Red/Blue Card exam list - See Attachment "A" 4. <u>ACTIONS OF THE DIRECTOR:</u> <ol style="list-style-type: none"> a. <u>REQUEST FOR ALCOHOL PURCHASE PERMIT:</u> <ol style="list-style-type: none"> 1. <u>GLOBAL ALGAE INNOVATIONS:</u> Approval of Alcohol Purchase Permit No. AP 2022-03, on June 16, 2022, at 4473 Pahee Street, Suite T. Lihue, Kauai, Hawaii. <p><u>Summary:</u> Corrections to 1. Approval of Minutes for June 23, 2022 Page 5. Motion should be Ms. Nishimitsu. Page 12. Director should review and approve minutes according to job description and not the Chair. Page 6. Motion (add), as represented by the applicant. Page 7. Motion (add), as represented by the applicant.</p>	<p><u>Motion:</u></p> <p>Mr. Matsunaga moved that the Consent Agenda as corrected and the minutes as corrected be approved. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	<i>Assistant Chief Stacy Iwasaki entered the meeting @ 4:11 p.m.</i>	
<p>F.</p>	<p><u>PUBLIC TESTIMONY:</u></p> <p>Ms. Ching, Administrator for Boards and Commission advised the Commission that there was a change in the Sunshine Law. Based on that change we are required to ask for testimony on every agenda item. When the item is read the Director will be requesting if anyone in the public who wishes to testify on that item. Refer to Bill 265.</p>	
<p>G.</p>	<p><u>ADOPTION OF DECISION AND ORDER:</u></p> <p>1. <u>COLORSHKO LLC. dba Paco’s Tacos (Kalaheo) 2G-073:</u> Adjudication hearing held, June 23, 2022.</p> <p>Director Leo Sandoval asked if there’s anyone in the public who wishes to testify on Item G. 1. Adoption of Decision and Order for Cloroshko LLC. dba Paco`s Tacos (Kalaheo) You can step up to the microphone and identify yourself. No one in the public provided testimony.</p> <p><u>Summary:</u> Concerns on the finding of facts, the third paragraph, is there a mitigating circumstance, and should indicate that blue card employee was present earlier and had to leave because of illness. This is the reason why the fine was imposed and the fine suspended. The orders and notices need to be an understanding of who the licensees are. The licensee is a Limited Liability Company, the individual who appears on behalf of that company is not the licensee. There should be a distinction that member of the LLC, appears. The finding of facts as compared to the other County’s would be drafted by Legal. Now the department is drafting these, causing things to be left out and probably legal should be drafting. Corrections should be passed to Mr. Foster.</p>	<p><u>Motion:</u></p> <p>Ms. Nishimitsu moved to defer the Adoption of Decision and Order for Cloroshko LLC. until it’s being revised as necessary. Mr. Matsunaga seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
<p>H.</p>	<p><u>PRELIMINARY HEARINGS (NEW LICENSE):</u></p> <p>1. <u>KAUAI PRIVATE CHEF, LLC. dba Scorpacciata: Application No. 2022-078 was filed on June 11, 2022, by Kauai Private Chef, LLC. Db a Scorpacciata for a Restaurant General (B) License with Live Entertainment and No Dancing located at 3501 Rice Street, Space Number 1003, Lihue, Kauai, Hawaii.</u></p> <p>Director Leo Sandoval asked if there’s anyone in the public who wishes to testify on Item H. 1. Kauai Private Chef, LLC dba Scorpacciata. You can step up to the microphone and identify yourself. No one in the public provided testimony.</p> <p>2. <u>NAPALI BREWING COMPANY, LLC. dba NAPALI BREWING COMPANY: Application No. 2022-076 was filed on June 8, 2022, by Napali Brewing Company, LLC. dba Napali Brewing Company for a Brewpub (B) with Live Entertainment and Dancing located at 4-361 Kuhio Hwy, Suite 100, Kapaa, Kauai, Hawaii.</u></p> <p>Director Leo Sandoval asked if there’s anyone in the public who wishes to testify on Item H.2. Napali Brewing Company, LLC dba Napali Brewing Company. You can step up to the microphone and identify yourself.</p> <p>Mr. Blake Conant, Owner of Napali Brewing Company was present to give testimony on behalf of Napali Brewing. We offer no testimony other than the fact that our introduction and appreciate all that you folks do to help us get our business up and running. I think you know where the site is, and this is who we are. Mahalo.</p> <p><u>Summary:</u> Request for sample menus, perimeter of the area that alcohol will be served</p>	<p><u>Motion #1</u></p> <p>Ms. Nishimitsu moved to accept Application No. 2022-078 Kauai Private Chef, LLC. dba Scorpacciata for a Restaurant General (B) License and schedule for Publication and Public Hearing. Mr. Matsunaga seconded the motion. Motion carried 5:0.</p> <p><u>Motion #2</u></p> <p>Mr. Matsunaga moved to accept Application No. 2022-076 Napali Brewing Company, LLC. dba Napali Brewing Company for a Brewpub License (B) with live entertainment and schedule for Publication and Public Hearing. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	and clearances.	
I.	<p><u>VIOLATION REPORT:</u></p> <p>1. <u>LAVA LAVA TOO LLC. dba LAVA LAVA BEACH CLUB: Violation of rule 3.2 Alteration of Premises.</u></p> <p>Director Leo Sandoval asked if there’s anyone in the public who wishes to testify on Item I. 1. Lava Lava TOO LLC. dba Lava Lava Beach Club. You can step up to the microphone and identify yourself. No one in the public provided testimony</p>	<p><u>Motion #1</u> Mr. Kahawai moved to accept the departments Violation report for Lava Lava TOO LLC. dba Lava Lava Beach Club and schedule for an Adjudication Hearing. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>
J.	<p><u>ADJUDICATION HEARINGS:</u></p> <p>1. <u>ET & WT LLC. dba KENJI BURGER (KAPAA): Violation of rule 3.12, Commission Orders.</u></p> <p>a. <u>Kenji Burger Kapaa Is licensed as a restaurant permitted to sell liquor for on-premises consumption.</u></p> <p>b. <u>On May 26, 2022, a violation notice was issued to Kenji Burger Kapaa for failing to pay \$300.00 of a Commission Decision and Order that was issued on April 20, 2022, as a result of a violation of Rule 7.8 Manager on Duty. During the prior adjudication hearing the Commission imposed a fine of \$500.00 and that \$200.00 be suspended, provided that there is no conviction of the same offense within one year.</u></p>	

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	<p>c. <u>Rule 3.12 of the Kauai Liquor Control Commission states: All licensees shall comply with all lawful orders of the Commission.</u></p> <p>d. <u>Violation History within 24 months: November 30, 2020 (1) violation of Rule 3.1 - Failure to Post License, March 2, 2022 (1) violation of Rule 7.8 - Manager on Duty</u></p> <p>Director Leo Sandoval asked if there's anyone in the public who wishes to testify on Item J. 1. ET & WT LLC. dba Kenji Burger Kapaa. You can step up to the microphone and identify yourself. No one in the public provided testimony</p> <p>Mr. Erik Tanigawa, Owner of ET & WT LLC. dba Kenji Burger apologized to the Commission. Spoke with Mr. Sandoval and thinks there was a miscommunication between receiving the DocuSign which he received and thought the notice of the actual fine. I was expecting the fine to come in the mail. So, after 30 days of not receiving it, I called and walked into the office and asked about the fine and where we are with that and paid the fine. I believe I was three or four days late with the fine. I apologize for that.</p> <p>Chair Crowell asked if he was represented by Counsel. He asked Mr. Tanigawa to raise his right hand. Do you solemnly swear to tell the whole truth and nothing but the truth?</p> <p>Mr. Tanigawa responded I do.</p> <p>Commissioner Nishimitsu asked can we incorporate it by reference.</p> <p>Mr. Larrimore replied, yes stipulate everything that he just mentioned before he took the oath, he could be able to do this.</p>	

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	<p>Mr. Tanigawa responded yes. Chair Crowell asked Mr. Tanigawa if he received a copy of the new charges</p> <p>Mr. Tanigawa replied yes, the first one I got was a DocuSign, the second one I went to the office and paid and should have thoroughly read it throughout. I talked to Mr. Sandoval saying that we are more than willing to pay the entire fine. I know this has been a headache for everyone.</p> <p>Commissioner Nishimitsu replied the packet shows the Notice of Hearing that advised you that you failed to pay the fine as required and that you DocuSigned a document on June 27th. So did you receive notice of today's hearing.</p> <p>Mr. Tanigawa replied yes, I am grateful I was talking to Mr. Sandoval about moving forward with the new technology and having the ability to DocuSign and do things online. It is helpful to all the business owners. It was my bad for not thoroughly reading that DocuSign and seeing the actual date. That is why I got worried by not getting it in the mail and went to the office.</p> <p>Chair Crowell commented we are dealing with two things today. There is a failure to comply option of violation. This is the original violation; a portion of the fine was suspended. Can we consider?</p> <p>Commissioner Nishimitsu replied the suspension was provided that they don't commit the same violation within a year, not any other violation. Maybe we need to revisit our rules.</p> <p>Director Sandoval-Reyes replied, the motion had been changed the past two or three meetings started to be any violation. Somewhere in the past couple of meetings that</p>	

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	<p>changed over to other similar kind.</p> <p>Commissioner Nishimitsu asked the second part of what penalty can be imposed for failing to pay the fines as when selected by the order. When I look at Commission Rules and Regulations, I don't see what the penalties are. When I go to the State Statues it says anything under this Chapter, meaning the State Chapter, by which authority we adopted our Rules and Regulations. Can be punishable by imprisonment of not more than six months or a fine of not more than \$1000.00. So, my question is that appropriate? That for failing to comply by the orders issued by this Commission whether 281-117 or 102 kicks in.</p> <p>Mr. Larrimore, Deputy County Attorney for the record that questions is addressed to me, 281-102 there's been a charge that has been violated. 281-102 lays out what the penalties are for any violation of Chapter 281 HRS regulations of the problem gated underneath Chapter 281. The rule here is 3.12, there is a charge that has been violated so 102 would apply so any violation would go up to that, six-month imprisonment of \$1000.00. As far as appropriate goes that's a question for this Commission.</p> <p>Commissioner Matsunaga asked have you admitted that you were in violation that you were late.</p> <p>Mr. Tanigawa admitted he was late to paying the charge. When he did not receive it in the mail is when he started to question. He walked into the office to make payment and it was already late.</p> <p>Director Sandoval-Reyes recommendation to the Commission to remain at \$500.00, at your discretion.</p>	<p><u>Motion #1:</u> Mr. Matsunaga moved that a \$500.00 fine be imposed. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	<p>2. <u>GEFFERT & APO LLC. dba NAWILIWILI TAVERN: Violation of rule 7.13, Fight and Disturbance Reports.</u></p> <p>a. <u>Nawiliwili Tavern is licensed as a restaurant (B) permitted to sell liquor for on-premises consumption.</u></p> <p>b. <u>On May 18, 2022, Investigator Yoshida received information from Investigator Stem of a call for service received by Kauai Police Department which occurred at Nawiliwili Tavern requesting assistance to remove a patron after causing a disturbance.</u></p> <p>c. <u>Rule 7.13 of the Kauai Liquor Commission states, an on-premises shall report all fights or disturbances, on the form provided or approved by the department that occurs in their licensed premise. The report shall be typewritten and submitted to the department within seven days from the time of the incident.</u></p> <p>d. <u>Violation History within 24 months: October 16, 2020 (1) Warning issued for violation of COVID - Executive Orders.</u></p> <p>Director Leo Sandoval asked if there's anyone in the public who wishes to testify on Item J. 2. Geffert & Apo LLC. dba Nawiliwili Tavern. You can step up to the microphone and identify yourself. No one in the public provided testimony</p> <p><u>Summary:</u> No written authorization from the Owner for Lee Miller, General Manager to represent Geffert & Apo LLC. dba Nawiliwili Tavern. He has been advised to have the Owner give authorization to represent the Licensee.</p>	<p><u>Motion #2</u> Ms. Nishimitsu moved to defer until there's an authorized representative of the LLC, which is a Licensee from appearing before this Commission. Mr. Matsunaga seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	<i>Commissioner Nishimura entered the meeting at 4:46 p.m.</i>	
K.	<p><u>DISCUSSION AND POSSIBLE DECISION MAKING ON DIRECTORS PHYSICAL RESIDENCY REQUIREMENTS AND SCHEDULE</u> (Human Resources Representative has been requested to be present)</p> <ol style="list-style-type: none"> 1. <u>Discussion of physical residency requirements of the Director of Liquor Control.</u> 2. <u>Discussion about a possible hybrid physical/teleworking work schedule for the Director of Liquor Control.</u> <p>Director Leo Sandoval asked if there’s anyone in the public who wishes to testify on Item K. 1. Discussion and Possible Decision Making on Directors Physical Residency Requirements and Schedule. K. 2. Discussion about a possible hybrid physical/teleworking work schedule for the Director of Liquor. You can step up to the microphone and identify yourself. No one in the public provided testimony</p> <p>Commissioner Matsunaga commented, the job posting for the Director of Liquor Control specifically states the Director must be a citizen in the United States and the County of Kauai and willing to establish residency. I would like this notice to be part of the record. The response provided by Human Resources and all the answers that were posed is that the employer can require an employee to be a resident of the County. It provides that the Liquor Control can require the Director to be a resident. The part that’s interesting the Director was interviewed by Human Resources and he was provided with information regarding the County of Kauai including the salary, cost of housing, cost of living whether traveling by air or other means. With that understanding of the information provided to him, he did accept the position. In looking at the job description for the Director of Liquor Control it does provide, especially on the</p>	

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	<p>supervision. The reason I feel strongly that the Director should be present seven days a week or five days a week between the hours of 7:45 a.m. to 4:30 p.m. Under supervision under job description that he is to counsel, develop, maintain morale and discipline standards of performance, guide subordinate personnel on a day-to-day activity. I believe his physical presence is required and therefore my motion would be that the Director be at work physically between the hours of 7:45 a.m. to 4:40 p.m. Monday to Friday. Trips that he has to make vacation or holidays.</p> <p>Ms. Ching commented to the Chair before the 2nd to the motion the County Attorney who has also been working on this may have some comments.</p> <p>Mr. Larrimore commented our office concurs with the judgement of HR in this situation. This is something like a requirement that for physical residence of the Commission can require. The only guidance we would give the Commission is that any reasonably related if you aren't imposing that requirement. That would be reasonably related to the job duties. I think Commissioner Matsunaga sort of identified a provision in the job description that spoke to the Commission and sounds like a reasonable nexus between the requirement of the job.</p> <p>Commissioner Nishimitsu replied I am not hearing where Commissioner Matsunaga says he cannot be a resident other than Kauai, it's just that if he wants to be a resident of any other county in the state then that's his choice, but his physical presence from this is critical to the proper operation of the department. Is that correct?</p> <p>Commissioner Matsunaga replied, yes Monday to Friday, 7:45 a.m. to 4:30 p.m. Preferably you would be a full-time resident.</p> <p>Mr. Larrimore asked whether or not his physical presence be required during this time, so I think that's when the Commissions power are subject to any of the other</p>	

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	<p>requirements under the HRS. The administrator’s position is also subject to Civil Service Laws. At this point I would have HR speak in depth, so as long as whatever requirement you place in terms of his physical presence is also observes whatever rights the administrator might have under the Civil Service Laws. I think that is something that can be required.</p> <p>Commissioner Nishimitsu commented her concerns a flight arriving 10 and the next flight out leaving at 6 p.m. Which means it ends up would be only three days a week. That the Director is going to be on Kauai, spending most of the time traveling and not really attending to business. As a director the example he sets for the staff is important. Tele-working two days a week which was never authorized by this Commission was a bit problematic. I don’t care where in the State he lives, I just thing that he properly performs his job and to set the example and lead the department is critical.</p> <p>Commissioner Matsunaga asked so do you agree Monday through Friday with all the working hours.</p> <p>Commissioner Nishimitsu replied whenever the county’s business hours are. I wouldn’t be so strict as to 4:40 p.m. I know they put in extra times as Director’s of these departments. It should be within that timeframe to adhere to.</p> <p>Ms. Ching asked Chair since you are in discussion maybe you might want to have a second to continue.</p> <p>Commissioner Shimabukuro commented that she agrees with both Commissioners, on top of that leading towards having physical residency here in the County of Kauai as part of the requirement of his job. It does say that you must be a citizen in the County of Kauai.</p>	<p><u>Motion:</u></p> <p>Mr. Matsunaga moved to approve that the Director be physically present in the office Monday through Friday 7:45 a.m. to 4:30 p.m. Residency requirement to be a resident of the island of Kauai.</p>

SUBJECT	DISCUSSION	ACTION
	Ms. Ching requested that Chair Crowell repeat the motion for Commissioner	Ms. Nishimitsu seconded the motion. Motion carried 5/1.
L.	<p><u>EXECUTIVE SESSION:</u></p> <p>Pursuant to HRS §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 HRS §92-5(a)</p> <ol style="list-style-type: none"> 1. <u>APPROVAL OF EXECUTIVE SESSION MINUTES: June 9, 2022</u> 2. <u>Discussion of physical residency requirements of the Director of Liquor Control.</u> 3. <u>Discussion about a possible hybrid physical/teleworking work schedule for the Director of Liquor Control.</u> 	<p><u>Motion:</u></p> <p>Ms. Nishimitsu moved to go into Executive Session. Mr. Matsunaga seconded the motion. Motion carried 6/0.</p> <p>At 4:55 p.m. entered Executive Session.</p>
M.	<u>RETURN TO OPEN SESSION</u>	At 4:59 p.m. reconvened in Open Session.
N.	<u>ROLL CALL FOR THE RETURN TO OPEN SESSION</u>	All members were present.
O.	<u>RATIFY ACTIONS TAKEN IN EXECUTIVE SESSION</u>	<p><u>Motion:</u></p> <p>Mr. Nishimura moved to ratify the actions taken in Executive Session. Mr. Matsunaga seconded the motion. Motion carried 6:0.</p>

SUBJECT	DISCUSSION	ACTION
P.	<u>DISCUSSION AND POSSIBLE DECISION MAKING ON DIRECTORS PHYSICAL RESIDENCY REQUIREMENTS AND SCHEDULE</u> (Human Resources Representative has been requested to be present)	Item removed from agenda.
Q.	<u>EXECUTIVE SESSION:</u> Pursuant to HRS §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 HRS §92-5(a)	
R.	<u>ADJOURNMENT</u>	<u>Motion:</u> Mr. Nishimura moved to adjourn meeting. Mr. Matsunaga seconded the motion. Motion carried 6:0. At 5:02 pm meeting was adjourned.

Submitted by: _____
 Malialani Kelekoma, Private Secretary

Reviewed and Approved by: _____
 Leo Sandoval-Reyes, Director of Liquor Control

(X) Approved as circulated.
 () Approved with amendments. See _____ meeting.