



## MEMORANDUM

TO: Alcoholic Beverage Control Board

DATE: March 31, 2020

FROM: Glen Klinkhart, Interim Director

RE: 5648 49<sup>th</sup> State Spirits and  
Gifts

**Requested Action:** Request for refund of the AB-29 Waiver of Operation Application fees which totals \$1,750.00. \$1,000.00 late fee and \$750.00 waiver fee.

**Statutory  
And  
Regulatory  
Authority:**

3 AAC 304.170: (a) Except as provided in this section, the board will deny an application for renewal of a license if the licensed premises were not operated for the time required by AS 04.11.330(a)(3) or (d).

(b) A licensee may apply to the board, requesting that the board waive the operating requirement of AS 04.11.330 (a)(3) or (d). Under AS 04.11.330(a)(3), the board will determine whether, through no fault of the licensee or because the premises are under construction, the licensed premises could not be operated for the required time during the preceding calendar year.

(c) An application for waiver for a calendar year must be made in writing to the board and must be accompanied by a non-refundable application fee of:

- (1) an amount equal to one-half the applicable biennial license fee if a waiver application was not made for the previous year; or
- (2) double the amount of the fee paid for the previous year's waiver application;

(d) In an application for waiver, the licensee must explain why the licensed premises were not operated. Additionally, the licensee must provide a copy of the application to the local governing body, if any, having jurisdiction over the license and licensed premises.

(h) In addition to the application fee under (c) of this section, the applicant shall pay \$1,000 for an application that is received too late for board consideration at its last meeting of the calendar year for which waiver is requested.

(l) If a new license is issued between November 20 and December 31, the licensee is exempt from filing a waiver of annual operating requirement for that year. (Eff. 11/30/90, Register 116; am 5/22/92, Register 122; am 5/1/94, Register 130; am 5/11/96, Register 138; am 2/21/2019, Register 229; am 11/28/2019, Register 232)

**Staff Rec.:** Review and consider the applicant's request.

**Background:** AMCO received a new package store license application on 3/13/2018 which was deemed complete by an examiner on 4/20/2018. AMCO received a notice to protest from the Municipality of Anchorage pending a conditional use permit.

At the 6/12/2018 ABC board meeting, the following conversation occurred regarding this application: *“Jason Motyka, licensee, provides testimony that this application is scheduled to go in front of the Assembly tonight for approval, and that the current door was determined by the Municipality to be adequate.*

*Erika McConnell reads AS 04.11.150(f) and clarifies that AMCO enforcement recommends requiring that the door be moved, not added, so that the package store has a separate entrance from the outside.*

*Glenn Brady states that he doesn’t know if relocating the door would, in any material way, improve the public convenience, health, safety, or enforcement.*

*Jason Motyka provides testimony regarding how the proposed relocation of the door would negatively impact traffic patterns, and regarding the financial cost of the relocation.*

*Bob Klein states that he feels that having the door where the licensee has it now is the safest, most-controlled approach.*

*Erika McConnell states that the enforcement team has concerns about removal and introduction of alcohol. She suggests that the Board require a sign that states that alcohol purchased in the package store may not be consumed on the licensed premises of the beverage dispensary license.*

*Glenn Brady moves to uphold the original protest with a 90-day abeyance, and require that the licensee post a sign on the door (of the package store) warning that a patron may not consume alcohol purchased on the premises.*

*Sara Erickson seconds the motion. None opposed, motion carries.”*

The protest was lifted on 8/1/2018 and the 2018/2019 license was issued the same day.

The inspection occurred on 11/20/2018.

Attachment: Request  
11/20/2018 Inspection Report  
AB-29 Approval Letter  
AB-29

**From:** Jason Motyka  
**To:** [AMCO Local Government Only \(CED sponsored\)](#)  
**Cc:** [Jason Motyka](#)  
**Subject:** FW: #5557 dba 49th State Brewery - Roof Top Deck Bar Renewal Protest  
**Date:** Tuesday, March 10, 2020 8:43:33 PM  
**Attachments:** [5557 CC Protest Notice.pdf](#)  
**Importance:** High

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Hey Carrie,

Hope all is well. As I sit on the board of the downtown community council, Silva had forwarded this to me. I believe the attached if for the protest for the Roof Top Bar at 49<sup>th</sup> State the Fire Department had issued but I wanted to confirm as the letter stated something different as a package store in Talkeetna. I am working with Anchorage Fire to correct the this shortly but I wanted to confirm with you this is correct as I believe the notice is incorrect?

Also I would like to see if you can schedule me for the meeting for the agenda for an appeal on my Application waiver fees for license 5648 49<sup>TH</sup> State Spirits and gifts. As you know I came in and paid all the fees with Randi and she had gotten everything sorted but I would like to plead the case to the board for the fees being returned in this instance as I have some documentation that can show this was all in error. I can send you another email concerning that but I believe the agenda deadline was tomorrow I was told. Let me know if there is anything else I need to do in order to get on the Agenda in regards to this.

Thanks for your time and hope to talk with you soon.

Jason Motyka  
907-229-5151



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**From:** akhr@gci.net <akhr@gci.net>  
**Sent:** Tuesday, March 10, 2020 10:21 AM  
**To:** Jason Motyka <JMotyka@nhgalaska.com>  
**Subject:** FW: #5557 dba 49th State Brewery - Roof Top Deck Bar Renewal Protest  
**Importance:** High

Hi Jason:  
Are you aware of this protest?Silvia

President  
Anchorage Downtown Community Council

----- Forwarded message -----

From: **AMCO Local Government Only (CED sponsored)** <[amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov)>

Date: Mon, Mar 9, 2020 at 1:39 PM

Subject: #5557 dba 49th State Brewery - Roof Top Deck Bar Renewal Protest

To: Downtown Community Council <[downtown.c.council@gmail.com](mailto:downtown.c.council@gmail.com)>, Federation of Community Councils <[info@communitycouncils.org](mailto:info@communitycouncils.org)>

Cc: AMCO Local Government Only (CED sponsored) <[amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov)>



Good afternoon,

Attached is correspondence regarding a protested liquor license application within your jurisdiction. A hard copy is also being mailed to you. If you have any questions or concerns, please direct them to [amco.localgovernmentonly@alaska.gov](mailto:amco.localgovernmentonly@alaska.gov).

The call in number and meeting information is available on our home page (<https://www.commerce.alaska.gov/web/amco>). The ABC Meeting Agenda, which will be posted on our documents page shortly, will also contain call-in information and the approximate order of consideration. (<https://www.commerce.alaska.gov/web/amco/ABCMeetingDocuments.aspx>).

Thank you,

*Carrie Craig*

Records and Licensing Supervisor  
Alcohol and Marijuana Control Office  
550 West 7<sup>th</sup> Avenue, Suite 1600

Anchorage, AK 99501  
907-269-0350



Department of Commerce, Community, and Economic Development  
 Alcoholic Beverage Control Board  
 550 W. 7<sup>th</sup> Ave, Suite 1600, Anchorage, AK 99501  
 Tel. (907) 269-0350

**LICENSED PREMISES INSPECTION REPORT**

Case No.

Premises, DBA		Date:	Time:
Address (Street No. RR No. etc., City, Zip code)		Type of License	
License or Permit Number	Type of Inspection: <input type="checkbox"/> Initial <input type="checkbox"/> Routine <input type="checkbox"/> Requested <input type="checkbox"/> Follow-Up		
<b>Important Notice</b> Any item determined to be unsatisfactory must be corrected or the Alcoholic Beverage Control Board may take action to suspend or revoke the license in accordance with AS 04.11.370(3)			

**GENERAL ITEMS**

	Yes	No	See Comments
1. Is the DBA the same as what is indicated in the ABC master file? 3 AAC 304.185			
2. License posted correctly? 3 AAC 304.185, pg. 101 / AS 04.11.630			
3. Does the premises have a restaurant designation permit? 3 AAC 304.745			
4. Warning signs posted? AS 04.21.065			
5. Do employees/supervisors have proof of current alcohol server training? AS 04.21.025(c), 3AAC304.465			
6. Do you expect to be closed more than 30 days in the near future? 3AAC304.170 AAC 304.195			
7. Do premises appear safe / neat? AS 04.21.030(2)			
8. Is any off-premises storage area approved by the board? AS 04.21.060(1)			
9. Have there been any physical changes to the licensed premises? 3 AAC 304.185(c)			
10. Is a duplicate license required/appropriately displayed? AS 04.11.090(e)			
11. If new license inspection, will they meet the 30 day operation requirements by the end of the calendar year? AS 04.11.330 (3) AAC 304.170 (j) (1-7)			
12. Is the license premise in a Rural area? (50 miles from a statewide road system)			

**MISCELLANEOUS**

13. Does the facility have the number of rooms required by Statute? AS 04.11.400			
14. Is there an operating restaurant or are there kitchens in the majority of the rooms? AS 04.11.400			
15. Did licensee have any questions for the investigator? What were they?			

**COMMENTS:**

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
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Owner/Manager/Agent Name:	Contact #	Investigator Name:
Signature: 		Investigator's Signature: 
Driver's License Number / Date of Birth:		Rank or Title:
Alcohol Server Education Card Number / Expiration Date:		



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Commerce, Community,  
and Economic Development**

ALCOHOL & MARIJUANA CONTROL OFFICE

550 West Seventh Avenue, Suite 1600  
Anchorage, AK 99501  
Main: 907.269.0350

March 4, 2020

Northern Hospitality Group, Inc.  
645 W 3<sup>rd</sup> Avenue  
Anchorage, AK 99501

Re: 49<sup>th</sup> State Spirits and Gifts, License #5648

Dear Northern Hospitality Group, Inc:

On November 13, 2017 the Alcoholic Beverage Control Board delegated the authority to approve first and second requests to waive the statutory minimum operating requirements to the Director.

Please consider this notice that I have approved your 1<sup>st</sup> waiver of operation for the 2018 calendar year.

Please ensure that if you are operating solely to meet minimum operating requirements in the future, you address the items required in 3 AAC 304.170(j) in order to prove your operations to the board.

Please contact [alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov) with any questions.

Sincerely,

A stylized, blue and white graphic signature of Carrie Craig.

Carrie Craig  
Records and Licensing Supervisor

For:

Glen Klinkhart  
Interim Director

cc: License File



**Alaska Alcoholic Beverage Control Board**

**Form AB-29: Waiver of Operation Application**

**What is this form?**

This form is the means by which a licensee may request that the Alcoholic Beverage Control (ABC) Board waive the operating requirement of AS 04.11.330(a)(3) or (d). If a recreational site license has not been operated at least once in a calendar year, or if a license of any other type has not been operated for at least 240 hours in a calendar year, then a complete copy of this form and the corresponding fees must be submitted for that calendar year, per 3 AAC 304.170.

**This application must be accompanied by a non-refundable waiver application fee of:**

- for a 1<sup>st</sup> request, an amount equal to ½ the applicable biennial license fee; or
- for a 2<sup>nd</sup> or subsequent request, double the amount of the fee paid for the previous waiver application.

The ABC Board will determine whether, through no fault of the licensee or because the premises are under construction, the licensed premises could not be operated for the required time during the calendar year. The ABC Board may impose conditions along with the approval of an application for waiver, and it may deny a third or subsequent application for waiver. If an application for waiver is denied, an application for license renewal for the succeeding license period will be denied by the Board. In addition to the waiver application fee, the applicant must pay a late fee of \$1,000 for an application that is received too late for Board consideration at its meeting before November 30 of the year for which the waiver is requested. Please check AMCO's website for meeting agenda deadlines.

**Please note that a licensee must submit a separate completed copy of this form and pay a separate corresponding fee for each license and for each calendar year during which a license was not operated in compliance with AS 04.11.330.**

**Section 1 – Establishment Information**

Enter information for the license that has not been operated for the time required under AS 04.11.330.

<b>Licensee:</b>	Northern Hospitality Group, Inc.	<b>License Number:</b>	5648		
<b>License Type:</b>	Package Store				
<b>DBA:</b>	49th State Spirits and Gifts				
<b>Premises Address:</b>	717 W 3rd Ave				
<b>City:</b>	Anchorage	<b>State:</b>	Alaska	<b>ZIP:</b>	99501
<b>Local Governing Body:</b>	Municipality of Anchorage				

**Section 2 – Request Number and Calendar Year**

1<sup>st</sup> Request     
  2<sup>nd</sup> Request     
  3<sup>rd</sup> Request     
  Other \_\_\_\_\_

**Request for Calendar Year** 2018





Alcohol and Marijuana Control Office  
 550 W 7<sup>th</sup> Avenue, Suite 1600  
 Anchorage, AK 99501  
[alcohol.licensing@alaska.gov](mailto:alcohol.licensing@alaska.gov)  
<https://www.commerce.alaska.gov/web/amco>  
 Phone: 907.269.0350

Alaska Alcoholic Beverage Control Board

**Form AB-29: Waiver of Operation Application**

**Section 3 – Reason for Non-operation**

Provide an explanation as to why the licensed premises were not operated:

The premise was under construction at the time the licenses we dropped off. Inspectors were dropping of licenses for the remainder of the facility at 717 W 3rd ave on November 23rd, 2018. It determined that the facility was not going to be ready till after the new year and yet the license was issued anyway. The first day of operations occurred on Jan 3rd 2019. Additional documentation will be accompanying this application.

**Section 4 – Certifications**

The following must be completed for establishments located within the boundaries of a local governing body:

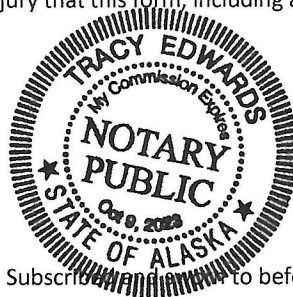
Read the line below, and then sign your initials in the box to the right of the statement:

Initials

I certify that I will provide a true copy of this application to the local governing body listed on Page 1 of this form prior to ABC Board consideration of this application.

As a liquor licensee, I declare under penalty of perjury that this form, including all attachments, is true, correct, and complete.

Signature of licensee  
 Jason Motyka  
 Printed name of licensee



Notary Public in and for the State of Alaska.  
 My commission expires: 10/09/2023

Subscribed and sworn to before me this 4<sup>th</sup> day of March, 2020

Office Use Only			
Waiver Application Fee:	750 -	Late Fee:	1000 -
Transaction #:	1263366		