



**Alcoholic Beverage Control Board
Meeting Minutes
September 10, 2019
Second Judicial District
Our Savior's Lutheran Church, 507 Bering Street
Nome, Alaska**

● **ADMINISTRATION**

8:59 am

A. Call to Order

B. Roll Call

Board Members Present

*Bob Klein, Chair, Industry Member
Rex Leath, Vice Chair, Public Safety Member
Charlie Cross, Rural Member
Glenn Brady, Industry Member*

Board Members Present via Phone (enters at approximately 11:00 am) see below.

Sara Erickson, Public Member

Staff Present

*Erika McConnell, Director
Mikal Martin, Records and Licensing Supervisor*

Legal Counsel Present

Harriet Milks, Assistant Attorney General

C. Approval of Agenda

Bob Klein asks if there are any changes requested to the agenda, none are proposed, the agenda is approved as written.

D. Approval of the July 9, 2019, Meeting Minutes

TAB 1

Considered below

E. Approval of the July 29, 2019, Meeting Minutes

TAB 2

No changes or corrections are presented.

Glenn Brady moves to approve the July 9 & 29 meeting minutes presented in Tabs 1 & 2.

Charlie Cross seconds the motion.

None opposed, motion carries.

● BOARD GOVERNANCE

9:02 am

No changes in status are disclosed. Bob Klein states that everyone has received public comment regarding regulations but that he's sure that every board member who has received such comment has directed the commenter to the public comment for regulations.

● PUBLIC TESTIMONY

9:02 am

Public testimony is limited to issues not on this agenda and that are not proposed regulations. The call-in number is 1-800-315-6338, code 69173#.

Sarah Oates, Alaska CHARR states that she congratulates Jane Sawyer on her new position and thanks staff for working to arrange a renewal application training for CHARR in Seward.

No one else is present via phone or in person to testify at this time.

Bob Klein states that he will leave this option open during the day; he asks Amy Demboski to come forward.

Amy Demboski states that she has provided the board with a letter regarding regulation reform. She discusses the statewide regulation reform project. She discusses the purpose of the project as stated in her letter. She states that she looks forward to working with the board towards regulation reform.

Bob Klein states that the board is hoping that the title 4 project passes and he states that regulations will follow and many changes will occur.

Amy Demboski states that "less is more" and the administration is concerned regarding actions that the board has taken on recent regulations.

Bob Klein asks if anyone else is present to testify, no one comes forward.

● DIRECTOR'S REPORT

9:10 am

A. Report

TAB 3

Erika McConnell summarizes her report as presented in Tab 3.

Regarding the Board's approval of the Administrative Law Judge decision regarding the Triplets case, she asks the board to provide specific guidance regarding notifications and frequency, prioritization, treating non-responses, and at what point does not issuing delegated license become a de-facto denial?

Bob Klein states that the decision that was adopted last meeting was to fix a mistake that occurred, he doesn't see the board developing the type and number of procedures suggested and doesn't find the requested clarifications to be a board action.

Erika McConnell explains that the decision is relevant to the questions posed because of the decision by the judge regarding "denials" and "delegation". She states that this appears to require that the licensee be notified during each step of delegation and she feels that the board needs to be clear with staff regarding when notifications are necessary and at what point a de-facto denial occurs.

Bob Klein states that the judge's decision was based on a mistake regarding an email not being sent.

Harriet Milks states that the judge's decision acknowledges a de-facto denial which is currently not in the board's vernacular. She states that this is relevant especially regarding de-facto denial situations in the future.

Glenn Brady states that he remembers that the Administrative Law Judge's decision was regarding an isolated circumstance, and that he doesn't see as being a reason for procedural change. He states that in general maybe tightening up of procedures would be good. He states that the general office processes should be streamlined with the use of technology and that better tools would help minimize situations like these. He agrees with Bob Klein that procedures do not need to be modified for this reason at this time.

Rex Leath states that his recollection was not that the processes were faulty, that a mistake was made. He doesn't think that everything needs to be changed.

Erika McConnell states that the notification that did not reach the licensee was not a required notification. She states that it's difficult to ensure that the information provided to applicants is received.

Rex Leath states that this is related to 'good business practices' on the part of staff.

Erika McConnell states that these "extra assurances" will take more time and will take away from other requirements. She is only asking for assistance regarding prioritization.

Rex Leath states that as far as prioritization goes for this type of matter it should be; 1) safety concerns and then 2) licensee cost. He finds this issue to be a giant can of worms.

Bob Klein states that the staff should give it their best effort and that if mistakes are made it can be fixed or addressed.

Erika McConnell moves forward with her report.

Regarding the Board Meeting Schedule; Bob Klein asks if the board has reviewed the meeting schedule, and states that the schedule of board meetings is acceptable.

B. Legislative Requests

TAB 4

Erika McConnell summarizes Tab 4; the board is already on the record as supporting Senate Bill 52 but this is an opportunity for the board to ask for any other changes.

No requests are made.

A. Manufacturer License Samples

TAB 5

Erika McConnell summarizes Tab 5. She asks the board to clarify if the holder of a brewery license can take samples off of their premises to retail licensed premises so that the retailer may decide whether or not to carry the brewery's products. She does not feel that AS 04.16.120(b) applies due to the proposed action being by a licensee's employee or licensee. AS 04.11.130(c) states that a brewery may allow provide samples of product, however she asks the board to interpret AS 04.11.130(c) as on the licensed premises rather than at any event or location. She also states that she is asking the board to allow sampling of product by retail licensees to discuss business as a "general business practice" rather than the sampling described in AS 04.11.130(c) and other relevant manufacturing statutes.

Glenn Brady states that the distinction is that it is not a "person" sampling, it's a registered agent or licensee, and as long as it's a business exchange, he finds no fix needed. As long as there are no abuses of it, his recommendation is to allow the standard practice to move forward as referenced. "Self-Distribution" from manufacturer to retailer. He doesn't see a problem with what Erika McConnell has proposed.

B. Sole Proprietors

TAB 6

Erika McConnell discusses the proposed change summarized in Tab 6. She states that AMCO has allowed a single person or group of people to be considered a "sole proprietorship" under 04.11.430(a). She discusses a different statute that states that under Alaska law any grouping of two or more people in business situations become an automatic partnership. She proposes to make the forms and records clear that a sole proprietorship is one person and that if no entity is held but multiple people are present, it is a de-facto partnership. It will be an adjustment to forms and staff will be working with licensees regarding the change. She finds that this will help in the "death of a licensee" issue. She states that staff has been working with an Assistant Attorney General whose specialty is corporate law.

Sarah Oates, Alaska CHARR, asks for clarification that married couples are not going to be required to file partnership agreements under this change. The direction she was given previously was that sole proprietors don't need these partnership agreements and if they are considered something other than a sole proprietorship, she hopes that they are not required to make this filing.

Bob Klein asks about the current forms having husband and wife listed. He is concerned about public confusion.

Rex Leath asks what's not working, currently, and what the downside is to the current system.

Erika McConnell explains that sole proprietorships that are held by multiple people currently exist. This becomes a problem, particularly when the death of a licensee occurs. It is her understanding that any time multiple people would hold a license it creates a de-facto partnership.

Harriet Milks states that in these situations, the two people are partners, even if married.

Glenn Brady asks how many instances of this are within the pool of licensees (staff is unsure at this time). He also asks if there is an apportionment of ownership within one of these "sole proprietorships" and

how the interest is divided, would this necessitate transfers of controlling interest where they would not be previously required.

Erika McConnell states that the interest is currently considered a lump.

Glenn Brady asks, regarding the language “except as provided in (b) of this section”, what the exceptions are. (b) states that associations formed in a different statute or jurisdiction are not partnerships under the referenced chapter.

Rex Leath asks if this applies to a sole proprietorship as referenced.

Harriet Milks states that she is unsure but that she will get back to the board.

Rex Leath asks if there is any increased costs related to this change.

Erika McConnell states that that was not the intent and she does not anticipate it incurring additional costs but she references what Sarah Oates mentioned regarding the partnership agreement and states that the board may wish to examine the matter at the next agenda. The intent is to make this a clearer process particularly when someone dies. The board moves on to the next agenda item.

● **ENFORCEMENT REPORT**

9:43 am

TAB 7

James Hoelscher states that he has provided a short report. He offers to answer any questions the board may have and he emphasizes the workload that enforcement is under at this time.

Bob Klein asks about the two columns in the first spreadsheet, (current and YTD) and asks why they have different ending dates.

James Hoelscher states that 8/28 is a typo, the correct date is 8/23.

Bob Klein asks what the difference between an investigation and advisory/inspection is.

James Hoelscher states that they are different matters; investigations are usually based on reports of violations and can take much more investigator time. Additionally, investigations may end up in NOV's and would be counted in both areas. It depends on the course of action taken to get to the end point.

Bob Klein asks about the “criminal charges” category.

James Hoelscher states that controlled substances, lack of server education (prolonged cases), service to a minor, allowing minor on premises. These are referrals to the police for possible criminal charges.

Glenn Brady asks about the investigations tally being separate from inspections and walk through tallies. He asks about the lack of accusations.

Erika McConnell clarifies that an “accusation” is a particular action by the Director, not an accusation by the public against a licensee.

Glenn Brady asks if, in all of the correspondence, the ‘tattling’ leads are tracked separately in the pie chart.

James Hoelscher states that the reports are considered a "contact". These contacts are phone calls, emails and in person occurrences. A lot of the contacts are pro-active enforcement work to ensure regulations are not violated.

Charlie Cross asks about the training and public appearance section and asks what the trainings are.

James Hoelscher states that police departments will request trainings regarding title 4 to have more information regarding title 4 enforcement. He states that usually title 4 violations are less common. AMCO Enforcement works with Law Enforcement to inform them about the title 4 enforcement issues and Title 17 is also covered. Public appearances would occur for requested appearances at events held for schools or counsel meetings.

A. Notices of Violation Issued and Licensee Responses

TAB 8

James Hoelscher states that he has resubmitted the Houston Lodge (License #533) doing business as issue again for this meeting, he has come to an agreement with Houston Lodge.

Bob Klein states that the agreement was well done.

James Hoelscher states that a major retailer has received 3 NOVs for lack of server education. No full response has yet been received. He finds their response inadequate because they did not discuss preventing the reoccurrence. He states that the response will be provided to the board in his next report.

Bob Klein states that he is interested in their response.

B. 1381 Creekbend Company: Creekbend Company LLC

TAB 9

64777 Second Street, Hope

License: Restaurant or Eating Place

Local Governing Body: Kenai Peninsula Borough

Erika McConnell states that the board at the last meeting had received comments regarding this license and requested the matter be brought before them. She summarizes Tab 9.

She states that the tab published and provided before the meeting did not have the attachments but that the board computers have all attachments at this time.

Jana Weltzin, counsel, is present and Stephen Thomas, licensee is present via phone.

She states that she has hard copies of the response from the licensee because she can't find the attachments in the tab. She states that there are two main issues regarding this matter; permit requirements and public concerns. She states that the licensee has been with the company for a long time even before he purchased the business. She reads the licensee's response to the tab. She mentions the cost to Creekbend being in the thousands of dollars for the permit changes. She references an email in the alcohol mailbox stating that the Creekbend detractors will slash tires during events. She finally states that, regarding the page 3 suggestions, she doesn't find that the board or staff have the right to ask for those items. She states that the community committee should be the ones to have this discussion. She asks Stephen Thomas if he has additional information.

Stephen Thomas states that he has worked in Hope since 2009 and only been working at this property since the purchase began. He references Hope being an unincorporated town that's being put on the map and growth is needed.

Bob Klein asks Stephen Thomas to describe the community group.

Stephen Thomas states that the Community Counsel is the closest thing they have to a governing body. A committee was formed with people on both sides on this issue. The committee meets every other Saturday to prioritize and create proactive solutions.

Bob Klein states that the director provided 4 suggestions and asks how they were written.

Erika McConnell states she focused on the main complaints that were received. She states that the 11:00 cutoff is the cutoff for the restaurant permit, the regular caterer's permit isn't required to stop at 11:00. She states that she struggled with the issues related to drunken people wandering around town, this complaint isn't directly traceable to Creekbend. She didn't find it appropriate to require one licensee to provide police for the rest of the town, however the biggest public safety concern is the drunken individuals.

Glenn Brady asks if the events in question with live music were conducted with a restaurant caterer's permit or beverage dispensary permit.

Erika McConnell refers him to the Tab that lists the permits issued to the location and their types.

Glenn Brady states that there is clearly efforts to grow a business and be responsive to the community but the challenge is that there is clearly something not right. The Restaurant/Eating Place permit is concerning but that the matter appears to be resolved. He does not want there to be a misconception that the sale of alcohol is a right; it is a privilege and thinking of it differently creates issues in the business world. He recommends that the Director look much closer at specific applications, keeping in mind that this is a restaurant or eating place license. He states that the Beverage Dispensary licensee must be responsive to the community as there seems to be a concerning pattern present. He urges the licensee to continue to engage the Community Council and be responsive.

Charlie Cross asks how many individuals have lodged complaints.

Erika McConnell states that there were 13 emails received but there may be duplicates. She is unsure how much of an overlap there is between the trooper complaints and emails in the tab.

Charlie Cross references the concerns of the public safety matters being separate from what the board deals with. It seems like the troopers should be dealing with it.

Rex Leath states that there are several concerns and that the board must look at only the NOV, he finds the language in the NOV to be unclear which he finds to be a problem. He recommends clarity in the applications as submitted by the licensee to avoid further issues. He states that there are many groups that use the town and he is cautious to blame the establishment for that. He finds the other issues to be public safety matters and they should be addressed through the community council.

Bob Klein states that the community council appears to be a positive step and that the changes should come from them. He finds it premature to impose conditions before the community process occurs.

Jana Weltzin states that she will inform the board if a memorandum or understanding is reached.

Break is called at 10:38am.

Meeting resumes at 10:47am.

● LICENSING REPORT

10: 47am

TAB 10

Mikal Martin summarizes her licensing report in Tab 10. She states that the date for transfers to require renewals is November 1st, not October 1st as reflected in her report. She apologizes for the mistake.

Sara Erickson joins the meeting at 10:50am.

Glenn Brady makes a comment about more streamlined workflow. He finds this is an area that the AMCO could be more responsive to licensees. He makes a pitch to support the staff to engage the licensees and states that he appreciates the report and staffs work.

Sarah Oates Alaska CHARR is present and echoes Brady's comments. She states that she recommends that the board consider adding expenditure authority for the new licensing system.

No other questions.

● BOARD CONSIDERATION

10:53 am

A. Three-Year Review of TIPS Server Education Course – Online Version

TAB 11

Erika McConnell summarizes Tab 11.

Glenn Brady states that the link crashed part way through his review. His review of the content found it appropriate and the identity verification seems robust. He still has zipcode reporting questions and references the section scheduled for later consideration.

Glenn Brady moves to approve the Online TIPS program.

Sara Erickson seconds the motion.

None opposed, motion carries.

B. Gold Miners Lodge Restaurant and Motel LLC

TAB 12

Renewal applications.

NOVs for violation of AS 04.11.450; City of Houston protests for non-operation.

1. 4380 Gold Miners Lodge Restaurant and Motel

TAB 13

20333 W Parks Highway, Houston

License: Restaurant or Eating Place

2. 4526 Gold Miners Lodge Restaurant and Motel

TAB 14

Mile 60.5 Parks Highway, Houston

License: Beverage Dispensary – Tourism

Erika McConnell summarizes tabs 12-14. Her recommendation is the denial of the renewal.

Bob Klein asks about the director's recommendation and the transfers that were submitted.

Erika McConnell clarifies that the Beverage Dispensary-Tourism could also be applied for by the new licensee as a new license. She also mentions that these licenses are co-located and discusses possible reasons for this not being addressed previously.

DanaLyn Dalrymple, counsel, is present via phone to testify. Brian and Sandra Gauthier are also present via phone. Counsel states that she will not address the co-location issue. She gives the update that transfers have been submitted. She addresses the premises/lease issues that the director has come into information about. She understands from Daryl Thompson the attorney that there was a publication issue and it had to be republished. She states that all other documents have been submitted including an addendum to the purchase and lease assignment. She states that this document should correct the error in the lease option signed between the parties. This is a two part document, a lease and an option. The dual purpose was put in the same document. There was a scrivener's error where the license was included in the lease not just the option. The transfer included a document reflecting the true intent of the parties including an assignment of those rights to the company from the individuals. She finds those documents to be relevant to this discussion and her clients request that the matter be settled.

Phone is reset.

DanaLyn Dalrymple states that she is unsure where in the presentation she was cut off. She returns to the point that the addendum was submitted with the transfer application on August 15. At the last meeting she states that there was testimony regarding the most recent operations of these licenses. The premises was open in 2017, and in 2018 a waiver was granted. 2019 would be addressed with renewal. She offers to answer questions and reminds the board that the licensees are present.

Bob Klein asks if Counsel saw the Director's recommendation to deny the renewals, he asks for comment.

Counsel states that this entire thing is based off an error that did not reflect the intent of the parties. With the resolution of the matter as stated above, she states that the denial of the renewal is inappropriate.

Bob Klein asks if she recommends if the matter should be again tabled.

Counsel asks for approval or tabling to see the complete package. The only delay in submission was the re-publication with the last date of 9/15/19.

Bob Klein asks the director if she would change her recommendation.

Erika McConnell states that at this time she has heard nothing that would change her recommendation.

Glenn Brady asks about the lodging component of the Beverage Dispensary-Tourism requirement and Erika McConnell states that the establishment is currently compliant.

Erika McConnell states that the renewal of the Beverage Dispensary-Tourism would meet the requirements of the renewal of the Beverage Dispensary-Tourism license type. There are multiple concerns that merit non-renewal, violation of financial interest, protest, and the incomplete transfers.

Bob Klein summarizes the matter at hand.

An individual on the phone asks for clarification regarding the number of rooms necessary for this license.

Bob Klein explains that for this license type the population does not prohibit a new license being issued but issuance and availability are tied to the number of rooms.

**Rex Leath moves to accept the director's recommendation and deny the renewals.
Glenn Brady seconds the motion.**

Sara Erickson asks if there is another license available.

Bob Klein again explains that the tourism license type is not constrained by population but by number of rooms. He states that the only concern is that the number of rooms and he is unsure if it qualifies as a new license.

Erika McConnell states that 10 rooms are available at this time based on the Tourism statement.

Brian Gauthier states that there are not enough rooms available to meet the new license requirements for the Beverage Dispensary-Tourism license type based on the population at this time; he believes that 25 rooms are required. He states that there have never been incidents with the police and it was their intent to be compliant before they moved to Missouri. He explains that the two licenses are located in the same place so that the beer and wine license can be exercised during the off season. The address issue was never brought up to them before today. What is being discussed would uproot the agreement with the prospective new licensees.

Erika McConnell states that the population would require 20 rental rooms for a new Beverage Dispensary-Tourism license.

Bob Klein states that he is uncomfortable with the idea that the entire story has not been provided. He is uncomfortable denying the renewals at this date. There are more submissions that have been made and he feels like this needs to be addressed with all of the information.

*Glenn Brady agrees with Bob Klein, this has become convoluted, particularly regarding the premises issue that needs to be addressed. He has questions regarding the alternating premises issues and hates to see a license disappeared for administrative reasons. **Glenn Brady withdraws his second.***

Rex Leath withdraws his original motion.

Rex Leath states that this matter has been discussed since 2013 and 2014. This has come up for 6 years. He discusses timelines for clarity and factual information. He states that the public at times complains about the timeliness of resolution of matters. He is in favor of the licensee.

Bob Klein states that he wants everything they need for the next meeting.

**Glenn Brady moves to table consideration of these licenses to the next meeting.
Charlie Cross seconds the motion.
None opposed, motion carries.**

- C. 263 Coghill's:** Coghill's, Inc.
807 North A Street, Nenana
License: Package Store
Local governing body: City of Nenana

TAB 15

Requesting additional time extension under AS 04.11.030(b).

Erika McConnell summarizes Tab 15.

Glenn Brady moves to grant the extension to November 14, 2019.

Rex Leath seconds the motion.

None opposed, motion carries.

- D. 1176 Tundra Lodge & R/V Park:** Barbara A Abbott
Milepost 1315 Alaska Highway, Tok
License: Beverage Dispensary - Seasonal

TAB 16

Requesting additional time extension for transfer under AS 04.11.030(b).

Erika McConnell summarizes Tab 16.

Glenn Brady moves to grant the extension by 180 days to April 11, 2020.

Charlie Cross seconds the motion.

None opposed, motion carries.

- E. 3934 Residence Inn by Marriott:** JL 35th Avenue Hotel, LLC
1025 35th Avenue, Anchorage
License: Restaurant or Eating Place

TAB 17

Renewal application.

Local governing body action: Municipality of Anchorage does not protest

Restaurant or eating place license with less than 50% of sales from food.

Erika McConnell summarizes Tab 17.

Glenn Brady moves to table consideration of this matter.

Charlie Cross seconds the motion.

Rex Leath and Erika McConnell discuss the temporary and whether an additional temporary is required for this license to continue operations. Ms. McConnell states that the licensee is continuing to operate with a temporary license.

None opposed, motion is carried.

- F. 4353 No DBA:** Kenneth Fuller
No Premises, Anchorage
License: Beverage Dispensary
From: Latin Connection Entertainment, LLC, dba Playhouse, at 333 W 4th Avenue

TAB 18

Transfer of ownership and location, and dba change.

Local governing body action: Municipality of Anchorage requests conditions

Approvals: Department of Labor – Employment Security, Department of Revenue

Background investigations: complete

Department of Labor - Workers Compensation objects; creditors object due to non-payment.

Erika McConnell summarizes Tab 18.

**Glen Brady moves to approve the transfer with delegation and the requested conditions.
Charlie Cross seconds the motion.**

Rex Leath states that if the protest is approved, “any business associated” with the liquor license appears to be overreaching on the part of the board. He believes that they should be very cautious with the implications of an overarching statement.

Bob Klein states that any action that the assembly takes on the license is subject to the arbitrary, capricious, and unreasonable test by the Board and the protest if arbitrary could be not upheld.

Todd Sherwood, via phone, representing the Municipality of Anchorage, references the local governing body’s responsibility to monitor compliance with the condition. He believes that the board is a check and that the assembly would need to bring it to the board in the first place before action was taken.

Ken Fuller is present via phone to testify. He agrees with the conditions and states that there are only two creditors left, workman’s compensation and the landlord.

Bob Klein states that if this application is passed with delegation the director would grant the transfer once the creditors, including workers compensation, are satisfied.

Colin Lao, by phone, discusses the conditions requested by the Municipality with the Board.

None opposed, motion carries.

● **PUBLIC HEARINGS – PROTESTS**

11:44 am

- A. 1036 Slippery Salmon Bar & Grill:** Northern Lodging, LLC
115 E 3rd Avenue, Anchorage
License: Beverage Dispensary - Tourism
From: Kress Properties, Inc. 50% & Alaska Resort Condos, Inc. 50%
To: Kress Properties, Inc. 100%

TAB 19

Transfer of controlling interest.

Approvals: Department of Labor, Department of Revenue

Pending: Creditors

Background investigations: complete

Municipality of Anchorage protests pending payment of delinquent taxes and certification by Fire and Health Departments.

Erika McConnell states that the protest has been lifted.

Glenn Brady moves to approve the transfer with delegation.

Charlie Cross seconds the motion.

None opposed, motion carries.

- B. 3123 Hangar Lounge: David K Freeman**
Mile 1.5 S Big Lake Road, Big Lake
License: Beverage Dispensary - Seasonal

TAB 20

Renewal application.

Matanuska-Susitna Borough protests pending payment of delinquent taxes and fees.

Erika McConnell summarizes Tab 20.

Bob Klein states that this is the required public hearing regarding the protest.

Glenn Brady moves to rescind the July renewal approval, and deny the renewal with 30 day abeyance and notification to the licensee the abeyance cannot be renewed per 3 AAC 304.145(h).

Rex Leath seconds the motion.

None opposed, motion carries.

- C. 5833 Alpine Creek Lodge: Alpine Creek Lodge LLC**
Mile 68 Denali Highway, Cantwell
License: Beverage Dispensary

TAB 21

New license application.

Approvals: Department of Environmental Conservation, State Fire Marshal

Background investigations: complete

Matanuska-Susitna Borough protests pending issuance of conditional use permit.

Erika McConnell summarizes Tab 21.

Glenn Brady moves to deny the application with an 180 day abeyance and notice that no extension to the abeyance will be granted.

Charlie Cross seconds the motion.

None opposed, motion carries.

● PUBLIC HEARINGS – OBJECTIONS

11:47 am

- A. 1244 Matanuska Brewing Downtown Brewpub: Matanuska Brewing Downtown LLC**
535 W 3rd Avenue, Anchorage
License: Beverage Dispensary
From: Woodshed, LLC, dba Matanuska Brewing Downtown

TAB 22

Transfer of ownership with security interest agreement and dba change.

Local governing body action: pending Municipality of Anchorage

Approvals: Department of Revenue, Department of Labor – Worker’s Compensation

Background investigations: complete

~~Department of Labor – Employment Security objects due to non-compliance.~~

Erika McConnell summarizes Tab 22 and states that the Department of Labor, Employment Security objection has been lifted.

Dan Coffey, counsel, is present via phone.

Glenn Brady asks about the attachment to the tab regarding the municipality of Anchorage food permit being granted to an entity that is not the licensee.

Dan Coffey asks this matter to be included in delegation.

***Glenn Brady moves to approve the application with delegation including resolution of the food permit issue.
Charlie Cross seconds the motion.***

None opposed, motion carries.

B. 2159 Whisky & Ramen: Whisky & Ramen, LLC

TAB 23

436 W 4th Avenue, Anchorage

License: Beverage Dispensary

From: Fish or Cut Bait LLC, dba Blues Central, at 609 F Street

Transfer of ownership and location, and dba change.

Local governing body action: pending Municipality of Anchorage

Approvals: Department of Labor – Worker’s Compensation, Department of Revenue

Background investigations: complete

~~Department of Labor – Employment Security objects due to non-compliance; creditor objects due to non-payment.~~

Erika McConnell summarizes Tab 23 and states that the Department of Labor, Employment Security objection has been lifted.

Glenn Brady moves to approve the application with delegation.

Charlie Cross & Sara Erickson second the motion.

None opposed, motion carries.

C. 3572 Gallo’s Mexican Restaurant #2: Acapulco, Inc.

TAB 24

8615 Old Seward Highway, Anchorage

License: Beverage Dispensary

From: Gallo’s Mexican Restaurant, Inc.

Transfer of ownership.

Local governing body action: pending Municipality of Anchorage

Pending: Department of Revenue, Department of Labor

Background investigations: complete

Creditor objects due to non-payment.

Erika McConnell summarizes Tab 24.

Bob Klein states that this is a public hearing.

Glenn Brady Moves to approve the application with delegation.

Rex Leath seconds the motion.

Glenn Brady clarifies that the “with the delegation” includes satisfaction of the creditors.

None opposed, motion carries.

● **WAIVERS OF MINIMUM OPERATING REQUIREMENTS**

11:54 am

A. Third Waiver Applications

1. **4835 Henri Hawaii:** Henri Hawaii, Inc.
201 E Northern Lights Boulevard, Ste B, Anchorage
Waiver for 2017.

TAB 25

Erika McConnell summarizes Tab 25.

Bob Klein asks about the current status of the license.

Erika McConnell states that staff is unsure of the exact operations since 2017 and is investigating.

Glenn Brady moves to approve the 2017, 3rd waiver of operations.

Charlie Cross seconds the motion.

None opposed, motion carries.

● **SECURITY INTEREST TRANSFERS & INVOLUNTARY RETRANSFERS**

11:56 am

A. Alaskan Lights, Inc

TAB 26

From: Rabideu's Clear Sky Lodge, Inc.

Transfers of ownership with security interest agreements.

1. **242 Clear Sky Lodge**

TAB 27

Mile 280 Parks Highway, Clear

License: Beverage Dispensary

Local governing body action: pending Denali Borough

Approvals: Department of Labor, Department of Revenue

Background investigations: complete

2. **243 Clear Sky Lodge**

TAB 28

Mile 280 Parks Highway, Clear

License: Package Store

Local governing body action: pending Denali Borough

Approvals: Department of Labor, Department of Revenue

Background investigations: complete

Erika McConnell summarizes Tabs 26-28.

Glenn Brady moves to approve both licenses (242 & 243) with delegation and security interest.

Charlie Cross seconds the motion.

None opposed, motion carries.

B. 691 Malemute Saloon: Jingle LLC

TAB 29

3660 Main Street, Ester

License: Beverage Dispensary - Tourism

From: Malemute, Inc. dba Malemute Saloon/Ester Gold Camp

Transfer of ownership with security interest agreement and dba change.

Local governing body action: pending Fairbanks North Star Borough
Approvals: Department of Labor, Department of Revenue
Background investigations: complete

Bob Klein summarizes Tab 29.

Erika McConnell notes that the tourism requirements have been reviewed and that this establishment appears to meet the requirement for transfer.

Glenn Brady moves to approve the transfer with delegation and the security interest.

Rex Leath seconds the motion.

None opposed, motion carries.

● **PUBLIC CONVENIENCE – NEW APPLICATIONS**

11:58 am

- A. 5819 Shogun Seafood & Steak BBQ Restaurant: Y & C LLC**
4400 Homer Spit Road, Homer
License: Restaurant or Eating Place – Public Convenience

TAB 30

New license application.

Local governing body action: pending City of Homer and Kenai Peninsula Borough
Approvals: Department of Environmental Conservation
Pending: State Fire Marshal
Background investigations: complete

Bob Klein and Erika McConnell summarize Tab 30.

Glenn Brady states that this is a unique situation due to the location that appears to be a slippery slope. He asks if the rest of the board has any concern about here being no public to be inconvenienced.

Bob Klein states that another check on this is by the city approval and public comment opportunity at the meeting.

Rex Leath asks about residences on the Homer spit. He asks if vessels are not considered residences.

Glenn Brady asks if the population is tied to census data.

Erika McConnell states that 3 AAC 304.115(b) requires that they be permanent residents.

Glenn Brady moves to approve the application with delegation.

Charlie Cross seconds the motion.

None opposed, motion carries.

● **OUTDOOR RECREATIONAL LODGE LICENSES – NEW APPLICATIONS**

12:03 am

- A. 5831 Highliner Lodge & Charters Inc.: Highliner Lodge & Charters Inc.**
1014 Salmon Way, Pelican
License: Outdoor Recreation Lodge - Seasonal

TAB 31

New license application.

Local governing body action: pending City of Pelican
Approvals: Department of Environmental Conservation, State Fire Marshal
Background investigations: complete

Erika McConnell summarizes Tab 31.

Glenn Brady moves to approve the application with delegation.

Charlie Cross seconds the motion.

None opposed, motion carries.

● **DELEGATED CONSENT AGENDA – NEW & TRANSFER APPLICATIONS**

12:04 pm

TAB 32

Bob Klein reads the Delegated Consent Agenda. See consideration below.

A. 567 Donnelly Dome Liquors: Donnelly Dome LLC

1205 Richardson Highway, Delta Junction

License: Package Store

From: Jack's Liquor & Service, Inc. dba Jack's Liquor & Service, at Mile 266 Richardson Highway

Transfer of ownership and location, and dba change.

Local governing body action: City of Delta Junction does not protest

Approvals: Department of Revenue, Department of Environmental Conservation, Department of Labor

Pending: State Fire Marshal

Background investigations: complete

B. 1384 Bowl of Pho: Haienadangle, LLC

3121 Glacier Highway, Suite 107, Juneau

License: Restaurant or Eating Place

From: Alfonso Soriano, dba Jovany's Italian Restaurant, at 1921 Glacier Highway

Transfer of ownership and location, and dba change.

Local governing body action: pending City and Borough of Juneau

Approvals: Department of Revenue, Department of Labor

Background investigations: pending

C. 2789 Vitus Energy LLC: Vitus Energy LLC

Mile 115.5 Parks Highway, Trapper Creek

License: Package Store

From: Trapper Creek Trading Post LLC, dba Trapper Creek Trading Post

Transfer of ownership and dba change.

Local governing body action: pending Matanuska-Susitna Borough

Approvals: Department of Revenue, Department of Labor

Background investigations: complete

- D. 4806 Vitus Energy LLC:** Vitus Energy LLC
Mile 115.5 Parks Highway, Trapper Creek
License: Restaurant or Eating Place
From: Trapper Creek Trading Post LLC, dba Trapper Creek Trading Post

Transfer of ownership and dba change.

Local governing body action: pending Matanuska-Susitna Borough
Approvals: Department of Revenue, Department of Labor
Background investigations: complete

- E. 4965 Marcello's Greek and Italian Restaurant:** FCAOLM LLC
551 W Parks Highway, Wasilla
License: Restaurant or Eating Place
From: Piccolino's Restaurants, Inc., dba Piccolino's

Transfer of ownership and dba change.

Local governing body action: City of Wasilla does not protest; pending Matanuska-Susitna Borough
Approvals: Department of Revenue, Department of Labor
Background investigations: complete

- F. 5807 Roald Amundsen:** Hurtigruten Cruise AS LLC
Alaskan Waters
License: Common Carrier

New license application.

Pending: USCG COC/COI
Background investigations: complete

- G. 5820 Originale, LLC:** Originale, LLC
400 D Street, Suite 1-B, Anchorage
License: Restaurant or Eating Place

New license application.

Local governing body action: pending Municipality of Anchorage
Background investigations: complete

- H. 5822 Sami's City Diner:** Hukali, LLC
3000 Minnesota Drive, Anchorage
License: Restaurant or Eating Place

New license application.

Local governing body action: pending Municipality of Anchorage
Background investigations: complete

- I. **5823 Gumbo House:** Cilantros, Inc.
611 W 9th Avenue, Anchorage
License: Restaurant or Eating Place

New license application.

Local governing body action: pending Municipality of Anchorage
Background investigations: complete

- J. **5825 Anchorage Brewing Company:** Anchorage Brewing, LLC
148 W 91st Avenue, Anchorage
License: Brewpub

New license application.

Local governing body action: pending Municipality of Anchorage
Background investigations: complete

- K. **5827 M/V L'Austral:** Ponant Company, SAS
Alaskan Waters
License: Common Carrier

New license application.

Pending: USCG COC/COI
Background investigations: pending

- L. **5828 M/V Le Boreal:** Ponant Company, SAS
Alaskan Waters
License: Common Carrier

New license application.

Background investigations: pending
Temporary license issued.

- M. **5829 M/V Le Soleal:** Ponant Company, SAS
Alaska Waters
License: Common Carrier

New license application.

Background investigations: pending
Temporary license issued.

- N. **5836 Lane's Quickie Tacos:** Lane's Quickie Tacos, LLC
3412 College Road, Suite #1, Fairbanks
License: Restaurant or Eating Place

New license application.

Local governing body action: pending Fairbanks North Star Borough
Approvals: Department of Environmental Conservation
Pending: Fire Marshal
Background investigations: pending

- O. 5838 Big Lake Estate Brewing Company:** Herman and Cynthia Acevedo
5874 South Katie Way, Big Lake
License: Brewery

New license application.

Local governing body action: pending Matanuska Susitna Borough
Pending: Department of Environmental Conservation, State Fire Marshal
Background investigations: complete

- P. 5845 Tent City Taphouse:** Tent City Taphouse LLC
343 W 6th Avenue, Anchorage
License: Restaurant or Eating Place

New license application.

Local governing body action: pending Municipality of Anchorage
Background investigations: pending

Glenn Brady moves to approve all items in the delegated consent agenda with delegation.

Rex Leath seconds the motion.

None opposed, motion carries.

Bob Klein and Harriet Milks exit the room 12:08pm.

● **CONSENT AGENDA – NEW & TRANSFER APPLICATIONS**

12:08 pm

TAB 33

Glenn Brady reads the Consent Agenda, see consideration below.

- A. 156 In & Out Liquor #1:** KYJ Corporation
3601 Arctic Boulevard, Anchorage
License: Package Store
From: Dong Kyu Kang

Transfer of ownership.

Local governing body action: Municipality of Anchorage does not protest
Approvals: Department of Revenue, Department of Labor
Background investigations: complete

- B. 1064 Sorrento's:** Venus Restaurant Corporation
610 E Fireweed Lane, Anchorage
License: Restaurant/Eating Place
From: Pete Gyfteas 100%
To: Kosta Gyfteas 100%

Transfer of controlling interest.

Local governing body action: Municipality of Anchorage does not protest
Approvals: Department of Labor, Department of Revenue
Background investigations: complete

- C. **3210 Café Cups:** Bivalves, Inc.
162 W Pioneer Avenue, Homer
License: Restaurant or Eating Place
From: Babaloo, LLC

Transfer of ownership.

Local governing body action: City of Homer and Kenai Peninsula Borough do not protest
Approvals: Department of Labor, Department of Revenue
Background investigations: complete

- D. **5824 M/V Forge:** Alaska Luxury Tours LLC
Alaskan Waters
License: Common Carrier

New license application.

Background investigations: complete

- E. **5832 Alaskan Airlines – Red Dog:** ASA Beverages LLC
Alaskan Skies
License: Common Carrier – Single Destination

New license application.

Background investigations: complete

- F. **5835 Melinda Leigh:** Allen Marine Tours, Inc.
Alaskan Waters
License: Common Carrier

New license application.

Background investigations: complete

Glenn Brady entertains a motion to approve the licenses listed on the consent agenda.

Charlie Cross moves to approve all applications on the consent agenda.

Rex Leath seconds the motion.

*Sara Erickson, Charlie Cross, Rex Leath and Glenn Brady vote yes; Bob Klein is absent from the room.
Motion carries.*

● **REGULATIONS**

12:14 pm

A. Proposed Regulations Projects

1. Board Requests

No Board requests are made.

B. Open Regulations Projects

1. Server Education Course

Status: Board amended and adopted on 7/29/19
Potential Board Actions: Reconsider to provide clarity on amendment

TAB 34

Glenn Brady states that there has been some activity regarding getting a group together for this matter but no action has occurred at this point, there is nothing to report on this tab.

Erika McConnell states that he appears to be discussing the work group regarding the review of server education. She clarifies the intent of the work group.

Glenn Brady states that the question is if the zip code is required for the reporting is the premises or applicants residence.

Erika McConnell references the regulatory requirement.

Harriet Milks and Bob Klein rejoin the meeting at 12:18 pm.

Glenn Brady comments that this is something in the language that the intent was missed in drafting. It was his belief that the intent was that the server (personal) residence would be the zip code where training is delivered, regardless of where the licensee was located.

Bob Klein asks if it is appropriate to put either/or in this section so that it can be used based on the requirements.

Glenn Brady finds this a reasonable clarification.

Erika McConnell states that it would be staff preference to draft language and bring back for re-approval. She will work on language and bring it back at the next meeting.

Erika McConnell asks if Sara Erickson has any comments on Tab 34. Sara Erickson states that she is okay with the director bringing draft language at the next meeting.

2. Permits

TAB 35

Status:

Revised draft for board consideration

Potential Board Actions: Amend and/or put out for public comment

Erika McConnell summarizes Tab 35.

Bob Klein summarizes the options and states that he wishes the directors comments in the memo to be published along with the regulation to clarify the changes that occur. He finds this helpful to the public.

Glenn Brady moves to post for public regulations project "Permits" out for comment including the director's explanatory memo.

Rex Leath seconds the motion.

None opposed, motion carries.

3. Death of a Licensee

TAB 36

Status:

First draft for board consideration

Potential Board Actions: Amend and/or put out for public comment

Erika McConnell summarizes Tab 36.

Bob Klein states that this was good work.

**Glenn Brady moves to put regulations project “Death of a Licensee” out for public comment.
Charlie cross seconds the motion.
None opposed, motion carries.**

4. Interpretation of AS 04.11.460(b) – When Petition is Required

TAB 37

Status: First draft for board consideration

Potential Board Actions: Amend and/or put out for public comment

Erika McConnell summarizes Tab 37.

Glenn Brady states that this project came about due to a licensee on the Richardson Highway that would have needed a petition to transfer location.

Rex Leath asks about someone “leapfrogging” locations and how the board could prevent that.

Erika McConnell states that it could currently happen based on the phrasing.

Rex Leath states that this must be addressed.

Erika McConnell states that the board should keep in mind that the transfer of location will still need to be advertised and publically posted.

Rex Leath states a word of caution, the public concern regarding licenses is high and he wants to be certain that the community involvement piece is considered. He is concerned about an establishment moving without ample public comment.

Glenn Brady states that Rex Leath has a good point, he could see a unscrupulous operator abusing this loophole.

Erika McConnell suggests a time qualification regarding the amount of time since the last petition.

Rex Leath states that maybe after 1 or 2 moves without petition the board would review any transfer application.

Bob Klein states that he also has concerns.

Erika McConnell offers to suggest language at the next meeting.

Bob Klein agrees and states that in effect the project will be held until the director brings alternative language.

● **ALCOHOL MAILBOX**

12:44 pm

TAB 38

All correspondence received in the alcohol@alaska.gov inbox from June 22, 2019 – August 23, 2019.

Bob Klein asks if there are other comments besides the Creekbend concerns.

Erika McConnell directs them to pages 12 and 13 of the tab.

Bob Klein invites Sarah Oates to discuss her public comment.

Sarah Oates, Alaska CHARR, discusses her comments submitted to the Alcohol Mailbox regarding shared tasting room requirements and the subcommittee formed approximately a year ago. She states that she has been meeting with the Brewers Guild and states that they have interest in clarification regarding this matter. She states that ambiguity creates concerns and confusion or inconsistency over the years and everyone is looking for clarification.

Bob Klein states that when the committee looked at this they determined that it wasn't a problem. He states that previously it has been thought of that the client is entitled to 3 drinks in an establishment. He is not opposed to a draft regulation for that to go out for comment.

Glenn Brady concurs with Bob Klein's sentiment. He believes this to be relevant to the discussion surrounding the tasting room issues that are larger issues. He believes that the proposed draft clarification is timely and appropriate.

Bob Klein directs staff to come up with regulatory language for the draft on this matter.

● **NEXT ABC BOARD MEETING**

12:50 pm

The next meeting is November 12, 2019, in Anchorage. All applications must be deemed complete and all other information for inclusion in the board's packets must be received by **October 25, 2019**.

Bob Klein reads the dates for the next board meeting as written above.

● **EXECUTIVE SESSION FOR PERSONNEL ISSUES UNDER AS 44.62.310(c)(2)**

12:50 PM

Harriet Milks – Mr. Chair, just a clarification on the executive session-- you cited "for personnel issues as under 44.62.310(c)(2)", that requires that whoever the personnel are who are the subject of the discussion be advised that they are the subject of discussion and what the subject is and they be advised that they have the right to request that that discussion be had on the record.

Glenn Brady- Through the chair I think with that in mind, I think the discussion is partially wrapped up in board to board relations, but that is a good point; how we are going to deal with that.

Harriet Milks- Mr. Chair, if I may just a clarification-- the statute requires that the board can, that under this section, this is the section that you are proposing executive session be about, it can discuss any person. That does not necessarily mean a person who works for you, but whoever that person or persons is or are needs to be advised as I described, and that is something that is developed in a couple of Alaska supreme court cases.

Bob Klein- I suspect that we picked the wrong reference.

Harriet Milks-Mr. Chair I'm sorry one more-- thing if you are considering having an executive session citing a different section of the APA and the discussion does roam around as discussions tend to do to a slightly different subject it the executive session if it ends up being about a person and that person has not been advised that they can have the discussion on the public record any action that you take either coming out of that executive session or any time in the future based on the discussion in the executive session could be void.

Glenn Brady- Through the Chair this title 44...

Harriet Milks-Through the Chair it is 44.62.310(c) [board member speaks, unintelligible] (c)(2) is the personnel section. There is basically four sections/subsections under which you can have an executive session and whatever the subject of the exec session has to fall under one of those four if it is not a purely adjudicative matter or it is not a session where you are receiving only legal advice that is not an open meeting that would fall under the open meetings act. Otherwise you know you're a public agency and everything you do needs to be on the public record.

Glenn Brady- Through the chair not being familiar with the inner workings of that statute, the notice requirements, what are they? Are there specific time/delivery method requirements?

Harriet Milks- Through the Chair I will take that as a question to counsel. There are not specific requirements but thinking in particular about a case called "Geistauts" [University of Alaska v. Geistauts, 666 P.2d 424 (Alaska 1983)] the individual needs to be given enough notice of the time and the place and the subject in order to make a meaningful decision about whether they want to have the discussion on the record. So you can't in other words spring it on someone and then expect them to be able to think about and make a meaningful decision about whether they want to keep it in private or have it in public record. But there is no specific timing and no specific way that the message needs to be delivered.

Glenn Brady- Thank you for that clarification.

Charlie Cross-Through the Chair, madam counsel, so that I understand any personnel matters or actions become a part of the public record for the public to be aware of?

Harriet Milks- Not exactly, through the Chair, what we're talking about is an exception to the requirement that all of your public agencies, of which you are one, be done on the public records and one of those exceptions is that if you are going to talk about an individual and obviously we're talking about situations not like their wardrobe but their qualifications in a way that implicates their character or reputation; if you're going to talk about somebody in a way that implicates their character or reputation, that citation that I just gave you in the administrative procedure act requires that you inform that individual as I said and give them the opportunity to have the discussion on the record. Does that answer your question?

Charlie Cross – Does the record then become available to the public, this personnel issue that we have?

Harriet Milks – Yes.

Erika McConnell – I think the point is that it's the person whose reputation may be effected by the discussion gets to decide whether they want to have the discussion in public or not. Does that make sense?

Harriet Milks – Through the Chair, thank you for that clarification. So, if the person says, if you notify somebody that you intend to have an executive session to talk about them in a way that could implicate their character and the person says "ok, fine", that person can say that; they want to be in the discussion in the executive session, they could say that they don't want any part of it, discuss all you want on your own in executive session, or they can say "no no, if you're gonna talk about me in that way I want it to be on the public record". And if it's on the public record then it's on the public record, everybody gets to have access to it.

Rex Leath – Through the Chair, so I'm clear if we discuss a personnel matter, whether or not it goes before the public is up to the person that the personnel matter is about. Just like any personnel record of a state employee or a person employed by a governing body, correct?

Harriet Milks – Through the Chair, basically that's correct. Yes, that's correct.

Rex Leath – Through the Chair, it's better to ask a few questions through forethought than hindsight 20/20 on certain matters. So I'm clear, to have any discussion about any person tied to any state body requires that it be on the record? Or recorded, is that correct? Is my understanding correct?

Harriet Milks – It's basically correct; if you're talking about for example an applicant's straight up educational qualifications obviously that's something that's, I shouldn't say obviously, but that is something that if you're a state agency and you're talking about should we hire Bob or Brenda and here are their qualifications those things are important to the public so that typically is a matter of public record, but if you're going to talk about them in a way that again implicates something more personal, then it doesn't necessarily fall into the realm of personnel discussions that would necessarily be on the public record.

Rex Leath – Through the Chair for my clarity, doesn't that apply only though if the information that is discussed is going to be presented to the public or does that include any confidential conversations that take place because my understanding is that there can be confidential conversations that take place regarding state employees that then information that is going to be brought to the public and if it concerns reputation then the employee or the person has the right to decide whether or not they want that before the public.

Harriet Milks – I'm not sure I understand your question.

Rex Leath – I apologize, let me try to simplify it. Is it not possible to have a confidential conversation about a person either somehow sponsored or governed by the state without it becoming public record?

Harriet Milks – It's possible, the question is, under the open meetings act is it something that falls within the exceptions relating to executive session if the subject is a person and something that could impugn or implicate their character or their reputation so it's a very very specific exception. And that exception allows you, if the individual agrees, to go into executive session and have that discussion not ever on the public record, not recorded not anything. But if the person says 'no no, I want you to have it on the public record' then it's on the public record.

Rex Leath – And again to clarify so to impugn or somehow negatively affect a person the information discussed would have to at some point be divulged to the public, if it's not divulged would it be still assumed that it would have a negative impact on the person?

Harriet Milks – No it's not. So, if you are, if you have a subject that you want to discuss about a particular individual and you reasonably conclude that it could implicate their reputation then what you do is you have the executive session all you do is you say to them that "we're going to discuss so and so, and we're having a discussion under executive session", period. Nobody needs to know anything about the subject, except for the person. You need to have informed the person but you don't need to tell the public because that would defeat the purpose right? You don't need to tell the public "well we talked to Bob", sorry not to use your name Bob, I just chose a name and I'll use a different name, "we talked to Carl and we discussed the fact that we're about to talk about something that could implicate his reputation". I mean that would defeat the purpose right? But going back to one of your earlier questions I think, I just

thought of what you might be concerned with. There are circumstances where a state agency can talk about personnel issues that don't become public but that's under another section. Those are matters that are required to be kept private by some other law like health things, health insurance, things like that. Other personnel issues. What we're talking about here is a very specific thing regarding executive session of a publically noticed board meeting.

Rex Leath – Okay, again, so I'll use myself as a named example, the board was concerned about my personal conduct and they thought it was causing discrediting the board or somehow effecting the board, and they, some of the board members wanted to speak about that they would have to notify me that they were going to talk about me and then I would have the choice on whether or not they could do that privately, with me present, or in front of the public, is that correct?

Harriet Milks – That is correct. Through the Chair, that is correct. And the reason is you know it goes back to what your jurisdiction as a board is to begin with, because you're not here to talk about recipes or restaurant reviews. You're here to do the state's work and particularly the states work with respect to regulating alcohol for the entire state. So the initial presumption is that's your job and so anything that you're going to take your time to do is going to implicate your actions as a state agency. So if you think it's worth your time to talk about an individual you're going to take your time as officers of a state agency to meet and talk about an individual; that's part of your work and so if that individual says "no I want that discussion to be on the public record" than that's the way it goes. It goes on the public record, otherwise you don't have that discussion. You can't meet in secret in private and have a discussion about someone who obviously comes within your gambit of authority somehow or you wouldn't be having the discussion without giving them the opportunity to have that discussion on the record.

Sara Erickson – This is Sara I just want to weigh in here, I have a question. Can you guys hear me?

Bob Klein – Yes, go ahead.

Sara Erickson – Okay, so this is confusing double-talk it seems like from Harriet. It's like she says one thing and the exact opposite it seems. There is so much discussion, what Rex is asking, it seems like it is a simple question; can we go into executive session, discuss an employee evaluation or whatever or circumstance, if it's not, if we're not going to divulge that conversation to the public why can't we talk about that or anything in private in executive session if we're not going to divulge that to the public, I mean I don't I guess I'm still completely confused as to Harriet's extremely long explanation. So.

Harriet Milks – Through the Chair...

Sara Erickson – It all [inaudible] to Nome, I don't know but I am lost.

Harriet Milks – Through the Chair, to Ms. Erickson, far away I will give you a very short explanation; because it's not fair and because that's what the administrative procedures act and the Alaska Supreme Court have said. You cannot discuss an employees or anything about an employee's reputation or their character without giving them the opportunity to insist that the discussion be had on the record. Was that short enough?

Sara Erickson – Yes it was, fine. So then if we say okay, when we want to have this discussion and we offer that person the ability to discuss it on the record or off the record, are we held up at any point if they say they don't want to discuss or they do want it discussed. Is it this boards, does it shut us down basically by the person's response?

Harriet Milks – Through the Chair, short answer: if the person says I want that discussion any discussion you have about me that could implicate my character or reputation, I want that discussion to be had on the public record, than you as a board get to decide, okay let's do it let's have it on the public record or no we really don't want to have all that dirty laundry on the public record. We withdraw so that is your choice, if the person says they want it on the public record it gets on the public record, or not. But what you cannot do as a board is to ignore that and then go and have the discussion in executive session in any way. There is no one to, you know, we don't have police here right, this is a state agency, so you can certainly do that but anything that comes out of that discussion where the person has not been so notified that action will be void.

Rex Leath – Through the Chair, so can I recommend that we go into executive session with the entire staff for a few minutes to further discuss?

Harriet Milks – Through the Chair, if you have, you have to cite one of those reasons for executive session.

Rex Leath – For a personnel matter.

Harriet Milks – For a personnel matter, and is there anybody that needs to be notified that they have the opportunity to have the discussion on the record?

Rex Leath – So I can name that person or we can have the entire staff stay here and we can discuss that initially or is that the improper way to do it?

Harriet Milks – One thing you could do at this point since I honestly thing there is a little confusion about the state of the law is you could suspend the meeting, we could have an attorney-client session, and I could explain the law rather than taking everybody's time to do that. Maybe that would help? This would not be an executive session, it would be as if I was talking to you on the telephone or you asked me to give you a written answer to something, you could ask me what the law is and that kind of thing and I will just represent to the public that we will just keep the discussion at that.

Bob Klein – Harriet, we will take you up on that.

Glenn Brady – So Sara are you able to call in to my phone?

Sara Erickson – Yeah I can call in to your phone. So I'll hang up and call you right back?

Bob Klein – Yes please.

Sara Erickson – Okay.

**The board suspends the meeting to discuss the matter with counsel 1:31pm.
The meeting is back on the record at 1:55pm.**

[Inaudible]

Glenn Brady – {to Sara Erickson} we have you on speaker. Then there's another witness that we're legit.

Bob Klein – Are we on?

[Inaudible]

Glenn Brady – It's fully public.

Bob Klein – Okay we're back on the record and we came out of session in which Counsel Milks described the environment in which we're working. What we have decided is it would be appropriate for us to go back into executive session to determine the applicability of 44 02 310(c). So I would like a motion to go into executive session.

[Inaudible]

Bob Klein – Thank You.

Glenn Brady – Yeah and I'll make a motion to go into executive session for that discussion.

Bob Klein – Okay, again this is 44.62.310(c) we'll be considering as far as whether it's applicable.

Glenn Brady – Sorry, I wasn't on the yeah, did you hear that through his mic?

Bob Klein – Okay is there a second?

Rex Leath – Second that, this is Rex.

Bob Klein – Sara how do you vote?

Sara Erickson – Yes.

Bob Klein – Thank You. Glenn?

Glenn Brady – Yes.

Bob Klein – Charlie?

Charlie Cross – Yes.

Bob Klein – And I vote Yes. Okay would you take us back into executive session?

None opposed, motion carries.

Board enters executive session at 1:56pm.

Board exits executive session at 2:43pm.

Bob Klein – Okay we are out of executive session and we have not brought a motion forward out of that session. What's the pleasure of the board?

Glenn Brady – [Off Microphone] Motion to re-enter executive session for discussion of personnel matters with Director McConnell.

Bob Klein – Okay.

Glenn Brady – Sorry, oh, sorry motion to re-enter executive session for discussion of personnel matters with Director McConnell.

Bob Klein – Rex do you second?

Charlie Cross – I second.

Bob Klein – Okay we need a vote on that, Sara?

Sara Erickson – Yes.

Bob Klein – Glenn?

Glenn Brady – Yes.

Bob Klein – Charlie?

Charlie Cross – Yes.

Bob Klein – Okay, Rex?

Rex Leath – Yes.

Bob Klein – I vote yes. Okay, sorry guys you're out of here. (2:44pm)

Harriet Milks – So Mr. Chair, just to be clear, if you're going into executive session to discuss personnel matters with Director McConnell have you informed or are you going to now inform Director McConnell that she has the ability to insist that that discussion be on the record or not?

Bob Klein – You gave us, you gave the advice, we're following that advice, we're fine, thank you.

Harriet Milks – And to be clear for the record, I gave you that advice but I didn't hear that information being conveyed to Ms. McConnell.

Bob Klein – Understood. We're in executive session.

Erika McConnell – Mr. Chair, I would like this to be on the record. [during this statement, recording paused for less than one minute]

Bob Klein – Are you sure it's about you?

Erika McConnell – I thought you just said it was a personnel matter relating to me?

Glenn Brady – It was, we needed to discuss a personnel matter with you.

Harriet Milks – Mr. Chair then my advice I will amend my advice to say whoever the person is that is the subject of the personnel matter and the implication is that if you are citing that one statute of the administrative procedures act you discussed before and if it's something that tends to impact or impinge the character or reputation or a person whoever that person is. It might not be Ms. McConnell, I don't know. Whoever that person is needs to be advised that they can have that discussion on the record.

Bob Klein – Thank you.

Rex Leath – Through the Chair?

Bob Klein – Yes?

Rex Leath – I think it would be appropriate based on span of control and the nature of the topic to direct the concerns towards Director McConnell at this moment for clarity purposes and then we can vet that out as we move forward, in fairness to her.

Bob Klein – Well let's not implement the executive session that we just voted on and let's begin the discussion of our concerns. I'd like Rex to articulate that.

Rex Leath – Through the Chair?

Bob Klein – Please.

Rex Leath – Director McConnell, that you know of in the past month, month and a half or so, has AMCO staff made any additional efforts to access criminal history information channels through state and federal agencies beyond specific criminal investigations? In other words has AMCO tried to establish further access to criminal history information beyond what historically was accessed through DPS?

Erika McConnell – Through the Chair, Mr. Leath, my awareness of my staff requesting information that we used to get through ARMS or APSIN has been limited to making specific requests to specified individuals at the department of public safety that we have been directed to work with for the purposes of investigations. I do not think they have always necessarily been, I'm not positive whether they have always been criminal or civil investigations. But if I could clarify, I am not aware of anything different happening in the past to month and a half than has been happening since January when we first established this procedure to make requests specifically to Lieutenant Shuey and Captain Lowden.

Rex Leath – Through the Chair, Director McConnell, are you familiar or have you heard the term or are you familiar that criminal history information moves thorough not just the department of public safety but through the FBI?

Erika McConnell – I understand that APSIN is a connection to the NCIC, I'm gonna get the acronyms probably wrong, which I the National Criminal Information Center which I understand is run by the FBI. So yes, I understand that.

Rex Leath – Director McConnell, do you know have any staff members in your office made an attempt to try to investigate or research your office's access to NCIC or the FBI. Specifically your FBI ORI number?

Erika McConnell – I was asked recently about some number, I don't remember if it was an ORI number that we were told we needed. Why did, why were we told we needed it? I don't recollect why were told we needed it but I was asked does anybody know what this number is and again I couldn't swear it was an ORI number I could check my email if you would like me to. Yes?

Rex Leath – Through the Chair, would you be able to check that now?

Erika McConnell – Yes.

[Pause for the director to check her email]

Erika McConnell – Yes, I was asked, both myself and our admin. officer were asked by Chief Hoelscher “Does anyone have our ORI number at their fingertips?” I asked him “What does ORI stand for?” because I didn’t know what that was and he said “Originating Agency Identifier” and I said that I don’t have it. And I recall asking him, Chief Hoelscher, in person why we needed that and I just don’t recall his explanation but it was, it didn’t appear to be anything nefarious, it didn’t seem to be about directly contacting the FBI that I recall.

Rex Leath – Okay, through the Chair. Is it normal for your staff to communicate with the FBI?

Erika McConnell – No.

Rex Leath – Would, did it cross your mind that it might have to do with criminal history information?

Erika McConnell – No, when I asked why he needed it I thought it had something, I don’t remember but I don’t think that it had anything to do with criminal history information.

Rex Leath – Okay, I guess at this point just to continue at any point you want to step into executive session we can, if you want to continue in a public forum we can do that.

Erika McConnell – Thank you, I am fine continuing in a public forum.

Rex Leath – So as the Director of AMCO your, you’ve mentioned it as well that you’re in charge of Enforcement correct?

Erika McConnell – Correct.

Rex Leath – And being in charge of Enforcement and having the Enforcement division under you you’re responsible for the actions taken by your employees in the office, correct?

Erika McConnell – Correct.

Rex Leath – We’ve had conversations on the record about seeking criminal history information through the Department of Public Safety in the past and did you at any time think that possibly your staff was trying to circumvent that criminal history access and try establish their own communications for criminal history information for your office?

Erika McConnell – No.

Rex Leath – So having this conversation, does it pique your interest why your staff was asking about your FBI ORI number?

Erika McConnell – Yeah, but I again, and I don’t remember the explanation, but I did request an explanation from Mr. Hoelscher and I was satisfied with whatever it was. I, to me it was so, obviously it was so non-. It didn’t raise any red flags because I have forgotten what it was. Honestly, it, my recollection was, someone is requiring us, in order to do this thing that is part of our job, and nobody knew what the ORI number was and so we were having trouble doing whatever it was where we were being required to give the number but I don’t remember exactly what it was that they were trying to do. But it didn’t raise any red flags with me at the time. Certainly now I’m wishing I remembered.

Rex Leath – Through the Chair, so this next, I mean I could make some additional comments right now but because some comments pertain to agencies outside the Department of Public Safety, I don't think I want to go on record publically with that information but I do think that there is something we need to speak about and if someone is concerned about being in executive session by all means I'll be glad to explain that later but I don't think it's appropriate to make any further comment on specifics with criminal history information on, to the, on the public record. The State of Alaska, they manage and they are a representative in the national criminal information sharing network but we can't speak beyond, I can't speak for Department of Public Safety now and I can't speak beyond that but anything further we speak about in fairness would have to be off, out of public hearing now in executive session.

*Glenn Brady – Sorry, through the Chair, so we're technically not in executive session right now so this is still on the public, open but **I'm going to make a motion to go into executive session to discuss a non-personnel matter at which point we can share this information and then come back out of executive session back into a public meeting so motion to go into executive session to discuss the non-personnel related matter that Mr. Leath is referring to.***

Harriet Milks – And through the chair, I would just request that Mr. Brady cite the section in the open meetings act that pertains to the purpose for the executive session. There are four choices.

Glenn Brady – Okay, so, refresh my memory on, I know you had given me the primer before, through the Chair.

Harriet Milks – Thank you for that invitation, through the Chair. The first is matters the immediate knowledge of which would clearly have an adverse effect on the finances of the agency, in this regard the possibility of that in the future is not sufficient. Second is the subject that we were discussing earlier, subjects that tend to effect the reputation or character of an individual. Third choice is matters which by law are required to be kept confidential and fourth is consideration of certain government records that by law are not subject to public disclosure.

Glenn Brady – It would be, through the Chair, would be reason three.

Harriet Milks – Matters by law that are required to be confidential?

Glenn Brady – Yes, that is correct.

*Harriet Milks – Okay, for the record that is **AS 44.62.310(c)(1)(c).***

Glenn Brady – So that's the motion as corrected.

Charlie Cross – Second.

[Inaudible]

No board members voice opposition. The board enters executive session at 2:58pm.
The board leaves executive session at 3:12pm.

Bob Klein – Okay, we're out of executive session, where we discussed a secure matter and we will continue now with discussion we were having with Erika because she requested that this be public. Go ahead.

Glenn Brady – Through the Chair, in light of the information that was discussed in executive session there is concern with to regard to how you are managing the Enforcement staff and your control of them and that gives me cause to be concerned about the effectiveness of our agency's enforcement of title 4 as we're responsible for and I've got some concerns about the effectiveness of our agency in light of what appear to be some failures of control of enforcement staff.

Erika McConnell- Can you be more specific, it's very difficult to respond to sort of generalizations.

Glenn Brady - Okay, so, without getting into the area, through the Chair, that we had gone into executive session for, so when I'm talking about that failure to control the enforcement staff it's in reference to that subject. And whether it's control or knowledge of are not necessarily immaterial to, or I mean, they're, the distinction is not necessarily totally relevant. It's all, as all actions of the staff subordinate to you are ultimately your responsibility, so, I, without going into the detail that we came out of executive session for, that is a concern of mine. And in regards to our, the effectiveness of our board and enforcing title 4 and those are my comments and observations and it's not, you know nothing personal Director, this, this is purely a mission driven statement that gives me cause for concern as a board member. And I have some grave reservations as to how we as an agency move forward with this new found knowledge in effectively regulating and performing our mission.

Erika McConnell – I think there needs to be a little bit more time for information on my end to be both sought out and presented to the board before any conclusions can be drawn based on the information that was recently discussed.

Glenn Brady – Through the chair I would concur with that, it's some fairly, quite a revelation I suppose but again at the end of the day I still believe the actions of your staff are your responsibility.

Erika McConnell – I agree.

Bob Klein – How do other board members feel? How do other board members feel on the issue?

Charlie Cross – Madam Director, in regards to your memorandum today from, there was, you're seeking direction on how to proceed with routine work inside the office and it seemed to be based from a, an action we took previously, in the previous meeting, specifically the delegated licenses and de-facto denials. It seemed like after we upheld, and kinda reversed on ourselves, based on a judge's findings you came back to us with "how do I, you tell me how to double check this, that information is passed along" and it just seemed very as though now as a board we have to tell you how to treat non-responses. And how to do those checks. Is that something that we're going to have to be doing consistently for this type of, this type of action that we do, we, it's not a systematic problem it seems to be isolated but now you want three bullet points on how to conduct business.

Erika McConnell – Through the Chair, Mr. Cross, last year the legislature removed a provision from title 4 that basically said the board doesn't have a, doesn't really have a requirement to consider precedent. The statute used to say that the board could treat a similar situation differently and that got removed. So the application of precedent has become much more important in the board's work and of course the staff's work. And the decision from the judge essentially created requirements for the staff and myself that are not in statute and that are not in regulation and it created an authority in me that is not in statute and that is not in regulation that I am very uncomfortable having because I don't see where the authority for me to have that authority comes from, and so I desired to get some direction from the board about how I should be using the authority and be treating all licensees consistently based on the decision in that situation. I can understand how you may read that as seeing it to be questions about

routine processing but I have to tell you that I disagree with that interpretation. To me that decision really changes a lot of things for our office. And I know that, you know a board that meets 5 times a year and the staff that is going in to do certain activities day in and day out, there's things that I don't understand about your work and there's things that you don't understand about the work that we do in the office. So while it may have seemed routine to you it is actually a concern that I am now responsible for helping the board to be, to treat all licensees consistently and to implement the implications of this judge's decision and so I was requesting the board's guidance, but I certainly don't see the need to come to the board for things that I would consider routine. So, obviously we have a difference in opinion on the significance of that particular decision.

Rex Leath – Through the Chair, Director McConnell, to speak back for a moment on the criminal history information we were speaking about a few moments ago. In the minutes from our February 19 board meeting on your directors report, you applied two pages of your directors report specifically to criminal justice information and the Department of Public Safety and the FBI and APSIN and you went very in depth to that topic as to why AMCO needed to have access to that information, why you felt your office needed more of streamlined access to it than you do have. And then today when I asked you if you know what a specific reference was when it came to sharing FBI information, the ORI, you didn't know what that was. I will tell you I am concerned that as the director of an agency that provides title 4 enforcement which is one of the most important enforcement efforts in this state--we have an epidemic in this state that is destroying the state in many ways--I expect you to know what your FBI ORI number, what that means. You fought tenaciously, it's well known, to increase access to your criminal justice database or databases that you think you should have access to and then not to know what that means today I will tell you that is of great concern. Your job is to know what that means. Your job is to manage that criminal justice information, not only in the civil side, but there is criminal applications for the State of Alaska if that is miss-managed and so I will tell you I was a little taken aback today that you didn't even know what that was and that you had staff members inquiring about that and you don't know about that. That's a very serious condition that we have. The public, and I don't mean to speak to you personally, but to the office, the public entrusts us with the authority to regulate and manage title 4. They expect us to be proactive with our enforcement efforts, we have a whole office set up to do just that and our investigators I have no doubt they apply themselves daily to try to make this a better state for our youth and for the people of our state. That the head of the agency does not understand the details of your access to criminal justice information but yet you can apply a lot of your Director's report to that very topic. I just want you to know where we're coming from in our concern. It's very concerning that it appears you don't have a handle on that topic and that's one of your key topics that you keep raising so I just wanted to put that on the record.

Glenn Brady – [to Sara Erickson] Let me put you right next to the microphone here, okay go ahead Sara.

Sara Erickson – Okay, so Erika you know I'm the public member on this board, general public. And there's some feed-back or something on this so I'm trying to focus here but. You know one thing that I have found that is discouraging to see as the public member is the lack of, I guess, help and attention given to the public in certain applications and things that we have denied applications or assessed fees on things based on the email or something and they never got it until it was too late and we assessed this huge fee or I guess I've just been consistently surprised at the lack of wanting to help the public be successful in their, you know, business. You know we have a job, the board and you to balance the public safety and business in Alaska. But it seems almost to me often times that the board is overruling your decisions on assessing late fees or denying applications based on something that seems so trivial and it almost seems shocking to me that you would almost be so harsh when a phone call could have solved the situation as well as the email to them or, you know, I mean, that has been discouraging to me as the public member to see that and would I hope that the direction of the AMCO staff would be one that would be more I

guess gracious and in extending help, and I know that often times they do that. But I guess I've just been looking back over the year, year and a half I've been on the board and thinking how many times we've had to over, or take back the fees that you've assessed based on these administrative hiccups that just seems really harsh to me and I would hope that we could move forward in a different direction.

Erika McConnell – I appreciate hearing the board's feedback. I have nothing to say at this time.

Glenn Brady – So to clarify, are we, we're in a sort of quasi-public executive session or we're just full?

Bob Klein – Yes.

Glenn Brady – So in the spirit of open discussion amongst my fellow directors on the record, in public, as we are bound to do. Are, do we feel like we need to take action at this moment or allow things to mature further?

Charlie Cross – Thank you Mr. Chair and I think to, for Director McConnell to get the full explanation of the request that was made that Mr. Leath referred to, to get the full explanation to give the, Ms. McConnell's office an opportunity to explain the situation I think is prudent, and one that I would like to be afforded if I had an opportunity to explain myself or my office so I would urge the board to not make any conclusion at this point.

Rex Leath – I agree with what Charlie said. I think if any big decision made, we deserve to have everything in front of us as far as facts. As the Director has alluded to if she can find answers to that question that would be helpful.

Sara Erickson – How soon?

Bob Klein – Well, within the constraints of proper notice we can get back as soon as Erika is ready to talk to us again. How soon?

Erika McConnell – Couple weeks?

Bob Klein – Okay. Okay so we'll do it that way when Erika has signaled that she's ready we'll send the information out to you and call you into a special board meeting and it can be telephonic. Sara especially likes those.

Sara Erickson – Thank you.

Bob Klein – Anything else to come before us? In that case ladies and gentlemen thank you, we are adjourned.

● **ADJOURN**

3:30 pm