



MEMORANDUM

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

DATE: August 14, 2018

FROM: Erika McConnell, Director

RE: Potential Regulations Change:
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: Initial draft for board to consider opening a regulations project

Background: 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 ____)

Register _____, _____ 2018

COMMERCE, COMMUNITY, AND EC. DEV.

Authority:	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	