



MEMORANDUM

TO: Bob Klein, Chair, and Members of the Alcoholic Beverage Control Board DATE: April 29, 2019

FROM: Erika McConnell, Director RE: 156 In and Out Liquor #1

Requested Action: License renewal

Statutory Authority: AS 04.06.090(b): “The board shall review all applications for licenses made under this title and may order the director to issue, renew, revoke, transfer, or suspend licenses and permits authorized under this title.”

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.”

AS 04.11.480(c): “A local governing body may recommend that a license be issued, renewed, relocated, or transferred with conditions. The board shall consider recommended conditions and testimony received at a hearing conducted under AS 04.11.510(b)(2) or (4) when it considers the application or continued operation, and the recommended conditions and the record of the hearing conducted under AS 04.11.510(b)(2) or (4) shall be kept as part of the board’s permanent record of its review. If the local governing body recommends conditions, the board shall impose the recommended conditions unless the board finds that the recommended conditions are arbitrary, capricious, or unreasonable. If a condition recommended by a local governing body is imposed on a licensee, the local governing body shall assume responsibility for monitoring compliance with the condition, except as otherwise provided by the board.”

Staff Recommendation: No action

Background: In and Out Liquor #1 is a package store located at 3601 Arctic Boulevard, in Anchorage. The Municipality of Anchorage protested the renewal of this license “pending a public

hearing and subsequent final action upon the license by the Assembly.” At the February 2019 meeting, the board determined the protest was arbitrary, capricious, and unreasonable because it contained no basis for the protest. The board voted to approve the renewal. The license was issued on March 1, 2019.

On March 14, 2019, the office received notice from the Municipality of Anchorage that it was lifting its protest and requesting conditions (listed below) be placed on the license. The requested conditions were received 90 days after the municipality was notified of a complete renewal application for this license.

While the statute at AS 04.11.480 does not state that requested conditions must be provided within the 60 day protest window, that seems to be an obvious conclusion as there must be some licensing action (issue, renewal, relocation, transfer) during which to add conditions. Since the board did not uphold the protest and the license has already been issued, the opportunity to add conditions appears to have passed. The municipality has the option to request conditions next January during the period to protest continuing operation of a license.

Requested conditions:

A. Small single-serving containers and products prohibitions:

1. No single-serving container of beer or malt beverage may be sold or offered for sale that has an alcohol content equal to or greater than 8.0% for less than \$2.49 per container.
2. Glass bottles of products shall not be sold if plastic container options for the same product are available locally.
3. No single-serving of an alcoholic beverage other than beer or wine may be sold or offered for sale in a container having a capacity of approximately 50 ml or 1.6 oz., commonly known as miniatures, shooters, or airplane serving size bottles, for a price less than \$1.70 per container.
4. Licensee shall not sell more than two “shooters” to any one customer, per day.

B. Other conditions recommended:

1. All shooters and single-serving containers of beer or malt beverage in containers of 16 oz. or less shall be labeled with a sticker or other identifying mark to identify the location of the point of sale.
2. The licensee shall, in good faith, execute and comply with a Memorandum of Understanding (MOU) between Midtown Community Council (MCC) and Dong K. Kang DBA In & Out Liquor #1, regarding licensee’s operations, practices, and effect on the area. The MOU conditions shall have no binding effect on the Assembly or the Municipality of Anchorage.
3. The conditions recommended by the Assembly herein shall only be applicable to license #156 while it is located at 3601 Arctic Blvd., in Anchorage. If the license is transferred to a different location all conditions shall be lifted from license #156; however this does not prevent the Anchorage Assembly from recommending the same or other conditions be imposed on the license at the time it reviews an application to transfer the location.

Attachment: MOA lift of protest and requested conditions



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4316 • Fax: (907) 249-7533 <http://www.muni.org/assembly/license>

March 14, 2019

Office of the Municipal Clerk Licensing

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

Re: Dong K. Kang DBA In & Out Liquor #1, LL#156

Dear Ms. Milton:

On January 29, 2019 the Anchorage Municipal Assembly approved the conditional protest of the renewal of package store liquor license, #156 for the above listed establishment until a subsequent public hearing took place to allow the Assembly further review of concerns expressed by the Midtown Community Council and the Assembly took final action on the license.

The Assembly is aware the ABC Board considered its protest at the February 19-20 meeting, dismissed it as arbitrary, capricious or unreasonable, and renewed this license. The Assembly did not want to waive its right to protest, and regardless of the ABC Board's action, the Assembly followed through to fully document this protest action.

The subsequent public hearing took place on March 5, 2019 and the Assembly passed AR 2019-52, As Amended which documents the Assembly's findings from the public hearing. AR 2019-52, As Amended is attached for your information.

The Municipality of Anchorage Clerk's Office LIFTS THE PROTEST on license #156. However, the applicant may have conditions of approval that the Assembly requests the ABC Board impose for the applicant to fulfill before their license is renewed.

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

CC: Dong K. Kang

Attachment: AR 2019-52, As Amended

Municipal Clerk's Office
Amended and Approved
Date: **March 5, 2019**

Submitted by: Assembly Chair Croft,
Assembly Vice-Chair Rivera, and
Assembly Public Safety Committee
Chair Dyson
Prepared by: Municipal Clerk's Office
For reading: February 26, 2019

ANCHORAGE, ALASKA
AR No. 2019-52, As Amended

1 **A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY REQUESTING**
2 **THAT CONDITIONS BE IMPOSED BY THE STATE ALCOHOLIC BEVERAGE**
3 **CONTROL BOARD ON PACKAGE STORE LIQUOR LICENSE #156 FOR DONG K.**
4 **KANG DBA IN & OUT LIQUOR #1 LOCATED AT 3601 ARCTIC BLVD. ANCHORAGE,**
5 **AK 99507, AND TAKING FINAL ACTION ON THE RENEWAL APPLICATION FOR**
6 **THIS LICENSE.**

7
8 (Midtown Community Council)
9

10 **WHEREAS**, Dong K. Kang has made an application with the Alaska Alcohol and
11 Marijuana Control Office (AMCO), for consideration by the Alcoholic Beverage Control
12 (ABC) Board, and has paid the required fee for the renewal of package store liquor license
13 #156 to be used for In & Out Liquor #1, located at 3601 Arctic Blvd., Anchorage, Alaska,
14 99507; and
15

16 **WHEREAS**, the Assembly passed AR 2019-23, as amended, on January 29, 2019,
17 following a public hearing, stating its protest to the renewal of liquor license #156, until a
18 second public hearing occurred and the "Assembly has taken final action on the license";
19 and
20

21 **WHEREAS**, the attachments to AR 2019-23 included, among other things:
22

- 23 • An email from Assembly Member Rivera, on behalf of the Midtown Community
24 Council, requesting a public hearing regarding the renewal of liquor license #156;
- 25 • The "Calls for Service Report" of APD activity for 3601 Arctic Blvd; and
26

27 **WHEREAS**, at the Regular Assembly Meeting of January 29, the Assembly completed
28 the first public hearing and set a second public hearing to continue their review of the
29 renewal application and concerns expressed by the Midtown Community Council; and
30

31 **WHEREAS**, the Assembly has provided the liquor licensee the opportunity to defend the
32 renewal application, has considered the testimony and evidence relevant to this liquor
33 license, and has considered protesting renewal, waiving its right to protest, or requesting
34 the ABC Board impose conditions;
35

36 **NOW, THEREFORE**, the Anchorage Assembly resolves:
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38 **Section 1.** The Anchorage Assembly finds the applicant and the Midtown Community
39 Council were given adequate notice and a hearing was properly held January 29, 2019

1 and February 26, 2019 for purposes stated herein with relevant evidence presented as
 2 indicated in the public records maintained by the Municipal Clerk.

3
 4 **Section 2. Findings.** Per Anchorage Municipal Code section 2.30.125, in the exercise
 5 of its powers and under AS 04.11.480 and 3 AAC 304.145 to protest issue, renewal and
 6 transfer of alcoholic beverage licenses within the Municipality of Anchorage, the
 7 Assembly shall consider whether the proposed license meets the factors and standards
 8 set forth in that section. The factors and standards potentially relevant, pending the public
 9 hearing, to the renewal application for license #156 are listed below.

10
 11 After review of the application and all relevant information, the Assembly finds that (**only**
 12 **check items that apply**):

- 13
 14 1. *Training.* The applicant cannot demonstrate prospective or continued
 15 compliance with a liquor server awareness training program approved by the state
 16 alcoholic beverage control board, such as or similar to the program for techniques
 17 in alcohol management (T.A.M.). Until such plan is approved, training by a
 18 licensee's employees in the T.A.M. shall constitute compliance with this section.
 19 (This subsection is effective December 1, 1985.)
 20 2. *Operations procedures.* The applicant cannot demonstrate prospective or
 21 continued compliance with operations procedures for licensed premises set forth
 22 in AMC section 10.50.035.
 23 3. *Public safety.* The operator cannot demonstrate the ability to maintain order
 24 and prevent unlawful conduct in licensed premises. In determining the operator's
 25 demonstrated ability to maintain order and prevent unlawful conduct, the assembly
 26 has considered police reports, testimony presented before the assembly, written
 27 comments submitted prior to or during the public hearing, and other evidence
 28 deemed to be reliable and relevant to the purpose of this subsection and in the
 29 record for AR 2019-23 and this resolution. For purposes of AMC section 2.30.125
 30 and AMC section 10.50.035 the term "licensed premises" shall include any
 31 adjacent area under the control or management of the licensee.
 32 4. *Public health.* The operator has engaged in a pattern of practices injurious to
 33 public health or safety, such as providing alcohol to minors or intoxicated persons,
 34 committing serious violations of state law relevant to public health or safety, or
 35 other actions within the knowledge and control of the operator which place the
 36 public health or safety at risk. The Assembly has considered criminal convictions,
 37 credible proof of illegal activity even if not prosecuted, police reports, testimony
 38 presented before the Assembly, written comments submitted prior to or during the
 39 public hearing, and other evidence deemed to be reliable and relevant to the
 40 purpose of this subsection and in the record for AR 2019-23 and this resolution.
 41 5. *Other.* The Assembly finds these other facts and circumstances relevant:

42 [_____
 43 _____]

44 **The Midtown Community Council has gone on the record concerning**
 45 **significant health, welfare, and associated "quality of life" impacts related to**

alcohol abuse. By observation of the inebriated, their litter – it has become clear that cheap alcohol in the form of 50 ml shooters and single fortified beer cans are a significant component. The Midtown Community Council has met with the licensee and he has attended several Council meetings. The Midtown Community Council proposed similar requirements on Mom & Pop’s across the street from this location, and with that licensee’s assent they were added as conditions to the Mom & Pop’s license.

Section 3. The Anchorage Assembly, based on the evidence and information provided and its findings in Section 2, hereby **conditionally protests** the renewal of liquor license #156 until the following conditions to remediate the above findings are met, if any are listed:

Section 4. Per AMC subsection 2.30.120F.2., in the exercise of its rights under AS 04.11.480(c), based on the evidence and information provided, and based on the findings in Section 2, the Assembly respectfully requests that the Alcoholic Beverage Control Board impose the following conditions, if any are listed, on liquor license #156:

- A. Small single-serving containers and products prohibitions:
 1. No single-serving container of beer or malt beverage may be sold or offered for sale that has an alcohol content equal to or greater than 8.0% for less than \$2.49 per container.
 2. Glass bottles of products shall not be sold if plastic container options for the same product are available locally.
 3. No single-serving of an alcoholic beverage other than beer or wine may be sold or offered for sale in a container having a capacity of approximately 50 ml or 1.6 oz., commonly known as miniatures, shooters, or airplane serving size bottles, for a price less than \$1.70 per container.
 4. Licensee shall not sell more than two “shooters” to any one customer, per day.

- B. Other conditions recommended:
 1. All shooters and single-serving containers of beer or malt beverage in containers of 16 oz. or less shall be labeled with a sticker or other identifying mark to identify the location of the point of sale.
 2. The licensee shall, in good faith, execute and comply with a Memorandum of Understanding (MOU) between Midtown Community Council (MCC) and Dong K. Kang DBA In & Out Liquor #1, regarding licensee’s operations, practices, and effect on the area. The MOU conditions shall have no binding effect on the Assembly or the Municipality of Anchorage.

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3. The conditions recommended by the Assembly herein shall only be applicable to license #156 while it is located at 3601 Arctic Blvd., in Anchorage. If the license is transferred to a different location all conditions shall be lifted from license #156; *however* this does not prevent the Anchorage Assembly from recommending the same or other conditions be imposed on the license at the time it reviews an application to transfer the location.

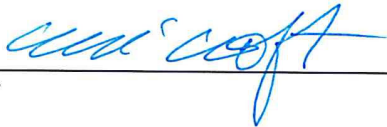
4. _____

5. _____

Section 5. The Anchorage Assembly hereby **lifts its protest** of the renewal of liquor license #156, provided that any conditions in Section 3 are met, and/or that any conditions in Section 4 are added to the license.

Section 6. This resolution is the Assembly's final action on the renewal application for liquor license #156, and the Municipal Clerk shall present this resolution to the Alcohol & Marijuana Control Office. This resolution shall be effective upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this 5th day of March, 2019.



Chair

ATTEST:



Municipal Clerk

MUNICIPALITY OF ANCHORAGE
ASSEMBLY INFORMATION MEMORANDUM

No. AIM 27-2019

Meeting Date: February 26, 2019

1 **From:** CHAIR

2
3 **Subject:** AR 2019-52, a resolution of the Anchorage Municipal Assembly
4 requesting that conditions be imposed by the State Alcoholic
5 Beverage Control Board on package store liquor license #156 for
6 Dong K. Kang DBA In & Out Liquor #1 located at 3601 Arctic
7 Blvd., Anchorage, AK 99507, and taking final action on the
8 renewal application for this license.

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11 Attached for the Assembly's review is the Midtown Community Council
12 Resolution regarding AR 2019-52 for liquor license #156 for Dong K. Kang DBA In &
13 Out Liquor #1.

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17 Prepared by: Miranda Honest, Business License Official

18 Approved by: Barbara A. Jones, Municipal Clerk

19 Respectfully submitted: Eric Croft, Chair

Draft for Consideration

Midtown Community Council Resolution
#2019 - _____

A Resolution of the Midtown Community Council requesting the Municipal Assembly place conditions/limitations on the "Conditional Use" for package liquor sales currently up for biannual renewal for "In and Out Liquor #1," located at 8601 Arctic Boulevard, License #156. The proposed Conditions/Limitations are necessary to make this use, at this specific location compatible with the surrounding neighborhood and uses, as well as, establishing consistent standards within an area of a high concentration of package liquor outlets.

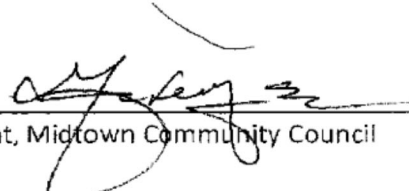
Whereas, members of the Midtown Community Council have observed continued littering of shooter bottles and cans of fortified beer in the area of 36th Avenue, Arctic Boulevard and Bering Street, which do not have distinctive marks placed on these items by clerks at Mom and Pop's Grocery and Liquor, as required by their license, and whereas, members of the Community Council have observed customers leave Mom and Pop's due to required minimum pricing conditions on their license, jay walk across 36th Avenue, enter "In and Out #1" and purchase multiple shooters priced at \$.99, leave the store and place the multiple shooters in various pockets, then jay walk across 36th Avenue to walk North towards the park, and

Whereas, Community Council representatives met with the "In and Out #1" licensee to request voluntary conformance to limitations imposed on Mom and Pop's, to which the licensee refused to adopt minimum pricing standards, for shooters and single unit fortified beer, or marking these products at point of sale, and

Whereas, without adoption of these very limited and non-invasive conditions, the Midtown Community Council does not believe the "In and Out #1" package liquor store can be made compatible with the surrounding neighborhood and uses,

Now therefore, the Midtown Community Council requests the Assembly to place Conditions/Limitations on the requested Conditional Use, consistent with the Conditions/Limitations placed upon Mom and Pop's Grocery and Liquor Conditional Use, including a Memorandum of Understanding with the Community Council, or make a finding that the Conditional Use is "not compatible" with the surrounding area and deny it.

Passed and Approved by the Midtown Community Council this 13th day of February, 2019, by a vote of 7 yea, 0 nay.



President, Midtown Community Council