



THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD
550 W. 7th Avenue, Ste 1600
Anchorage, Alaska 99501
Main: 907.269.0350
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Fax: 907.334.2285

MEMORANDUM

TO: Robert Klein, Chair and
Members of the Board

FROM: Cynthia Franklin
Director, ABC Board

DATE: April 12, 2016

RE: AK Alchemist License #5367

This is an application for a new restaurant/eating place in Anchorage. The MOA previously protested due to a denied administrative site plan review, protest from the MOA Fire Department, and pending building safety approval. The Anchorage Assembly held a hearing January 26, 2016 on the denial of the site plan review and issued an AR waiving the MOA protest if the ABC board imposed certain conditions. The Assembly amended and approved the AR February 9, 2016.

Date Notification sent to MOA: January 7, 2015

Date MOA Protest Received: March 5, 2015

Basis for Protest: Denial of administrative site plan review (finalized 6/3/15), protest from the MOA Fire Department and pending building safety review

Update from MOA: MOA waived protest contingent on board approving conditions contained in AR 2015-261(S)

Requirements met per 3 AAC 304.145(d): Yes, multiple hearings were held on this matter.

Statutory Considerations: AS 04.11.480(c) permits the board to issue a license with conditions recommended by the local governing body, but the board must conduct an AS 04.11.510(b)(2) hearing in order to impose the conditions.

Notice requirements for an AS 04.11.510(b)(2) hearing were not met for this meeting due to some confusion on MOA's position. In order to issue license with conditions per AS



04.11.480(c), board should table to July meeting to meet statutory notice requirements.

MOA has conditional use permitting process which would permit MOA to impose conditions themselves.

Recommendation:

The board may take one of the two following actions:

- 1) Table the issuance of the license to July, 2016 in order to meet statutory notice requirements for a hearing that would permit the board to issue license with conditions per AS 04.11.480(c)
- 2) Uphold protest with abeyance of 30-60 days for MOA to impose recommended conditions through their CUP and for applicant to meet conditions through MOA CUP process. Authorize issuance of license through delegation if protest lifted by this method.



Municipality of Anchorage

P.O. Box 198650 • Anchorage, Alaska 99519-8650 • Telephone: (907) 343-4316 • Fax: (907) 249-7533 <http://www.muni.org/assembly/license>

Office of the Municipal Clerk Licensing

February 17, 2016

Ms. Sarah Oates
Alaska Alcohol and Marijuana Control Office
550 W 7th Ave. Ste. 1600
Anchorage, Alaska 99501

Re: AK Alchemist LL#5367

Dear Ms. Oates:

On March 3, 2015 the Anchorage Municipal Assembly approved the protest of a new Restaurant/Eating Place Liquor License #5367 with Restaurant Designation Permit for the above listed establishment until approvals from the Anchorage Fire Department, Building Safety had been received and an administrative site plan review (ASPR) had been completed and approved.

The ASPR was denied, which changed the process into a conditional use permit (CUP) review. The Assembly approved the CUP with extra conditions. (Please see attached Assembly Resolution, which details the conditions placed on the CUP.)

The Municipality of Anchorage Clerk's Office LIFTS THE PROTEST on license #5367.

Conditions placed on any license are to continue until specifically removed or amended. If you require additional information or if I can be of any assistance please call me.

Cordially,


Mandy Honest
Business License Official

Concur,


Amanda K. Moser
Deputy Municipal Clerk

CLERK'S OFFICE
AMENDED AND APPROVED
Date: 2-9-2016

Submitted by: ASSEMBLY MEMBER DEMBOSKI
(ASSEMBLY HEARING COORDINATOR)
Prepared by: Assembly Counsel
For reading: January 26, 2016

ANCHORAGE, ALASKA
AR NO. 2015-261(S), As Amended

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY APPROVING AN ALCOHOLIC BEVERAGES CONDITIONAL USE FOR A RESTAURANT/ EATING PLACE SERVING BEER AND WINE ONLY AND LICENSE NUMBER 5367, IN THE B-2B (CENTRAL BUSINESS, INTERMEDIATE) DISTRICT FOR AK ALCHEMIST, LLC, DBA AK ALCHEMIST; AT 103 EAST 4TH AVENUE, LOTS 7 AND 8, BLOCK 117, ORIGINAL SUBDIVISION; GENERALLY LOCATED AT THE NORTHEAST CORNER OF A STREET AND EAST 4TH AVENUE, IN ANCHORAGE.

(DOWNTOWN COMMUNITY COUNCIL) (CASE 2015-0089)

1
2 WHEREAS, this matter has come before the Anchorage Assembly as an adjudicatory
3 appeal from the decision of the Community Development Department director dated June 3,
4 2015, denying administrative site plan approval; and
5

6 WHEREAS, AR 2015-261(S) supported by the Decision on Appeal dated February 9,
7 2016 (Decision on Appeal); and
8

9 WHEREAS, in approving this AR 2015-261(S), the Anchorage Assembly adopts as the
10 Assembly's final action in this appeal, the attached DECISION ON APPEAL dated February 9,
11 2016; AR 2015-261 prepared by the Community Development Department dated September
12 29, 2015 is hereby modified as set out herein; now therefore,
13

14 THE ANCHORAGE ASSEMBLY RESOLVES:
15

16 **Section 1.** A conditional use permit with limitations and special conditions is hereby
17 approved, as supported by the attached Decision on Appeal, for a restaurant/eating place
18 serving beer and wine only, provided that the State of Alaska Alcoholic Beverage Control
19 (ABC) Board determines the premises qualifies as a restaurant/eating place under state law
20 for purposes of licensing under AS.04.11.100 and proposed license number 5367 is issued in
21 the B-2B (central business, intermediate) district for AK Alchemist, LLC, dba AK Alchemist,
22 103 East 4th Avenue, Lots 7 and 8, Block 117, Original Subdivision; generally located at the
23 northeast corner of A Street and East 4th Avenue. Subject to specific limitations and
24 conditions, the Decision on Appeal, license approval from the ABC Board, and with
25 applicant's modifications to the original application, and repairs undertaken at the site during
26 the appeal process, the proposed conditional land use generally meets the applicable land
27 use provisions of Anchorage Municipal Code (AMC) ch. 10.50, AMC (old code) 21.15.030,
28 AMC (old code) 21.40.240D.5., AMC (old code) 21.50.020, and AMC (old code) 21.50.160.
29

30 **Section 2.** Alcohol licensing of a premises is within the exclusive jurisdiction of the ABC
31 Board and local land use permitting and regulation for alcohol licensing use are a function of
32 local government. This conditional land use is approved, with limitations, and made subject to
33 the following conditions and the Decision on Appeal. Applicant shall update the ABC license

1 application to recognize these special conditions and shall request the ABC Board to
2 incorporate special conditions and limitations as concurrent conditions to the proposed ABC
3 restaurant/eating place license #5367 for this location:
4

- 5 1. This limited alcoholic beverages conditional use permit allows land use of this
6 property for a State of Alaska restaurant/eating place ABC license: If applicant
7 is issued proposed ABC license #5367 by the Alcoholic Beverage Control
8 Board under AS 04.11.100, this conditional use permit allows land use for
9 serving beer and wine only, concurrent with the service of food from the food
10 menu, with consumption of food and drink exclusively on a deck structure for
11 outdoor seating. Customers and clients shall not consume any food or
12 beverage, alcoholic or non-alcoholic, within the structure permitted as a Mobile
13 Food Unit (MFU).
14
- 15 2. Nothing in this permit shall be construed to allow service of any alcoholic
16 beverage "to go", or to allow alcoholic beverage service to anyone within a
17 vehicle or otherwise not seated within the outdoor seating area. No customer
18 may take or remove an alcoholic beverage from the outdoor seating area. Any
19 removal of an alcoholic beverage from the outdoor seating area is a violation of
20 law and this conditional use permit.
21
- 22 3. A building permit is not required by the municipal building code for a MFU
23 meeting the requirements of AMC 23.10.104.4. Applicant shall maintain in
24 active status and timely renew all Department of Health & Human Services
25 municipal permits required for the MFU without lapse, and the MFU shall meet
26 the municipal building code requirements in AMC 23.10.104.4.
27
 - 28 • Applicant shall resolve all Fire Inspection Compliance Comments to the
29 satisfaction of the Fire Marshall. Although MFU occupancy by the public is
30 not permitted and has been deleted from the application, AFD may require
31 public safety inspection of the Type I hood suppression system and
32 mechanical heating/ventilation system as a special limitation.
33
 - 34 • Applicant's certificate of occupancy dated December 31, 2013 under
35 Building Permit # E13-2052 for the existing MFU structure, is applicable to
36 use as a Coffee Cart, and shall not be used to support customer "dine-in"
37 occupancy of the MFU.
38
 - 39 • ABC license use is not authorized on the site during any period when a
40 municipal permit required for the MFU is expired.
41
 - 42 • **ABC license use is not authorized on the site during any concurrent**
43 **period of use, storage, or structure on the subject lots in violation of**
44 **municipal code.**
45
- 46 4. The outdoor seating area shall be a deck structure providing maximum square
47 footage no greater than 500 square feet. The deck shall be constructed

1 substantially as depicted in the rendering photograph included with applicant's
2 brief as Exhibit 5, incorporated herein by reference provided, however, the
3 outdoor seating area shall comply with any conditions, requirements or
4 provisions that the ABC Board may require of AK Alchemist even if those
5 conditions, requirements or provisions conflict with those set forth in this
6 Resolution. In the event of any variation from the terms of this
7 Resolution, AK Alchemist shall advise the Planning and Development
8 Services divisions of such variation(s) prior to implementation. The
9 Planning and Development Services divisions may approve such
10 variation(s), or may require the AK Alchemist to come back before the
11 Assembly for approval of a modification of the conditional use.
12

- 13 5. On-premise sale of alcoholic beverages may be seven days a week, and only
14 concurrent with the service of food from the food menu. Alcoholic beverages
15 shall not be dispensed prior to 11:00 a.m. and shall not be dispensed after
16 11:00 p.m.
17
- 18 6. Applicant intends the deck to be free-standing, without attachment to the MFU.
19 Certain seasonal use structures including decks may be erected in the B-2
20 zoning districts without meeting all requirements for permanent structures, if
21 requirements in AMC 23.10.104.3.2 are met. For purposes of public health and
22 safety, compliance with requirements applicable to seasonal use structures in
23 AMC 23.10.104.3.2 is a special limitation to this conditional use permit.
24 Recognizing that applicant's deck is not intended as a seasonal structure, AMC
25 23.10.104.3.2 subsections C and F shall not apply as special limitations. The
26 deck structure shall maintain outdoor seating accessible to persons with
27 physical disabilities.
28
- 29 7. Applicant will acquire commercial liability insurance consistent with industry
30 standards for a business open to the public serving beer & wine.
31
- 32 8. With the exception of a banner sign on the deck railing in compliance with AMC
33 chapter 21.11 (new code), outdoor signage advertising beer and wine and MFU
34 signage in public view advertising beer and wine are prohibited because such
35 signage may be mistaken as offering drive-through or dine-in availability. Menu
36 and table advertisements of beer and wine for service concurrent with food are
37 not prohibited.
38
- 39 9. Applicant provided a copy of the municipal application for Right of Way Permit
40 marked Attachment F, the Queuing Plan, and municipal Traffic Engineering
41 Conditions of Approval associated with the drive-through MFU coffee cart
42 service for parcel #022-096-23-000. During appeal, applicant revised the
43 municipal land use permit request to delete all square footage proposed as
44 premises serving area within the MFU, and instead to offer food and beverage
45 for on-site consumption exclusively on an outdoor deck not to exceed 500
46 square feet. Applicant shall secure municipal Traffic Engineering approval for
47 the traffic queuing plan and conditions of approval for parcel #022-096-23-000
48 for the revision adding outdoor seating with beer and wine consumption on a

1 deck not to exceed 500 square feet, assuming temporary toilet facilities for
2 customer use.

3
4 10. A notice of zoning action shall be filed with the State of Alaska Recorder's
5 Office within 120 days of the Assembly's approval of this conditional use.

6
7 11. Servers will be trained in accordance with the Alcoholic Beverage Control
8 Board's "Liquor Server Awareness Training Program," as described in
9 AS 04.21.025. Upon demand, the applicant shall demonstrate compliance with
10 a "Liquor Server Awareness Training Program" approved by the State of Alaska
11 Alcoholic Beverage Control Board, such as or similar to the program for
12 "Techniques in Alcohol Management (T.A.M.)."

13
14 12. Use of the property for the duration of this limited conditional use permit by any
15 person shall comply with all current and future federal, state and local laws and
16 regulations including but not limited to laws and regulations pertaining to the
17 sale, dispensing, service and consumption of alcoholic beverages and the
18 storage, preparation, sale, service and consumption of food. The owner of the
19 property, the licensee under the Alcoholic Beverage Control license and their
20 officers, agents and employees shall not knowingly permit or negligently fail to
21 prevent the occurrence of illegal activity on the property.

22
23 13. A copy of the conditions imposed by the Assembly in connection with this
24 conditional use approval shall be maintained on the premise at a location visible
25 to the public.

26
27 **Section 3.** The approved period and other special limitations are established in recognition
28 that the application presents a unique business model of first impression, and the business
29 model is neither specifically prohibited nor fully addressed under provisions of municipal land
30 use and building code in effect for this application. Factors unique to this application that
31 support special limitations for land use approval on a trial basis by the Anchorage Assembly
32 at this site are reflected in the Decision on Appeal.

33
34 **Section 4.** This limited alcoholic beverages conditional use permit for on-premises
35 consumption of beer and wine concurrent with service of food from the food menu shall
36 expire March 31, 2018, without further action by the Assembly. In accepting and submitting
37 this conditional use approval to the ABC Board, applicant acknowledges and agrees that
38 during the permitted land use period prior to expiration, Assembly review of the limited
39 conditional use permit may be initiated by the Assembly. Initiation of Assembly review may
40 occur in circumstances such as, but not limited to, notice of any ABC Board violation by
41 applicant; a request from the Chair of the Assembly Public Safety Committee or the Chief of
42 Police; formal introduction by an Assembly Member requesting review and/or modification of
43 conditional use permit; the potential need for AK Alchemist to provide on-site parking or other
44 site improvements; revision of service hours in consideration of neighboring residential use;
45 or a request by the applicant. **Assembly review of the limited conditional use permit
46 prior to expiration shall be a separate and distinct process from administrative review
47 associated with MFU permit renewals, Fire Department safety inspections, reviews
48 appropriate for seasonal use structures under AMC 23.10.104.3.2, and other routine**

1 **administrative actions.** The scope of review may include potential modification of the
2 conditions, permit extension, or early termination. These provisions shall apply:
3

- 4 1. In support of the appeal, Applicant seeks to advance applicant's development
5 plans for a permanent structure on applicant's property. Applicant has
6 developed its current MFU business and requests discretionary action from the
7 Anchorage Assembly to advance long term development plans by Assembly
8 approval of the current application, guided by the Anchorage 2020 Plan and the
9 Anchorage Downtown Comprehensive Plan. Prior to any Assembly action to
10 extend the duration of this limited permit, applicant shall provide a report to the
11 Anchorage Assembly on applicant's progress toward the long term
12 development of this parcel.
13
- 14 2. The Assembly will give applicant 30-day advance notice of any permit review
15 not initiated by applicant, and the notice will identify potential concerns and
16 changes the Assembly may consider at a hearing before the Anchorage
17 Assembly. The Assembly may request applicant meet informally with the
18 Assembly in Work Session or in an Assembly Committee meeting.
19

20 **Section 5.** During the appeal, the Assembly was made aware that a "quick-
21 connect/disconnect" option to on-site municipal water and sewer for use by serving staff
22 within the MFU is available but not authorized under current municipal building code
23 23.10.104.4 prohibiting MFU connection to all utilities except electrical. If the Anchorage
24 Assembly amends Municipal Code to allow MFU connection to water and sewer, the
25 applicant will connect to on-site municipal water and sewer, consistent with Municipal Code,
26 as soon as practicable after notice of the code amendment allowing the connection.
27

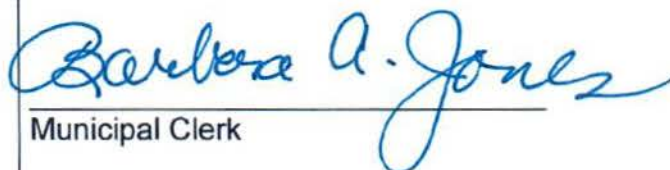
28 **Section 6.** In addition to any other remedy or recourse available to the Municipality, failure
29 to comply with the conditions of this limited conditional use permit shall constitute grounds for
30 its modification, termination, or revocation.
31

32 **Section 7.** This resolution shall become effective immediately upon passage and approval
33 by the Anchorage Assembly.
34

35 PASSED AND APPROVED by the Anchorage Assembly this 9th day of
36 February, 2016.
37

38
39
40 
41 _____
42 Chair of the Assembly

43 ATTEST:

44
45 
46 _____
47 Municipal Clerk