



## MEMORANDUM

TO: Bob Klein, Chair, and Members of the  
Alcoholic Beverage Control Board

DATE: October 15, 2018

FROM: Erika McConnell, Director

RE: Regulations Change: Wine Auction  
Permit; Seasonal Licenses;  
Operating Requirements; Local  
Governing Body Protests

**Statutory Authority:** AS 04.06.100(a): “The board shall adopt regulations governing the manufacture, barter, sale, consumption, and possession of alcoholic beverages in the state that are consistent with this title and necessary to carry out the purpose of this title in a manner that will protect the public health, safety, and welfare.”

**Status:** Public comments on all four proposals closed October 10

While the four projects have been combined into one regulations package for administrative purposes, the board should consider and vote on each project separately.

No public comments were received on these projects.

### **Wine Auction Permit**

Staff has received inquiries various times about the ability to raffle a basket containing wine or to hold a wine pull—an event where mystery bottles of wine are sold for a single price. These activities are used as fundraisers but are not compliant with our statutes and regulations. The current regulation regarding a wine auction permit states that wine may be sold “by outcry or silent auction.”

This proposed change would allow wine raffles and wine pulls to be held with a wine auction permit. A wine raffle meets the three criteria of gambling—contribution, element of chance, and prize—so a gaming permit from the state of Alaska is required to hold a wine raffle. A definition of “wine pull” is proposed.

### **Seasonal Licenses**

This draft regulation clarifies the rights, privileges, and limitations of a seasonal license holder. The proposal allows a seasonal license holder to prepare for the season by purchasing alcohol 30 days before the seasonal license becomes effective. In addition, the proposal clarifies that during the non-

licensed period, if the seasonal license holder wishes to store alcohol at the site, the holder shall use the off-premises warehouse provision already provided in AS 04.21.060.

### **Operating Requirements**

This proposed regulation clarifies that the listed items in 3 AAC 304.170(j) are operating requirements necessary for licensees who only operate 240 hours per year, but allows the board to accept alternate documentation to meet the burden of proof if the licensee fails to provide documentation proving each operating requirement. The proposal includes a list of example documents that could be provided. Staff has attempted to provide additional clarity to licensees, AMCO staff, and the board, and some flexibility to licensees and the board through this regulations project.

In addition, the project proposes that waiver of operations applications be required (to avoid a late fee) by the last meeting of any year rather than by the last meeting before November 30 of any year. Depending on the meeting schedule, current regulatory language would require (as it would for this year) waiver applications to be submitted in September for an October meeting.

### **Local Governing Body Protests**

This proposed regulation clarifies in 3 AAC 304.145 that the local governing body that has jurisdiction over a particular interest has protest rights for a license. When a license is located in a city that is within a borough, generally the interpretation has been that the city is the local governing body that has the right to protest. However, in many situations, the borough retains some relevant jurisdiction, such as land use, and should be able to protest on issues over which they have jurisdiction.

In addition, this draft sets forth and clarifies the “conditional protest” that the board has been using for some time. AS 04.11.480 requires that the board uphold a local governing body protest, unless the board finds the protest to be arbitrary, capricious, and unreasonable. However, many protests received from local governing bodies relate to local conditions that the applicant has not yet met, but is anticipated to meet in the future. Other protests are for non-payment of taxes, and the board wishes to give the licensee one last opportunity to pay their taxes and retain their license. In these situations, the board has provided an abeyance period before the protest is upheld. This regulation proposal formalizes that and sets some parameters.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 304.145 is amended to read:

**3 AAC 304.145. Local governing body protest** (a) To protest an application or the continued operation of a license, **a** [THE] local governing body must set out its reasons in a written protest filed with the board and copied to the applicant. The reasons stated by **a** [THE] local governing body must be logical grounds for opposing the application or continued operation of the license and have a reasonable basis in fact.

(b) No final action will be taken by the board upon an application until at least

(1) 60 days after the receipt of the notice required by AS 04.11.520 by **a** [THE] local governing body unless it advises the director in writing before the end of the 60 days that it is waiving its right to protest the application; and

(2) 15 days after completion of public notice of the application.

(c) Repealed 5/11/96.

(d) A local governing body that protests an application shall allow the applicant a reasonable opportunity to defend the application before a meeting of the local governing body.

(e) A local governing body protest may be based upon facts that render the particular application objectionable to the local body, or may be based upon a general public policy. If based on a general public policy, the policy must have a reasonable basis in fact, may not be contrary to law, and may not be patently inapplicable to the particular application being protested. The board will not substitute its judgment for that of the local governing body on matters of public policy that have reasonable factual support.

(f) If the application is denied because of the protest, and the applicant requests a hearing, the local governing body must, at the board's request, appear or otherwise meaningfully participate in the hearing and must assist in or undertake the defense of its protest.

(g) In addition to the other grounds for protest set out in this section, a local governing body may protest the

(1) renewal or transfer of a license based on nonpayment of delinquent taxes of at least \$200 arising in whole or in part from the conduct of the licensed business; and

(2) transfer of a license if the

(A) local governing body has adopted an ordinance under which it may estimate the amount of taxes due in the tax year of the proposed transfer and arising in whole or in part from the conduct of the licensed business, and require the licensee to pay the estimated amount; and

(B) licensee fails to pay that amount or give security under AS 04.11.360.

**(h) The board may uphold a protest of an application or continued operation with a single abeyance period not to exceed 180 days if the local governing body indicates the protest is subject to rescission and that it will be withdrawn if the applicant meets conditions set by the local governing body. If the local governing body notifies the board within the period of abeyance that the protest has been removed, the application or continued operation is approved when all other applicable requirements have been met. If the local governing body has not notified the board within the timeframe of the abeyance that it has removed the protest, the application or continued operation is denied. The period of abeyance may not be extended or renewed.** (Eff. 11/29/81, Register 80; am 4/28/84, Register 90; am 5/22/92, Register 122; am 5/11/96, Register 138; am \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_)

<b>Authority:</b>	AS 04.06.090	AS 04.11.360	AS 04.11.520
	AS 04.06.100	AS 04.11.480	AS 04.21.080
	AS 04.11.330	AS 04.11.510	

3 AAC 304.170(h) is amended to read:

(h) In addition to the application fee under (c) of this section, the applicant shall pay \$1,000 for an application that is received too late for board consideration at its **last** meeting [BEFORE NOVEMBER 30] of the **calendar** year for which waiver is requested.

3 AAC 304.170(j) is amended to read:

(j) If a license is exercised only to satisfy the minimum operating requirement under AS 04.11.330(a)(3) or 3 AAC 304.107(c)(1), a licensee **shall operate** [HAS THE BURDEN OF PROOF TO SHOW THAT THE LICENSED PREMISES WAS OPERATED] in a similar fashion to other licensed premises of the same type **by meeting the following operating requirements if appropriate for the license type:** [AND SHALL, AT MINIMUM,]

(1) provide signage, of sufficient size and visibility to show that the premises is open for business, stating business name and hours of operations;

(2) offer for sale at the licensed premises, as appropriate to the type of license, a variety of malt beverages, wines, and distilled spirits;

(3) visibly display the alcoholic beverages stock in a licensed package store premises;

(4) provide seating in beverage dispensary licensed premises for at least one-

half of the maximum number allowed by the occupancy permit;

(5) comply with all state or municipal health, fire, and zoning laws or ordinances required for the operation of business;

(6) maintain a record of all purchases of alcoholic beverages for resale on the licensed premises; and

(7) record sales with a cash register **or point of sale system** that retains a record of transactions.

3 AAC 304.170 is amended by adding a subsection to read:

(k) The licensee has the burden of proof to show that the licensed premises was operated for the minimum required period of time and met the operating requirements under (j) of this section. The licensee may provide receipts, invoices, photographs, permits, timecards, and other records to meet the burden of proof. If the licensee fails to provide proof that one or more of the operating requirements was met, the board may consider additional documentation provided by the licensee to determine whether the licensee has met the burden of proof. (Eff. 11/30/90, Register 116; am 5/22/92, Register 122; am 5/1/94, Register 130, am 5/11/96, Register 138; am \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:**    AS 04.06.090            AS 04.06.100            AS 04.11.330(a)

3 AAC 304 is amended by adding a section to read:

**3 AAC 304.190. Seasonal Licenses.** (a) Except as provided in this section, the rights, privileges, and restrictions of a license issued under AS 04 are limited to the interval stated on the seasonal license.

(b) The holder of a seasonal package store license or a seasonal license that serves alcohol for consumption on the premises may purchase alcohol intended for resale starting 30 days before the seasonal license is effective.

(c) The holder of a seasonal package store license or a seasonal license that serves alcohol for consumption on the premises may, during the period of the year when the seasonal license is not effective, store alcohol in accordance with AS 04.21.060. (Eff. \_\_\_/\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

<b>Authority:</b>	AS 04.06.090	AS 04.11.100	AS 04.11.150	AS 04.11.255
	AS 04.06.100	AS 04.11.110	AS 04.11.210	AS 04.11.540
	AS 04.11.010	AS 04.11.115	AS 04.11.220	AS 04.11.680
	AS 04.11.090	AS 04.11.135	AS 04.11.225	AS 04.21.060

3 AAC 304.699(a) is amended to read:

(a) A wine auction permit authorizes the holder to sell wine **for consumption off the designated premises** by outcry or silent auction, **by wine pull, or, with a permit issued under AS 05.15, by raffle,** at designated premises for a specific occasion and limited period of time.

Only organizations that would be eligible for a special events permit under AS 04.11.240(a) are

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eligible for a wine auction permit, and only if all profits derived from the auction, **wine pull, or raffle** of wine are paid to the organization and not to an individual.

( Eff. 6/13/2003, Register 166; am \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

3 AAC 304.990 is amended by adding a new subsection to read:

(b) “wine pull” means the offering of individual unidentified bottles of wine for a fixed price per bottle, where some bottles are valued at less than the fixed price and other bottles are valued at more than the fixed price. (Eff. 4/28/84, Register 90; am 6/13/2003, Register 166; am. \_\_\_/\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

**Authority:**    AS 04.06.090                    AS 04.06.100                    AS 04.11.010