

APPROVED

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

See minutes of 10-28-2021.

Board/Commission:	LIQUOR CONTROL COMMISSION	Meeting Date	September 23, 2021
Location	Tele Conference via Microsoft Teams Audio +1 469-848-0234, Conference ID: 170 008 212# https://bit.ly/3tELmlk	Start of Meeting: 4:00 p.m.	End of Meeting: 5:31 p.m.
Tele Present	Chair William Gibson, Vice Chair Dee Crowell Members: Lorna Nishimitsu, Randy Nishimura, 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	Leland Kahawai		
Absent			

SUBJECT	DISCUSSION	ACTION
A.	<u>CALL TO ORDER</u>	Chair Gibson called meeting to order 4:00 p.m.
B.	<u>ROLL CALL</u> Director Leo Sandoval called roll, noting 6 members were present via Tele-Conference constituting a quorum. Commissioner Kahawai is excused.	
C.	<u>ANNOUNCEMENTS:</u> Next Scheduled Meeting: Thursday, October 14, 2021 – 4:00 p.m. or shortly thereafter.	
D.	<u>APPROVAL OF AGENDA</u> Director Leo Sandoval commented the Department didn't notice an error on the start time for this agenda. On the top it shows 10:00 AM and needs to be corrected to 4:00 PM for the record and I would like to request an amendment to the agenda to reflect the correct time of 10:00 a.m. with the motion to do so.	<u>Motion:</u> Mr. Pacheco moved to approve the agenda as corrected. Ms. Nishimitsu seconded the motion.

SUBJECT	DISCUSSION	ACTION
		Motion carried 6:0
E.	<p><u>DIRECTOR'S REPORTS:</u></p> <ol style="list-style-type: none"> 1. <u>DIRECTOR REPORT:</u> <ol style="list-style-type: none"> a. September 2 - 16, 2021 2. <u>INVESTIGATORS ACTIVITY REPORTS:</u> 3. <u>EMPLOYEES IN LICENSED PREMISES:</u> <ol style="list-style-type: none"> a. Managers and Assistant Managers - See Attachment "A" <p>Commissioner Nishimitsu asked a question regarding the requirement that there be ten applicants, for the position of Investigator IV sent to Human Resources? What if they never get ten?</p> <p>Director Leo Sandoval replied we have surpassed ten.</p> <p>Commissioner Nishimura asked is the Training Coordinator is that a budgeted item.</p> <p>Director Leo Sandoval replied no that's going to be an item that's being funded through the fines account. It's funding that's not having to come through the budget.</p> <p>Commissioner Nishimura replied, are you're doing that through HR (Human Resources).</p> <p>Director Leo Sandoval replied yes, through HR (Human Resources), or is that a contract hire?</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval responded it is going to be an 89-day contract they are hiring and doing the recruiting for the initial recruits, then they'll forward them to me once they have a certain amount, they're gonna open for about 7 or 14 days.</p> <p>Commissioner Nishimura commented that's it thank you.</p> <p>Chair Gibson asked are there any further questions, hearing none.</p>	<p><u>Motion:</u> Mr. Nishimura moved to approve the Director's Report 1 a. through 3 a. Ms. Shimabukuro seconded the motion. Motion carried 6:0.</p>
<p>F.</p>	<p><u>ACTIONS OF THE DIRECTOR:</u></p> <ol style="list-style-type: none"> 1. <u>BEACH HOUSE RESTAURANT:</u> Approval of Temporary Extension of Premises to include the patio lawn space, as seen in the attachment. The space is approximately thirty feet by eighty feet, from October 1, 2021, through March 12, 2022. All applicable requirements have been met and clearances obtained Including a temporary emergency (SMA) Special Management Permit from planning, a clearance from Building Division, and Department of Health. 2. <u>VALENTE HOLDINGS, LLC dba KALAPAKI JOE'S:</u> Approval of Temporary increase of premises to area outside of the restaurant, per diagram submitted, from October 1, 2021, through December 31, 2021. All applicable requirements have been met and clearances obtained 	

SUBJECT	DISCUSSION	ACTION
	<p>Including a clearance from planning, a clearance from Building Division, and Department of Health.</p> <p>Chair Gibson asked are there any questions.</p> <p>Commissioner Nishimura asked a question for both is this a specification based on COVID protocol.</p> <p>Director Leo Sandoval replied, the one for Beach House is for COVID protocol. We've gone back and forth on this scenario. They are in the process of still continuing to seek a permanent increase, just for the record what they're doing is they have sought the SMA (Special Management Area) which is going to be a permit that is going to be necessary. In the future based sought it through a six-month emergency period, which is through the Emergency Declaration. At the conclusion of the six months or the conclusion of the emergency orders whenever the applicant would have to go through planning again to begin the process completely. They would have to go, so that they could start a public hearing through Planning at that point we would no longer issue anymore temporaries until they would get a clearance from Planning with the permanent SMA (Special Management Area).</p> <p>Commissioner Nishimura asked so Valente's request is not COVID related.</p> <p>Director Leo Sandoval responded, Valente are saying its COVID related for the patio.</p> <p>Commissioner Nishimura replied it is or is not.</p> <p>Director Leo Sandoval responded they say it is that's what they're paperwork is saying for COVID.</p> <p>Commissioner Nishimura asked why one gets six months and one gets three months.</p>	

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	<p>Director Leo Sandoval replied that's only what they asked for, is three months, the one for Beach House. The estimate was granted for a total of six months. So, I went ahead and did that, so we don't have to bring them again onto the agenda.</p> <p>Commissioner Nishimitsu asked the letter from the planning Director says, the Emergency Permit would automatically expire six months from the date of the letter. The planning letter or the end of the March 4th, 2020, emergency proclamation, whichever occurs first?</p> <p>Director Leo Sandoval responded correct.</p> <p>Commissioner Nishimitsu replied to the authorization from you does not reflect that, is there any reason why it wasn't included.</p> <p>Director Leo Sandoval responded for the authorization should match properly it was for March 12th I believe that's what I put on the actual permit which would be, six months from the date of September 13th. Would have been March 12th that's actually on the permit is March 12th, is that what you're talking about it? Can you clarify what you're asking?</p> <p>Commissioner Nishimitsu commented in the event that there is no limit on capacity for any restaurants in the future and your six-month period exceeds that limitation. Wouldn't it have been better to make that dovetail? If the Governor lifts the limitation and that's when they don't have any increase in premises.</p> <p>Director Leo Sandoval replied, if the Governor lifts the limitations on it, then this permit would cease to exist. So, we would just take it away and then after that they would have to go directly to Planning and start their process if that makes sense.</p>	

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	<p>Commissioner Nishimitsu responded we all know that did you send a letter already to Beach House, saying they had until March 12, 2022? Director Leo Sandoval answered yes, clearly have that letter or through their attorney Mr. Bobby Ichikawa that's who we've been dealing with.</p> <p>Vice Chair Crowell asked what Commissioner Nishimitsu is saying that it could end sooner? SMA (Special Management Area) approval may end sooner than March 12th.</p> <p>Director Leo Sandoval answered yes, they are under the understanding.</p> <p>Vice Chair Crowell replied, so they understand that.</p> <p>Director Leo Sandoval commented yes, they understand that even if it ends sooner that even if they're approved through the emergency SMA (Special Management Area) even though it's on writing that it, it does expire at the point whenever anything changes. Whether the Governor's order expires, and they changed it up, then ours will also expire they do understand that as well. It's not a guarantee to have all the way through that time.</p> <p>Vice Chair Crowell added you may need all those six months to get that SMA (Special Management Area) permit.</p> <p>Director Leo Sandoval replied, probably will I do see that they are gonna with the public hearing. They are going to have some feedback from the public so. We'll just get ahold of it after the public gets ahold of it and either approves or denies then we'll get it on our court.</p> <p>Chair Gibson asked are there any further questions.</p>	<p><u>Motion:</u> Mr. Pacheco moved to approve the Actions of the Director 1. Beach House Restaurant and 2. Valente Holdings LLC. Kalapaki Joes.</p>

SUBJECT	DISCUSSION	ACTION
		Mr. Crowell seconded the motion. Motion carried 6:0.
G.	<p><u>INFORMATIONAL MATTERS:</u></p> <p>1. <u>3 YEAR PERCENTAGE FEE COMPARISON</u></p>	<p><u>Motion:</u> Mr. Nishimura moved to accept the 3 Year Percentage Fee Comparison Report provided by the Director. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
H.	<p><u>VIOLATION REPORT:</u></p> <p>1. <u>BRICK OVEN PIZZA KALAHEO, INC.:</u> Violation of Rule 7.8 Manager on duty, qualifications.</p> <p>Commissioner Nishimura commented I just wanted to note for the record that you know, we seem to be having a lot of these managers on duty issues. Might be good for the Department to send out reminders to all the licensees that, it has caught that attention of the Department that people are not abiding by it.</p> <p>Director Leo Sandoval replied thank you I will follow through with that.</p> <p>Commissioner Pacheco replied, it's a good suggestion.</p> <p>Chair Gibson replied, I think we're also gonna have this brought up in our change of rules where the red and blue card holders will be serving four-year terms instead of five.</p> <p>Director Leo Sandoval responded yes, Mr. Chair also just for the record this issue has been visiting this quite often in the office and we've been working diligently on. We are updating</p>	

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	<p>our Assistant Manager and Manager training guide, we do currently have just about completed for the online training course.</p> <p>That way we can just make it easier for everyone to attend without having to worry about capacities. My ultimate goal is instead of just having the testing on Wednesdays, where we're only able to get in a total of 16 people in one day. Is to be able to launch it online so we can have that class taught throughout the week? That way it'll open more options for the licensees and their employees to be able to attend this class. Hopefully it will be able to help them not get these kinds of violations in the future, but it is in the work Investigator Stem has been working diligently also I wanted to appreciate him also for doing this hard work on that because he really has been working on that form and once that's launched in. Well, give proper credit where credit is due on that.</p> <p>Chair Gibson asked are there any questions or comments.</p>	<p><u>Motion:</u> Ms. Nishimitsu moved to schedule a Violation Hearing for Brick Oven Pizza Kalaheo, Inc. Mr. Nishimura seconded the motion. Motion carried 6:0.</p>
<p>I.</p>	<p><u>DISPOSITION OF AMOUNT OF FINE HELD IN ABEYANCE:</u></p> <p>1. <u>VIVA KAI LLC, dba KAI BAR COFFEE ROASTERS:</u> After recurrence of a violation within the year in the Notice of Hearing issued by the Commission on June 17th, 2021.</p> <p>Director Leo Sandoval commented Mr. Foster can you speak on this one for a moment.</p> <p>Mr. Foster replied, this was in the first violation an amount there was a fine. I believe at \$250 with \$150 held in abeyance. Then there was a second violation which is the confusing aspect of this was that the second violation happened after the first violation. But before the first violations hearing, so my recollection is the Commission was aware that there were two violations and that the second would be coming up at a later date. At that first violation hearing, when the fine and the abeyance orders were entered. The second meeting occurred there was another fine imposed but there was no disposition of the amounts held in abeyance so. That has been brought back for your consideration whether you want to direct the Director to collect that amount held in abeyance or not.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Gibson asked do we have a motion to collect the amount held in abeyance. Is that correct Mr. Foster?</p> <p>Mr. Foster replied, that's correct.</p> <p>Commissioner Nishimura asked Mr. Chair before we take the vote, I was looking at the decision and order. There's nothing about any kind of fine in there. Maybe I'm picking at things but it would seem that we would normally include how much the fine would be how much would be suspended. There's nothing to that effect in these, Findings of Fact Decision and Order.</p> <p>Commissioner Nishimitsu replied to the Findings of Fact, is one that was issued for the second violation.</p> <p>Commissioner Nishimura replied no this is the first one, it references the June 8th violation. There's no Decision or Order included with the Finding of Fact and I'm wondering whether we can indeed collect the amount.</p> <p>Chair Gibson replied wouldn't that be dealing with the second violation?</p> <p>Commissioner Nishimura responded they are separate violations.</p> <p>Chair Gibson commented but one is contingent on the other.</p> <p>Vice Chair Crowell replied yes, but these Findings of Fact and Conclusions of Law and Decision and Order contains no Conclusions of Law or a Decision and Order that's the concern. It doesn't say these guys violated such and such section of the law, he doesn't say or we moved</p>	

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	<p>in, it was passed that we levied a fine of \$250.00 of which \$150 was suspended.</p> <p>Director Leo Sandoval replied to Vice Chair Crowell is that the one that you're looking at for the 16th or 17th of June finding of facts or which one are you looking at.</p> <p>Commissioner Nishimitsu for the June 8th violation.</p> <p>Director Leo Sandoval replied, let me look here. I have a copy of the Finding of Facts for May 28th offense or violation that one does indicate that 250 and 150 and a banner that's being held. I think that's when we're talking about right now is that correct.</p> <p>Vice Chair Crowell Well, if that's what we're talking about. I don't have it.</p> <p>Director Leo Sandoval responded no it's not one, but since Commissioner Nishimitsu.</p> <p>Director Leo Sandoval Is it me too? Was referring to that or finding a fact that's something that's not attached in the in the packet but I do have a copy of it personally, I'm not sure if I can present that. Mr. Foster am I able to present that in here or is there not something I can show?</p> <p>Mr. Foster asked what is it exactly that you want to show it's one of the orders or not one of the orders.</p> <p>Director Leo Sandoval replied it's the Finding of Fact.</p> <p>Mr. Foster replied yes, you can show that.</p> <p>Director Leo Sandoval responded if the Commissioners will bear with me to the second. Let me see if I can show it to you on the screen one moment.</p>	

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	<p>Vice Chair Crowell responded yes, Mr. Foster maybe you can clarify something for me, you know, in this kind of situation where there is a decision that's going to be made that maybe the applicant or Licensee's interest do, they need to be present?</p> <p>Mr. Foster stated when we were talking about putting this on the agenda. I had suggested noticing specifically the licensee. I believe, and I don't know if that happened or not. I think in this case because it's a disposition of a new violation. This is just sort of an administrative decision almost whether to go ahead and collect that amount or not. I think in this case, it's not necessary that the license, actually gets specific notice, although I would prefer, they did. I don't know if they did or did not. I don't think that's fatal to us here. We can still proceed with this, if it was a new violation, then absolutely. Of course, they would have to be noticed, and we would not be able to proceed.</p> <p>Commissioner Nishimitsu replied, what you're showing on the screen is not what was included in our packet. So what you're showing on the screen, and Vice Chair Crowell correct me if I'm wrong that looks like a proper Findings of Fact and Conclusions of Law decision and order. The one in our packet doesn't have as Vice Chair Crowell pointed out doesn't have Conclusions of Law for a Decision and Order so are some pages missing.</p> <p>Commissioner Nishimura commented it also it, for a different violation as well.</p> <p>Director Leo Sandoval replied sorry about that the violation that I was showing you just on the screen was the violation occurred on May 28th which I believe is the first violation. I believe that's the first violation that we're looking at that is held in abeyance. The second one did not have a fine in abeyance, it was just a \$250 fine. The first one, is the one that the Commission is actually considering at this point, am I correct?</p>	

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	<p>Commissioner Nishimura replied, yes.</p> <p>Director Leo Sandoval commented, I don't know exactly which one you have in your packet.</p> <p>Commissioner Nishimura replied we have the June 8th.</p> <p>Mrs. Kelekoma asked Director Leo Sandoval to email, and I'll email everybody.</p> <p>Director Leo Sandoval replied ok, I'll send them to you.</p> <p>Chair Gibson commented in the meantime where are we have; we made a motion?</p> <p>Commissioner Nishimura responded Mr. Chair; I think because the agenda listed as an item that occurred on June 17th. We may need to re-agenda this item.</p> <p>Chair Gibson replied, okay.</p> <p>Commissioner Nishimura asked Mr. Foster please take a look at the agenda item.</p> <p>Mr. Foster commented after recurrence of violation within the year in the notice of hearing issued by yes. There was actually the May 28th violation that we are talking about.</p> <p>Commissioner Nishimura replied, correct.</p> <p>Mr. Foster commented I agree with you, I think if that's the case. If we're if we notice the wrong violation. We should probably notice the correct violation. Before, we properly proceed on it.</p> <p>Chair Gibson OK, we need to withdraw the motion.</p>	

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	<p>Commissioner Nishimitsu I will withdraw the motion but, I need clarification again. The June 17th date refers to the Notice of Hearing not the date of the event. The paperwork, we were delivered, has a Notice of Hearing that is dated July 9th so that's for the second event. So I'm not convinced that the date is incorrect. The Notice of Hearing date might be correct.</p> <p>Mr. Foster replied, in the Notice of Hearing issued by the Commission on alright? What notice of hearing did the Commission issue on June 17th, 2021.</p> <p>Commissioner Nishimitsu commented was it for the May 28th event?</p> <p>Director Leo Sandoval replied, that's correct it was heard on the June 17th for the May 28th event.</p> <p>Mr. Foster commented wait a minute so too many dates are going by first of all first event first violation was May 28. Correct.</p> <p>Director Leo Sandoval commented was May 28th.</p> <p>Mr. Foster asked when the second violation's date was.</p> <p>Commissioner Nishimitsu responded, June 8th.</p> <p>Mr. Foster replied June 8 first, then we have dates not only for hearings, but for Notice of Hearings is that correct. Or is it a notice of hearing for June 17th, was the hearing June 17th there was the notice dated June 17th.</p> <p>Director Leo Sandoval replied, the hearing was for the 17th.</p>	

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	<p>Mr. Foster June 17th was the hearing on the May 28th, violation correct. Director Leo Sandoval replied, right.</p> <p>Mr. Foster stated, then to make this complete there was a second hearing what date was the second hearing.</p> <p>Commissioner Nishimitsu stated that was in July sometime.</p> <p>Mr. Foster commented so there's a July hearing. It's not come up that date, alright, so the May 28th hearing, so the agenda says after recurrence of a violation within the year in the Notice of Hearing issued by the Commission on June 17th. I think is supposed to mean the June 17th hearing obviously. But it says the Notice of Hearing issued by the Commission on June 17th. It's not clear to me.</p> <p>Commissioner Nishimura I think agenda item and correct me if I'm wrong, Charlie if anything, the agenda item should reference the decision and order date. Because that's when the fine was imposed.</p> <p>Mr. Foster commented the date of that hearing.</p> <p>Commissioner Nishimura replied yes, well the date of the hearing or the date of the decision and order.</p> <p>Mr. Foster responded yes; it should definitely be clearer I think then it is, I guess.</p> <p>Chair Gibson commented so we've withdrawn one motion to accept, and we need to withdraw the second.</p>	

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	<p>Commissioner Nishimitsu responded, I'm withdrawing the motion now, I have it withdrawn it yet, but I moved to withdraw motion. Commissioner Pacheco responded I am withdrawing the second.</p> <p>Mr. Foster replied I will work with the Director on drafting the agenda item. To get it back on coming up or with or with admin. Whoever is going to work on drafting that I will work with them on that?</p> <p>Vice Chair Crowell replied ok, you should check the second violation because with this with this Decision and Order it loosely doesn't look like we levy define for the second violation.</p> <p>Commissioner Pacheco commented no we didn't it.</p> <p>Commissioner Nishimitsu replied, no we moved to impose a \$250.00 fine, but the Findings of Fact that's in our packet doesn't reflect that.</p> <p>Mr. Foster replied I will be putting this on the next agenda I will also work with whoever to get all this paperwork together. I'll also look at the orders and if there's something amiss there. I'll bring it to the Commissions' attention at that time or perhaps even earlier if we need to work on putting together in order.</p> <p>Commissioner Nishimitsu replied it's hard to tell it doesn't look like there are missing pages. The pages aren't numbered you know the stuff in our packet doesn't have any numbers on the pages. If you compare it to the first Findings of Fact for the May 28th event, there were more pages.</p> <p>Mr. Foster replied, I'll definitely look at like at all the orders related to this case, both of those.</p> <p>Chair Gibson requested in the meantime that Director Leo Sandoval and Mr. Foster will get</p>	<p><u>Motion #1:</u> Ms. Nishimitsu moved that the Director be instructed to collect the suspended amount of fine imposed on the first violation for 2021. Mr. Pacheco seconded the motion.</p> <p><i>Ms. Nishimitsu withdrew her motion and Mr. Pacheco withdrew his second.</i></p> <p><u>Motion #2</u> Mr. Nishimura moved to defer action on Violation Report Item H, to the next meeting. Mr. Pacheco seconded the motion. Motion Carried 6:0.</p>

SUBJECT	DISCUSSION	ACTION
	together to restructure this.	
J.	<p><u>DISCUSSION AND POSSIBLE DECISION MAKING ON THE SALARY OF THE DIRECTOR OF LIQUOR CONTROL AND ANY RELATED MATTERS</u></p> <p>Ms. Ching Administrator for the Office of Boards greeted the Commissioners. I was asked by the Chair to place this item on the agenda. I was also asked by the Chair to come to the Commission to look at the Salary of the Director of Liquor. Let me give you a little bit of background, I'm gonna share screen. So hopefully you got the right screen. So just a little bit of background on this, which the Chair also asked for, so Director Leo Sandoval date of hire first date was June 1st, 2021. The six months would be November 30th, 2021, and just note in November, you only have one meeting which is November 12, 2021. In December, there is only one meeting, which is December 9th, 2021. I'm going off the recommendations from your PIG (Permitted Interaction Group) that the Commission accepted. As far as a six-month evaluation process, the Liquor Control Director will provide the Commission with a status report on his goals and objectives. For the initial six-month period and include a narrative the Liquor Control Director will complete a six-month evaluation. An assessment is that tool that you guys approved and submitted to Boards and Commissions. The Boards and Commission will solicit the input from the Liquor Control Commission from the Liquor Control Department staff. We will get those three parts and then we will provide that to the Commission and then the Commission will do their evaluation. We will then when you do your evaluation, you'll turn it into Boards and Commissions, and we will collate all of your comments and present our correlated report evaluation report back to you. Then discuss the report and formulate a unified evaluation response. One of the things that we do just to make sure that we're all neat and tidy about everything we do. We will solicit HR's (Human Resource) review on the final evaluation report to make sure that everything is in order. The other thing that the Commission voted on to do was to hold a special meeting to conduct the evaluation, I want to remind you of that. These are the recommendations that were approved by the Commission so we would be following this process and procedure. Are there any</p>	

SUBJECT	DISCUSSION	ACTION
	<p>questions, I'm happy to answer.</p> <p>Commissioner Nishimitsu asked how this all relates to the agenda item that identifies the Salary of the Director.</p> <p>Ms. Ching replied it relates the Chair wanted to know what the six months point is. Typically, the Commission will visit a salary increase or discussion about salary within the evaluation process. However, it is totally in your ability to visit salary at any time. I did also get another question from one of the Commissioners, and that was whether there is a probationary period, and this Commission did not designate a probationary period, so there is none.</p> <p>Vice Chair Crowell commented, you started day one off probation.</p> <p>Commissioner Nishimura asked do you have that information in front of you. What is he being paid now and what is the max he could qualify for?</p> <p>Vice Chair Crowell asked Mr. Foster, is this Executive Session material?</p> <p>Mr. Foster replied no it's, all public, salaries are public. Unless you wanted it, if we were going to discuss something that Director Leo Sandoval had an expectation of privacy in being something along the lines of his psychiatric records, medical records things of that nature, then that warrants Executive Session. All our salaries, my salary and Director Leo Sandoval are a matter of public record and discussion about them are public matters.</p> <p>Vice Chair Crowell commented, thank you.</p> <p>Ms. Ching asked the Commissioners are you able to see the salary resolution. The Commission has to be guided by the salary resolution. This is a copy of the Salary resolution that passed, and it was effective July 1st, 2019, so as you can see this is the max \$117,912. Currently it is at</p>	

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	<p>\$112,000. Are there any other questions.</p> <p>Chair Gibson asked do we need a motion to follow Ms. Ching’s direction on how to handle this resolution of when we can make the salary appropriate.</p> <p>Commissioner Nishimura asked Chair Gibson I would suggest if I may make a motion. I would say that we defer this item until after his six-month evaluation.</p> <p>Chair Gibson asked for the six-month evaluation do we have the forms ready with the questions?</p> <p>Ms. Ching replied yes, you have adopted the forms, so you have everything ready. So once we passed on November 30th and I've received the reports from the Liquor Director then I would be turning it around to come to the Commission and an evaluation form for all you to complete.</p> <p>Chair Gibson replied I think the timing on it is such that two of our commissioners will be, timing out.</p> <p>Ms. Ching replied yes Chair Gibson, I don't think you will get away from us that easily because my intention is to ask if you all will agree to a 90 day hold over especially in view of this evaluation. I don't think it would be prudent for our new Commissioners to come on, and then to evaluate the Director when they have no knowledge or experience. In working with him, so you know to me, it would be admit make a lot more sense. Especially as the Chair who work so closely with the Director and also Commissioner Pacheco as well to move forward and if you would be so willing to complete this process.</p> <p>Chair Gibson commented however, another question comes up in December, traditionally we elect a new chair. In order to make the transition smooth, I think the deputy chair should.</p>	<p><u>Motion:</u> Mr. Nishimura moved to defer the Salary of the Director until the Commission perform a six month Evaluation. Mr. Pacheco seconded the motion. Motion carried 6:0.</p> <p><u>Roll Call Vote:</u> Shimabukuro – Aye Pacheco – Aye Nishimitsu – Aye Nishimura – Aye Crowell –Aye</p>

SUBJECT	DISCUSSION	ACTION
	<p>Direct us in their 90 days.</p> <p>Ms. Ching commented, I know lot of individuals not just this Commission. There's a lot of reluctance to assume the Chair position but I would also want to remind the Commissioners that as the Chair you have the ability to designate people to a PIG (Permitted Interaction Group) assign them like our Chair has done. That also exempts you from being on one. Look upon taking the Chairmanship or the Chair in a lot more favorable light. Let's put it that way.</p>	<p>Gibson – Aye</p>
<p>K.</p>	<p><u>PRESENTATION OF 2021 PROPOSED RULE AMENDMENTS FOR COMMISSION REVIEW</u></p> <p>Director Leo Sandoval stated the initial presentation for the proposed rule amendments for you to receive. I think according to Mr. Foster these 2021 Rule Amendments are just for presentation.</p> <p>Chair Gibson asked is this for acceptance.</p> <p>Director Leo Sandoval replied for discussion.</p> <p>Mr. Foster replied it is not for action today correct.</p> <p>Chair Gibson asked are there any questions about the proposed changes in the rules and regulations?</p> <p>Commissioner Nishimura replied are we going to review all of them today?</p> <p>Director Leo Sandoval asked Mr. Foster are we permitted to do that.</p> <p>Mr. Foster replied, we can't take action on them. You could if the Commission wants or has questions about them.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Nishimura commented Mr. Foster does this have to be reviewed by small business and do we have to have public hearing and all that too.</p> <p>Mr. Foster replied that's correct. We will not be able to take any action until we do all of that. I would suggest actually excuse me for interrupting I mean, sort of suggests maybe accepting these that would give the members time with them and after we've run them past small business and such then you know have it put him on the agenda and really address them.</p> <p>Commissioner Nishimura replied yes, we can start then and start the process for. The first one, which is Rule 2.58 on page 6. Does the department or will the department set up rules for denying the application suspension or revocation and collecting the penalty.</p> <p>Director Leo Sandoval replied I'm sorry, which number were you talking about.</p> <p>Commissioner Nishimura replied number 2.58 (b) 8.</p> <p>Director Leo Sandoval commented we will have to add that into the chart of the penalties.</p> <p>Commissioner Nishimura asked as far as any kind of adjudication processes that have to be outlined?</p> <p>Director Leo Sandoval replied to it does, ultimately, we would really want to just have them correct the issue so we can try to get them working in business. It would be at your discretion, also we could actually just revoke the application and have them start over. I mean, if they started it incorrectly from the get-go, then they're going to have false statements on the application, we can just revoke it completely.</p> <p>Commissioner Nishimitsu asked about whether or not this provision should not apply to all the subsections, like c through k, as opposed to subsection (b). Because you can make a false statement in connection with any kind of application for a license. If it's left under subsection</p>	

SUBJECT	DISCUSSION	ACTION
	<p>(b) an argument could be made that it couldn't be applicable to any of the other subsections. That's something for you and Mr. Foster to consider.</p> <p>Director Leo Sandoval responded, I see what you're talking about. It's having to find the right place for it and to squeeze things into already existing areas.</p> <p>Vice Chair Crowell responded to piggyback on that I would look at whether we need rules for you know stuff like. Enforcement like the issue we had previously today. If we don't have a defined process that's why we get into all kinds of messes. If I was the licensee, I would get really crazy.</p> <p>Director Leo Sandoval replied are you talking about also for the fine collection?</p> <p>Commissioner Nishimitsu commented the suspended parts?</p> <p>Director Leo Sandoval replied if you look at 4.10, we might need to adjust that one a little. But that's stresses the fines in advance.</p> <p>Commissioner Nishimura asked, what is the difference between a fine held in abeyance and a suspended fine?</p> <p>Director Leo Sandoval commented I think when researching abeyance, it was actually used for traffic court and suspended fine. I haven't found anywhere on where I've been researching, they use the word abeyance, for the process that was utilized before. I don't know if seems like a legal question for me. I don't understand where that would have come from?</p> <p>Mr. Foster replied, I use them interchangeably for our purposes.</p> <p>Commissioner Nishimitsu asked why we don't just use one term to avoid confusion.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval responded, that's helpful, so we are good.</p> <p>Mr. Foster replied, we can just wait a week, we can, definitely do that and make it a defined term.</p> <p>Chair Gibson asked are there any further questions.</p> <p>Commissioner Shimabukuro asked if we're ready to go all the way to, I'm looking at Rule 7.8 if we're not ready to get there, then that's fine, I can wait.</p> <p>Commissioner Nishimura responded maybe we can do 3.18 suspended fines or held in abeyance. We have all these options.</p> <p>Director Leo Sandoval commented yes options everywhere.</p> <p>Chair Gibson asked Commissioner Nishimura, what are you talking about the terminology?</p> <p>Commissioner Nishimura commented yes, the terminology if we need to have all three of them. I think the intent is just to give the Director the Administrative Authority to just collect without action from the Commission.</p> <p>Chair Gibson asked Director Leo Sandoval, where did the terminology come from?</p> <p>Director Leo Sandoval responded, that's something Mr. Foster and I discussed. We are trying to come up with the right terminology, I just followed his guidance on what we needed to put on that one.</p> <p>Mr. Foster replied yes, we could there's no reason we need to have all three just to cover all bases. I've seen at least two of those used by this body just to cover that so we can define it.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Then stop that practice and dwindle it down to a defined term that we use.</p> <p>Commissioner Nishimura replied, yes maybe if we define all three and then this makes sense otherwise.</p> <p>Mr. Foster commented, they're all used interchangeably and what we would do is just throw out two of them and use only one.</p> <p>Chair Gibson commented, I'm familiar with suspended.</p> <p>Director Leo Sandoval replied it seems to be the easiest way to do that.</p> <p>Commissioner Nishimitsu commented, but before that, on rule proposed new Rule 4.10. If you're gonna use fines and monies it would be better if you just said fine as opposed to using fines and monies.</p> <p>Commissioner Nishimitsu replied on page 22, Rule 4.10.</p> <p>Director Leo Sandoval responded, remove the money, only fines.</p> <p>Commissioner Nishimitsu replied yes if you could just say funds collected from assessment of fines. Then you can designate a portion of the fines collected and not use the word monies.</p> <p>Mr. Foster replied, this is the chance to clean up a lot of those I think that Director Leo Sandoval took language from existing rules. This is a chance for you to clean up, the patchwork of the rules right now and get rid of a lot of terms that are overlapping.</p> <p>Commissioner Nishimura asked are where we on 4.10.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Gibson commented yes 4.10.</p> <p>Commissioner Shimabukuro asked if we could go back to 4.8, my only comment here was just how it opens up into the first sentence is no licensee shall fail to accurately report revenues. I felt like that was a double negative, but I'm not sure if it is.</p> <p>Vice Chair Crowell commented yes, I had the same problem with that.</p> <p>Commissioner Nishimura asked Mr. Foster is there a difference between that and Licensee shall accurately report revenues.</p> <p>Mr. Foster responded I think that your way is better. I don't know if this comes from Statutory language or something it is weird.</p> <p>Commissioner Nishimitsu replied to it does it does on statutory?</p> <p>Commissioner Nishimura asked what the implications Commissioner Nishimitsu are.</p> <p>Commissioner Nishimitsu replied, I don't have a problem with it. I think it's clear, but I mean, if it needs to be clarified or cleared up, so that there's no double negative as Commissioner Shimabukuro pointed out, I haven't got a problem with it.</p> <p>Vice Chair Crowell commented so the less sentence in that paragraph, failure to accurately file accurately gross sales is an issue to. That sentence needs to be reworded.</p> <p>Director Leo Sandoval asked the last one failure to accurately file.</p> <p>Commissioner Nishimitsu responded, just delete the second word accurately is that what you're saying.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Vice Chair Crowell replied yes, may result in the issuance of a notice of violation. Director Leo Sandoval responded the intent on that was if it comes whenever somebody reports their numbers, or their gross sales improperly reported then it throws off everyone's amount that they're having to pay back. If they don't do it properly then it could mess with all the numbers.</p> <p>Commissioner Nishimura replied, I think that the intent is fine it's just the language.</p> <p>Vice Chair Crowell commented you can eliminate the first one in the second accurately should be accurate.</p> <p>Commissioner Nishimura commented on 4.9, I am accused of fraudulently reporting my sales. So I get a letter from you, saying I gotta pay, within 15 days. As a licensee, am I subject to the determination by the Director?</p> <p>Director Leo Sandoval replied of the underreporting? No if you underreport, they're gonna help, again this is a long range that we're going to have to go, the route of actually getting an auditor. Someone who has a financial background to be able to go down and actually audit books to make sure that they're reporting them accurately. This is going to have to go down the line, right now our budget is not going to be at that point. We do need to have somebody with the finance background that knows how to do depletion analysis and so forth. So that way they can make sure that they are reporting something properly. I'm not trying to cheat the system.</p> <p>Commissioner Nishimura replied so that being said. I don't mind having it on the books. As far as implementation I'm a little concerned. If you don't have an auditor on staff and you say, you've underreported your sales.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval replied right, I guess I could recover from it may be premature to add that in there at this point until we can actually get into that portion of adding it that's kind of staff.</p> <p>Commissioner Nishimura replied, I would suggest you consider that at this point because of the cost to either hire an auditor or to have an in-house auditor. Is it worth the additional revenue see what it is I'm going to hire one guy for \$80,000 and I want to go and collect \$5000.00 more, it doesn't make sense.</p> <p>Director Leo Sandoval replied, I see what you're talking about.</p> <p>Vice Chair Crowell asked is the decision of the Director appealable to the Commission or does it goes straight to court?</p> <p>Director Leo Sandoval replied that is not been discussed yet. I don't want to have anything to do with that part.</p> <p>Commissioner Nishimura replied, no but that that's sort of where I'm looking at this thing from. It's not worth the additional cost.</p> <p>Director Leo Sandoval replied, yes and no it might be better, just too cross train someone to do that kind of stuff.</p> <p>Chair Gibson commented by the same token, we don't want to leave a licensee to steal right. I can understand putting it aside until I hear rumors. Over the last few years that a County auditor position needs to be filled, so maybe that person could be.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Nishimura replied utilized for that purpose.</p> <p>Chair Gibson replied yes, because this could be sizeable dollars, but not enough to warrant, an auditor for that purpose. Alone.</p> <p>Commissioner Nishimura replied that's a different kind of auditor.</p> <p>Commissioner Nishimitsu replied on Rule 6.2 what the rationale for prohibition is. Meeting employees to consume liquor after the promises have been closed to the public.</p> <p>Vice Chair Crowell commented, I'm glad you asked that question.</p> <p>Director Leo Sandoval replied that's fantastic, where it comes into play is during the prohibited hours of the State hours of consumption. If a location is supposed to stop serving at 2:00 o'clock and the employees are not permitted to consume after 2:00 o'clock. If it's a location that closes during, regular hours are consumptions actually still permitted? Then, at the discretion of whoever the employer is. There's a term that's utilized on island and it's they allow them to have a drink after they've worked. The only thing is, we're the only island that doesn't have that in the rulebooks and permitted to do it after closing.</p> <p>Commissioner Nishimura replied, Director Leo Sandoval has it has just been an enforcement problem.</p> <p>Director Leo Sandoval replied none since I've been here, but we haven't had to work those hours in a long time. Everyone keeps closing it's more preparing for whenever or if we ever get to a more normalized time, where they're staying open later?</p> <p>Commissioner Nishimura commented, can you check violations if anything occurred in the past under normal conditions the frequency of this kind of violation. Where it's been a</p>	

SUBJECT	DISCUSSION	ACTION
	<p>problem because I know that these pau hana drinks, I know that it occurs? But then they are not charging for it.</p> <p>So, technically they are still closed the only thing is, they are on the premises, but the business is not open for business.</p> <p>Director Leo Sandoval replied, right I'll do some looking for you.</p> <p>Commissioner Shimabukuro commented, I just wanted to clarify, or I guess for me, I just wanted clarification on 7.8. You struck out the phrase that said, basically at all times when there is anyone who is not an employee on the premise or in the premise so. So, I'm thinking back right now as you just said something about the section 6. Let me think this through. So, this would mean closed or otherwise correct.</p> <p>Director Leo Sandoval commented it would be at the time. Yes, whenever they're closed because the way that they have it right now as if. There is a location, and it is during normal business hours, and they're open, but no customers are present. Then they would still have to have a manager on duty, or they get a violation for manager on duty, not being there, so this one would it's almost like it would help them because. It would only apply if during business hours or open in their customers present. So, the possibility of them reoccurring a violation is going to be less. I mean, you take for granted take for instance, you have a coffee shop that also sells you know, but then at that point.</p> <p>The coffee shop does not say that they close uh typically they close at 8:00 o'clock. But on one day they close at 6:00 because there's no customers there. They really wouldn't have to have a manager because there's no customers there inside the building. They're all outside but they're not actually buying from that location. It's so that it aligns with the other rule of 10.2, and it makes it easier also for the investigators.</p> <p>Commissioner Nishimitsu commented on 7.8 subsection (b), you're striking out the phrase the applicant the 6th line down and I think it should be left in.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval replied it removes the Commissioner, who's really to remain in there with the applicant.</p> <p>Commissioner Nishimitsu commented delete it then, who's gonna be issued the blue card and it's not a complete sentence.</p> <p>Commissioner Nishimura commented you know if you're taking a Commission review or eligibility and approval why we are still required to have or enable off to require having them for personal interview. You took out our Commission review for eligibility and approval. The last sentence of the same paragraph. The Commission may require applicant to appear.</p> <p>Director Leo Sandoval replied, that wasn't an oversight on my part, so it has to be. Well, if you have the eligibility apparently, it goes back to history because. Technically, they're supposed to go before the Commission approved before they're issued their red and blue card. Somewhere it got changed over to where it just to commit the Department does the class and issues the part. I think it might have been more of a convenience for the licensing well because if we cut them, actually take that class, they would have to wait till the next Commission meeting to be approved to actually have it. Therefore, we be delaying them again and they'd still be in violation because they still wouldn't have their card yet. So that's all there is I took it out. I was trying to take it out, that's something that you guys would prefer still to do, and we could still go back to doing that portion as well?</p> <p>Commissioner Nishimura replied no, I'm just saying that if you're gonna take us out of the review. That last sentence, you may want just take that out.</p> <p>Vice Chair Crowell asked why four years instead of five?</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval commented the four years has been added in there, because it's aligning with the other islands. It's for any time that we have somebody as a courtesy from another island comes over and they have an active card issued by one of the other islands. I've gone ahead and told the guys here go ahead and honor that card while it's here on island for the duration that he was issued at the neighboring island. That way they're not having to go through the whole thing again. The testing and all this and once the card expires from the neighboring island, then we'll go ahead and have them come in and then we'll start with one of our cards, they'll do the whole testing and start like they're completely with us. I just I thought it would be one of the fair options.</p> <p>Vice Chair Crowell asked do they have to take a test every time they renew?</p> <p>Director Leo Sandoval commented every time that they expire? Yes, they have to come in take the test again. One other things is if you'll notice we did start, adding in on like 7.8 (c).With the amount of resources that we did dedicate towards the cards and the testing itself. I was telling you earlier we only have 16 spots that we train or that we are able to take in. Out of those times since there's nothing that makes them come in. They have no buy in on that card, they actually just cancel and don't tell us about it, so we end up. Sometimes ended up with four people and we should have eight, so it kinds of messed up the whole thing. We aren't able to maximize the amount of time in training whenever we could. We started adding and finding out also we're the only island that doesn't charge for the class or the card. We're still having to expense for the materials and upkeep of the machine that produces those cards.</p> <p>Vice Chair Crowell asked how you say four or five year thing is more disadvantageous, to Kauai residents, who go to another island. Their card may be expired, because it's in their 5th year.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Director Leo Sandoval replied yes but I don't know the only way I was pondering the neighboring islands is I'm hoping that they would reciprocate it also whenever they go over there. I don't know if they're going to do that, for them, but at least we'll do it for them here.</p> <p>Commissioner Nishimitsu asked about subsections (e) & (f) on page 28. You have the term accessing, I think it should be replaced with the word's payment of. It says duplicate manager cards can be reprocessed after accessing a fee of \$5.00 through the applicant. It should be a payment of \$5.00 by the applicant not to the applicant.</p> <p>Director Leo Sandoval asked is there anything else.</p> <p>Commissioner Nishimitsu commented not for that rule.</p> <p>Commissioner Nishimura replied, I guess I got one for you guys and the decision doesn't have to be made now. I would suggest that the fees be \$10.00. Just do it and nonrefundable then you don't have to they pass the test you just process and be given the card. You have a refundable fee of \$5.00 dollars not even worth the cost of processing.</p> <p>Chair Gibson asked what are they paying now Director Leo Sandoval?</p> <p>Director Leo Sandoval replied they are not paying.</p> <p>Commissioner Nishimura commented that it can be vetted through small business, but I would suggest you do a \$10.00 fee.</p> <p>Director Leo Sandoval replied noted on there and that's again we're still staying on the conservative side on the fine. I even went even lower than the conservative I believe two islands over, they do \$20.00.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Nishimitsu asked on Rule 7.16 page 30, from the Hawaii Rules of people procedure already cover drug or other illegal activities. Why would you add it under the liquor laws, the liquor rules?</p> <p>Director Leo Sandoval replied it's just for the administrative case on our part. Should there be a licensee that is either arrested or a possession or distribution? We don't have anything to put per say, adding on their license for even acting on that.</p> <p>Commissioner Nishimitsu replied that makes sense.</p> <p>Commissioner Nishimura commented is there a fine if you do get busted for any of that where would the repercussions come in?</p> <p>Director Leo Sandoval stated that would be on the Commissions side you would assess the fine or suspension, depending on what you decide, but most of these cases where they would come from. We would have to collaborate with the Police Department, because if they were the ones that made an arrest of some sort involving our licensee. We'd have to talk with them to make sure that they are, in fact, the ones that violated. Then we can connect that or put the nexus to the license locations, so we could have. A bite in that fight.</p> <p>Commissioner Nishimura replied so that would be added to your chart.</p> <p>Director Leo Sandoval responded that's another one we have to add to the chart.</p> <p>Chair Gibson asked Director Leo Sandoval is 10.2 for retail, as compared to 7.8.</p> <p>Commissioner Nishimura replied, manufacturers, wholesalers and retailers.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Commissioner Nishimitsu replied, so I would ask that Mr. Foster to review all the proposed new changes. Making sure that grammatically everything makes sense and would be enforceable so that there is no confusion on any licensee if the Commission chooses to take action under the authority of the rules.</p> <p>Chair Gibson asked Mr. Foster probably to set up a PIG (Permitted Interaction Group).</p> <p>Mr. Foster commented so I will look at these, I haven't looked at all of them. Only when they come to me with specific questions. I've worked with him, but I haven't looked at these yet and I do intend to. You know, kind of go through the whole package at some point. When we feel like it's you know, getting close. So yes, I will do that.</p> <p>Chair Gibson asked for any further questions.</p>	<p><u>Motion:</u> Mr. Nishimura moved to receive the draft for the 2021 Proposed Rule amendments. Mr. Pacheco seconded the motion. Motion carried 6:0.</p>
<p>L.</p>	<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>	<p>No action taken.</p>
<p>M.</p>	<p><u>RETURN TO OPEN SESSION</u></p>	<p>No action taken.</p>
<p>N.</p>	<p><u>ROLL CALL FOR THE RETURN TO OPEN SESSION</u></p> <p>Director Leo Sandoval called roll, noting 6 members were present via Tele-Conference</p>	

SUBJECT	DISCUSSION	ACTION
	constituting a quorum. Commissioner Kahawai is excused.	
O.	<u>RATIFY THE ACTIONS TAKEN IN EXECUTIVE SESSION</u>	No action taken.
P.	<u>ADJOURNMENT</u> With no further business to conduct, Chair Gibson called for a motion and a second to adjourn the meeting.	<u>Motion:</u> Mr. Pacheco moved to adjourn the meeting. Ms. Shimabukuro seconded the motion. Motion carried 6:0.

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.