

MUNICIPALITY OF ANCHORAGE

ANCHORAGE ASSEMBLY

Minutes for Special Meeting of May 31, 2000

1. CALL TO ORDER:

Assembly Chair Fay Von Gemmingen convened the meeting at 12:10 p.m. in the Mayor's Conference Room, City Hall, 632 W. 6th Avenue, Anchorage, Alaska.

2. ROLL CALL:

Present: Dan Sullivan, Dick Tremaine, Allan Tesche, Melinda Taylor, Kevin Meyer, George Wuerch, Anna Fairclough, Fay Von Gemmingen, Cheryl Clementson
Absent: Dan Kendall (excused), Pat Abney (excused)

3. NEW PUBLIC HEARINGS:

- A. Resolution No. AR 2000-142, a resolution of the Municipality of Anchorage protesting the beverage dispensary liquor license renewal for **Anna's Place**, Assembly member Von Gemmingen.
- B. Assembly Memorandum No. AM 517-2000, 2000/2001 Liquor License Renewal: **Anna's Place** - Beverage Dispensary (Spenard Community Council), Clerk's Office.
- C. Resolution No. AR 2000-160, a resolution of the Anchorage Municipal Assembly **waiving protest of renewal of a beverage dispensary license for Anna's Place** and recommending imposition of conditions on renewal of this license by the Alcoholic Beverage Control Board under AS 04.11.480(c), Assembly member Von Gemmingen. (**LAID ON THE TABLE**)

Chair Von Gemmingen combined and opened the public hearings on the relative Anna's Place documents, and asked if anyone wished to speak.

DAN COFFEY, attorney for the licensee, Woodrow and Chong Sanders, who were present, spoke to a potential protest of the liquor license renewal for Anna's Place. He pointed out that the standards for protest were listed in the Municipal Code Chapter 2.130.125. He said that the Quarterly Bar reports relative to Anna's Place were inaccurate and gave specific examples: "minors" referred to in the Quarterly summary "appeared to be minors" in the police report, and a person named as being present during a incident denied that she was there. Mr. Coffey discussed the closing hours and an incident, which occurred on February 26, 2000, in the parking lot.

(Clerk's Note: Mr. Coffey submitted a written memorandum to the Assembly in support of his testimony.)

Mr. Coffey said that an administrative hearing was scheduled before the Alcoholic Beverage Control (ABC) Board regarding these incidents. He suggested a resolution imposing conditions on the establishment and a review in December by the Assembly. He pointed out that there were no reported police incidents since March.

In response to Chair Von Gemmingen, Mr. Coffey related his unsuccessful attempt to locate the person referenced in a Notice of Violation report of February 26, 2000.

In response to Ms. Clementson, Mr. Coffey allowed that observations of the police officers as reported could be correct. Whereas, the portable breath test (PBT) was used to test multiple people without changing the tube in between tests. He felt it was consequently unclear what a particular person's test results were. He said that the licensee took umbrage with the manner in which the PBT was used. He noted that no citations were issued.

Ms. Clementson agreed that citations would have supported police observations. She felt that portable breath test results could vary some, but not as much as Mr. Coffey implied.

In response to Mr. Tesche, Mr. Coffey confirmed that the licensee did not object to the legality of the Assembly making recommendations to the ABC board, according to Alaska Statute Title 4, without so-called local enabling legislation. Mr. Coffey confirmed that the licensee contests some of the violations, which have not gone to court or an administrative hearing.

In response to Ms. Fairclough, Mr. Coffey said that employees, including new hires, carry TAM cards.

In response to Ms. Clementson's question whether the restaurant designation should be continued, Mr. Coffey said that the establishment was primarily a restaurant. The restaurant designation expires at 9:30 p.m. The reported problems happened after that time. He emphasized that the establishment was primarily a restaurant, not a bar. The licensee asks minors to leave by 9:30.

In response to Ms. Clementson's concerns about the time to impose conditions, Mr. Coffey explained that House Bill 69 would allow the Assembly to take action against a license at any time during the year. If the Assembly determines that imposed conditions have been violated, the Assembly would give notice to the ABC Board that could take an administrative action against the license. The City is required to actively participate in writing and by appearance of the City attorney at administrative hearings. He pointed out that either party in an administrative hearing could go to court subsequent to the hearing.

Mr. Meyer stated that the Assembly wanted to identify the Anchorage Police Department as the enforcement agency for conditions and has introduced an enabling ordinance to do so.

In response to Mr. Meyer, Mr. Coffey discussed the landscaping and lighting considerations, as suggested by Mr. McGrath.

CHIEF DUANE UDLAND introduced Officer Hsieh, and stated that APD does not release police reports when criminal reports are pending. Those matters are submitted to Municipal Prosecutors for determination. APD did provide police reports to the licensee.

OFFICER HSIEH related the incidents reported on February 26. (Tab 4 of Mr. Coffey's memorandum.)

In response to Chair Von Gemmingen, Officer Hsieh explained how the PBT was operated. He admitted that on occasion the breath tube was used more than once, and it was not the most accurate instrument. He outlined the general use of PBT.

In response to Mr. Tesche, Officer Hsieh verified that he prepared the police report. He stood by his report as written.

In response to Mr. Tesche, Chief Udland and Officer Hsieh said that the bar was a problem bar at the time the police report was written. He said he could have issued a criminal summons to the Sanders but did not. When he returned two hours later on the 26th, he found a similar condition. And, in the latter half of 1999, he noted liquor license violations.

In response to Ms. Clementson, Officer Hsieh did not recall how a female's age was identified on the 26th.

In response to Mr. Sullivan, Officer Hsieh explained the PBT tube was opened ended and no residual air could be trapped in it. He said that he allows the instrument to "zero out" before giving another test. On September 16, 1999, the establishment was opened late, which is a violation. There was a minor on premises at that time.

In response to Mr. Sullivan, Officer Hsieh said he would recommend that the establishment have a full-time door person. He said that a woman was hiding in the bathroom.

In response to Mr. Tremaine, the Officer confirmed he had observed other violations on his second visit to the bar. He elaborated on his relationship with the licensees and other observations. He spelled the name of the 20-year old woman he observed on a return trip on the 26th.

In response to Ms. Fairclough, the Officer summarized the incident of September 16, at 11:17 p.m. He and another officer went into the bar; a number of people left when the officers arrived. Ms. Sanders, a licensee, said there were no other people in the bar. However, he observed a woman, known to him from another incident, leaving the bathroom. The woman denied that she had any identification with her, but Ms. Sanders produced the woman's purse from behind the bar, which gave her date of birth as January 19, 1979.

In response to Mr. Meyer, he was in uniform at the time.

In response to Ms. Fairclough, Officer Hsieh explained that gang activity was difficult to ascertain. However, common clues were tattoos. He described certain tattoos and their meaning.

TOM MCGRATH, nearby business owner, spoke about his observations of Anna's place regarding needed lighting. He also suggested that the restaurant have limited hours. He felt that it was better for the establishment to remain a restaurant. If the restaurant designation was removed, it would be counter productive; it would be more productive that the up-coming ordinance disallowing smoking would further the restaurant theme. He hopes that the restaurant is widely successful because they are the types of neighbors he would like to have. The gang activity centered around the attempts of the establishment to have a Mexican theme. He felt that the notice of violations occurred during that time and not the preceding five years.

In response to Mr. Meyer, Mr. McGrath spoke to the conditions proposed by Mr. Coffey. The landscaping and lighting should be enhanced. There is a trailer court behind Anna's Place. Another restaurant shares the same parking lot with traffic going back to the trailer court. Lately, he has not noticed gangs in the daytime. He said that the restaurant now serves Chinese food. He confirmed that for the most part, the owners of Anna's Place had been good neighbors. There was no problem with litter in the parking lot.

In response to Mr. Tesche, Mr. McGrath agreed that any specific theme in a restaurant did not indicate gang activity. He recommended conditions rather than closure of the establishment.

In response to Mr. Sullivan, Mr. McGrath explained the public thoroughfare easement to the trailer court. It currently was a walkway gate, not parking.

ROBERT AUTH, Chair of the Spenard Community Council, said the Council protested the transfer of this license in 1995. He remembered that it was a restaurant with a full dispensary liquor license; he felt the distinction between the restaurant and bar hours were part of the problem. He said that the Council did vote to protest the renewal at its October 6th meeting. He felt that the hours of operation for the bar were a problem.

Copies of the Council's October 17th letter were distributed to the members.

Chair Von Gemmingen asked if anyone else wished to testify. Hearing none, she closed the public hearing. She pointed out that AR 2000-142 was before the Assembly.

Mr. Sullivan noted that the motion on the floor from May 16 was AM 517-2000.

Mr. Wuerch withdrew his motion to amend AM 517-2000 made on May 16, 2000. Ms. Taylor, the second, concurred. He suggested that the Assembly move to adopt the new document presented today.

Mr. Wuerch moved, to approve AR 2000-160.
seconded by Mr. Sullivan,

Mr. Tesche, who drafted AR 2000-160, explained that the governing body could make recommendations to the ABC board for conditions, and the ABC board is required to impose those conditions unless they are found to be arbitrary, capricious or unreasonable. He referenced the attached exhibit and discussed paragraphs “B” and “G” regarding hours of closing. Item “B” required service cease 30 minutes prior to closing and item “G” stated closing hours are midnight on weekdays and 1:30 a.m. on Friday, Saturday and Sunday. The resolution included a landscaping condition suggested by Mr. McGrath as Item “H.”

In response to Mr. Sullivan, Mr. Coffey replied that although landscaping was not a known issue to the licensees, they did not object to doing it.

In response to Mr. Sullivan, Tom McGrath explained that the municipal landscaping code changed in 1985 before the restaurant was built. He suggested that landscaping be required according to the 1985 code changes known as “visual enhancements.”

Ms. Clementson felt that such a condition would require taking out some pavement at the establishment and putting in trees and bushes.

Mr. Coffey suggested that the Assembly require a landscaping plan be submitted by the licensee, and taken to officials and the community council. An approved landscaping plan could be brought back in December.

In response to Chair Von Gemmingen, Police Chief Duane Udland brought up the point that the resolution would be enforced by the police department and asked that any restrictions be clear so the department could enforce such fairly.

In response to Mr. Sullivan, Mr. Coffey verified that food is available until closing, although the emphasis changes. The establishment functions as a restaurant until closing.

Mr. Meyer moved, to amend AR 2000-160 by adding a condition lettered “I”
seconded by Ms. Taylor, from Mr. McGrath’s suggestion to “enhance outside lighting
and it was withdrawn, to current parking lot standards.”

Mr. Tesche moved, to amend AR 2000-160 by adding a condition, lettered “H” to
seconded by Mr. Meyer, read: “The owner shall obtain approval of an exterior lighting
and landscaping plan from the Planning Director within ninety
days, after community input and review by Spenard
Community Council. The plan shall be implemented no later
than November 1, 2000.”

Ms. Clementson felt the condition was out of place in the resolution, which was to be enforced by APD; the only way to enforce it would be by the Assembly.

Ms. Clementson and Mr. Coffey discussed the merits of extending restaurant designation hours.

Mr. Coffey reiterated that the violations occurred one night and were not a pattern. He felt that the problem was resolved by changes in the establishment’s business practices. The Sanders have 18 years of operating history in Anchorage, with four different restaurants.

In response to Ms. Clementson, Officer Hsieh strongly disagreed with Mr. Coffey about changes in the business practices regarding gang activities. He observed such activities before February, but stated that there have not been many incidents since February 16 (sic). Closing hours and the parking lot activity were better since then.

Mr. Coffey and Chair Von Gemmingen discussed the weekend closing hours. Mr. Coffey said that midnight closing on weeknights was all right; Friday night, Saturday morning, Saturday night and Sunday morning the licensees would like to close at 2:00 a.m., which is an hour earlier than the law requires.

Mr. Sullivan objected to Mr. Tesche’s amendment because it dealt with landscaping and lighting while the violations were liquor license related. He felt that the path being followed was uncharted.

Ms. Clementson stated that the landscaping time frame was too late to accomplish the landscaping during this summer. She suggested that the community council form a subcommittee to review it.

In response to Ms. Taylor, Tom McGrath explained the present lighting at the establishment, the lighting at his adjacent business, and what lighting could be added.

Mr. Sanders mentioned that there was motion sensitive lighting presently in the parking lot of the establishment.

Ms. Taylor moved, to divide the question, separating the lighting
seconded by Mr. Meyer, from landscaping conditions.
and it passed without
objection,

Mr. Wuerch felt that it was a stretch to assume that alcohol control statutes were crafted to include land use conditions. Lighting and landscaping issues are part of the conditional use permit. He suggested leaving beverage control statutes relating to the operation of service of alcoholic beverages as proposed in conditions A through G. He would vote against the amendment for that reason, not because he was opposed to the land use conditions. As an alternative he suggested a “whereas” clause stating that the operator agreed to provide those amenities.

In response to Mr. Tesche, Assistant Municipal Attorney Dennis Wheeler said the present conditional use permit could be amended, especially with the concurrence of the licensee. Mr. Wheeler suggested that concurrence is established now and the conditional use application process with the Planning Department is used.

In response to Mr. Tesche, Mr. Coffey agreed to landscaping and lighting conditions. However, he felt that they were conditions more appropriately addressed in the conditional use process.

Mr. Tesche moved, seconded by Ms. Fairclough,	to substitute subsection “H” “The applicant shall receive approval of an amendment to its conditional use permit for exterior lighting and landscaping.”
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In response to Ms. Clementson, Mr. Tesche confirmed that his motion did not include a statement “Whereas, the petitioner has agreed...”

She felt that the following statement was needed in the resolution: “Whereas they have agreed, as a condition to non-protest, to come back to amend their conditional use.”

Mr. Tesche felt that such a representation gave the Assembly no “teeth” whatsoever to enforce the proposed change to the conditional use permit. He suggested drafting the language as a subsection “H” condition.

Mr. Sullivan felt that the statement was more appropriate in a "whereas" section. The community council is in his Assembly section, and he stated that he would work with the licensee and community council to effect the change.

Mr. Tesche supported the substitute to be added as a condition rather than a finding.

Mr. Wuerch felt the purpose of the resolution was to send to ABC and convey the Assembly requirements for the operation of the license; the other matters are solely the jurisdiction of the Assembly. He agreed with Ms. Clementson’s suggestion to add a “whereas” that conveys the intent of the protest waiver. If the condition has not been fulfilled when the Assembly reviews the license in January 2001, the Assembly can so inform the ABC board that the basis for the waiver was not fulfilled and ask ABC to rescind the license.

Mr. Tesche emphasized the connection between land use and liquor. Testimony suggested gang activity in these licensed premises. The literature, planning people, and Alcoholic Beverage Control experts suggest that gangs do not hang out in nice places. Improvements to the lighting and landscaping will have an affect on reducing gang activity in the licensed premises.

Ms. Clementson spoke against the substitution.

Question was called on Mr. Tesche’s motion to substitute and it failed:

AYES: Tremaine, Tesche, Taylor, Meyer, Von Gemmingen.
NAYS: Sullivan, Wuerch, Fairclough, Clementson.

Ms. Clementson moved, seconded by Mr. Sullivan, and it passed without objection,	to add a whereas clause to read: “Whereas the petitioner has agreed to amend the conditional land use permit within the next six months to include landscaping and exterior lighting requirements.”
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Mr. Meyer withdrew his prior motions on lighting and landscaping.

Mr. Tesche moved, seconded by Mr. Sullivan, and it passed without objection,	to amend AR 2000-160 in subsection “G” to read: “Closing hours are midnight on weekdays...on Saturday and Sunday.”
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Mr. Tesche moved, seconded by Ms. Fairclough,	to amend subsection “G” to read: “Closing hours are midnight on weekdays and 2:00 a.m. on...”
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AYES: Tremaine, Tesche, Von Gemmingen.
NAYS: Taylor, Meyer, Wuerch, Fairclough, Clementson.

Question was called on the motion to approve AR 2000-160 as amended and it passed with Ms. Clementson objecting.

(Clerk’s Note: No action was taken on AR 2000-142 or AM 517-2000.)

4. ADJOURNMENT:

The meeting adjourned at 1:50 p.m.

Chair

ATTEST:

Municipal Clerk

Date Minutes Approved: September 12, 2000

VC/vc