THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community, and Economic Development

Alcohol and Marijuana Control Office

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Anchorage, AK 99501
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MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: August 18, 2020

FROM: Jane P. Sawyer, Regulations Specialist RE: Alaska Commercial Company license 1264 – transfer of ownership and location

At the June 9, 2020, meeting, the board tabled this application to consider the protest lodged by the City and Borough of Yakutat. In the packet you will find the protest from CBY, a letter from the applicant to the board, and the application to transfer the ownership and location of the license.

Relevant statute(s) and 'implemented as' regulation(s):

AS 04.11.480 (a) – A local governing body may protest the issuance, renewal, relocation, or transfer to another person of a license by sending the board and the applicant a protest and the reasons for the protest within 60 days of receipt from the board of notice of filing of the application. … The board shall consider a protest and testimony received at a hearing conducted under AS 04.11.510(b)(2) or (4) when it considers the application…If an application or continued operation is protested, the board shall deny the application or continued operation unless the board finds that the protest is arbitrary, capricious, and unreasonable.

> 3 AAC 304.145(a) – … The reasons stated by 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.
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> (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 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.
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> 3 AAC 304.150(a)(2) – … If the board has any indication that the protest might be arbitrary, capricious, or unreasonable, the board will first determine whether the protest is based on a question of law. If the protest is found to be based in whole or in part on a question of law, the board will schedule the matter for a public hearing … Unless a hearing is required by another provision of law, if the protest is found not to be based on a question of law the board will, in its discretion, and if appropriate, conduct a public hearing … to ascertain the reaction of the public

or a local governing body to the application in question. If the board has no indication that the protest is arbitrary, capricious, or unreasonable, it will, in its discretion, vote to uphold the protest, and the applicant and the board will follow the procedure se in AS 04.11.510(b)(1). If the board decides to overrule the protest, the local governing body may appeal the board's decision under AS 44.62.

Information regarding license limits:

City & Borough of Yakutat has a population of about 540 people. Under AS 04.11.400(a), the package store license cap in Yakutat is one license and the board may prohibit the relocation of an existing license if that license exceeds the cap. The license in question here is one of two package stores in Yakutat. However, under AS 04.11.400(f), the board shall grant the transfer of location of the 'extra' license without regard to license cap if the new location is less than one mile from the original location and

1. No ground for denial exists under AS 04.11.340(1) or (3); and
2. Relocation of the licensed premises is necessary due to
    a. Termination of a lease or rental agreement;
    b. Condemnation of the premises;
    c. The substantial destruction of the premises by any cause.