

CLERK'S OFFICE
APPROVED
Date: 8-25-98

Submitted by: Assembly Member
Wuerch

Prepared by: Department of Law
For reading: August 25, 1998

ANCHORAGE, ALASKA
AR NO. 98-251(S)

A RESOLUTION ENACTING A NEW CHAPTER TO THE ANCHORAGE MUNICIPAL CODE OF REGULATIONS TO ESTABLISH PRE-HEARING, HEARING AND POST-HEARING PROCEDURES GOVERNING ALL ASPECTS OF THE INITIATION AND CONDUCT OF PROCEEDINGS BEFORE THE ASSEMBLY FOR THE GRANT AND REVOCATION OF CONDITIONAL USE PERMITS FOR THE RETAIL SALE OF ALCOHOLIC BEVERAGES.

THE ANCHORAGE ASSEMBLY RESOLVES

Section 1. The Anchorage Municipal Code of Regulations is hereby amended by adding a new chapter 21.05 entitled "Assembly Rules of Procedure for Conditional Use Permit Hearings" to read as follows:

21.05.010 Applicability

- A. The provisions of this chapter shall apply to hearings before the Assembly for the revocation of conditional use permits under Title 21 for the retail sale of alcoholic beverages.
- B. The provisions of this chapter shall be in addition to those procedures established by Anchorage Municipal Code chapter 3.60.

21.05.020 Pre-hearing Requirements

- A. *Witness Lists and Documentary Evidence.* Not later than thirty (30) days prior to the hearing date, the parties shall exchange and shall provide to the Municipal Clerk and the Assembly's counsel, copies of their witness lists, affidavits of witnesses and documentary evidence.
- B. *Subpoena Requests.* Requests for subpoenas for witnesses shown on the witness list submitted pursuant to subsection A. of this section shall be filed with such witness list. All other subpoenas shall be submitted in accordance with section 3.60.045F.
- C. *Pre-Hearing Memoranda.* Not later than twenty-one (21) days prior to the hearing date, the parties shall submit a pre-hearing memorandum of not more than ten pages, double-spaced, setting out their evidence and their legal arguments.
- D. *Documentary Evidence.* Documentary evidence shall be marked by the Municipal Clerk in advance of the hearing as "(name of party) Exhibit ____". Each party shall provide a copy to all other parties, the Assembly's counsel and twelve (12) copies to the Clerk prior to the hearing.

Exhibits of the party who initiated the proceedings shall be assigned Arabic numbers and exhibits of the responding or defending party shall be assigned capitalized letters of the alphabet.

21.05.030 Fair Hearing.

- A. The Assembly, as the trier of facts and decision maker, shall provide the permit holder a fair hearing, shall be impartial and unbiased and shall have no *ex parte* contacts in accordance with section 3.60.065.
- B. The Assembly may appoint the Municipal Administrative Hearing Officer or another hearing officer to act as the trier of fact and to make findings of fact for and a recommended decision to the Assembly.

21.05.040 Hearing Procedures

- A. *Opening Statements.* The parties or their attorneys may make an opening statement of not more than five (5) minutes, unless additional time is requested in advance of the hearing and is necessary to the full and fair presentation of the party's case.
- B. *Witnesses.* The parties may call as many witnesses as are required to make or defend their case.
- 1 All witnesses shall be sworn in by the Municipal Clerk and shall provide their testimony under oath.
2. The conduct of witness examination shall be governed by section 3.60.045, provided however, the Chair of the Assembly may require any examination or cross-examination to be conducted through the Chairman when necessary for good order and discipline in the conduct of the hearing.
- C. *Evidence and Objections.* The admission of evidence shall be governed by section 3.60.045.
- 1 Objections to evidence and exhibits shall be made at the time the evidence is presented at the hearing and shall be ruled on by the chair at such time.
- D. *Closing Statements.* When all evidence has been submitted by the parties, each party may make a closing statement not to exceed ten (10) minutes.
- E. *Ruling or Decision.* After closing statements are completed, the chair may entertain a motion to act upon the conditional use permit which motion must be seconded to be considered by the Assembly.
- 1 Before action on a conditional use permit may be taken, the applicant seeking the action must establish by a preponderance of the evidence that the requested action is warranted and in accordance with law.
2. After the motion has been seconded, the maker of the motion shall state whether he/she supports the motion and shall articulate for the record the factual evidence

constituting a preponderance of the evidence in support of a conclusion that the violations occurred and that revocation is warranted.

3 After all Assembly members wishing to explain their reasoning on the record have done so, the chair shall call for a vote on the motion.

4. The decision of the Assembly shall be announced on the record.

21.05.050 Post-Hearing Procedures

A The Assembly shall adopt written findings of fact and conclusions of law based on the statements of Assembly members on the side of the motion that prevails in accordance with section 3.60.055.

1. The written findings of fact and conclusions of law shall be mailed by the Clerk to the parties with a notice that the decision of the Assembly is final and the non-prevailing party has thirty (30) days to appeal to the Superior Court in accordance with section 3.60.080.

Section 2. This resolution shall become effective immediately upon its passage and approval by the Assembly. The Municipal Clerk shall immediately forward a copy of this ordinance to all parties to proceedings awaiting hearing before the Assembly governed by this ordinance.

PASSED AND APPROVED by the Anchorage Assembly this 25th day of August, 1998.

Fay Von Hemming
Chair of the Assembly

ATTEST

Lynne Thompson
Municipal Clerk