Municipal Clerk's Office
Amended and Approved
Date: July 27, 2021

Submitted by: Chair of the Assembly at the Request of the Mayor
Prepared by: Department of Law
For reading: July 27, 2021

ANCHORAGE, ALASKA
AR No. 2021-253, As Amended

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY RECOMMENDING THAT THE STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL (ABC) BOARD SUSPEND FOR A PERIOD OF SIX MONTHS, RATHER THAN REVOKE, PACKAGE STORE LIQUOR LICENSE #3219, FOR LEE FAMILY CORPORATION DBA MOM & POP'S GROCERY AND LIQUOR LOCATED AT 601 W 36TH AVE., STE.3-4, ANCHORAGE, AK 99503, TO ALLOW THE LICENSE TO BE TRANSFERRED.

WHEREAS, on the 10th day of March, 2020, the Anchorage Assembly passed AR No. 2020-56, As Amended, and thereby protested the renewal of liquor license #3219 to the ABC Board; but also requested that the ABC board allow the licensee to transfer the license to another applicant; and

WHEREAS, on March 30, 2021 the ABC Board upheld the protest of the Anchorage Assembly and denied the Lee Family Corporation's (Lee) application to renew its license; and

WHEREAS, Lee began the administrative appeal process allowed by Alaska Statutes Title 4 and the matter was heard by a State of Alaska Administrative Law Judge (ALJ) who makes a determination which is submitted back to the ABC which can then accept or reject the determination and make a final administrative decision regarding the renewal of the license; and

WHEREAS, on June 14, 2021 the ALJ hearing the administrative appeal affirmed the action of the ABC Board in upholding the Assembly protest and denying the renewal of the license; and

WHEREAS, it is expected that the ABC Board at its August 17, 2021 meeting will vote to accept the decision of the ALJ and thereby confirm final revocation of the liquor license; and

WHEREAS, Eddie Lee, of the Lee Family, stated to the Assistant Attorney General representing ABC in the case, that they would like the opportunity to sell the liquor license if the ABC were to suspend the license instead of revoking it; and

WHEREAS, the Midtown Community Council (MTCC) met July 20, 2021 and agreed that it would support a suspension of the license by the ABC, instead of revocation, to allow its transfer, provided that: the suspension lasts no more than 6 months from August 17, 2021; and that the liquor store closes to the public and ceases all operations and sales of alcohol effective midnight August 17, 2021; that the transfer be to an unrelated third party; that the current license holder would not own or have interest in a liquor license in the Municipality of Anchorage; and that the transfer of

the license not be in Midtown due to the existing density of package store licenses in Midtown and adjacent areas; and

WHEREAS, the Assembly believes the ABC Board will only have authority at its August 17, 2021 meeting to suspend, rather than revoke, the license for 6 months to allow for its transfer and cannot – except as part of the transfer process if and when it occurs – provide conditions on the transfer at this time; the Assembly nonetheless is sympathetic to and aware of, the very real concerns of the MTCC about the transfer of the license; and

WHEREAS, the Assembly recognizes that once a liquor license is revoked, it is permanent and cannot come back into being; and

WHEREAS, the Assembly further recognizes the significant economic value of the liquor license in generating tax and property revenue to the Municipality of Anchorage; and now, therefore,

THE ANCHORAGE ASSEMBLY RESOLVES:

Section 1. That it recommends to the Alcoholic Beverage Control Board that it suspend, rather than revoke, the Lee Family liquor license, for a period of six months from August 17, 2021; that it orders the liquor store to be closed and cease all operations and sales of alcohol effective midnight on August 17, 2021; **that the license upon transfer or any other license may not operate in the same premises;** and that if the license is not transferred during the 6 month period of time, the ABC Executive Director is authorized to, and in fact, shall, revoke the license without any further action or direction by the ABC Board.

Section 2. This resolution shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 27th day of July, 2021.

_____
Chair

ATTEST:

_____
Municipal Clerk

Municipal Clerk's Office
Amended and Approved
Date: March 10, 2020

Submitted by: Assembly Chair Dunbar, Assembly Vice-Chair Weddleton and Public Safety Committee Co-Chairs Dyson and Petersen
Prepared by: Municipal Clerk's Office
For reading: February 25, 2020

ANCHORAGE, ALASKA
AR No. 2020–56, As Amended

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY REGARDING THE STATE OF ALASKA APPLICATION FOR THE RENEWAL OF PACKAGE STORE LIQUOR LICENSE #3219, FOR LEEFAMILY CORPORATION, DBA MOM & POP'S GROCERY & LIQUOR LOCATED AT 601 W 36TH AVE., STE. 3-4, ANCHORAGE, AK 99503 AND AUTHORIZING THE MUNICIPAL CLERK TO TAKE CERTAIN ACTION.

(Midtown Community Council)

WHEREAS, LeeFamily Corporation has made an application with the Alaska Alcohol and Marijuana Control Office (AMCO), for consideration by the Alcoholic Beverage Control (ABC) Board, and has paid the required fee for the renewal of package store liquor license, #3219, doing business as Mom & Pop's Grocery & Liquor, located at 601 W 36th Ave., Ste. 3-4, Anchorage, Alaska, 99503; and

WHEREAS, on October 15, 2019, the Clerk's Office received from the Midtown Community Council, a request in a timely manner for a legislative public hearing before the Assembly regarding the renewal of liquor license #3219 for Mom & Pop's as authorized by AMC 2.30.120C.; and

WHEREAS, 10 day notice of the public hearing has been given to the applicant and the Midtown Community Council as required by AMC 2.30.120. and AS 04.21.010(d); and

WHEREAS, the Assembly must enter any protest to AMCO within 60 days following receipt of the application; and

WHEREAS, Anchorage Municipal Code (AMC) 2.30.120 and 3 AAC 304.145(d) require the Assembly to hold a public hearing to provide the applicant an opportunity to defend their application prior to exercising or waiving the right to protest; and

WHEREAS, the Anchorage Municipal Clerk received a copy of this application on January 15, 2020 and has determined that the last day for the Assembly to file a protest is March 15, 2020; and

WHEREAS, the Assembly Meeting on March 10, 2020 is the last scheduled regular meeting of the Anchorage Assembly prior to the expiration of the protest period; and

WHEREAS, the Municipal Clerk reports the following status concerning this location:

1. Any ABC Board violations and/or incidents on file that would lead to an ABC Board violation are attached; and

2. There are no taxes owing to the Municipality of Anchorage; and

3. Special Land Use Permit, required by AMC 21.03.040C4.a., **has been approved**; and

4. Certifications from the Anchorage Health Department, the Building Safety Official and the Anchorage Fire Department **have been received**; and

WHEREAS, in 2017, the Midtown Community Council submitted a timely request for a public hearing on the renewal of Mom & Pop's liquor license regarding concerns about public safety and operations; and

WHEREAS, the Assembly passed AR 2018-134, As Amended which requested conditions to be placed on the license and the Alcoholic Beverage Control Board upheld the Assembly's request and placed 7 conditions listed under Section 1. of AR 2018-134, As Amended on the license; and

WHEREAS, on August 20, 2019, a representative of the Midtown Community Council made an appearance at the Regular Assembly Meeting to report on Mom & Pop's non-compliance with the conditions placed on the license; and

WHEREAS, on September 4, 2019, the Assembly Public Safety Committee invited the Midtown Community Council and the owners of Mom & Pop's to attend and discuss issues brought up at the August 20, 2019 Regular Assembly Meeting; and

WHEREAS, on January 10, 2020 and January 31, 2020, the Assembly held worksessions and invited the Midtown Community Council and the owners of Mom & Pop's to discuss the Mom & Pop's liquor license renewal process; and

WHEREAS, this resolution sets the public hearing on the protest of the renewal of liquor license #3219 for February 25, 2020; and

WHEREAS, the Assembly has provided the liquor licensee the opportunity to defend the renewal application, has considered the testimony and evidence relevant to this liquor license, and has considered the options of either protesting or waiving protest and requesting the ABC Board impose conditions;

NOW, THEREFORE, the Anchorage Assembly resolves:

Section 1. The Anchorage Assembly finds the applicant and the Midtown Community Council were given notice and a hearing was properly held February 25, 2020 for purposes stated herein with relevant evidence presented as indicated in the public records maintained by the Municipal Clerk.

Section 2. Per Anchorage Municipal Code section 2.30.125, in the exercise of its powers and under AS 04.11.480 and 3 AAC 304.145 to protest issue, renewal and transfer of alcoholic beverage licenses within the Municipality, the Assembly shall consider whether the proposed license meets the factors and standards set forth in that section, and those potentially relevant, pending the public hearing, to the renewal application for license #3219 are listed below.

A. After review of the application and all relevant information, the Assembly finds that **(only check items that apply)**:

☐ Concentration and land use. The transfer of location or issuance of the requested license will negatively impact the community through an increase in the concentration of uses involving the sale or service of alcoholic beverages within the area affected and will conform to the separate standards of section 21.03.080D.

☐ Training. The applicant cannot demonstrate prospective or continued compliance with a liquor server awareness training program approved by the state alcoholic beverage control board, such as or similar to the program for techniques in alcohol management (T.A.M.). Until such plan is approved, training by a licensee's employees in the T.A.M. shall constitute compliance with this section. (This subsection is effective December 1, 1985.)

☐ Operations procedures. The applicant cannot demonstrate prospective or continued compliance with operations procedures for licensed premises set forth in section 10.50.035.

☑ Public safety. The operator cannot demonstrate the ability to maintain order and prevent unlawful conduct in licensed premises. In determining the operator's demonstrated ability to maintain order and prevent unlawful conduct, the assembly has considered police reports, testimony presented before the assembly, written comments submitted prior to or during the public hearing, and other evidence deemed to be reliable and relevant to the purpose of this subsection and in the record for AR 2018-134, As Amended, and this resolution. For purposes of this section and section 10.50.035 the term "licensed premises" shall include any adjacent area under the control or management of the licensee.

1. **Licensee acknowledged awareness of the conditions imposed on the license by the ABC Board in September of 2018, as requested by the Assembly in AR 2018-134, As Amended, and that licensee complied with the conditions for several months following their imposition. Licensee testified he consciously disregarded conditions after several months generally because he felt they were unfair since he learned other operators in the vicinity were not restricted by the same or similar restrictions and requirements. The Assembly finds that noncompliance for those reasons is not justified.**

2. **On many occasions throughout 2019, sales of products at Mom & Pop's Grocery & Liquor violated conditions imposed on the license. Credible photographic evidence and an attestation was provided by Timothy Potter showing shooter size liquor bottles with receipts sold for less than the minimum price required by ABC conditions, and in quantities to a person in a day exceeding the number allowed by conditions. Conditions were imposed by legal process and compliance is required by law. The Assembly acknowledges that the alleged violations have not been adjudicated, including an ABC Notice of Violation dated 2/8/2020, but the totality of the allegations and admission of the licensee to sales practices in violation make them trustworthy and reliable for purposes of a protest to license renewal.**

3. **The Anchorage Police Department Calls for Service report (AIM 32-2020) for calendar year 2019 are voluminous to the extent the licensed premises appear to be a magnet for unlawful conduct and the number of calls for police service are significant in relationship to other package stores in the Municipality. The Assembly recognizes that liquor licensees should not be discouraged from calling for police assistance when needed, but they also have a responsibility to implement operations and practices that mitigate the need for frequent police assistance. The conditions imposed on the license are one of the measures the licensee could have implemented but admitted in testimony he does not comply with. The Assembly finds the licensee's pattern of practices contributed to unlawful conduct and public safety concerns at the licensed premises.**

☐ Payment of taxes and debts. Pursuant to AS 04.11.330, the applicant is delinquent in payment of taxes owed to the municipality for the payment of any debts or taxes, including any estimated taxes for the current year arising from the conduct of the licensed business.

☑ Public health. The operator has engaged in a pattern of practices injurious to public health or safety, such as providing alcohol to minors or intoxicated persons, committing serious violations of state law relevant to public health or safety, or other actions within the knowledge and control of the operator which place the public health or safety at risk. The assembly has considered criminal convictions, credible proof of illegal activity even if not prosecuted, police reports, testimony presented before the assembly, written comments submitted prior to or during the public hearing, and other evidence deemed to be reliable and relevant to the purpose of this subsection and this resolution.

1. **The record of this location demonstrates to the Anchorage Assembly as a matter of general public policy there is a negative impact greater than that anticipated from permitted package stores generally, on the neighboring properties and parks, to the sense of safety and welfare to**

nearby residents, and on health and safety of customers the licensee caters to, as a result of the licensee's pattern of practices and operations procedures.

2. The licensee's practices and catering to chronic inebriate customers, including selling shooter size bottles of hard alcohol for low prices that are below the $1.70 minimum price condition for shooters, evidenced by pictures and testimony of at least two individuals, substantially contributed to negative impacts on the area, including,
   a. increased costs to nearby property owners in damages and loss, and increased costs for security and security improvements, particularly Mallory Place apartments, and concerns for safety of tenants and security of their buildings. Denali Commercial Property Management provided credible photographic evidence and testimony of empty liquor containers littered on its properties on various dates, persons incapacitated on its property and inside its laundry facilities and a vacant apartment unit. While each instance cannot demonstrate conclusively the customers or product litter was purchased at licensee's store, in the totality of the circumstances it is sufficient to show many product purchases from the licensee significantly contributed to these impacts to the area.
   b. being a significant contributing factor to chronic inebriates littering, trespassing and becoming publicly incapacitated (passing out) in the area.

3. The licensee failed to mark containers as a litter prevention and identification measure. Photos provided the Assembly credibly demonstrate shooters purchased at licensee's store were not marked or labeled as required so they could be identified as originating from that store when discovered as litter. Compliance with that condition could have exonerated or implicated licensee of responsibility of litter of empty shooter bottles in the area.

4. The practices have continued after the State ABC Board imposed conditions on the license September 4, 2018. The Assembly finds by a preponderance of the evidence submitted that such practices violating conditions imposed on the license occurred in June, July, August, November, December of 2019, and January of 2020. The Assembly concludes the foregoing practices and violations of conditions are known to the licensee and under its control, and continue to place the public health and safety at risk.

B. The Midtown Community Council has requested a hearing and provided a resolution, which is attached, recommending non-renewal of package store license #3219 and to revoke the conditional use permit for alcohol for 601 W 36th Ave., Ste 3 & 4, due to significant non-compliance with restrictions as agreed to in the signed Memorandum of Understanding, which is included in AR 2018-134, As Amended, as well as non-compliance with conditions placed on the license by the State of Alaska.

C. The Anchorage Assembly, based on the evidence and information provided and its findings as stated in this resolution, hereby **protests** the renewal of liquor license #3219.

D. **Should AMCO uphold the protest, the Assembly recommends that the licensee be allowed to transfer the license to another licensee. The Assembly further recommends that a package store license will not be allowed at this location by this operator.**

Section 3. The Municipal Clerk shall provide a copy of this Assembly Resolution to AMCO as proof that the Anchorage Assembly, as the local governing body, has stated its **protest** of the renewal of package store liquor license, #3219.

PASSED AND APPROVED by the Anchorage Assembly this 10th day of March, 2020.

Chair

ATTEST:

Jennifer Venekласen

for Municipal Clerk

MUNICIPALITY OF ANCHORAGE

Assembly Information Memorandum

No. AIM 128-2021

Meeting Date: July 27, 2021

From: **ASSEMBLY MEMBER RIVERA**

Subject: **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY RECOMMENDING THAT THE STATE OF ALASKA ALCOHOLIC BEVERAGE CONTROL (ABC) BOARD SUSPEND FOR A PERIOD OF SIX MONTHS, RATHER THAN REVOKE, PACKAGE STORE LIQUOR LICENSE #3219, FOR LEE FAMILY CORPORATION DBA MOM & POP'S GROCERY AND LIQUOR LOCATED AT 601 W 36TH AVE., STE.3-4, ANCHORAGE, AK 99503, TO ALLOW THE LICENSE TO BE TRANSFERRED.**

Attached is the Midtown Community Council's Resolution #2021-07-02 concerning the above Package Store Liquor License for the Assembly's information and consideration. The vote was reportedly 10 in favor and 0 opposed.

Prepared by: Assembly Counsel

Respectfully submitted: Felix Rivera, Assembly Member
District 4, Midtown

Resolution of MTCC Board # 2021-07-02

A resolution of the Midtown Community Council Executive Board concerning final action by AMCO on Mom and Pop's Grocery & Liquors, Package Liquor License, (601 W 36th Avenue) scheduled for August 17, 2021, action at AMCO.

Whereas, the Midtown Community Council met with the Package Liquor Store owner and attorney, and

Whereas, as a result of this meeting a Memorandum of Understanding (MOU) was developed and signed agreeing to certain conditions of operation that would help reduce direct negative impacts on abutting and surrounding properties, and

Whereas, the MTCC entered into this MOU in good faith and the agreed to operational conditions were added to the Special Land Use Permit by the Municipal Assembly, and AMCO's Package Liquor License renewal, and Whereas, the license holder has continued to be non-compliant with the conditions of the MOU, SLUP, and AMCO Package Liquor License, and

Whereas, MTCC has over the last few years collected and validated evidence of the blatant non-compliance. Anchorage and State of Alaska investigators collected similar collaborative evidence of non-compliance with conditions of their license, and

Whereas, MTCC wants and believes the sale of alcohol shall end no later than midnight August 17, 2021. The Package Liquor License be deactivated no later than midnight August 17, 2021, and that AMCO allow the license holder 180 days to sell the deactivated Package Liquor License. No extension to this 180 day sale period can be granted, and

Whereas, transfer or sale of this license cannot be a relative of this license holder, and

Whereas, due to the high density of Package Liquor Licenses in Midtown, AMCO and Municipal Assembly does not allow this specific License to be transferal back into Midtown.

Now therefore be it resolved, the MTCC requests that the Municipality and AMCO take action to closeout this license to stop continued non-compliant operation by this license holder, and allow this license holder 180 days to sell the deactivated Package Liquor License to a non-relative third party so the asset value of the License may be recognized, if they complete the sale within the stated 180 days.

Passed and Approved with a vote of _____ yea to _____ neigh.

_____ _____

AL TAMAGNI Date
Vice President
Midtown Community Council Board