



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community,  
and Economic Development

ALCOHOL & MARIJUANA CONTROL OFFICE

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Anchorage, Alaska 99501  
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June 15, 2023

The Members of the Anchorage Assembly  
P.O. Box 196650  
Anchorage, Alaska 99519-6650

Re: A.O. 2023-71 Public Comment

Dear Honorable Members of the Anchorage Assembly:

Thank you for the opportunity to comment on the above referenced ordinance. The Alcohol and Marijuana Control Office (AMCO) writes in general support of A.O. 2023-71. However, we also write to express concern that, as written, the Ordinance greatly impacts AMCO's ability to implement SB 9 on the statutorily required time schedule. For this reason, we suggest A.O. 2023-71 be amended to exempt from the definition of "application" certain actions that should not be subject to the protest process. These actions fall into one of three categories: (1) mandatory license conversions; (2) mandatory conversion of licenses upon application; and (3) applications for standalone endorsements when the conduct authorized by the endorsements have already been vetted and approved under the Municipality's current process. Last, we suggest minor edits and request the Assembly to review a recently issued decision from the Office of Administrative Hearings that will guide how the Alcoholic Beverage Control Board ("ABC Board") addresses conditional protests.

### **Background**

As your ordinance and Assembly Memorandum 455-2023 recognize, Governor Dunleavy has signed Senate Bill 9 into law, which modernizes the license structure available to alcoholic beverage licensees in Anchorage and across the State. The now enacted law provides the ABC Board and AMCO until January 1, 2024, to implement the vast majority of the changes to these licenses. Applicants for licenses will not be permitted to apply to AMCO until September 1, 2023. As such, our office has to examine and process, and the ABC Board has to approve, applications within 120 days. That is an

extremely tight timeframe that leaves little opportunity to coalesce the implementation process with local government procedures as usual.

We include with this memorandum Sections 168 through 177 of SB 9, which describe the actions the Board must take and its timeframe for doing so. As such, we respectfully propose the following amendments.

### **Amendment to the Definition of Application**

As proposed in Section 3.30.121 of AO No. 2023-71, application means, “an application to issue, renew, transfer location, or transfer to another person, an alcoholic beverage license, an alcoholic beverage license with one or more endorsement, or an endorsement, or to protest the continued operation of a license.”<sup>1</sup>

We request that you exempt from the definition of “application,”

- Any automatic conversion of a license as described in Section 169(b);
- Any automatic conversion of a license upon application as described in Section 169(c);
- Any automatic conversion of a license with or without an application as described in Section 169(d); and
- Any separate application by a current licensee for the following endorsements:
  - manufacturer sampling endorsements;
  - hotel or motel endorsements where the licensee currently operates a hotel or motel as defined under SB 9 and currently holds a beverage dispensary or a beverage dispensary tourism license;
  - restaurant endorsements where the licensee already holds a restaurant designation permit;
  - bowling alley endorsements where the licensee currently operates a bowling alley and currently holds a beverage dispensary or a beverage dispensary tourism license;
  - package store shipping endorsements;
  - package store repackaging endorsements;
  - package store delivery endorsements; and
  - brewery repackaging endorsements.

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<sup>1</sup> As an initial matter, we are confused about the inclusion of “or to protest the continued operation of a license,” because that is not an “application,” *per se*. It is a protest of an existing license. We recommend that this language be struck from the definition.

Providing these exceptions does not compromise the Municipality's protest rights, because, as a body, the Assembly has already approved the licenses and licensed activities. The right to protest would continue for new licenses, transfer licenses (to person and location), renewal licenses, and protests of continued operations.

### **Additional Requested Amendments**

At Section 2.30.121, we suggest the following:

- Definition of AMCO – strike “the administrative office of”
- Definition of ABC Board – define as the Alcoholic Beverage Control Board as authorized under AS 04.06.

At Section 2.30.122, we suggest the following:

- Receipt of Notice of application. Last sentence before numerals, strike “designated by the state” and replace with “required under AS 04.11.480.”

At Section 10.50.006, we suggest the following:

- (B)(1) Action by the Chief of Police. The Anchorage Police Department has authority to inspect licensed premises not only for compliance with conditions the Municipality requests to be placed on the license, but with all requirements for licensed activities. As such, please insert after with “the license or”

### **Recent OAH Decision**

We believe some members of this body are already aware of the recent decision for *In The Matter of LED Ultra Lounge & Grill, LLC*, OAH No. 22-0846-ABC. This decision analyzes whether the Municipality's conditional protest procedures were arbitrary, capricious, and unreasonable. We suggest no amendments to the Ordinance at this time. However, please be aware the ABC Board will be guided by this decision when it reviews conditional protests in the future.

### **Conclusion**

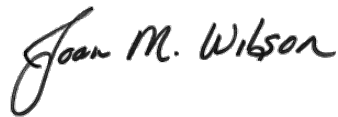
While these recommendations are substantial, we at AMCO applaud the Municipality's effort to clarify and simplify municipal code. Anchorage currently has 435 active alcohol licenses that will most definitely be impacted by your efforts to streamline and clarify the municipal process. Eliminating duplicative language within municipal

code will allow for more efficient reviews, which will provide improved service to alcohol business licensees within the municipality.

This ordinance will also facilitate better internal licensing procedures which will provide an opportunity for clearer communication between all stakeholders such as community councils, local law enforcement, AMCO, and the public at large.

We welcome the opportunity to work with you and the Mayor's Office to best serve our licensed businesses and the citizens of Anchorage.

Sincerely,

A handwritten signature in black ink that reads "Joan M. Wilson". The signature is written in a cursive, flowing style.

Joan M. Wilson  
Director

cc: The Honorable David Bronson, Mayor

1 04.16.180(d), 04.16.210; and AS 04.21.080(b)(3) are repealed.

2 \* **Sec. 165.** AS 04.11.400(e) and 04.11.400(g) are repealed.

3 \* **Sec. 166.** AS 04.09.270(f) is repealed January 1, 2029.

4 \* **Sec. 167.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 APPLICABILITY. (a) The provisions of secs. 13 - 24, 34, 85 - 88, 90 - 135, 140 -  
7 143, 145, and 153 - 155 of this Act apply to offenses committed on or after the effective date  
8 of each of those respective sections.

9 (b) References to previous convictions in AS 04.11.270(a), as amended by sec. 27 of  
10 this Act, AS 04.16.180(b), as amended by sec. 128 of this Act, AS 04.16.180(e), as amended  
11 by sec. 129 of this Act, and AS 04.16.220(i), as amended by sec. 134 of this Act, apply to  
12 convictions occurring before, on, or after the effective date of each of those respective  
13 sections.

14 \* **Sec. 168.** The uncodified law of the State of Alaska is amended by adding a new section  
15 to read:

16 TRANSITION: IMPLEMENTATION. Notwithstanding sec. 177 of this Act, to timely  
17 provide for the issuance, renewal, and transfer of licenses, endorsements, and permits,  
18 beginning on January 1, 2024, the Alcoholic Beverage Control Board may begin to implement  
19 the changes that will be made under secs. 6, 7, 12, 13, 25, 27, 75, and 169 of this Act by  
20 sending out notices relating to, accepting applications for, and collecting fees for licenses,  
21 endorsements, and permits according to the changes that will be made when secs. 6, 7, 12, 13,  
22 25, 27, 75, and 169 of this Act take effect. However, the Alcoholic Beverage Control Board  
23 may not issue licenses, endorsements, and permits under secs. 6, 7, 12, 13, 25, 27, 75, and 169  
24 of this Act before January 1, 2024.

25 \* **Sec. 169.** The uncodified law of the State of Alaska is amended by adding a new section  
26 to read:

27 TRANSITION: CONVERSION OF APPLICATIONS AND LICENSES. (a)  
28 Notwithstanding the population limits under AS 04.11.400(a) or (b), the Alcoholic Beverage  
29 Control Board shall convert, within 90 days after the effective date of this subsection,

30 (1) a license issued or renewed as necessary for the public convenience under  
31 former AS 04.11.400(e) or 04.11.400(g), repealed by sec. 165 of this Act, into a restaurant or

1 eating place license under AS 04.11.100, if the license was issued as a restaurant or eating  
2 place license, or into a beverage dispensary license under AS 04.11.090, if the license was  
3 issued as a beverage dispensary license under former AS 04.11.400(j), as that subsection read  
4 on June 5, 1985;

5 (2) an application submitted to the board that meets all of the requirements  
6 under former AS 04.11.400(e) or 04.11.400(g), repealed by sec. 165 of this Act, into an  
7 application for a restaurant or eating place license under AS 04.11.100.

8 (b) Notwithstanding the population limits under AS 04.11.400(a) or (b), the Alcoholic  
9 Beverage Control Board shall convert, within 90 days after the effective date of this  
10 subsection,

11 (1) a license issued or renewed as a bottling works license under former  
12 AS 04.11.120, repealed by sec. 164 of this Act, into a brewery manufacturer license under  
13 AS 04.09.020, added by sec. 13 of this Act, or into a winery manufacturer license under  
14 AS 04.09.030, added by sec. 13 of this Act;

15 (2) a license issued or renewed as a brewpub license under former  
16 AS 04.11.135, repealed by sec. 164 of this Act, into a brewery manufacturer license under  
17 AS 04.09.020, added by sec. 13 of this Act;

18 (3) a license issued or renewed as a beverage dispensary license or restaurant  
19 or eating place license for a premises that is a theater under former AS 04.11.090 or  
20 AS 04.11.100, repealed by sec. 164 of this Act, into a theater license under AS 04.09.250,  
21 added by sec. 13 of this Act;

22 (4) a license issued or renewed as a wholesale license under former  
23 AS 04.11.160(a), repealed by sec. 164 of this Act, into a general wholesale license under  
24 AS 04.09.100, added by sec. 13 of this Act;

25 (5) a license issued or renewed as a wholesale license under former  
26 AS 04.11.160(b), repealed by sec. 164 of this Act, into a limited wholesale brewed beverage  
27 and wine license under AS 04.09.110, added by sec. 13 of this Act;

28 (6) a license issued or renewed as a beverage dispensary license under former  
29 AS 04.11.400(d), repealed by sec. 164 of this Act, into a beverage dispensary tourism license  
30 under AS 04.09.350, added by sec. 13 of this Act;

31 (7) a duplicate license issued or renewed as a duplicate beverage dispensary

1 license under former AS 04.11.090(e), repealed by sec. 164 of this Act, into a multiple fixed  
2 counter endorsement under AS 04.09.420, added by sec. 13 of this Act.

3 (c) Notwithstanding the population limits under AS 04.11.400(a) or (b), the Alcoholic  
4 Beverage Control Board shall, upon application by the licensee, convert a license issued or  
5 renewed as a recreational site license under former AS 04.11.210, repealed by sec. 164 of this  
6 Act, into a sporting activity or event license under AS 04.09.270, added by sec. 13 of this Act,  
7 or another applicable license under AS 04.09.

8 (d) Notwithstanding the population limits under AS 04.11.400(a) or (b), the Alcoholic  
9 Beverage Control Board may

10 (1) convert a license issued or renewed as a brewery license under former  
11 AS 04.11.130, repealed by sec. 164 of this Act, into a brewery manufacturer license under  
12 AS 04.09.020, added by sec. 13 of this Act, and a brewery retail license under AS 04.09.320,  
13 added by sec. 13 of this Act, upon application by the licensee;

14 (2) convert an application submitted to the board that meets all of the  
15 requirements under former AS 04.11.130, repealed by sec. 164 of this Act, into an application  
16 for a brewery manufacturer license under AS 04.09.020, added by sec. 13 of this Act, and a  
17 brewery retail license under AS 04.09.320, added by sec. 13 of this Act;

18 (3) issue a brewery manufacturer license under AS 04.09.020, added by sec.  
19 13 of this Act, and a brewery retail license under AS 04.09.320, added by sec. 13 of this Act,  
20 to an applicant who submits an application to the board under former AS 04.11.130, repealed  
21 by sec. 164 of this Act, if the board converts the application under (2) of this subsection;

22 (4) convert a license issued or renewed as a winery license under former  
23 AS 04.11.140, repealed by sec. 164 of this Act, into a winery manufacturer license under  
24 AS 04.09.030, added by sec. 13 of this Act, and a winery retail license under AS 04.09.330,  
25 added by sec. 13 of this Act, upon application by the licensee;

26 (5) convert an application submitted to the board that meets all of the  
27 requirements under former AS 04.11.140, repealed by sec. 164 of this Act, into an application  
28 for a winery manufacturer license under AS 04.09.030, added by sec. 13 of this Act, and a  
29 winery retail license under AS 04.09.330, added by sec. 13 of this Act;

30 (6) issue a winery manufacturer license under AS 04.09.030, added by sec. 13  
31 of this Act, and a winery retail license under AS 04.09.330, added by sec. 13 of this Act, to an

1 applicant who submits an application to the board under former AS 04.11.140, repealed by  
2 sec. 164 of this Act, if the board converts the application under (5) of this subsection;

3 (7) convert a license issued or renewed as a distillery license under former  
4 AS 04.11.170, repealed by sec. 164 of this Act, into a distillery manufacturer license under  
5 AS 04.09.040, added by sec. 13 of this Act, and a distillery retail license under AS 04.09.340,  
6 added by sec. 13 of this Act, upon application by the licensee;

7 (8) convert an application submitted to the board that meets all of the  
8 requirements under former AS 04.11.170, repealed by sec. 164 of this Act, into an application  
9 for a distillery manufacturer license under AS 04.09.040, added by sec. 13 of this Act, and a  
10 distillery retail license under AS 04.09.340, added by sec. 13 of this Act;

11 (9) issue a distillery manufacturer license under AS 04.09.040, added by sec.  
12 13 of this Act, and a distillery retail license under AS 04.09.340, added by sec. 13 of this Act,  
13 to an applicant who submits an application to the board under former AS 04.11.170, repealed  
14 by sec. 164 of this Act, if the board converts the application under (8) of this subsection;

15 (10) establish an application form and procedure for conversion applications  
16 under this subsection.

17 \* **Sec. 170.** The uncodified law of the State of Alaska is amended by adding a new section  
18 to read:

19 **TRANSITION: SEASONAL RESTAURANT OR EATING PLACE TOURISM**  
20 **LICENSE.** (a) Notwithstanding AS 04.11.080, the Alcoholic Beverage Control Board may  
21 issue a seasonal restaurant or eating place tourism license to a person who files an application  
22 under AS 04.11.260.

23 (b) A seasonal restaurant or eating place tourism license authorizes a restaurant or  
24 eating place to sell brewed beverages and wine for consumption only on the licensed premises  
25 for a period not to exceed six months in each calendar year.

26 (c) The biennial seasonal restaurant or eating place tourism license fee is \$1,250.

27 (d) The board may issue a license under this section only if

28 (1) the board determines that the licensed premises is a bona fide restaurant or  
29 eating place; and

30 (2) the sale and service of food and alcoholic beverages and any other  
31 business conducted on the licensed premises of the restaurant or eating place is under the sole



1 control of the licensee.

2 (e) The board may issue a license under this section only in a municipality or  
3 established village that

4 (1) has a population of 40,000 or less; and

5 (2) receives more than 4,000 visitors a year, as determined by the board in  
6 regulation.

7 (f) The board may issue a license or approve an application for the transfer of  
8 ownership of a license under this section if it appears that issuance or transfer will encourage  
9 the tourism trade.

10 (g) The holder of a seasonal restaurant or eating place tourism license shall ensure  
11 that gross receipts from the sale of food for consumption on the licensed premises are not less  
12 than the total amount of the gross receipts from the sale of alcoholic beverages for  
13 consumption on the licensed premises in each calendar year.

14 (h) The board shall adopt a regulation establishing a formula to limit the number of  
15 seasonal restaurant or eating place tourism licenses.

16 (i) The holder of a seasonal restaurant or eating place tourism license may provide  
17 entertainment on or adjacent to the licensed premises only between the hours of 11:00 a.m.  
18 and 11:00 p.m. unless additional hours are approved by the director upon the written request  
19 of the licensee for a specific occasion. The director may not grant approval for additional  
20 hours of entertainment on or adjacent to the licensed premises of an individual licensee more  
21 than three times in a calendar year. In this subsection, "entertainment" includes dancing,  
22 karaoke, live performances, or similar activities, but does not include recorded or broadcast  
23 performances without live participation.

24 (j) A license issued under this section may be renewed under AS 04.09.360, added by  
25 sec. 13 of this Act, on or after the effective date of sec. 13 of this Act.

26 (k) In this section, "bona fide restaurant" means an establishment or a portion of an  
27 establishment where, during all times alcoholic beverages are served or consumed,

28 (1) the patron's principal activity is consumption of food; and

29 (2) a variety of types of food items appropriate for meals is prepared on site  
30 and available for sale as shown on a menu provided to patrons and filed with the board.

31 \* **Sec. 171.** The uncodified law of the State of Alaska is amended by adding a new section

1 to read:

2           TRANSITION: REGULATIONS. The Department of Commerce, Community, and  
3 Economic Development and the Alcoholic Beverage Control Board may adopt regulations  
4 necessary to implement the changes made by this Act. The regulations take effect under  
5 AS 44.62 (Administrative Procedure Act), but not before the effective date of the law  
6 implemented by the regulation.

7       \* **Sec. 172.** Sections 169(a) and 170 of this Act are repealed January 1, 2024.

8       \* **Sec. 173.** The uncodified law of the State of Alaska is amended by adding a new section  
9 to read:

10           CONDITIONAL EFFECT. AS 04.16.060(k), enacted by sec. 109 of this Act, and sec.  
11 163 of this Act take effect only if sec. 163 of this Act receives the two-thirds majority vote of  
12 each house required by art. IV, sec. 15, Constitution of the State of Alaska.

13       \* **Sec. 174.** Sections 36, 41, 43, 49, 54, 59, 165, 169(a), 169(d)(10), 170, and 171 of this Act  
14 take effect immediately under AS 01.10.070(c).

15       \* **Sec. 175.** Section 168 of this Act takes effect September 1, 2023.

16       \* **Sec. 176.** Section 51 of this Act takes effect January 1, 2030.

17       \* **Sec. 177.** Except as provided in secs. 174 - 176 of this Act, this Act takes effect January 1,  
18 2024.