

# APPROVED

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

See minutes of 10-14-21

Board/Commission:	<b>LIQUOR CONTROL COMMISSION</b>	Meeting Date	<b>August 26, 2021</b>
Location	Tele Conference via Microsoft Teams Audio +1 469-848-0234, Conference ID: 529 790 579#	Start of Meeting: 4:00 p.m.	End of Meeting: 5:19 p.m.
Tele Present	Chair William Gibson, Vice Chair Dee Crowell Members: Leland Kahawai, Randall Nishimura, Lorna Nishimitsu, Gary Pacheco, Tess Shimabukuro Also: Liquor Control Staff: Director Leo Sandoval, Liquor Clerical Assistant Malialani TM Kelekoma; Ellen Ching Administrator Boards & Commission, Deputy County Attorney Charles Foster		
Excused			
Absent			
SUBJECT	DISCUSSION	ACTION	
A. <b><u>CALL TO ORDER</u></b>		Chair Gibson called meeting to order 10:02 a.m.	
B. <b><u>ROLL CALL</u></b>	Director Leo Sandoval called roll, noting 7 members were present via Tele-Conference constituting a quorum.		
C. <b><u>ANNOUNCEMENTS:</u></b>	Next Scheduled Meeting: Thursday, September 9, 2021 – 10:00 a.m. or shortly thereafter.		
D. <b><u>APPROVAL OF AGENDA:</u></b>	Director Leo Sandoval advised the Commission of the corrections to the agenda: 1. Item G 1. Temporary listed as September 9, 2021 – December 31, 2021 the expiration should reflect December 9, 2021.		

SUBJECT	DISCUSSION	ACTION
	2. Item G 2. Gather Federal Credit union omit National Tropical Botanical Gardens should be Gather Federal Credit Union. 3. Minutes in section E. Approval of Minutes Open Session Minutes of June 20, 2021 should be June 17, 2021. 4. Approval of Executive Session Minutes of June 20, 2021 should be Executive Session Minutes of June 17, 2021.	<u>Motion:</u> Mr. Pacheco moved to approve the agenda as amended by Director Leo Sandoval. Mr. Kahawai seconded the motion. Motion carried 7:0.
<b>E.</b>	<u><b>APPROVAL OF MINUTES</b></u>  a. <u>Open Session Minutes of June 3, 2021</u> b. <u>Open Session Minutes of June 17,2021</u>  Commissioner Nishimitsu did not receive a copy of the Open Session Minutes of June 3 and June 17, 2021 and abstained from voting.	<u>Motion:</u> Mr. Nishimura moved to approve the Open Session Minutes of June 3, 2021 and June 17, 2021. Mr. Pacheco seconded the motion. Motion carried 6:1.
<b>F.</b>	<u><b>DIRECTOR'S REPORTS:</b></u>  1. <u>INVESTIGATOR'S ACTIVITY REPORTS:</u>  2. <u>EMPLOYEES IN LICENSED PREMISES:</u> a. Managers and Assistant Managers – See Attachment "A"	<u>Motion:</u> Mr. Pacheco moved to accept the Director's Report item # 1 and 2a. Ms. Nishimitsu seconded the motion. Motion carried 7:0.
<b>G.</b>	<u><b>ACTIONS OF THE DIRECTOR:</b></u>  1. <u>BANGKOK HAPPY BOWL KAUAI INC:</u> Approval of Temporary Increase of Premise to include the covered area immediately fronting the restaurant per diagram submitted from September 9, 2021 to December 9, 2021.	

SUBJECT	DISCUSSION	ACTION
	<ol style="list-style-type: none"> <li>2. <u>GATHER FEDERAL CREDIT UNION</u>: Approval of Application Nos. Free 2022-10 filed on August 13, 2021, by Gather Federal Union for a Free One-Day Special Dispenser General licenses on September 11, 2021 at Pua Kea Golf Course at 4150 Nuhou Street, Lihue, Kauai, Hawaii.</li> <li>3. <u>DUKE'S CANOE CLUB</u>: Approval of Temporary Increase of Premise to include the grass area fronting the restaurant for a consumption area, per diagram submitted. Dates of temporary increase effective August 10, 2021 to September 6, 2021 from 10:30am to 10:30pm.</li> <li>4. <u>KAUAI KILO HANA PARTNERS</u>: Approval of Temporary Increase of Premise to include the circular drive area fronting the luau pavilion per diagram submitted. Date of temporary increase effective August 21, 2021 from 3:00pm - 11:00pm.</li> <li>5. <u>AOAO OF THE HANAIEI BAY RESORT</u>: Approval of Temporary Increase of Premise to include the entrance and gazebo area per diagram submitted. Date of temporary increase effective August 16, 2021 from 6:00pm to 9:00pm.</li> <li>6. <u>BEACH HOUSE RESTAURANT</u>: Approval of Temporary Increase of Premise to include the patio lawn space for a consumption area, per diagram submitted. Dates of temporary increase for August 22 &amp; 26, 2021 from 6:00pm - 10:00pm.</li> <li>7. <u>BEACH HOUSE RESTAURANT</u>: Approval of Temporary Increase of Premise to include the patio lawn space for a consumption area, per diagram submitted. Dates of temporary increase for September 2, 2021 from 5:00pm - 10:00pm.</li> <li>8. <u>BEACH HOUSE RESTAURANT</u>: Approval of Temporary Increase of Premise to include the patio lawn space for a consumption area, per diagram submitted. Dates of temporary increase for September 3, 2021 from 5:30pm - 10:00pm.</li> <li>9. <u>BEACH HOUSE RESTAURANT</u>: Approval of Temporary Increase of Premise to include the patio lawn space for a consumption area, per diagram submitted. Dates of temporary increase for September 4, 2021 from 10:30am - 2:30pm.</li> </ol>	

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	<p>10. <u>BEACH HOUSE RESTAURANT</u>: Approval of Temporary Increase of Premise to include the patio lawn space for a consumption area, per diagram submitted. Dates of temporary increase for September 4, 5, 9, 11, 12, 13, 17, 18, 19, 20, 21, 23, 24, 25, 26, 30, 2021 from 4:30pm -10:00pm.</p> <p>11. <u>BEACH HOUSE RESTAURANT</u>: Approval of Temporary Increase of Premise to include the patio lawn space for a consumption area, per diagram submitted. Dates of temporary increase for September 16, 2021 from 6:00pm - 8:30pm.</p> <p>12. <u>BEACH HOUSE RESTAURANT</u>: Approval of Temporary Increase of Premise to include the patio lawn space for a consumption area, per diagram submitted. Dates of temporary increase for September 27, 2021 from 6:00pm - 9:00pm.</p> <p>13. <u>HAWAII HOTEL INDUSTRY FOUNDATION</u>: Approval of Application Nos. Free 2022-11 filed on August 16, 2021, by Hawaii Hotel Industry Foundation for a Free One-Day Special Dispenser General licenses on August 28, 2021 at the Poipu Bay Clubhouse &amp; Golf Course, 2250 Ainako Street, Koloa, Kauai, Hawaii.</p> <p>Commissioner Nishimitsu asked about Dukes Canoe Club expansion are there any SMA (Special Management Areas) issues. Under the SMA was the hotel permitted to do certain things within the approved structures? Was their confirmation from planning that didn't trigger any (Special Management Area) issues?</p> <p>Director Leo Sandoval replied at this time we don't have that information. We are looking into some additional actions from the Departments that we will be requiring prior to issuance of the permits. In light of new information that was received should the information be discovered during the time of the active temporary increase, the department will suspend the temporary permit.</p> <p>Chair Gibson responded my observation and limited information was that the extension area was provided in order that people could be accommodated from the Hotel and separated</p>	

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	<p>from the restaurant customers by the extension. As I say that is only here say. Commissioner Nishimura asked are they using the sidewalks to serve their drinks.</p> <p>Director Leo Sandoval responded yes.</p> <p>Investigator Ken Herman responded to Commissioner Nishimura any extension has to be continuous through their existing licenses. There is a pathway across from Dukes leading to that area that is licensed, Dukes is not allowing customers to walk across that, servers are walking drinks across. To his knowledge they are not walking it across they have a satellite bar set up in the extension area. To our knowledge from what Chair Gibson has said, it was not relayed to us upon their request for this extension to separate the hotel guests. This is just an extension to relieve them for COVID expansion to be able to separate people six feet. It is not to separate hotel guests from restaurant guests. On the temporary request in the past we did not require zoning clearance from Planning. That will be something the Director just mentioned on the permit extension we are requiring it but not on the temporary we are in the process of working it out as new information that we received.</p> <p>Chair Gibson asked any further questions.</p> <p>Vice Chair Crowell asked are they going to be on the beach?</p> <p>Director Leo Sandoval responded no, I had the opportunity to visit the location and the extension is out to the grassy area directly in front of the hostess stand. They have a tent set up and roped off from exiting the area. I spoke to the management and has two dedicated employees that are in that area at all times. They do understand that during the course of inspection that could keep them from continuing that operations.</p> <p>Vice Chair Crowell commented as long as they do not go on the sand and out of the County jurisdiction then it will be a State jurisdiction. There may be more problems, it's like having</p>	

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	<p>weddings on the beach.            Investigator Herman replied we do not issue a permit pass the vegetation line.</p> <p>Chair Gibson asked any further questions, hearing none asked for a motion.</p>	<p><u>Motion:</u>            Mr. Kahawai moved to approve Actions of the Director for 1 through 13 as amended. Mr. Pacheco seconded the motion.            Motion carried 7:0.</p>
<p><b>H.</b></p>	<p><b><u>NEW LICENSE:</u></b></p> <p>a. <u>ET &amp; WT LLC dba KENJI BURGER KOLOA: ET &amp; WT LLC dba KENJI BURGER KO LOA filed Application No. 2022-006 on August 16, 2021 for a New Restaurant General B (Live Entertainment and Dancing) license located at 5404 Koloa Road, Unit 06-02, Koloa, Kauai, Hawaii. Deposited \$450.00.</u></p> <p>b. KO LOA PIZZA KITCHEN+ BAR LLC dba KO LOA PIZZA+ KITCHEN + BAR: KOLOA PIZZA KITCHEN + BAR LLC dba KO LOA PIZZA KITCHEN + BAR FILED Application No. 2022-007 on August 13, 2021 for a New Restaurant General B (Live Entertainment No Dancing) license located at 5408 Koloa Road, Unit 04-01, Koloa, Kauai, Hawaii. Deposited \$450.00</p> <p>Chair Gibson asked Director Leo Sandoval when will there hearings be.</p> <p>Director Leo Sandoval replied after the acceptance we have to wait 45 days.</p>	<p><u>Motion #1:</u>            Mr. Nishimura moved to accept Application No. 2022-006 for ET &amp; WT LLC dba KENJI BURGER KOLOA schedule for Publication and Public Hearing. Mr. Pacheco seconded the motion. Motion carried 7:0.</p>

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	<p>Investigator Ken Herman commented for clarification it will have to go into the newspaper first. Once the Publication is out then we wait 45 days, you don't count 45 days out from the acceptance. When the clerk submits for the first publication next week Wednesday we count 45 days out from that.</p> <p>Chair Gibson commented his reason for the question is will that bring us into the period where we are asking about dates of the future meetings.</p> <p>Investigator Herman replied no Chair myself and Director Leo Sandoval talked about this earlier today. We are estimating their Public Hearings to be in October.</p>	<p><u>Motion #2:</u>          Mr. Nishimura moved to accept Application No. 2022-007 for KO LOA PIZZA KITCHEN + BAR LLC dba KO LOA PIZZA schedule for Publication and Public Hearing. Mr. Pacheco seconded the motion. Motion carried 7:0</p>
<p>I.</p>	<p><b><u>PERMANENT INCREASE OF PREMISES (8/12/21):</u></b></p> <p><u>MPK MANAGEMENT CO. LLC dba THE BEACH HOUSE RESTAURANT:</u> Request for permanent increase of premises to accommodate the regular weddings/events on the south lawn area and west lawn area of the Beach House Restaurant. The appropriate staff as well as the manager on duty will monitor all areas.</p> <p>Director Leo Sandoval stated this is a continuous from the 8-12-21 meeting where MPK Management is requesting a permanent increase. At that time they requested a large increase to their premises permanently and sent back for re-consideration to amend their premises that they are requesting. Request for permanent increase of premises to accommodate the regular weddings/events on the south lawn area and west lawn area of the Beach House Restaurant. The appropriate staff as well as the manager on duty will monitor all areas. They are requesting for in an increase as part of HRS 281-62 all guidelines have been attached indicating the existing area on diagram 1, request to increase on diagram 2. Proposed overall premises on diagram 3 and diagram 4 showing the original area was requested in the last Commission</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Meeting on 8-12-21 prior to making adjustments to what was sought as the new license premises. He asked Chair Gibson if there is any questions or concerns and for item (I) for Permanent Increase of Premises this is the time to do. Director Leo Sandoval stated that Director Kaaina Hull from Planning is available and has information that he would like to share with the Commission prior to making a decision on this request.</p> <p>Commissioner Nishimitsu asked would/should this be treated as a new application for a license, it goes beyond what was previously licensed for alcohol consumption and service.</p> <p>Director Leo Sandoval replied for the permanent increase it doesn't in the HRS tell us to do that. However, this is information that was received from Planning that would affect the decision or would give you additional information on making a decision on the permanent increase. That is why I invited Director Kaaina Hull to talk to the Commission.</p> <p>Director Kaaina Hull on behalf of the Planning Department wanted to update the Commission in regards for some paperwork that was filled out by one of his staff members for this application, in which may have been made in error.</p> <p>Commissioner Nishimitsu replied the zoning compliance report was made in error.</p> <p>Director Kaaina Hull replied yes, it crossed my desk this morning, one of our relatively new techs signed a few of these for the Beach House Restaurant. While Beach House has the zoning ability to operate a restaurant, bar and liquor sales from a zoning perspective. Everything in our permit is within the footprints and confines of the restaurant itself. Any expansion out into the lawn the zoning permits do not cover and the Planning Department is not against or in opposition to expanding liquor or</p>	

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	<p>commercial operations onto the lawn itself, the existing premises don't cover it. If there is a desire from a zoning perspective to expand within that area they will need to go back to the Planning Commission to expand to that area. It crossed my desk this morning and we did a rapid research. Everything in our files is showing restricted to the restaurant area. I did not want to put everything in writing to you folks. I am sure the applicant wanted to reach out to the Planning Department, if they have documentation that they can present to the Planning Department that would entitle the lawn for commercial liquor sales we would be happy to entertain it. Everything that we could find in our research shows it is restricted to the restaurant area.</p> <p>Chair Gibson asked they would need to apply for temporary permit, is that right Director Kaaina Hull.</p> <p>Director Kaaina Hull responded they can apply for a temporary or a permanent permit.</p> <p>Chair Gibson replied they would need to go through your department with the application.</p> <p>Director Kaaina Hull responded yes.</p> <p>Chair Gibson asked even on temporary.</p> <p>Director Kaaina Hull replied whether it is temporary or permanent they need to expand their SMA use permit and I don't have the authority to ministerial it they would have to go to the Planning Commission to ask for permission and expansion of the permit.</p> <p>Chair Gibson asked Director Leo Sandoval would that impact all the temporary requests.</p>	

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	<p>Director Leo Sandoval replied that is the information that I was conveying to the Commission if they don't want to jump ahead of it before Director Kaaina Hull had an opportunity to speak to you with the new information being enlightened upon us previous forms that have been in the department do not require the Planning Commissions clearance for a temporary increase. Being that the Planning Department does not have it on file for the location that they are seeking for an expansion area, I really could not approve a temporary extension to that area that they are requesting. We have to make sure before we grant them a temporary expansion of their premises legally we unfortunately we would have to rescind the temporary increases that already have been issued until they begin their process with Planning to make it right.</p> <p>Chair Gibson asked are we talking about all of our requests for temporary increases.</p> <p>Director Leo Sandoval replied at this point it would only be Beach House Restaurant because it has been brought to our attention. We would need to research the ones that are currently issued and active at this point to make sure that they are in compliance.</p> <p>Chair Gibson asked Director Kaaina Hull we have Rob's who does it on a regular basis.</p> <p>Investigator Ken Herman replied we have numerous ones out there for COVID relief.</p> <p>Director Kaaina Hull commented the vast majority of where there are liquor sales are occurring right now is out right permissible in our books. We have some land use people on your board, commercial zoning, resort zoning expansions in these area outright permissible and we would sign off on any type of zoning compliance forms. It gets a bit of an issue when you are in those coastal areas or non-urban areas. We could do a relatively quick check of all the ones that have come before the Commission</p>	

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	<p>on this past year or two.            We can do that in a day to see which may not be in compliance. Also recognizing on a temporary basis that much of this are on a COVID relief. On the table possibly is using the emergency proclamation to exempt themselves from adhering to our zoning standards. We would be supportive if we could legally do that understanding that within the dining and drinking environments it is safer to be outside. If we don't exercise that to grant those things to gum up all the actions that you have taken up this year and a half we would absolutely look at this process.</p> <p>Chair Gibson thanked Director Kaaina Hull.</p> <p>Sarah Hill representing the Beach House commented I totally understand that this is a novel issue that we are all encountering today and was just wondering given that this has been the operating practice and standard for us for many years now. This is impacting a lot of establishments for COVID increases and other events that are going on right now. At a year where we severely, severely where our businesses have been impacted. Would be possible to give applicants a grace period of a month or two to get this process so that we can all figure out what the process should look like and that we are able to proceed appropriately before enacting these new regulations. Is something like that feasible since this rule is technically isn't in place for temporary extensions right now? If that is possible that would be a huge help for our business.</p> <p>Investigator Ken Herman asked Chair Gibson for a point of order question for Mr. Foster. This is not a Public Hearing should the Chair call upon that person first before just testifying.</p> <p>Ms. Sarah Hill apologized for speaking out of turn.</p> <p>Mr. Foster replied first of all as to Investigator Ken Herman's point is to drawing the</p>	

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	<p>meeting back to order, I would take that. This is to novel for me to shoot on the hip on. This needs to be in conversation with some high level people in the County who have for instance working with KEMA and have good knowledge of the COVID and Emergency Proclamations and what we can do under those. I can't sit here and say you can or cannot grant a grace period it's just to novel right now. I have to do research and won't know today.</p> <p>Vice Chair Crowell commented the reason that I am concerned in the shoreline areas the problem is may not be a problem for the Liquor Department or the Liquor Commission to regulate this guys. For the Planning Department they have been sued a number of times for this exact kind of activity happening in the shoreline setback area. There was an earlier one in a hotel on our agenda, same thing it's a really sticky problem for the Planning Department and Commission. I think we should let them go through their process first and make sure everything is right with them. The last thing we want to happen is they get sued again and we all look stupid.</p> <p>Commissioner Nishimitsu replied if this practice of giving Beach House Restaurant temporary increases preceded the COVID restrictions and it is clearly not just for COVID relief but purely to expand the area there in which they can conduct their business and conduct liquor sales. I need to know what it is.</p> <p>Ms. Hill asked to speak and Chair Gibson granted her an opportunity to speak. Thank you for asking that question you are correct on how those practice proceeds for COVID restrictions. However we are relying much more on this area in the COVID times because of our inability to use the entire building. We have done this previously the problem and the use of this area is compounded significantly by COVID and the restrictions that we face. We are directly impacted by those restrictions and needing use of this area much more so because of that.</p>	

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	<p>Chair Gibson asked for any other comments or questions.</p> <p>Director Kaaina Hull commented like I was saying sympathetic to what's occurring globally and the impact on various businesses. We just got this issue today I was peeling through the various files, I wouldn't want my comments here today to be characterized as asking to deny the application requesting at most a deferral so that we can further culture this record due to the fact it just came to our attention today.</p> <p>Chair Gibson asked Director Leo Sandoval consider the deferral for Beach House that they cannot go on with their scheduled functions until such time all of the questions can be answered and to permit.</p> <p>Director Leo Sandoval replied the temporary permits that have been issued can continue to operate with the temporary until we figure out what we need to do. In case the proclamation does not cover then we should probably revisit it. In the HRS it did give me the authority to revoke those temporary's anytime. In fairness we can have them operate under the temporary until we can find out the proper authorities that have been given to them to operate. If there is any kind of variances in the proclamation and allow them the opportunity to go through Planning to process correctly and any Public Hearings that need to get started to permanently increase their premises according to Planning.</p> <p>Chair Gibson asked Director Kaaina Hull will that impact your department.</p> <p>Director Kaaina Hull replied no and honestly when we run into issues where staff may have accidentally in error given entitlements with the Class I Zoning permits and we have run into these issues before and there is a lot of case law on it. I think moving to revoke their liquor licenses contingent upon a possible error on determination of the Planning Department issued.</p>	

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	<p>I would actually ask for a little bit of leeway to continue the operator to continue operating on the temporary ones that were already issued based off of documentation that was signed from my department at least until we can get to the bottom of this.</p> <p>Director Leo Sandoval commented to Chair Gibson that he agrees.</p> <p>Commissioner Nishimitsu replied I am comfortable in authorizing the extension through September 27, 2021 that we acted on today, but nothing beyond that.</p> <p>Chair Gibson replied September 27, 2021 is the furthest one out.</p> <p>Director Leo Sandoval commented that is correct, it appears that they have one out till the 30<sup>th</sup> of September.</p> <p>Ms. Hill replied it is item #10 the difference is the time.</p> <p>Director Leo Sandoval responded to Chair Gibson they can go to the September 30<sup>th</sup>. That would probably be good if it is acceptable by Commissioner Nishimitsu. As long as Beach House follows up through with Planning. We can do the deferral on the permanent increase.</p> <p>Commissioner Nishimitsu asked are they coming in with additional expansion request to go through the end of September. Is that what you are saying?</p> <p>Director Leo Sandoval replied no all the Department has is through September. NO additional ones have come through this office. Their intention was to get the permanent increase by October so they wouldn't have to do anymore. However there is no temporary's issued for October. It ceases in September.</p>	

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	<p>Chair Gibson commented they are approved till September all we need is a motion to defer the Permanent Increase until such time as the Planning Department can say aye or nay to the use of the property.</p> <p>Mr. Foster commented to Chair Gibson you can postpone indefinitely or to a specific upcoming meeting date or until someone wants it put on.</p> <p>Commissioner Nishimura replied if I put it indefinitely does it kill it in essence.</p> <p>Mr. Foster replied you can use that so you never have to hear the matter again. In this case it doesn't necessarily kill it if someone wants it put back on the agenda it can be put back on.</p> <p>Vice Chair Crowell recommended deferred until there is action from the Planning Commission and Department.</p> <p>Chair Gibson asked Director Leo Sandoval will you be in contact with Beach House Restaurant when they should re-apply for the permanent permit.</p> <p>Director Leo Sandoval responded yes we will coordinate with Beach House and Planning to verify all the information prior to re-presenting back to the Commission for discussion.</p> <p>Vice Crowell asked Director Kaaina Hull in the shoreline setback area are tents allowed.</p> <p>Director Kaaina Hull replied it depends if the tent is set-up in continuity for weeks and months then the answer is no. They set up a tent on a daily basis and break it down, yes. So we have to establish how long it is going to be set-up there.</p>	

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	<p>Vice Chair Crowell they will come in to see you to straighten that out.</p> <p>Director Kaaina Hull replied we have to go over the timelines in which they are setting up. We have to treat the commercial, mama and pops folks and anybody who are accessing the shoreline equally. So there might be some tenor to shut it down all tent openings. We don't have the resources to stop.</p> <p>Vice Chair Crowell commented we just had a request for a tent on the beach for commercial use.</p> <p>Director Kaaina Hull replied if they are putting it up permanently or semi permanently they would have to get permits from us.</p> <p>Director Leo Sandoval thanked Director Kaaina Hull.</p> <p>Chair Gibson asked any further questions.</p> <p>Ms. Hill commented she will follow up with the Directors and Commission and thanked the Commission for considering their permanent increase. Will work towards getting everything squared away as soon as possible.</p>	<p><u>Motion:</u>            Mr. Nishimura moved to defer action on the Permanent Increase of premises for MPK Management Company LLC dba The Beach House Restaurant pending receipt of recommendations from the Planning Department. Mr. Pacheco seconded the motion. Motion carried 7:0.</p>
<p><b>J.</b></p>	<p><b><u>PRESENTATION, DISCUSSION ON A PENALTY GUIDELINE DRAFT</u></b></p> <p>Chair Gibson asked are there any recommendations on the fines schedule.</p> <p>Director Leo Sandoval asked Chair Gibson that he would like to go over the schedule. The recommended fine schedule is not set in stone. There was a request to put together a</p>	

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	<p>recommendations of fines for future violations that we can begin a precedent. So when we have violations in the future, it's been history to ask the department for recommendations on various Violations Hearing when they take place. What the department most likely will be doing is off of this recommended fine schedule as our recommendation whenever these violations occur. Keep in mind this is not inclusive of all violations, there may be others that are not on here. However these are the ones that are most common that are presented. Now each one of these are set up in columns for first, second and third violations. These would be the initial recommendation however the Commission has ultimate authority to deviate an increase or decrease the amount of the fine as presented. That did not take away from the Commission in any way, this is only a recommendation. For example if you have the second violation which is 281-4 consumption on unlicensed premises if you notice it says KPD. Those will be cases where it will be referred to KPD at that point we wouldn't handle that. On the next line you have 281-31 activities prohibited by class, first violation would be a \$500.00 recommendation, a second violation within twelve months would be \$750.00 a third violation within twelve months would be a \$1,000.00 recommendation for the Commission. Anything pass that would be up to your discretion of the Commission a maximum of \$2,000.00 which is maximum by HRS. We are trying to begin a history on each of the licensees and try to keep them in line so they do not repeat within those twelve months period and graduated fine and also precedence in case we need to go that route. These are just for information we do not need to take an action on this item. This is just a guideline in which the department is coming up with. I am open for discussion as well and if there is no discussion it can be accepted with a motion to do so as information received.</p> <p>Chair Gibson asked are there any questions.</p> <p>Commissioner Pacheco asked Director Leo Sandoval on previous Liquor Commission Meetings the coffee shop in Kilauea they had a second violation when the investigator was issuing not present of a blue card holder that was put on hold. What is going on with that?</p>	

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	<p>Director Leo Sandoval responded I will refer to Investigator Ken Herman.</p> <p>Investigator Ken Herman replied to the Commissioners these seems to be a confusing topic for the past couple of meetings. That was never put on hold, Mr. Foster help me out on this also the reason they were sighted a second time before their first violation hearing occurred. So at the first violation there were given a suspended amount, the second violation does not apply because it happened before the violation hearing for the first offense. So we could not hold them to the suspended amount, they were given a separate violation and were given a second fine on the second violation in which it did not include the suspended amount.</p> <p>Director Leo Sandoval replied I believe this was discussed with Mr. Foster and Commissioner Nishimitsu. I don't know what the communication was on there might be more clarification on Mr. Foster's part.</p> <p>Commissioner Nishimitsu replied before that happens Mr. Foster there is a charge when the licensee was served with the violation notice of the event that it is a violation. Then there is a Hearing in which there is a disposition. So if you equate that with the criminal process then the charge is a conviction. So the first event there was no final action until June 17<sup>th</sup> when the licensee admitted that there was a violation, then on July 22<sup>nd</sup> for the second charge the licensee again admitted. So in my view there is a second violation after the first within a period of one year. That is what I wanted to have Mr. Foster explain. Why that analogy does not apply. I did try to send you an email I don't know where it went.</p> <p>Mr. Foster commented we are discussing an item that is not on the agenda, I'm happy to talk to the Commissioner and provide an opinion.</p> <p>Investigator Ken Herman replied exactly.</p> <p>Commissioner Nishimitsu commented I think we should put this on the agenda.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Foster replied yes let's put it on the agenda.</p> <p>Chair Gibson asked for the next meeting.</p> <p>Mr. Foster replied that is fine with me.</p> <p>Commissioner Kahawai asked Director Leo Sandoval is this the first written guideline of fines that we are looking at or is there a current written guidelines of fines.</p> <p>Director Leo Sandoval replied this is fresh off the press.</p> <p>Chair Gibson was this fines schedule made with the adjudication arms of the Honolulu and Hawaii (Big Island) Liquor Commissions.</p> <p>Director Leo Sandoval replied these fines came from Honolulu, there fines are a lot higher then what was put on this one. So it was narrowed down a little.</p> <p>Chair Gibson commented there is no line for suspension, dismissal or cancellation of licenses.</p> <p>Director Leo Sandoval replied turn to the last page there is a line that says prohibition anytime you see at the third violation of prohibition where is says S/R is suspension or ratification by the Commission on the third violation. If they had three violations within the twelve month period one of the options would be to suspend or revoke or you could go up to \$2,000.00 fine it is what the Commission will decide at that point. You don't have to suspend or revoke the Commission may fine if you choose to.</p> <p>Chair Gibson replied on any of these violations.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval replied it is the sole discretion of the Commission to assess whatever the fine or suspension is.</p> <p>Mr. Foster commented you don't have the follow the guidelines if you don't want to.</p> <p>Director Leo Sandoval commented wanted to give the Commission an idea of where if we had that case is where it will be coming from the violation and take into consideration past history of the location to see if they are a continuous bad actor or a first time and start from the lower side.</p> <p>Chair Gibson asked if there is no more discussion may we have a motion to accept the recommended fines schedule.</p>	<p><u>Motion #1:</u>            Mr. Nishimura moved to receive the Penalty Guideline Draft. Mr. Kahawai seconded the motion. Motion carried 7:0.</p>
<p>K.</p>	<p><b><u>PRESENTATION,DISCUSSION AND POSSIBLE ACTION ON THE DIRECTOR OF LIQUOR CONTROL'S 90 DAY STATUS REPORT</u></b></p> <p>Director Leo Sandoval commented you received three amendments to the packet the last one is the most current and is open for discussion and if you have any questions.</p> <p>Commissioner Nishimura thanked Director Leo Sandoval for spending quite a bit of time going through this also it looks like he did a good job in achieving most or all of his goals. Because of all the changes I asked that we receive it but I don't want to take final action on it today.</p> <p>Chair Gibson replied are you recommending that we put this on the next agenda.</p> <p>Commissioner Nishimura replied I don't know if we want to discuss this further, but we can certainly receive it. We got so many different changes I would like to take time to review it.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Nishimitsu asked Director Leo Sandoval on #7 on the action plan and your investigators have nothing other than a can of mace in certain situations. Are you suggesting that they need any other weaponry? Or equipment and get the required training for those?</p> <p>Director Leo Sandoval replied that is a good question, at this point that is the only option available to the Investigator's. There has been legislation introduced to permit them other options of defense. Those options have not been further discussed it has been put on an indefinite statuses. They have introduced to legislation the option of allowing them to have an electronic gun (stun guns) but that did not go anywhere either. That is something we need to take up with legislation. The options is the Pepper Spray and we are currently seeking additional certification for that so they can carry it as a method of defense.</p> <p>Commissioner Nishimitsu commented that is kind of vague and asked what are you thinking of?</p> <p>Director Leo Sandoval replied right now we are looking for any kind of self-defense and being able to use their selves. They need to have some kind of self-defense training. At this point that is the only option that I have available is mace. I don't have any plans to move forward with it or anything else at this point.</p> <p>Commissioner Nishimitsu responded Martial Arts Training as self-defense training.</p> <p>Director Leo Sandoval replied I don't know if it is Martial Arts it would be the same as the Police Training.</p> <p>Commissioner Nishimitsu commented you are saying that it is the Hawaii State Legislature dictates whether or not Liquor Investigators can be armed with something like a Taser or a gun.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval replied at this point it is, it has to do with the classification of the Investigators considered either being Law Enforcement Officers or Police Officers. Police Officers are the only ones authorized to carry fire-arms and Law Enforcement Officers are not able to carry firearms.</p> <p>Commissioner Nishimitsu thanked Director Leo Sandoval.</p>	<p><u>Motion :</u>            Mr. Nishimura moved to receive the Director of Liquor Control's 90 Day report and to discuss at the next meeting. Mr. Kahawai seconded the motion.            Motion carried 7:0.</p>
<p>L.</p>	<p><b><u>EXECUTIVE SESSION</u></b></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"> <li>1. <b><u>APPROVAL OF MINUTES:</u></b> <ol style="list-style-type: none"> <li>a. <b><u>Executive Session Minutes of June 3, 2021</u></b></li> <li>b. <b><u>Executive Session Minutes of June 17, 2021</u></b></li> </ol> </li> </ol> <p>Pursuant to HRS §92-4, §92-5(a)(4), §92-9(a)(1-4) and (b), the purpose of this Executive Session is for Commission to approve or amend the <u>Executive Session Minutes of June 3, 2021, June 17, 2021</u> and to consult with its attorney on questions and issues <u>pertaining to the Commission's powers, duties, privileges, immunities, and liabilities as they may relate to this item.</u></p>	<p><u>Motion:</u>            Mr. Pacheco moved to go into Executive Session. Ms. Nishimitsu seconded the motion. Motion carried 7:0.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval asked Chair Gibson for an invitation for Mr. Charles Foster and Mrs. Malialani Kelekoma into Executive Session.</p>	
<p><b>M.</b></p>	<p><b><u>RETURN TO OPEN SESSION</u></b></p> <p>Commissioners returned to Session at 5:17 p.m.</p>	
<p><b>N.</b></p>	<p><b><u>ROLL CALL FOR THE RETURN TO OPEN SESSION</u></b></p> <p>The Commission reconvened at 5:17 p.m. Director Leo Sandoval called roll, noting 7 members were present via Tele-Conference constituting a quorum.</p>	
<p><b>O.</b></p>	<p><b><u>RATIFY THE ACTIONS TAKEN IN EXECUTIVE SESSION</u></b></p>	<p><u>Motion:</u>          Mr. Nishimura moved to ratify the actions taken in Executive Session. Mr. Pacheco seconded the motion. Motion carried 7:0.</p>
<p><b>P.</b></p>	<p><b><u>EXECUTIVE SESSION:</u></b></p> <p><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).</u></p>	

SUBJECT	DISCUSSION	ACTION
<b>Q.</b>	<b><u>ADJOURNMENT:</u></b>  With no further business to conduct, Chair Gibson called for a motion and a second to adjourn the meeting.	<b><u>Motion:</u></b> Mr. Pacheco moved to adjourn the meeting. Ms. Nishimitsu seconded the motion. Motion carried 7:0.  Meeting adjourned @ 5:19 p.m.

Submitted by: \_\_\_\_\_  
Malialani TM Kelekoma, Liquor Clerical Assistant

Reviewed and Approved by: \_\_\_\_\_  
William Gibson, Chair

(X) Approved as circulated.

( ) Approved with amendments. See minutes of \_\_\_\_\_ meeting.