

DRAFT

Submitted by: ASSEMBLY MEMBER FLYNN
ASSEMBLY CHAIR TRAINI
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Prepared by: Assembly Counsel

Reviewed by: Dept. of Law

For reading: January 13, 2015

ANCHORAGE, ALASKA AR NO. 2015-

1 **A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY STATING ITS**
2 **PROTEST REGARDING TRANSFER OF BEVERAGE DISPENSARY LICENSE #4531 AND**
3 **DUPLICATE LICENSES #451 AND #4552 FOR PREMISES LOCATED AT 901 WEST 6TH**
4 **AVENUE, ANCHORAGE, ALASKA; GIVING NOTICE OF REASONS FOR PROTEST; AND**
5 **FURTHER PROVIDING FOR PUBLIC HEARING BEFORE THE ASSEMBLY ON THE**
6 **EXERCISE OR WAIVER OF THIS PROTEST.**

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8 WHEREAS, the Anchorage Assembly is in receipt of applications from the Alcoholic
9 Beverage Control (ABC) Board for transfer of ownership (with security interest) from La
10 Mexicana, Inc. to Robert Alexander of beverage dispensary license #4531 and duplicate
11 licenses #4551 and #4552 for premises located at 901 West 6th Avenue, Anchorage, Alaska
12 Exhibit A);

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14 WHEREAS, standards governing Assembly protests to the ABC Board in AMC
15 2.30.125 and 3 AAC 304.180 include:

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- 18 • Land use consideration – Is there a permanent negative impact greater than that
19 anticipated from permitted development on pedestrian and vehicular traffic circulation
20 and safety; the demand for and availability of public services and facilities; noise, air,
21 water or other forms of environmental pollution; maintenance of compatible and
22 efficient development patterns and land use intensities?
 - 23 • Training – Does the applicant demonstrate prospective compliance with a program for
24 techniques in alcohol management (T.A.M)?
 - 25 • Operations procedures – Does the applicant demonstrate prospective compliance with
26 operations procedures for licensed premises described in AMC 10.50.035?
 - 27 • Public safety considerations -- Does the applicant demonstrate the ability to maintain
28 order and prevent unlawful conduct in licensed premises, including any adjacent area
29 under the control or management of the licensee?
 - 30 • Public health – Has the operator engaged in a pattern of practices injurious to public
31 health or safety, such as committing serious violations of state law relevant to public
32 health or safety, or other actions within the knowledge and control of the operator
33 which place the public health or safety at risk?
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 - 35
 - 36
 - 37

- Are the transferee and transferee's affiliates trustworthy and fit to fully and responsibly conduct a licensed business without potential source of harm to the public?

WHEREAS, Anchorage Municipal Code and state law provide the Anchorage Assembly the opportunity to protest a license transfer upon facts that render the particular application objectionable to the local governing body, or may be based upon a general public policy with a reasonable basis in fact, not contrary to law, and not patently inapplicable to the particular application;

WHEREAS, within the most recent six – eight year period, the Municipality of Anchorage has faced increasing public safety challenges in the downtown business district related to bar break and changes in the operational profiles of licensed premises;

WHEREAS, in recognition that the operational profile, especially in the split of gross receipts attributable to alcohol, contributes to the public safety, noise, litter, and operational management outcome, the Anchorage Assembly has increasingly scrutinized the proposed use of a licensed premises under the license transfer application, distinguishing between a dining establishment with full beverage dispensary service under the conditional land use permit for alcohol use, and use of the licensed premises as a dance club with food service;

WHEREAS, the specific location of 901 West 6th Avenue had decades-long restaurant operation, as Thompson's Restaurant, the Harbor Restaurant, and La Mex. In 2006, the Anchorage Assembly took special measures to retain the restaurant profile in the land use permit: 60% food sales; open for lunch every day at 11:00 a.m.; full menu food service until 1:00 a.m. (Exhibit B);

WHEREAS, in the 2006 approval, public safety considerations were addressed by providing a 15-member security team with National Hospitality & Security Alliance training; 32 DVR surveillance cameras; provision for additional security staff to monitor the area within a six-block circumference, and T.A.M. training for all employees except kitchen staff (Exhibit B);

WHEREAS, prior licensee implementation of these public safety, use, and mitigation considerations proved insufficient for public health and safety and at least seven (7) ABC Board Notices of Violation were issued against the licensed premises at this location between 2009 and 2012 (Exhibit C). The negative land use impact of a club profile offering recorded music, live music, and patron dancing, open until 2:30 a.m. on week nights, and 3:00 a.m. on weekends, has been demonstrated to the Assembly in the history of prior operations at this location;

WHEREAS, the Anchorage Assembly in 2013 reviewed the transfer of beverage dispensary duplicate use and license #5260 at another downtown location (415 E Street), after experiencing negative land use impact. The emphasis on maintaining a bona fide restaurant was emphasized with sale of alcoholic beverages not to exceed 25% (Exhibit D);

WHEREAS, not shown in the ABC application for transfer of beverage dispensary licenses #4351, #4551, and #4552, Mr. Robert Alexander has held State of Alaska business licenses as sole proprietor of Fusions Bar & Grill (issue date September 20, 2013) and as co-owner in partnership with Han Young Cho (issue date February 11, 2014) (Exhibit E);

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2 WHEREAS, not shown on the ABC application for transfer of beverage dispensary
3 licenses #4351, #4551 and #4552, Mr. Robert Alexander in his capacity as sole proprietor,
4 dba Fusions Bar & Grill, and subsequently as a partner, is a named Respondent in the Final
5 Decision and Order, Alaska Workers' Compensation Board (AWCB) Decision No. 14-0137,
6 AWCB Case No. 700004468, October 10, 2014, which includes findings of fact and factual
7 conclusions that are either undisputed or established by a preponderance of the evidence
8 before the Alaska Worker's Compensation Board (Exhibit F -- Per Department of Labor,
9 hearing to address the petition for modification is scheduled for 2/4/15);

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11 WHEREAS, the ABC Board "Bar File" for Fusions Bar & Grill includes the investigative
12 materials, transcript excerpt, attachments, and judgment against Hong & Lee's Inc. in Case
13 No. 3AN-14-01730CR concerning operational issues at Fusions Bar & Grill (Exhibit G);

14
15 WHEREAS, the Anchorage Assembly heard public testimony on December 2, 2014,
16 and received written comment from individuals and entities concerning the transfer of
17 beverage dispensary licenses #4351, #4551 and #4552 (Exhibit H);

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19 WHEREAS, under cover letter dated December 18, 2014, Mr. Robert Alexander has
20 provided the Anchorage Assembly with the proposed Business Plan for Tri-Grill Downtown
21 and L.E.D Ultra Lounge (Exhibit I);

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23 WHEREAS, public hearing on the exercise or waiver of protest has been duly
24 scheduled for January 27, 2015;

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26 WHEREAS, the proposed findings in Section 1 of this Assembly Resolution state the
27 reasons for the protest and a copy of this Assembly Resolution and the accompanying
28 Assembly Memorandum of Exhibits have been provided to the applicants and representatives
29 by no later than 21 days in advance of public hearing on January 27, 2015;

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31 WHEREAS, on January 27, 2015, the Assembly having reviewed the standards for
32 protest and the exhibits, held public hearing, reviewed and deliberated the proposed findings
33 in support of protest;

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35 NOW, THEREFORE, THE ANCHORAGE ASSEMBLY hereby enters its protest
36 regarding the proposed transfer of beverage dispensary licenses #4351, #4551 and #4552;
37 and further resolves:

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39 **Section 1:** The Anchorage Assembly makes the following findings in support of the protest.
40 Each finding, taken alone, is considered by the Anchorage Assembly as independent
41 grounds for protest:

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43 Finding 1. Historical experience with this location since at least 2009, and with one
44 or more other downtown locations, demonstrates to the Anchorage
45 Assembly as a matter of general public policy, there is a permanent
46 negative impact greater than that anticipated from permitted
47 development, on a) pedestrian and vehicular traffic circulation and

safety; b) the demand for and availability of public services and facilities; and c) noise and public litter, when the licensed premises is operated under a business plan such as the one proposed by Mr. Robert Alexander (Exhibit I). Mr. Alexander’s business plan is insufficient to ameliorate the negative impact to surrounding land use, public health, and public safety, experienced by the municipality at this location.

Finding 2. The business plan proposed by Mr. Robert Alexander (Exhibit I), taken together with public testimony, written comment (Exhibit H), sole proprietorship of Fusions Bar & Grill, partnership proprietorship of Fusions Bar & Grill, restaurant management responsibility for Fusions Bar & Grill (Exhibits E & G), failure to responsibly provide Workers’ Compensation Insurance (Exhibit F), is insufficient to demonstrate prospective compliance with alcohol management training and requisite operational procedures.

Finding 3. The business plan proposed by Mr. Robert Alexander, taken together with public testimony and written comment (Exhibit H), sole proprietorship of Fusions Bar & Grill, partnership proprietorship of Fusions Bar & Grill, restaurant management responsibility for Fusions Bar & Grill (Exhibits E & G), is insufficient to demonstrate the applicant’s ability to maintain order and prevent unlawful conduct in the licensed premises.

Finding 4. The business plan proposed by Mr. Robert Alexander is insufficient to overcome concerns by the Anchorage Assembly with respect to prior actions and inactions within the knowledge and control of Mr. Alexander affecting health and safety of workers, demonstrated by the failure to responsibly provide Workers’ Compensation Insurance (Exhibit F).

Finding 5. The business plan proposed by Mr. Robert Alexander is insufficient to demonstrate trustworthiness and fitness to responsibly conduct a licensed business without potential harm to the public interest in areas of a) alcohol management training in light of public testimony (Exhibit H); b) record keeping and financial management practices (Exhibits F & G); and c) inconsistent public record disclosures (Exhibits A & E, F, G).

Section 2. A copy of this Assembly Resolution may be presented to the Alcoholic Beverage Control Board as proof that the Anchorage Assembly, as the local governing body, has stated its protest after public hearing on January 27, 2015.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2015.

Chair

ATTEST:

Municipal Clerk