

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission:	LIQUOR CONTROL COMMISSION	Meeting Date	August 24, 2022
Location	Pi`ikoi Building, Suite 300 4444 Rice Street, Lihue, HI 96766	Start of Meeting: 1:00 p.m.	End of Meeting: 2:27 p.m.
Present	Chair Dee Crowell, Vice Chair Leland Kahawai Members: Gerald Matsunaga, Randall Nishimura, Lorna Nishimitsu. Also: Liquor Control Staff: Director Leo Sandoval-Reyes, Liquor Private Secretary: Malialani Kelekoma, Boards & Commission Administrator: Ellen Ching, Deputy County Attorney: Charles Foster		
Excused	Tess Shimabukuro		
Absent			

SUBJECT	DISCUSSION	ACTION
A.	<u>CALL TO ORDER</u>	Chair Crowell called meeting to order @ 1:00 p.m.
B.	<u>ROLL CALL</u> Director Leo Sandoval-Reyes called roll, Commissioner Shimabukuro is excused, noting five members were present constituting a quorum.	
C.	<u>ANNOUNCEMENTS:</u> Next Scheduled Meeting: Wednesday September 14th, 2022 – 1:00 p.m. or shortly thereafter. Details on the meeting will be forthcoming.	
D.	<u>APPROVAL OF AGENDA</u> Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item. Commissioner Nishimura requested to strike the approval of minutes from the agenda.	No Public Testimony. <u>Motion:</u> Ms. Nishimitsu moved to approve the agenda as amended. Mr. Matsunaga seconded the motion. Motion carried 5:0.

SUBJECT	DISCUSSION	ACTION
<p>E.</p>	<p><u>CONSENT AGENDA:</u></p> <p>Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item.</p> <p>1. <u>APPROVAL OF MINUTES:</u></p> <p>2. <u>DIRECTORS REPORT: August 3, 2022 - August 18, 2022</u></p> <p>3. <u>EMPLOYEES IN LICENSED PREMISES:</u></p> <p>Managers and Assistant Managers Red/Blue Card exam list - See Attachment “A”</p> <p>4. <u>ACTIONS OF THE DIRECTOR:</u></p> <p>a. <u>REQUEST FOR FREE-ONE DAY SPECIAL LICENSE:</u></p> <p>1. <u>KAUAI MUSEUM ASSOCIATION LIMITED dba KAUAI MUSEUM ASSOCIATION LIMITED:</u> Approval of Application No. 2023-05 filed on August 11, 2022. Event to be held on September 15, 2022, at the Kauai Museum located at 4428 Rice Street, Lihue, Kauai, Hawaii.</p> <p>2. <u>HAWAII HOTEL INDUSTRY FOUNDATION dba HAWAII HOTEL INDUSTRY FOUNDATION:</u> Approval of Application No. 2023-04 filed on August 10, 2022. Event to be held on August 20, 2022, at Vidinha Stadium, Hoolako Street, Kauai, Hawaii.</p> <p>3. <u>NATIONAL TROPICAL BOTANICAL GARDEN dba NATIONAL TROPICAL BOTANICAL GARDEN:</u> Approval of Application No. 2023-06 filed on July</p>	<p>No Public Testimony.</p>

SUBJECT	DISCUSSION	ACTION
	<p>20, 2022. Event to be held on August 20, 2022, at 4425 Lawai Road, Koloa, Kauai, Hawaii.</p> <p>b. <u>APPLICATION FOR PRODUCT TASKING PERMIT:</u></p> <p>1. <u>Safeway, Inc. dba Safeway Store #2894 (4G-011):</u> Approval of product tasting permit to be conducted at 4454 Nuhou Street, Lihue, Kauai, Hawaii on August 19th, 2022 and August 26th, 2022.</p> <p>c. <u>REQUEST FOR OFF-PREMISE WAREHOUSING:</u></p> <p>1. <u>DHC FOOD & BEVERAGE CORP. dba THE MARKET:</u> Request for off-premise warehousing, per diagram submitted, located within the Sheraton Kauai Resort</p> <p>5. <u>REQUEST FOR APPROVAL OF PERMANENT REDUCTION OF PREMISES:</u></p> <p>a. <u>DHC FOOD & BEVERAGE CORP. dba SHERATON KAUAI COCONUT BEACH RESORT:</u> Request for permanent reduction within the licensed premise in the basement of the hotel, per diagram submitted.</p> <p>6. <u>AUTHORIZED AGENT NOTIFICATION:</u></p> <p>a. <u>MPK Management-IP2, LLC, dba The Beach House (2G-045):</u> Authorization for Laura Blaho, Controller; Sara Hill, CEO and Erica Dunn, General Manager, to act as authorized agents for MPK Management- IP2, LLC. dba The Beach House.</p> <p>b. <u>Kawailoa Development LLP. dba Poipu Bay Clubhouse (5G-028):</u></p>	

SUBJECT	DISCUSSION	ACTION
	<p>Authorization for Russell S. Kato, Attorney; Jennifer Chin, Attorney; Jill Nakagawa, Legal Assistant and Tanya David, Attorney to act as authorized agents for Kawailoa Development LLP dba Poipu Bay Clubhouse.</p> <p>7. <u>CHANGE IN OFFICERS/ DIRECTORS/MEMBERS:</u></p> <p>a. <u>AOAO of Hanalei Bay Resort dba AOA of Hanalei Bay Resort (4BW-002) & The Pool Bar (5G-003):</u> reports the deletion of Deborah Fraga-Decker as Secretary; Joan Bettencourt as Director and the addition of Gene Stout and Andy Muxlow as Directors.</p> <p>b. <u>Light House Bistro LLC. dba The Bistro Kilauea (2G-008):</u> reports the addition of John Gordon as a member.</p> <p>c. <u>The Kalama Beach Corporation dba Kilauea Market+Café (2G-088), Kilauea+Café (4G-059) and Ishihara Market (4G-024):</u> reports the deletion of Keoni Matthew Sun Tim Chang as Vice President, and the addition of Stacy Marie Kuuipo Waiiau-Omori as Senior Vice President.</p> <p>d. <u>The Food Pantry, LTD. dba Whalers General Store (4G-066), Whalers General Store (4G-064), Accents (4G-005), Accents(4G-004) and Lamonts Gifts & Sundry(4G-056):</u> reports the addition of Stacy Marie Kuuipo Waiiau-Omori, and Jamie Kiyomi Tokunaga-Magno both as Senior Vice President.</p>	<p><u>Motion:</u></p> <p>Mr. Nishimura moved to approve the Consent Agenda. Mr. Kahawai seconded the motion. Motion carried 5:0.</p> <p>\</p>

SUBJECT	DISCUSSION	ACTION
<p>F.</p>	<p><u>PUBLIC TESTIMONY ON ALL AGENDA ITEMS:</u></p> <p>Director Sandoval-Reyes asked if there's anyone in the public who wishes to testify on this item at this time.</p>	<p>No Public Testimony.</p>
<p>G.</p>	<p><u>ADOPTION OF DECISION AND ORDER:</u></p> <p>Director Sandoval-Reyes asked if there's anyone in the public who wishes to testify on this agenda item.</p> <p>1. <u>TRU PROTECTION, INC. dba Japanese Grandma's Café (2G-098)</u></p> <p><u>Summary:</u> Under the findings of fact the opening paragraph of the entire document references the failure of the sole officer to make an appearance, there should be a finding of fact that the sole officer did not appear and that a default was therefore taken. In addition to that I would suggest that contact also was called, licensee was not present, placed at the end of the calendar and recalled. Called three times and there was no response, and a default judgement was placed against her.</p> <p><i>Commissioner Nishimura withdrew his motion and Commissioner Nishimitsu withdrew her second.</i></p>	<p>No Public Testimony.</p> <p><u>Motion #1:</u></p> <p>Mr. Nishimura moved to approve the Adoption of Decision and Order for Tru Protection, Inc. dba Japanese Grandma's Café License # (2G-098). Ms. Nishimitsu seconded the motion.</p> <p><u>Motion #2:</u></p> <p>Mr. Nishimura moved to defer action on the Adoption of Decision and Order for Tru Protection Inc. dba Japanese Grandma. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Director Sandoval-Reyes asked if there's anyone in the public who wishes to testify on this agenda item.</p> <p>2. <u>VIVA KAI, LLC. dba Kai Bar Coffee Roasters (2G-029)</u></p> <p><u>Summary:</u> Concerns about the finding of facts should also reflect that the licensee was present, waived reading of the charge and admitted to the offense.</p> <p><i>Commissioner Nishimura withdrew his motion and Commissioner Nishimitsu withdrew her second.</i></p>	<p>No Public Testimony.</p> <p><u>Motion #3:</u></p> <p>Mr. Nishimura moved to Adopt Decision and Order for Viva Kai, LLC. dba Kai Bar Coffee Roasters License (2G-029). Ms. Nishimitsu seconded the motion.</p> <p><u>Motion #4</u></p> <p>Mr. Nishimura moved to defer this item and refer back to staff or Attorney's Office for amendments and brought back to the Commission for further action. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>
<p>H.</p>	<p><u>PUBLIC HEARINGS:</u></p> <p>Director Sandoval-Reyes asked if there's anyone in the public who wishes to testify on this agenda item.</p> <p>1. <u>AG AVALON, LLC. dba AVALON GASTROPUB:</u> Application No. 2022-074 was filed on June 7, 2022, by AG AVALON, LLC. dba AVALON GASTROPUB for a New Restaurant General (B) with Live Entertainment and Dancing located at 2555 Ala Namahana Parkway Bldg. J1, Kilauea, Kauai, Hawaii.</p>	<p>No Public Testimony.</p>

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	<p>2. <u>AG AVALON, LLC. dba AVALON WHISKEY SHOP</u>: Application No. 2022-075 was filed on June 7, 2022, by AG AVALON, LLC. dba AVALON WHISKEY SHOP for a New Retail Dealer General license located at 2555 Ala Namahana Parkway Bldg. J1, Kilauea, Kauai, Hawaii.</p> <p>Mr. Gabriel Avalon, Member/Owner was present to represent AG Avalon, LLC. dba Avalon Gastropub and Avalon Whiskey Shop. He received the investigators report and had no comments.</p> <p>Commissioner Nishimura asked Mr. Foster if we need to take both applications as there is a relationship between the two applications. My understanding is they want to serve or dispense retail in the restaurant while it is closed. Serve as a restaurant when the restaurant is open is that correct?</p> <p>Mr. Avalon replied we will run both there will be a wall separating the restaurant from the retail. Food will be going both ways for lunchtime, and they are separate entities and have a separate entrance.</p> <p>Commissioner Nishimura asked the Director Sandoval-Reyes under the retail license people can take drinks out of the facility; how would you distinguish between where that drink came from.</p> <p>Mr. Avalon commented the retail side we do a lot of barrel picks, where we buy.</p> <p>Mr. Foster advised for procedural you can't do them together, there should be a motion to hear them together and then you can freely discuss both applications.</p>	<p><u>Motion #1:</u></p> <p>Mr. Nishimura moved to hear both applications for AG Avalon, LLC. dba Avalon Gastropub Application No. 2022-074 and AG Avalon, LLC. dba Avalon Whiskey Shop Application No. 2022-075 hear them together and handle actions separately. Mr. Matsunaga seconded the motion. Motion carried 5:0.</p>

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	<p>Mr. Avalon replied, the retail side will be a defined space, when we have customers come in, they will be getting their to go food or any of our single barrel whiskeys or beer by the bottle they will be leaving. There will be no on-premises consumption for any of that. When you come in through the market, there will be a door leading to the restaurant for any of the on-premises. If you were to buy our single barrels or bottles of booze, you have the option of bringing it to your car before you come in or we have a check stand for anything that was purchased in the market that we will hold them while they are dining. They will have two options, purchased before dining from the market to the restaurant.</p> <p>Chair Crowell asked will you be operating separately and the same hours?</p> <p>Mr. Avalon commented it depends on staff; on the retail side we plan to keep that open from 10:00 a.m. till 4:00 p.m. Get that lunch rush and have our retail it's kind of like a niche spirit. So, it will be rare, allocated whiskeys and our single barrels. We are not looking to sell any kind of commodity spirits. Nothing that you could just go to the grocery store and get. It's more of a specialty shop.</p> <p>Commissioner Nishimura asked Mrs. Kelekoma to bring up page 77 of 132, it has the floor plan. Where is that wall going to be?</p> <p>Mr. Avalon replied to the red line on top of the screen that will be a solid wall. Where it says door that's going to be the access to the restaurant. There is another door if you go all the way to the bottom of the screen it goes to the patio.</p> <p>Commissioner Nishimitsu asked any customer wanting to eat at your restaurant has to come in through the retail section.</p>	

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	<p>Mr. Avalon replied through the retail section or the red line at the bottom right of the screen there will also be an access right there. Where it says TLT 1 right in the red line, that's the walkway to the patio.</p> <p>Commissioner Nishimitsu asked, staff for the retail section and staff for the restaurant section are going to be totally separate staff.</p> <p>Mr. Avalon responded, correct.</p> <p>Commissioner Nishimitsu asked so, there won't be any overlap and confusion.</p> <p>Mr. Avalon replied no overlap from the market floor staff or the restaurant floor staff. The kitchen will be receiving orders from both sides.</p> <p>Chair Crowell asked are there any questions and asked where are you going to have the live music?</p> <p>Mr. Avalon replied either or we have live music for four years and we had live music one time, it's not something we intend to exercise all the time. It's more for special events, tasting menu's or when we do a private event. It wouldn't be necessarily a band more like a duo or trio. If we are contracted for a reception, we want to be able to and not waste your time with applying for a license. We figured we get that all out of the way right here. We have the whole lanai space, or we would be able to clear the lower portion of the dining room from the bar on. We would be able to clear that space for indoor music or the lanai for outside.</p> <p>Commissioner Nishimitsu asked where would the dance floor be?</p>	

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	<p>Mr. Avalon replied either the left section of the lanai or if it was inside, the lower portion of the restaurant. It's not something we intend to use all the time.</p> <p>Commissioner Nishimitsu asked Director Sandoval-Reyes as to whether a floating dance floor location is allowable under the rules.</p> <p>Director Sandoval-Reyes responded there is supposed to be a designated space and a particular size, and it shouldn't be moving around there should be a designated spot for it.</p> <p>Mr. Avalon replied I don't recall the square footage its supposed to be. I know it's supposed to be a square space when dancing is happening.</p> <p>Director Sandoval-Reyes replied, it should be at least 150 square feet.</p> <p>Mr. Avalon asked if he could have two designated spaces.</p> <p>Director Sandoval-Reyes replied it is up to you.</p> <p>Mr. Avalon responded I would do two designated spaces, the carpet lanai on the left side and the lower portion of the restaurant.</p> <p>Chair Crowell asked Director Sandoval 150 square feet for each space or total.</p> <p>Director Sandoval-Reyes replied, no.</p> <p>Vice Chair Kahawai asked for the outside covered lanai are there going to be actual barriers?</p>	

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	<p>Mr. Avalon replied yes, they will be an actual railing and we are still building, and there will be a roof over that.</p> <p>Commissioner Nishimura asked Director Sandoval-Reyes since this is still under construction how long do they have to exercise their license.</p> <p>Director Sandoval-Reyes replied they have 180 days.</p> <p>Commissioner Nishimura advised you can come in for an extension you will need to get that done and get a certificate of occupancy.</p> <p>Commissioner Nishimitsu asked will the department require a revised floor plan showing the two proposed dance floor areas so we can be comfortable to what's submitted.</p> <p>Director Sandoval-Reyes replied they are going to have their final inspection and it's going to have to compare to what was approved by the Commission. What he put's on there then we will go back to make sure it's going to be there.</p> <p>Chair Crowell opened the Public Hearing there was no one that was for or against the application. Hearing none Chair called for a motion.</p>	<p><u>Motion #2</u></p> <p>Mr. Nishimura moved to close the Public Hearing for AG Avalon, LLC. dba Avalon Gastropub Application No. 2022-074 and AG Avalon, LLC. dba Avalon Whiskey Shop Application No. 2022-075. Mr. Matsunaga seconded the motion. Motion carried 5:0.</p> <p><u>Motion #3</u></p> <p>Mr. Matsunaga moved that Application No. 2022-074 and Application No. 2022-075 be approved. Mr. Nishimura added two conditions: First as represented by the applicant that a physical barrier be constructed to separate the retail and restaurant operations. Second applicant work with the department to establish a clear dancing area(s) as part of their issuance of the license. Mr. Kahawai seconded the motion. Motion passed 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	<p>2. <u>VAN WESCOMP HAWAII INC., dba VAN WESCOMP HAWAII, INC.:</u> Application No. 2022-073 was filed May 26, 2022, by Van Wescomp Hawaii Inc. dba Van Wescomp Hawaii Inc. for a new Retail Dealer General license located within the Koa Kea Hotel at 2251 Poipu Road, Koloa, Kauai, Hawaii.</p> <p>Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item.</p> <p>Mr. Robert Ueoka, Counsel and Sharolyn Kawakami, General Manager was present to represent Van Wescomp Hawaii. There were no changes to the Investigator’s Report. This is a Retail Dealer General application for a resort sundry located in the Koa Kea Resort. We are open and currently not selling alcohol at this time, and it’s located just to the left of the front desk area.</p> <p>Chair Crowell asked are there any questions.</p> <p>Commissioner Nishimura asked why the customers are bringing it up to the front desk.</p> <p>Mr. Ueoka replied we don’t have the facilities right now in the retail store. That is why we are including the front desk with the premises for the retail to allow that. Thank you, to the department was very nice, to allow us to accommodate that. Originally, we did submit just the retail store however that is the only place that has a register.</p> <p>Chair Crowell asked is that a bar and restaurant to the left.</p> <p>Mr. Ueoka replied yes, it is a restaurant not a bar called Red Salt.</p> <p>Chair Crowell asked how do you separate? If they buy something from the store, can</p>	<p>No Public Testimony.</p>

SUBJECT	DISCUSSION	ACTION
	<p>they drink it out here.</p> <p>Mr. Ueoka explained once they take it out of the premises they are supposed to consume off-premises, the intent of the retail is to take it outside of the premises. Our intent is to not have the consumers consume there. It is a complete restaurant area that's reserved for the restaurant for on-premises consumption.</p> <p>Commissioner Nishimitsu asked do you have no control over that restaurant?</p> <p>Mr. Ueoka replied we operate it as well.</p> <p>Commissioner Nishimitsu asked would you allow customers who purchased a bottle of liquor to go into the restaurant?</p> <p>Mr. Ueoka replied we can do it by choice, and we would rather not have it, but we want them to buy in the restaurant. So, I mean "no" something that we would highly discourage. People are trying to save money we want to present the best.</p> <p>Chair Crowell asked how would you enforce?</p> <p>Mr. Ueoka responded we have employees that will monitor, the retail container is going to be different from what they are going to be served in, a glass at the restaurant. We would tell them very nicely that we have to follow the liquor laws and we have a policy as well. We are going to monitor it and make sure it doesn't happen.</p> <p>Commissioner Matsunaga replied so, they won't be able to buy a bottle of wine and drink it in the restaurant.</p> <p>Mr. Ueoka replied that is something that we don't want to encourage or allow. We want them to buy in the restaurant and put our best foot forward. The restaurant is one</p>	

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	<p>our flagships that we are very proud of. Commissioner Nishimura asked do you feel that this might be an enforcement issue.</p> <p>Director Sandoval-Reyes replied it is going to be their responsibility to maintain the control of alcohol if they come out. The ball is in their court on being able to enforce the rule.</p> <p>Commissioner Nishimura commented personally I do not want to set them up for failure, I don't want to approve something that they will get in trouble.</p> <p>Mr. Ueoka replied we are willing to take that responsibility and to monitor it and it's our responsibility to follow liquor laws.</p> <p>Commissioner Nishimitsu commented I would imagine the wait staff that tips depend on how much they sell. They might not be happy with somebody pulling a little bottle out of their purse pouring into a glass.</p> <p>Mr. Ueoka replied we really don't think that's a problem, the reason why we opened the retail store is when people go off property they always ask where can we buy alcohol to take out. You can't do it from the restaurant. That is why we wanted a retail store. It took us some time to do it as there were so many questions and requests from the customers and guests. We are trying to accommodate the customers; the whole intent is to take it off property.</p> <p>Commissioner Matsunaga asked is there a sign now.</p> <p>Mr. Ueoka replied absolutely.</p> <p>Commissioner Matsunaga indicated that the purchase of alcohol cannot be consumed</p>	

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	<p>at the restaurant.</p> <p>Mr. Ueoka replied absolutely on the boundary of the retail store where we can put signs and to notify the guests and customers. We are happy to do that and that’s what we have done with other clients in other jurisdictions and has worked well.</p> <p>Vice Chair Kahawai asked do you allow a corkage fee at the restaurant</p> <p>Mr. Ueoka replied I don’t know if that ever came up it is not something that comes up with most of our people being tourist. They are not bringing their stash from home. It hasn’t been an issue.</p> <p>Chair Crowell opened the public hearing and asked if there was anyone who would like to speak for or against this application. Hearing none, called for a motion to close the public hearing.</p>	<p><u>Motion #1</u></p> <p>Ms. Nishimitsu moved to close the Public Hearing. Mr. Nishimura seconded the motion. Motion carried 5:0.</p> <p><u>Motion #2</u></p> <p>Mr. Matsunaga moved that Application 2022-073 be approved. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>
<p>I.</p>	<p><u>PRELIMINARY HEARING (NEW LICENSE):</u></p> <p>Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item.</p> <ol style="list-style-type: none"> <u>DRIFT KAUI, LLC. dba DRIFT KAUI:</u> Application No. 2023-007 was filed on July 26, 2022, by Drift Kauai, LLC. dba Drift Kauai for a new Restaurant General (A) No Live Entertainment and No Dancing license to be located at 3540 Koloa Road (Food Truck Space #5), Kalaheo Kauai, Hawaii. 	<p>No Public Testimony.</p> <p><u>Motion:</u></p> <p>Mr. Kahawai moved to approve Application No. 2023-007 Drift Kauai, LLC dba Drift Kauai for Publication and Public Hearing. Mr. Nishimura seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
<p>J.</p>	<p><u>ACTION REQUESTED ON SCHEDULED CONTESTED HEARING:</u></p> <p>Director Sandoval-Reyes asked if there's anyone in the public who wishes to testify on this agenda item.</p> <ol style="list-style-type: none"> 1. <u>BAMF, LLC. dba BATTERS UP:</u> located at 1639 Haleukana St. Unit 1&2, Lihue, Kauai, Hawaii, Violation of Rule 7.8, Manager on Duty. <p>Director Sandoval-Reyes requested that the licensee in a previous decision was scheduled to a Contested Hearing Case. After discussion with him that was not exactly what he wanted to, he wanted to discuss the circumstances behind why the violation took place. He would like to have it re-considered as a regular adjudication hearing for another day if possible.</p> <p>Mr. Foster commented the process is very easy there are two options. By a majority vote you can rescind the action and that would take the contested case off the calendar. Or there can be a motion to amend something previously adopted. It could stay on the calendar as a non-contested matter and have a non-contested hearing on the same day. So, if someone made a motion to amend the prior action to remove the Contested Case and have it be a non-contested case hearing.</p> <p>Commissioner Nishimitsu asked would we need to do that if the applicant compares it to a criminal proceeding and decides he wants to plead guilty, but guilty with an explanation or admit with an explanation.</p> <p>Mr. Foster replied my understanding is the department discussed with me what his intent was here, what was he denying. He was not denying the facts at all. Rather he wanted to present mitigating circumstances that were not exercising their license yet. They aren't selling and wanted to explain that. I think that normally this body considers,</p>	<p>No Public Testimony.</p>

SUBJECT	DISCUSSION	ACTION
	<p>we will ask the licensee for an explanation of what happened and can consider those circumstances in your decision as to the fine or how much and determine whether to fine or not. In consultation with our office and the Director you may go before the body and turn this into a non-hearing. It's not fact, here he is admitting to the facts is my understanding.</p> <p>Commissioner Nishimitsu asked why, can't we proceed with the contested case hearing and listen to his explanation. Whether or not he admits to the allegations or not, instead of going through this whole motion about change it from a contested case hearing to a regular hearing.</p> <p>Mr. Foster explained that in the contested case the county attorney would send another attorney down to represent this department. I would be Counsel the way I am normally, and our department would send down another attorney to prosecute the case. It's more procedurally complicated. This would be easier then holding it as a contested case hearing.</p> <p>Commissioner Matsunaga asked if this was a first appearance or second. I have the same thoughts with Commissioner Nishimitsu person appears, even it is a contested change of plea. I have admitted to the charge and have some ligating circumstance that the Commission to consider.</p> <p>Commissioner Nishimitsu commented, I need to have Mr. Christiansen up here again. I heard at the beginning, that we would change the nature of the preceding and he would have to come back again, which means he would be before us three times.</p> <p>Mr. Foster explained he will come back, this is not the contested case hearing, correct. That's yet to be determined he will be coming back for either case whether its contested or non-contested case hearing.</p>	

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	<p>Commissioner Matsunaga asked if he was here and if we could dispose of this today?</p> <p>Commissioner Nishimitsu replied if he withdraws his request for a contested case hearing and states that on the record and says he admits that it occurred but let me give you my explanation and we act today, so he doesn't have to come back another day.</p> <p>Mr. Foster stated we have it down as actually requested on schedule a contested hearing, he is here.</p> <p>Commissioner Matsunaga commented he is here; he can say I changed my mind I am not contesting the charge.</p> <p>Mr. Foster said we can do it that way, right now it is on the agenda as action requested on scheduled contested case hearing and you would do the motion to rescind and hear it now as a non-contested hearing.</p> <p>Trevor Christensen was present to represent BAMF LLC, dba Batter's Up.</p> <p>Chair Crowell asked if was represented by counsel and asked him to tell the truth, the whole truth and nothing but the truth. Do you admit to the charge? Please explain what happened.</p> <p>Mr. Christensen replied no not represented by counsel. Yes, I have a copy of the charges and admit to the charge. I was under the impression that the blue card was pertaining to sell alcohol. We were not quite open yet as I did not want to fall behind as being a restaurant that 30% of my sales has to be through as the restaurant part had not been open yet. We did obtain the liquor license without acquiring alcohol on the premise whatsoever, and the batting cages side was still open. So, we had an employee there</p>	<p><u>Motion #1</u></p> <p>Mr. Nishimura moved to rescind the contested case hearing as requested by the licensee and that we hear his explanations as to the charges on his violation. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
	<p>working running the batting cages and at the time we filed for a gaming permit as we were acquiring our permit from the Department of Health. One of the officers came to drop off the permit asked employee Sam, if he has his blue card. He has not obtained one and issued a citation. Again, I take full responsibility of not reading the section of the license and I have no problem in admitting that part is my fault. That when you acquire the license, you have to have a member, a manager on duty with the blue card. I, again take responsibility for that. I should have had one, but I was under the impression it was to sell the alcohol and we were not quite open on restaurant part.</p> <p>Commissioner Nishimitsu asked you're understanding was that the license was triggered upon alcohol sales.</p> <p>Mr. Christensen replied yes correct.</p> <p>Commissioner Nishimitsu responded although the license is actually triggered upon issuance. Now I have a question about whether you were selling food from the premises or not yet.</p> <p>Mr. Christensen replied we are now, we have copies of when we got our license, which is on August 8th. Also have when we obtain liquor from Odom Corporation to start selling. We got our first order from them as the distributor for alcohol which is July 13th. We were right there starting to open the restaurant but not quite open.</p> <p>Commissioner Nishimitsu asked the day the violation was noted that there were no food sales occurring either.</p> <p>Mr. Christensen replied no food.</p> <p>Commissioner Nishimitsu asked do you have blue and red card employees now?</p>	<p><u>Motion #2</u></p> <p>Mr. Nishimitsu moved as acknowledged by the licensee that he was in violation that we levy a fine of \$500.00 and we will suspend \$500.00 given that he had Health Department issues as well as not having any liquor either in inventory or in sales. Provided that he doesn't have another incident like this in the next twelve months. Ms. Nishimitsu seconded the motion. Motion did not pass.</p> <p><u>Roll Call Vote:</u></p> <p>Mr. Matsunaga - Nay Ms. Nishimitsu - Aye Mr. Nishimura - Aye Mr. Kahawai - Nay Mr. Crowell - Aye</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Christensen replied yes, we do, and we have a calendar schedule for all managers on duty with their blue cards every single day, included are the food handlers.</p> <p>Director Sandoval-Reyes asked Mr. Christensen did you also have an issue with the Department of Health that was holding something up.</p> <p>Mr. Christensen replied they held up our licenses a little bit, there was a miscommunication, obviously with Roger. I put in with the health department the same time I put in for our liquor license. In an email he stated all my paperwork was great I didn't need a sink behind the bar at the time. So, we were right in line with the liquor department to have both permits at the same time. When I was ready for him, he came in and asked for my sink behind the bars and showed him an email and he said no. You have to have a sink, so I did stop in March, and we had to replumb, reconnect everything. That is why I did take a few extra months to obtain the actual health department permit. I did not want to fall behind and have more liquor sales than food sales. In case an auditor, I'm not that type of person this may be out of context, but I may not look like I follow the rules, but I really do try to. I am not asking for a handout or for anything. My biggest thing is I don't want to continue wasting your time which I am grateful you decided to do this now. Again, now I understand looking back that I didn't follow the exact law as far as what was my permission for taking that license. So, I am not here to ask for hand-outs I don't want to be that person that goes oh well Batters Up had this thing happen, if I need to pay a fine, I am totally understandable as I am in fault of that.</p> <p>Commissioner Nishimitsu asked if you didn't have to stop and replumb your premises, would you have your food and alcohol sales and blue and red card employees ready to go.</p> <p>Mr. Christensen replied yes.</p>	<p><u>Motion #3</u></p> <p>Mr. Matsunaga moved that a fine of \$500.00 be imposed of which \$500.00 to be suspended provided that no violations occur within a period of one year from date of this order. Mr. Nishimura seconded the motion. Motion passed 5:0.</p> <p><u>Roll Call Vote:</u></p> <p>Mr. Matsunaga - Aye Ms. Nishimitsu - Aye Mr. Nishimura - Aye Mr. Kahawai - Aye Mr. Crowell - Aye</p>

SUBJECT	DISCUSSION	ACTION
<p>K.</p>	<p><u>VIOLATION REPORT:</u></p> <p>Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item.</p> <ol style="list-style-type: none"> 1. <u>RESORT MANAGEMENT INTERNATIONAL INC. A CALIFORNIA CORPORATION dba THE POINT AT POIPU:</u> located at 1613 Pee Road, Poipu, Kauai, Hawaii, Violation of Rule 7.8(a), Manager on Duty. 2. <u>SHIVALIK INDIAN CUISINE LLC. dba SHIVALIK INDIAN CUISINE:</u> located at 4-771 Kuhio Hwy. Kapaa, Kauai, Hawaii, Violation of Rule 4.7, Gross liquor Sales reports, percentage fee, and records. 3. <u>RED ROOSTER RESTAURANTS, LLC. dba FISH BAR DELI:</u> located at 4-1380 Kuhio Hwy, Kapaa, Kauai, Hawaii, Violation of Rule 4.7, Gross liquor Sales reports, percentage fee, and records. 	<p>No Public Testimony.</p> <p><u>Motion:</u></p> <p>Mr. Nishimura moved to schedule a violation hearing for items K1. Resort Management International INC. a California Corporation dba The Point at Poipu, K2. Shivalik Indian Cuisine LLC. dba Shivalik Indian Cuisine and K3. Red Rooster Restaurants, LLC. dba Fish Bar Deli. Mr. Matsunaga seconded the motion. Motion carried 5:0.</p>
<p>L.</p>	<p><u>ADJUDICATION HEARINGS:</u></p> <p>Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item.</p> <ol style="list-style-type: none"> 1. <u>TAHITI NUI ENTERPRISES INC. dba Tahiti Nui:</u> located at 5-5134 Kuhio Hwy, Hanalei, Kauai, Hawaii, Violation of Rule 2.6, Renewal of license. <ol style="list-style-type: none"> a. Tahiti Nui Enterprises Inc. is licensed as a restaurant permitted to sell liquor for on premises consumption. b. Tahiti Nui Enterprises Inc. failed to submit application renewal of license 	<p>No Public Testimony.</p>

SUBJECT	DISCUSSION	ACTION
	<p>no later than June 30th of each year. On July 7th, 2022, contrary to Rule 2.6 of the Rules and Regulations of the Liquor Control Commission of the County of Kauai, State of Hawaii.</p> <p>c. Violation History within 24 months: None</p> <p>Nanea Marston, Owner/ Member present to represent Tahiti Nui.</p> <p>Chair Crowell asked Ms. Marston to raise her right hand, do you swear to tell the truth, the whole truth and nothing but the truth.</p> <p>Ms. Marston replied yes.</p> <p>Chair Crowell asked did you receive a copy of the charges and do you understand the charge. Do you admit or deny the charge? Please explain what happened.</p> <p>Ms. Marston replied yes this is about the liquor license. I admit to the charge. Yes, embarrassed to say it but this is the first time we had our federal and state taxes paid. That is what I am waiting for at the last minute. All of that was paid this year on time. I thought we were waiting for insurance to be renewed when I got over there to get the stamp, she said that our corporate tax return had to be done. Prior to that, is the first that had I had to do that. She explained that to me which was my misunderstanding. It's my fault for not understanding it. She said that normally we have to October, so we weren't normally late. Our state and federal taxes was paid on time. Our corporate tax returns for 2020 were still sitting at H&R Block that is really it. We finished that night the lady from H&R Block came in to help me at 7:30 p.m. I got it turned in the next morning we lost our bookkeeper and was extra long at H&R Block.</p> <p>Commissioner Nishimitsu asked Director Sandoval-Reyes you have a chronology of events being the last page. One item noted received tax-clearance Wednesday July 6, 2022. Was that the final thing the department needed to be able to renew the license.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Sandoval-Reyes replied yes.</p> <p>Commissioner Matsunaga stated the deadline was June 30th.</p> <p>Director Sandoval-Reyes commented there was not supposed to be any liquor sales between the 30th through the 6th.</p> <p>Commissioner Matsunaga asked from July 1st to July 6th were you selling alcohol?</p> <p>Ms. Marston answered we got the license back the next day, not the 6th of July it was on the 1st.</p> <p>Commissioner Nishimitsu replied the clearance went into the liquor department on July 6th which was what was necessary before the license could be renewed.</p> <p>Ms. Marston commented I am confused it was the very next day.</p> <p>Commissioner Nishimura check to say if there is a date stamp.</p> <p>Director Sandoval-Reyes commented I will have to check with Malia if it was delivered online.</p> <p style="text-align: center;"><i>Chair Crowell called for a recess at 2:12 p.m.</i></p> <p style="text-align: center;"><i>Resumed meeting at 2:18 p.m.</i></p> <p>Director Sandoval-Reyes replied on July 1st the department has the on-line submittal that the compliance certificated was requested on June 30th on the last day of the month you had done your submission. Then you gave you a form that said it was complied in there. The actual tax clearance was received on the 6th which is the actual official form. So, we had the unofficial that it's been submitted for request.</p> <p>Ms. Marston replied I brought in the paper copy the next day.</p>	<p>Mr. Nishimura moved to call for a recess @ 2:12 p.m. Mr. Matsunaga seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Nishimitsu replied for the purposes of this matter we're dealing with the question of whether there were liquor sales from July 1st to July 6th. The July 6th date is just the date that they received your tax clearance from the department. So, it becomes mooted out.</p> <p>Vice Chair Kahawai asked do we date stamp the document.</p> <p>Director Sandoval-Reyes replied it supposed to.</p> <p>Commissioner Nishimura also commented it has an issuance date. Isn't that the QR code above that the issuance date is July 1st, 2022. That is for the state of the issuance online.</p> <p>Director Sandoval-Reyes replied there is a discrepancy she saying she did come in on the 1st and that it was stamped. I don't know where the stamp is, one it is probably at the office. So, we probably collaborate whatever she is saying if it says the first it will be stamped the first. If it is not, it will be stamped whatever it is. It is up to the Commission if you want to defer, we can get that document to you or we can go with this, it's up to you.</p> <p>Commissioner Matsunaga replied, it does not make a difference the deadline was June 30th. It was submitted pass June 30th.</p> <p>Chair Crowell commented do we have two violations at this point, one of county rules and the other of the state HRS.</p> <p>Director Sandoval-Reyes replied we presented it under the rule.</p> <p>Commissioner Nishimitsu asked addressing the question whether they sold liquor between July 1st to July 6th which is not the charge that Tahiti Nui is here for. The charge is they failed to renew on or before June 30th. There was an admission that they missed that deadline.</p>	<p><u>Motion:</u></p> <p>Mr. Matsunaga moved that a fine of \$500.00 be imposed. Ms. Nishimitsu seconded the motion. Motion carried 5:0.</p>

SUBJECT	DISCUSSION	ACTION
<p>M.</p>	<p><u>ADJOURNMENT</u></p>	<p><u>Motion:</u></p> <p>Mr. Nishimura moved to adjourn the meeting. Mr. Matsunaga seconded the motion. Motion carried 5:0.</p> <p>Meeting ended at 2:27 p.m.</p>
<p>N.</p>	<p><u>EXECUTIVE SESSION:</u></p>	<p>No Executive Session</p>

Submitted by: _____
 Malialani Kelekoma, Private Secretary

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

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