

# APPROVED

COUNTY OF KAUAI  
Minutes of Meeting  
OPEN SESSION

See Open Session Minutes of 03/08/2023.

Board/Commission:	<b>LIQUOR CONTROL COMMISSION</b>	Meeting Date	<b>January 25, 2023</b>
Location	Pi`ikoi Building, Suite 300 4444 Rice Street, Lihue, HI 96766	Start of Meeting: 1:00 p.m.	End of Meeting: 1:47 p.m.
Present	Chair Leland Kahawai, Vice Chair Lorna Nishimitsu Members: Paul Endo, Randall Nishimura, Tess Shimabukuro. Also: Liquor Control Staff: Director Leo Sandoval-Reyes, Assistant Chief Investigator: Stacy Iwasaki, Liquor Private Secretary: Malialani Kelekoma, Deputy County Attorney: Charles Foster		
Excused	Gerald Matsunaga		
Absent			



SUBJECT	DISCUSSION	ACTION
<b>A.</b>	<b><u>CALL TO ORDER</u></b>	Chair Kahawai called the meeting to order @ 1:00 p.m.
<b>B.</b>	<b><u>ROLL CALL</u></b>  Director Leo Sandoval-Reyes called for a roll call to ascertain quorum to conduct business, Commissioner Matsunaga is excused noting six members were present to conduct business.	
<b>C.</b>	<b><u>ANNOUNCEMENTS:</u></b>  Next Scheduled Meeting: February 8, 2023 – 1:00 p.m. or shortly thereafter.	
<b>D.</b>	<b><u>APPROVAL OF AGENDA</u></b>  Director Sandoval-Reyes asked if there's anyone in the public who wishes to testify on this agenda item.	No Public Testimony.

SUBJECT	DISCUSSION	ACTION
		<p><u>Motion:</u>            Mr. Endo moved to approve the agenda. Mr. Crowell seconded the motion. Motion carried 6:0.</p>
<p>E.</p>	<p><b><u>CONSENT AGENDA:</u></b></p> <p>Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item.</p> <ol style="list-style-type: none"> <li>1. DIRECTOR’S REPORT: January 5, 2023 – January 17, 2023</li> <li>2. EMPLOYEES IN LICENSED PREMISES:           <ol style="list-style-type: none"> <li>a. Managers and Assistant Managers Red/Blue Card exam list - See Attachment “A”</li> </ol> </li> <li>3. ACTIONS OF THE DIRECTOR:           <ol style="list-style-type: none"> <li>a. <u>Request for Temporary Increase of Premise:</u> <ol style="list-style-type: none"> <li>1. <u>Sugahara Ranch Inc. dba The Dolphin Poipu (2G-062):</u> Approval of Temporary Increase of Premises to include their lanai area as a Beer Garden and Wine Bar per diagram submitted for a Culinary Market to be issued for use on every Wednesday beginning, February 1, 2023, through April 26, 2023, from 3:30 p.m. to 6:30 p.m. Applicant has met all requirements and clearances obtained with The Department of Health, Building Division and Planning Department.</li> </ol> </li> </ol> </li> </ol>	<p>No Public Testimony.</p>

SUBJECT	DISCUSSION	ACTION
	<p>2. <u>Sugahara Ranch Inc. dba The Dolphin Poipu (2G-062)</u>: Approval of Temporary Increase of Premises to include their lanai area as a Beer Garden and Wine Bar per diagram submitted for a Flavors of Kukui’ula Event to take place on Friday, January 27, 2023, from 5:30 p.m. to 9:30 p.m. Applicant has met all requirements and clearances obtained with The Department of Health, Building Division and Planning Department.</p> <p>b. <u>Request to change Licensee Trade Name:</u></p> <p>1. <u>Haole Girl Island Sweets LLC. dba Street Burger Kauai (2G-028)</u>: Haole Girl Island Sweets LLC. located at 4-369 Kuhio Highway, Kapaa, Kauai, Hawaii, submitted a request for change of dba from “Street Burger Kauai” to “Ravish Kauai”. A certificate of Registration of Trade Name was submitted with the Request of Trade Name change issued by the State Department of Commerce and Consumer Affairs showing approval as required by administrative rules.</p> <p>c. <u>Request for Use of Gaming Device:</u></p> <p>1. <u>Barrel and BBQ LLC. dba Chicken in a Barrel Plantation Hideaways:</u> License No. 2G-011 located at 9400 Kaumualii Highway, Waimea, Hawaii requested approval of the use of; Giant Jenga, Xbox One, PS5, Giant Connect 4, Karaoke machine, and Ring Toss. Request was approved on December 8, 2022, through June 30, 2023.</p> <p>4. <u>Ratification of Declaratory Ruling Communication</u></p>	<p><u>Motion:</u></p> <p>Mr. Nishimura moved to approve the consent agenda as distributed. Mr. Endo seconded the motion. Motion carried 6:0.</p>

SUBJECT	DISCUSSION	ACTION
<p><b>F.</b></p>	<p><b><u>VIOLATION HEARING:</u></b></p> <p>Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item.</p> <p>1. <u>Case No.2023-014:</u> Mee &amp; Son Corporation dba Taps &amp; Hops Eatery located at 4-885 Kuhio Hwy., Kapaa, Kauai, Hawaii. Violation of Rule 4.7(b), Gross Liquor Sales Report, percentage fee, and records.</p> <p>Mr. Edwin Choy, Co-Owner was present to represent Mee &amp; Son Corporation dba Taps &amp; Hops Eatery. He was not represented by Counsel. He raised his right hand and solemnly swore to tell the truth and nothing but the truth. He received a copy of the charges and understood the charge and denied the charge.</p> <p>Mr. Foster requested to hear from Mr. Choy before he denies or admit to the charges. It is doable under the rules, as we had this situation before.</p> <p>Vice Chair Nishimitsu asked Mr. Choy according to the report prepared by the inspector and the supplemental report. You closed your existing account because of some fraudulent issues, you then provided a list to American Savings Bank of the checks that had to be honored.</p> <p>Mr. Choy replied yes, those checks were payroll checks, which a day after would have paid for the employees the next day.</p> <p>Vice Chair Nishimitsu commented you neglected to advise that the check to pay your license fees should have been included in that to be paid.</p>	<p>No Public Testimony.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Choy replied yes, the explanation for that matter is that those checks were handwritten one for the Liquor Commission we don't really have a complete record of that. For the payroll check, it's done by the bookkeeper, which she completed for the employee's payroll. So, I think I can use it, I can get that from my bookkeeper to get to the bank. Anything else other than payroll</p> <p>Vice Chair Nishimitsu asked did you write the check to pay the license fee?</p> <p>Mr. Choy replied no, my father did.</p> <p>Vice Chair Nishimitsu asked, and he never communicated it to you.</p> <p>Mr. Choy replied he communicated to me that he did pay it in September, and this happened on October 20th. So, I assumed that the check had already cleared.</p> <p>Vice Chair Nishimitsu replied it's kind of puzzling as to why an incomplete list of to be paid items, was given to the bank.</p> <p>Mr. Choy replied the bank recommended I did not want to close the account at first, but the bank recommended that I have to close the account right way. So, that day I worked with one of the tellers and she quit maybe a few days afterwards. So, most of the paperwork wasn't done with her and I had to check with the bank a couple weeks after to ask what was going on. So, we took a lot longer to get more of a completed check too.</p> <p>Mr. Foster asked the director a question when was the check submitted to the department? Was it submitted timely?</p> <p>Director Sandoval-Reyes replied September 30th, which is the original due date prior to which was a year ago from the due date used to be September 30th.</p> <p>Mr. Foster asked so it was submitted to the department, that was sent to finance.</p>	

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	<p>Vice Chair Nishimitsu replied it wasn't submitted to finance, according to this report until October 3<sup>rd</sup> and then on December 20<sup>th</sup>. Finance notified the liquor department that the check had not cleared, so there was a two-month delay.</p> <p>Director Sandoval-Reyes replied on September 30<sup>th</sup> was a Friday, so October 3<sup>rd</sup> was the Monday that follow, so it was deposited the next business day to finance.</p> <p>Vice Chair Nishimitsu replied, the liquor department wasn't notified until two months later, right that there was a problem. So, I have an issue with that delay being tagged to the licensee.</p> <p>Commissioner Endo asked Director Sandoval-Reyes do you know what the process is after you submit your report with the check to finance, again, you know the delay. Why did it take like 17 days? It was more than 17 days.</p> <p>Director Sandoval-Reyes replied, the explanation from finance treasury was that they've been shorthanded and it's pretty much the same process for them and DMV and everybody else.</p> <p>Chair Kahawai asked are there any further questions from the Commission.</p> <p>Vice Chair Nishimitsu asked Mr. Choy, are you saying that you paid in time.</p> <p>Mr. Choy replied yes.</p> <p>Vice Chair Nishimitsu replied, but the check didn't clear at all.</p> <p>Mr. Choy commented because the front happened during that.</p> <p>Vice Chair Nishimitsu replied which is not the liquor department's fault.</p> <p>Mr. Choy replied, no.</p>	

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	<p>Vice Chair Nishimitsu replied based on that, you're still denying that you are liable. Or are you denying that you are liable for two months' worth.</p> <p>Mr. Choy replied for the two months' worth of fines?</p> <p>Chair Kahawai commented you stated that you don't keep up checkbook record right.</p> <p>Mr. Choy replied right for handwritten checks, because me and my father share the checkbook. So, something's he pays for some things I pay the bills.</p> <p>Commissioner Shimabukuro asked do you have then a manual set of checks? And a digital set for payroll?</p> <p>Mr. Choy replied yes.</p> <p>Commissioner Shimabukuro asked the reconciliation was not done as of September 30th either as with the September 30<sup>th</sup> statement and the October 31<sup>st</sup>.</p> <p>Mr. Choy replied yes.</p> <p>Director Sandoval-Reyes asked a question on the admit on the deny of the charge. I think that's something we should probably give the applicant an option. It really should be if they are guilty not guilty or no contest on it. Those really should be the options that he has instead of saying that he admits or denies this, I mean that could be a no contest setting.</p> <p>Chair Kahawai asked is there two charges one it is not making the payment timely, and the second charge is the number of dates.</p> <p>Director Sandoval-Reyes replied yes correct, there actually two charges.</p> <p>Vice Chair Nishimitsu commented you are saying there are 51 violations because each</p>	

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	<p>day that it remains unpaid is a separate violation, right?</p> <p>Director Sandoval-Reyes replied right, first violation is just that we didn't get paid and the 50 violations is daily.</p> <p>Commissioner Nishimura replied, I would suggest that you treat it separately.</p> <p>Vice Chair Nishimitsu replied the first count which is you didn't pay on time.</p> <p>Mr. Choy responded yes.</p> <p>Vice Chair asked do you admit or deny that?</p> <p>Mr. Choy replied I admit.</p> <p>Vice Chair Nishimitsu asked the remainder do you admit or deny.</p> <p>Mr. Choy replied I deny and want to contest it.</p> <p>Mr. Foster replied, the Director can dismiss counts it's the director's discretion to dismiss.</p> <p>Vice Chair Nishimitsu asked Is it the director's discretion since they were already filed or is it the Commission's discretion?</p> <p>Mr. Foster replied, I guess in an abundance of caution, I would answer that be treated as either way, I would right now I don't know. So, I would say it would definitely be within the Commissions terms. That being a question, I would say the Commission should do it if that's the Commissions wish.</p> <p>Director Sandoval-Reyes asked Chair Kahawai the Commission could just refuse to</p>	



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	<p>accept the charge on that second charge, you can take the first violation and not have the second violation.</p> <p>Chair Kahawai replied I think that for the second one not for the number of days.</p> <p>Director Sandoval-Reyes replied that information, should you decide to go the option of contesting basically getting our witnesses to explain what happened. So, we have to work together to see we show you who are witnesses and you have shown with you. It would be a trial. We have discussed this before should we go down that route? The Commission also has the power to subpoena, so you could also subpoena people from the bank to come speak on our behalf or his behalf.</p> <p>Chair Kahawai replied I don't know that's the route I was thinking of having. For me if we keep that charge separate, he admits to the charge the initial charge of non-payment on-time and then the Commission decides what we feel is appropriate. Number of days for the 2<sup>nd</sup> violation can we do that?</p> <p>Mr. Foster replied you can entertain a motion.</p> <p>Commissioner Nishimura commented as to count one, it has been made. I would propose is that we adjudicate that portion. Since he has admitted to that charge and then I would like to propose something after that for the Commission.</p> <p>Vice Chair Nishimitsu asked Mr. Choy, do you understand?</p> <p>Mr. Choy responded yes.</p> <p>Commissioner Endo commented the first charge as far as the non-payment it was on time. I know that the applicant has admitted to the charge but, is there a way that we make a motion to dismiss the charge?</p> <p>Vice Chair Nishimitsu as to which charge the initial charge.</p>	

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	<p>Commissioner Endo replied, yes.</p> <p>Chair Kahawai asked the Commission any further discussion?</p> <p>Commissioner Endo responded the reason why I made the motion is because I believe the applicant made the payment on time. The applicant came in and made the payment on September 30. The check was forwarded to the finance department on October 3<sup>rd</sup>. The deposit was made on October 24<sup>th</sup>. Now the reason that I heard why they didn't make it on time, because the Director mentioned that the finance department was short staffed. That's not a reason, I mean, you know the applicant came in good faith and said here's my check. I have the money the \$3200. In anticipation that the deposit was going to be made in a timely fashion, not to wait. And of course, you didn't know again. He mentioned he didn't know that the check was being held up. His thought process was that the check had been deposited he paid, so it's not his fault. That finance took 21 days to make a deposit. If you're a bank and you come in, you cannot say we're gonna process this in 21 days after we receive it. That's not a timely fashion. I think we all expect, as far as if they made a payment, his check had processed. So that's my reason to say is that we dismiss the charge because the fact is that it did come in good faith and made the same September 30<sup>th</sup>. Which is in a timely fashion. And so, it is not his fault that the check was processed 21 days later so that's where I'm coming from. And that's why I said that. That's my reason to dismiss the charge.</p> <p>Vice Chair Nishimitsu asked now if the check had been processed per say of the bank to honor, three days later, it would still have been dishonored because the account was already closed, right?</p> <p>Commissioner Endo replied no, it was not, it's better than sooner. Now, in a timely fashion, if on October 3<sup>rd</sup>, and let's say it was deposited one week later, which is October 10<sup>th</sup>. Did the check clear. I don't know. Maybe I mean we don't have the statement showing what the balance was as of that date. His bank balance so it could</p>	

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	<p>have been paid. But my thought process is that when he came on the September 30th saying is that here's a check, the thought process being I have money is now and this is what I'm doing, and the thing is he does not have any kind of violations for five year period. None.</p> <p>Vice Chair Nishimitsu replied, the funds I see the date now. The account was closed October 20, right? So, the money was sitting there for 20 days.</p> <p>Commissioner Nishimura asked the bankers in this room we have 3 experts. Typically, when the bank receives those funds for the deposit, do you just notify the payee? Or do you notify the payor or payee that there are insufficient funds.</p> <p>Commissioner Shimabukuro responded we notify whoever the check was payable to.</p> <p>Commissioner Nishimura replied I would say based on that you know I think I can support dismissal of the charge. If the payor Mr. Choy had received notice that they had insufficient funds, on October 27th, as indicated by the report, I would say, you know, then he had adequate time to address. Although someone had a short amount of time, he still had time to address that because he was not notified, I would say that I can support the motion to dismiss the charge because. It's clear that he made the payment in good faith and until he was notified on December 20th or 21st, he was not aware that the payment had not been made. Furthermore, he came in the following day and took care of the payment immediately. Correct me if I'm wrong, I don't there were any issues clearing that check.</p> <p>Director Sandoval-Reyes replied no that one was cleared up because it was actually a cashier's check.</p>	

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	<p>Commissioner Crowell commented I was leaning towards a guilty but suspend the whole fine because both sides the County and the licensees did something wrong. But I think the problem is we got to the point where we held the conviction against the licensee. Had there been funds in there to clear it, we wouldn't be in this situation.</p> <p>Chair Kahawai commented from the banker's perspective, again, you know having sufficient funds could have been the reason for not sharing that check. So, we don't know if that time that deposit was made, even if it's done in three days if you know you had enough funds in the account because it could have been returned insufficient, not due to fraud, but due to insufficient funds. But so that's my only hang up there could have been funds to take. If there had been funds in there to clear it and we wouldn't be in the situation.</p>	<p><u>Motion:</u></p> <p>Mr. Endo moved to dismiss the first charge of Violation of Rule 4.7 for not paying on time. Mr. Nishimura seconded the motion. Motion carried 6:0.</p>
<p><b>G.</b></p>	<p><b><u>VIOLATION REPORT:</u></b></p> <p>Director Sandoval-Reyes asked if there's anyone in the public who wishes to testify on this agenda item.</p> <ol style="list-style-type: none"> <li><u>Case No.2023-015</u>: Haole Girl Island Sweets LLC. dba Street Burger (2G-028) located at 4-369 Kuhio Highway, Kapaa, Kauai, Hawaii. Violation of Rule 7.8(a), Manager on Duty, qualifications.</li> </ol>	<p>No Public Testimony.</p> <p><u>Motion:</u></p> <p>Mr. Endo moved to schedule a Violation Hearing for LIC # (2G-028) Haole Girl Island Sweets LLC. dba Street Burger. Mr. Nishimura seconded the motion. Motion carried 6:0.</p>

SUBJECT	DISCUSSION	ACTION
<p>H.</p>	<p><b><u>PRESENTATION OF 2023 PROPOSED RULE AMENDEMENTS FOR COMMISSION DISCUSSION (Continued)</u></b></p> <p>Director Sandoval-Reyes asked if there’s anyone in the public who wishes to testify on this agenda item.</p> <p>1. Liquor Revenue Fee Rate Comparison to neighboring islands.</p> <p>Director Sandoval-Reyes commented to the Commission that there are new legislation running through right now and I am keeping an eye on it. It might have effect on some of the things that we are working on currently. If you would like we can table this.</p> <p>Vice Chair Nishimitsu asked are the proposed statutory amendments going to affect what we already discussed or have not yet discussed.</p> <p>Director Sandoval -Reyes replied some of them have not, some have to do with rules that were placed while we were in COVID allowing for alcohol and food delivery. Those that ordered food could have their alcohol delivered. It is just in its first reading; I am following right now, and it could be having an addition to what we have for now.</p> <p>Chair Kahawai replied, it would impact things that we covered.</p>	<p>No Public Testimony.</p> <p><u>Motion:</u></p> <p>Mr. Nishimura moved that we take Item H. Presentation of 2023 Proposed Rule Amendments for Commission Discussion table it till the end of the Legislature Session. Mr. Endo seconded the motion. Motion carried 6:0.</p>

SUBJECT	DISCUSSION	ACTION
<p>I.</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> <p>Commissioner Shimabukuro requested to go into Executive Session to discuss the Boards duties.</p> <p>The Commission requested the presence of Director Leo Sandoval-Reyes, Assistant Chief Investigator Stacy Iwasaki, Private Secretary Malialani TM Kelekoma and Deputy County Attorney Charles Foster into the Executive Session.</p>	<p><b><u>Motion:</u></b></p> <p>Ms. Shimabukuro moved to go into Executive Session. Ms. Nishimitsu seconded the vote. Motion carried 6:0.</p> <p><b><u>Roll Call Vote:</u></b></p> <p>Mr. Endo -Aye          Mr. Crowell – Aye          Mr. Nishimura – Aye          Ms. Shimabukuro – Aye          Vice Chair Nishimitsu – Aye          Chair Kahawai - Aye</p>
<p>O.</p>	<p><b><u>RATIFY ACTIONS TAKEN IN THE EXECUTIVE SESSION</u></b></p>	
<p>P.</p>	<p><b><u>ADJOURNMENT</u></b></p>	<p><b><u>Motion:</u></b></p> <p>Mr. Crowell moved to adjourn the meeting. Mr. Endo seconded the motion. Motion carried 6:0.</p>

Submitted by: \_\_\_\_\_  
Malialani Kelekoma, Private Secretary

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

( ) Approved as circulated.

(X) Approved with amendments. See 03/08/2023 meeting.