
RULES OF THE LIQUOR COMMISSION



City and County of Honolulu
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CITY AND COUNTY OF HONOLULU, STATE OF HAWAII

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LIQUOR COMMISSION OF THE CITY AND COUNTY OF HONOLULU

**RULES OF THE LIQUOR COMMISSION
OF THE CITY AND COUNTY OF HONOLULU**

Be it prescribed by the Liquor Commission of the City and County of Honolulu, State of Hawaii:

The Rules of the Liquor Commission of the City and County of Honolulu (March 2017 ed.) are replaced in their entirety by the following rules, which include the March 24, 2018 amendments:

**TITLE 3 DEPARTMENT OF BUDGET AND FISCAL SERVICES
SUBTITLE 6 LIQUOR COMMISSION**

**RULES OF THE LIQUOR COMMISSION
OF THE CITY AND COUNTY OF HONOLULU, STATE OF HAWAII**

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CHAPTER 80 GENERAL PROVISIONS

§3-80-1. DEFINITIONS.

§3-80-1.1. Definitions. The definitions applicable to a particular word set forth in Section 281-1, Hawaii Revised Statutes (HRS), shall govern whenever any word contained in that section is used herein. Words in the masculine or feminine gender signify both the masculine and feminine gender, and those in singular or plural number signify both the singular and plural number.

“Adjudication Hearing” means a proceeding held pursuant to Section 281-91, Hawaii Revised Statutes, in which it is proposed to revoke or suspend any license issued, or assess and collect a penalty, or reprimand a licensee. The summary revocation of any special license is not included within the scope of this term.

“Administrator” means the individual, duly appointed and authorized by the Commission, to be responsible for the operation and activities of the Commission staff.

“Ambient noise” means the totality of sounds in a given place and time, independent of the sound contribution of the specific source being measured.

“Authorized Agent” means a person who is authorized in writing or in person by the licensee or applicant to act for or be the representative of the licensee or applicant in Commission proceedings.

“Bartender” means a person who prepares or mixes alcoholic drinks in accordance with established recipes and procedures, collects and receives payment for drinks served as all or part of his duties, and is responsible for the cleanliness and orderly condition of the bar area. This excludes people who only open or pour draught or bottled beer or wine. This also excludes a customer who brings into the premises, purchases from the licensee, or obtains from the licensee wine or distilled spirits in its

original container, or a pitcher of beer, and pours wine or distilled spirits from the original container, or beer from a pitcher, to create an unmixed serving of liquor for himself or others who sit at the pourer's table and consume the serving of liquor at the pourer's table.

"Caterer" as it pertains to a Class 13(a) licensee means a restaurant (class 2), hotel (class 12), or condominium hotel (class 15) licensee which provides off-premise liquor service in connection with food service, as stated in Sec. 281-31(m) HRS.

"Chaser" means a supplemental beverage that accompanies a straight, unmixed serving of liquor.

"City" means the City and County of Honolulu and includes the Commission attorneys responsible for prosecuting or defending cases before the Commission.

"Commission" means the Liquor Commission of the City and County of Honolulu, State of Hawaii.

"Complimentary drink(s)" means individual servings of the licensee's liquor inventory made in exchange for the immediate receipt of goodwill which shall be valued at the licensee's prices routinely charged to cash-paying customers.

"Condominium Hotel Guest Room" means (1) a guest room that is a unit, as defined in Sec. 514B-3, HRS, which is used to provide transient lodging for periods less than thirty days under a written contract with the owner of a unit in a condominium hotel operation; or (2) a guest room that is a unit, owned or managed by the condominium hotel operator, providing transient lodging for periods of less than thirty days, which is offered for adequate pay to transient guests.

"Customer" means any person other than an on-duty employee of that licensee.

"Dancer" means a person who is at least twenty-one (21) years of age and who performs or entertains unclothed or in such attire as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola. A dancer performing on a licensed premises shall be deemed an employee of the licensee regardless of whether the dancer is under contract or commission, compensated or not compensated, and shall be considered on duty during the period the dancer is performing and while the dancer remains on the licensed premises between performances.

"Dancing", as it pertains to a customer on the licensed premises, means the movement of the customer's body in a way that goes with the rhythm and style of music that is being played.

"Day" refers to the business day of a particular class of license as specified in §3-82-38.19 (unless otherwise specified); i.e., the business day of a restaurant is 6:00 a.m. until 2:00 a.m. the following morning.

"dBA" means a unit of measurement of decibels at the "A" level. "A" level is the total sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Decibels" (dB) means the unit for measuring the volume of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (0.0002 dynes per square centimeter).

"Employee" means any person who performs a service usually or normally done, on or within a licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated. This

excludes a customer who brings into the premises, purchases from the licensee, or obtains from the licensee wine or distilled spirits in its original container, or a pitcher of beer, and pours wine or distilled spirits from the original container, or beer from a pitcher, to create an unmixed serving of liquor for himself or others who sit at the pourer's table and consume the serving of liquor at the pourer's table.

"Entertainer" means any musician, singer, comic, any person who operates a system that provides amplified, recorded music for dancing, any person who operates a system that provides music so that customers may sing (i.e., "karaoke machines"), or other person who performs a specialized talent for the customers of a licensed premises, regardless of whether that person is under contract or on commission, registered or not registered, compensated or not compensated. This definition excludes dancers and go-go dancers.

"Excessive noise" means the presence of sound, as measured by standard testing devices, of a volume or in quantities and for durations which endangers human health, welfare or safety, animal life, or property or which unreasonably interferes with the comfortable enjoyment of life and property in the County or in such areas of the County as are affected thereby.

"Excessive noise source" means any sound or sequence of sounds to which an individual is exposed and which exceeds the permissible sound levels more than ten (10%) percent of the time in any twenty (20) minute period. For the purpose of this definition, any sound having a duration of less than one second shall be deemed to last one second.

"General" where applied to licenses, means includes all liquor except alcohol.

"Go-Go Dancer" means a person who is at least twenty-one (21) years of age and who performs or entertains clothed and in such attire that does not expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals, or any portion of the female breast below the top of the areola. A go-go dancer performing on a licensed premises shall be deemed an employee of the licensee regardless of whether the go-go dancer is under contract or commission, compensated or not compensated, and shall be considered on duty during the period the go-go dancer is performing and while the go-go dancer remains on the licensed premises between performances.

"Host or Hostess" means a person who is either compensated or not compensated and allowed to sit with patrons, whether or not the individual, employee or entertainer is consuming nonalcoholic beverages while in the company of the patrons. As stated in Sec. 281-31 HRS the host or hostess shall only be allowed to be employed or utilized under a class 5 dispenser, category 4 license. Under a class 2 license, or class 12-14 licenses, a host or hostess shall be described as the person who meets, greets, or seats the customer.

"Hotel Guest Room" means a room within a hotel licensee's premises where sleeping accommodations are provided and offered for compensation to transients or permanent guests.

"Issued license" is one possessed by a licensee whose application has been approved after full compliance with all the licensing requirements.

"Lap dancing" means any form of physical contact where a person's torso makes contact or is rubbed against another involving sexual contact.

“Manager” means the designated person duly registered with the Commission as a manager or assistant manager who is in active charge of the licensed premises during the time the establishment is licensed to sell or serve liquor.

“Noise” means any sound that may produce adverse physiological or psychological effects or interfere with individual or group activities, including but not limited to communication, work, rest, recreation or sleep.

“Party” means the Commission if named, permitted or entitled as of right to participate in a proceeding; each person named in a proceeding; or any other person permitted or entitled as of right to participate in a proceeding before the Commission in the capacity of a petitioner, claimant, respondent, intervenor, or in a capacity other than that of a witness.

“Person” means individuals, partnerships, corporations, associations, or public or private organizations of any character, other than the Commission.

“Permissible sound levels” mean the sound levels assigned to zoning areas as established by the State of Hawaii Director of Health.

“Professional entertainment” means any live music, dancing by dancers, or other entertainment performed by a professional or semi-professional entertainer who is paid for the performance.

“Property line boundary” means a line drawn through the points of contact of adjoining lands, apartments, condominiums, townhouses, duplexes, owned, rented, or leased by different persons.

“Sexual Contact” means any touching of the sexual or other intimate parts of a person by the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

“Showroom” means an approved room which provides an authorized form of entertainment and may serve any required or attached drinks together so to limit disturbance to that entertainment.

“Sound level meter” means an instrument or combination of instruments, which meets or exceeds the requirement for a Type I or Type II sound level meter as specified in the American National Standards Institute or the International Electrotechnical Commission.

“State” means the State of Hawaii.

“Undue noise” or “undue disturbance” means disturbance to the peace and quiet of the residents or tenants of the neighborhood from music, customers, or other noise originating from a licensed premises that is unreasonable. Music, customers, or other noise originating from a licensed premises is unreasonable within the meaning of Rule §3-84-78.03 if considering the nature and purpose of the licensee’s conduct and the circumstances known to the licensee, including the nature and zoning district of the location and the time of the day or night, the licensee’s conduct involves a gross deviation from the standard of conduct that a law-abiding citizen conducting the same type of business would follow in the same situation; or the failure to heed the reasonable admonition of a Commission investigator that the noise is unreasonable and should be stopped or reduced.

“Valid license” means a liquor license that has been issued in accordance with HRS and has not been cancelled or revoked.

“Zoning districts” means the land use districts established by rules or ordinances adopted by council, legislature, or county or state government agencies.

Zoning Districts; Classifications:

- (1) Class A Zoning Districts shall include all areas equivalent to county lands zoned conservation (P-1), residential (R-1 through R-70) or similar.
- (2) Class B Zoning Districts shall include all areas equivalent to county lands zoned apartment (A-1 through current A-5), business (B-1 through current B-5), hotel (H-1 and H-2), resort (B-R) or similar.
- (3) Class C Zoning Districts shall include all areas equivalent to county lands zoned Agricultural (AG-1 and AG-2), Industrial (I-1 through I-3) or similar.

§3-80-2. EXCEPTED ARTICLES. (Reserved)

§3-80-3. ILLEGAL MANUFACTURE, IMPORTATION, OR SALE OF LIQUOR. (Reserved)

§3-80-4. LIQUOR CONSUMPTION ON UNLICENSED PREMISES PROHIBITED. The service of liquor to a minor or the consumption of liquor by a minor in any restaurant or other premises where food, beverages, or entertainment are sold or provided, is prohibited. Any person who keeps or maintains a restaurant or other premises is responsible for insuring that minors do not consume or possess liquor.

§3-80-5 - §3-80-10. (Reserved)

CHAPTER 81 LIQUOR COMMISSIONS

§3-81-11. COUNTY LIQUOR COMMISSIONS; QUALIFICATIONS; COMPENSATION.

§3-81-11.1. Designation of Commission Chairperson. (a) In accordance with Section 281-11, Hawaii Revised Statutes, the Commission shall designate one of its members as the chairperson. The designation shall be by an affirmative vote of a majority of all members to which the Commission is entitled.

(b) The term of the chairperson shall begin January 1 and end on December 31 of each year. The chairperson may be redesignated by an affirmative vote of the majority of all members to which the Commission is entitled. In the event of the chairperson’s departure from the Commission, an interim chairperson will be designated by vote to fill the remaining term.

(c) During a temporary absence of the chairperson, the chairperson shall designate another member to act as the chairperson pro tempore.

§3-81-11.5. LIQUOR COMMISSION ATTORNEY.

§3-81-11.51. Question of Law. (a) The Commission, with the concurrence of the Corporation Counsel and the approval of the City Council, may appoint an attorney as a

special Deputy Corporation Counsel who shall be responsible for prosecuting or defending cases before the Commission.

(b) Where a question of law is involved, the Commission may refer the matter to the Corporation Counsel or its own duly appointed Special Deputy. The Commission also may obtain the assistance of other agencies, where necessary or desirable.

§3-81-12. COMMISSION OFFICE. (Reserved)

§3-81-13. MEETINGS.

§3-81-13.1. Meeting Dates, Time and Place. The Commission shall conduct its meetings and hearings at specified dates, times and places as set by the Commission.

§3-81-14. RECORDS.

§3-81-14.1. Public Information. (a) Any person may inspect public records of the Commission as provided for under Chapter 92F, Hawaii Revised Statutes, by filling out a request for information form at the office of the Commission during regular business hours, or by submitting a written request to the Commission. Copies of records are available at a price fixed by ordinance.

(b) All rules of the Commission are available for public inspection during regular business hours at the office of the Commission and the office of the City Clerk. Copies of the rules and supplements are available at a price to cover publication costs and mailing costs, if applicable.

§3-81-15. REPORTS, ACCOUNTS, AUDIT. (Reserved)

§3-81-16. COUNTY LIQUOR COMMISSION FUNDS; DISPOSITION OF REALIZATION; PAYMENT OF EXPENSES. (Reserved)

§3-81-17. JURISDICTION AND POWERS; RULES OF PRACTICE AND PROCEDURE.

§3-81-17.1. Limitation on Issuance of a Liquor License. (a) A license application shall not be accepted if the proposed premises is located in an area that has reached or exceeded the maximum number of licenses of that particular class as determined by the Commission. This rule shall not apply to transfers of licenses or to stock transfers. Area boundaries shall be designated by legislative State house districts as of the effective date of this rule. If the legislative State house districts are amended, the area boundaries as of the effective date of this rule shall continue to govern, unless the Commission directs otherwise.

(b) A license shall not be issued without a zoning clearance from the City and County of Honolulu Department of Planning and Permitting for the proposed premises. If the proposed premises is located in the Kakaako Community Development District, a zoning clearance will be required from the Hawaii Community Development Authority (HCDA). If the proposed premises is located in the Aloha Tower Marketplace, a zoning clearance will be required from the Aloha Tower Development Corporation.

§3-81-17.2. Declaratory Ruling by Commission. (a) Any interested person may petition the Commission for a declaratory order as to the applicability of any statute or of any rule or order of the Commission.

(b) The petition shall be typewritten, submitted in eight copies, and shall contain:

- (1) The name, address and telephone number of the petitioner.
- (2) A statement of the nature of petitioner's interest, including reasons for the submission of the petition.
- (3) A designation of the specific provision, rule or order in question.
- (4) A complete statement of the relevant facts.
- (5) A statement of the position or contention of the petitioner.
- (6) A memorandum of authorities, containing a full discussion of the reasons, including legal authorities, in support of such position or contention.
- (7) The signature of each petitioner.

(c) Any petition that does not conform to the foregoing requirements may be rejected.

(d) The Commission may, for good cause, refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the Commission may refuse to issue a declaratory order where:

- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts that can reasonably be expected to exist in the near future.
- (2) The petitioner's interest is not of the type that would give him standing to maintain an action if he were to seek judicial relief.
- (3) The issuance of the declaratory ruling may adversely affect the interests of the City or any of its officers or employees in litigation that is pending or may reasonably be expected to arise.
- (4) The matter is not within the jurisdiction of the Commission.

(e) Where a question of law is involved, the Commission may refer the matter to the Corporation Counsel or its own duly appointed Special Deputy. The Commission may also obtain the assistance of other agencies, where necessary or desirable.

(f) The Commission shall consider each petition submitted, and within a reasonable time after its submission, either deny the petition in writing, stating its reason for the denial, or issue a declaratory order on the matters contained in the petition.

(g) Orders disposing of petitions shall have the same status as other Commission orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. Declaratory orders shall not be applicable to different fact situations or where additional facts not considered in the order exist.

§3-81-17.3. Petition for Adoption, Amendment or Repeal of Rules. (a) Any interested person may petition the Commission for the adoption, amendment or repeal of any rule of the Commission.

(b) The petition may contain any pertinent information, but it shall be typewritten, submitted in eight copies and shall include:

- (1) The name, address and telephone number of each petitioner.
- (2) A statement of the nature of the petitioner's interest.

- (3) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed.
- (4) A statement of the reasons in support of the proposed rule, amendment, or repeal.
- (5) The signature of each petitioner.

(c) The Commission shall, within a reasonable time after the submission of the petition, either deny the petition in writing, stating its reasons for the denial, or initiate proceedings in accordance with Chapter 91, Hawaii Revised Statutes, for the adoption, amendment or repeal of the rule, as the case may be.

(d) Any petition that does not conform to the foregoing requirements may be rejected.

§3-81-17.4. Delegation of Administrative Duties. The Commission at its discretion may delegate to the Administrator routine administrative duties and functions which do not require a hearing and which the Commission determines will more efficiently assist the Commission in its responsibilities.

§3-81-17.5. LICENSE FEES; JUSTIFIED, METHOD OF CHANGE, GROSS SALES REPORTS.

§3-81-17.51 License Fees. (a) The fees for licenses shall be per annum except where specified. In addition to the basic license fee, an additional license fee will be assessed. This additional license fee will be assessed if the gross liquor sales achieves a certain threshold (hereinafter referred to as 'deductible'). The additional license fee assessment will be calculated on the net of the gross liquor sales less a deductible. The deductible will be prorated for licenses issued during the course of the fiscal year. For licenses that are cancelled or revoked during the course of a fiscal year but prior to the calculation of the deductible for that fiscal year, the prior year's deductible (prorated) will be used.

***The deductible will be calculated through the following formula:**

1) Calculation of Additional Fees required for the next fiscal year

BFB = Estimated Beginning Fund Balance
LRF = Estimated License Renewals Fees
ALF = CALCULATED Additional License Fee
MR = Estimated Miscellaneous Revenue
BUD = Budget as submitted to Council for the next fiscal year
EFB = Ending Fund Balance (Twenty percent of BUD)

Basic Formula: BFB + LRF + ALF + MR - BUD = EFB

ALF = EFB + BUD – BFB – LRF – MR

2) Calculation of the DEDUCTIBLE

The prior year's gross liquor sales of each licensee will be entered into a database. The gross liquor sales will be analyzed and based on the assessment rate of the respective class and additional license fees required (ALF), the deductible for the fiscal year will be calculated. The calculated deductible will be rounded to the nearest thousands of dollars.

A maximum additional assessment fee has been established for each class. The fees for licenses based on different classes, kinds, and categories shall be as follows:

<u>CLASS</u>	<u>KIND</u>		<u>FEES</u>
1	Manufacturer		
	(a) Beer		\$1,980, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.
	(b) Wine		\$900, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.
	Wine manufactured from fruits grown in the state		\$180
	(c) Alcohol		\$540
	(d) Other Liquors		\$1,980, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$5,000.
2	Restaurant		
	(a) General (includes all liquor, except alcohol)		
		(1) Category 1 - Standard	\$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(2) Category 2 – Music/Dancing	\$1,980, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
	(b) Beer & Wine		
		(1) Category 1 - Standard	\$1,380, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.

<u>CLASS</u>	<u>KIND</u>		<u>FEES</u>
		(2) Category 2 – Music/Dancing	\$1,440, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
	(c) Beer		
		(1) Category 1 - Standard	\$540, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(2) Category 2 – Music/Dancing	\$660, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
3	Wholesale		
	(a) General (includes all liquor except alcohol)		\$3,960, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.
	(b) Beer & Wine		\$1,260, and one-tenth of one percent (0.001) of the total gross liquor sales less a *deductible, not to exceed \$10,000.
	(c) Alcohol		\$180
4	Retail		
	(a) General (includes all liquor except alcohol)		\$1,800, and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.
	(b) Beer & Wine		\$1,380, and one-quarter of one percent (0.0025) of the total gross liquor sales less a *deductible, not to exceed \$15,000.
	(c) Alcohol		\$96
5	Dispenser		
	(a) General (includes all liquor except alcohol)		
		(1) Category 1 - Standard	\$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(2) Category 2 – Nudity	\$2,160, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.

<u>CLASS</u>	<u>KIND</u>		<u>FEEES</u>
		(3) Category 3 – Music/Dancing	\$1,980, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(4) Category 4 – Hostess	\$2,160, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(5) Categories 3 & 4	\$2,280, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(6) Categories 2 & 3	\$2,460, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(7) Categories 2 & 4	\$2,460, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(8) Categories 2, 3 & 4	\$2,640, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
	(b) Beer & Wine		
		(1) Category 1 - Standard	\$1,380, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(2) Category 3 – Music/Dancing	\$1,440, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(3) All other combinations	\$1,560, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
	(c) Beer		
		(1) Category 1 - Standard	\$540, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
		(2) Category 3 – Music/Dancing	\$660, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.

<u>CLASS</u>	<u>KIND</u>		<u>FEES</u>
			\$25,000.
		(3) All other combinations	\$840, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
6	Club		
		(1) Category 1 - Standard	\$1,020, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.
		(2) Category 2 – Music/Dancing	\$1,080, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$15,000.
8	Transient Vessel		
	(a) Per day		\$90
	(b) Per year		\$1,980
9	Tour/Cruise Vessel		
		(1) Category 1 - Standard	\$1,380, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed \$10,000.
		(2) Category 2 – Music/Dancing	\$1,440, and one-half of one percent (0.005) of four (4) times the amount of liquor purchased less a *deductible, not to exceed \$10,000.
10	Special, per day		
	(a) General (includes all liquor, except alcohol)		\$90
	(b) Beer & Wine		\$60
	(c) Beer		\$45
11	Cabaret, General		
		(1) Category 1 - Standard	\$3,000, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.
		(2) Category 2 - Nudity	\$3,600, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$30,000.
12	Hotel, General		\$5,940, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to

<u>CLASS</u>	<u>KIND</u>		<u>FEES</u>
			exceed \$45,000.
13	(a) Caterer, General (Class 2, Class 12, Class 15 only)		\$45 per day
	(b) Caterer, General (Food Service Business Type)		
		(1) Category 1 – Standard	\$900, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus \$45 per day.
		(2) Category 2 – Music/Dancing	\$1,080, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000, plus \$45 per day.
14	Brewpub		
		(1) Category 1 – Standard	\$2,520, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.
		(2) Category 2 – Music/Dancing	\$2,700, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.
15	Condominium Hotel, General		\$4,500, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$45,000.
16	Winery		\$1,800, and one-half of one percent (0.005) of the total gross liquor sales less a *deductible, not to exceed \$25,000.
17	BYOB		
		(1) Category 1 – Music only	\$540
		(2) Category 2 – Music/Dancing	\$660
18	Small Craft Producer Pub		
		(1) Category 1 - Standard	\$2,520, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to

<u>CLASS</u>	<u>KIND</u>		<u>FEEES</u>
			exceed \$40,000.
		(2) Category 2 – Music/Dancing	\$2,700, and three-fourths of one percent (0.0075) of the total gross liquor sales less a *deductible, not to exceed \$40,000.
n/a	Temporary		<p>\$420 for an initial period of one hundred twenty (120) days or any part of the period the license was in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.</p> <p>The fee for renewal of such license shall be \$420 for the renewal period or any part of the period the license is in use, and the current rate of assessment of the respective license class of the license applied to the total gross liquor sales.</p>

(b) Solicitors' and Representatives' Permits. The fees for solicitors' and representatives' permits shall be for each license year (commencing on July 1 and ending on the succeeding June 30) and shall be in the following amounts: General, \$210; Beer and Wine, \$130; Alcohol, \$9.

§3-81-17.52. Prorated License Fees, Forfeiture of Fees. (a) Full payment of the prorated license fee is due and payable at the time the license is issued except for special, transient vessel (per day), caterers and temporary licenses which fees shall be paid in full at the time of filing the application.

(b) Upon the licensee's termination of its business, or upon revocation or cancellation of the license by the Commission, all fees paid for the remaining unexpired license term shall be forfeited.

§3-81-17.53. License Fees; When Due and How Calculated. (a) The fee for any license renewed shall be due with the renewal application and payable on or before June 30 of each year. For any license other than special, transient vessel (per day), caterer, temporary or renewed licenses, the fee shall be due and payable on the date the license is issued. The fee for a license issued July 1 shall be for a full year. The fee paid for a license issued on any other date shall be prorated from the first day of the month in which the license is issued to the end of the license year.

(b) License fees required to be paid on June 30 of each year, or on such other date as provided by this rule, shall be the fees prescribed by §3-81-17.51 for each respective class and kind of license.

(c) The license fee for a special and caterer license shall be based on the calendar day ending and expiring at midnight.

(d) If a licensee fails to effect its renewed license following payment of the license fee, refund of the fee to the licensee shall be reduced by any outstanding assessments and/or penalties for liquor law or rule violations.

§3-81-17.54. Gross Sales Reports. (a) All licensees, except transient vessel (per day), special, and bring-your-own-beverage, shall file a report as directed by the Commission showing the true and accurate gross sales of liquor and purchases of liquor. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party. The gross sales report shall also indicate the additional license fee due and payable which exceeds the minimum fees established by §3-81-17.51.

(b) All tour and cruise vessel licensees shall file a report on a prescribed form as directed by the Commission showing the true and accurate declaration of liquor purchases. The report shall be signed by the owner, partner, corporate officer, member, or authorized agent and submitted with the original signature of the authorized party. The gross sales report shall also indicate the additional fee due and payable which exceeds the minimum fees established by §3-81-17.51.

(c) The report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be complete and filed with the additional license fee, if applicable, on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

(d) All licensees, except transient vessel (per day), special, and bring-your-own-beverage, shall produce within three (3) calendar days for Commission inspection books or records showing all income, purchases and expenses of their liquor licensed business. These books and records, including but not limited to daily sales records and invoices, shall be made available for inspection and/or auditing by the Commission, through its auditors or otherwise, at any time and shall be preserved for a period of four years, except that the Commission may, in its discretion, consent to destruction of those books and records within the period or may require that they be kept longer.

(e) Gross sales from off-premises catering shall be included in the gross sales report of the Restaurant, Hotel, or Condominium Hotel licensee.

(f) Licensees who give complimentary drinks or samples without charge shall report the value of those drinks in their annual gross sales report. If there is no sales price related to the complimentary drink, the licensee shall report the complimentary drink's value at four (4) times the amount of liquor purchased.

(g) In addition to the report for the period ending June 30th, wholesale licensees shall complete and file an interim gross sales of liquor report for the period July 1 to December 31. The interim report is due not later than March 1st of the following year. The Commission may direct the wholesale class to file additional interim gross sales of liquor reports, and establish the respective due date(s).

§3-81-17.55. Additional License Fees on Gross Sales. (a) The additional license fee based on gross sales of liquor shall be due and payable thirty-one (31) days after expiration, revocation or cancellation of the license under which the additional license fee accrued. In case of a license transfer, the additional license fee chargeable against such licenses shall become due and payable before the actual transfer of the license. If the deductible for the fiscal year has not been calculated, the prior year's deductible (prorated) will be applied to gross liquor sales to determine if any additional license fee is due.

(b) If the license is issued after July 1, any additional license fee based on gross sales of liquor shall be determined by prorating the deductible for the year.

§3-81-17.56. Failure to File Accurate Gross Sales Reports. No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report. It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to these rules.

§3-81-17.57. Payment for Under Reporting Gross Liquor Sales. Any licensee who is determined by the Administrator to have under-reported gross liquor sales shall be required to pay the amount due the Commission within fifteen (15) days from notification.

§3-81-17.58. Trade Name; Change; Fee. A new licensee or transferee shall have a choice of trade name, however, any trade name must be registered with the State Department of Commerce and Consumer Affairs. Any current or pending licensee desiring to change an existing or previous trade name shall submit to the Commission a Certificate of Registration of Trade Name issued by the State Department of Commerce and Consumer Affairs, showing approval of that registration. A processing fee of \$45.00 shall be assessed by the Commission for any change of existing trade name to include a license transfer.

§3-81-17.59. Use of Unauthorized Trade Name Prohibited. Use of any trade name without prior approval of the Commission is prohibited. Any publication or advertising or sign with an unauthorized trade name will be considered presumed evidence of use of that trade name.

§3-81-17.6. Mediation in Contested Cases. (a) The Commission may encourage parties to a contested case hearing to participate in mediation prior to the hearing subject to conditions imposed by the Commission described herein or in rules adopted

by the Commission. The Commission may suspend all further proceedings in the contested case pending the outcome of the mediation.

(b) No mediation period under this Rule shall exceed thirty days from the date the case is referred to mediation, unless otherwise extended by the Commission.

(c) The parties may jointly select a person to conduct the mediation. If the parties are unable to jointly select a mediator within ten days of the referral to mediation, the Commission may select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the Commission, or provided by law.

(d) No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the matter, including the contested case hearing or a court proceeding.

(e) No preparatory meetings, briefings, or mediation sessions under this Rule shall constitute a meeting under Section 92-2, HRS. Any mediator notes under this Rule shall be exempt from Section 92-21 and Chapter 92F, HRS. Section 91-10, HRS, shall not apply to mediation proceedings.

§3-81-17.7. Monies Collected From Assessment of Fines. The Administrator, with Commission approval, shall be authorized to designate a portion of fine monies collected for use in programs to promote compliance with liquor laws, business development, and improvement of interagency and interoffice functions. Such programs may include, but are not limited to, grant assistance programs, enforcement, public service announcements promoting responsible drinking and driving, youth programs, education, and liquor control administrative meetings.

§3-81-17.8. Waiver. Upon receipt of a written request from a license applicant or a licensee, or upon the Commission's initiative but with the concurrence of a license applicant or a licensee, the Commission may waive any portion of the Rules upon a showing by the license applicant or the licensee that (A) the license applicant or the licensee would suffer undue hardship, economic or otherwise, if the Rule were to be strictly implemented; (B) the waiver of the Rule would not unduly burden or adversely affect any affected parties; and (C) the waiver is consistent with the underlying purposes of Chapter 281, Hawaii Revised Statutes, as amended, and the Rules. Waiver requests made by the license applicant or the licensee must be submitted in writing to the Commission, and shall include all documentation which supports the waiver request.

§3-81-18. (Reserved)

§3-81-19. HEARINGS, ATTENDANCE, EXAMINATIONS.

§3-81-19.1. Hearings. All hearings shall be conducted pursuant to Chapters 91 and 92, Hawaii Revised Statutes, and these rules. All hearings shall be before the Commission. All parties shall be afforded full opportunity to present evidence and argument on all issues involved. The hearing shall be at the time and place set forth in the Notice of Hearing and may be continued from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing. The Commission, if there is no dispute as to the facts involved in a particular

matter, may permit the parties to proceed by written or oral argument in lieu of a hearing unless this procedure would unduly burden any party or is otherwise not conducive to the ends of justice.

§3-81-19.2. Legal Counsel or Other Authorized Representative. (a) A party may be represented by legal counsel or any other individual authorized in writing to represent that party at any proceeding before the Commission.

(b) Substitution of legal counsel shall be effective only upon filing written notice of substitution with the Commission.

(c) Withdrawal of legal counsel in the absence of a concurrent substitution shall be effective only upon the approval of the Commission and legal counsel shall be subject to the guidelines of the Hawaii Code of Professional Responsibility and other applicable law.

(d) No party shall substitute or withdraw legal counsel for the purpose of delaying a proceeding. Substitution or withdrawal of counsel less than thirty days before the hearing shall not be considered sufficient reason to continue the hearing, unless good cause is shown.

§3-81-19.3. Authorized Agent Representing Party. (a) When an individual, acting in a representative capacity on behalf of a party, appears in a proceeding or signs a document submitted to the Commission, that personal appearance or signature shall constitute a representation that the individual is lawfully authorized to so act.

(b) The agent shall provide written authorization from the licensee or applicant to act in this capacity in all proceedings. This authorization shall be renewed annually or is considered invalid. The Commission may, at any time, however, require the individual to furnish proof of authorization.

(c) Authorized agents shall be bound by the provisions of the code of conduct currently applicable to attorneys and others authorized by law to represent parties. The Commission reserves the right to refuse to recognize authorized agents in its proceedings for sufficient cause.

§3-81-19.4. Substitution of Parties. (a) Substitution of parties may be ordered upon motion and for good cause shown, provided that the substitution shall:

- (1) Be conducive to the ends of justice;
- (2) Not unduly delay any proceeding; and
- (3) Not otherwise unduly harass, hinder, or prejudice the rights of any party.

(b) In the case of the death or legal incapacity of any party, substitution may be ordered by the Commission without the necessity of filing a motion therefor.

§3-81-19.5. Consolidation. The Commission may on its own motion, or upon motion by any party, consolidate two or more proceedings which involve substantially the same issues, arise out of the same general transaction, or involve the same person or persons, provided the consolidation shall be conducive to the ends of justice and shall not unduly delay any proceeding or hinder, harass, or prejudice any party.

§3-81-19.6. Service, Generally. (a) Unless otherwise provided by this chapter or by other applicable law, whenever service is required to be made on any party to a proceeding before the Commission, service shall be made personally or by certified mail; the document to be served at the party's last known address or to the party's attorney of record or to any other individual duly authorized to represent the party in the proceeding.

(b) If personal service or service by certified mail is unsuccessful, the Commission may authorize service by publication if permitted by statute. The Commission may require that personal service be attempted prior to permitting service by publication. After service by publication has been authorized, whenever service is required to be made on that party thereafter, service by first class mail to the party's last known address shall be sufficient.

§3-81-19.7. Service, By Whom. Unless otherwise provided by these rules, a party filing a pleading, motion, memorandum, document, or other paper in connection with an adjudication hearing shall cause a copy of the pleading, motion, memorandum, document, or other paper to be served upon each of the other parties to the adjudication hearing, or upon any agent or attorney representing the other party. The party shall attach to the pleading, motion, memorandum, document, or other paper a certificate of service indicating the date and manner of service.

§3-81-19.8. Time. (a) Unless otherwise provided by statute or rule, in computing any period of time prescribed or allowed, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event the period shall run until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is seven days or less. A half holiday shall not be considered a holiday for the purpose of these computations.

(b) The hours of a day during which documents will be accepted for filing by the Commission shall be those specified in Section 80-1, HRS.

§3-81-19.9. Extensions of Time. Unless otherwise provided, the Commission may, at the request of any party, extend the time within which any action shall be taken. The Commission, in its sole discretion, may require that the extension be stipulated to by all parties to the proceeding or that the request be by motion for good cause shown.

§3-81-19.10. Motions. (a) Unless made during a hearing, an application for any relief or order shall be made by written motion, stating with particularity the grounds therefor and setting forth the relief or order sought.

(b) Motions referring to facts not of record shall be supported by affidavits, and if involving a question of law, shall be accompanied by a memorandum of points and authorities in support thereof.

(c) If a hearing is held on the motion, the party filing the motion shall serve a copy of the motion and notice of hearing on the motion upon all parties not later than

seventy-two (72) hours before the hearing on the motion and the opposing party shall file and serve any counter affidavits or memorandum in opposition not less than twenty-four (24) hours before the hearing.

(d) Motions shall be filed with the Commission at its offices during regular business hours.

(e) Failure to comply with the requirements of this section may be the basis for the denial of any motion.

(f) The decision on the motion may be made orally at the time of the hearing on the motion, or in writing, or as part of the Commission's decision.

§3-81-19.11. Powers of the Commission in Conducting Hearings. Unless otherwise provided by law, the Commission shall have the power:

- (1) To hold hearings and issue notices;
- (2) To administer oaths and affirmations;
- (3) To consolidate or sever proceedings, provided that those actions shall be conducive to the ends of justice and shall not unduly delay the proceedings or hinder, harass, or prejudice any party;
- (4) To issue decisions and orders consistent with state statutes and the rules of the Commission;
- (5) To issue subpoenas and examine witnesses;
- (6) To rule upon offers of proof, to receive relevant evidence, and to exclude evidence which is irrelevant, immaterial, unduly repetitious, or cumulative, and, accordingly, may restrict lines of questioning or testimony;
- (7) To regulate the course and conduct of the hearing;
- (8) To regulate the manner of any examination so as to prevent the needless and unreasonable harassment, intimidation, or embarrassment of any witness or party at the hearing;
- (9) To remove disruptive individuals, including any party, legal counsel, witness, or observer;
- (10) To hold conferences, including pre-hearing conferences, before or during the hearing, for the settlement or simplification of issues;
- (11) To rule on motions and dispose of procedural matters;
- (12) To dispose of any other matter that normally and properly arises in the course of the proceedings and to take any action authorized by these rules, Chapters 91 and 281, HRS, or any other related laws; and
- (13) To examine, after notice to all parties, any site or tangible evidence relevant to the proceeding.

§3-81-19.12. Disqualification of Member of Commission. (a) No matter shall be heard by a member of the Commission who:

- (1) Has any direct or indirect pecuniary interest in the matter being heard;
- (2) Has participated in the investigation preceding the institution of the proceeding or has participated in the development of the evidence to be introduced in the proceeding; or

- (3) Has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding which will prevent a fair hearing by the Commission.

(b) Any member of the Commission may be disqualified from hearing the matter upon motion of any party. Any motion to disqualify a member of the Commission shall be filed and decided before the evidentiary portion of the hearing.

§3-81-19.13. Ex Parte Communications. In any proceeding before the Commission:

(a) No person shall communicate privately on the merits of the case with any member of the Commission or the Commission's staff unless specifically provided for by law; and

(b) No member of the Commission's staff or any other government agency who participates in the proceeding as a witness or counsel shall communicate privately on the merits of the case with any member of the Commission, unless specifically provided for by law.

§3-81-19.14. Decisions, Generally. (a) Unless otherwise provided, every decision and order issued by the Commission shall be in writing or stated on the record.

(b) The Commission shall cause a certified copy of the decision and order together with any findings of fact and conclusions of law to be personally served or by certified or registered mail, return receipt requested, to the licensee, the party's attorney of record, an authorized agent, or officer or director of the corporation.

(c) Where a party has failed to appear at an adjudication hearing, service of the Commission's decision and order to the party is complete upon transmission by registered or certified mail, return receipt requested, to the party's last known address.

§3-81-20. GENERAL RIGHT OF INSPECTION. Without notice, search warrant, or other legal process, a licensee shall provide an investigator immediate access to every part of the licensed premises for the purpose of making an examination or inspection thereof of items related to the licensee's compliance with the liquor laws or rules. Except as prohibited by laws governing confidential or protected information, said examination or inspection shall include, but not be limited to, any books and records of the licensee kept on the licensed premises which relate to the licensee's compliance with the liquor laws or rules. Items discovered during such examination or inspection shall be used for the purpose of enforcement of the liquor laws or rules.

§3-81-21. SERVICE OF SUBPOENAS BY INVESTIGATORS; WITNESSES' FEES. (Reserved)

§3-81-22 - §3-81-30. (Reserved)

CHAPTER 82 LICENSES AND PERMITS, GENERAL PROVISIONS

§3-82-31. LICENSES, CLASSES.

§3-82-31.1. Determination of Classification for Licensed Premises. Upon submission of an application for a license on the form prescribed by the Commission,

the administrator shall appropriately classify and categorize said application based upon the class and category as defined by Section 281-31, Hawaii Revised Statutes.

§3-82-31.2. Conduct of Business. (a) Licensees are prohibited from conducting any business except as authorized by the Commission. Any licensee desiring a change of class or category shall apply to the Commission on a form prescribed by the Commission and comply with Sections 281-51 to 281-60, Hawaii Revised Statutes.

(b) Any licensee failing to operate its business in compliance with its authorized class or category or ceasing to provide an activity permitted by its class or category may be reclassified or re-categorized by the Commission after notice and hearing in conformance with Chapter 91, Hawaii Revised Statutes.

(c) Tour or cruise vessels (class 9) may, with approval from the Commission, sell and serve liquor to ticketed passengers within the vessel before scheduled departure and after docking of the vessel for the period of time as determined by the Commission.

§3-82-31.3. Determination of Nudity in Cabarets. (a) The Administrator shall classify each cabaret license to determine whether the cabaret licensee is permitted to provide professional entertainment by a dancer pursuant to Section 281-31(k), Hawaii Revised Statutes.

(b) Any cabaret licensee aggrieved by the decision of the administrator may file a written notice of appeal to the Commission within thirty (30) days after receipt of the notice of classification. The Commission shall hold a hearing and issue a final decision on the matter.

(c) A cabaret licensee seeking to provide professional entertainment by a dancer shall file an application on a form prescribed by the Commission and comply with Sections 281-51 to 281-60, Hawaii Revised Statutes.

§3-82-31.4. Term of License. (a) With the exception of transient vessel (per day), special, and temporary licenses of any class or kind, every license shall expire at twelve o'clock midnight on June 30, notwithstanding when the license was issued.

(b) No license shall be renewed unless the fee applicable thereto and an application for renewal of such license has been submitted to the Commission not later than June 30 of each year and the applicant presents signed certificates from the applicable tax services as required by Section 281-45, Hawaii Revised Statutes. These certificates shall be presented not later than July 31 of the year for which the applicant seeks renewal of a license, unless the Commission waives this requirement for good cause.

(c) Upon the expiration of the license and until that license is renewed and issued, the sale of liquor on the premises is prohibited. The expiration date of a transient vessel (per day), special, caterer or temporary license shall be determined by the Commission and stated on the license at the time it is issued and that license shall expire at midnight on the date so determined or on June 30 if the primary license is not renewed.

§3-82-31.5. Brew Pub Licenses. (a) Brew Pub categories shall only be as follows:

- (1) A standard bar; or

- (2) A premise in which live entertainment or recorded music is provided. Facilities for dancing may be permitted as provided by Liquor Commission rules.

(b) All Brew Pub licensees shall file a report as directed by the Commission showing the total number of barrels of malt beverages manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

(c) Any Brew Pub licensee is permitted to conduct the activities described in paragraphs (1) through (8) of Section 281-31(n), HRS, upon written approval of the Commission, subject to the following conditions:

- (1) An application for the designation of a second location other than the licensed premises shall be submitted by the licensee on a form prescribed by the Commission.
- (2) The designated second location shall be in an area zoned for the proposed activity.
- (3) An application for the designation of a second location shall be accompanied by a lease agreement or any other document showing that the licensee has the exclusive right to legally occupy the proposed premises, and a floor plan of the premises drawn to scale.
- (4) Invoices for all malt beverages manufactured and/or sold at the designated second location shall be kept on the premises. All such records shall be kept for not less than three (3) years.

§3-82-31.6. Special Licenses by For Profit Organizations. (a) Any For Profit organization may apply for special licenses in increments up to three (3) days on any occasion per license, not to exceed twelve (12) days per calendar quarter, with Commission approval.

(b) An application for a For Profit special license must include a zoning clearance from the City and County Department of Planning and Permitting, the Hawaii Community Development Authority (HCDA) or the Aloha Tower Development Corporation.

§3-82-31.7. Catering By Restaurant, Hotel, or Condominium Hotel Licensees. (a) Restaurant, hotel, and condominium hotel licensees may provide catering if that activity is directly related to the licensee's operation as a restaurant, hotel, or condominium hotel.

(b) Businesses that wish to provide on or off-premises catering service shall apply for a restaurant (class 2), hotel (class 12), or condominium hotel (class 15) license, as applicable by law and rule, which will permit the sale of liquor (other than alcohol) while performing food catering functions.

(c) Off-premises catering will only be authorized upon the issuance of a caterer (class 13(a)) license. A caterer event license is required for each off-premises catered event where liquor is served.

(d) For each off-premises catered event, the licensee shall submit an application for a caterer (class 13(a)) event license. The application shall include a notice stating the date, time, and location of the event; a floor plan showing the boundaries of the proposed catered licensed premises; a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and Rules of the Commission and open to inspection by the Commission's investigators.

(e) A caterer event license fee, as established by §3-81-17.51, shall be submitted with the application.

(f) A duly registered manager shall be in active charge of the licensed, catered premises during times that the premises is open for business. No other employees on the catered, licensed premises need to be registered with the Commission.

(g) Gross sales from on or off-premises catering shall be included in the gross sales report of the restaurant, hotel, or condominium hotel licensee. Each catered event must include food and liquor. At least thirty (30) per cent of the establishment's gross revenue from all catered events must come from the sale of foods.

(h) The licensee shall clearly post the issued license at the catered premises.

(i) A catering licensee shall have available for inspection and review the contract indicating the parties involved in the catered event or activity.

§3-82-31.8. Recorking. Unless inconsistent with Chapter 281 of the Hawaii Revised Statutes or the Rules of the Liquor Commission, any licensee engaged in meal service may allow a patron who has purchased or brought onto the licensed premises wine, liquor or beer for consumption with a meal to remove the partially consumed product from the licensed premises, which shall be recorked or resealed in its original container.

§3-82-31.9. Catering By Food Service Businesses. (a) Food service businesses may provide liquor service if that activity is directly related to the business's operation as a food service provider or food catering service.

(b) Minimum requirements of a caterer (class 13(b)) license shall be that it is an enterprise which is regularly and in a bona fide manner in the business of preparing meals for patrons for compensation, and which has kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for meals, and operated in compliance with State Department of Health laws and regulations.

(c) If liquor for catered events will be stored other than at the kitchen facilities identified in (b), approval for outside warehousing must be obtained in accordance with §3-82-42.1.

(d) A per-event caterer license is required for each catered event where liquor is served.

(e) For each catered event, the caterer (class 13(b)) licensee shall submit an application for a caterer event license. The application shall include a notice stating the date, time, and location of the event; a floor plan showing the boundaries of the proposed catered licensed premises; a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and Rules of the Commission and open to inspection by the Commission's investigators.

(f) A per-event caterer license fee, as established by §3-81-17.51, shall be submitted with the application.

(g) A duly registered manager shall be in active charge of the licensed, catered premises during times that the premises is open for business and licensed. No other employees on the catered, licensed premises need to be registered with the Commission.

(h) The licensee shall clearly post the issued license at the catered premises.

(i) A caterer (class (b)) licensee shall have available for inspection and review the contract indicating the parties involved in the catered event or activity.

(j) Liquor sales, service, and consumption shall be limited to the catered event. Each catered event must include food and liquor. At least thirty (30) per cent of the establishment's gross revenue from all catered events must come from the sale of foods.

(k) Retail dealer (class 3), dispenser (class 5), club (class 6), cabaret (class 11), brewpub (class 15), winery (class 16), and small craft producer pub (class 18) licensees may not apply for a caterer (class 13(b)) license.

§3-82-31.10. Winery Licenses. All Winery licensees shall file a report as directed by the Commission showing the total number of barrels of wine manufactured on the licensee's premises during the license year, which report shall be completed and filed not sooner than July 1 nor later than July 31 of each year, or at such other times as the Commission may direct. In cases of a transfer of a license, the report shall be filed by the transferor before the actual transfer of the license. Where licenses are revoked, canceled, or expired by term, a final report shall be filed within thirty-one (31) days following such revocation, cancellation or expiration. All reports shall be filed on or before the required filing dates by delivering them to the office of the Liquor Commission or by depositing them, properly addressed and stamped, in the United States mail. A postmark shall be evidence as to the time and date a report is mailed. The Commission shall not be responsible for failure of the post office to postmark the mailed report in a timely manner. A report received through the mail after the filing dates shall be considered late if received more than seven (7) calendar days after the postmark.

§3-82-31.11 Manufacturer Licenses. If on-premises sampling of beer, wine, or other specified liquor manufactured or distilled from fruits or other products grown in the State has been approved by the Commission, manufacturer licensees may charge for sampling to offset costs. The value of the charges for the samples shall be reported in the licensee's annual gross sales report.

§3-82-32. TEMPORARY LICENSES.

§3-82-32.1. Temporary License. (a) The issuance of a temporary license is based upon a transfer or new license application as stated in Sec. 281-32, HRS and shall be effective for not in excess of one hundred twenty (120) days, renewable for not more than one additional sixty (60) day period. Unless otherwise approved by the Commission, a temporary license shall be effective seven (7) calendar days after approval by the Commission or upon issuance of the physical temporary license, whichever occurs first. There will be no refund of temporary license application fees for temporary licenses not issued within seven (7) calendar days after approval by the Commission. The license application must be filed within five (5) working days of the surrender of the previous license or the closing of the business.

(b) An activated or issued temporary license shall terminate upon the issuance of the transferred or new license, denial or withdrawal of the transfer or new application, failure of the licensee to timely effect a renewable license, or at midnight of the one hundred twentieth day after being effected or issued.

(c) No temporary license, under Sec. 281-32, HRS, will be issued before:

- (1) Any pending fines which have been imposed upon the transferor are paid;
- (2) The surrender to the Commission of the existing license by the current holder;
- (3) The applicant for a temporary license has provided proof of landlord's and transferor's consent to the new license.

§3-82-32.3. ONE-DAY SPECIAL LICENSES FOR FUND-RAISING EVENTS.

§3-82-32.31. One-Day Special Licenses for Fund-Raising Events by Not for Profit Organizations. A one-day special license for fund-raising events by not for profit organizations, not to exceed twelve (12) days per calendar quarter, shall be reviewed and approved by the Administrator or designate. If the application is submitted fifteen (15) or more days prior to the proposed event, the license may be issued through the mail, provided the cost of mailing is submitted with the application.

§3-82-32.32. Exemption. The one-day special license for fund-raising events by not for profit organizations shall not be subject to a hearing, fees, and notarizing of documents.

§3-82-32.5. PERMITS FOR TRADE SHOWS AND EXHIBITIONS.

§3-82-32.51. Sampling at Trade Shows and Exhibitions. All exhibitors desiring to have a promotional sampling at a trade show or exhibition shall submit a written application to the Administrator prior to permitting liquor consumption. The application shall be submitted by the exhibitor and clearly state and identify the type of liquor to be sampled, the date, location and hours sampling is to take place and the name of the person in charge of the sampling. No minors shall be permitted to sample liquor and no person under the age of eighteen (18) years shall serve liquor. A copy of the approval form from the Administrator shall be posted in the vicinity of the sampling area.

§3-82-33. SPECIAL POWERS, PRIVILEGES, AND RIGHTS. (Reserved)

§3-82-33.1. INDIVIDUAL PERMITS TO RECEIVE SHIPMENTS OF LIQUOR.

§3-82-33.11. Applications for Individual Permits to Receive Shipments of Liquor.

(a) Any person twenty-one (21) years of age or older may apply to the Commission, on the form prescribed by the Commission and upon payment of a permit fee of \$18.00, for a permit to receive a shipment of liquor from outside the State, within the limits allowed by Chapter 281, Hawaii Revised Statutes.

(b) The application form shall include the following information:

- (1) A description of the liquor as to type, brand or trade name, domestic or imported and quantity.
- (2) Whether the liquor is an unsolicited gift unavailable in the State, or part of the applicant's household goods.

§3-82-33.5. Repealed.

§3-82-33.6. Direct Shipment of Wine by Wineries. (a) Any manufacturer of wine who desires to ship wines to residents of the County of Honolulu shall obtain a Direct Wine Shipper Permit from the Liquor Commission, City and County of Honolulu. The permit may be granted by the Administrator to any person holding:

1. A general excise tax license from the State of Hawaii Department of Taxation; and
2. Either:
 - A. A Class 1 license to manufacturer wine under Section 281-31, HRS; or
 - B. A license to manufacture wine issued by another state.

(b) The term of the permit shall be for one calendar year. The applicant for a permit shall submit:

1. An application form;
2. Copy of the State of Hawaii Department of Taxation general excise tax license;
3. Copy of the Class 1 license to manufacture wine under Section 281-31, HRS, or the license to manufacture wine issued by another state; and
4. Payment of an annual permit fee of \$180.00; provided, that the annual permit fee for a manufacturer of wine licensed under Section 281-31, HRS, shall be inclusive and part of its annual license fee. For purposes of this rule, permit fees shall be prorated.

No permit shall be issued unless the applicant has met the foregoing requirements.

(c) The holder of a Direct Wine Shipper Permit may sell and annually ship to any person twenty-one years of age or older in this county no more than six nine-liter cases of wine per household for personal use only and not for resale, and shall:

1. Ship wine directly to the person only in containers that are conspicuously labeled with the words containing or similar to:
"CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."
2. Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment;

3. Report no later than January 31 of each year to the Liquor Commission the total amount of wine shipped to persons in this county during the preceding calendar year;
4. Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a Direct Wine Shipper Permit shall be deemed to be wine sold in the state; and
5. Be subject to audit by the Liquor Commission.

(d) The holder of a license to manufacture wine issued by another state shall annually renew a Direct Wine Shipper Permit by providing the Liquor Commission with a renewal application, a copy of the current license to manufacture wine, and payment of the annual fee.

(e) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid Direct Wine Shipper Permit is prohibited. Knowingly violating this law is a misdemeanor.

§3-82-34. SHAM OPERATION UNDER CLUB LICENSE; SUPERVISION. (Reserved)

§3-82-35. SPECIAL CONDITIONS, CLUB LICENSES.

§3-82-35.1. Club Membership List. Club licensees shall keep a complete, current list of members, which shall be readily available for inspection on the licensed premises.

§3-82-35.2. Club Guests. Any person enjoying the guest privileges of a club and to whom liquor may be sold shall be a guest of the club. Clubs shall keep records as to registration of such guest for at least one year. These records shall be produced whenever required by the Commission. Guest privileges shall not be extended to a guest for more than four weeks within twelve consecutive months.

§3-82-36. SPECIAL CONDITIONS, RETAIL LICENSE (CLASS 4).

§3-82-36.1. Display of Prices in Retail Premises. Every retail licensee shall display, within the liquor sales area of the licensed premises, a shelf price for, or price tags on each container or bottle of, each size of each brand of liquor sold.

§3-82-36.2. Liquor on Retail Premises During Prohibited Sales Hours. If a retail dealer's licensed premises are open to the public during hours when the sale of liquor is not permitted, the licensee shall post signs in the area or areas where liquor sales are usually made, giving notice to customers that the sale of liquor is prohibited during that time.

§3-82-36.3. Drive-in Retail Sales Prohibited. Customers making purchases at retail premises must enter the licensed premises to purchase liquor. The drive-in method whereby the customer orders from a motor vehicle and the licensee delivers liquor to the vehicle is prohibited. Nothing in this rule shall be construed to prohibit assistance to any person who is physically unable to walk, lift or carry purchases of liquor because of a disability.

§3-82-36.4. Deliveries. (a) Retail licensees may make deliveries of liquor to private residences or businesses with a bona fide order from the purchaser provided the licensee produces a receipt of delivery signed by a person verified to be of legal age at the delivery point.

(b) Deliveries of liquor by licensed wholesalers or distributors shall only be made to a licensee's premises. With Commission prior approval, deliveries to a licensee's catered or other location shall be permitted.

§3-82-37. SALES OF ALCOHOL.

§3-82-37.1. Retail Alcohol Sales; Records. Alcohol may be sold for non-beverage purposes, by any person holding a retail alcohol license only upon the prescription of a duly licensed physician. Such sale shall be in a maximum quantity of one quart at any time, and the alcohol must be in a standard original package. Each such prescription shall be preserved by the seller for four (4) years, including the name of the prescribing physician and of the person to whom the alcohol was sold and delivered and the quantity so sold and delivered.

§3-82-38. CONDITIONS OF LICENSES.

§3-82-38.1. Familiarity with Liquor Laws and Rules. Licensees and their employees shall familiarize themselves with the liquor laws and the rules of the Commission.

§3-82-38.2. Liquor Laws and Rules on Licensed Premises. Every licensee (except special licensees, transient vessel per day, and caterer) shall have a current copy of the statutes relating to intoxicating liquor and the rules of the Commission in English available at all times on the licensed premises. Customers shall be entitled to examine the statutes and rules upon request

§3-82-38.3. Preparation of Drinks at Open Bars. If the portion of the licensed premises open to customers is equipped with a bar, the preparation of drinks shall be on the top surface of the bar and in such a manner as to permit an interested customer to have a clear and unobstructed view of the bartender's operations.

§3-82-38.4. Employee Records. (a) All dispenser, cabaret, hotel, club, restaurant, brewpub, condominium hotel, winery, bring-your-own-beverage, and small craft producer pub licensees, including temporary licenses, shall have available on the licensed premises a time card or other adequate record showing in English the month, day, year, and time, indicating a.m. or p.m. and the legal first name and surname of each employee when that employee is on duty. This rule also applies to managers but does not apply to entertainers or kitchen staff who do not handle, serve or sell liquor.

(b) Time record entries shall be made at the time the employee reports on duty and again when the employee goes off duty. If the employee is a minor, the licensee shall print on the time record below the employee's name that said employee is a minor. Employee time records shall be preserved for at least six months.

(c) Electronic or otherwise recorded payroll registration may be used for the purposes of this rule with the Administrator's approval.

§3-82-38.5. Registration of Employees. (a) All dispenser, cabaret, hotel, club, brewpub, condominium hotel, winery, bring-your-own-beverage, or small craft producer pub licensees shall employ only persons in that section of the licensed premises where liquor is sold, served or consumed who are registered with the Commission prior to the start of employment. For restaurant and class 13(b) caterer licensees, only managers and bartenders are required to be registered prior to the start of employment. Licensees shall ensure that any bartender currently employed in these classes of licenses successfully completes the server-training program within ninety (90) days of the publication of these rules. A temporary registration is allowed for each employee who has an unexpired certificate of registration. This temporary registration shall not exceed three (3) consecutive days, and will only become effective if the licensee timely advised the Commission by facsimile time stamp of the temporary employment. Further, the employee temporarily registered with the Commission must permanently register not later than the first working day after the temporary registration expires. An employee need not obtain a new certificate of registration because of a name change only. This rule shall apply to the registration of employees under a temporary license based upon a new license application as stated in §3-82-32.1. However, this rule shall not apply to employees under a temporary license based upon a transfer license application where the employee is registered under the pre-existing license.

(b) Certificates of registration issued by the Commission shall be valid only for the licensed premises for which the employee registers and the license number of the premises shall be printed on the certificate of registration. Employees may be employed to work at more than one licensed premises; however, a separate certificate of registration shall be required for each licensed premises. Certificates of registration for employees, except for dancers, bartenders or managers shall be valid for four (4) years from the date of issue. For bartenders or managers, certificates of registration shall be valid for four (4) years from the date of successful completion of the server training program required under sub-paragraph (f) of this rule (including passing the examination).

(c) Persons who apply to the Commission for registration shall present:

- (1) A valid, unexpired government issued ID card, containing the registrant's name, photo, and date of birth (e.g., Driver's License, State ID, US Passport, or Military ID); and
- (2) An original Social Security card or a Wage and Tax Statement from W-2, provided the Social Security Number is printed on the document. A printed electronically transmitted copy is acceptable.

(d) Each person registered shall be photographed and issued a certificate of registration which shall be valid until the expiration date indicated thereon or when recalled, suspended, or revoked by the Commission. The certificate of registration shall be retained by each employee and not surrendered to or held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.

(e) Licensees shall ensure that all employees who are required to register with the Commission have their certificate of registration for the licensed premises readily available for inspection while on duty at that licensed premises.

(f) All dispenser, cabaret, restaurant, tour or cruise vessel, annually licensed transient vessel, hotel, club, brewpub, or condominium hotel licensees shall employ only bartenders who have successfully completed the server-training program administered by the Commission, including an examination and instruction in the following areas:

- (1) Identifying and dealing with intoxicated persons,
- (2) Reviewing liquor laws and rules, and
- (3) Dangers of driving while intoxicated.

In these classes, the licensees shall ensure that individuals currently employed as a bartender successfully complete the server-training program within ninety (90) days of publication of these rules. A person may be issued a certificate of registration as a bartender for the same or another licensed premises and need not retake the server-training program if that person had successfully completed the server-training program within the past four (4) years.

(g) If an employee has been issued a manager's certificate of registration for a particular licensed premises, the employee with the manager's certificate need not be issued a separate employee's certificate of registration of another category, except dancers, for the same licensed premises.

(h) Entertainers are not required to be registered as employees pursuant to this rule.

(i) The licensee shall ensure that any employee who performs duties of a hostess, as defined in §3-80-1.1, in a class 5 Dispenser, Category 4 licensed premises, is duly registered as a hostess with the Liquor Commission. Licensed premises not authorized Category 4 (hostess) shall not have employees registered or performing duties as hostesses, except as defined in §3-80-1.1.

(j) For hotel and condominium hotel licensees, only managers, bartenders and staff who handle, serve or sell liquor are required to be registered as employees pursuant to this rule.

§3-82-38.6. Registration of Dancers. (a) Any dancer shall be subject to the same requirements as all other employees of licensed premises including, but not limited to, time card and registration requirements pursuant to §3-82-38.4 and §3-82-38.5.

(b) A person seeking to register as a dancer shall be at least twenty-one (21) years of age, in addition to all other requirements provided for in §3-82-38.5.

(c) Certificates of registration for dancers shall be valid for one year from the date of issue. The certificate of registration for a dancer shall be valid only for purposes of being a dancer. For example: a dancer who also performs as a bartender must be registered with the Commission as a dancer and a bartender.

§3-82-38.7. Refusal or Revocation of Employees Registration, and Proof of Registration. (a) The Commission may, for good and sufficient reason, refuse to register an applicant for a certificate of registration or suspend or revoke a certificate of registration which has been issued.

(b) Except as provided in §3-82-38.8, in every case where it is proposed to refuse to register an applicant or to suspend or revoke the registration of an employee, that applicant or employee shall be entitled to notice and hearing in conformance with Chapter 91, Hawaii Revised Statutes.

§3-82-38.8. Semi-Annual Submission of Employee List. All licensees required to register employees pursuant to §3-82-38.5 shall submit to the Commission, annually on a date and in such manner as the Commission may direct, and on such other dates as may be required by the Commission, the name of every person then employed on the licensed premises who is registered with the Commission or who is subject to registration. The employment of a person who had previously registered for a particular premises and whose name does not appear on the licensee's annual list of employees shall be considered terminated and the registration of that person shall be voided. A person whose registration with the Commission for a particular premises has expired and who then applies for re-registration shall be considered an original applicant and shall appear in person at the Commission's office to complete this registration. It shall be presumed evidence of a violation of §3-82-38.5, Registration of Employees; §3-82-38.6, Dancers; and §3-82-38.9, Managers; that an unregistered employee's name appears on any employee time card or employment records.

§3-82-38.9. Licensee and Manager in Charge of Premises. (a) Each dispenser, cabaret, tour or cruise vessel, annually licensed transient vessel, restaurant, class 13(b) caterer, club, hotel, caterer, brewpub, condominium hotel, winery, and small craft producer pub licensee shall have a duly registered manager in active charge of the licensed premises during the time the establishment is open for business and licensed to sell or serve liquor.

- (1) Managers on catered premises shall be registered with the hotel, restaurant, class 13(b) caterer, or condominium hotel licensee performing the catering.
- (2) Retail (class 4) licensees shall have a duly registered manager or assistant manager assigned to each licensed premises (or group of premises if ownership has multiple properties) to insure employees are knowledgeable in applicable Commission laws and rules. It is not required that these managers be present at all times but shall assume responsibility for training and monitoring their assigned stores. These managers shall complete the server-training program and pass the examination prior to being assigned those duties or within one hundred eighty (180) days after publication of these rules, if currently performing those duties.
- (3) Bring-your-own-beverage (class 17) licensees shall have a duly registered manager in charge of the licensed premises during the time the establishment is licensed to permit consumption on the premises by patrons.

(b) A person shall successfully complete the server-training program and pass the examination administered by the Commission before that person can be registered with the Commission as a manager or permitted to renew the manager's certificate of registration. However, a person may be issued a manager's certificate of registration for the same or another licensed premises and need not retake the server-training program and pass the examination if that person had successfully completed the server training program within the past four years.

(c) Certificates of registration issued by the Commission shall be valid only for the licensed premises in which the manager is registered. A person may be employed to work as a manager at more than one licensed premises, however, that person shall have a manager's certificate of registration for each licensed premises. Retail licensees shall be exempt from the "one certificate-one premises" limitation.

(d) Certificates of registration for managers shall be valid for four (4) years from the date of successful completion of the server training program required under subparagraph (b) of this rule (including passing the examination). Any person registered as a manager for a licensed premises may also perform any other duties at the same premises, except for performing as a dancer, which does require a separate registration, or sit with customers in the case of a cabaret. Managers of licensed cabarets are not permitted to sit with customers during hours of operation.

(e) Persons who apply to the Commission for registration as a manager for a particular premises shall present:

- (1) A valid, unexpired government issued ID card, containing the registrant's name, photo, and date of birth (e.g., Driver's License, State ID, US Passport, or Military ID);
- (2) An original Social Security card or a Wage and Tax Statement Form W-2, provided the Social Security Number is printed on the document (a printed electronically transmitted copy is acceptable);
- (3) Proof that the applicant is at least twenty-one (21) years of age; and
- (4) A letter from the holder of the liquor license, principal of the licensee entity, or authorized agent of the licensee entity certifying that the applicant will be or is a manager of the licensed premises.

(f) Each person registering as a manager shall be photographed and issued a certificate of registration which shall be valid for use only at the designated licensed premises until the expiration date or until recalled, suspended or revoked by the Commission. The certificate of registration shall be retained by each manager and not surrendered to or be held by the employer. A processing fee shall be charged for each certificate of registration issued to cover the cost of materials and processing.

(g) Licensees shall ensure that all managers who are required to register with the Commission shall have the manager's certificate of registration for the licensed premise readily available for inspection while on duty at that premises.

(h) All retail, dispenser, cabaret, tour or cruise vessel, restaurant, class 13(b) caterer, club, hotel, brewpub, condominium hotel, bring-your-own-beverage, winery, and small craft producer pub licensees shall ensure that responsible managers have successfully completed the server-training program administered by the Commission, including passing an examination and instruction in the following areas:

- (1) Identifying and dealing with intoxicated persons,
- (2) Reviewing liquor laws and rules, and
- (3) Dangers of driving while intoxicated.

§3-82-38.10. (Reserved)

§3-82-38.11. Price List to be Posted. (a) Current prices of all liquor and any other services shall, at all times, be posted and exposed to view of patrons within the interior

of the licensed premises authorized to sell liquor for consumption on the premises. For the purpose of this rule, legible signs, menus or table tents are acceptable. If there is a price range for certain types of liquor, the licensee shall post the minimum price and the maximum price of the liquor.

(b) All price lists and menus displayed pursuant to subparagraph (a) of this rule shall state whether or not a service charge is included in the total amount charged to the customer and the amount of said charge, if any.

(c) All price lists and menus displayed pursuant to subparagraph (a) of this rule shall state whether any tax is added to the total amount charged to the customer for liquor, other beverages and/or services provided.

§3-82-38.12. Requirements of a Hotel License. (a) Minimum requirements for a hotel license shall be an establishment consisting of one or more buildings containing at least fifty hotel guest rooms. Hotel licensees providing off-premises catering services shall have a kitchen approved by the Commission and located within the hotel property. Room service, self-service and service at private parties in areas which are the property of and contiguous to the hotel are permitted.

(b) Upon the opening or closing of any section within the hotel licensed premises which serves alcoholic beverages, the licensee must notify the Liquor Commission with details and floor plan changes in writing not less than thirty (30) days prior to the commencement of such event.

§3-82-38.13. Restrictions on Hotel and Condominium Hotel Licenses. Unless otherwise authorized by law, hotel and condominium hotel licensees shall not sell liquor in the manner authorized by the retail dealer's licenses.

§3-82-38.14. Restrictions on Vessels. (a) A tour or cruise vessel licensee shall obtain written approval from the Commission regarding the vessel's berth location. Prior written approval from the Commission is required for a change of berth.

(b) In the event of an emergency or inclement weather conditions which force a transient vessel into the port of Honolulu, that vessel shall be allowed to serve liquor while in port if a license from another county has been obtained.

§3-82-38.15. Unlawful Discrimination. (a) No licensee, whose premises are open for business to the general public, shall refuse, withhold from, or deny to any person, the full and equal enjoyment of any of the licensee's accommodations, advantages, facilities, goods, privileges, or services on the basis of that person's race, color, disability, religion, sex, sexual orientation or ancestry.

(b) For purposes of this rule, any licensee that caters, sells, serves, extends, offers, or otherwise makes available to the general public its accommodations, advantages, facilities, goods, privileges, or services, for a fee or charge shall be deemed to be open for business to the general public.

(c) This rule shall not apply to clubs that are not open to the general public, except to the extent that the accommodations, advantages, facilities, goods, privileges, or services of the club are made available to the general public.

(d) Nothing in this rule shall be construed or interpreted to prohibit a licensee from the right to deny service to any person for failure to conform to the usual and regular requirements, standards, and regulations for the licensed premises so long as the denial, requirements, standards, and regulations are uniformly applied to all persons without regard to race, color, disability, religion, sex, sexual orientation or ancestry.

§3-82-38.16. (Reserved)

§3-82-38.17. (Reserved)

§3-82-38.18. Sampling on Licensed Premises. (a) Licensees desiring to have a promotional sampling on their premises shall apply to the Administrator prior to permitting such sampling on the premises. The application shall clearly state and identify the type of liquor to be sampled, the date and hours sampling is to take place and the name of the person in charge of sampling.

(b) Samples of beer or wine will be limited to one (1) three-ounce (3 oz.) sample of each item per person. Distilled spirits will be limited to a single one-ounce (1 oz.) sample of each item per person.

(c) No minors shall be permitted to sample liquor.

(d) No person under the age of eighteen (18) years shall serve liquor.

(e) A copy of the approval form shall be posted in the vicinity of the sampling area.

§3-82-38.19. Hours of Business. A licensee shall be authorized to sell, serve, or allow consumption of liquor based upon its class of license during the hours specified as follows:

(a) Dispenser, Club, Restaurant, Brewpub, Caterer, Transient Vessel, Tour or Cruise Vessel, Special, Winery, and Small Craft Producer Pub: From 6:00 a.m. to 2:00 a.m. the following day.

(b) Cabaret: From 10:00 a.m. to 4:00 a.m. the following day. Liquor may be dispensed during the prescribed hours only when service is confined to customers within the area where live or amplified recorded music for dancing is provided for patrons, including a dance floor, or professional entertainment as permitted by Section 281-31, Hawaii Revised Statutes, or authorized by the Commission, is both visible and audible to customers. In areas that do not comply with the foregoing requirement, liquor may be sold, served or consumed no later than the closing hour prescribed for dispenser premises.

(c) Retail: From 6:00 a.m. to 12:00 midnight.

(d) Manufacturer and Wholesaler: 24 hours a day; sampling shall be limited to from 6:00 a.m. to 2:00 a.m. the following day.

(e) Hotel: From 6:00 a.m. to 4:00 a.m. the following day.

(f) Temporary: The hours of the class of the license for which the application has been submitted.

(g) Condominium Hotel: From 6:00 a.m. to 2:00 a.m. the following day.

(h) Class 17 Bring-Your-Own-Beverage: From 6:00 a.m. to 2:00 a.m. the following day.

(i) Manufacturers, Restaurants, Retail Dealers, Brewpubs, Wineries, and Small Craft Producer Pubs for product sold for off-premises consumption: From 6:00 a.m. to 12:00 midnight.

§3-82-38.20. Sale, Service or Consumption Before or After Hours of Business. (a) No sale, service or consumption of liquor on or within the licensed premises shall be provided before or after the hours established by the Commission.

(b) No liquor, whether in bottle, glass or other container, shall be open and readily consumable within the licensed premises before or after the authorized hours as provided by these rules.

§3-82-38.21. Extension or Curtailment of Hours of Business. The Commission shall have the authority to extend or curtail hours of business of any license class on a holiday or other occasion when such action is deemed advisable by the Commission.

§3-82-38.22. Requirements of a Restaurant (class 2) License. (a) Minimum requirements of a restaurant (class 2) license establishment shall be that it is a place which is regularly and in a bona fide manner used and kept open for the serving of meals to patrons for compensation and which has kitchen facilities approved by the Commission, connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals.

(b) At least thirty (30) per cent of the establishment's gross revenue must come from the sale of foods.

(c) Failure to meet these minimums will result in a reclassification of the liquor license by the Commission in accordance with §3-82-31.2.

§3-82-38.23. Compliance With Allowable Noise Levels. (a) No licensee shall make or permit to be made from its licensed premises or any adjacent area under the licensee's control any noise which results in a complaint from one or more resident(s) or tenant(s) in the vicinity and exceeds the maximum permissible sound levels (MPSL) as set forth in this rule.

<u>Maximum Permissible Sound Levels in dBA</u>		
Zoning Districts	Daytime 7 a.m. – 10 p.m.	Nighttime 10 p.m. – 7 a.m.
Class A	55	45
Class B	60	50
Class C	70	70

(b) There shall be a violation of this rule when: by measurement by sound level meter at or within the property lines of the complainant, or if unavailable, from a position most practical, for a combined total of two minutes in any twenty minute period, noise levels exceed the pertinent MPSL for the complainant's zoning and exceed the ambient noise level by three or more decibels.

(c) In mixed zoning districts, the lowest MPSL shall apply. For any area not zoned or Interim zoned, the comparable State Land Use classification shall apply.

(d) The Liquor Commission may, by a majority vote, set a lower MPSL for a license upon finding that the location of the licensed premises and the unusual nature of the pre-existing surrounding uses are such that the standard MPSL are insufficient to permit reasonable conduct of the pre-existing uses. This standard shall include, but not be limited to, hospitals, nursing homes, residential health care or other facilities that are care providers and that without such lower MPSL, the license application or renewal will more likely than not be denied.

§3-82-38.24. Requirements of a Condominium Hotel License. (a) Minimum requirements for a condominium hotel license shall be a condominium hotel, as defined in Sec. 281-1, HRS, containing at least fifty (50) condominium hotel guest rooms. Condominium Hotel licensees providing off-premises catering services shall have a kitchen approved by the Commission and located within the hotel property. Room service, self-service, and service at private parties in areas which are within the condominium hotel premises are permitted.

(b) As part of its initial application, (1) a condominium hotel license applicant shall submit a list of the initial condominium hotel guest rooms that are part of the proposed licensed premises and (2) the number of condominium hotel guest rooms that are part of the proposed licensed premises must equal at least fifty percent (50%) of the total number of guest rooms in the condominium hotel. If the condominium hotel is a phased project (meaning built and/or administered in separate phases), for purposes of determining the total number of condominium hotel guest rooms in the condominium hotel, each phase shall be treated as a separate condominium hotel. After said application is approved by the Commission, the condominium hotel licensee shall update the list of condominium hotel guest rooms on a quarterly basis.

(c) In addition to the quarterly update obligation in subparagraph (b), the condominium hotel licensee shall maintain for inspection at the premises by any authorized employee of the Commission a current list of the condominium hotel guest rooms.

(d) Upon the opening or closing of any section within the condominium hotel premises which serves alcoholic beverages, the licensee must notify the Liquor Commission with details and floor plan changes (which may be shown using relevant portions of the condominium map) in writing not less than thirty (30) days prior to the commencement of such event.

§3-82-38.25. Restrictions or Conditions on Licenses. (a) Pursuant to HRS Section 281-61(b), the Commission may, at any time, fine, suspend, revoke, or place restrictions or conditions on any license issued under HRS 281 and the Rules of the Commission for the purpose of preventing activities within the licensed premises, or adjacent areas under the licensee's control that are potentially injurious to the health, safety, and welfare of the public. Such adjacent areas include areas such as, but not limited to, stages, entertainment areas, lanais, and parking areas.

(b) The Commission may place such restrictions or conditions on any license issued or transferred pursuant to HRS 281 or these Rules (i) at the time the license is initially issued or (ii) at any other time upon petition of the Administrator to the Commission and after notice and hearing in accordance with HRS 281 and these Rules.

(c) Licensee shall comply with any restrictions or conditions placed on the license by the Commission pursuant to this Rule.

§3-82-38.26. Bottle Service for On-Premise Consumption. Service of wine or distilled spirits in its original container is permitted at premises licensed for on-premise consumption. The seal of the original container shall be broken at the time of service.

§3-82-38.27. “Growlers” or Containers used for Off-Premises Consumption. A growler or other glass, ceramic, or metal container used by Manufacturers, Restaurants, Retail Dealers, Brewpubs, Wineries, and Small Craft Producer Pubs for sale of product for off-premises consumption by patrons shall be a single-use container that is filled on-premise or a container that is re-sealable once opened, and intended for multiple fills and use.

§3-82-39. PLACE OF BUSINESS; EXCEPTION. (Reserved)

§3-82-40. UNLICENSED LIQUOR.

§3-82-40.1. Unauthorized Liquor. A licensee is prohibited from possessing, on the licensed premises, any liquor other than the kind authorized by its license. The presence of such unauthorized liquor on the licensed premises shall be presumed evidence of illegal possession thereof by the licensee.

§3-82-41. TRANSFER OF LICENSES; NOTICE OF CHANGE IN OFFICERS, DIRECTORS AND STOCKHOLDERS OF CORPORATE LICENSES; PENALTY.

§3-82-41.1. Transfer of License. (a) No license shall be transferred while an adjudication hearing against the licensee is pending, and/or there are any outstanding assessments and/or penalties for liquor law or rule violations.

(b) Dispenser (class 5) and cabaret (class 11) licensees shall comply with the requirements in Section 281-57, HRS.

(c) The transferee is responsible for payment of any violations or penalties that might be due or levied against the transferor.

(d) The transferee shall include with any transfer application a detailed and current eight and one-half by eleven inch floor plan of the premises.

§3-82-41.2. Transfer of Corporate Stock; Notification Regarding Limited Partners, Limited Liability Company Managers or Members. (a) Prior to the date of transfer or change in ownership of a corporation, the corporate licensee shall submit an application for stock transfer and secure the approval, in writing, of such transfer or change of ownership from the Commission. The request for approval shall include the following:

- (1) The stock purchase offer or similar document;
- (2) Information regarding the consideration to be paid for the transfer and the effective date of the transfer of stock;
- (3) Personal history, FBI Fingerprint card, and criminal history record clearance, as explained in §3-82-45.1, on forms prescribed by the

Commission, of each new stockholder holding twenty-five percent (25%) or more of corporate stock, officer or director; and

- (4) Upon the approval of the proposed transfer of stock by the Commission, the corporate licensee shall submit an executed copy of the stock purchase agreement to the Commission not more than fifteen days after the effective date of the transfer of stock or approval by the Commission, whichever is earlier.

(b) Corporate licensees shall notify the Commission, in writing, within thirty days of any change of officers or directors and submit a personal history of the new officer or director, on forms prescribed by the Commission. Limited liability company licensees shall notify the Commission, in writing, prior to any change of managers of manager-managed limited liability companies or of any change of members in a member-managed limited liability companies and submit a personal history of the new manager or member, on forms prescribed by the Commission. All newly appointed or elected principals, who are natural persons, of any class license, except as exempted by §3-82-45.1, must be fingerprinted or submit fingerprints on a Honolulu Liquor Commission fingerprint card and submit a personal history and affidavit, and must request a Criminal History Clearance from the Hawaii Criminal Justice Data Center within thirty days of appointment or election, unless the period is extended or the requirement is waived by the Commission, for just cause. Principals that are not natural persons must submit whatever documentation establishes the entity (for example, Articles of Incorporation or Organization, or Partnership Agreement), and a list of principals of the entity. Limited partnerships and manager-managed limited liability company licensees shall notify the Commission, in writing, within thirty days of any change of limited partners holding twenty-five percent or more interest or members and submit a personal history of the new limited partner holding twenty-five percent or more interest or member, on forms prescribed by the Commission.

(c) The transfer of an aggregate of fifty-one (51%) percent of the stock of cabaret licenses which, pursuant to Section 281-31(l), Hawaii Revised Statutes, are permitted to have entertainment by dancers, shall be considered a transfer of the license for purposes of determining whether the licensee may continue to have such entertainment.

(d) Stock transfer applicants shall provide documentation from the Department of Commerce and Consumer Affairs of proof of the existence of a valid corporation.

§3-82-41.3. Payment of Fees Upon Transfer of License. A transferor shall pay in full any additional fee which may have accrued through the exercise of the license by the transferor prior to the transfer of a license. Upon transfer of the license, the transferee shall be responsible for any additional fee based on the total gross liquor sales for the entire term for which the license was issued, including the period during which the license was exercised by the transferor; provided that any payment made by the transferor during the term of the license on account of the accrual shall be considered payment toward any additional fee that may be chargeable against the transferee upon expiration or termination of such license.

§3-82-41.4. Management or Operating Agreements. Prior to any management or operating agreement taking effect, an existing licensee shall notify the Commission, in writing, about such agreement and shall affirm to the Commission that any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the person's or principal's own right in conformance with Section 281-45, Hawaii Revised Statutes.

(a) The signed notice shall include the following:

- (1) Identification of the manager, operator, or entity, and submittal of the documents required under Rule §3-83-53.1(a)(1)(i)-(iv), substituting the manager, operator, or entity for "applicant" in submitting documents under those sections; and
- (2) Except in the case of a management or operating agreement pertaining to a Hotel or Condominium Hotel license, the expected date for the transfer of the license to the manager, operator, or entity.

(b) The signed notice shall constitute certification by the licensee that the following is true:

- (1) The agreement is restricted to permitting the operator to manage and operate the licensed premises on behalf of the licensee, and the licensee shall remain in possession and control of the licensed premises.
- (2) Except in the case of a management or operating agreement pertaining to a hotel or condominium hotel license, the agreement shall be for the entire licensed premises.
- (3) To the best of the licensee's knowledge, information, and belief, any proposed person or any principal of the management or operating entity is a fit and proper person to hold a liquor license in the individual's or principal's own right in conformance with Section 281-45, Hawaii Revised Statutes.

(c) If the Commission finds that any proposed person or any principal of the agreement is an unfit or improper person to hold a liquor license in the person's or principal's own right pursuant to Section 281-45, Hawaii Revised Statutes, the notification requirement herein shall be deemed to have not been met. The licensee shall confirm within 30 days of the written notification to the licensee of the Commission's aforementioned finding, that such management or operating agreement has been terminated.

(d) In addition to the documents required under (a)(1), licensee will provide any additional documents or information related to the arrangement contemplated by the management or operating agreement upon request.

(e) If at any time the Commission finds that notwithstanding the terms of the agreement and notification the licensee is not in possession and control of the licensed premises, or the entire premises is not being managed and operated by the manager or operator, the Commission may in its discretion revoke or suspend the license, or assess and collect a penalty, or reprimand the licensee.

The term "management agreement" or "operating agreement" shall include any agreement, verbal or written, where through such agreement the licensee allows an operator to manage and operate the licensed premises on behalf of the licensee.

§3-82-42. LICENSES, SPECIAL RESTRICTIONS.

§3-82-42.1. Warehousing. Any licensee may be permitted outside warehousing upon written approval of the Commission, subject to the following conditions:

- (a) An application for the use of a warehouse outside of the licensed premises shall be submitted by the licensee on a form prescribed by the Commission.
- (b) The designated building shall be in an area zoned for warehousing.
- (c) Warehouse space used for the storage of liquor shall be completely enclosed and separated from other merchandise.
- (d) An application for outside warehousing shall be accompanied by a lease agreement or any other document showing that the licensee has the exclusive right to legally occupy the proposed premises, a floor plan of the premises drawn to scale, and a list of all licensed premises sharing the same warehouse, if the applicant is the holder of more than one license. The joint use of an outside warehouse space by more than one licensee at the same time is prohibited.
- (e) Invoices for all liquor received at the warehouse and a record of all liquor removed from the warehouse shall be kept within the warehouse. All such records shall be kept for not less than three (3) years.
- (f) No liquor shall be distributed or sold from the outside warehouse. However, this restriction shall not apply to the delivery of liquor from the outside warehouse of a wholesale licensee. Liquor imported into the State may come to rest at an outside warehouse by being unloaded into such warehouse.

§3-82-42.2. Peddling Prohibited. A retail (class 4) licensee must have received an order for the type and quantity of liquor to be removed from licensee's premises before removing said liquor for delivery to a customer. Peddling in any sense of the term is prohibited.

§3-82-43. (Reserved)

§3-82-44. ADVERTISEMENTS AND SIGNS UPON LICENSED PREMISES.

§3-82-44.1. Advertisements and Signs. (a) No licensee shall permit lewd or obscene advertising matter to be distributed or displayed in connection with the exercise of its license.

(b) Any exterior signs which contain liquor advertising, either in whole or in part, shall conform to the sign regulations of the Land Use Ordinance and this rule and have prior approval of the City Department of Planning and Permitting.

(c) All licensees shall post a sign on the licensed premises stating:

"IT IS ILLEGAL:

- ◆ FOR A PERSON UNDER 21 YEARS OLD TO PURCHASE, POSSESS, OR CONSUME LIQUOR

- ◆ TO USE FALSE IDENTIFICATION TO OBTAIN LIQUOR

- ◆ TO USE ANOTHER PERSON'S IDENTIFICATION TO OBTAIN LIQUOR, OR
- ◆ TO PURCHASE LIQUOR FOR A PERSON UNDER 21 YEARS OLD Sections 281-78 & 101.5, Hawaii Revised Statutes.”

The sign shall be clearly legible from a distance of ten feet to a person with normal vision and shall contain this exact wording.

(d) All licensees shall display in and around the premises signs notifying all customers of the penalties of driving under the influence of intoxicating liquor under Section 291-4, HRS. These signs are available from the Commission at no charge.

§3-82-44.2. Liquor Display and Storage. The display or storage of liquor by a licensee on other than the licensed premises is prohibited, except that the display of liquor at a fair, product show or similar exhibition by the holder of a manufacturer's or wholesale dealer's license is permissible. An approved outside warehouse or storage, in accordance with §3-82-42, is permissible.

§3-82-45. REASONS FOR DENIAL OF LICENSE.

§3-82-45.1. Requirement for Criminal History and Fingerprint Card. (a) Applicants for all licenses except renewal applications and applications for daily transient vessel and caterer class licenses shall submit with each license application a form requesting criminal history clearance directly to the Criminal Justice Data Center for each of the principals of the applicant who are natural persons. The form will be available at the Liquor Commission. Applicants for other than club, daily transient vessel and caterer class licenses will also be required to submit fingerprints of the principals who are natural persons to the Commission on an FBI Fingerprint card bearing the Commission's identification. Fingerprints may be taken at the Commission by appointment, or they may be taken by legal or other authority in jurisdictions off Oahu, in which case a letter citing the processor's competence and the means by which the principal was identified must accompany the completed fingerprint card. Clearances issued as a result of these fingerprintings shall be valid for license application or reapplication for up to two (2) years from the clearance date. Charges for these clearances will be determined and assessed upon the applicant by the Center.

(b) Applicants may still be scheduled for a hearing. However, no license will be issued until all clearance forms have been submitted by the applicant, unless waived by the Commission for just cause.

(c) All new principals (officers, directors, limited partners, managers of manager-managed limited liability companies, members of member-managed limited liability companies, owners of a 25% or greater interest in the licensee) who are natural persons must submit fingerprints to the Commission and a request for Criminal History Clearance to the Hawaii Criminal Justice Data Center within thirty days of appointment or election, unless the period is extended or the requirement is waived by the Commission, for just cause.

§3-82-45.2. Requirements Applicable to Late Night Cabarets, Establishments Where Entertainment is Provided by a Dancer and Hostess Bars. (a) Except as provided in subsection (b), no license of a class or category permitting the licensee to provide entertainment by an exotic dancer; no class 5 category 4 (hostess) license; and no class 11 (cabaret) license permitting operation until 4:00 a.m., may be issued to an establishment located within 500 feet of any previously licensed establishment of any class or category subject to this section.

(b) This section shall not apply to any class 11 (cabaret) license in the resort commercial or resort mixed use precinct of the Waikiki Special District.

(c) This section shall apply only to the issuance of a new liquor license and not to the renewal of a license.

§3-82-46. POOL BUYING.

§3-82-46.1. Time Limitations for Buying. Licensees desiring approval for pool buying shall submit the Liquor Commission form to the Administrator for consideration. The approval period shall be for the license year and must be renewed annually.

§3-82-47. STANDARD BAR; MUSIC AND DANCING AVAILABLE.

§3-82-47.1. Music, Dancing, Entertainment. (a) All forms of live/professional music, dancing and entertainment, including but not limited to electronic gaming devices, card playing and table games, are prohibited in premises licensed to sell liquor for consumption thereon except where authorized by law or where prior Commission approval has been obtained.

(b) Any licensee may install and operate television sets, radios, jukeboxes, and any other system of providing recorded music in the premises, without written permission of the Commission, except that the licensee shall obtain written permission from the Commission prior to installing or operating any system which provides music and enables customers to sing along with that music (i.e., "karaoke machines").

(c) Any dancing by or with customers is permitted only on a designated dance floor approved by the Commission. Licensees shall not allow any form of lap dancing by customers or employees.

§3-82-47.2. Dance Floor. In premises where dancing by customers is permitted, the licensee shall provide a clearly designated dance floor of not less than 150 square feet suitable for dancing. When used for dancing, the designated area shall be totally free from all obstructions. The designated area may, however, be used for other purposes when not used for dancing.

§3-82-47.3. Entertainment in Cabarets. A cabaret licensee shall provide no less than a total of four hours of dancing or professional entertainment between 9:00 p.m. and 4:00 a.m. Within this period, either live or amplified recorded music for dancing, professional entertainment which has received prior written approval by the Commission or has met the requirements of Section 281-31, Hawaii Revised Statutes, or any combination of the foregoing shall be provided.

§3-82-48 - §3-82-50. (Reserved)

CHAPTER 83 PROCEDURE FOR OBTAINING LICENSE

§3-83-51. PRIOR INSPECTION. (Reserved)

§3-83-52. PUBLIC HEARING. (Reserved)

§3-83-53. APPLICATION; PENALTY FOR FALSE STATEMENTS.

§3-83-53.1. License Applications; Notice of Hearing; Affidavits. (a) An applicant applying for a new license or for the transfer of an existing license of a manufacturer, restaurant, wholesale, retail, dispenser, club, annual transient vessel, tour or cruise vessel, cabaret, hotel, caterer class 13(b), brewpub, condominium hotel, winery, bring-your-own-beverage, or small craft producer pub shall file in support of the application:

- (1) With the application:
 - (i) If the applicant is a sole proprietor or an unincorporated association, a personal history and affidavit for each natural person listed in the application on forms provided by the Commission.
 - (ii) If the applicant is a partnership, the partnership agreement, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of the current partners to the partnership. For each partner, a personal history and affidavit on a form provided by the Commission or, if the partner is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that partner, and a list of current principals of that partner.
 - (iii) If the applicant is a limited liability company, the articles of organization and operating agreement, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of the current managers and current members of the company with their percentage of ownership. For each manager and member, a personal history and affidavit on a form provided by the Commission or, if the manager or member is not a natural person, the partnership agreement, articles of organization, articles of incorporation, or other agreement, as applicable, of that manager or member, and a list of current principals of that manager or member.
 - (iv) If the applicant is a corporation, the articles of incorporation, a certificate of good standing from the Department of Commerce and Consumer Affairs that is not more than 60 days old, and a list of current officers, current directors, and current stockholders of 25% or more of the outstanding capital stock of the corporation. For each officer, director, or stockholder of 25% or more of the outstanding capital stock, a personal history and affidavit on a form provided by the Commission or, if the stockholder is not a natural person, the partnership agreement, articles of organization, articles

- of incorporation, or other agreement, as applicable, of that stockholder, and a list of current principals of that stockholder.
- (v) Except for a caterer class 13(b) or condominium hotel license, a floor plan to scale of the licensed premises or proposed licensed premises with the area to be licensed demarcated in red and showing all fixtures, a square footage calculation for the area to be licensed, and the scale and orientation of the plan, and, in the case of an application regarding a license for consumption on the premises, the restrooms for the premises and a preliminary approval stamp from the State Department of Health. If the applicant is applying for a class or category of license that permits dancing, the designated dance floor shall be shown on the floor plan.
 - (vi) A copy of the floor plan required by paragraph (v) on an 8½-inch by 11-inch piece of paper.
 - (vii) A copy of the deed, lease, sublease, assignment of lease, rental agreement, or other conveyance of the use of the property to the applicant permitting the activity for which the license is applied. A copy of the executed document with applicable consents shall be submitted before the license is issued and may be submitted in fulfillment of the requirement of this paragraph.
 - (viii) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a tax map drawn to a scale of one inch to each forty, fifty, or sixty feet showing the area within 500 feet of the licensed area or proposed licensed area of the premises and also indicating 100 feet from the premises.
 - (ix) For applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of names and addresses of all property owners, recorded lessees, condominium projects, and cooperative apartment projects within 500 feet of the premises, which list shall also designate those owners, lessees, condominiums, and cooperatives which are within 100 feet of the premises.
 - (x) Except in the matter of a hotel as defined in HRS Section 486K-1, a restaurant, or a convenience store, for applications for new licenses and for the transfer of an existing dispenser or cabaret license, a list of small businesses within 500 feet and of small businesses within 100 feet of the premises.
 - (xi) A full, true, and accurate statement of the complete financial condition of the applicant, which shall not be over six months old, or that is less than one year old and certified by the applicant to be substantially correct.
 - (xii) Documents substantiating the financial statement and showing sufficient finances to cover proposed expenditures related to the application and including initial operating expenses for the first six months of operation.

- (xiii) For the transfer of a license, an instrument documenting the consideration for the proposed transfer.
- (xiv) Except when the applicant will do business under its own name, exactly, for an application for a new license, a Certificate of Registration of trade name from the Department of Commerce and Consumer Affairs or other sufficient documentation of the permitted use of the trade name in accordance with §3-81-17.58, or for an application for the transfer of a license, a statement of what trade name is proposed to be used, which shall be confirmed before the transfer is effected by a Certificate of Registration of trade name or other sufficient documentation.
- (xv) A description detailing the kind of business that the applicant proposes to operate. For applications for transferred restaurant licenses, a financial report of gross revenue for the year preceding the application demonstrating that at least thirty percent of the establishment's gross revenue was derived from the sale of foods. For applications for new restaurant licenses if not previously operated as an establishment serving meals to patrons for compensation, a business plan demonstrating the applicant's ability to meet the minimum gross revenue from the sale of foods required of restaurant licensees.
- (xvi) A 4-inch by 6-inch photoimage or photograph of the front of the licensed premises or proposed licensed premises and a 4-inch by 6-inch photoimage or photograph showing the licensed premises or proposed licensed premises street location.
- (xvii) For applications for new condominium hotel licenses or for the transfer of an existing condominium hotel license:
 - a. A list of the condominium hotel guest rooms within the proposed licensed premises as of the application date.
 - b. A copy of the application for registration of the condominium hotel operator approved by the real estate commission, if applicable.
 - c. A floor plan (which may be a copy of all or portions of the recorded condominium map) marked to show:
 - (i) the portion or portions of the licensed premises or proposed licensed premises in which alcoholic beverages will be served, with such portion or portions marked in red and showing all fixtures and any designated dance floor in such portion or portions; a square footage calculation of such portion or portions; the scale of the map; and, if liquor will be consumed within such portion or portions, the restrooms for such portion or portions;
 - (ii) the locations of all condominium hotel guest rooms in the condominium hotel (which locations may be

voters within 500 feet and within 100 feet to the Commission with the affidavit of mailing and the master mailing lists.

- (iv) The zoning clearance shall be submitted to the Commission as soon as possible and before the license is issued or the transfer is effected.
- (v) Each applicant for a new license shall directly notify the chair of the neighborhood board in which the applicant's place of business is to be located, in writing and delivered by certified mail, return receipt requested. The Commission, for just cause, may waive this requirement.

(b) Except as excused by HRS Section 281-52 or 281-57, an application for a change of location, change of class, change of kind, or change of category will be treated as a new application.

(c) An applicant for a special license, other than a one-day special license for a fund raising event by a not for profit organization, shall fulfill the requirements of paragraphs (a)(1)(i)-(iv) and (xv), (a)(2)(i) and (ii), and (a)(3)(i), (iv), and (v). Additionally, the applicant shall submit a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.

(d) An applicant for a transient vessel license shall file in or with the application:

- (1) If the application is made by an agent for the owner, a copy of a contract or other document establishing the agent's relationship with the vessel's owner and a document establishing the identity of the agent.
- (2) The pier and port at which the vessel will berth and the times and dates of arrival and departure.
- (3) The name, city, and state or country of the vessel's fee titled owner.
- (4) A personal history and affidavit, partnership agreement, articles of organization, articles of incorporation, or other organizational document of the proposed licensee.
- (5) If the proposed licensee is not a sole proprietor, a list of the principals of the proposed licensee.
- (6) A current financial statement of the proposed licensee.
- (7) A photograph of the vessel.
- (8) A description of the vessel and deck plans showing proposed liquor outlets, dance floors, and so forth.

(e) An applicant for a caterer license shall file with the application a detailed floor plan and site plan with dimensions, permission of the landlord for the event or other document conveying the use of the premises to the applicant, or permission from the government entity property owner allowing the sale or consumption of liquor on the premises, and a detailed description of the event and kind of business that the applicant proposes to conduct.

(f) After granting of a new license or the transfer of an existing license other than for special license, transient vessel license, or caterer license and before the license is issued or transferred, the applicant shall request a final inspection of the proposed

licensed premises by Commission staff. Before the issuance of a license allowing live music or other entertainment, Commission staff will evaluate the premises regarding its suitability for live music or other entertainment.

(g) If a new license is not issued or the transfer of a license is not effected within six months from the date of granting, the Commission will review the granting. The applicant may show good cause why the license has not been effected, and the Commission may, at the hearing, reconsider its granting.

(h) If the Commission finds that the applicant has made a false statement as part of the application, it may deny the application, suspend or revoke any current license, or assess and collect a penalty.

§3-83-53.2. License Applicant Background Verification. The license applicant shall ensure that every person named in an application discloses to the Commission any felony convictions. The obligation to disclose such information shall be continuing even after the license is issued.

§3-83-54. FILING FEES WITH APPLICATION.

§3-83-54.1. Filing Fees. A filing fee of \$375 shall be paid with an application for a new license or the transfer of an existing license, as required by Section 281-54, Hawaii Revised Statutes. The filing fee shall be applied to the payment of the license fee required by §3-81-17.52 where the license is granted and shall become a realization of the City where the license is denied or the application is withdrawn.

§3-83-55. REFERENCE TO INVESTIGATOR. (Reserved)

§3-83-56. REPORT BY INVESTIGATOR. (Reserved)

§3-83-57. NOTICE.

§3-83-57.1. Affidavits; Forms. All applications for licenses, notices of public hearing and affidavits filed by applicants shall be on forms prescribed by the Commission.

§3-83-57.2. Change of Class or Category. Notices of public hearing for a license application or for any proposed change in class or category shall clearly state, in language set forth in Section 281-31, Hawaii Revised Statutes, the class and category(s) applied for or the change of class or category being sought. An applicant may not change the class or category applied for or the change being sought following publication of the Notice of Public Hearing but must withdraw the application and resubmit with appropriate changes unless the change of application is considered a downgrade by the Commission.

§3-83-57.3. Publication Cost Deposits. An applicant shall, at the time of application, submit a deposit to cover the cost of publishing the Notice of Public Hearing. Any unused portion of this deposit shall be refunded.

§3-83-57.4. Neighborhood Board Notification. The applicant for a new or change of location license shall directly notify the chair of the neighborhood board in which the

applicant's place of business is to be located, in writing as required in HRS 281-57(c) and delivered by certified mail, return receipt requested. At a minimum, the notification shall include the date and purpose of the public hearing, the class of license applied for, and the location of the proposed licensed premises. The Commission, for just cause, may waive this requirement.

§3-83-58. PROTESTS.

§3-83-58.1. Time for Filing Protests. Protests against the granting of a license should be filed with the Commission at least three (3) working days prior to the date of the public hearing on the application, provided the Commission may in its discretion allow additional protests to be filed at the public hearing or any adjournment thereof. The deadline for filing protests shall be indicated in the applicant's Notice of Public Hearing.

§3-83-59. HEARING.

§3-83-59.1. Procedures for Applying for a License. Except as otherwise provided by law, in any proceeding involving an application for the issuance or transfer of a license, the following shall apply:

(a) The applicant shall be represented at the Commission hearing only by the individual applicant, a general partner representing the partnership, an officer of a corporation, trust, or association representing the corporation, trust, or association, a licensed attorney, or an agent authorized in writing by any of the above, to represent the applicant.

(b) If the Commission approves an application for a license, the Commission shall promptly notify the applicant of the decision. If the Commission decides otherwise, it shall issue appropriate findings of facts, conclusions of law, and a decision and order. The Commission shall, within a reasonable time, serve a certified copy thereof to the applicant.

(c) Any of the foregoing procedures may be modified or waived by stipulation of the parties.

(d) Judicial review shall be as provided by law.

§3-83-59.2. Petition for Rehearing. A request for a reconsideration of the Commission's decision shall be filed with the Commission not later than fifteen days after the date on which notice of the refusal is provided to the applicant, or the date of the hearing where no majority vote was taken.

§3-83-60. FURTHER APPLICATION. (Reserved)

§3-83-61. RENEWALS.

§3-83-61.1. Renewal of Existing License. The Commission may withhold the issuance of a renewed license for good and sufficient reason, which may include, but is not limited to:

- (a) Failure to pay any outstanding penalties due the Commission;
- (b) Failure to file any outstanding gross liquor sales reports;
- (c) Failure to pay any outstanding additional license fees;

(d) Failure to comply with any prior Commission orders, which may include, but is not limited to, an order to update or keep current any and all license application documents contained in the Commission's licensee file;

(e) Complaints from the public or reports from the Commission's investigators indicating that sounds emanating from the licensed premises cause undue disturbance which disrupts the peace and quiet of the neighborhood;

(f) Complaints from the public or reports from the Commission's investigators indicating that noise created by patrons departing the premises disturbs residents of the neighborhood in which the premises are located;

(g) A report, investigated and verified by the Commission, indicating that sounds emanating from the premises exceed permissible levels.

(h) For licensees who are corporations, limited partnerships, limited liability companies, or limited liability partnerships, failure to maintain the business entity's good standing in the state of its organization. In this regard, business entity licensees shall submit with their license renewal documents a certificate of good standing from the state of its organization that is not more than 60 days old to establish compliance with this requirement.

§3-83-62. ARCHITECTURAL REQUIREMENTS/ALTERATION OF LICENSED

PREMISES. (a) Any physical alterations within a licensed premises shall only be made with the prior, written approval of the Commission. Retail licensees are exempt from the prior approval requirement but are required to file an updated floor plan for the premises within five (5) business days of completion of the alteration(s). Hotel licensees are required to obtain prior approval only for physical alterations made to (i) an area where alcoholic beverages are sold, served, or consumed or (ii) common areas.

(b) No licensee that is authorized on-premise consumption shall have an opening or entrance from within the licensed premises into any other enclosed, unlicensed part of the same structure, or into any adjoining, enclosed, unlicensed structure offering entertainment.

(c) A licensee who applies for a permanent increase in the area of the licensed premises where the increase sought is equal to or greater than 50 percent of the current area licensed shall give notice of said application to the chair of the neighborhood board in which the licensee's licensed premises is located, in writing and delivered by certified mail, return receipt requested.

(d) Alterations, changes, or increases to a condominium hotel licensee's premises which are within (i) condominium hotel guest rooms or (ii) areas that only provide access to and from the portion or portions of the licensed premises in which alcoholic beverages will be served and condominium hotel guest rooms, are exempt from the requirements and restrictions of this Rule.

(e) After granting an increase in the area of the existing licensed premises of a licensee, the licensee shall request and pass a final inspection of the premises by Commission staff before the licensee is authorized to occupy and use the granted addition.

CHAPTER 84 DUTIES OF AND SUPERVISION OVER LICENSEE

§3-84-71. POSTING OF LICENSE. (Reserved)

§3-84-72. CONDITION OF PREMISES.

§3-84-72.1. Sanitation Requirements. Licensed premises, including all furnishings, equipment, and paraphernalia on the premises, shall be kept in a clean and sanitary condition, and drinking glasses shall be effectively sanitized. The licensee shall also comply with all rules of the State Department of Health. Restaurant, hotel, condominium hotel, club, cabaret, dispenser, brewpub, winery, bring-your-own-beverage, and small craft producer pub licensees shall also provide access to adequate toilet facilities which have been approved by the State Department of Health.

§3-84-72.2. Premises Lighting; Doors. Street or primary entrances to licensed premises shall be kept unlocked during all times that any person other than an on-duty employee is on the premises. Entrances to booths shall be open and unobstructed. The interior and exterior of the licensed premises shall be well and properly lighted.

§3-84-72.3. Windows on Interior Rooms. (a) All interior rooms or enclosed areas in dispenser or cabaret licensed premises where liquor is sold, served, or consumed shall be constructed in such a manner as to permit a full view of the interior of the room through a transparent window on the entry door or on the wall. If the door or wall is constructed of transparent material and permits full view of the interior, then a window will not be required. Tinting of the glass on doors, walls or windows is prohibited.

(b) The Commission may waive this requirement for good cause. A request for a waiver shall be in writing and specifically state why an exception to this rule is justified.

§3-84-73. QUALITY OF LIQUOR; PENALTY.

§3-84-73.1. Liquor Content of Drinks. (a) A drink containing one or more kinds of liquor and any non-alcoholic mixture which is served, sold, offered for sale, or prepared for such purpose by a licensee authorized to sell liquor for consumption on the licensed premises, shall contain not less than one fluid ounce or thirty milliliters of liquor unless the customer requests the drink be mixed with a lesser amount of liquor.

(b) When liquor is poured into a glass or container by the licensee or an employee, the drink shall be presumed to have been prepared for service or sale, notwithstanding the fact that the non-alcoholic mixture has not been added. This subsection shall not apply to a drink served as a straight drink with or without a "chaser."

(c) A straight drink shall contain not less than one fluid ounce or thirty milliliters of liquor unless the customer requests a lesser amount of liquor.

§3-84-73.2. Quality of Liquor. Straight or unmixed distilled spirits shall only be dispensed from its original container. In the handling and storage of straight or unmixed distilled spirits, the transfer of product from its original container to any other storage container is prohibited.

§3-84-74. LABELS ON CONTAINERS. (Reserved)

§3-84-75. ANALYSES. (Reserved)

§3-84-76. TAMPERING WITH SAMPLES; PENALTY. (Reserved)

§3-84-77. REFUSAL OF SAMPLES; PENALTY. (Reserved)

§3-84-78. PROHIBITIONS.

§3-84-78.01. Conduct of Employees. (a) Licensees shall be strictly accountable for the conduct of all employees on the licensed premises. Any person who performs a service usually or normally done, on or within a licensed premises, regardless of whether that person is under contract or commission, registered or not registered, compensated or not compensated, shall be subject to the constraints of these rules and shall be considered an on duty employee of the licensee. This rule does not apply to vendors, tradesmen, or maintenance people who, in the normal course of their duties, service the licensed premises. For purposes of this rule, an entertainer shall be deemed to be an employee of the licensee during the time the entertainer is performing or while the entertainer is on the platform or stage or in any other area set aside for the performance.

(b) No employee while on duty shall consume liquor.

(c) No employee while on duty shall solicit or accept any food or beverage, alcoholic or otherwise, as a gift from or at the expense of a customer.

(d) Only registered hostesses and managers of licensed hostess bars are permitted to sit with customers during hours of operation. Registered managers and waitresses in licensed cabarets are not permitted to sit with customers during hours of operations.

§3-84-78.02. Restrictions on Nudity; Dancers. (a) No licensee shall permit any person, other than registered dancers during their performances, to be unclothed or in such attire, costume or clothing as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitalia, or any portion of the female breast below the top of the areola in the licensed premises.

(b) No licensee shall permit dancers to perform in any licensed premises, unless the performance is on a permanently affixed stage at least eighteen (18) inches above the immediate floor level.

(c) Licensees shall erect barriers sufficient to prevent persons outside of the premises from viewing dancers while performing.

§3-84-78.03. Entertainment. (a) Entertainment which causes undue noise or disturbs the peace and quiet of the residents or tenants of the neighborhood is prohibited on licensed premises.

(b) Entertainment which causes complaints from the public or reports from the Commission's investigators indicating that sounds emanating from the licensed

premises cause undue disturbance which disrupts the peace and quiet of the residents or tenants of the neighborhood is prohibited.

(c) Entertainment which causes complaints from the public or reports by the Commission's investigators indicating that noise created by patrons departing the premises disturbs residents or tenants of the neighborhood in which the premises are located is prohibited.

§3-84-78.04. Sexual Acts and Their Simulations by Persons. No licensee shall:

(a) Permit any person, on the licensed premises, to perform acts of or acts which simulate sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(b) Permit any person, on the licensed premises, to use or wear artificial devices, inanimate objects or other covering which, when exposed to view, depict:

- (1) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
- (2) The touching, caressing or fondling of the breasts, buttocks, anus or genitalia.
- (3) The displaying of the pubic hair, anus, genitalia, female breast or any portion thereof.

§3-84-78.041. Visual Reproductions of Sexual Acts and Simulations. No licensee shall permit, on the licensed premises, the showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:

(a) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(b) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitalia.

(c) Scenes wherein a person displays the anus or genitalia.

(d) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

§3-84-78.042. Fondling. No licensee shall encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitalia of themselves or any other person, whether directly or through the clothing or any other material.

§3-84-78.05. Drugs and Other Illegal Activities. (a) The possession, distribution, or use of illicit or illegal drugs or narcotics on the licensed premises by any person is prohibited.

(b) No licensee shall promote, encourage or permit any person on the licensed premise to possess, distribute or use illicit or illegal drugs.

§3-84-78.06. Solicitation of Business Outside of Premises. No licensee authorized to sell liquor for consumption on the premises, shall solicit business within a twenty feet radius of the licensed premises.

§3-84-78.5. PRACTICES TO PROMOTE EXCESSIVE CONSUMPTION OF LIQUOR; PROHIBITED.

§3-84-78.51. Practices to Promote Consumption of Liquor, Prohibited. (a) No licensee shall promote the excessive consumption of liquor, or sell or offer to sell any liquor to any person who appears to be intoxicated from the excessive use of intoxicating liquor.

(b) No licensee of any premises licensed to sell liquor for consumption on the premises shall:

- (1) Sell, advertise or offer to sell “all the liquor you can drink” for a fixed price.
- (2) Encourage or permit any game or contest that involves the consumption of liquor or the awarding of liquor as a prize.

§3-84-78.52. Repealed.

§3-84-79. ENTRY FOR EXAMINATION; PENALTY.

§3-84-79.1. Obstructing Commission Operations. No licensee shall allow the obstruction, hampering, or interfering with investigations and inspections or Liquor Commission operations in any way, including but not limited to, the sounding of alarms, flashing of lights or use of a public address system or other advance warning announcing the arrival of Commission investigators.

§3-84-79.2. Improper Influence. (a) Any licensee, employee of a licensee or its agent who shall give, pay, or offer, directly or indirectly, any pecuniary benefit to any Liquor Commission investigator or staff member, with the intent to influence the investigator or staff member in the discharge of any duty herein provided for, shall be guilty of a violation.

(b) Any licensee, employee of a licensee or its agent who solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that such person’s judgment, exercise of discretion, or other action as regards to compliance with any liquor law or Rules will thereby be influenced, shall be guilty of a violation.

§3-84-80. ARREST. (Reserved)

§3-84-81. (Reserved)

§3-84-82. NO ACTION FOR DEBT. (Reserved)

§3-84-83. PAYMENT OF LIQUOR TAX TO BE MADE. (Reserved)

§3-84-84. EXCLUSION OF INTOXICATED PERSON FROM PREMISES; PENALTY. (Reserved)

§3-84-85. PRIZE, GIFT, PREMIUM, AND OTHER INDUCEMENT.

§3-84-85.1. Free Goods Prohibited. No licensee or employee of a licensee, except a manufacturer or wholesaler, shall, directly or indirectly, offer, furnish, deliver or give

away any free goods, gratuities, gifts, prizes, coupons, premiums, or other article or thing of value to a consumer or customer in connection with the sale of liquor. Articles of nominal value, such as the drink glass, or items necessary for the proper opening of containers are exempt from this provision.

§3-84-85.2. Quantity Discounts. A quantity discount shall be granted to a licensee only when a single delivery of an entire order is made to a buyer on the premises of the seller or when delivery of an entire order to a buyer on the premises of the seller or when delivery of an entire order to a single licensed premises or to a public carrier for delivery to the buyer is begun and completed the same day.

CHAPTER 85 REVOCATION OF LICENSE

§3-85-91. REVOCATION OR SUSPENSION OF LICENSE; ADJUDICATION HEARINGS.

§3-85-91.1. Notice of Hearing and Subpoena. (a) Where it is proposed to revoke or suspend a license, assess and collect a penalty, or reprimand a licensee, for a violation of law or of these rules, the administrator shall schedule a hearing before the Commission and issue a Notice of Hearing informing the licensee of the charge(s) and the date, time and place of the hearing. Notice of Hearing shall be issued to the licensee of record at the Commission offices at the time of the violation.

(b) Subpoenas may be issued by the Administrator or designee. Compliance with the subpoenas shall be enforced in the courts.

§3-85-91.2. Pre-hearing Conference. (a) The Commission may order that a pre-hearing conference be conducted and attended by all parties to an adjudication hearing. At the pre-hearing conference, the Commission may require all parties to disclose to the other parties any information which may be requested pursuant to §3-85-91.6.

(b) If no pre-hearing conference is held, the Commission may require each party to an adjudication hearing to submit a statement disclosing and identifying all witnesses to be called at the adjudication hearing, and all exhibits to be used at the adjudication hearing. A copy of the statement shall be served upon all other parties to the proceeding. The Commission may require other relief in order to simplify the issues and facilitate the orderly progress of the adjudication hearing.

§3-85-91.3. Testimony and Record; Adjudication Hearings. (a) All witnesses testifying at an adjudication hearing shall be administered an oath prior to their testimony. The Commission's chairperson or designee shall administer the oath.

(b) A record shall be made of all oral testimony taken at the hearing. Testimony taken at the hearing may be electronically recorded by video or audio tape and need not be transcribed. The cost of copying any transcription shall be paid by the requesting party, unless otherwise provided. The Commission shall make the written record of the testimony available to the parties for use in preparing exceptions to or statements in support of a recommended decision or recommended order.

(c) Unless otherwise provided by law, the record shall consist of the following:

(1) All pleadings, motions, and intermediate rulings;

- (2) All evidence received or considered, including without limitation, oral testimony, exhibits, and matters officially noted by the Commission;
- (3) All offers of proof and rulings thereon; and
- (4) All proposed findings and exceptions.

§3-85-91.4. Pleadings; Adjudication Hearings. (a) The first page of every pleading in an adjudication hearing shall set forth the name, address, and phone number of the party, the party's attorney, if any, the title of the particular pleading, the name of the proceeding and case number, if any.

(b) All pleadings in an adjudication hearing shall be signed in black or other photo-reproducible ink by the party filing the pleadings or by the party's authorized agent. The signature shall constitute certification that the person so signing has read the pleading and that to the best of the person's knowledge, information, and belief, the pleading is true and correct and is not submitted for the purpose of hindering, harassing, or delaying any party or proceeding.

(c) Unless otherwise provided, all pleadings, motions, memoranda, and other documents shall be filed with the Commission.

§3-85-91.5. Evidence; Adjudication Hearings. (a) The admissibility of evidence at an adjudication hearing shall not be governed by the laws of evidence and all relevant oral or documentary evidence shall be admitted. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The Commission shall give effect to the privileges recognized at law.

(b) Documentary evidence may be received in the form of copies, provided that, upon request, all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible but the non-availability of the original and the reasons therefore may be considered by the Commission when considering the weight of the documentary evidence.

(c) The Commission may take notice of judicially recognizable facts and of generally recognized technical or scientific facts. The parties, whenever possible, shall be notified before the hearing of the material to be so noticed and shall be afforded an opportunity to contest the facts so noticed.

(d) Except as otherwise provided by law, the burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by preponderance of the evidence.

§3-85-91.6. Disclosure; Adjudication Hearings. (a) Any party to an adjudication hearing may, by written demand timely filed with the Commission, and served upon any other party, request of any other party to the proceeding, the full disclosure of:

- (1) The identity of all witnesses to be called by the other party, including their addresses and phone numbers, if known;
- (2) The identity of all persons, including their addresses and phone numbers, known by the other party to have material knowledge relevant to the proceeding; and

(3) All exhibits, including, but not limited to documents, photographs, and other tangible evidence to be introduced by the other party at the adjudication hearing. The requesting party shall have the right to examine the exhibits and make copies thereof.

(b) In order to be admitted at the adjudication hearing, a copy of an investigation report shall be provided to all parties upon request not later than seven days before such hearing. If a copy of the investigation report is not provided to all parties, the report shall not be permitted to be introduced at the adjudication hearing.

(c) All demands for disclosure shall continue in effect for the duration of the proceeding and the party to whom the demand is directed shall be under a continuing duty to disclose the information requested as and when it becomes available.

(d) The information requested shall be disclosed to the requesting party at the pre-hearing conference or at least seven days before the adjudication hearing, whichever occurs first. The failure to comply with disclosure requirements may result in the evidence subject to the disclosure request not being permitted to be introduced at the adjudication hearing.

§3-85-91.7. Procedures; Adjudication Hearings. Unless otherwise stipulated by the parties, all adjudication hearings shall proceed as follows:

(a) The licensee who has been notified to appear before the Commission shall enter a plea admitting or denying the allegations contained in the Notice of Hearing.

(b) If the licensee admits the allegations contained in the Notice of Hearing, the Commission shall determine what action, if any, should be taken against the licensee.

(c) If the licensee denies the allegations contained in the Notice of Hearing, the parties shall have the opportunity to present any facts tending to prove or disprove the allegations contained in the Notice of Hearing.

(1) The parties shall have the opportunity to make opening statements before any evidence is presented, unless they waive the opportunity. The opening statement shall be heard in the following order:

(A) The City's opening statement; and

(B) Licensee's opening statement, unless licensee chooses to reserve same until after presentation of the City's evidence;

(2) The City's evidence shall be presented first, and shall be followed by the presentation of the evidence in support of licensee's case;

(3) After presentation of the evidence in support of their respective cases, the parties shall have the opportunity to introduce rebuttal evidence. Rebuttal evidence shall be introduced in the same order as was followed with respect to the introduction of evidence in support of the parties' respective cases;

(4) Each witness shall be examined first by the party calling the witness before cross-examination by the opposing party;

(5) After all evidence, including rebuttal evidence, has been presented, the parties shall have the opportunity to make a final argument. Final argument shall proceed as follows:

(A) The City's final argument;

(B) Licensee's final argument;

- (C) The City's final argument in rebuttal which shall be limited to countering matters raised in licensee's final argument.
- (6) The adjudication hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence pursuant to §3-85-91.9, whichever is later.
- (d) Any party may file with the Commission a statement in support of the recommended decision within fifteen (15) days after receipt of a copy of the recommended decision. The party filing the statement in support shall serve the statement upon all other parties.
- (e) Whenever written exceptions have been timely filed and a party has requested oral argument, all parties to the proceedings shall be afforded the opportunity to present to the Commission oral arguments concerning the recommended decision. Unless otherwise provided by law, all the parties shall be served with notice of the time and place of argument at least five days prior to the hearing. Within a reasonable time after argument has been heard, the Commission shall either issue its final decision and order adopting, modifying or reversing, in whole or in part, the recommended decision; or set the matter for a further hearing before the Commission. Before reaching a final decision, the Commission shall personally consider the entire record or portions thereof which may have been cited by the parties.
- (f) Where written exceptions to the recommended decision have not been timely filed, the Commission shall issue, within a reasonable time after receipt of the recommended decision, a final written decision and order adopting, modifying, or reversing, in whole or in part, the recommended decision. If the recommended decision is modified or reversed, in whole or in part, the Commission shall specifically state in its final decision, the reasons for such modification or reversal.

§3-85-91.8. Motion to Dismiss; Adjudication Hearings. (a) After all evidence has been presented by the City in support of the allegations contained in a Notice of Hearing, the licensee may move the Commission for an order denying or dismissing the charges in the Notice of Hearing or for similar affirmative relief.

(b) If the motion is denied or taken under advisement, licensee shall have the right to continue with the adjudication as fully as if the motion had never been made.

§3-85-91.9. Taking of Further Evidence; Adjudication Hearings. At any time before the Commission's final decision, the Commission, on its own or upon motion for good cause shown, may reopen an adjudication hearing for the purpose of taking further evidence. The reopening shall be at the sole discretion of the Commission. Further evidence may be taken either through oral hearing or by certification of written questions to the parties.

§3-85-91.10. Reconsideration of Decision and Order; Adjudication Hearings. Any request or motion to reconsider a decision made by the Commission or for a new hearing, or for a stay of the decision or order shall be filed with the Commission within

fifteen (15) days from the date the decision and order is served. A suspension or revocation of license shall commence following the fifteenth day after notification.

§3-85-91.11. Surrender of License Upon Suspension, Revocation or Closing of Business. Every licensee shall immediately surrender the license to the Commission for appropriate action upon suspension or revocation thereof, or within five days after permanent closing of the business or loss of lease or bona fide premises. A letter of explanation signed by a corporate officer, partner, or other authorized person shall accompany any license surrendered for Commission action.

§3-85-91.12. Licenses Under Safekeeping. Any license held in safekeeping by the Commission shall be considered an active license and the licensee must continue to comply with all Liquor Commission laws and rules unless otherwise directed by the Commission. Any license held in safekeeping beyond June 30 of a license year must receive Commission approval to remain in safekeeping and as otherwise directed by the Commission.

§3-85-92. APPEALS; RECORD. (a) Any party aggrieved by the final decision and order of the Commission or by a preliminary ruling or order of the Commission of such a nature that deferral of review pending the entry of a subsequent final order would deprive that party of adequate relief is entitled to judicial review in accordance with Section 91-14, HRS.

(b) Any party requesting judicial review shall serve a copy of the request upon the Commission and all other parties in accordance with the Hawaii Rules of Civil Procedure.

(c) Unless the Commission has been notified in writing of a party's request for judicial review within the time permitted for requesting judicial review, the Commission, after the time for requesting judicial review has passed, may cause exhibits to be returned to the party introducing the exhibits or if the party does not wish their return, order the disposal or destruction of the exhibits.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence material to the issue in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Commission, the court may order that the additional evidence be taken before the Commission upon such conditions that the court deems proper. The Commission may modify its findings of facts, conclusions of law, decision and order by reason of the additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence, together with any modifications or new findings, decision or order.

§3-85-93. REPORTS TO PROSECUTING OFFICERS. (Reserved)

§3-85-94. FORFEITURE OF FEE PAID. (Reserved)

§3-85-95. BANKRUPTCY, INSOLVENCY, DEATH. (Reserved)

§3-85-96. CANCELLATION. (Reserved)

§3-85-97. WHEN SALE WITHOUT LICENSE AUTHORIZED. (a) In case a license is revoked or canceled or not renewed, the licensee may, with the permission of and upon the conditions set by the liquor commission, sell intoxicating liquors then in the licensee's possession, from the previously licensed premises, in bulk form and in original containers, not for consumption on premises, within sixty (60) days, or within such additional time allowed by the Commission.

(b) The Commission may set other conditions on the sale as it sees fit.

CHAPTER 86 GENERAL VIOLATIONS AND PROSECUTIONS

§3-86-101. MANUFACTURE OR SALE WITHOUT LICENSE; PENALTY. (Reserved)

§3-86-101.5. PROHIBITIONS INVOLVING MINORS; PENALTY.

§3-86-101.51. Sale or Service of Liquor to Minors, Prohibited. (a) The sale or service of liquor to a minor or the consumption of liquor by a minor on any licensed or unlicensed premises, any off-premises catered event, or any other premises authorized by the Commission is prohibited. Licensees are responsible for the proper checking of personal identification of any person wishing to purchase liquor, prior to the selling or serving of liquor.

(b) Documents used for identification shall be an official state driver's license, a military identification card, other official government identification containing a photograph, or other form of identification document approved by the Commission. Such documents shall be unaltered, undamaged and laminated. At a minimum, non-government identification approved by the Commission shall bear the name of the issuing entity, date of issuance, expiration date or date of departure from the State of Hawaii, date of birth, a photograph, signature, and a statement that the identification is valid only in the County of Honolulu. All documents should be examined carefully. School identification cards, expired documents of any kind, cards with such phrases as "information provided by applicant" or the like, identification cards issued for the purpose of check cashing or other identification cards not issued by a government agency are unacceptable, unless approved by the Commission.

§3-86-101.53. Minors on Licensed Premises. (a) On licensed premises no person under eighteen (18) years of age shall be employed in that section of the premises where liquor is sold, served or consumed, or allowed to entertain in said areas unless the licensee has obtained written permission from the Commission for the employment or the entertainment by such minor. The licensee, the person under eighteen (18) years old, and his/her parent or guardian shall be interviewed by an investigator, who shall submit a report to the administrator regarding the employment of the individual under the age of eighteen (18) years. If the standards set by the Commission are complied with, the administrator may approve the licensee's request and may include any condition which the administrator deems necessary for the protection of the person under eighteen (18) years of age. After employment approval has been obtained, the employee under the age of eighteen (18) shall be registered with the Commission

pursuant to §3-82-38.5. Manufacturers, wholesalers and retail (class 4) licensees shall be excluded from this requirement.

(b) Applications for permission for persons under eighteen (18) years of age to work on licensed premises where liquor is sold or served shall be submitted by the licensee for whom the applicant will work and shall include the following:

- (1) Proof that the proposed employee is at least sixteen (16) years of age;
- (2) Written consent of a parent or guardian;
- (3) A certificate of employment and age;
- (4) A letter from a school counselor or other school official attesting to a satisfactory academic grade standing or graduation certificate.

(c) The duties of a person under eighteen (18) years of age shall not include selling or serving liquor, unless that person is in an approved program under Section 281-78(4), Hawaii Revised Statutes.

(d) The licensee shall provide adequate supervision of any employee under eighteen (18) years of age while such employee is employed on the licensed premises.

(e) Minors under age sixteen (16) who perform as members of a choir, hula dance group, etc., may be permitted to perform by approval of the Administrator, provided they are under the supervision of an adult leader and have permission of parent or guardian. The licensee shall provide the Commission with a letter stating the date, time, purpose and activity of the entertainers.

§3-86-101.54. Minors on Licensed Premises with Nude Dancing. No licensee holding a dispenser general category 2 (nudity) license or cabaret license which is permitted to have entertainment by a nude dancer, pursuant to Section 281-31(k), Hawaii Revised Statutes, shall permit any person under twenty-one years of age to enter or remain within the licensed premises, except as provided by Section 281-78(b)(3), HRS, which allows employees age 18 and above.

§3-86-102 - §3-86-124. (Reserved)

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