

Submitted by: Chair of the Assembly at
the request of the Mayor
Prepared by: Planning Department
For reading: January 8, 2008

CLERK'S OFFICE

APPROVED

Date: 2-12-08

Anchorage, Alaska

AR No. 2008-1

IMMEDIATE RECONSIDERATION

FAILED 2-12-08; VETOED 2-19-08 ; VETO OVERRIDDEN 2-26-08

1 A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY APPROVING
2 AN ALCOHOLIC BEVERAGES CONDITIONAL USE IN THE B-3 (GENERAL
3 BUSINESS) DISTRICT FOR A DUPLICATE BEVERAGE DISPENSARY USE PER
4 AMC 21.40.180 D.8, FOR DEBCO, INC., FANTASIES ON 5TH, LOCATED AT
5 1911 E. 5TH AVENUE, WITHIN FANTASIES SUBDIVISION, LOT 1, AND FOURTH
6 ADDITION, BLOCK 26C, LOTS 4, 5 AND 6; GENERALLY LOCATED BETWEEN
7 EAST 4TH AND EAST 5TH AVENUES, ON THE EAST SIDE OF SITKA STREET.
8

9 (Mountain View Community Council) (Case 2008-013)
10
11

12 THE ANCHORAGE ASSEMBLY RESOLVES:
13

14 **Section 1.** This conditional use approval is for an Alcoholic Beverages Conditional Use
15 in the B-3 District for a Beverage Dispensary Use per AMC 21.40.180 D.8, for Debco,
16 Inc., doing business as Fantasies on 5th, located in Fantasies Subdivision, Lot 1, and
17 Fourth Addition, block 26C, Lots 4, 5 and 6; generally meets the applicable provisions of
18 AMC 21.50.020 and AMC 21.50.160.
19

20 **Section 2.** The conditional use for an Alcoholic Beverages Conditional Use for a
21 Duplicate Beverage Dispensary Use is for the first floor of the building located at 1911 E.
22 5th Avenue.
23

24 **Section 3.** The conditional use is approved subject to the following conditions:
25

- 26 1. A Notice of Zoning Action shall be filed with the District Recorder's Office within
27 120 days of the approval of the Assembly of the amendment for a duplicate
28 beverage dispensary license use within Fantasies Subdivision, Lot 1.
29
30 2. All uses shall conform to the plans and narrative submitted with this conditional use
31 application, including the first floor seating plan for eighty-three occupants.
32
33 3. This conditional use approval is for an Alcoholic Beverages Conditional Use in the
34 B-3 District for a Duplicate Beverage Dispensary Use per AMC 2140.180 D.8 for
35 approximately 4,300 square feet, located on the first floor of the structure at
36 Fantasies Subdivision, Lot 1. Plans and submittals indicate non-fixed seating of
37 fifty-seven, fixed seating of twenty-six, and a facility occupant capacity of eighty-
38 three.

- 1
- 2 4. This conditional use approval is for on-premise sale of alcoholic beverages seven
- 3 (7) days a week, Sunday through Thursday, 4:00 P.M. to 2:30 A.M.; Friday and
- 4 Saturday 4:00 P.M. to 3:00 A.M. Liquor sales represent eighty-five percent
- 5 compared to fifteen percent food sales.
- 6 5. Upon demand, the applicant shall demonstrate compliance with a liquor "Server
- 7 Awareness Training Program," approved by the State of Alaska Alcoholic
- 8 Beverage Control Board, such as or similar to, the program for "Techniques in
- 9 Alcohol Management" (T.A.M.).
- 10 6. The use of the property, by any person for the permitted purposes, shall comply
- 11 with all current and future Federal, State and local laws and regulations, including
- 12 but not limited to, laws and regulations pertaining to the sale, dispensing, service
- 13 and consumption of alcoholic beverages and the storage, preparation, sale, service
- 14 and consumption of food. The owner of the property, the licensee under the
- 15 Alcoholic Beverage Control license and their officers, agents and employees,
- 16 shall not knowingly permit or negligently fail to prevent the occurrence of illegal
- 17 activity on the property.
- 18 7. A copy of the conditions imposed by the Assembly in connection with this
- 19 conditional use approval shall be maintained on the premise.
- 20

21 **Section 4.** Failure to comply with the conditions of this conditional use permit shall

22 constitute grounds for its modification or revocation.

23

24 **Section 5.** This resolution shall become effective immediately upon passage and

25 approval by the Anchorage Assembly.

26


27 PASSED AND APPROVED by the Anchorage Assembly this 26th day of

28 February 2008.

29

ATTEST:


Chair


Municipal Clerk

(2008-013) (003-081-66, -14, -15, -16)



MUNICIPALITY OF ANCHORAGE ASSEMBLY MEMORANDUM

No. AM 1-2008

Meeting Date: January 8, 2008

From: Mayor

Subject: ALCOHOLIC BEVERAGES CONDITIONAL USE IN THE B-3 (GENERAL BUSINESS) DISTRICT FOR A DUPLICATE BEVERAGE DISPENSARY USE PER AMC 21.40.180 D.8 FOR DEBCO INC., DOING BUSINESS AS FANTASIES ON 5TH.

1 Debcu, Inc., doing business as Fantasies on 5th, has made application for a Duplicate
2 Beverage Dispensary Alcoholic Beverage Conditional Use in the B-3 District located at
3 1911 E. 5th Avenue, within Fantasies Subdivision, Lot 1, and Fourth Addition Subdivision,
4 Lots 4, 5 and 6.

5
6 The proposal is for a Beverage Dispensary Alcoholic Beverage Conditional Use
7 amendment to allow a duplicate beverage dispensary license for the approximately 4,300
8 square-foot first floor area within the three-story structure. The existing use of the adult
9 cabaret, which allows adult patrons ages 18 and older, will cease to exist. The adult use
10 will remain on the first floor, but the petitioner proposes a business change in that only
11 adults ages 21 and older will be allowed on the premises. The petitioner has an approved
12 conditional use and license for a beverage dispensary license for Club Elixir, located on the
13 second floor of the structure. The property is zoned B-3 in which alcoholic beverage sales
14 are permitted through the conditional use process. The adult use which will coexist on the
15 premises is a permitted use in the B-3 district meeting the use separation requirements for
16 adult uses under AMC 21.45.240.

17
18 The petitioner, doing business as Fantasies on 5th, has applied to the Alcoholic Beverages
19 Control Board for a duplicate of its current beverage dispensary license located at 1911 E.
20 5th Avenue.

21
22 There are no known churches or schools within 200 feet of the petition site, according to
23 Municipal records.
24

1 There are a total of three (3) alcohol conditional uses and licenses within a 1,000-foot
2 radius of the petition site: one (1) beverage dispensary license (at the petition site), and
3 two (2) restaurant licenses. Approving this amendment to a beverage dispensary
4 conditional use for a duplicate license will add a second beverage dispensary license within
5 a 1,000-foot radius of the petition site.
6

7 Fantasies on 5th will operate Sunday through Thursday from 4:00 P.M. to 2:30 A.M., and
8 Friday and Saturday from 4:00 P.M. to 3:00 AM. On-premise sale of alcohol beverages
9 will be available as permitted by the Alcohol Beverage Control Board requirements only
10 during the hours allowed for the specific day of the week applicable. The petitioner
11 estimates that eighty-five percent of total sales will be for alcohol. Employees involved in
12 the sale of alcoholic beverages will be trained in accordance with the Alcoholic Beverage
13 Control Board's "Liquor Server Alcohol Awareness Training Program," (TAM) and will
14 hold the necessary certifications.
15

16 At the time this report was prepared, the Treasury Department and the Anchorage Police
17 Department did not provide comments. The Department of Health and Human Services
18 provided comments.
19

20 THIS CONDITIONAL USE FOR A DUPLICATE BEVERAGE DISPENSARY USE
21 AND LICENSE IN THE B-3 DISTRICT GENERALLY MEETS THE APPLICABLE
22 PROVISIONS OF AMC TITLES 10 AND 21, AND ALASKA STATUTE 04.11.090.
23

24 Prepared by: Jerry T. Weaver Jr., Zoning Administrator, Planning Department

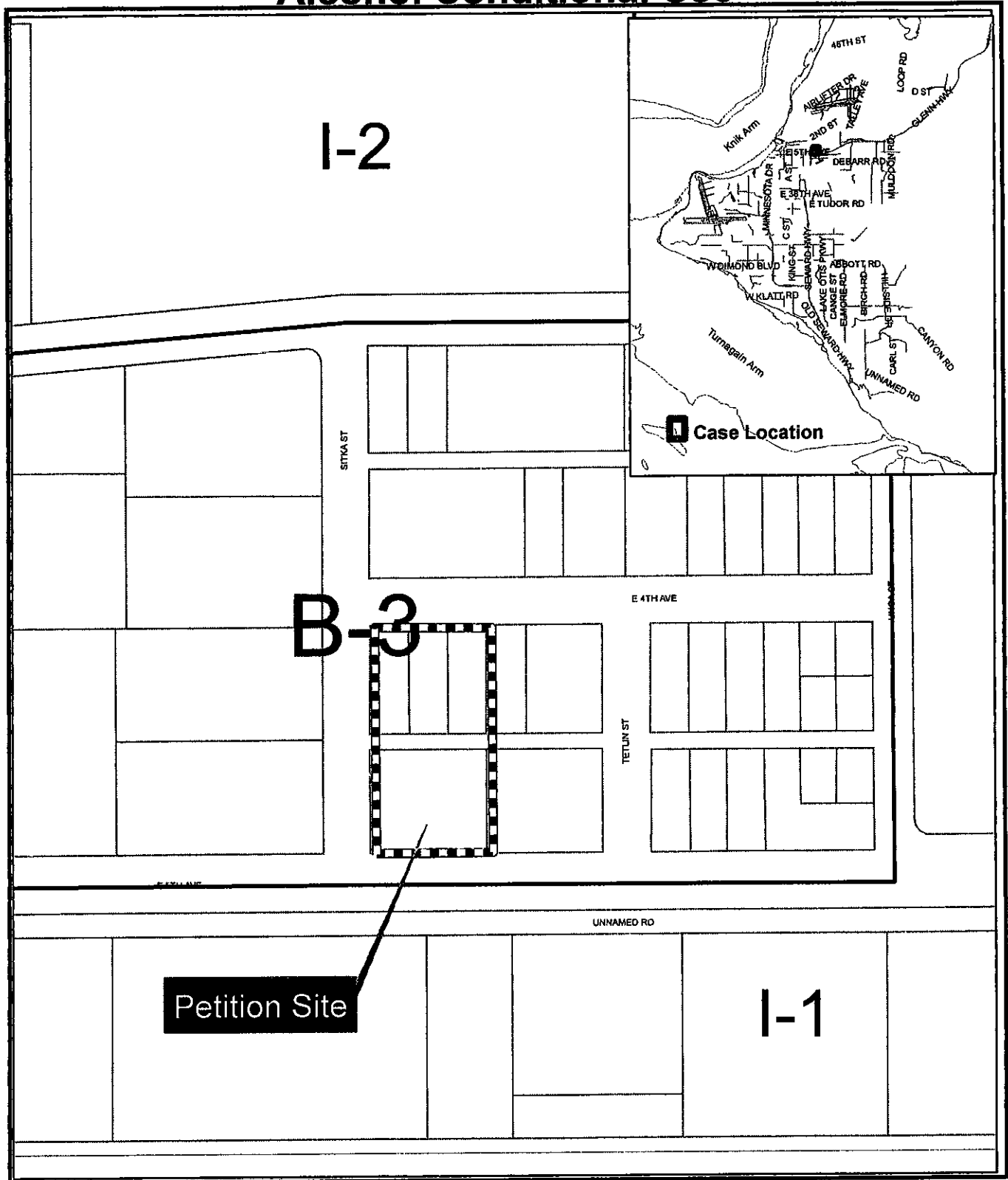
25 Concur: Tom Nelson, Director, Planning Department

26 Concur: Mary Jane Michael, Executive Director, Office of Economic &
27 Community Development

28 Concur: Denis C. LeBlanc, Municipal Manager

29 Respectfully submitted: Mark Begich, Mayor

2008-013 Alcohol Conditional Use

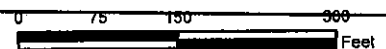


Municipality of Anchorage
Planning Department

Date: November 27, 2007

Flood Limits

- 100 Year
- 500 Year
- Floodway



001

**PLANNING DEPARTMENT
STAFF ANALYSIS
CONDITIONAL USE - ALCOHOLIC BEVERAGE SALES**

DATE: January 8, 2008

CASE NO.: 2008-013

APPLICANT: Debco, Inc., dba Fantasies on 5th

REPRESENTATIVE: Carol Hartman

REQUEST: An Amendment to a Conditional Use for an Alcoholic Beverages Conditional Use in the B-3 (General Business) District for a Duplicate Beverage Dispensary License for the first floor, per AMC 21.40.180D.8.

LOCATION: Fantasies Subdivision, Lot 1, and Fourth Addition, Block 26C, Lots 4, 5 and 6, generally located between East 4th and East 5th Avenues, on the east side of Sitka Street.

STREET ADDRESS: 1911 East 5th Avenue

COMMUNITY COUNCIL: Mountain View; adjacent to Airport Heights and Fairview.

TAX PARCEL: 003-081-66, -16, -15, -14/ Grid SW 1233

ATTACHMENTS

1. Location Map
2. Departmental Comments
3. Application
4. Posting Affidavit
5. Historical Information

RECOMMENDATION SUMMARY:

The petition site has been used as a bar/lounge with a beverage dispensary license since approximately 1957, prior to annexation into the City of Anchorage on March 20, 1960. Prior to 2004, this was a one story building. For approximately the last 19 years, the petitioner has operated two separate uses out of the building: an adult cabaret, dba Fantasies on 5th Avenue, in part of the building with a "juice bar," and the other part was occupied by the bar/lounge with the beverage dispensary license.

In 2003, the petitioner applied to expand both the bar and adult cabaret uses. This action was to move the bar (Club Elixir) to the new second floor, and to expand the first floor for the cabaret use. The third floor added is only for storage/office space. A variance was received in 2003 from the Zoning Board of Examiners and Appeals for additional parking to be on a non-adjacent lot, which is on the three lots north of the petition site, across the alley. The petitioner also applied for an amendment to their conditional use to move the bar to the new second floor of the building (case 2005-103). This conditional use amendment was approved via AR 2005-193, in which condition seven required resolution of the physical separation between the two uses with the Municipal Clerk's Office.

At the time, there was significant discussion at the Assembly regarding the physical separation of the beverage dispensary use with the 18 and over adult cabaret use. The Assembly amended AMC 10.40.050, placing additional restrictions on such establishments including a requirement of a separation of a minimum of four feet between entertainers, dancers and/or strippers and patrons, and prohibiting broadcasting to any site outside the licensed premises for the adult cabaret use. The petitioner appealed the amendments to AMC 10.40.050 to US District Court. The Municipal code amendments were upheld. The decisions are attached to this report.

The conditional use for the beverage dispensary use amendment for the second floor of the structure is in effect. The petitioner has applied for a new amendment to the existing conditional use for a duplicate beverage dispensary license for the first floor of the building. The following business modifications have been made to comply with Municipal code:

- Debco, Inc., will continue to hold and operate the approved beverage dispensary license currently dba as Club Elixir on the second floor.
- Petitioner will dissolve the corporation, Sands North, Inc., which does business as Fantasies on 5th Avenue (adult cabaret), and will thus dissolve the age 18 and over adult cabaret (operated on the first floor) by that name.
- Petitioner has applied for a duplicate beverage dispensary license for Debco, Inc., for the first floor of the building. No one under the age of 21 will be permitted to enter either establishment. The adult cabaret use will thus cease to exist, and the first floor business name will change to Fantasies on 5th.

The effect of this change is that there will no longer be anyone under the age of 21 in either establishment. The issue of having adults that are between the ages of 18 and 20 years old being allowed in a business located in the same building as an establishment serving alcohol will be eliminated. The new first

floor use will remain an adult use subject to AMC 21.45.240 (Location of premises where children are not allowed), but no longer under the regulations of AMC 10.40.050, and instead will be under the jurisdiction of the State of Alaska Beverage Control Board (ABC Board). The standards of AMC 21.45.240 require a minimum of 1,000 foot separation from the property line of uses such as schools, parks, churches, residentially zoned property, child care centers, etc. The petitioner has long established that this use at this site meets these requirements.

It is important to note that the petitioner has applied to the ABC Board for a duplicate beverage dispensary license, and not a new and separate license. The ABC Board regulations of 13 AAC Section 04.11.090 allow a holder of a beverage dispensary license to maintain upon a licensed premise more than one room (location) in which there is regularly maintained a fixed counter or service bar at which alcoholic beverages are sold if a duplicate of the original license is issued. The petitioner, Debco Inc., holds the original license at the second floor bar on the premises; the duplicate applied for is for the first floor new fixed bar. 13 AAC Section 04.21.080 (Definitions) states that "licensed premise" means "...any or all designated portions of a building or structure, rooms or enclosures in the building or structure, or real estate leased, used controlled, or operated by a licensee in the conduct of business for which the licensee is licensed by the board at the specific address for which the license is issued."

13 AAC Section 104.185. (Licensed premises) further defines licensed premises as:

- a) A license is issued for a specific place which is the licensed premises and which must be clearly designated in a line drawing accompanying an application. The licensed premises must be one area, but may include separate rooms if the rooms are adjacent to one another or if they are rooms described in AS 04.11.090(d). The address of the licensed premises and the business name under which the licensee is doing business at that address must be indicated on the license application. If the licensed premises consist of more than one room in which a fixed counter or service bar is regularly maintained, a duplicate license is required for the additional rooms.
- b) The licensee shall conspicuously post the license within the licensed premises.
- c) A licensee may not alter the functional floor plan, reduce or expand the area, or change the business name of the licensed premises without the prior written approval of the director. The licensee must provide a new line-drawing showing the proposed changes in the premises.
- d) If a business establishment or facility consists of both licensed premise and an unlicensed area, the licensee shall clearly segregate the license premises and the unlicensed area.

License #561 is held by Debco Inc., dba Club Elixir. Debco Inc. has applied to the ABC Board for a duplicate beverage dispensary license at the same location and dba as Fantasies on 5th. The petitioner will not have "unlicensed premises" in this structure. It is the jurisdiction of the ABC Board to accept and approve any licenses determined to meet the criteria of "duplicate."

This conditional use amendment generally meets the required standards of AMC Title 10 and Title 21.

SITE:

Acres: 0.93 Acres/40,523 SF (19,523 SF for Fantasies Subdivision, Lot 1 which houses the bar and adult cabaret uses, and 21,000 SF for Fourth Addition, Block 26C, Lots 4, 5, and 6 which are used as off-street parking for the structure)
Vegetation: Natural vegetation
Zoning: B-3 (General Business)
Topography: Relatively Level
Existing Use: Bar/Lounge; Adult Oriented Use; Off-Street Parking Lot
Soils: Public Sewer & Water

COMPREHENSIVE PLAN

Classification: Anchorage 2020 - N/A
1982 Plan - Commercial/Industrial
Density: N/A

SURROUNDING AREA

	NORTH	EAST	SOUTH	WEST
Zoning:	B-3	B-3	I-1	B-3
Land Use:	Hotel/Vacant Land/Office/ Warehouse/ Non- Conforming Residential	Hotel/ Retail/Auto Related Services/ Multi-Family and Non- Conforming Residential	Merrill Field Airport/ Airport Related Uses	Hotel/Office/ Warehouse/ Retail/Auto Related Services

SITE DESCRIPTION AND PROPOSAL:

** See Recommendation above for history

This is a request for a duplicate beverage/dispensary license for the first floor of a two story building for Debco, Inc., dba Fantasies on 5th. The petitioner holds a beverage dispensary license with an approved conditional use on the premises, for the fixed bar on the second floor of the building, dba Club Elixir.

The petition site includes one 19,523 square foot (SF) lot at the northeast corner of East 5th Avenue and Sitka Street, and three parcels to the north totaling 21,000 SF, which are located across an alley and used for off-street parking for the uses on the other parcel. The 19,523 SF parcel, Fantasies Subdivision Lot 1 was constructed with a one-story structure in approximately 1957, according to Municipal Property Appraisal records. It has been used as a bar/lounge with a beverage dispensary license since that time, prior to annexation into the City of Anchorage on March 20, 1960. Thus, according to AMC 21.55.070, the use of the beverage dispensary license in its current location within the structure is considered to exist as a conditional use, and shall not be deemed a nonconforming use. The license owned by the petitioner has been in their ownership since 1968. The site is now occupied by a three story structure, with the third floor remaining as office/storage, the second floor by the existing beverage dispensary use of Club Elixir, and the first floor to be the proposed duplicate license area of Fantasies on 5th. The first floor has an area of approximately 4,450 SF (4,300 of floor space for the use according to the application), and 4,440 SF on the second floor.

Through the 2005 conditional use amendment process to relocate the existing license to the second floor of the structure, characteristics of use such as parking, access and landscaping have been resolved. The building has a certificate of occupancy issued by Building Safety. This proposed duplicate license will not change the site layout or need for parking amendments.

Daily operating hours currently are, and are proposed to be from 4:00 PM to 2:30 AM Sunday through Thursday, and 4:00 PM to 3:00 AM Friday and Saturday, 365 days a year. The sale of alcoholic beverages represent 85% compared to 15% food sales. Recorded music will be provided. Adult entertainment will be provided, and the use falls under the category of AMC 21.45.240 – Location of premises where children are not allowed. However, no one under the age of 21 is permitted entry to the establishment, and thus the provisions of adult cabaret of AMC 10.40.050 and unlicensed nightclub of AMC 21.45.245 do not apply. Separation of uses is not required.

Approximately 10-12 employees may have direct contact with alcohol and will all be trained in accordance with the Alcoholic Beverage Control Board's Liquor Server Awareness Training Program. These employees will be required to keep their cards up to date and renewed as required. The facility belongs to Anchorage CHARR, Alaska CHARR, HERE Local Union 878, Downtown Bar Owner's Association, Mountain View Community Council, and also takes part in the Security Training Program, Compliance check Program, Civil Penalty Program and Off the Road Program offered by Anchorage CHARR. There will be no happy hours, games or contests that include consumption of alcoholic beverages, and no solicitation or encouragement of alcoholic beverage

consumption. Sales to persons who are inebriated or underage are prohibited. The application states that there are security personnel on duty during hours of operation, with a minimum of two security persons at all times. The petitioner has installed 27 video cameras (20 inside/7 outside), and seven additional high watt lights outside.

PUBLIC COMMENTS:

Thirty-one (31) public hearing notices (PHNs) were mailed. At the time this report was written no PHNs were returned. No written comment has been received from any of the Community Councils notified (Mountain View, Airport Heights and Fairview).

FINDINGS

A. Furthers the goals and policies of the Comprehensive Development Plan and conforms to the Comprehensive Development Plan in the manner required by Chapter 21.05.

This site is not identified on the Anchorage 2020 Anchorage Bowl Comprehensive Plan Land Use Policy Map as part of any specific Policy area.

The Anchorage 2020 Comprehensive Plan does not specifically address the sale of alcoholic beverages in the community. A strategy of the adopted Anchorage 2020 Plan, however, calls for the development of locational standards and criteria for retail sales/service of alcoholic beverages. To date this has not been done.

The Anchorage 2020 Plan (ref. P.40) contains a generalized community vision that advocates "an active learning community with abundant cultural amenities." Several goals of the Anchorage 2020 Plan do address related issues such as recreational and economic opportunities. The sale of alcoholic beverages is part of the social, recreational and economic environment of the community. The bar expansion will also facilitate a growing hospitality and tourism industry in Anchorage.

Another of the Plan's stated economic development goals are "Business Support and Development: a quality of life and a financial climate that encourages businesses to start up, expand or relocate in Anchorage (p. 41).

B. Conforms to the standards for that use in this title and regulations promulgated under this title.

This standard is met.

Except for the alcoholic beverages conditional use standards established in AMC 21.50.160, the Assembly has not adopted specific zoning regulations for alcoholic beverage sales. The B-3 General Business district zoning regulations allows alcoholic beverage sales through the conditional use permit process: AMC 21.40.180 D.8. Restaurants, cafes, and other places serving food or beverages. Uses involving the retail sale, dispensing or service of alcoholic beverages may be permitted by conditional use only in accordance with AMC 21.50.160.

The adult-oriented use portion of the Fantasies on 5th business is a permitted use in B-3 zoning district provided that it meets separation requirements from protected land uses. This requirement is to be separated by 1,000 feet from certain lots with protected uses such as schools, public parks, church, residential zoned and certain residentially used property, public recreational facilities, certain types of day care and public libraries (AMC 21.45.240. This lot has been verified to comply with those requirements by Land Use Enforcement. The existing structure has been issued a certificate of occupancy, and has been determined to be conforming in regards to characteristics of use such as parking, access, landscaping, etc. The proposed amendment to the conditional use will not change the parking requirements.

C. Will be compatible with existing and planned land uses in the surrounding neighborhood and with the intent of its use district.

This standard is met.

The petition property is east of the Downtown Major Employment Center and Redevelopment area: a commercial area that is expected to remain in that land use category for the foreseeable future. The petition site is also south of an Industrial Reserve area, which is intended for preservation of said lands for industrial uses. The petition property is not in a designated area on the Anchorage 2020 Anchorage Bowl Comprehensive Plan Land Use Policy Map. In and around this location are found hotels, office/warehouse uses, airport related uses, retail and auto service uses, some vacant land and other non-residential uses. Land to the north, east and west are zoned B-3, and to the south is land zoned I-1 (Light Industrial) which is a part of the Merrill Field Airport. Staff site and area visits have indicated that there appear to be no churches, day care or schools within 200 feet of the site property line.

As discussed above in the site description, there is a permitted adult-oriented establishment in the same building as the bar. However, this will cease to be an establishment allowing adults between the ages of 18 and 20. The

amendment request for the beverage dispensary license serves to aid in the compatibility of the area by permitting only adults age 21 and over. Thus, regulations regarding separation between uses no longer apply.

AMC 21.50.160.B asks that a list of all alcohol licenses located within a minimum of 1,000 feet of the proposed conditional use be provided. There are a total of three licenses within 1,000 feet of the proposed conditional use amendment site. One is the beverage dispensary license of the petition site, which is Fantasies Upper Deck License #561. The other two are restaurant/eating place licenses for Peggy's Restaurant License #1821 and Imperial Palace License #2010.

Beverage Dispensary	The Setter	1911 E. 5 th Avenue, #561
Restaurant	Peggy's Restaurant	1675 E. 5 th Avenue, #1821
Restaurant	Imperial Palace	400 Sitka Street, #2010

This request will still make a total of 1 Beverage Dispensary licenses (although it is only a duplicate license) within 1,000 feet. This is because this request is to add a duplicate beverage dispensary license to the premise.

Alaska Statute 04.11.410, Restriction of location near churches and schools, restricts beverage dispensary and package store licenses from being located in a building the public entrance of which is within 200-feet of the public entrance of a church building, or from being located within 200-feet of school grounds. There appear to be no church buildings or school grounds within 200 feet of the petition site.

D. Will not have a permanent negative impact on the items listed below substantially greater than that anticipated from permitted development:

- 1. Pedestrian and vehicular traffic circulation and safety.**
This standard is met.

The structure establishment had nonconforming rights for the parking spaces that existed on Fantasies Subdivision, Lot 1, where the structure housing the uses is sited. However, when expansion plans were proposed to make it the current three story structure, the petitioner applied for a variance to allow for additional parking to be located on the three lots behind the structure, which are owned by the petitioner. The variance was not for a reduction in number of parking spaces, but for the required parking to be on lots not directly abutting the petition site. In 2003 the Zoning

Board of Examiners and Appeals approved the variance for additional parking to be on the three lots north of the petition site. The new parking area has been constructed, and there is a parking agreement of record filed for use of these spaces by Lot 1, according to Municipal records.

The 2004 approved building permit addressed vehicular and pedestrian traffic circulation and safety. There are adequate entrances and exits for vehicles to and from adjacent streets and roadways. Concerns by the public and the petitioner which occurred in 2005 regarding both the access to and from the petition site and new adjacent parking area, and the issue of driveway cuts with the State of Alaska regarding the 5th Avenue improvements have been resolved.

The parking is located across an alley, for which pedestrian safety can more easily be accounted for than if it were located across a street which has vehicles traveling at normal roadway rates of speed. Alleys are not streets used for the purpose of vehicle circulation; they are narrower rights-of-way used for service for structures such as deliveries and refuse collection. Although alleys are sometimes used for cut-through purposes by vehicles, this one is not, as there are significant amounts of developed public streets in the area. In this situation, there is provided clear access to the building by the public. Any potential for pedestrian/vehicle conflicts appears to be no different from that of any private drive lane. There are also pedestrian walkways along adjacent rights of way.

The parking area is lit, the parking areas paved, and the site incorporates pedestrian sidewalks along the along the roadways adjacent to the parking lot entrances.

2. The demand for and availability of public services and facilities.

This standard is met.

The addition of the duplicate beverage dispensary license to the first floor adult use will not impact public services. Electrical, water and sewer, natural gas are available on site. Road infrastructure and public transit is already in place. The petition site is within ARDSA, Police and Fire service areas. Required site improvements have been made regarding required parking and landscaping.

3. Noise, air, water, or other forms of environmental pollution.

This standard is met.

As a land use, a duplicate Beverage Dispensary conditional use and license will not cause or contribute to any environmental pollution. The public parking lots are paved, which control air pollution.

4. The maintenance of compatible and efficient development patterns and land use intensities.

This standard is met.

The zoning, land use and the general area land use will not change as a result of this amendment for a duplicate beverage dispensary license. There will be no change in the new structure or site. The adult establishment will no longer allow admittance to adults under the age of 21. The surrounding uses are primarily commercial, retail and hotel uses. The area is a grid-pattern with road infrastructure to Municipal standards, and sufficient access provided to and from the petition site without the need to access from any adjacent properties. The intensity of this proposed expansion of use appears to be no greater than general traffic generated in the area from the adjacent hotels, restaurant, commercial, auto service related uses, and the airport directly to the south.

Standards Chapter 10.50 Alcoholic Beverages

In the exercise of its powers and under AS 04.11.480 and 15 AAC 104.145 to protest issue, renewal and transfer or alcoholic beverage licenses within the Municipality of Anchorage, the Assembly shall consider whether the proposed license meets each and every factor and standard set forth below

- A. Concentration and land use. Whether transfer of location or issue of the requested license will negatively impact the community through an increase in the concentration of uses involving the sale or service of alcoholic beverages within the area affected and will conform to the separate standards of AMC 21.50.020.**

See table and narrative under Findings, Item C for other alcohol licenses within 1,000 feet of this application.

The amendment to this conditional use for a duplicate beverage dispensary license will not adversely impact the immediate area or surrounding uses. See narrative under Findings, Item D.

Staff site/area visits and agency comments indicate that there are no schools or churches within 1,000-feet of the petition site. There remain a total of three (3) licenses in the vicinity, with one being the beverage dispensary license for the petition site, and the remaining two being two restaurant licenses.

Approving a duplicate of this beverage dispensary license for the first floor of the same site does not alter the number of licenses within a 1,000-foot radius of the petition site. See narrative under Findings, Item C. There are a total of two restaurant, one wholesale/general, and one brewpub license within 1,000 feet of the petition site, as well as the beverage dispensary license at the petition site.

- B. Training. If application is made for issue, renewal or transfer of a beverage dispensary license, restaurant or eating place license, or package store license, whether the applicant can demonstrate prospective or continued compliance with a Liquor "Server Awareness Training Program approved by the State of Alaska alcoholic Beverage Control Board, such as or similar to the program for techniques in alcohol management (T.A.M.). Until such plan is approved, training by a licensee's employees in the T.A.M. shall constitute compliance with this ordinance.**

This standard is met.

The applicant states that all employees involved with serving alcohol, including security personnel, will be involved in the dispensing of alcoholic beverages and will be trained in accordance with the T.A.M. training and hold the appropriate certificates. This involved approximately 10-12 employees.

The petitioner states that these employees will be required to keep their cards up to date and renewed as require. The facility belongs to Anchorage CHARR, Alaska CHARR, HERE Local Union 878, Downtown Bar Owner's Association, Mountain View Community Council, and also takes part in the Security Training Program, Compliance check Program, Civil Penalty Program and Off the Road Program offered by Anchorage CHARR.

- C. Operations procedures. If application is made for issue, renewal or transfer of a license, whether the applicant can demonstrate prospective or continued compliance with operations procedures for licensed premises set forth in Section 10.50.035 of this code.**

This standard is not applicable.

- D. Public safety. When application is made for the renewal or transfer of location or transfer of ownership of a beverage dispensary license restaurant or eating place license, or package store license, the Assembly shall consider whether the operator can demonstrate the ability to maintain order and prevent unlawful conduct in a licensed premise. In determining the operator's demonstrated ability to maintain order and prevent unlawful conduct, the Assembly may consider police reports, testimony presented before the Assembly, written comments submitted prior to or during the public hearing, or other evidence deemed to be reliable and relevant to the purpose of this subsection. For purposes of this section and Section 10.50.035 "licensed premises" shall include any adjacent area under the control or management of the licensee.**

This standard appears to be met.

There will be no happy hours, games or contests that include consumption of alcoholic beverages, and no solicitation or encouragement of alcoholic beverage consumption. Sales to persons who are inebriated or underage are prohibited. The application states that there are security personnel on duty during hours of operation, with a minimum of two security persons at all times. The petitioner has installed 27 video cameras (20 inside/7 outside), and seven additional high watt lights outside.

At the time this report was written, no response had been received from the Anchorage Police Department.

- E. Payment of taxes and debts. When application is made for renewal of a license the assembly shall consider, pursuant to AS 4.11.330, whether the applicant is delinquent in payment of taxes owed to the Municipality. When application is made for transfer of ownership of**

a license the Assembly shall consider, pursuant to AS 4.11.360, whether the municipality has received either payment or adequate security, for the payment of any debts or taxes, including any estimated taxes for the current year, arising from the conduct of the licensed business. Adequate security for the payment of debts and taxes may be in the form of: 1) escrowed funds sufficient to pay the debts and taxes claimed and any escrow fees; 2) actual payment of debts and taxes claimed; or, 3) a guarantee agreement in accordance AMC 10.50.030. Any guarantee agreement shall be in writing, signed by the transferor, transferee and Municipality

At the time this report was written, comments had not been received from the Treasury Division.

- F. Public health. If application is made for the renewal or transfer of location or transfer of ownership of a license, the Assembly shall consider whether the operator has engaged in a pattern of practices injurious to public health or safety such as providing alcohol to minors or intoxicated persons, committing serious violations of State law relevant to public health or safety, or other actions within the knowledge and control of the operator which place the public health or safety at risk. In determining if a pattern of practices injurious to public health or safety exists, the Assembly may consider criminal convictions, credible proof of illegal activity even if not prosecuted, police reports, testimony presented before the Assembly, written comments submitted prior to or during the public hearing, or other evidence deemed to be reliable and relevant to the purpose of this subsection.**

The Department of Health and Human Services provided comments that did not voice objection to this request.

- G. Municipality of Anchorage Alcoholic Beverage Licensee Compliance Form. In order to determine whether applicants seeking issue, renewal or transfer of alcoholic beverage licenses have complied with the provisions of this chapter, applicants shall, at the request of the Assembly, submit to the municipal clerk such information as is required on a municipal form prepared by the municipal clerk known as the Municipality of Anchorage Alcoholic Beverage Licensee Compliance Form. Upon request, operators shall also provide the municipal clerk with certificates from all current employees demonstrating that those employees have successfully**

completed a "Liquor Service Awareness Training Program" such as the program for techniques in alcohol management (T.A.M.) as approved by the State of Alaska Alcoholic Beverage Control Board.

This form was not requested of this applicant.

RECOMMENDATION:

This application for an amendment to an existing conditional use for alcoholic beverages in the B-3 District to allow a duplicate beverage dispensary use and license per AMC 21.40.180D.8 for Fantasies Subdivision, Lot 1, and Fourth Addition, Block 26C, Lots 4, 5 and 6, meets the required standards of AMC Title 10 and Title 21.

If after a public hearing on the matter, the Anchorage Assembly finds that the required standards have been met, staff recommends the following conditions of Approval:

1. A notice of Zoning Action shall be filed with the District Records Office within 120 days of the Assembly's approval of the amendment for a duplicate beverage dispensary license use on Lot 1, Fantasies Subdivision.
2. All uses shall conform to the plans and narrative submitted with this conditional use application, including the first floor seating plan for 83 occupants.
3. This conditional use approval is for an Alcoholic Beverages Conditional Use in the B-3 District for a Duplicate Beverage Dispensary Use per AMC 2140.180 D.8 for approximately 4,300 SF gross leasable area to be located on the first floor of the structure at Fantasies Subdivision, Lot 1. Plans and submittals indicate non-fixed seating of 57, fixed seating of 26, and a facility occupant capacity of 83.
4. On-premise sale of alcohol beverages seven (7)-days a week, Sunday through Thursday, 4:00 PM to 2:30 AM; Friday and Saturday 4:00 PM to 3:00 AM. Liquor sales represent 85% compared to 15% food sales.
5. Upon demand the applicant shall demonstrate compliance with a liquor "Server Awareness Training Program approved by the State of Alaska alcoholic Beverage Control Board, such as or similar to the program for techniques in alcohol management (T.A.M.).
6. The use of the property by any person for the permitted purposes shall comply with all current and future federal, state and local laws and

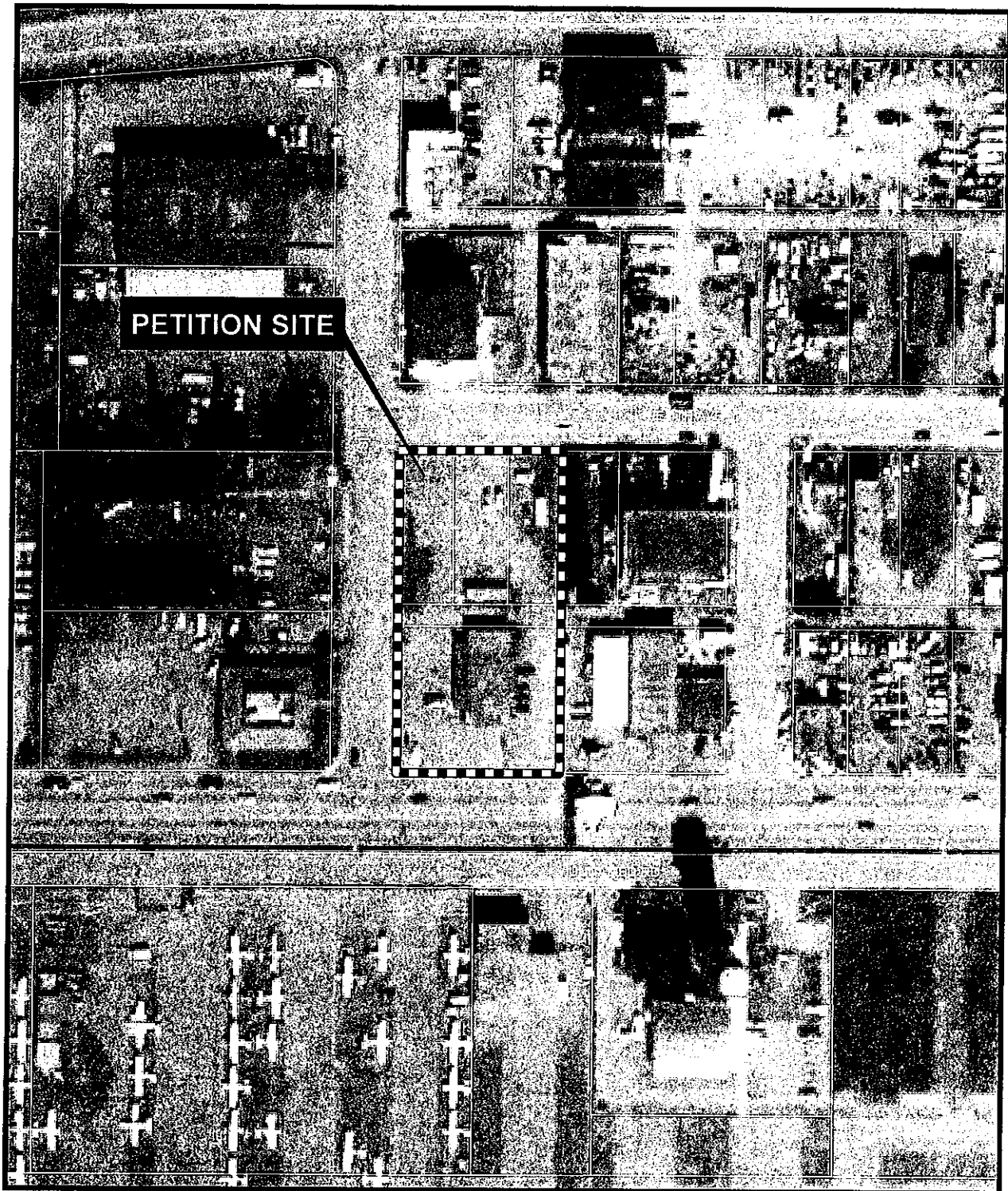
regulations including but not limited to laws and regulations pertaining to the sale, dispensing, service and consumption of alcoholic beverages and the storage, preparation, sale, service and consumption of food. The owner of the property, the licensee under the Alcoholic Beverage Control license and their officers, agents and employees shall not knowingly permit or negligently fail to prevent the occurrence of illegal activity on the property.

7. A copy of the conditions imposed by the Assembly in connection with this conditional use approval shall be maintained on the premise at a location visible to the public.

2

**HISTORICAL MAPS
AND
AS-BUILTS**

2008-013



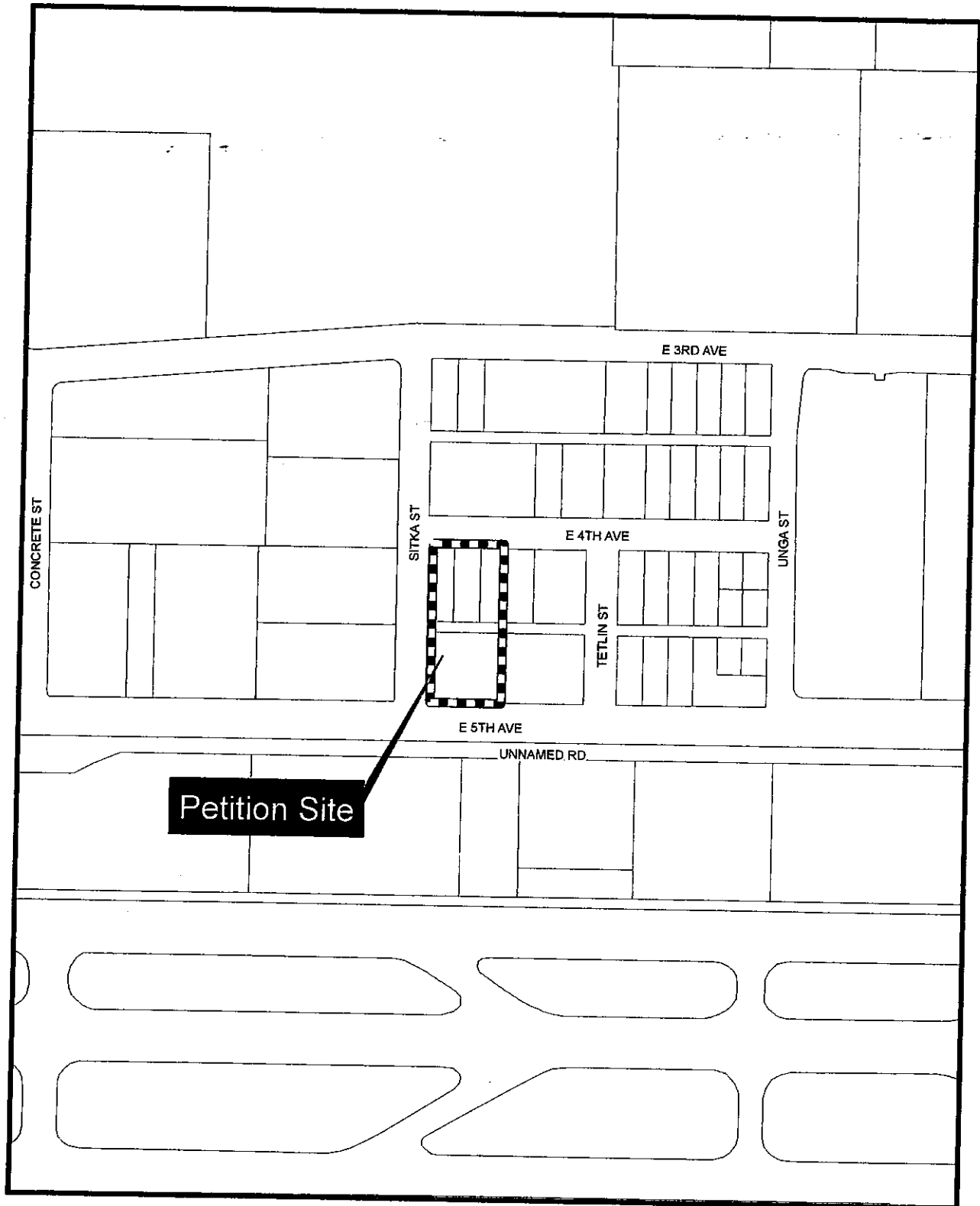
Municipality of Anchorage
Planning Department



Date: November 27, 2007




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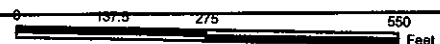
2008-013



Municipality of Anchorage
Planning Department

Date: November 27, 2007

-  Single Family
-  Multi-Family
-  Mobile Home Park



3

DEPARTMENTAL

COMMENTS



MUNICIPALITY OF ANCHORAGE

Department of Health and Human Services



Date: December 12, 2007
To: Department of Planning, Zoning and Platting Division
From: Nathan Johnson, Division Manager, DHHS
Subject: Comments Regarding CUP 2008-013

RECEIVED

DEC 13 2007

MUNICIPALITY OF ANCHORAGE
PLATTING DIVISION

Case No. 2008-013

This is a request for a concept/final approval of a conditional use to permit: the sales, dispensing or serving of alcoholic beverages for Fantasies on 5th at 1911 E. 5th Avenue. Currently there are 3 active liquor licenses within 1,000 feet of Fantasies on 5th

Alcohol Dispensing Locational Standards

Policy #22 in the Anchorage Comprehensive Plan 20/20 says that "locational standards and criteria for retail sales/service of alcoholic beverage will be provided" however at this time, no standards have been established. Reasonable standards can be applied to this application until Assembly action is taken. The Municipality of Anchorage approves the conditional use permits for the location of all alcohol outlets based on community input and municipal department approvals.

Comment re Food Safety & Sanitation

This CUP mentions the change of ownership of Fantasies on 5th Avenue from Sands North, Inc. to Debco, Inc. An Application for Health Permit for this change of ownership must be filed with DHHS. This CUP also mentions the ownership of Club Elixir to be Debco, Inc. Our records show Kathy Hartman to be the owner. If there is a change of ownership, an Application for Health Permit must be completed for both the bar and the snack bar.

Stewart, Gloria I.

From: Pierce, Eileen A
Sent: Tuesday, December 11, 2007 8:02 AM
To: Graves, Jill A.; Stewart, Gloria I.
Subject: FW: Platting and Zoning Comments

RECEIVED

DEC 11 2007

MUNICIPALITY OF ANCHORAGE
PLATTING DIVISION

From: Staff, Alton R.
Sent: Monday, December 10, 2007 5:12 PM
To: McLaughlin, Francis D.; Stewart, Renee M.; Pierce, Eileen A
Subject: Platting and Zoning Comments

Case No. 2008-007 In anticipation of future bus service along 100th Avenue, please include an eastbound bus stop boarding pad at approximate station 55+00 and a westbound bus stop boarding pad at approximate station 58+50.

The Public Transportation Department has no comment on the following zoning cases:

2008-013
2008-018
2008-019
2008-020

The Public Transportation Department has no comment on the following plats:

S11485-2
S11544-2
S11641-1
S11642-1
S11643-1
S11644-1
S11645-1

Thank you for the opportunity to review.

Alton R. Staff
Planning Manager
Public Transportation Department
3650A East Tudor Road
Anchorage, AK 99507
907-343-8230

Municipality Of Anchorage
ANCHORAGE WATER & WASTEWATER UTILITY

MEMORANDUM

RECEIVED

DEC 10 2007

MUNICIPALITY OF ANCHORAGE
PLATTING DIVISION

DATE: December 5, 2007
TO: Jerry Weaver, Zoning Division Administrator, Planning Department
FROM: Paul Hatcher, Engineering Technician III, AWWU *PH*
SUBJECT: Zoning Case Comments
Planning & Zoning Commission Hearing January 8, 2008
Agency Comments due December 11, 2007

AWWU has reviewed the materials and has the following comments.

08-013 FANTASIES LT 1, FOURTH ADDITION BLK 26C LT 4-6, A request concept/final approval of a conditional use to permit the sales, dispensing, or service of alcoholic beverage, Grid SW1233

1. AWWU water mainlines located in 4th Avenue, 5th Avenue and Sitka Street currently serves properties.
2. AWWU sanitary sewer lines located in Sitka Street and Alleyway between 4th and 5th currently serves properties.
3. AWWU has no objection to this conditional use permit.

If you have any questions pertinent to public water and sanitary sewer, you may call me at 564-2721 or the AWWU planning section at 564-2739, or e-mail paul.hatcher@awwu.biz.



FLOOD HAZARD REVIEW SHEET

RECEIVED

DEC 10 2007

MUNICIPALITY OF ANCHORAGE
PLATTING DIVISION

Date: 12/10/07

Case: 2008-013

Flood Hazard Zone: C

Map Number: 0235C

- ☐ Portions of this lot are located in the floodplain as determined by the Federal Emergency Management Agency.
- ☐ Flood Hazard requests that the following be added as a condition of approval:

"Portions of this subdivision are situated within the flood hazard district as it exists on the date hereof. The boundaries of the flood hazard district may be altered from time to time in accordance with the provisions of Section 21.60.020 (Anchorage Municipal Code). All construction activities and any land use within the flood hazard district shall conform to the requirements of Chapter 21.60 (Anchorage Municipal Code)."

- ☐ A Flood Hazard permit is required for any construction in the floodplain.
- ☐ Other:
- ☒ I have no comments on this case.

Reviewer: Jeffrey Urbanus



MUNICIPALITY OF ANCHORAGE
Traffic Department



MEMORANDUM

DATE: December 6, 2008
TO: Jerry T. Weaver, Platting Supervisor, Planning Department
FROM: Mada Angell, Assistant Traffic Engineer *MA*
SUBJECT: Traffic Engineering and Transportation Planning Comments for
January 8, 2008 Assembly Hearing

RECEIVED

DEC 07 2007

**MUNICIPALITY OF ANCHORAGE
PLATTING DIVISION**

08-013

AOT 4th add; Conditional Use to permit alcohol; Grid 1233

- Traffic Engineering and Transportation Planning have no comment.

E-MAILED



MUNICIPALITY OF ANCHORAGE

Development Services Department

Right of Way Division



MEMORANDUM

DATE: December 3, 2007
TO: Planning Department, Zoning and Platting Division
THRU: Jack L. Frost, Jr., Right of Way Supervisor *LF*
FROM: Lynn McGee, Senior Plan Reviewer *LM*
SUBJ: Request for Comments on Assembly case(s) for January 8, 2008.

RECEIVED

DEC 03 2007

MUNICIPALITY OF ANCHORAGE
PLATTING DIVISION

Right of Way Division has reviewed the following case(s) due December 11, 2007.

08-013 Fantasies, Lot 1, and Fourth Addition, Block 26C, Lots 4, 5, & 6, grid 1233
(Conditional Use for Alcohol Sales, Dispensing, or Serving)
Right of Way Division has no comments at this time.
Review time 15 minutes.

4

APPLICATION

Application for Conditional Use Retail Sale Alcoholic Beverages

Municipality of Anchorage
Planning Department
PO Box 196650
Anchorage, AK 99519-6650

Please fill in the information asked for below.

PETITIONER*	PETITIONER REPRESENTATIVE (IF ANY)
Name (last name first) Hartman, Kathy	Name (last name first) Hartman, Carol
Mailing Address 1911 E 5th Ave.	Mailing Address 3714 E. 16th Ave.
Anchorage, AK 99501	Anchorage, AK 99508
Contact Phone: Day: 907-341-7080 Night:	Contact Phone: Day: 229-4839 Night: 278-3714
FAX: 907-563-0043	FAX: 907-563-0043
E-mail:	E-mail: carolhartman@yahoo.com

*Report additional petitioners or disclose other co-owners on supplemental form. Failure to divulge other beneficial interest owners may delay processing of this application.

PROPERTY INFORMATION

Property Tax #(000-000-00-000): **00308166, 00308114, 00308115, 00308116**
 Site Street Address: **1911 E. 5th Avenue, Anchorage, AK 99501**
 Property Owner (if not the Petitioner): **Kathy Hartman**
 Current legal description: (use additional sheet in necessary) **Lot 1, Fantasies Subdivision and lots 4, 5, and 6, block 26C, Fourth Addition Subdivision.**

Zoning: **B-3** Acreage: **.93** Grid # **SW 1233**

ALCOHOLIC BEVERAGE CONTROL BOARD LICENSE PROPOSED

☒ Beverage Dispensary ☐ Private Club ☐ Restaurant, exempt
☐ Beverage Dispensary-Tourism ☐ Public Convenience ☐ Theater
☐ Brew Pub ☐ Recreational ☐ Other (Please explain):
☐ Package Store ☐ Restaurant

Is the proposed license: ☒ New ☐ Transfer of location: ABC license number:
AM #0561 bevidisp - duplicate license Transfer license location:
 Transfer licensed premises doing business as:

I hereby certify that (I am)/(I have been authorized to act for) owner of the property described above and that I petition for a retail sale of alcoholic beverages conditional use permit in conformance with Title 21 of the Anchorage Municipal, Code of Ordinances. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the conditional use. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department, Municipal Clerk, or the Assembly for administrative reasons.

Date: **11/20/07** Signature (Agents must provide written proof of authorization): **Carol Hartman, sec/treas Decco, Inc.**

Accepted by: **AD** Poster & Affidavit: **AC** Fee: **\$4,000** Case Number: **2008-013**

COMPREHENSIVE PLAN INFORMATION

Anchorage 2020 Urban/Rural Services: ☐ Urban ☒ Rural

Anchorage 2020 West Anchorage Planning Area: ☐ Inside ☐ Outside

Anchorage 2020 Major Urban Elements: Site is within or abuts:

- ☐ Major Employment Center ☐ Redevelopment/Mixed Use Area ☐ Town Center
☐ Neighborhood Commercial Center ☐ Industrial Center
☐ Transit - Supportive Development Corridor

Eagle River-Chugiak-Peters Creek Land Use Classification:

- ☐ Commercial ☐ Industrial ☐ Parks/opens space ☐ Public Land Institutions
☐ Marginal land ☐ Alpine/Slope Affected ☐ Special Study
☐ Residential at _____ dwelling units per acre

Girdwood-Turnagain Arm

- ☐ Commercial ☐ Industrial ☐ Parks/opens space ☐ Public Land Institutions
☐ Marginal land ☐ Alpine/Slope Affected ☐ Special Study
☐ Residential at _____ dwelling units per acre

ENVIRONMENTAL INFORMATION (All or portion site affected)

- Wetland Classification: ☒ None ☐ "C" ☐ "B" ☐ "A"
Avalanche Zone: ☒ None ☐ Blue Zone ☐ Red Zone
Floodplain: ☒ None ☐ 100 year ☐ 500 year
Seismic Zone (Harding/Lawson): ☐ "1" ☒ "2" ☐ "3" ☐ "4" ☐ "5"

RECENT REGULATORY INFORMATION (Events that have occurred in last 5 years for all or portion site)

- ☒ Rezoning - Case Number: 2005-103
☐ Preliminary Plat ☐ Final Plat - Case Number(s): _____
☒ Conditional Use - Case Number(s): 2005-103
☒ Zoning variance - Case Number(s): 2003-131
☐ Land Use Enforcement Action for _____
☐ Building or Land Use Permit for _____
☐ Wetland permit: ☐ Army Corp of Engineers ☐ Municipality of Anchorage

DOCUMENTATION

- Required: ☒ Site plan to scale depicting: building footprints; parking areas; vehicle and pedestrian circulation; lighting; landscaping; signage; and licensed premises location.
☒ Building plans to scale depicting: floor plans indicating the location of sales and service areas; building elevations (photographs are acceptable).
☒ Photographs of premises from each street frontage that include and show relationship to adjacent structures and the premises visible street address number.
☒ Narrative: explaining the project; construction, operation schedule, and open for business target date.
☒ Copy of a zoning map showing the proposed location.
☒ Copy of completed Alcoholic Beverage Control Board liquor license application form including all drawings and attachments, if filed with ABC Board.
Optional: ☐ Traffic impact analysis ☐ Economic impact analysis ☐ Noise impact analysis

PROPERTY OWNER AUTHORIZATION* (if petitioner is not property owner)

(I)(WE) hereby grant permission to and acknowledge that person shown as the petitioner on this application is applying for a conditional use permit for the retail sales of alcoholic beverages on a property under (MY)(OUR) ownership and that as part of the conditional use permit process the Assembly may apply conditions which will be (MY)(OUR) responsibility to satisfy.

11/20/2007

Date

Kathy T. Carter

Signature

*Report additional petitioners or disclose other co-owners on supplemental form. Failure to divulge other beneficial interest owners may delay processing of this application.

FACILITY OPERATIONAL INFORMATION

What is the proposed or existing business name (Provide both if name is changing):

Fantasies on 5th (Previously - Fantaisies on 5th Avenue)

What is the gross leaseable floor space in square feet?

4,300 sq. feet - 12th floor

What is the facility occupant capacity?

12th floor 83, (2nd floor 107)

What is the number of fixed seats(booth and non movable seats)?

26

What is the number non-fixed seats(movable chairs, stools, etc.)?

57

What will be the normal business hours of operation?

4PM - 2:30AM Sun-Thurs 4PM - 3:00AM Friday & Sat.

What will be the business hours that alcoholic beverages will be sold or dispensed?

4PM - 2:30AM Sun-Thurs. 4PM - 3:00AM Fri - Sat.

What do you estimate the ratio of food sales to alcohol beverage sales will be?

85 % Alcoholic beverage sales

15 % Food sales

Type of entertainment proposed: (Mark all that apply)

☒ Recorded music ☐ Live music ☐ Floor shows ☐ Patron dancing ☐ Sporting events ☐ Other ☐ None

Do you propose entertainment or environmental conditions in the facility that will meet the definition of "indecent material" or "adult entertainment" as set forth by AMC 8.05.420 Minors-Disseminating indecent material or AMC 10.40.050 Adult oriented establishment?

☒ Yes ☐ No

DISTANCE FROM CHURCHES, DAY CARE, AND SCHOOLS

Locate and provide the names and address of all churches, day care, and public or private schools within 200 feet of the site property lines

Name

Address

None within 200' of site property lines

PACKAGE STORES

N/A

Provide the projected percentage of alcoholic product inventory in the store where the retail unit price is:

% less than \$5.00

% \$5.00 to \$10.00

% \$10.00 to \$25.00

% greater than \$25.00

CONDITIONAL USE STANDARDS

The Assembly may only approve the conditional use if it finds that all of the following 4 standards are satisfied. Each standard must have a response in as much detail as it takes to explain how your project satisfies the standard. The burden of proof rests with you. Use additional paper if needed.

Explain how the proposed conditional use furthers the goals and policies of the comprehensive development plan and conforms to the comprehensive development plan in the manner required by AMC 21.05.

The proposed amendment is for a duplicate license for existing beverage dispensary license #0561, and amendment to an existing Alcohol Beverage Conditional Use that dates back to the early 1950's. The existing license dates back to 1968. By obtaining the requested duplicate alcohol beverage dispensary license, and amending the existing conditional use permit, we will be complying with the wishes of the Assembly and the Municipality by no longer allowing 18-20 year old patrons to enter our establishment. The building is construction and remodeling was completed in February 2006, and therefore is in complete compliance with AMC 21.05, and will meet the goals and policies of the comprehensive development plan. We have been in business for nearly 19 years in Anchorage, 9 of those years at the existing location. We provide a compatible land use mix, with no conflicts in the surrounding area. Our recent construction, remodel, paving, and landscaping further enhance the area, and have raised property values in the surrounding neighborhood.

Explain how the proposed conditional use conforms to the standards for that use in this title and regulations promulgated under this title.

The Alcohol Beverage Conditional Use on this land has existed for several decades, and it conforms to the standards for its use in this title (AMC 21.05). Debco, Inc. dba Club Elixir is the only full service bar in the immediate area and we fulfill the social and recreational needs for the surrounding area for decades. We are requesting a duplicate license to be placed in Fantasies on 5th Ave. has been an 18 and over Adult Cabaret for nearly 19 years, but we now wish to become a 21 and over Adult Oriented Business that serves alcohol to further the wishes of our community, and it would have no other impact on the surrounding area.

Explain how the proposed conditional use will be compatible with existing and planned land uses in the surrounding neighborhood and with the intent of its use district.

Our land use classification melds well with all other mixed uses in the surrounding area. There are a variety of different businesses in the surrounding area that have existed for years, even decades. The entire south side of our property is adjacent to 5th Avenue (the highway), and directly across 5th Avenue is Merrill Field, the airport for small aircraft.

Explain how the proposed conditional use will not have a permanent negative impact on the items listed below substantially greater than that anticipated from permitted development:

1. Pedestrian and vehicular traffic circulation and safety.

The pedestrian and vehicular circulation and safety issues regarding this property will not change. We have one main entry for both businesses located on the Sitka Street (west) side of the building. The parking lot is paved and the flow of traffic throughout has been previously approved by the city, and this has created a better flow of traffic in and out of our property, and the surrounding area.

2. The demand for and availability of public services and facilities.

Modifying the existing conditional use for alcohol beverage will have no effect on the demand for, or the availability of existing public services and facilities.

3. Noise, air, water or other forms of environmental pollution.

We see no changes in the future regarding any noise, air, water, or other forms of environmental pollution. The existing liquor license and alcohol beverage conditional use has existed for years with no major problems in the surrounding area.

4. The maintenance of compatible and efficient development patterns and land use intensities.

Our existing alcohol beverage land use, and the uses in the surrounding area has not changed in decades. This commercial area has been well established for many years without problem, and we do not anticipate any changes in the future. This modification of the existing CUP should have no impact on any zoning, or land use issues in the surrounding area.

STANDARDS CHAPTER 10.50 ALCOHOLIC BEVERAGES

In the exercise of its powers and under AS 04.11.480 and 15 AAC 104.145 to protest issue, renewal and transfer of alcoholic beverage licenses within the Municipality of Anchorage, the Assembly shall consider whether the proposed license meets **each and every factor and standard** set forth below.

Concentration and land use. Whether transfer of location or issue of the requested license will negatively impact the community through an increase in the concentration of uses involving the sale or service of alcoholic beverages within the area affected and will conform to the separate standards of AMC 21.50.020.

How many active liquor licenses are located on the same property as your proposed license? *one (1)*

Within 1,000 feet of your site are how many active liquor licenses? *3*

How would you rate this area's license concentration on a scale of 1 to 5 with 5 = high *1*

How many active liquor licenses are within the boundaries of the local community council? *13*

In your opinion, is this quantity of licenses a negative impact on the local community? *no*

Training. If application is made for issue, renewal or transfer of a beverage dispensary license, restaurant or eating place license, or package store license, whether the applicant can demonstrate prospective or continued compliance with a Liquor "Server Awareness Training Program approved by the State of Alaska Alcoholic Beverage Control Board, such as or similar to the program for techniques in alcohol management (T.A.M.). Until such plan is approved, training by a licensee's employees in the T.A.M. shall constitute compliance with this ordinance.

How many employees in direct contact with alcohol will be trained in accordance with the Alcoholic Beverage Control Board's Liquor Server Awareness Training Program?

There will be a total of approximately 10-12 employees that will deal with the service and handling alcohol and/or security and ID checking issues in the establishment. Many of those employees are already TAM/TIPS certified and have current and valid TAM/TIPS cards. Any other employees will be required to complete the course and become certified prior to employment. We are members of Alaska CHARR, Anchorage CHARR, Anchorage Hospitality Foundation, Downtown Bar Owners Association, HERE Local Union 878, Mountain View Community Council, and are politically active, so we strive to be responsible owners/operators and comply with state and local ordinances, laws, and regulations. We also participate in the Security Training Program, Off the Road Program, Compliance Check Program, and the Civil Penalty Program offered through Anchorage CHARR.

Operations procedures. If application is made for issue, renewal, or transfer of a license, whether the applicant can demonstrate prospective or continued compliance with operations procedures for licensed premises set forth in Section 10.50.035 of this code.

- ☐ Yes ☒ No Happy hours?
☐ Yes ☒ No Games or contests that include consumption of alcoholic beverages?
☒ Yes ☐ No Patron access and assistance to public transportation?
☒ Yes ☐ No Notice of penalties for driving while intoxicated posted or will be posted?
☒ Yes ☐ No Non-alcoholic drinks available to patrons?
☐ Yes ☒ No Solicitation or encouragement of alcoholic beverage consumption?

Public safety. When application is made for the renewal or transfer of location or transfer of ownership of a beverage dispensary license restaurant or eating place license, or package store license, the Assembly shall consider whether the operator can demonstrate the ability to maintain order and prevent unlawful conduct in a licensed premises. In determining the operator's demonstrated ability to maintain order and prevent unlawful conduct, the Assembly may consider police reports, testimony presented before the Assembly, written comments submitted prior to or during the public hearing, or other evidence deemed to be reliable and relevant to the purpose of this subsection. For purposes of this section and Section 10.50.035 "licensed premises" shall include any adjacent area under the control or management of the licensee.

What are the proposed precautions to maintain order and prevent unlawful conduct at the licensed premises?

inside facility: We have installed 27 video cameras (20 inside/7 outside), 7 additional high watt lights outside, and we have employed numerous security personnel to assist in maintaining order, and preventing unlawful conduct on the premises. Our security personnel must also get a background check prior to employment. There are a minimum of 2 security officers on duty in the lobby every evening, Sunday through Wednesday, and approximately 8 or more on Thursday through Saturday. (2 in the lobby, others inside and outside in strategic areas). All ID's are checked prior to entering either business, however, bartenders are still required to check ID's, and not rely on security.

outside facility: We have installed 27 video cameras (20 inside/7 outside), 7 additional high watt lights outside, and we have employed numerous security personnel to assist in maintaining order, and preventing unlawful conduct on the premises. Our security personnel make frequent trips outside to the parking area, and around the buildings exterior to ensure there is no criminal activity taking place

Payment of taxes and debts. When application is made for renewal of a license the assembly shall consider, pursuant to AS 4.11.330, whether the applicant is delinquent in payment of taxes owed to the Municipality. When application is made for transfer of ownership of a license the Assembly shall consider, pursuant to AS 4.11.360, whether the municipality has received either payment or adequate security, for the payment of any debts or taxes, including any estimated taxes for the current year, arising from the conduct of the licensed business. Adequate security" for the payment of debts and taxes may be in the form of: 1) escrowed funds sufficient to Pay the debts and taxes claimed and any escrow fees; 2) actual payment of debts and taxes claimed; or, 3) a guarantee agreement in accordance AMC 10.50.030. Any guarantee agreement shall be in writing, signed by the transferor, transferee and Municipality

☒ Yes ☐ No *Are real estate and business property taxes current?*
☐ Yes ☒ No *Are there any other debts owed to the Municipality of Anchorage?*

Public health. If application is made for the renewal or transfer of location or transfer of ownership of a license, the Assembly shall consider whether the operator has engaged in a pattern of practices injurious to public health or safety, such as providing alcohol to minors or intoxicated persons, committing serious violations of State law relevant to public health or safety, or other actions within the knowledge and control of the operator which place the public health or safety at risk. In determining if a pattern of practices injurious to public health or safety exists, the Assembly may consider criminal convictions, credible proof of illegal activity even if not prosecuted, police reports, testimony presented before the Assembly, written comments submitted prior to or during the public hearing, or other evidence deemed to be reliable and relevant to the purpose of this subsection.

☒ Yes ☐ No *As the applicant and operator can you comply? If no explain*



Municipality of Anchorage
Planning Department
Counter Sales and Fees

Planning

4700 Bragaw St.

Anchorage, AK 99504-

Phone: (907) 343-7931 Fax: (907) 249-7541

Employee: Angela Chambers

AN 01 19 102472 11/26/07 11:40AM
052 Planning/Zoning Fee \$4,000.00

Invoice Date: 11/26/2007	Customer Name: Hartman
Invoice Number: 1197	Type of Case: Zoning
Order Date: 11/26/2007	

Bill To:

Anchorage, Alaska

Product Name	Quantity	Unit	Unit Price	Total	Key
Conditional use - petition area less than 1.75 acres	1.00	Each	\$4,000.00	\$4,000.00	52

Case Number: Zoning Case Number To Be Assigned

Comment: No Remarks or Comments

Total Due: \$4,000.00

PLEASE PAY AT CASHIER
(Next to the Building Safety Check-in Station)

Receipt #: _____

Cash: _____

Check: 8977

Charge: _____

Void: <input type="checkbox"/> Reason: _____
Supervisory Approval: _____



RECEIVED

NOV 26 2007

PLANNING DEPARTMENT

AFFIDAVIT OF POSTING

CASE NUMBER: 2008-C13

I, Carol Hartman hereby certify that I have posted a **Notice of Public Hearing** as prescribed by Anchorage Municipal Code 21.15.005 on the property that I have petitioned for alcohol land use modification. The notice was posted on 11/26/07 which is at least 21 days prior to the public hearing on this petition. I acknowledge this Notice(s) must be posted in plain sight and displayed until all public hearings have been completed.

Affirmed and signed this 26th day of November, 2007

Signature

LEGAL DESCRIPTION

Tract or Lot 1

Block _____

Subdivision Fantaisies | Fourth Addition

TABLE OF CONTENTS

1. Narrative for Amendment to Conditional Use Permit.
2. Letter from AFDC Board.
3. Site plan to scale showing parking, lighting, landscaping, (3-pages)
4. Building plans, to scale depicting floor plans, location of sales, elevation (first floor- three pages, second floor, third floor) and photos.
5. Photos of premises from each street frontage.
6. Zoning map of petitioned area.
7. Alcoholic Beverage Control Board liquor license application form including all drawings and attachments.
8. Extra additional information:
 - 1000 foot alcohol area map
 - Mountain View Community Counsel Map
 - Fantasies occupancy sign
 - Club Elixir occupancy sign
 - Certificate of Occupancy

Narrative for Modified Conditional Use Permit

Debco, Inc., dba: Club Elixir, currently has a liquor license and operates a full service bar located on the 2nd floor of the building located at 1911 E. 5th Avenue. On the 1st floor, there is currently an adult cabaret named Fantasies on 5th Avenue. Fantasies on 5th has been in business for nearly 19 years as an adult cabaret, or 18 and over juice bar with no alcohol sales. We plan to dissolve the corporation, Sands North, Inc. and request a duplicate liquor license for Debco, Inc. to be placed on the 1st floor. At that time, there will no longer be anyone under the age of 21 allowed to enter the establishment, or either business. We would no longer be an adult cabaret, and would then be regulated by the ABC Board. We feel confident that this has been the wish of the Municipality and the Assembly members for quite some time, and this should comply with their wishes. It will eliminate the issue of having adults that are between the ages of 18 and 20 years old being allowed in a business that is located adjacent to, or in the same building with another business that serves alcohol. The required legal age to enter that business (Club Elixir) is 21 or older. There have been some rumor's, and speculation over a "hole in the floor", or a "glass ceiling" that patrons on the 2nd floor can look down onto the 1st floor stage, but this has never existed, nor will it ever exist.

We have had meetings with the AFDCB regarding the "off limits" at our establishment. Although we feel this was unjustly placed on our establishment, we never-the-less have been working with them to have the ban lifted. At a September 11, 2007 meeting with the AFDCB that was attended by myself, Carol Hartman and my attorney, Joe Josephson, we **offered** to discontinue the "KFAT House Party" that is held on Thursday nights, and seems to have been a bone of contention with APD since we started having it approximately 18 months ago. We also **offered** to apply for a duplicate liquor license for Fantasies on 5th Avenue, thereby eliminating 18, 19, and 20 year old adults from the premise. Only those persons age 21 and over will be allowed to enter upon approval of the duplicate liquor license. A copy of the letter we received from Colonel James A. Harrold, President of the Armed Services Disciplinary Control Board is attached. This letter also states that "the Board appreciates you and your client's efforts to address our concerns regarding the safety of Soldiers and Airmen while at Fantasies on Fifth and Club Elixir (the Clubs). The Board understands that your clients have already taken several steps to reduce the problems with firearms and gang violence". They have said that if we follow through with the measures we offered to implement, they will recommend that the "off limits" be lifted.

It may appear that there are more police reports in the past year, but I would like to make you aware that the large majority of the ones involving the establishment were calls initiated by the establishment. We have called APD and had several under 21 patrons arrested for attempting to gain entrance to Club Elixir, several other patrons arrested after they were caught attempting to gain entrance with drugs on their person, a couple arrested for having weapons outside, or in their vehicle, others for starting fights, and some trespassed for disorderly conduct. There are numerous APD stops for traffic, welfare checks, etc. that do not involve our establishment, or the safety of our patrons, and should not reflect poorly on us. Also, it was stated at a previous Public Safety meeting that the more calls to the police, the better managed and pro-active the business is.

We have 27 security cameras (20 inside, and 7 outside), that are watermarked and approved for use through the court system. APD has requested copies of several incidents that have occurred, though not all at our establishment, and the copies we have given them have assisted them in their investigations. In addition to the existing lights we were required to install in the parking lot, we have installed 7 additional 500-1000 watt flood lights out side of our establishment to better light the entire area, and dissuade any criminal activity. Our security personnel also conduct pat-down searches of patrons entering our establishment to assure there are no weapons, drugs, alcohol, or other illegal contraband being brought in. ~~Due to the fact that we are not allowed to search or make contact with certain private areas on their bodies, we cannot catch 100% of all contraband, however we do attempt to.~~ This is also done in order to enhance the safety and well-being of our employees and patrons.



**DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES**

8 November 2007

Colonel James A. Harrold
President, Armed Forces Disciplinary Control Board
11560 Heritage Circle
Elmendorf Air Force Base, Alaska 99506

Mr. Joe P. Josephson
Josephson & Associates, Attorneys at Law
912 West Sixth Avenue
Anchorage, Alaska 99501

Dear Mr. Josephson,

The Armed Forces Disciplinary Control Board met on October 3, 2007 to discuss the terms of your September 11, 2007 letter. The Board appreciates your and your clients' efforts to address our concerns regarding the safety of Soldiers and Airmen while at Fantasies on Fifth and Club Elixir (the Clubs).

The Board understands that your clients have already taken several steps to reduce the problems associated with firearms and gang violence. These measures include "patdowns" for drugs, increased video surveillance, and no longer allowing security personnel to carry firearms. The Board believes these actions are an improvement for safety at the Clubs, and we hope that these efforts continue.

In addition, the Board understands that your clients have offered three additional measures to increase the safety of the Clubs:

- Both Fantasies on Fifth and Club Elixir will only admit patrons who are 21 years of age or older;
- The Clubs will discontinue their contract with a local radio station to hold a weekly "Hip-Hop" event; and
- The Clubs will contract with a third party to test all applicants for employment for drug use and randomly test current employees (to include security, bartenders, entertainers and management). The Clubs do not propose to test for marijuana due to legal concerns, but they would continue to ban the possession and consumption of marijuana at the workplace.

2

The Board agrees that these proposed measures would be positive and substantial steps towards protecting the health and safety of our military personnel. At this time, the Board looks forward to seeing your clients' progress in implementing the proposals. The Board understands that it is your clients' choice whether or not to implement the proposed measures. The Board does not propose any specific timetable or method of compliance. Should your clients choose to implement their proposals, the Board asks only that your clients provide proof of actions taken. Such proof may be sent to Captain Adam Frey, 3 WG/JA, 8517 20th Street, Elmendorf Air Force Base, Alaska 99506. Upon receipt of such proof, the Board will examine the sufficiency of the proof and then make its decision.

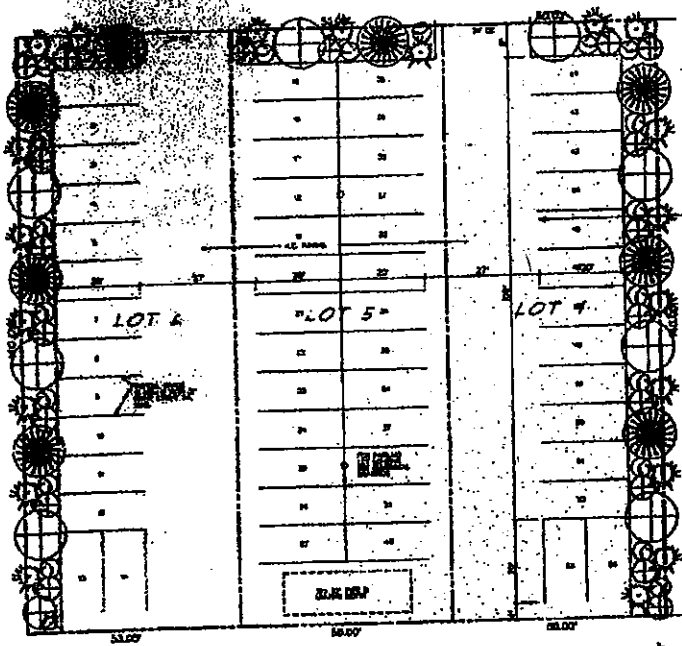
Please be advised that under Section B-7 of our joint regulation, AR 190-24/AFI 31-213, *Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations*, neither I nor the Board have the power to remove an off-limits restriction. However, when we receive proof of compliance, the Board will recommend removal of the restriction to the Commander of U.S. Army Alaska and to Elmendorf Air Force Base Installation Commander.

If you have any questions, please contact Capt Frey at 552-1995.

Sincerely


JAMES A. HARROLD, Colonel, USAF
President, AFDCB

SITKA STREET

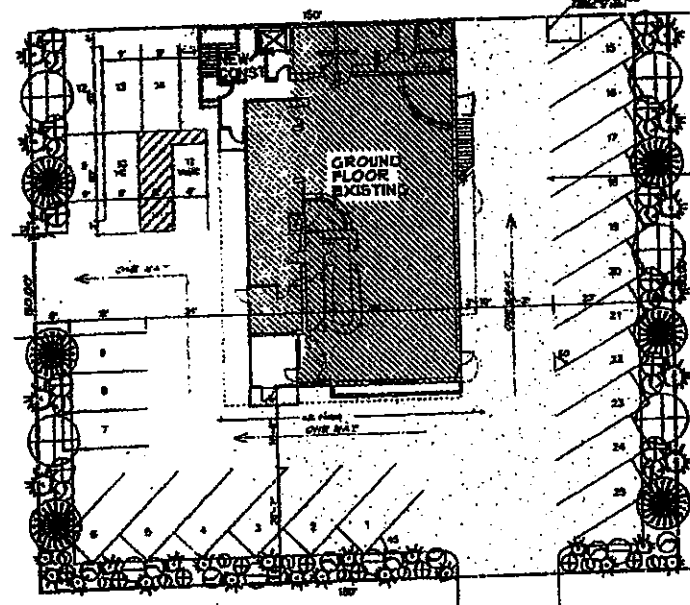


PARKING AREA B
24 PARKING SPACES
LANDSCAPING AT
PERMITS 10000

LEGAL DESCR:
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

LOT 3

LOT 1A



PARKING AREA B
24 PARKING SPACES
LANDSCAPING AT
PERMITS 10000

LEGAL DESCR:
Lot 10000, BR 21C
Anchorage Tonsite 4th Addn

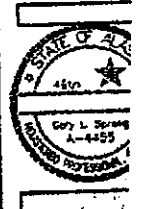
LOT 10A

E. 5TH AVENUE (GLENN HIGHWAY)

PARKING/LANDSCAPING PLAN
1" = 20'

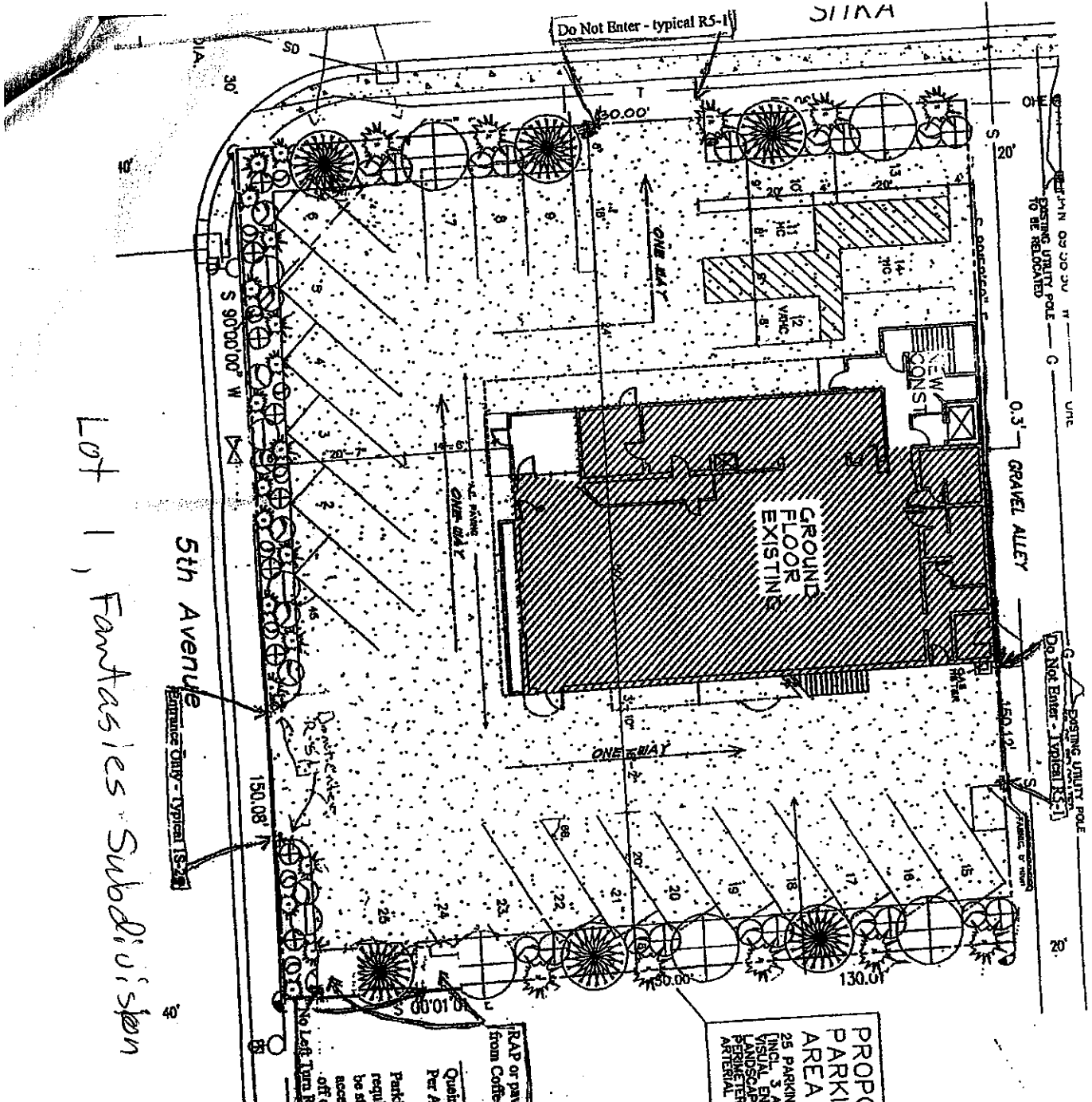


**Spreng Associates In
Architecture**
10. 2021
9239 Arctic Blvd. Suite 102 / Anchorage, Alaska 99503 / (907) 561-1111



SETTER/FANTASIES ON 5th ADDITION
ANCHORAGE, ALASKA

04



Lot 1, Fantasia's Subdivision

5th Avenue

APPROVED
MUNICIPALITY OF ANCHORAGE
TRAFFIC DEPARTMENT

Queue length for Coffee Drive-up approved
Per ADOT driveway entrance permit approved
Parking spaces 23, 24 & 25 meet dimensional
requirements and are provided, but are not to
be striped to prevent confusion for coffee cart
access lanes. Access lanes are to be blocked
off during Club's business hours.
RAP or paved access to and
from Coffee Shop

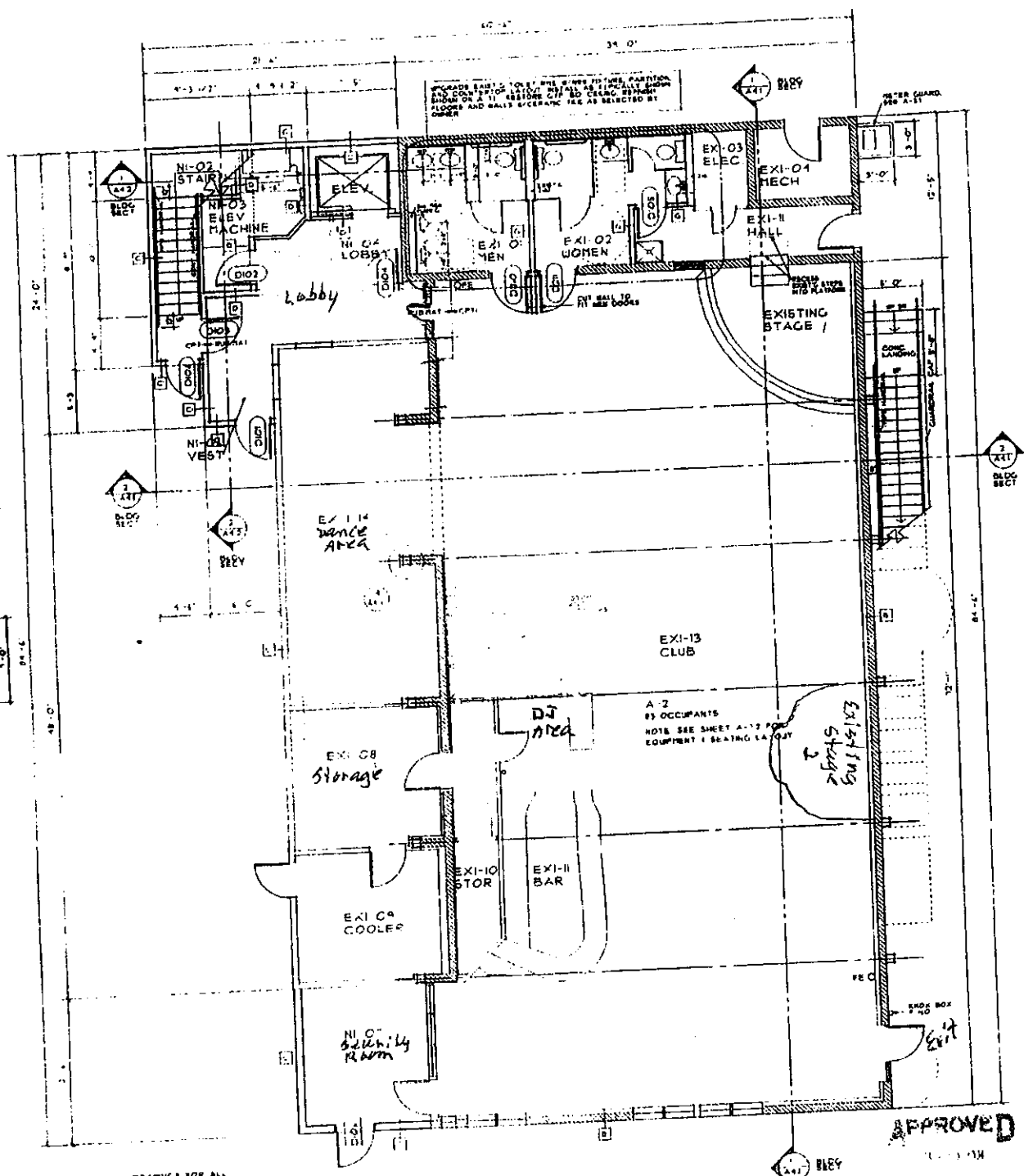
**PROPOSED
PARKING
AREA A**
25 PARKING SPACES
[INCL. 3 ACCESSIBLE]
VISUAL ENHANCEMENT
LANDSCAPING AT
PERIMETER, EXC.
ARTERIAL @ 5TH AVE.

LANDSCAPING APPROV
W. KER
9/30/05
18 weeks from
9/30/05
04-5129

SIGNS C/ ON BUILT
SIGNS S/ OF THE P
ALL HAVE PARKING
INSTALL (FIGURE
NON-VAN
AN ACCE
THE FIRE

11th Street

BUILDING PLANS TO SCALE, AND PHOTOGRAPHS
SHOWING FLOOR PLANS, INDICATING THE
LOCATION OF SALES AND SERVICE AREAS AND
BUILDING ELEVATIONS,



REFER TO STRUCTURAL DRAWINGS FOR ALL
STRUCTURAL WORK
ON MECHANICAL AND ELECTRICAL WORK REFER
TO THE MECHANICAL AND ELECTRICAL DRAWINGS
PROVIDE ALL SITE CIVIL WORK IN ACCORDANCE WITH
THE CIVIL ENGINEERING DRAWINGS
OUTSIDE DIMENSIONS ARE TO FACE OF STUDS
MASONRY FOUNDATION UNLESS OTHERWISE NOTED
INDICATES 30" GORE AND 6" EXTENSION
UPFACE NOTED ON ALL BRACKET + 40"

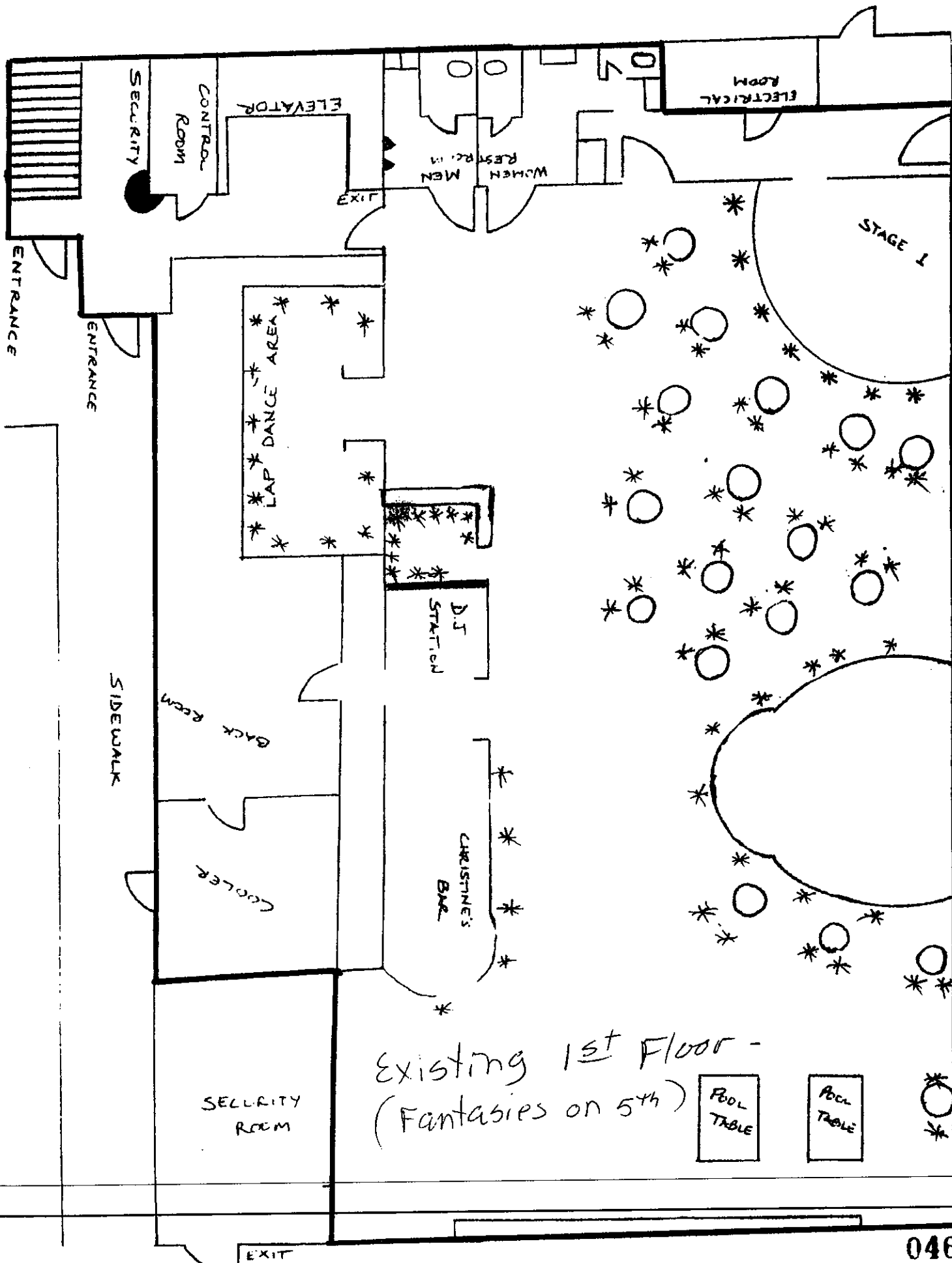
GENERAL NOTES

Spreng Associates Inc., AIA
Architecture
2522 Arctic Blvd. Suite 102/Anchorage, Alaska 99503/1907563-541N FAX 279-2377
Date: 10 Feb 2004
Drawn by: GAT
Checked by: GAT
Project No: 0755-0

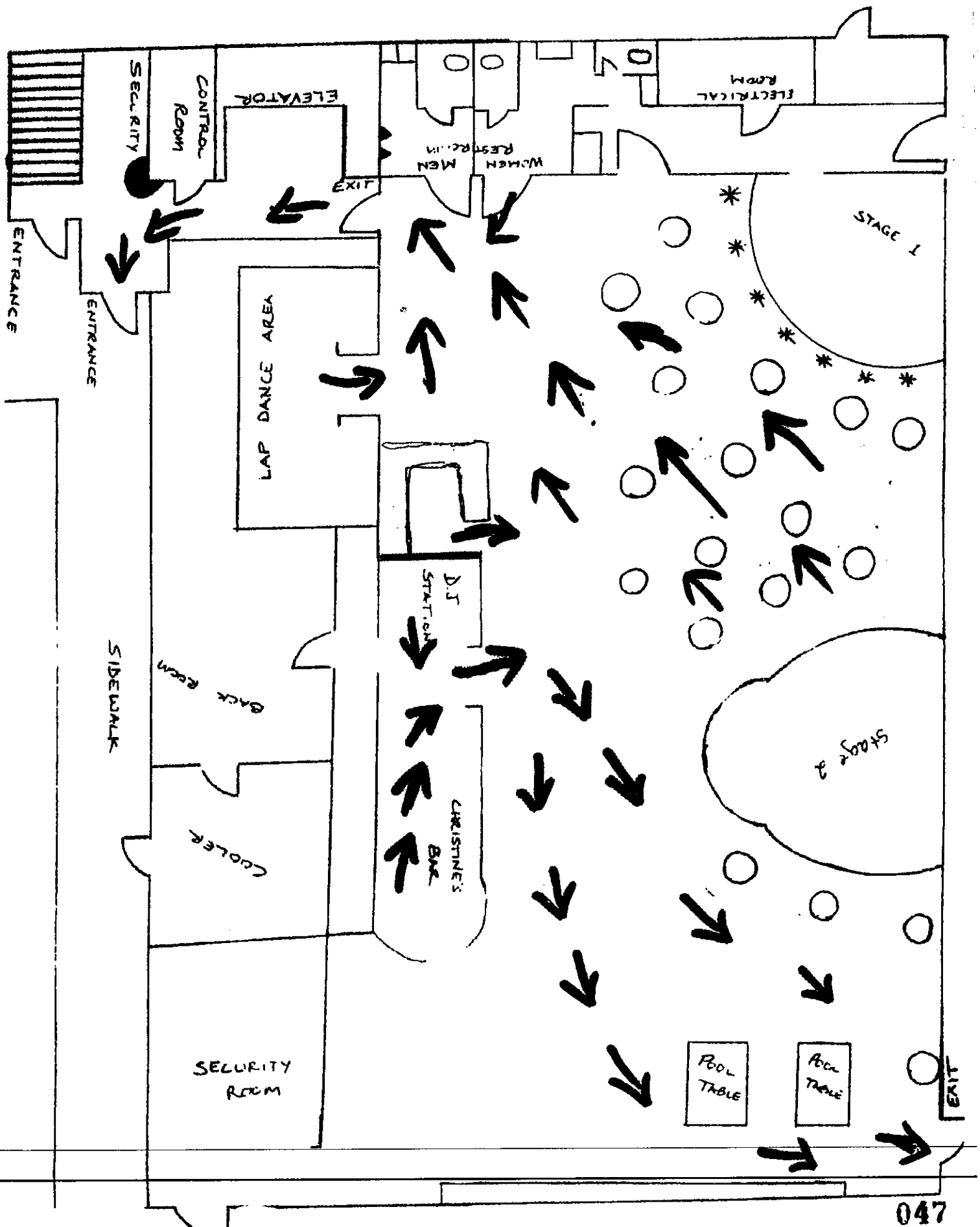


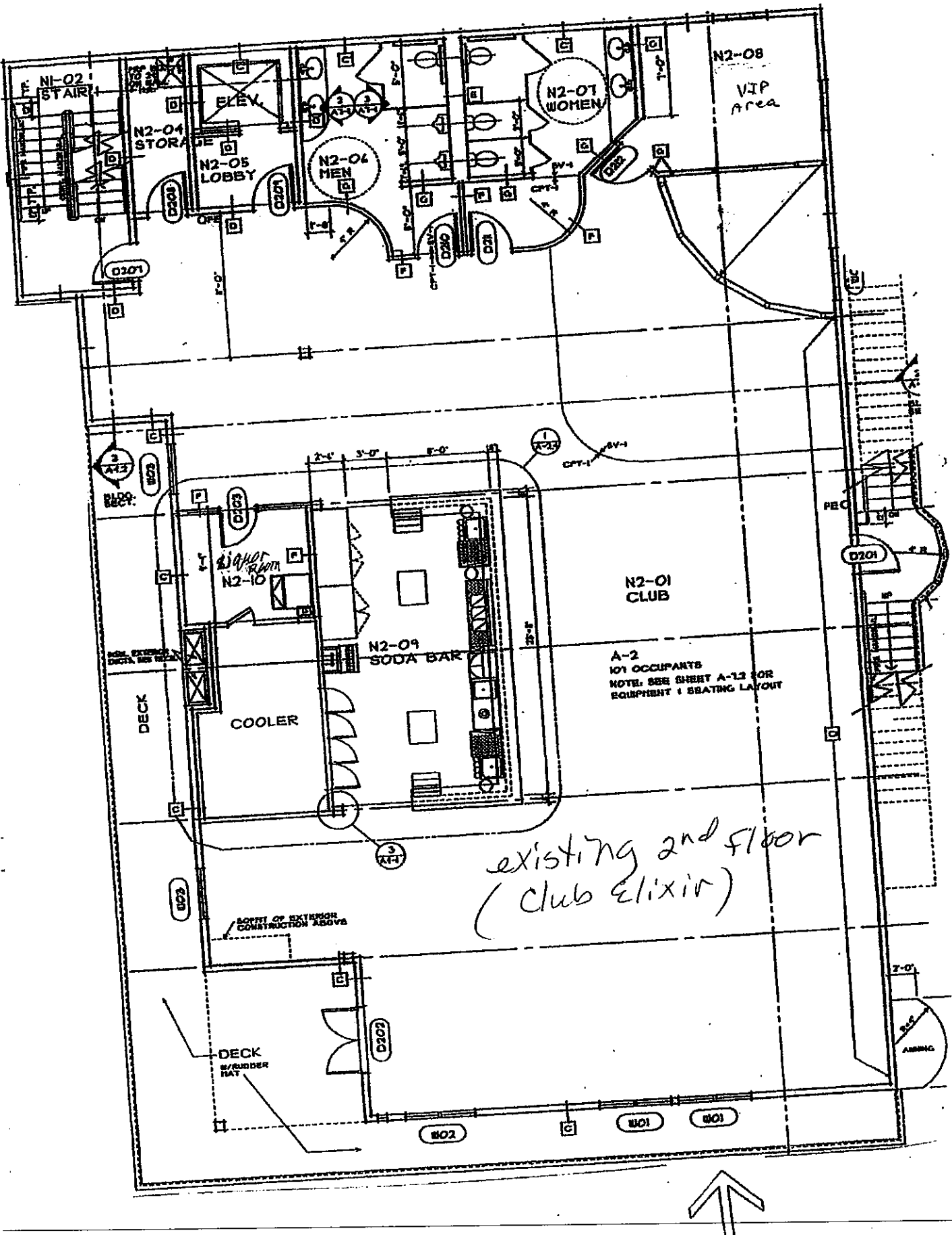
PROJECT TITLE
SE-TER/FANTASIES ON 5th ADDITION
ANCHORAGE, ALASKA
FIRST & SECOND FLOOR PLANS

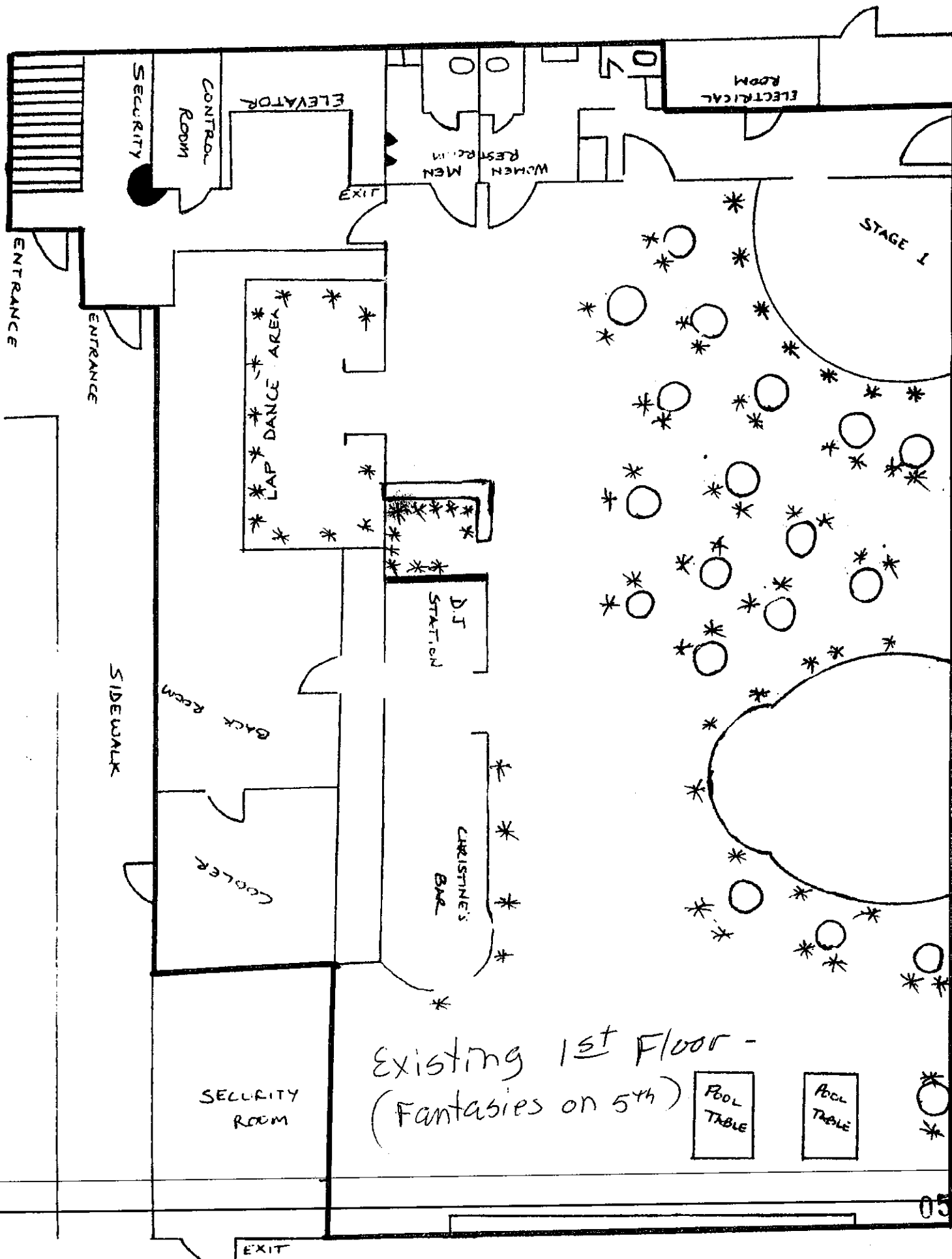
SHEET NO:
A2-1



Existing 1st Floor -
(Fantasies on 5th)

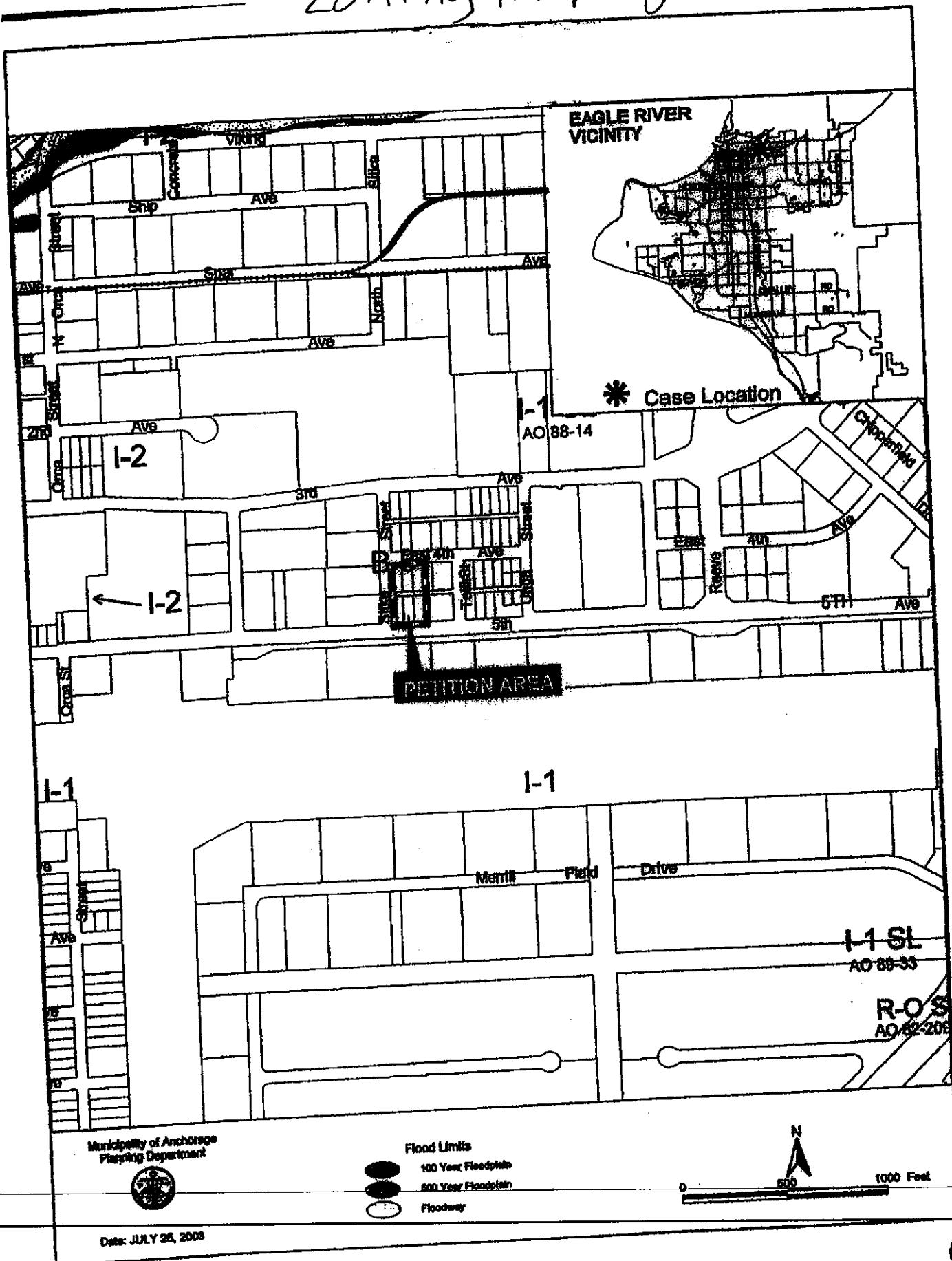






Existing 1st Floor -
(Fantasies on 5th)

Zoning Map of area



Alcoholic Beverage Control Board
5848 E Tudor Rd
Anchorage, AK 99507

New Liquor License

PAGE 1 OF 2
(907) 269-0350
Fax: (907) 272-9412
www.dps.state.ak.us/abc

This application is for:

- ☐ Seasonal - Two 6-month periods in each year of the biennial period beginning _____ and ending _____
Mo/Day Mo/Day
- ☐ Full 2-year period

SECTION A. LICENSE INFORMATION. Must be completed for all types of applications.			FEES
License Year: 2008-2009 <small>(Office Use Only)</small> License #: 561	License Type: Beverage Dispensary Duplicate License	Statute Reference Sec. 04.11. 090	License Fee: \$ 2500- Filing Fee: \$100.00 200- Fingerprint: <small>(\$39 per person)</small> Total Submitted: \$ 2700.00
Local Governing Body: (City, Borough or Unorganized) Muni. of Anchorage	Community Council Name(s) & Mailing Address: Mt. View 306 Price, Anchorage, AK P.O. Box 142824 Anchorage, AK 99514		Business Telephone Number: 907 272 9224 Fax Number: 907 563-0043
Federal EIN or SSN: 92-0140455	Name of Applicant (Corp/LLC/LP/LLP/Individual/Partnership): Decco, Inc.	Doing Business As (Business Name): Club Elixir	Email Address: caroljhantman@yahoo.com
Mailing Address: 1911 E. 5th Ave.	Street Address or Location of Premise: Same		
City, State, Zip: Anchorage, AK 99501			

SECTION B. PREMISES TO BE LICENSED. Must be completed.	
Closest school grounds more than 200' Distance measured under: <input checked="" type="checkbox"/> AS 04.11.410 OR <input type="checkbox"/> Local ordinance No.	<input type="checkbox"/> Premises is GREATER than 50 miles from the boundaries of an incorporated city, borough, or unified municipality. <input checked="" type="checkbox"/> Premises is LESS than 50 miles from the boundaries of an incorporated city, borough, or unified municipality. <input type="checkbox"/> Not applicable
Closest church: more than 200' Distance measured under: <input checked="" type="checkbox"/> AS 04.11.410 OR <input type="checkbox"/> Local ordinance No.	
Premises to be licensed is: <input type="checkbox"/> Proposed building <input checked="" type="checkbox"/> Existing facility <input type="checkbox"/> New building	<input type="checkbox"/> Plans submitted to Fire Marshall (required for new & proposed buildings) <input checked="" type="checkbox"/> Diagram of premises attached

SECTION C. Individual, corporate officer, limited liability organization member, manager or partner background.				
Does any individual, corporate officer, director, limited liability organization member, manager or partner named in this application have any direct or indirect interest in any other alcoholic beverage business licensed in Alaska or any other state? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, complete the following. Attach additional sheets if necessary.				
Name	Name of Business	Type of License	Business Street Address	State
Kathy Hartman	Decco, Inc. aka club ELIXIR	beva dispensary	1911 E. 5th Ave Anchorage	Alaska
Has any individual, corporate officer, director, limited liability organization member, manager or partner named in this application been convicted of a felony, a violation of AS 04, or been convicted as a licensee or manager of licensed premises in another state of the liquor laws of that state? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, attach written explanation.				

Office use only

Date Approved

Director's Signature

Liquor License

Corporations, LLCs, LLPs and LPs must be registered with the Dept. of Community and Economic Development.

Name of Entity (Corporation/LLC/LLP/LP) (or N/A if an Individual ownership) Debeco, Inc.	Telephone Number 907-272-9224	Fax Number 907 563-0043
Corporate Mailing Address: 1911 E. 5th Ave.	City Anchorage	State AK
		Zip Code 99501
Name, Mailing Address and Telephone Number of Registered Agent	Date of Incorporation OR Certification with DCED 3/20/1992	State of Incorporation Alaska
Is the Entity in compliance with the reporting requirements of Title 10 of the Alaska Statutes? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, attach written explanation. Your entity must be in compliance with Title 10 of the Alaska Statutes to be a valid liquor licensee.		

Entity Members (Must include President, Secretary, Treasurer, Vice-President, Manager and Shareholder/Member with at least 10%)

Name	Title	%	Home Address & Telephone Number	Work Telephone Number	Date of Birth
Kathy Hartman	Pres	100	333 N St #401 Anchorage, AK 99501 272-9224 or 760-341-7080	563-0042	3/3/1948
Carol Hartman	Sec	0	3714 E. 16th Anchorage, AK 99508 278-3714	663-0042	10/6/49
Carol Hartman	Treas	0	" "	"	"
Armando Gonzalez	V. Pres.	0	4113 Aurora Cr. 223-6802 Eagle River, AK 99577	563-0042	9/22/80

NOTE: On a separate sheet provide information on ownership other organized entities that are shareholders of the licensee.

Individual Licensees/Affiliates (The ABC Board defines an "Affiliate" as the spouse of a licensee. Each Affiliate must be listed.)

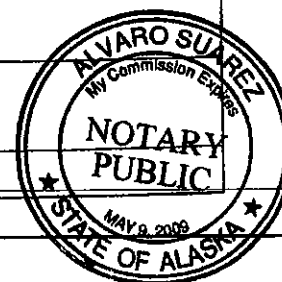
Name: Address: Home Phone: Work Phone:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/> Date of Birth:	Name: Address: Home Phone: Work Phone:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/> Date of Birth:
Name: Address: Home Phone: Work Phone:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/> Date of Birth:	Name: Address: Home Phone: Work Phone:	Applicant <input type="checkbox"/> Affiliate <input type="checkbox"/> Date of Birth:

Declaration

- I declare under penalty of perjury that I have examined this application, including the accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete, and this application is not in violation of any security interest or other contracted obligations.
- I hereby certify that there have been no changes in officers or stockholders that have not been reported to the Alcoholic Beverage Control Board. The undersigned certifies on behalf of the organized entity, it is understood that a misrepresentation of fact is cause for rejection of this application or revocation of any license issued.
- I further certify that I have read and am familiar with Title 4 of the Alaska statutes and its regulations, and that in accordance with AS 04.11.450, no person other than the licensee(s) has any direct or indirect financial interest in the licensed business.
- I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

Signature of Licensee(s) Signature	Signature Carol Hartman
Name & Title (Please Print) Kathy Hartman, President	Name & Title (Please Print) Carol Hartman, Sec/treas
Subscribed and sworn to before me this ____ day of _____	Subscribed and sworn to before me this 19th day of November, 2007
Notary Public in and for the State of Alaska	Notary Public in and for the State of Alaska Alvaro Suarez
My commission expires:	My commission expires: May 9 2009

New License App 11/05



053

Extra additional
information,
but may help with
any questions -

Please call Carol
@ 229-4839 or 563-0042
if you need anything -

1000 foot alcohol

Wed Jul 06, 10:56:30, 2005

Map: Parcels-Basic Layers



Scale 1:12000

Legend:

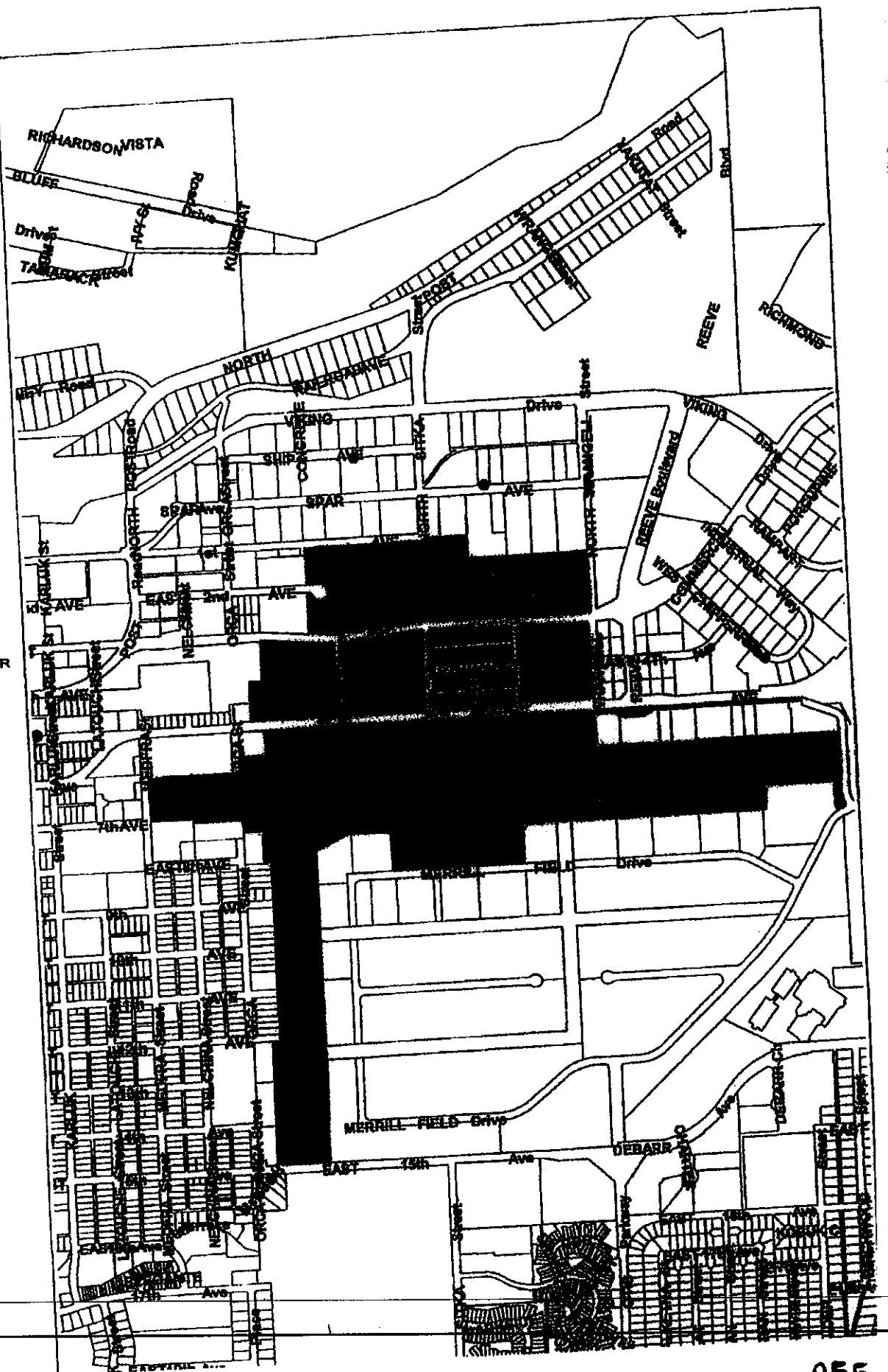
Td STRNAME_BLDIR

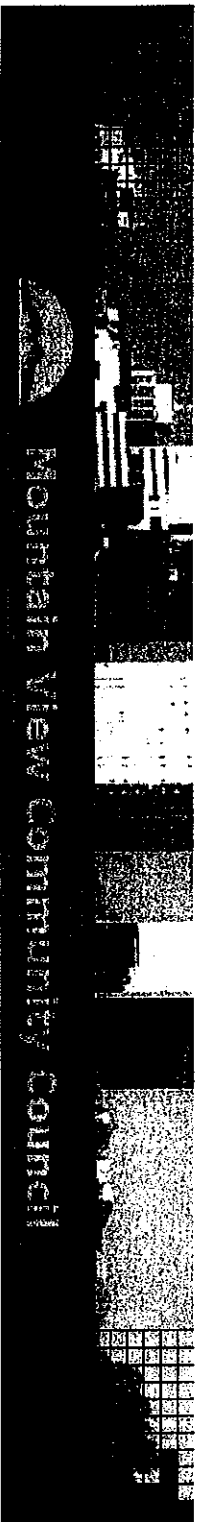


ALCOHOL



PARCELS





State of Alaska

Mayor

Planning & Zoning Case

MOA

MOA Contacts

Assembly

Contacts

Council Maps

Mountain View Home

Officers

Meetings - Directions

Minutes

Minutes archive

Mountain View Reports

Newsletters

Newsletters for Previous Years

Executive Board Minutes

CIP List

Mountain View Blog

Bylaws

Mountain View CC Map

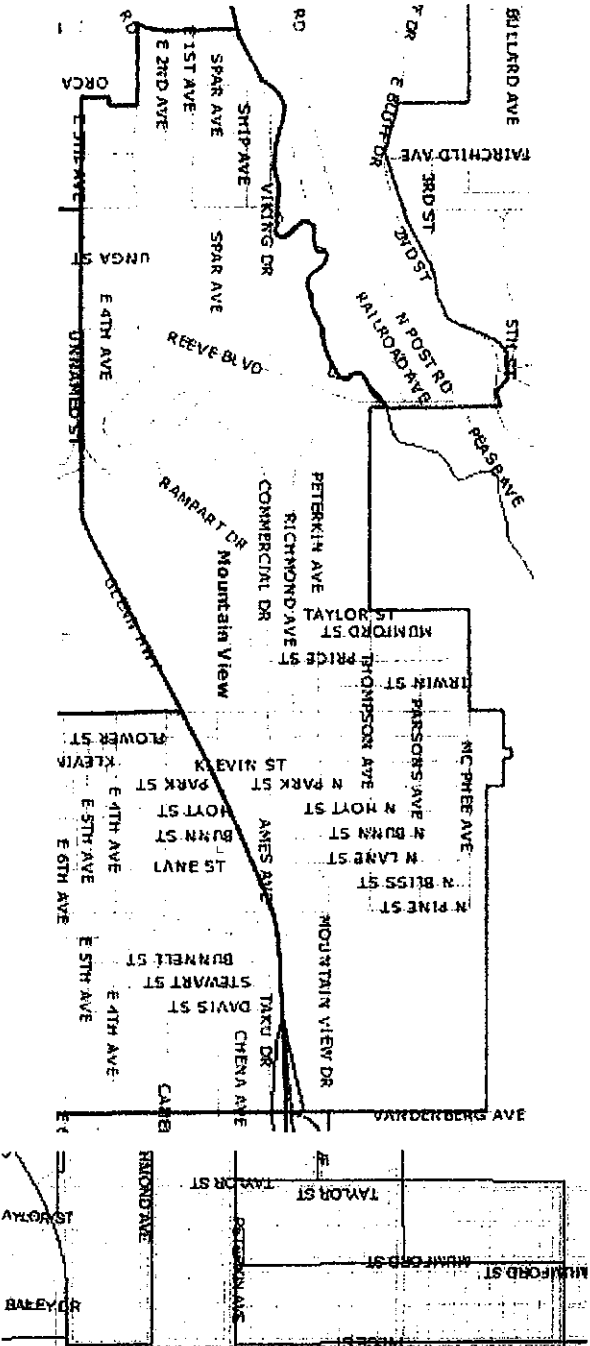
Alaska Museum of Natural History



Withour Trust

MVCC Resolution of December 2006

Mountain View CC Map

Mountain View Community Council



OCCUPANCY BY MORE THAN
83 persons
IS DANGEROUS AND UNLAWFUL
THIS AREA IS CERTIFIED
FOR THE FOLLOWING USE(S)
Adult Cabaret

FIRE PREVENTION DIVISION
ANCHORAGE FIRE DEPARTMENT
3-2-06 
Date
53-076 (6/82)

Fantasies
1st floor

OCCUPANCY BY MORE THAN

107

persons

IS DANGEROUS AND UNLAWFUL



53-076 (5/82)

THIS AREA IS CERTIFIED
FOR THE FOLLOWING USE(S)

alcohol bar

FIRE PREVENTION DIVISION
ANCHORAGE FIRE DEPARTMENT

3-2-06

Date

Club Elixir
2nd floor



CERTIFICATE OF OCCUPANCY

MUNICIPALITY OF ANCHORAGE
BUILDING SAFETY DIVISION
4700 BRAGAW STREET



ISSUE DATE: 07/12/06

This Certificate is issued pursuant to the requirements of Section 309 of the Anchorage Administrative Code certifying that, at the time of issuance, this structure, or portion thereof, was in compliance with the various ordinances of the Municipality regulating building construction or use, for the following:

Building Permit No. 04- -5129

Type of Work: COMBINED, ADDITION

Lot: 26C **Blk:** 8 **Subdivision:** FOURTH ADDITION

Site Address: 1911 E 5TH AVE

Owner: HARTMAN KATHY LIVING TRUST

Street Address: 333 M STREET #401

City: ANCHORAGE

State: AK **Zip:** 99501-1902

Structural: 06/22/06 STUBBS, JAMES R.

Fire: 03/09/06 VENTA, RITA A.

Electrical: 01/25/06 FRANCEK, EDWARD C.

Zoning: 07/11/06 WYATT, DUANE E.

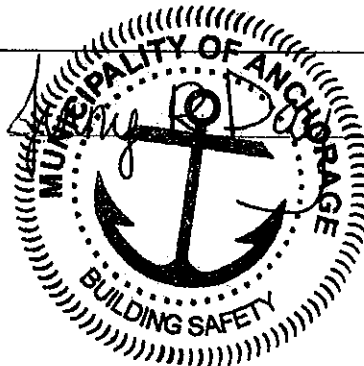
Plumbing: 02/03/06 MEACHAM, LYMAN

Elevator: 03/07/06 REIN, CHALON M.

Mechanical: 02/03/06 MEACHAM, LYMAN

PREPARED BY: DAY, JINNY R.

AUTHORIZED OFFICIAL:



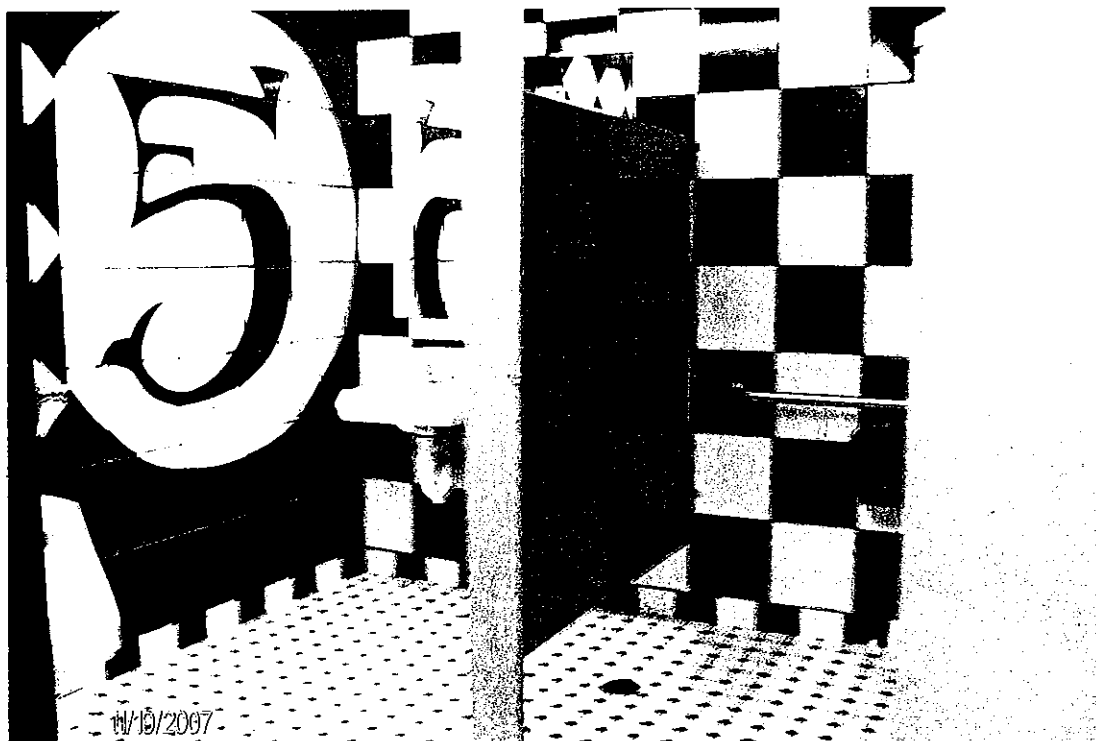
East Side of subject property showing entrance.



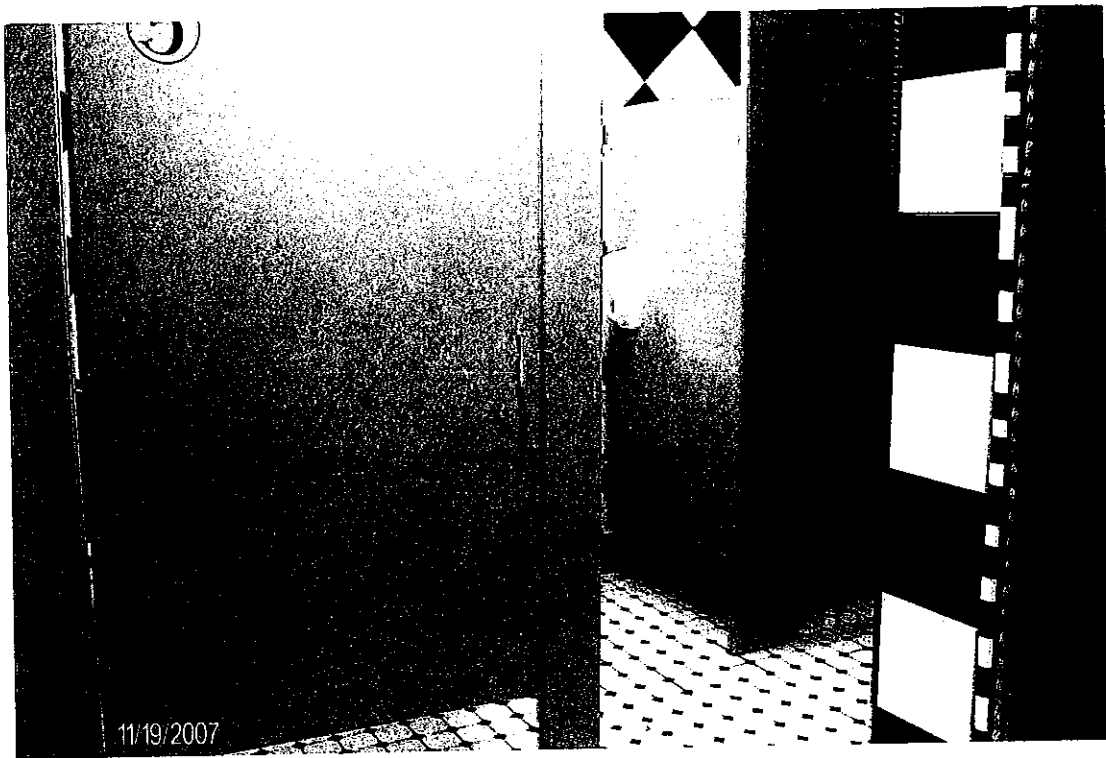
So. side of bldg, showing subject address.



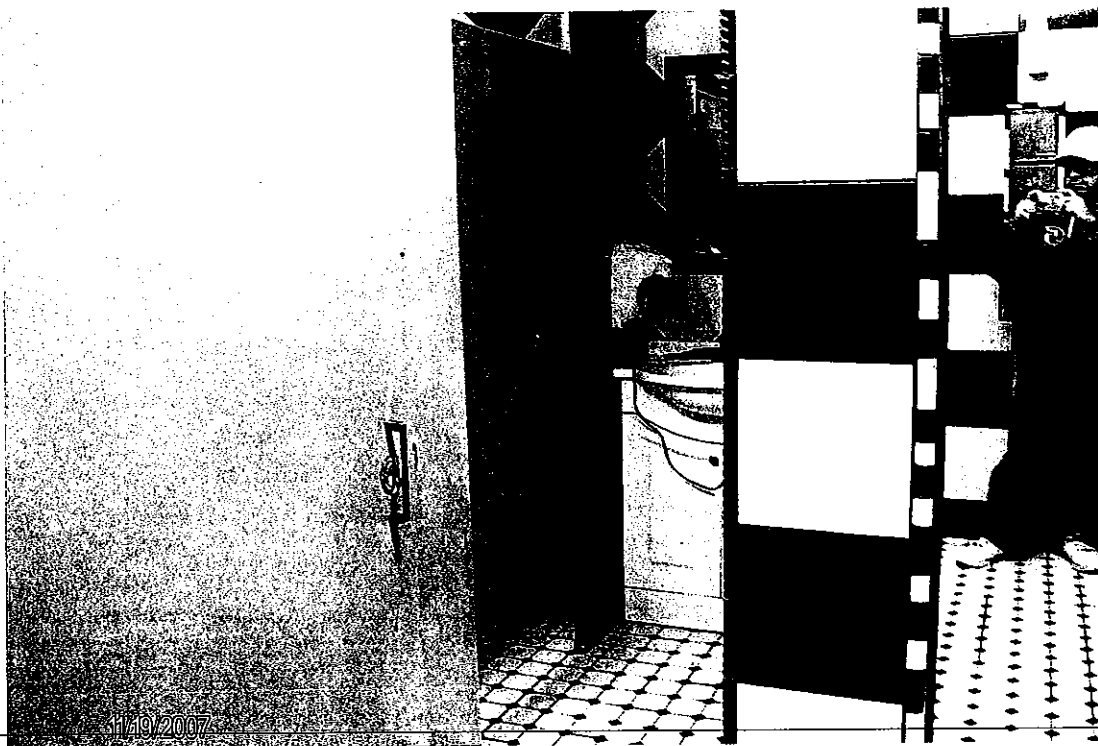
1st Floor Men's Restroom



1st Floor Women's Restroom



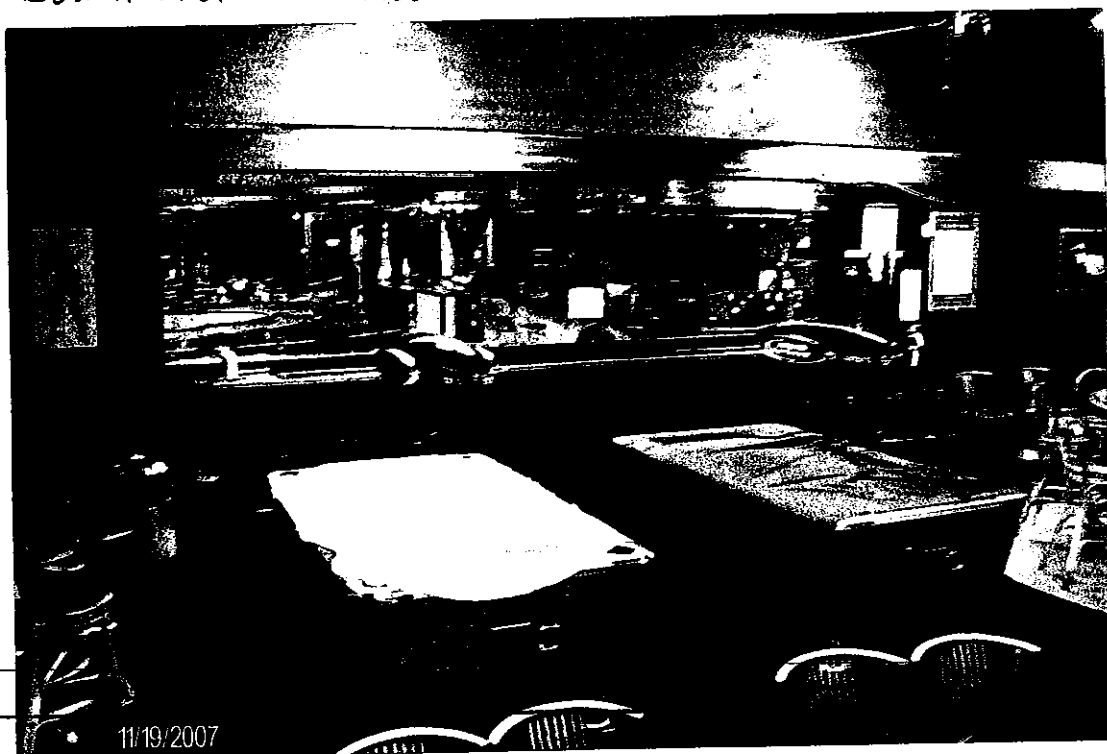
1st floor women's Restroom



North End - 1st floor, restrooms, Stage 1



South End - 1st Floor



1st floor - Fantasies Bar



1st floor - stage 2, DJ Booth, VIP area



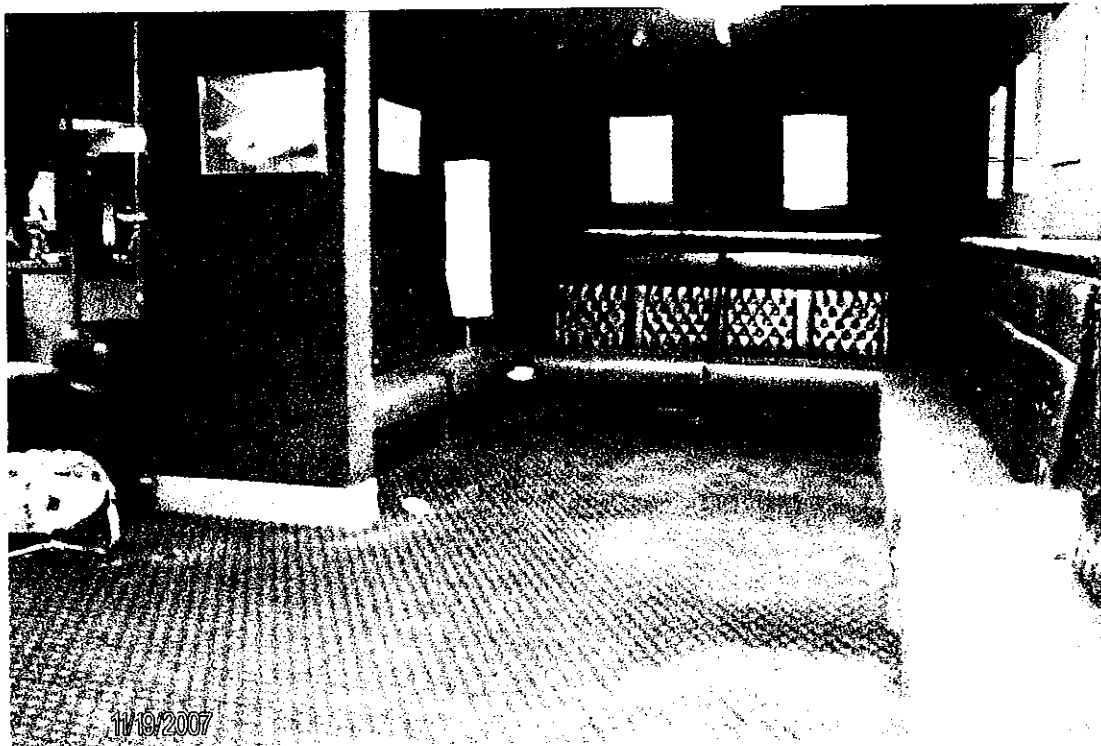
1st floor storage area



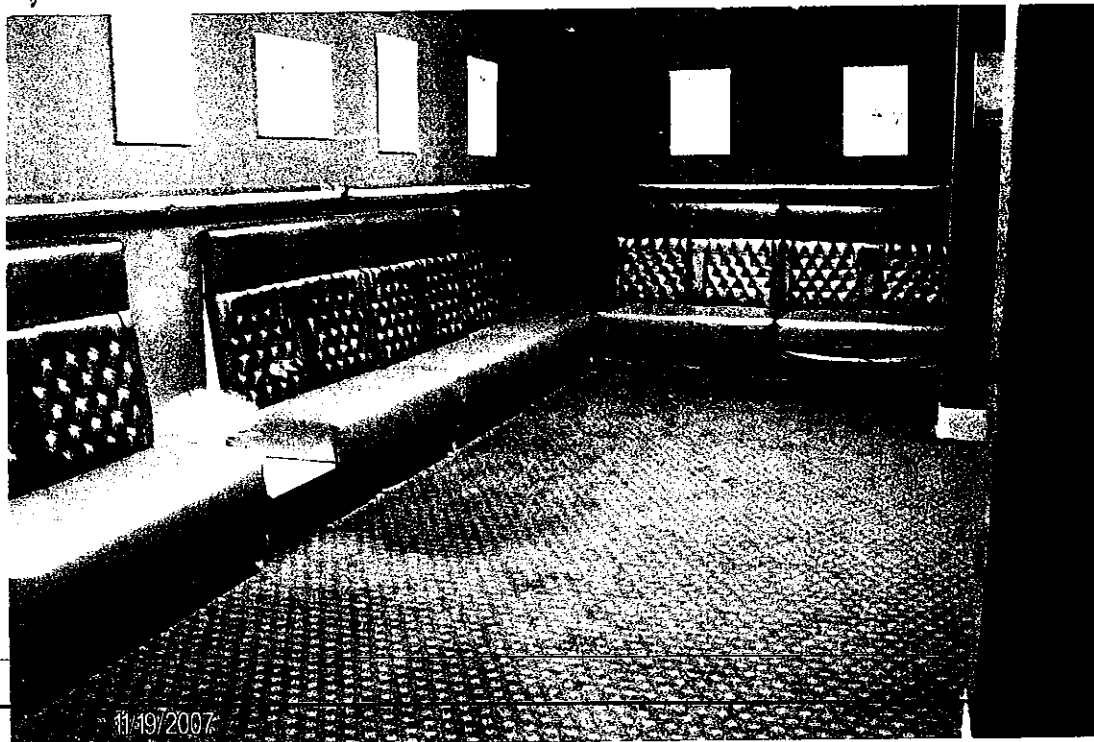
1st floor cooler



South End Dance Area



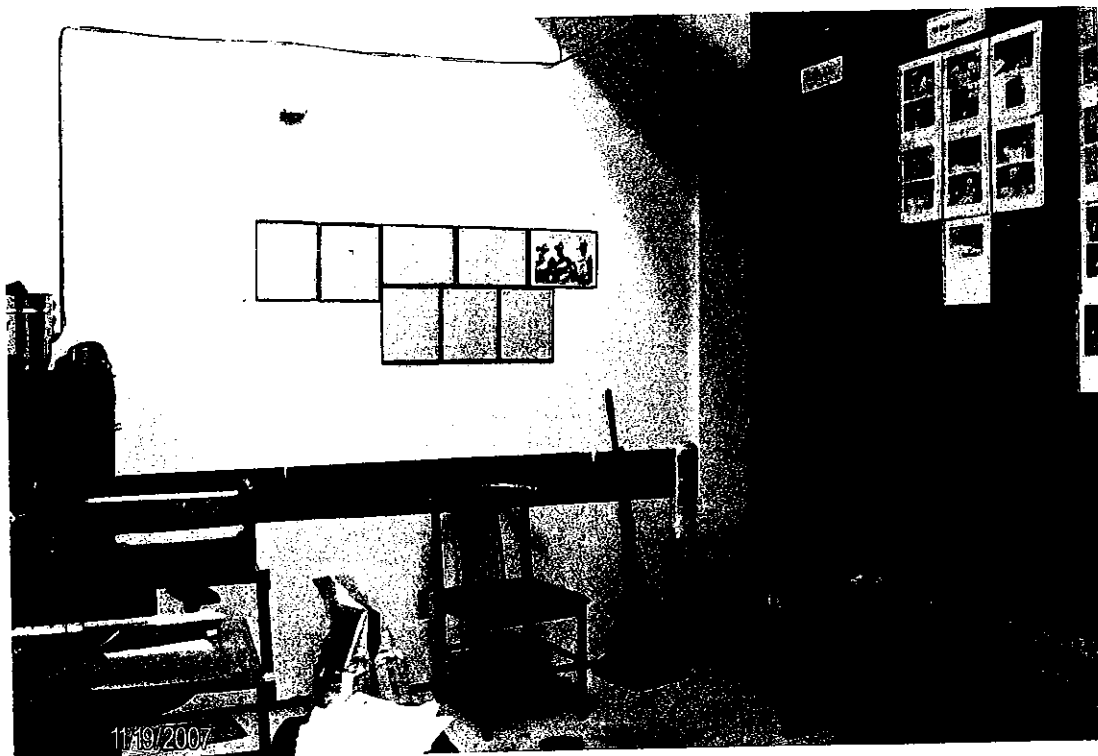
North End of Dance Area



1st floor security room, door to S. exterior



Security Room - 1st floor - SW corner

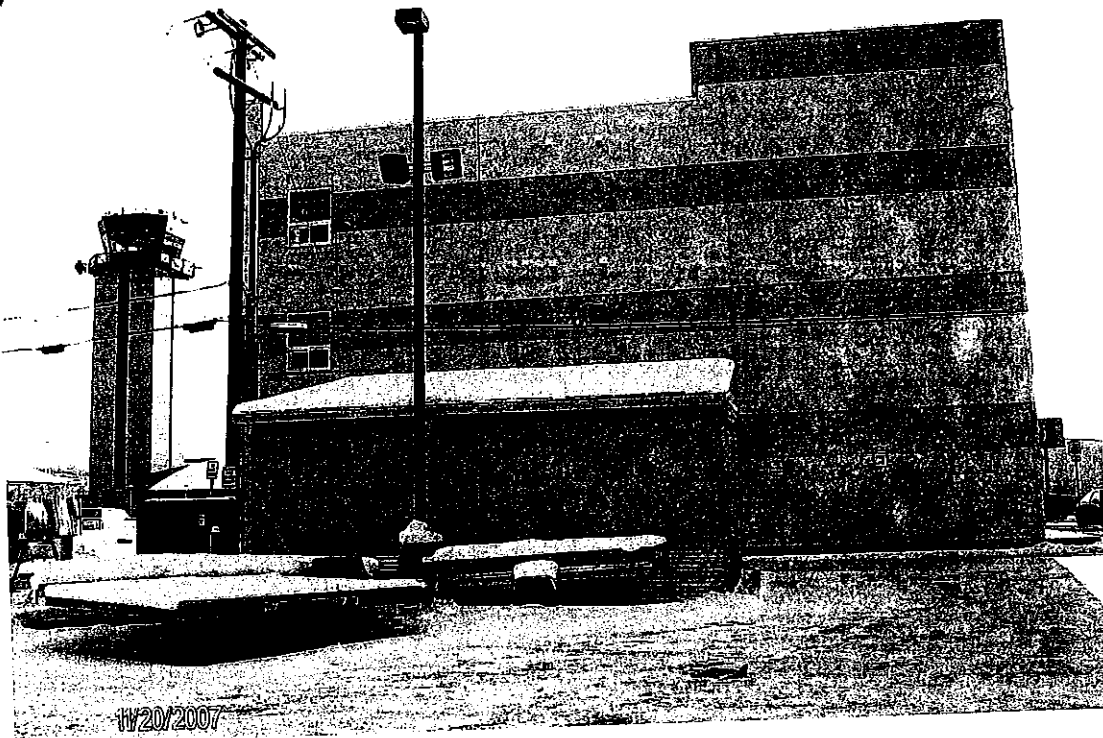


**PHOTOGRAPHS OF PREMISES FROM EACH
STREET FRONTAGE THAT INCLUDES AND
SHOWS RELATIONSHIPS TO ADJACENT
STRUCTURES AND THE PREMISES VISIBLE
STREET ADDRESS.**

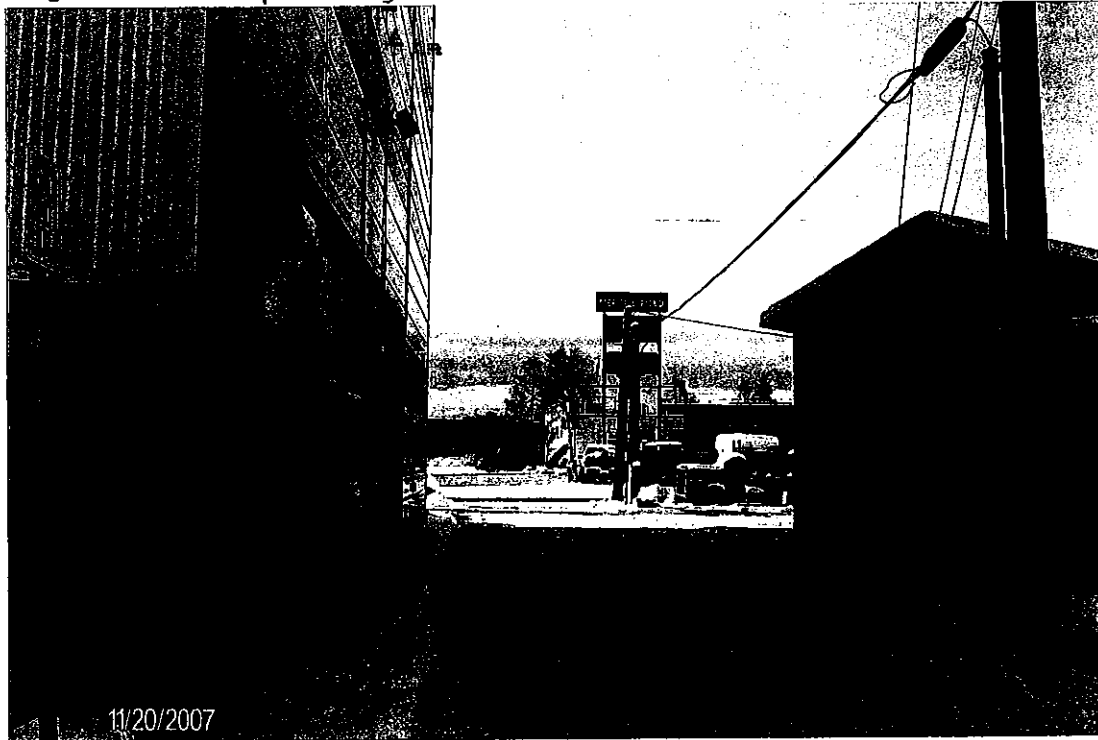
Subject property from Sitka showing Merrill Field Tower



N. Side of subject property, alley, & Merrill Field Tower



Alley between parking lots, showing Sitka St. & Merrill Field Inn



So. parking lot looking East, old Battery Shop, Car Toys, etc.



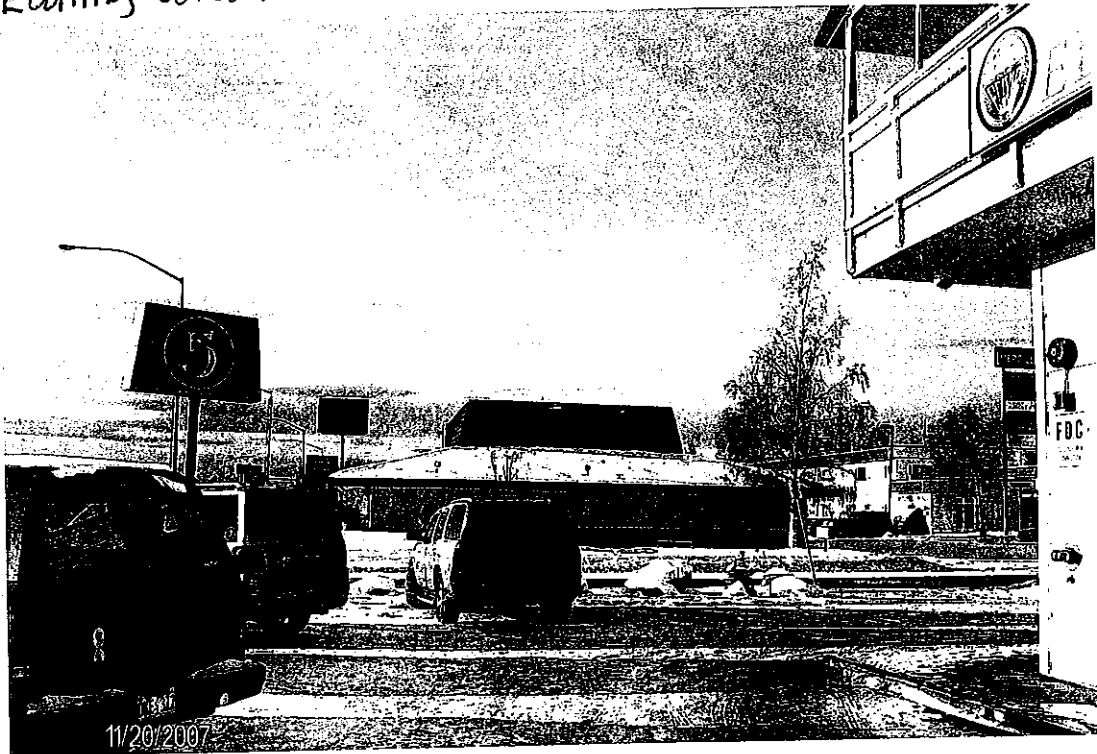
South Parking lot & Mega Castle across Sitka St



N.E. corner parking lot, Sitka St, Merrill Field Inn
and Imperial Palace



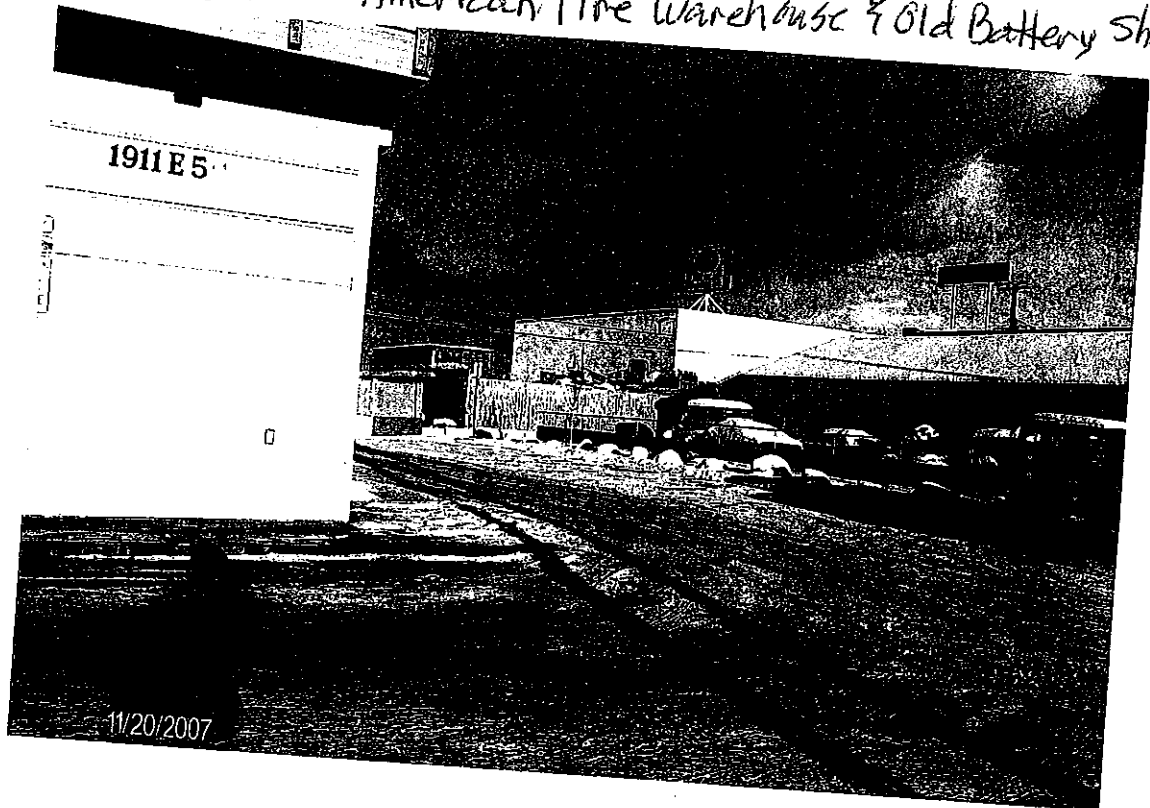
Looking W. across Sitka @ Mega Castle Store.



Looking S.E. @ Merrill Field Tower



Looking N.E. American Time Warehouse & Old Battery Shop



Subject property showing signs (5th & Sitka)



5

**POSTING
AFFIDAVIT**



AFFIDAVIT OF POSTING

CASE NUMBER: _____

I, Carol Hartman hereby certify that I have posted a Notice of Public Hearing as prescribed by Anchorage Municipal Code 21.15.005 on the property that I have petitioned for alcohol land use modification. The notice was posted on 11/26/07 which is at least 21 days prior to the public hearing on this petition. I acknowledge this Notice(s) must be posted in plain sight and displayed until all public hearings have been completed.

Affirmed and signed this 26th day of November, 2007

Carol Hartman
Signature

LEGAL DESCRIPTION

Tract or Lot 1

4, 5, 6

Block _____

26C

Subdivision Fantasies

Fourth Addition

for G:\CPD\Public\FORMS\OtherDocs\AOP.DOC

returned P 42
11/26/07

6

HISTORICAL INFORMATION

Alcohol Existing License List Report

Case Number: 2008-013

Description: 1000'

Parcel Business Name	Parcel Owner Name Applicant Name	Parcel Owner Address Business Address	City Lic. Number	State Lic. Zone	Zip Lic. Type
00308166000 Fantasies Upper Deck	HARTMAN KATHLEEN ANN Debco, Inc.	1911 E 5TH AVENUE 1911 E 5th Ave	ANCHORAGE 561	AK B3	99501 Beverage Dispensary
00308313000 Peggy's Restaurant	FMB LLC Peggy's Restaurant, Inc.	1675 E 5TH AVENUE 1675 E 5th Ave	ANCHORAGE 1821	AK B3	99501 Restaurant/Eating Place
00308325000 Imperial Palace	SS AND SONS LLC Shin, Myong Sun	420 SITKA STREET 400 Sitka St	ANCHORAGE 2010	AK B3	99501 Restaurant/Eating Place

077

Report Date: 11/28/2007

Page 1

Alcohol Church and School List Report

Case Number: 2008-013

Description: 1000'

Parcel	Parcel Owner Name	Parcel Site Address	Description
00308165000	ANCHOR ARMS INC	1905 E 4TH AVE	CHARITABLE

078

Report Date: 11/28/2007

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SANDS NORTH, INC., d/b/a
FANTASIES ON 5TH AVENUE, an
Alaska Corporation,

Plaintiff,

vs.

THE CITY OF ANCHORAGE,
ALASKA, an Alaska Municipal
Corporation,

Defendant.

Case No. 3:05-cv-256-TMB

ORDER
RE: Motion for Partial Summary Judgment

Plaintiff Sands North, Inc., d/b/a/ Fantasies on 5th Avenue, filed a Complaint for Declaratory and Injunctive Relief, Damages and Attorney Fees pursuant to 42 U.S.C. §§ 1983, 1988 and 2201, as well as pendant state law claims. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3), and 2202.

Defendant seeks Partial Summary Judgment¹, as well as Judgment on the Pleadings.² This matter has been fully briefed by the parties,³ and the Court heard oral argument on November 29, 2006.

BACKGROUND

According to the Complaint, Plaintiff opened its current business on or about August 30, 1990. Plaintiff's establishment has featured the presentation of what is commonly referred to as

¹Docket 41.

²Docket 43. An Order regarding the Motion for Judgment on the Pleadings will issue separately.

³Docket nos. 42, 53, 58, 44, 55 & 59.

nude and topless entertainment. Plaintiff does not serve alcoholic beverages, and therefore has employees and customers who are age 18 and over.

Defendant ("the Municipality") has adopted an ordinance codified at § 10.40.050 of the Anchorage Municipal Code, which was amended on October 11, 2005. The ordinance governs the manner in which "adult-oriented establishments" may conduct business. The relevant portions of §10.40.050 are as follows:

A. Definitions. For the purpose of this section, the following words and phrases shall have the meanings indicated in this subsection:

Adult-oriented establishment, or adult business, shall include, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion picture establishments, adult cabarets, physical culture studios, massage parlors, escort services, or similar type businesses where, by the nature of the business, minors under the age of 18 are denied entry, or businesses which are prohibited by law from having minors or unaccompanied minors on the premises for reasons other than the sale of liquor. If a premises, whose primary business is overnight lodging, offers adult movies via a cable, closed circuit or pay per view system, in the absence of any other adult entertainment activities, the availability of such movies, does not render the business an adult-oriented establishment for the purposes of this section.

...

Adult cabaret means a cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers. An adult cabaret does not include an establishment licensed for sale of alcoholic beverages.

...

Specified sexual activities means simulated or actual:

- a. Showing of human genitals in a state of sexual stimulation or arousal.
- b. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus.
- c. Fondling or touching of human genitals, pubic region, buttock, anus or female breasts.⁴
- d. The intrusion of any object into the genital or anal opening regardless of whether the act was consensual.
- e. A separation of a minimum of four feet shall be maintained between entertainers, dancers and/or strippers and patrons.⁵

...

I. Revocation of license.

⁴The parties refer to this provision of the Ordinance as the "No Touch" provision.

⁵ The parties refer to the four-foot requirement as "the buffer zone."

1. The municipal clerk may revoke or suspend a license or permit for any of the following reasons:

...

g. Any of the following offenses are committed by any person at the location to which an adult business license has been issued:

...

(3) Allowing any person on the premises to engage in any of the specified sexual activities listed in 10.40.050A.

...

J. Physical condition of premises; sanitation requirements.

...

3. Exterior.

...

d. No adult entertainment shall be open to view from outside the licensed premises, or broadcast to any site outside the licensed premises. Permanent barriers shall be installed and maintained at each entrance and exit to screen the interior of the premises from public view. Exterior windows shall be covered with opaque covering at all times.

It is undisputed that Plaintiff operates as an "adult-oriented establishment," and is licensed as an "adult cabaret." The 2005 amendments imposed additional restrictions on such establishments, including a requirement that "a separation of a minimum of four (4) feet shall be maintained between entertainers, dancers and/or strippers and patrons," (the "No Touch" provision) as well as a restriction prohibiting "broadcasting to any site outside the licensed premises." In addition, the 2005 Amendments added language allowing revocation of a business license in the event that any licensee or its employees allows "any person on the premises to engage in any of the specified sexual activities listed in 10.40.050A."⁶

⁶AMC § 10.40.050(I)(1)(g)(3).

Plaintiff complains that the ordinance, as amended, is in violation of the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, as well as Article I, §§ 5, 7 and 22 of the Alaska Constitution, because "it bans or unlawfully infringes on constitutionally protected dance entertainment in Anchorage."⁷ Plaintiff further complains that the definitions set forth in the ordinance are "unconstitutionally vague and overbroad."⁸ Plaintiff alleges that "the ordinance is an unconstitutional prior restraint on constitutionally protected expression which is not supported by any evidence of 'adverse secondary effects.'"⁹ Plaintiff further alleges a violation of the Equal Protection Clause of the Fourteenth Amendment (as well as the corollary provisions of the Alaska Constitution), violation of the Commerce Clause, and a deprivation of the lawful use of property without due process.¹⁰

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.¹¹

⁷Docket 1 at 12.

⁸*Id.*

⁹*Id.*

¹⁰Docket 1 at 12-13.

¹¹Fed. R. Civ. P. 56(c).

The moving party bears the initial burden of proof for showing that no fact is in dispute.¹² If the moving party meets that burden, then it falls upon the non-moving party to refute with facts which would indicate a genuine issue of fact for trial.¹³ Summary judgment is appropriate if the facts and allegations presented by a party are merely colorable, or are not significantly probative.¹⁴

DISCUSSION

Defendant's Motion for Partial Summary Judgment¹⁵

Defendant seeks summary judgment on five of Plaintiff's claims, arguing that they are insufficient as a matter of law under both Federal and State analyses. Specifically, Defendant seeks summary judgment regarding Plaintiff's claims that: 1) the Municipality's four foot rule unconstitutionally infringes on protected expression;¹⁶ 2) AMC 10.40.050 violates the equal protection doctrine;¹⁷ 3) AMC 10.40.050 is unconstitutionally overbroad;¹⁸ 4) AMC 10.40.050 is

¹²*Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

¹³*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

¹⁴*Id.* at 249-50, *See also, In re Lewis*, 97 F.3d 1182, 1187 (9th Cir. 1996); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

¹⁵Docket 41.

¹⁶ *See* Complaint at ¶¶ 32 & 43(c), (e), (m) (g) & (h).

¹⁷ *See* Complaint at ¶¶ 36 & 43(n).

¹⁸ *See* Complaint at ¶¶ 33 & 43(b).

unconstitutionally vague;¹⁹ and 5) the broadcasting restriction of AMC 10.40.050 violates the Commerce Clause of the United States Constitution.²⁰

Protected Expression

Paragraph 43(c) of the Complaint alleges that AMC 10.40.050 is a content-based restriction on speech. Paragraph 43(e) alleges “there are no facts that would support the claim that an ‘adult cabaret’ ... causes any adverse secondary effects that Anchorage has a right to regulate.” Paragraph 43(g) alleges that AMC 10.40.050 “[is] not narrowly tailored nor are the restrictions contained reasonably related to any legitimate and/or substantial government interest.” Paragraph 43(h) alleges that the ordinance is not supported by any evidence that it would be effective in furthering any substantial government interest. Paragraph 43(m) alleges that AMC 10.40.050 “attempts to impose unconstitutional conditions on one’s right to engage in constitutionally protected activities.”

The Municipality argues that AMC 10.40.050 only regulates conduct that is not constitutionally protected; that constitutional principles do not require that AMC 10.40.050 be “narrowly tailored” to serve a government interest; that the ordinance need only be substantially related to a legitimate government goal, and it meets this standard; that there are abundant facts in the Municipality’s legislative record and in the decisions of other courts that adverse secondary effects exist; and that AMC 10.40.050 does not infringe upon constitutionally protected activity, nor are the restrictions it imposes

¹⁹ See Complaint at ¶¶ 33 & 43(p).

²⁰ See Complaint at ¶¶ 38 & 43(i).

unconstitutional. Because the Federal and Alaska analyses differ with respect to protected expression, they will be examined separately.

- Federal Analysis

"[F]ive members of the Supreme Court have agreed that nude dancing is expressive conduct protected by the First Amendment, albeit only at the 'outer ambit' of the Amendment's protection."²¹ "The level of constitutional protection and the type of analysis we apply to nude dancing regulations differs depending upon the type and purpose of the restriction. In all situations, however, the government has the burden of proof to justify burdening freedom of expression."²²

Extensive briefing was devoted to the determination of whether strict or intermediate scrutiny of the ordinance is appropriate in this matter. Plaintiff argues that the ordinance should be subject to strict scrutiny, as the amendments were drafted solely to prohibit a particular type of expression. The Municipality, however, suggests that intermediate scrutiny is appropriate, arguing that the amendments are nothing more than "time, place and manner restrictions."

The Ninth Circuit has held that "Restrictions upon nude dancing are considered content-neutral because they are aimed at the so-called secondary effects of nude dancing and not at expressive conduct. 'The State's interest in preventing harmful secondary effects is not related to the suppression of expression. In trying to control the secondary effects of nude dancing, the ordinance seeks to deter crime

²¹*Clark v. City of Lakewood*, 259 F.3d 996, 1004-05 (9th Cir. 2001), (citing *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000); *Colacurcio v. City of Kent*, 163 F.3d 545, 549 (9th Cir. 1998)).

²²*Id.*

and the other deleterious effects caused by the presence of such an establishment in the neighborhood.”²³ For example, the Supreme Court has held that a zoning ordinance prohibiting adult movie theaters from locating within 1,000 feet of “sensitive locations” was properly analyzed as a “time, place, and manner regulation,” as it did not ban adult theaters altogether.²⁴ Similarly, in this case, nude dancing is not banned altogether. Rather, the “place and manner” of the dancing are impacted by the four-foot buffer zone.

The Supreme Court in *Alameda Books* went on to explain: “we next considered whether the ordinance was content neutral or content based. If the regulation were content based, it would be considered presumptively invalid and subject to strict scrutiny.”²⁵ The Supreme Court noted that the ordinance in *Renton* was aimed not at the content of the films shown at adult theaters, but rather at the secondary effects of such theaters on the surrounding community. Therefore, the *Renton* ordinance was deemed content neutral.²⁶

It has been suggested, however, that “virtually all regulation of adult businesses is content-based.”²⁷ Acknowledging that content-based regulations are normally subject to strict scrutiny, the

²³*Clark*, 259 F.3d at 1004-05 (quoting *Pap's A.M.*, 529 U.S. at 289-93).

²⁴*City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 434 (2002) (citing *Renton v. Playtime Theatres*, 475 U.S. 41, 46 (1986)).

²⁵*Id.*

²⁶*Id.*

²⁷*Gammoh v. City of La Habra*, 395 F.3d 1114, 1123 (9th Cir. 2005) (citing *Alameda Books*, 535 U.S. at 448 (Kennedy, J., concurring)).

Ninth Circuit noted that "content-based regulations may be analyzed under intermediate scrutiny if two conditions are met: 1) the ordinance regulates speech that is sexual or pornographic in nature; and 2) the primary motivation behind the regulation is to prevent secondary effects."²⁸

There is no dispute here that the ordinance regulates speech that is sexual in nature, but the parties disagree as to the "primary motivation behind the regulation." Plaintiff complains that the 2005 amendments were made without the Assembly making appropriate legislative findings.²⁹ Specifically, Plaintiff complains that despite Defendant's argument that the 2005 amendments (including the "buffer zone") were enacted to eliminate the risk of prostitution, sexual assaults, and sexually transmitted diseases, the Assembly made no such findings. In support of its position, Plaintiff presents affidavits of expert witnesses containing testimony contradicting the argument that adult establishments generate unwanted "secondary effects" such as prostitution, drug sales, and the transmittal of sexually transmitted diseases.³⁰ Affidavits of the owners of Sands North, Inc., as well as those of employees, indicate that no prostitution or other illegal activity takes place at Plaintiff's establishment.³¹ Plaintiff's expert has conducted an analysis of crime in the Anchorage for the past five years and has concluded that adult

²⁸*Id.*

²⁹Docket 53 at 12.

³⁰Docket 53 at 17-20.

³¹Docket 53 at 20-23.

businesses in *Anchorage* are not associated with an increase in crime or other secondary effects.³² Rather, argues Plaintiff, the amendments were drafted solely to prohibit a particular type of expression.

The Municipality asserts that the Anchorage Assembly considered direct eyewitness testimony, academic studies, findings from other jurisdictions, and decided caselaw in amending the ordinance to prevent secondary effects such as prostitution, drug use, drug sales, and other illegal activities that historically occur near adult-oriented businesses. Defendant has presented evidence that such secondary effects were acknowledged when the Assembly approved a previous version of the ordinance in 1994.³³

The four-foot restriction is justified by the Municipality as a reasonable time, place and manner restriction to prevent potential drug transactions and solicitations for prostitution, noting that the Ninth Circuit Court of Appeals repeatedly has upheld "buffer zone" requirements like the one in AMC 10.40.050.³⁴ Defendant contends that although Sands North has produced evidence tending to disprove the link between adult businesses and adverse secondary effects, this evidence is not sufficient to cast doubt on the Municipality's rationale for passing its ordinance. Indeed, the Ninth Circuit has held that

³²Docket 53, Ex. D, ¶'s 79-83.

³³"[A]dult businesses have been determined, by court accepted independent studies, to produce secondary impacts on surrounding land uses. The impacts include a decline in property values, and increase in the level of criminal activity including prostitution, rape, and assaults in the vicinity of these types of enterprises . . ." Docket 42, Exhibit 1.

³⁴*See Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986) (ten foot buffer zone did not significantly burden First Amendment Rights), *BSA, Inc. v. King County*, 804 F.2d 1104 (9th Cir. 1986) (six-foot buffer zone upheld); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998) (ten-foot buffer zone upheld); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005) (two-foot buffer zone upheld).

there is no authority requiring that a legislative body must function like a court of law every time it considers legislation that may implicate the First Amendment.³⁵ The Supreme Court has explained:

The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.³⁶

Here, the court finds that although the ordinance may be content-based under the rationale in *Gammoh*, the Municipality sought to regulate speech that is sexual or pornographic in nature, and the primary motivation behind the regulation was to prevent secondary effects. Accordingly, the ordinance may be analyzed under intermediate scrutiny.

A statute will survive intermediate scrutiny if it: 1) is designed to serve a substantial government interest; 2) is narrowly tailored to serve that interest; and 3) leaves open alternative avenues of communication.³⁷

The cases cited herein have universally agreed that a government's interest in curbing the secondary effects associated with adult entertainment establishments is substantial.³⁸ "Municipalities may reasonably find that separation requirements serve the interest of reducing the secondary effects

³⁵ *BSA, Inc.*, 804 F.2d at 1112.

³⁶ *Renton*, 475 U.S. at 51-2.

³⁷ *Gammoh*, 395 F.3d at 1125-26. See also *Alameda Books, Inc.*, 535 U.S. at 434; *Renton*, 475 U.S. at 51-53.

³⁸ See *Gammoh*, 395 F.3d at 1126; *BSA, Inc.*, 804 F.2d at 1111.

of adult establishments. 'Buffers' between patrons and performers prevent the exchange of money for prostitution or drug transactions and allow enforcement of 'no touching' provisions, which would otherwise be virtually unenforceable."³⁹

The narrow tailoring requirement is satisfied so long as the government's asserted interest "would be achieved less effectively absent the regulation."⁴⁰ As previously noted, the Ninth Circuit consistently has upheld buffer zones of various degrees,⁴¹ and specifically has held that a "two-foot separation requirement is narrowly tailored to prevent the exchange of money or drugs and to allow enforcement of the 'no touching' provisions."⁴² In *BSA, Inc., v. King County*, the Ninth Circuit upheld a six-foot buffer zone, noting that the complaining parties "failed to explain how the distance requirement impinges upon their First Amendment rights. The requirement does not prohibit nude entertainment. It also does not diminish the expressiveness of nude entertainment."⁴³

Finally, the ordinance leaves open ample alternative avenues of communication, since the dancers are still free to engage in nude dancing. "The challenged Ordinance leaves dancers free to convey their erotic message as long as they are two feet away from patrons. Although the message may

³⁹ *Gammoh*, 395 F.3d at 1127.

⁴⁰ *Colacurcio*, 163 F.3d at 553.

⁴¹ See fn. 34, *supra*.

⁴² *Gammoh*, 395 F.3d at 1127-28.

⁴³ *BSA, Inc.*, 804 F.2d at 1111.

be slightly impaired from this distance, it cannot be said that a dancer's performance 'no longer conveys eroticism' from two feet away."⁴⁴ "Erotic dancers still have reasonable access to their market."⁴⁵

- State Analysis

In *Mickens v. Kodiak*, the Alaska Supreme Court specifically held that nude dancing is protected under the freedom of speech clause of the state constitution.⁴⁶ The *Mickens* court found that an ordinance prohibiting nude dancing in establishments where alcohol was served could not survive scrutiny under the state constitution, because the ordinance was aimed at the content of the performances.⁴⁷ The Alaska Supreme Court was not convinced that the ordinance was directed at suppressing criminal activity in the vicinity of the bars offering nude dancing, finding that "the city has offered no justification for distinguishing between entertainment involving nudity from other forms of entertainment as a means to prevent crowds from congregating in establishments where intoxicating liquor is sold. Without such a justification, the ordinance cannot stand."⁴⁸

Plaintiff asserts the Anchorage Ordinance, as amended, similarly violates the Alaska Constitution. Plaintiff argues that unlike the U.S. Supreme Court, which has permitted the regulation of nudity on the basis of a showing of "secondary effects of adult entertainment," the Alaska Supreme

⁴⁴ *Gammoh*, 395 F.3d at 1128 (citing *Dream Palace*, 384 F.3d at 1021).

⁴⁵ *Kev Inc.*, 793 F.2d at 1061.

⁴⁶ *Mickens v. Kodiak*, 640 P.2d 818, 820 n.3 (Alaska 1982), (citing Alaska Constitution, Article I, § 5 ("Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right."))

⁴⁷ *Id.* at 821-22.

⁴⁸ *Id.* at 822.

Court has stated that "it is absurd to punish a person 'because his neighbors have no self-control and cannot refrain from violence.'"⁴⁹ The *Mickens* court held that "it is not permissible to suppress constitutionally protected forms of expression in order to curb the lawless conduct of some of those who are reacting to it, unless other law enforcement techniques which do not infringe first amendment freedoms are unavailable or likely to be ineffective."⁵⁰ In this case, Plaintiff suggests that the government cannot meet its significant burden of demonstrating not only a compelling governmental reason to restrict performances before adult audiences who knowingly and willingly have come to view them, but also, that the means chosen to do so are not the most narrowly drawn means available to serve that interest. Plaintiff asserts that the municipality must demonstrate that a no sexual contact provision as found in the liquor code would not be sufficient to serve the government's interest or that a one-, two- or three-foot buffer zone would not suffice.

The *Mickens* case, however, is distinguishable from the case at hand. In *Mickens*, the City of Kodiak enacted an ordinance that prohibited nudity by waiters, waitresses and entertainers in establishments serving alcohol. The City justified the ordinance by citing an increase in police calls originating at the location of nude dancing. The Alaska Supreme Court found that "while this. . . may well be the result of nude dancing, there is no reason to suppose that other forms of entertainment, not involving nudity, would not also increase business and therefore police calls."⁵¹ "Once a fundamental

⁴⁹*Mickens*, 640 P.2d at 822.

⁵⁰*Id.*

⁵¹*Id.*

right under the constitution of Alaska has been shown to be involved and it has been further shown that this constitutionally protected right has been impaired by governmental action, then the government must come forward and meet its substantial burden of establishing that the abridgment in question was justified by a compelling governmental interest. . . . [T]he adoption of the compelling interest standard best comports with the kind of ordered liberty which represents the core of Alaska's constitutional heritage."⁵²

In the present case, nude dancing has not been prohibited. Rather, a four-foot buffer zone has been mandated for the purpose of preventing drug transactions and solicitations for prostitution from taking place, both of which will be significantly less likely if entertainers and patrons maintain their distance from one another. The question, therefore, is whether the Municipality has sustained its "substantial burden" of establishing that the impairment of Plaintiff's rights is justified by a "compelling governmental interest."⁵³ As discussed in the previous section, Federal caselaw has found that a government's interest in curbing the secondary effects associated with adult entertainment establishments is substantial,⁵⁴ and this Court finds that such a substantial interest is the equivalent of a "compelling interest" under the Alaska analysis.

⁵²*Messerli v. State*, 626 P.2d 81, 84 (1980)(internal quotation omitted). .

⁵³*Id.*

⁵⁴*See Gammoh*, 395 F.3d at 1126; *BSA, Inc.*, 804 F.2d at 1111.

Equal Protection

Paragraph 43(n) of the complaint alleges that AMC 10.40.050 violates the equal protection doctrine under the United States and Alaska constitutions. Plaintiff complains that the ordinance seeks to impose regulations on its business which are greater than those imposed upon alcoholic serving establishments offering the identical type of entertainment as the Plaintiff. Plaintiff complains that businesses which offer similar entertainment as the Plaintiff, but which also hold a liquor license, are not required to be licensed, nor are they required to comply with the licensing and regulatory provisions, although no justification is found for this disparate treatment and no legislative findings are stated to support this distinction.⁵⁵

- Federal Analysis

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. . . . The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.

The general rule gives way, however, when a statute classifies by race, alienage, or national origin. These factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy-a view that those in the burdened class are not as worthy or deserving as others. For these reasons and because such discrimination is unlikely to be soon rectified by legislative means, these laws are subjected to strict scrutiny

⁵⁵Docket 53 at 12-13.

and will be sustained only if they are suitably tailored to serve a compelling state interest. Similar oversight by the courts is due when state laws impinge on personal rights protected by the Constitution.⁵⁶

The Ninth Circuit has examined the issue of equal protection as it relates to adult-oriented businesses, and has held that ordinances directed at the secondary effects of adult businesses, are permissible time, place and manner regulations:

So long as alternative avenues of expression are provided, a city may choose to treat adult businesses differently from other businesses, . . . and even may treat one category of adult businesses differently from other categories of adult businesses. . . . A regulation of secondary effects of adult businesses is not a regulation of content; a classification of adult businesses therefore does not impinge on a fundamental right, nor does it involve a suspect classification. The ordinance may therefore survive an equal protection challenge if it has a rational basis.⁵⁷

Accordingly, the Municipality need articulate only a rational basis for its distinction. The Municipality states that it excluded liquor establishments from its regulation because the State already regulates alcohol-related businesses, and the Municipality felt it would be redundant to do so itself. Although somewhat arbitrary, the U.S. Supreme Court has acknowledged that legislation of this sort is not an exact science:

The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. . . . Or the reform may take one step at a time,

⁵⁶*City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-40 (1985) (internal citations omitted).

⁵⁷*Isbell v. City of San Diego*, 258 F.3d 1108, 1116 (9th Cir. 2001) (citing *Renton*, 475 U.S. at 51-53).

addressing itself to the phase of the problem which seems most acute to the legislative mind. . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others. . . . The prohibition of the Equal Protection Clause goes no further than the invidious discrimination.⁵⁸

"Invidious discrimination is an engine of oppression, subjugating a disfavored group to enhance or maintain the power of the majority."⁵⁹ Finding no invidious discrimination here, Sands North's federal equal protection claim fails as a matter of law.

- State Analysis

Article I, section 1 of the Alaska Constitution mandates "equal treatment of those similarly situated." The Alaska Supreme Court has stated:

In reviewing equal protection claims we view the enactment in question as creating, by its differential treatment, separate groups.... This separation by different legal treatment is referred to as a 'classification.' We ordinarily review a classification under Alaska's equal rights clause by asking whether a *legitimate reason* for disparate treatment exists, and, given a legitimate reason, whether the enactment creating the classification bears a *fair and substantial relationship* to that reason.⁶⁰

Minimal scrutiny under Alaska's constitution, therefore, may be more demanding than under the federal constitution.⁶¹ "We have long recognized that [this clause] affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment. To implement Alaska's

⁵⁸*Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 489 (1955) (internal citations omitted).

⁵⁹*Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 243 (1995) (Stevens, J., dissenting).

⁶⁰*Stanek v. Kenai Peninsula Borough*, 81 P.3d 268, 270 (Alaska 2003) (emphasis added).

⁶¹*Id.* at 272 (internal quotation and citation omitted).

more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interest at stake....⁶²

Alaska's sliding scale approach involves the following process:

First, it must be determined at the outset what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review.... Depending upon the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation.

Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest.

Third, an evaluation of the state's interest in the particular means employed to further its goals must be undertaken. Once again, the state's burden will differ in accordance with the determination of the level of scrutiny under the first stage of analysis. At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between means and ends must be much closer. If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.⁶³

Even applying the highest form of scrutiny to the classification in this instance, the Court finds no equal protection violation here. As previously discussed, the Municipality's interest in

⁶²*Alaska Civil Liberties Union v. State*, 122 P.3d 781, 787 (Alaska, 2005)(internal citations and quotations omitted).

⁶³ *Id.* at 789.

curbing the secondary effects associated with adult entertainment establishments is a substantial interest under Federal law, the functional equivalent of a “compelling interest” under the Alaska analysis. The “fit between means and ends” must be very close, and “if the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.”⁶⁴

Although it is true that alcohol establishments are exempt from AMC 10.40.050, the Municipality aptly points out that alcohol establishments are extensively regulated by the State of Alaska, under Title 4 of the Alaska Statutes and Title 13 Chapter 104 of the Alaska Administrative Code. State regulations differ in some respects from the Municipal ordinance, but they still prohibit sexual contact between customers and patrons.⁶⁵ Since alcohol establishments are regulated by the State, the Municipal Assembly saw no need to extend its regulations to bars, lest the establishments serving alcohol may find themselves subject to conflicting State and Municipal regulations.

The Court is not persuaded that the State’s *failure* to regulate nude dancing in juice bars should prevent the Municipality from regulating such activity at all for fear of violating equal protection. The four-foot buffer rule is a limitation that is specifically tailored to prevent specific activities, such as drug transactions or solicitations for prostitution. The ordinance satisfies the strictest end of the spectrum of the of the state analysis.

The Alaska Supreme Court held in *Mickens* that “it is not permissible to suppress constitutionally protected forms of expression in order to curb the lawless conduct of some of those

⁶⁴*Id.*

⁶⁵13 AAC 104.180(a)(3).

who are reacting to it, unless other law enforcement techniques which do not infringe first amendment freedoms are unavailable or likely to be ineffective.”⁶⁶ However, *Mickens* prevented a wholesale ban on nude dancing absent clear reasons for the ban. *Mickens* did not, however, address the extent to which nude dancing could be regulated without totally banning the activity. Plaintiff asserts that the Municipality must demonstrate that a no sexual contact provision as found in the liquor code would not be sufficient to serve the government’s interest or that a one-, two- or three-foot buffer zone would not suffice. This Court disagrees. The difference between a one-foot and a four-foot buffer zone is *de minimis*. Furthermore, there is no evidence in the record that the four-foot buffer zone is more restrictive than the “no sexual contact” provision of the State liquor code.

A duly enacted law or rule, including a municipal ordinance, is presumed to be constitutional. Courts should construe enactments to avoid a finding of unconstitutionality to the extent possible.⁶⁷ The Court finds no equal protection violation under Alaska law.

Vagueness and Overbreadth

Paragraph 43(b) of the Complaint alleges that AMC 10.40.050 is unconstitutionally overbroad. Paragraph 43(p) alleges that “some or all of the definitions contained in the Ordinance are vague and facially overbroad.”

⁶⁶640 P.2d at 822.

⁶⁷*Treacy v. Municipality of Anchorage*, 91 P.3d 252, 260 (Alaska. 2004).

- *Vagueness*

Plaintiff complains that the definitions of "specified sexual activities" and "adult business" are vague, and the use of the word "simulated" renders other definitions vague, requiring enforcement based upon the "subjective viewpoint of others," which has been deemed unconstitutional.⁶⁸ The Municipality argues that if the ordinance is found to be vague in any respect, it is entitled to resolve the problem by narrowing the construction of its terms.

When a statute is challenged on constitutional grounds, "it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."⁶⁹ A statute should not be declared unconstitutional unless it "could not be construed so as to avoid all constitutional difficulties."⁷⁰

"To survive a vagueness challenge, a regulation must 'define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a

⁶⁸See *Free Speech Coalition v. Reno*, 198 F.3d 1083, 1095 (9th Cir. 1999); *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) (holding a provision that criminalized sexually explicit images that "appear to be a minor" or "convey the impression" that a minor is depicted unconstitutionally vague because it was unclear "whose perspective defines the appearance of a minor, or whose impression that a minor is involved leads to criminal prosecution").

⁶⁹*U.S. v. Thirty-Seven (37) Photographs*, 402 U.S. 363, 369 (1971).

⁷⁰*Id.*

manner that does not encourage arbitrary and discriminatory enforcement.”⁷¹ “The fact that the regulation will necessarily alter the dancers’ conduct does not make it vague.”⁷²

The Supreme Court has observed that:

[T]he more important aspect of [the] vagueness doctrine is not actual notice but the other principal element of the doctrine - the requirement that a legislature establish minimal guidelines to govern law enforcement. . . . Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep [that] allows policeman, prosecutors, and juries to pursue their personal predilections.⁷³

Plaintiff further suggests that the amendments to the Ordinance are examples of poor drafting. It notes that the “buffer zone” requirement is articulated as part of the *definition* section of AMC 10.40.50A. “Thus, the first question that arises is whether this provision is a regulatory provision at all, or rather is that a term which is merely definitional without any regulatory impact.”⁷⁴ Plaintiff suggests that precision in draftsmanship is the touchstone of constitutionality for a regulation which impacts upon First Amendment rights, and cites this Ordinance as an example of poor draftsmanship that rises to the level of unconstitutionality.⁷⁵

⁷¹*Gammoh*, 395 F.3d at 1119 (citations omitted).

⁷²*Id.*, at 1120.

⁷³*Kolender v. Lawson*, 461 U.S. 352, 358 (internal citations and quotations omitted).

⁷⁴Docket 53 at 49.

⁷⁵Docket 53 at 38, citing *Keyishian v. Board of Regents*, 385 U.S. 589, 603-04 (1967).

The Court agrees with Plaintiff that the amendments to the ordinance are poorly drafted. Specifically, the Court is puzzled by the definition of "Specified sexual activities."

Specified sexual activities means simulated or actual:

- a. Showing of human genitals in a state of sexual stimulation or arousal.
- b. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus.
- c. Fondling or touching of human genitals, pubic region, buttock, anus or female breasts.⁷⁶
- d. The intrusion of any object into the genital or anal opening regardless of whether the act was consensual.
- e. A separation of a minimum of four feet shall be maintained between entertainers, dancers and/or strippers and patrons.⁷⁷

At oral argument, the Municipality specifically stated that it did not intend to enforce the ordinance with respect to "simulated" activities. Severance of the word "simulated" from the ordinance would appear to remedy any concerns regarding "subjective interpretation" of the prohibited activities, without altering the apparent regulatory intent of the ordinance to prohibit actual sexual activities. Having stated on the record that the Municipality does not intend to enforce the "simulated" aspect of the provision, the Court presumes that the word "simulated" will be severed from the Ordinance.

⁷⁶The parties refer to this provision of the Ordinance as the "No Touch" provision.

⁷⁷§10.40.050(A).

More puzzling is subsection "e" which, as Plaintiffs have discussed, is a regulatory provision encapsulated in a definitional section of the Ordinance. While the provision, "A separation of a minimum of four feet shall be maintained between entertainers, dancers and/or strippers and patrons," is not vague standing alone, its presence tagged on to the end of the definition of "*Specified sexual activities*" appears misplaced. The prohibitive language clearly does not define a sexual activity. Nevertheless, the Assembly put teeth in the Ordinance in §10.40.050(I)(1)(5)(3), which allows the municipal clerk to revoke or suspend an adult business license if any person at the location to which an adult business license has been issued allows any person on the premises to engage in any of the specified sexual activities listed in 10.40.050A. While the drafting may be inartful, the prohibited activities are not vague.

- Overbreadth

Plaintiff further complains that the definition of "specified sexual activities" is overbroad. A law is overbroad under the First Amendment if it "reaches a substantial number of impermissible applications" relative to the law's legitimate sweep.⁷⁸ "The overbreadth doctrine exists 'to prevent the chilling of future protected expression.' . . . Therefore, any law imposing restrictions so broad that it chills speech outside the purview of its legitimate regulatory purpose will be struck down."⁷⁹ However, "the mere fact that one can conceive of some impermissible applications of a statute is not

⁷⁸*New York v. Ferber*, 458 U.S. 747, 771 (1982).

⁷⁹*Deja Vu of Nashville, Inc., v. Metropolitan Gov't of Nashville and Davidson County, Tenn.*, 274 F.3d 377, 387 (6th Cir. 2001) (citing *Staley v. Jones*, 239 F.3d 769, 779 (6th Cir. 2001)).

sufficient to render it susceptible to an overbreadth challenge.”⁸⁰ While it is true that “[t]he Constitution gives significant protection from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere,”⁸¹ a finding of overbreadth does not mean the ordinance would automatically be struck down. The Supreme Court has held:

The scope of the First Amendment overbreadth doctrine, like most exceptions to established principles, must be carefully tied to the circumstances in which facial invalidation of a statute is truly warranted. Because of the wide-reaching effects of striking down a statute on its face at the request of one whose own conduct may be punished despite the First Amendment, we have recognized that the overbreadth doctrine is “strong medicine” and have employed it with hesitation, and then “only as a last resort.” We have, in consequence, insisted that the overbreadth involved be “substantial” before the statute involved will be invalidated on its face.⁸²

If the statute or ordinance is overbroad and is not subject to a narrowing construction, it should not be struck down on its face if it is severable.⁸³

Defendant argues that AMC 10.40.050 is not overbroad, because it does not reach any constitutionally protected conduct. Even if the ordinance were overbroad, it is not overbroad as applied to Sands North, because sexual touching of nude dancers by patrons is conduct that may be

⁸⁰*Gammoh*, 395 F.3d at 1121.

⁸¹ *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002).

⁸² *Ferber*, 458 U.S. at 769.

⁸³ *Id.* at n. 24 (citing *Thirty-seven Photographs*, 402 U.S. 363).

legitimately proscribed.⁸⁴ Finally, Defendant argues that any part of the ordinance that proves to be irreparably overbroad is severable.

Finding that a statute prohibiting child pornography was not overbroad, the Supreme Court stated:

We consider this the paradigmatic case of a state statute whose legitimate reach dwarfs its arguably impermissible applications. New York, as we have held, may constitutionally prohibit dissemination of material specified in [the statute]. While the reach of the statute is directed at the hard core of child pornography, the Court of Appeals was understandably concerned that some protected expression, ranging from medical textbooks to pictorials in the National Geographic would fall prey to the statute. How often, if ever, it may be necessary to employ children to engage in conduct clearly within the reach of [the statute] in order to produce educational, medical, or artistic works cannot be known with certainty. Yet we seriously doubt, and it has not been suggested, that these arguably impermissible applications of the statute amount to more than a tiny fraction of the materials within the statute's reach. Nor will we assume that the New York courts will widen the possibly invalid reach of the statute by giving an expansive construction to the proscription on "lewd exhibition[s] of the genitals." Under these circumstances, [the statute] is "not substantially overbroad and ... whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied."⁸⁵

In light of *Ferber*, the Court sees no legitimate concern of overbreadth under the Ordinance in this case.

⁸⁴ The Court need not address this standing argument. "'The overbreadth doctrine constitutes an exception to traditional rules of standing' and allows claimants to assert the rights of parties not before the court." *Deja Vu of Nashville, Inc.*, 274 F.3d at 387 (citing *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129, 135 (6th Cir. 1994)).

⁸⁵ *Ferber*, 458 U.S. at 773-74 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 615-616 (1973)).

Broadcast Restriction

Paragraph 43(i) of the Complaint alleges that the ordinance violates the Commerce Clause of the United States Constitution. Pursuant to the Amended Ordinance:

No adult entertainment shall be open to view from outside the licensed premise, **or broadcast to any site outside the licensed premise.** Permanent barriers shall be installed and maintained at each entrance and exit to screen the interior of the premise from public view. Exterior windows shall be covered with opaque covering at all times.

Plaintiff complains that the language which prohibits the broadcast of entertainment from inside the premises to any other location violates not only the Commerce Clause, but also the First Amendment, Art. I, Sec. 5 of the Alaska Constitution.

- Commerce Clause

In this case, the Ordinance in question prohibits the broadcasting of adult entertainment from inside the premises to locations outside the premises. The Municipality argues that AMC 10.40.050 does not violate Commerce Clause doctrine, because it simply does not discriminate against out of state commerce.

The dormant implication of the Commerce Clause prohibits state ... regulation ... that discriminates against or unduly burdens interstate commerce and thereby imped[es] free private trade in the national marketplace. . . . The unique nature of the Internet highlights the likelihood that a single actor might be subject to haphazard, uncoordinated, and even outright inconsistent regulation by states that

the actor never intended to reach and possibly was unaware were being accessed.⁸⁶

In *American Booksellers Foundation v. Dean*, the Second Circuit considered a Vermont statute which prohibited the use of the internet to distribute sexually explicit materials to minors.⁸⁷ The Court observed that “the Constitution permits a state to impose restrictions on a minor’s access to material considered harmful to minors even if the material is not obscene with respect to adults, but such restrictions aimed at minors may not limit non-obscene expression among adults.”⁸⁸ The Court ultimately found that the Vermont law burdened protected speech and was not sufficiently narrowly tailored.⁸⁹ The Court explained that the dormant Commerce Clause protects against state regulations that “erect barriers against interstate trade.”⁹⁰ “State regulations may burden interstate commerce ‘when a statute (i) shifts the costs of regulation onto other states, permitting in-state lawmakers to avoid the costs of their political decisions, (ii) has the practical effect of requiring out-of-state commerce to be conducted at the regulating state’s direction, or (iii) alters the interstate flow of the goods in question, as distinct from the impact on companies trading in those goods.’”⁹¹ In

⁸⁶*ACLU v. Johnson*, 194 F.3d 1149, 1160-61 (10th Cir. 1999)(internal quotations and citations omitted).

⁸⁷*American Booksellers Foundation v. Dean*, 342 F.3d 96, 98-99 (2nd Cir. 2003).

⁸⁸*Id.* at 101 (citation omitted).

⁸⁹*Id.* at 102.

⁹⁰*Id.* (quoting *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 35 (1980)).

⁹¹*Id.* (internal quotations and citations omitted).

Dean, the Second Circuit observed that although Vermont aimed to protect only Vermont minors, the rest of the nation would be forced to comply with Vermont's regulation or risk prosecution.⁹²

The Ordinance here presents the inverse situation. The cost of the ordinance is not shifted to other states; out-of-state commerce is not conducted at Anchorage's direction; the interstate flow of goods is not impacted. The Court finds that AMC 10.40.050 only prohibits broadcasting activity from *within* the Municipality by entities that are *governed by* the Municipality. There is no dormant Commerce Clause issue here.

*- First Amendment*⁹³

The Municipality argues that although Plaintiff characterizes its proposed internet usage as "broadcasting," internet use is not included in the definition of broadcasting under federal or state law.⁹⁴ It further argues that Plaintiff is not prohibited from displaying nudity over the internet, "it simply cannot do so from the premises of an adult cabaret, because no adult entertainment may be open to view from outside the licensed premises." The Municipality takes irreconcilable positions on this issue. If, as it argues, internet usage is not "broadcasting," then the broadcast restriction in the Ordinance does not apply to Plaintiff's proposed internet use. If, on the other hand, it intends to

⁹²*Id.* at 103.

⁹³The Municipality did not seek summary judgment on the issue of whether the broadcast restriction violates the First Amendment. Plaintiff raised this argument for the first time in its Opposition to the Motion for Summary Judgment.

⁹⁴*See* 47 U.S.C. § 153(6); AS § 44.21.290(2). The Court notes that AS § 44.21.290(2) states that public broadcasting "includes, but is not limited to, television and radio transmission," etc.

restrict the broadcasting of activities from inside an adult cabaret (via the internet or otherwise), then the Municipal Ordinance prohibits speech based solely upon its content, and must pass First Amendment scrutiny.

Plaintiff argues that the broadcast restriction is no different than those found to be unconstitutional in *Playboy*,⁹⁵ *Ashcroft*,⁹⁶ *Reno*,⁹⁷ and *Turner*.⁹⁸ This Court agrees. In *Reno*, the Supreme Court indicated that First Amendment scrutiny should be applied to the internet as to any other medium.⁹⁹ Since the Ordinance is a content-based speech restriction, it can stand only if it satisfies strict scrutiny.¹⁰⁰ "If a statute regulates speech based on its content, it must be narrowly tailored to promote a compelling Government interest. If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative."¹⁰¹

When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.¹⁰² "Content-based regulations are presumptively invalid, and the

⁹⁵*United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000).

⁹⁶*Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002).

⁹⁷*Reno v. ACLU*, 521 U.S. 844 (1997).

⁹⁸*Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622 (1994)

⁹⁹*Reno*, 521 U.S. at 870.

¹⁰⁰*Playboy Entertainment Group, Inc.*, 529 U.S. at 813, (citing *Sable Communications of Cal., Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989)).

¹⁰¹*Id.* (citing *Reno*, 521 U.S. at 874).

¹⁰²*Id.* at 816.

Government bears the burden to rebut that presumption.”¹⁰³ Plaintiff argues that the legislative record in this case is devoid of such evidence and the Defendant has not offered any here. The Court agrees. The Municipality has not presented any evidence that its blanket ban on broadcasting is narrowly tailored to promote a compelling Government interest.

CONCLUSION

Defendant seeks summary judgment regarding Plaintiff’s claims that: 1) the Municipality’s four foot rule unconstitutionally infringes on protected expression;¹⁰⁴ 2) AMC 10.40.050 violates the equal protection doctrine;¹⁰⁵ 3) AMC 10.40.050 is unconstitutionally overbroad;¹⁰⁶ 4) AMC 10.40.050 is unconstitutionally vague;¹⁰⁷ and 5) the broadcasting restriction of AMC 10.40.050 violates the Commerce Clause of the United States Constitution.¹⁰⁸ Defendant is entitled to Summary Judgment as to these five specific claims. Defendant’s Motion for Partial Summary Judgment at Docket 41 is GRANTED.

Accordingly, the causes of action in the Complaint at paragraphs 33, 36, 38, 43(b), (e), (i), (n), & (p), and 49(b), (e), (i), (n), & (p) are DISMISSED WITH PREJUDICE.

¹⁰³ *Id.* at 817 (quotations and citation omitted).

¹⁰⁴ See Complaint at ¶¶ 32, 43(c), (e), (g) (h) & (m) and corresponding subsections of ¶ 49.

¹⁰⁵ See Complaint at ¶¶ 36, 43(n) & 49(n).

¹⁰⁶ See Complaint at ¶¶ 33, 43(b) & 49(b).

¹⁰⁷ See Complaint at ¶¶ 33, 43(p) & 49(p).

¹⁰⁸ See Complaint at ¶¶ 38, 43(I) & 49(i).

To the extent that paragraphs 32, 43(c), (g), (h) & (m) and 49(c), (g), (h) & (m) seek redress for First Amendment violations due to the broadcast restriction, they are not dismissed.

IT IS SO ORDERED.

Dated at Anchorage, Alaska, this 15th day of November, 2007.

/s/ Timothy Burgess
Timothy M. Burgess
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SANDS NORTH, INC., d/b/a
FANTASIES ON 5TH AVENUE, an
Alaska Corporation,

Plaintiff,

vs.

THE CITY OF ANCHORAGE,
ALASKA, an Alaska Municipal
Corporation,

Defendant.

Case No. 3:05-cv-256-TMB

ORDER

Re: Motion for Judgment on the Pleadings

Plaintiff Sands North, Inc., d/b/a/ Fantasies on 5th Avenue, filed a Complaint for Declaratory and Injunctive Relief, Damages and Attorney Fees pursuant to 42 U.S.C. §§ 1983, 1988 and 2201, as well as pendant state law claims. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(3), and 2202.

Defendant seeks Partial Summary Judgment¹, as well as Judgment on the Pleadings.² This matter has been fully briefed by the parties,³ and the Court heard oral argument on November 29, 2006.

BACKGROUND

The Court incorporates by reference the background information discussed in the Order Regarding Motion for Partial Summary Judgment at Docket 62.

¹Docket 41. An order on the Motion for Partial Summary Judgment has been issued separately.

²Docket 43.

³Docket nos. 42, 53, 58, 44, 55 & 59.

STANDARD OF REVIEW

Judgment on the pleadings is properly granted when, taking all the allegations in the pleading as true, there are no issues of material fact and the moving party is entitled to judgment as a matter of law.⁴ Under Federal Rule of Civil Procedure 12(c), “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Where Fed. R. Civ. Pro. 12(c) is used to raise the defense of failure to state a claim, the motion for judgment on the pleadings faces the same test as a motion under Rule 12(b)(6). That is, the Court dismisses Plaintiff’s claim “only if it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations.”⁵ In deciding this motion, not only must the court accept all material allegations in the complaint as true, but the complaint must be construed, and all doubts resolved, in the light most favorable to the plaintiff.⁶

DISCUSSION

Defendant has moved that any claims not addressed by the motion for partial summary judgment be resolved under the standard that applies for judgment on the pleadings.

- Prior Restraint

Paragraph 43(a) of the Complaint states that AMC 10.40.050 “is a prior restraint on constitutionally protected speech activities” Paragraph 43(d) alleges that AMC 10.40.050 “fails to provide the procedural guarantees required . . . in *Freedman v. Maryland*, 380 U.S. 51 (1965) and *FW/PBS v. City of Dallas*, [493] U.S. 215 (1990).”

⁴*Heliotrope General, Inc. v. Ford Motor Co.*, 189 F.3d 971, 979 (9 Cir. 1999); *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 760 (9th Cir. 1991).

⁵*Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

⁶*NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986); *Ernest W. Hahn, Inc. v. Coddling*, 615 F.2d 830, 834-35 (9th Cir. 1980).

Regulations enacted for the purpose of restraining expression on the basis of its *content* are presumptively invalid.⁷ A "prior restraint" exists when speech is conditioned upon the prior approval of public officials.⁸ Although prior restraints "are not unconstitutional *per se*," they come to court bearing a heavy presumption against their validity.⁹ Prior restraints are presumptively invalid because they typically involve "two evils that will not be tolerated": (1) the risk of censorship associated with the vesting of unbridled discretion in government officials; and (2) "the risk of indefinitely suppressing permissible speech" when a licensing law fails to provide for the prompt issuance of a license.¹⁰

In this case, the Municipality argues as a jurisdictional issue that Sands North has failed to allege any injury, and therefore lacks standing. It notes that Fantasies' adult entertainment license already has been issued, so the claim of prior restraint is moot. The Court disagrees.

In the area of freedom of expression it is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a properly drawn statute, and whether or not he applied for a license. . . . Standing is recognized in such cases because of the . . . danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application."

Sands argues that the relevant question is not whether Plaintiff already possesses a license, but rather whether the ordinance delegates overbroad discretion to *revoke or suspend* that license.

In *City of Lakewood v. Plain Dealer Pub. Co.*, the United States Supreme Court found that:

The regulatory scheme in the present case contains two features which, at least in combination, justify the allowance of a facial challenge. First, Lakewood's ordinance requires that the Newspaper

⁷*City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46-47 (1986).

⁸*See, e.g., Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975).

⁹*FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 225 (1990) (citations omitted).

¹⁰*Id.* at 225-27.

¹¹*Freedman v. Maryland*, 380 U.S. 51, 56 (1965) (quotation omitted).

apply annually for newsrack licenses. Thus, it is the sort of system in which an individual must apply for multiple licenses over time, or periodically renew a license. When such a system is applied to speech, or to conduct commonly associated with speech, the licensor does not necessarily view the text of the words about to be spoken, but can measure their probable content or viewpoint by speech already uttered. . . . A speaker in this position is under no illusion regarding the effect of the "licensed" speech on the ability to continue speaking in the future. Yet demonstrating the link between "licensed" expression and the denial of a later license might well prove impossible. While perhaps not as direct a threat to speech as a regulation allowing a licensor to view the actual content of the speech to be licensed or permitted, . . . a multiple or periodic licensing requirement is sufficiently threatening to invite judicial concern.¹²

Here, renewal of the license is required annually.¹³ Revocation of the license is possible under various circumstances.¹⁴ Under *Freedman* and *City of Lakewood*, Plaintiff has adequate standing to bring a prior restraint claim.¹⁵

On the merits, the Municipality argues that Sands North has failed to show that AMC 10.40.050 is an unconstitutional prior restraint. The Court agrees.

The United States Supreme Court determined that "three procedural safeguards were necessary to ensure expeditious decision making by the motion picture censorship board: (1) any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained; (2) expeditious judicial review of that decision must be available;

¹²486 U.S. 750, 759-60 (1988) (citations omitted).

¹³AMC §10.40.050(H).

¹⁴AMC § 10.40.050(I).

¹⁵The Court notes that the Supreme Court found that the parties lacked standing in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 233 (1990), under very specific circumstances not present in this case.

and (3) the censor must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court."¹⁶

Plaintiff seeks to stretch these procedural safeguards to include all ordinances which regulate the operation of sexually oriented businesses. However, the Supreme Court specifically declined to deem a licensing scheme that regulates adult businesses a prior restraint where 1) ordinary court procedural rules and practices provide reviewing courts with judicial tools sufficient to avoid delay-related First Amendment harm; 2) there is no reason to doubt state judges' willingness to exercise these powers wisely so as to avoid serious threats of delay-induced First Amendment harm; and 3) the ordinance does not seek to censor material, but instead applies reasonably objective, nondiscretionary criteria unrelated to the content of the expressive materials that an adult business may sell or display.¹⁷ "[N]othing in *FW/PBS* or in *Freedman* requires a city or State to place judicial review safeguards [directly] in the city ordinance that sets forth a licensing scheme."¹⁸ Indeed, the Supreme Court noted that "many cities and towns lack the state-law legal authority to impose deadlines on state courts."¹⁹ The *Littleton* Court held that the state's "ordinary rules of judicial review are adequate-at least for purposes of this facial challenge to the ordinance. Where . . . the regulation simply conditions the operation of an adult business on compliance with neutral and nondiscretionary criteria . . . and does not seek to censor content, an adult business is not entitled to an unusually speedy judicial decision of the *Freedman* type."²⁰ With respect to the censorship aspect, the *Littleton* Court found:

¹⁶*FW/PBS*, 493 U.S. at 227 (citing *Freedman v. Maryland*, 380 U.S. 51, 58-60 (1965)). See also *City of Littleton v. ZJ Gifts D-4 LLC*, 541 U.S. 774, 779 (2004).

¹⁷*City of Littleton*, 541 U.S. at 782-83.

¹⁸*Id.* at 784.

¹⁹*Id.*

²⁰*Id.*

[T]he ordinance at issue here does not seek to *censor* material. And its licensing scheme applies reasonably objective, nondiscretionary criteria unrelated to the content of the expressive materials that an adult business may sell or display. The ordinance says that an adult business license "*shall*" be denied if the applicant (1) is underage; (2) provides false information; (3) has within the prior year had an adult business license revoked or suspended; (4) has operated an adult business determined to be a state law "public nuisance" within the prior year; (5) (if a corporation) is not authorized to do business in the State; (6) has not timely paid taxes, fees, fines, or penalties; (7) has not obtained a sales tax license . . . ; or (8) has been convicted of certain crimes within the prior five years.²¹

The Anchorage Municipal Code provision is substantially similar to the Colorado ordinance at issue in *Littleton*. Renewal of an adult business license under the Anchorage ordinance is accomplished by the filing of an application not later than 60 days before the license expires. The application for renewal requires the following information be provided under oath: 1) Name and address; 2) Written proof that the individual is at least 18 years of age; 3) The address of the adult-oriented establishment and the name of the business to be operated by the applicant; and 4) If the applicant is a corporation, the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of all shareholders owning more than five percent of the stock in the corporation and all officers and directors of the corporation. A license renewal fee of \$300.00 is required. The Ordinance notes: "If the municipal police department, health and human services, or other departments are aware of any information bearing on the operator's qualifications, or that of the applicant's employees, that information shall be filed in writing with the municipal clerk. Approval or clearance by the municipal police department is not a prerequisite to the issuance of a license under this chapter." Renewal may be denied on the same grounds that may support revocation of a license.

The municipal clerk may revoke or suspend a license or permit for any of the following reasons:

- a. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

²¹*Id.* at 783.

- b. The operator violates any provision of subsection J. or K. of this section or any rule or regulation adopted pursuant to this section.²²
- c. The operator becomes ineligible to obtain a license or permit.
- d. Any cost or fee required to be paid by this section is not paid.
- e. Any intoxicating liquor or other alcoholic beverage is transported onto the premises, or served or consumed on the premises of the adult-oriented establishment by any person, where the licensee knew or reasonably should have known.
- f. Any person under the age of 18 is permitted to enter or remain upon the premises.
- g. Any of the following offenses are committed by any person at the location to which an adult business license has been issued:
 - (1) Any of the offenses described in chapter 8.65 involving or related to prostitution;
 - (2) Any of the offenses described in chapter 8.50 involving sexual exhibition, dissemination of indecent material, or sexual exploitation harmful to minors; or
 - (3) Allowing any person on the premises to engage in any of the specified sexual activities listed in 10.40.050A.
- h. Any of the reasons set forth in Section 10.10.035.²³

Accordingly, under the rationale set forth in *Littleton*, this Court finds that the renewal and revocation portions of the ordinance simply condition the operation of an adult businesses on compliance with neutral and nondiscretionary criteria, and do not seek to censor content. Given *Littleton*'s finding that "ordinary rules of judicial review are adequate-at least for purposes of this facial challenge to the ordinance,"²⁴ Sands North has failed to show that AMC 10.40.050 is an unconstitutional prior restraint. Defendant is entitled to Judgment on the Pleadings with respect to paragraphs 43(a) and (d) and 49(a) and (d) of the Complaint.

- Reasonable Opportunity to Open and Operate

Paragraph 43(f) of the Complaint alleges that AMC 10.40.050 "... fails to provide a reasonable opportunity for an adult business to open and operate ..." The Municipality argues

²²Section "J" addresses physical condition of the premises and sanitation requirements. Section "K" explains responsibilities of the operator, including the exclusion of minors, gambling restrictions, and record-keeping requirements.

²³This provision addresses grounds for revoking or suspending a business license, including false statements made in connection with application for the license, violation of terms of the license, selling or conveying the license, etc.

²⁴*City of Littleton*, 541 U.S. at 784.

that because Fantasies currently is open and operating, this claim is moot. Plaintiff opposes dismissal of this claim, reiterating its equal protection argument. Plaintiff alleges that by treating the Plaintiff in a disparate manner from similar situated entertainment facilities, (i.e. bars), the Defendant denies the Plaintiff a reasonable opportunity to engage in expression and to operate its business.

This Court already has dismissed Plaintiff's equal protection claims. With respect to the ability to open and operate, the Ninth Circuit has held that adverse economic impact is irrelevant to First Amendment analysis.²⁵ The relevant test requires "an examination of whether a challenged provision prohibits entry into a market where the aggrieved party might exercise her rights, and distinguishes this inquiry from any examination of success within the market at issue."²⁶ "[I]n the absence of any absolute bar to the market . . . it is irrelevant whether [a regulation] will result in lost profits, higher overhead costs, or even prove to be commercially unfeasible for an adult business."²⁷ As the Municipality observes, "Fantasies *could* operate under the current regulations, because Fantasies admittedly *is* doing so." Plaintiff's "reasonable opportunity to open and operate" claim fails.

- Takings Claims

Paragraph 43(j) alleges that AMC 10.40.050 constitutes a taking of property without just compensation. Specifically, Plaintiff alleges that Ordinance interferes with Plaintiff's use of its property by rendering an area, within four feet of any entertainer, unusable. In addition, Plaintiff claims that the regulation interferes with Plaintiff's investment-based expectations. The Municipality argues that this claim fails to state a *prima facie* case, because Sands North has not identified any protected property interest that has been taken.

²⁵*Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663, 665 (9th Cir.1996).

²⁶*Id.* at 666.

²⁷*Id.* (citation omitted).

"The takings clause of the Fifth Amendment protects *private property* from being taken for public use without just compensation. 'In order to state a claim under the Takings Clause, a plaintiff must first demonstrate that he possesses a 'property interest' that is constitutionally protected.'"²⁸

Gammoh is dispositive on the four-foot issue. Considering the argument that a two-foot buffer could result in economic losses if patrons were unwilling to pay for dances, the Ninth Circuit noted "[a]ppellants have not here pointed to a 'property interest' interfered with by the City of La Habra's regulation of the dancers' conduct."²⁹

Regarding takings in general, the Supreme Court has noted that it has been "unable to develop any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons. . . . Indeed, we have frequently observed that whether a particular restriction will be rendered invalid by the government's failure to pay for any losses proximately caused by it depends largely 'upon the particular circumstances [in that] case.'"³⁰ However, the Supreme Court has provided "guidance to courts confronted with deciding whether a particular government action goes too far and effects a regulatory taking."³¹

First, we have observed, with certain qualifications . . . that a regulation which "denies all economically beneficial or productive use of land" will require compensation under the Takings Clause. . . . Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action.³²

²⁸ *Gammoh v. City of La Habra*, 395 F.3d 1114, 1122 (9th Cir. 2005) (citation omitted).

²⁹ *Id.*

³⁰ *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 123-24 (1978).

³¹ *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001).

³² *Id.* (citations omitted).

The purpose of the Takings Clause is to prevent the government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."³³ While the United States Supreme Court has concluded that a regulation that substantially furthers important public policies may so interfere with investment-backed expectations that it amounts to a "taking,"³⁴ not every regulation that impacts investment-backed expectations is considered a "taking."

Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law... and this Court has accordingly recognized, in a wide variety of contexts, that government may execute laws or programs that adversely affect recognized economic values. . . .

More importantly for the present case, in instances in which a state tribunal reasonably concluded that the health, safety, morals, or general welfare would be promoted by prohibiting particular contemplated uses of land, this Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests.³⁵

A land use regulation does not constitute a taking if the regulation does not deny a landowner all economically viable use of the property and if the regulation substantially advances a legitimate government interest.³⁶ Clearly, the Ordinance here does not deny all economically viable use of the property. As this Court discussed in the Order at docket 62, the regulation at issue here is designed to substantially advance a legitimate government interest: diminishing secondary effects associated with adult entertainment. Plaintiff's bare assertion that "the regulation interferes with Plaintiff's investment-based expectations" is inadequate to survive a motion for judgment on the pleadings.

³³*Id.* at 617-18 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

³⁴*Penn Central Trans. Co.*, 438 U.S. at 127.

³⁵*Id.* at 124-25 (internal quotations and citations omitted).

³⁶*Hotel & Motel Ass'n of Oakland v. City of Oakland*, 344 F.3d 959, 965 (9th Cir. 2003)(internal citations and quotations omitted).

- Lack of Evidence to Support Adoption of the Ordinance

Paragraph 43(l) alleges that the ordinance “was not enacted on a constitutionally sufficient basis.” The Municipality suggests that a conclusory allegation of this nature is insufficient to survive a motion for judgment on the pleadings. Plaintiff’s response relies on its argument elsewhere that the Ordinance allegedly violates various Federal and Alaskan Constitutional provisions.

The Court previously has addressed Plaintiff’s Constitutional arguments, and has dismissed some claims and declined to dismiss others. Paragraph 43(l), however, adds nothing to the Complaint and is entirely conclusory.

- Remaining Counts of the Complaint

Paragraph 43(k) alleges that the ordinance “violates Plaintiff’s substantive and procedural due process rights.” Such conclusory allegations are insufficient to survive a motion for judgment on the pleadings.³⁷

Paragraph 43(o) alleges that the restrictions on dance entertainment are greater than those permitted by the United States Supreme Court in *City of Erie v. Paps A.M.*,³⁸ and such further restrictions on dance entertainment in connection with constitutionally protected expression are not supported by any evidence of negative secondary effects, are a prior restraint on constitutionally protected expression and are unconstitutionally overbroad.

Defendant notes that the *City of Erie* case upheld an ordinance that completely prohibited nudity in public places, forcing the nude dancing establishments in the city to shut down altogether. Plaintiff failed to respond to this argument in its briefing at docket 55. In this Court’s Order at docket 62, the Court explicitly found evidence of negative secondary effects, and determined that the Ordinance is not unconstitutionally overbroad. In this Order, the Court has determined that the Ordinance does not act as a “prior restraint.” Accordingly, paragraph 43(o) is subject to dismissal.

³⁷See *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir.1988).

³⁸529 U.S. 277 (2000).

Paragraph 43(q) alleges that the ordinance "impairs upon other rights not yet known, but will or may become known through course of discovery." This is not a legally cognizable claim. Should Plaintiff discover additional information in the future, it may move to amend its Complaint.

CONCLUSION

In light of the foregoing, Defendant's Motion for Judgment on the Pleadings at **Docket 43** is **GRANTED**. The counts of the Complaint at paragraphs 43(a), (d), (f), (j), (k), (l), (o) and (q), and the corresponding counts at paragraph 49 are **DISMISSED WITH PREJUDICE**.

Dated at Anchorage, Alaska, this 15th day of November, 2007.

/s/ Timothy Burgess

Timothy M. Burgess
United States District Judge

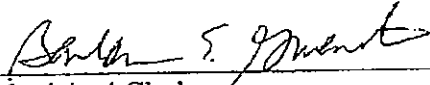
NOTICE OF ZONING ACTION

This notice announces that a zoning conditional use has been duly approved by the Municipal Assembly of the Municipality of Anchorage providing for the development of the herein described property in accordance with the provisions of the Anchorage Municipal Code of Ordinances and the terms and conditions of the zoning conditional use approval as set forth in the Municipal zoning file 2005-103. Under the provisions of the specified ordinance the subsequent development of the subject property shall be in accordance with the terms of the approved zoning conditional use or any subsequent amendments hereto.

LEGAL: Located on Lot 1, Fantasies Subdivision, and Lots 4, 5 and 6, Block 26C Fourth Addition Subdivision Anchorage Recording District, Alaska. Site address being 1911 East 5th Avenue, generally located between East 4th and East 5th Avenues, on the east side of Sitka Street

PETITIONER: The Setter. NOTE: (send a copy of the recorded document to Municipality of Anchorage, Planning Department, P.O. Box 196650, Anchorage, Alaska 99519-6650)

REQUEST: Alcoholic Beverages Conditional Use in the B-3 District for a Beverage Dispensary use per AMC 21.40.180 D.8

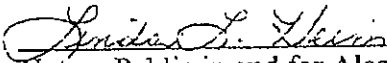


Municipal Clerk
Municipality of Anchorage
Assembly

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on the 21 day of October, 2005 before me, the undersigned, a Notary Public in and for Alaska, personally appeared Barbara E. Gruenstein, to me known to be the duly appointed Municipal Clerk of the Municipal Assembly and acknowledged to me that she had in her official capacity aforesaid executed the forgoing instrument as an act and deed of the Municipality of Anchorage for the uses and purposes therein stated.

WITNESS my hand and notarial seal on the 21 day of October, 2005 in this certificate first above written.



Notary Public in and for Alaska
My Commission expires: 1-10-07



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2006-004305-0

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Submitted by: Chair of the Assembly at
the Request of the Mayor
Prepared by: Planning Department
For reading: August 9, 2005

CLERK'S OFFICE

AMENDED AND APPROVED

Date: 10-11-05 Anchorage, Alaska
AR 2005-193

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY APPROVING AN AMENDMENT TO AN ALCOHOLIC BEVERAGES CONDITIONAL USE IN THE B-3 DISTRICT FOR A BEVERAGE DISPENSARY USE PER AMC 21.40.180 D.8 FOR THE SETTER, LOCATED ON LOT 1, FANTASIES SUBDIVISION AND LOTS 4, 5 AND 6, BLOCK 26C, FOURTH ADDITION SUBDIVISION; SITE ADDRESS BEING 1911 EAST 5TH AVENUE, GENERALLY LOCATED BETWEEN EAST 4TH AND EAST 5TH AVENUES, ON THE EAST SIDE OF SITKA STREET.

(Mountain View Community Council) (Case 2005-103)

THE ANCHORAGE ASSEMBLY RESOLVES:

Section 1. The amendment to a conditional use permit for an Alcoholic Beverages Conditional Use in the B-2A District for a Beverage Dispensary use per AMC 21.40.180 D.8 for The Setter, located on Lot 1, Fantasies Subdivision, and Lots 4, 5 and 6, Block 26C, Fourth Addition Subdivision; site address being 1911 East 5th Avenue, meets the applicable provisions of AMC 21.50.020 and AMC 21.50.160.

Section 2. The subject amendment to a conditional use permit for an Alcoholic Beverages Conditional Use in the B-3 District for a Beverage Dispensary Use per AMC 21.40.180 D.8 is subject to the following conditions:

1. A Notice of Zoning Action shall be filed with the District Recorders Office within 120 days of the Assembly's approval of the amendment for relocation and expansion of license premise on Lot 1, Fantasies Subdivision, to the final conditional use approval for a beverage dispensary use in the B-3 District.
2. All uses shall conform to the plans and narrative submitted with this conditional use application, including the second floor seating plan for 104 non-fixed seats (no date on drawing - states 107 actual number of occupants).
3. This conditional use approval is for an Alcoholic Beverages Conditional use in the B-3 District for a Beverage Dispensary Use per AMC 21.40.180 D.8 for approximately 4,440 square-foot lounge area to be located on the second floor of the structure at Fantasies Subdivision, Lot 1. The lounge area proposes a bar, cooler, storage room and deck seating area. Plans and submittals indicate non-fixed seating of 104 and a facility occupant capacity of 107.



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AM 519-2005

2006-004305-0

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4. On-premise sale of alcohol beverages seven (7) days a week, Monday through Friday, 10:00 AM to 2:30 AM; Saturday and Sunday 10:AM to 3:00 AM. Liquor sales represent 85 percent compared to 15 percent food sales.
5. Upon demand, the applicant shall demonstrate compliance with a Liquor Server Awareness Training Program approved by the State of Alaska Alcoholic Beverage Control Board, such as or similar to, the program for techniques in Alcohol Management (T.A.M.).
6. The use of the property by any person for the permitted purposes shall comply with all current and future federal, state and local laws and regulations, including but not limited to, laws and regulations pertaining to the sale, dispensing, service and consumption of alcoholic beverages and the storage, preparation, sale, service and consumption of food. The owner of the property, the licensee under the Alcoholic Beverage Control license and their officers, agents and employees shall not knowingly permit or negligently fail to prevent the occurrence of illegal activity on the property.
7. Prior to this conditional use becoming effective, resolve the physical separation of the entrances to the lounge and to the adult-oriented use with the Municipal Clerk's Office and the Planning Department.
8. No use involving the retail sale, dispensing or service of alcoholic beverages shall be allowed on any floor but the approved second floor of the three story structure on the petition site.
9. A copy of the conditions imposed by the Assembly in connection with this conditional use approval shall be maintained on the premise at a location visible to the public.

Section 3. Failure to comply with the conditions of this conditional use permit shall constitute grounds for its modification or revocation.

Section 4. This resolution shall become effective immediately upon passage and approval by the Anchorage Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 11th day
of October 2005.

Anna L. Fairclough
Chair

ATTEST:

Barbara S. Burt
Municipal Clerk

(Planning Case 2005-103)
(003-081-66; 1-16, -15, -14)



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2006-004305-0

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Content Information**Content ID :** 005820**Type:** AR_AllOther - All Other Resolutions

Title: ALCOHOLIC BEVERAGES CONDITIONAL USE IN THE B-3
(GENERAL BUSINESS) DISTRICT FOR A DUPLICATE BEVERAGE
DISPENSARY USE PER AMC 21.40.180 D.8 FOR DEBCO INC.,
DOING BUSINESS AS FANTASIES ON 5TH.

Author: weaverjt**Initiating Dept:** Planning

Description: ALCOHOLIC BEVERAGES CONDITIONAL USE IN THE B-3
(GENERAL BUSINESS) DISTRICT FOR A DUPLICATE BEVERAGE
DISPENSARY USE PER AMC 21.40.180 D.8 FOR DEBCO INC.,
DOING BUSINESS AS FANTASIES ON 5TH.

Date Prepared: 12/17/07 2:30 PM**Director Name:** Tom Nelson

Assembly Meeting Date: 1/8/08

Public Hearing Date: 1/8/08

M.O.A.
 2007 DEC 28 AM 9:54
 CLERK'S OFFICE

Workflow History

<u>Workflow Name</u>	<u>Action Date</u>	<u>Action</u>	<u>User</u>	<u>Security Group</u>	<u>Content ID</u>
AllOtherARWorkflow	12/17/07 2:32 PM	Checkin	weaverjt	Public	005820
Planning_SubWorkflow	12/17/07 2:33 PM	Approve	weaverjt	Public	005820
ECD_SubWorkflow	12/17/07 4:22 PM	Approve	thomasm	Public	005820
MuniManager_SubWorkflow	12/27/07 5:00 PM	Approve	abbottmk	Public	005820
MuniMgrCoord_SubWorkflow	12/27/07 5:00 PM	Approve	abbottmk	Public	005820

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MUNICIPALITY OF ANCHORAGE

INFORMATION MEMORANDUM

NO. AIM 3 -2008

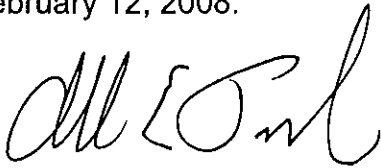
Meeting Date: January 8, 2008

From: Assembly Member Tesche

Subject: Item 14-A — Resolution AR 2008-1 Conditional Use Permit for Fantasies
on 5th Ave.

From the attached correspondence, the Public Safety Committee of the Fairview Community Council has requested that the Assembly not take action on this application on January 8, 2008, in order to give the council sufficient time to review requested police reports and make a formal recommendation to the Assembly.

Fairview's request is joined by the South Addition and Downtown Community Councils who have also asked for additional time to meet and comment on this application. Accordingly, it is recommended that action on this matter be postponed until February 12, 2008.



Respectfully submitted: Allan Tesche, Assemblymember Section 1

-----Original Message-----

From: Sharon Chamard
Date: 12/24/2007 8:28:39 PM
To: teschea@muni.org
Cc: leeross@gci.net; gmpeon@alaska.net; kemplen@alaska.net; GGilliam@ci.anchorage.ak.us
Subject: Fantasies on 5th

December 24, 2007

Dear Mr. Tesche,

The Public Safety Committee of the Fairview Community Council met last Thursday to discuss the proposed Conditional Use Permit for Fantasies on 5th that would allow them to convert their Under 21 strip club to an alcohol-serving facility. The Committee opposes the granting of this permit. We do not believe it is in the best interests of the Fairview community to have yet another alcohol-serving location, especially given the questionable track record of Fantasies on 5th.

I've asked Lt. Garry Gilliam of APD to run a calls-for-service history on the Fantasies on 5th premises, and to present these data to the Fairview Community Council at our Executive Board meeting on January 3rd. The matter may then be referred to the General Membership for a decision on January 10th. Given that the Anchorage Assembly is scheduled to hear the matter of the Conditional Use Permit on January 8th, I'd like to formally request that the Assembly postpone action to a later meeting, so that the Fairview Community Council may response more completely to the Fantasies on 5th application.

Thank you and regards, and Merry Christmas to you and yours,

Sharon Chamard, Ph.D.
Chair, Public Safety Committee, Fairview Community Council

RE: Fantasies on 5th conditional use application

 Reply

 Reply to All

 Forward



RE: Fantasies on 5th conditional use application

Paul J. Nangle [PaulJ.Nangle@acsalaska.net]

Sent: Friday, January 04, 2008 2:06 PM

To: Tesche, Allan

Dear mr. tesche, at last night meeting of the downtown community council,
we voted to ask the assembly to postpone any action on the fantaasies until
after we can have a meeting with the petitioner. Please convey this to the
assembly.

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MUNICIPALITY OF ANCHORAGE

INFORMATION MEMORANDUM

NO. AIM 13 -2008

Meeting Date: February 12 , 2008

From: Assemblymember Allan Tesche

Subject: AM 73-2008 and Resolution AR 2008-1: Duplicate beverage dispensary license and conditional use permit for Fantasies on 5th Ave.

Attached are the following:

1. January 14, 2008 letter to Allan Tesche from Rob Heun, Chief of Police and attachments.
2. February 6, 2008 letter from Chris Ingmanson (Anchorage Women's Commission) to Chairman Dan Coffey
3. February 12, 2008 Memorandum from Gene Storm to Allan Tesche
4. January 11, 2008 letter to Daniel Coffey from V. Rev. Donald J. Bramble, OP (Holy Family Cathedral
5. February 10, 2008 Letter from Darrel Hess, Chair, Fairview Community Council to Assembly Chairman Dan Coffey
6. Undated letter from Julie Jessal, (Government Hill Community Council) to Assembly Chairman Dan Coffey.
7. January 14, 2008 Resolution of the Mountain View Community Council

Fantasies' application was also discussed and voted on by the South Addition Community Council on January 2008. A motion to approve the conditional use permit was defeated by a vote of 15-6. On February 7, 2008 Fantasies' application was considered by the Downtown Community Council. 2 voted in favor, 1 voted against the application, and 4 abstained from voting. Chair Nangle ruled the motion to approve the application did not pass. Approved minutes of these meetings are not yet available.

Respectfully Submitted,



Allan Tesche

January 14, 2008

Assemblyman Allan Tesche
Anchorage Municipal Assembly
c/o Municipal Clerk's Office
P.O. Box 196650
Anchorage, AK 99519-6650

Dear Assemblyman Tesche,

As per your request, the Anchorage Police Department listed the calls for service to 1911 E. 5th for 2006 and 2007.

The attachments show the number of calls and types of calls for service from 1911 E. 5th. For 2006, the Anchorage Police responded to that address 198 times. Of those calls a minimum of 53 originated from 1911 E. 5th. These reports are from a phone or person connected to the business.

For 2007, the Anchorage Police responded to that address 218 times. Of those calls a minimum of 64 originated from 1911 E. 5th. These reports are from a phone or person connected to the business.

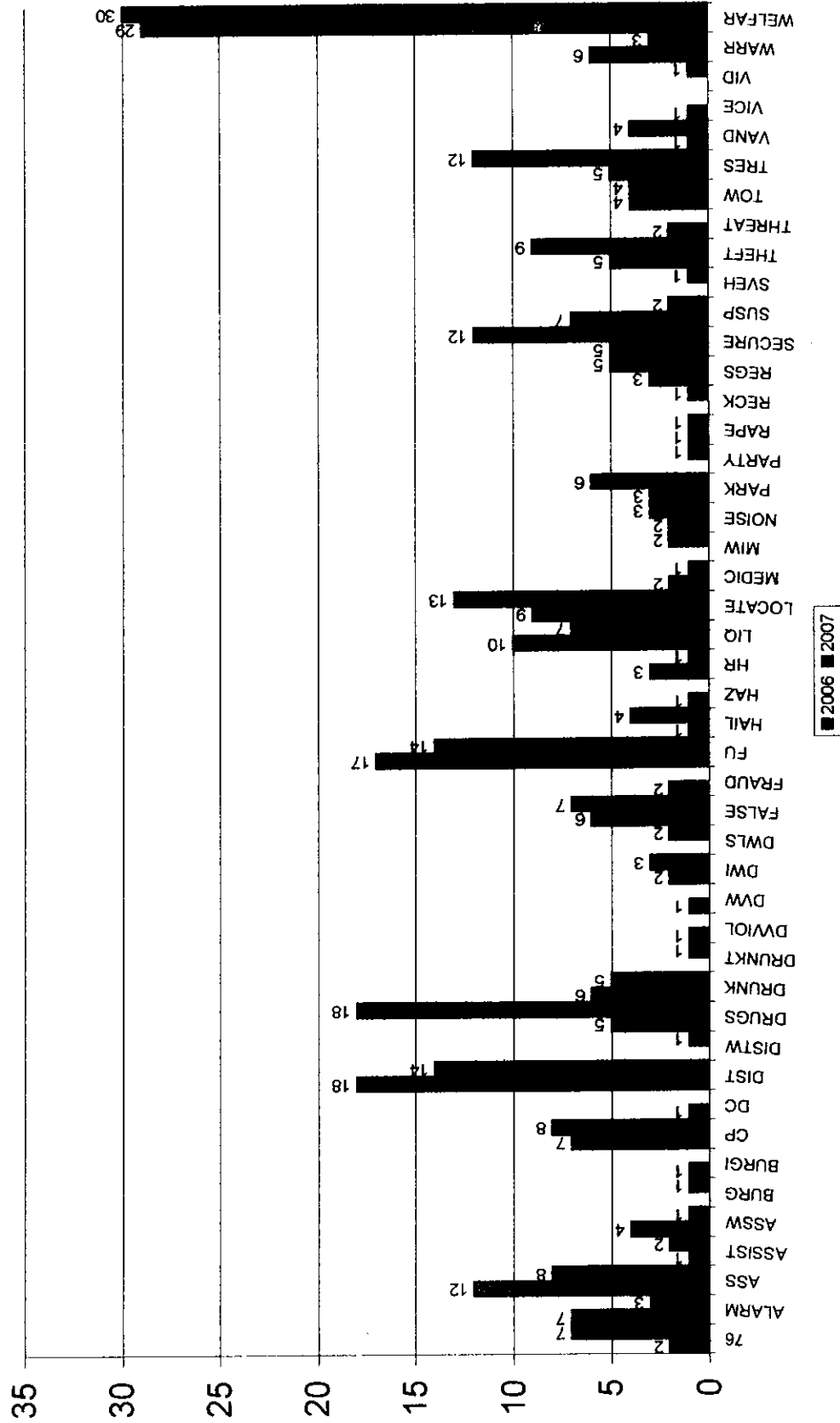
Sincerely,

Rob Heun
Chief of Police

Translation of graph X axis label

Call_Type	Translation
76	-----SUBJECT STOP
ALARM	-----ALARM
ASS	-----ASSAULT
ASSIST	-----OUTSIDE AGENCY ASSIST
ASSW	-----ASSAULT WITH A WEAPON
BURG	-----BURGLARY
BURGI	-----BURGLARY INPROGRESS
CP	-----COMMUNITY POLICING
DC	-----DISORDERLY CONDUCT
DIST	-----DISTURBANCE
DISTW	-----DIST WITH WEAPON
DRUGS	-----DRUGS/FORGED PERSCRIPTION
DRUNK	-----DRUNK PROBLEM
DRUNKT	-----DRUNK TRANSPORT
DVVIOL	-----DV WRIT VIOLATION
DVW	-----DV WRIT SERVICE
DWI	-----DRIVING WHILE INTOXICATED
DWLS	-----DRIVING WITH LIC S/R/C
FALSE	-----FALSE RPT/FALSE INFO
FRAUD	-----FRAUD
FU	-----FOLLOW UP
HAIL	-----OFFICER HAILED
HAZ	-----HAZARD
HR	-----HIT AND RUN
LIQ	-----LIQUOR LAW VIOLATION
LOCATE	-----GENERAL LOCATE
MEDIC	-----MEDIC ASSIST
MIW	-----MISCONDUCT INV/WEAPON
NOISE	-----NOISE VIOLATION
PARK	-----PARKING PROBLEM/OVER 24
PARTY	-----LOUD/DISRUPTIVE PARTY
RAPE	-----SEXUAL ASSAULT
RECK	-----RECKLESS DRIVING
REGS	-----VIOL CITY/STATE REGS
SECURE	-----SECURITY CHECK
SUSP	-----SUSPICIOUS PER/VEH/CIRC
SVEH	-----STOLEN VEHICLE
THEFT	-----THEFT
THREAT	-----THREATS
TOW	-----PPI/REPO
TRES	-----TRESPASS
VAND	-----VANDALISM
VICE	-----GAMBLING/PROSTITUTION
VID	-----VEHICLE IN DISTRESS/STALLED
WARR	-----WARRANT SERVICE
WELFAR	-----WELFARECHK/911 HANG UP

Calls for Service to 1911 E 5th Ave



Estimated percentage of calls from the business:

2006: 27.46%

2007: 29.36%



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • 825 "L" Street • <http://www.muni.org>



Mayor Mark Begich

Anchorage Women's Commission

February 6, 2008

Dan Coffey, Chair
Anchorage Assembly
632 West 6th Avenue
Anchorage, AK 99501


Dear Mr. Coffey:

As you know, the Anchorage Women's Commission exists to advise the Mayor and Assembly on matters pertaining to the status of women. In 2005, we sent a Resolution to the Assembly supporting an ordinance (2005-116) that would prohibit nudity within adult-oriented businesses in proximity of an alcohol dispensary.

It has come to our attention that the Assembly will be considering a Conditional Use Permit that will allow "Fantasies on 5th" to sell liquor. We understand that this permit, if allowed, will substantially increase bar capacity at 1911 E. 5th Avenue, and that the teen club will be closed. Furthermore, it appears that this permit, if approved, will be permanent.

We are very concerned about the potential adverse effects of such an expansion of alcohol sales, particularly in close proximity to a strip club. We urge you to deny the application for the new conditional use permit requested by Kathy and Carol Hartman, for Fantasies on 5th.

Sincerely,


Chris Ingmanson
Chair

cc: Assemblymembers: Allan Tesche, Debbie Ossiander, Bill Starr, Matt Claman, Dan Sullivan, Dick Traini, Sheila Selkregg, Paul Bauer, Jennifer Johnston, Chris Birch
Diane Ingle, Director, Department of Health and Human Services

Community, Security, Prosperity

HOLY FAMILY CATHEDRAL

ARCHDIOCESE OF ANCHORAGE

811 West Sixth Avenue • Anchorage, Alaska 99501-2093 • (907) 276-3455 • FAX (907) 258-9785

2600 17th Ave. 01 5:05

01/11/08 17:01

January 11, 2008

Daniel Coffey
Anchorage Assembly
632 West 6th Avenue
Anchorage, Alaska 99501

Dear Mr. Coffey:

It has come to my attention that Fantasies on 5th Strip Club & Bar has applied for a conditional use permit from the Municipality to change their current status as a 18-21 yr. old venue.

On behalf of Holy Family Cathedral and its parishioners, I wish to express my opposition to any change in the club's status. As a strip club, I feel it will become an attractive nuisance for criminal activities, e.g., drug sales, underage drinking, prostitution and alcohol-related chaos. This will spill into the downtown area and produce an atmosphere contrary to the best interests of this neighborhood. The folks in Mountain View, Fairview and Government Hill, members and parishioners at Holy Family, are under enough pressures from negative social forces (gangs, alcohol and drug abuse, prostitution, etc.) already. We truly do not need to throw any more fuel on this fire!

I ask you to encourage the Assembly to put a halt to this nonsense! Let's build a downtown zone we can all be proud to call our own!

Sincerely,

V. Rev. Donald J. Bramble, OP

V. Rev. Donald J. Bramble, OP
(Pastor: Holy Family Cathedral
Vicar General: Archdiocese of Anchorage)



DOMINICANS SERVING THE ARCHDIOCESE OF ANCHORAGE

Report and Analysis on State of Alaska Formula on the Issuance of General Dispensary Liquor Licenses and Application to Fantasies on 5th

The State of Alaska issues general dispensary liquor licenses by a formula based on population. The number of licenses allowed in any given political subdivision such as the Municipality of Anchorage is one general dispensary license per 3,000 residents. The Alaska Department of Community and Regional Affairs annually updates Anchorage population figures for the Alcoholic Beverage Control Board. By statute that number excludes active military and incarcerated prisoners. The most recent population figure for Anchorage is 253,488 residents. Under the formula the number of licenses allowed is 85. Currently there are 155 licenses in Anchorage, 70 more than allowed by the law.

That disparity is, in part, attributable to the so-called "tourism" general dispensary licenses that are issued outside of the formula to hotel/motel locations. Suffice it to say, there is no shortage of opportunities for Anchorage residents to locate a place to imbibe alcohol. The numbers from both the ABC Board and law enforcement agencies attest to that fact. Police and court statistics bear out the overwhelming role that alcohol plays in the social costs to our community and the price tag to taxpayers.

Any application for a general dispensary license located in Anchorage, outside of the tourism designation, would not get a hearing and would be rejected because of the disparity in the Anchorage formula. That would be true if the application location were next door to Fantasies on 5th, across the street, or across town. The legal loophole that brings the conditional use permit application before the Assembly is covered by the "duplicate" designation allowed under the law for an existing license. That test may meet the letter of the law, but can be construed to violate the spirit of the law.

There are other facts that pertain to this application. By calls for service records available from the Anchorage Police Department, the business operated as Fantasies on 5th has generated inappropriate and illegal activity. For a while, the owners authorized the security staff to carry firearms. The security staff uses handcuffs and an isolation area to deal with problem patrons. The owners claim to have initiated a significant number of the police calls made from the business. That begs the question of whether the business as operated is in fact an attractive nuisance for adults. That apparently is the assessment of the military, having declared the establishment "off limits" to military personnel. To approve the application for a conditional use permit, the Assembly must come to the conclusion that the addition of alcohol to the mix will improve public safety and reduce the incidence illegal activity at Fantasies on 5th.

Report & Analysis Submitted February 11, 2008
Gene Storm
Assembly Aide



The Fairview Community Council
Darrel Hess, Chair
317 East 14th Ave #6
Anchorage, AK 66501

February 10, 2008

Dan Coffey
Chair, Anchorage Assembly
P.O. Box 196650
Anchorage, AK 99519-6650

Dear Chairman Coffey,

During the Fairview Community Council's January 10, 2008 General Membership Meeting, based on recommendations by the Council's Public Safety Committee and Executive Board, the Council, with a quorum of at least fifteen (15) voting members present, unanimously voted to oppose Debco Incorporated's application for a Conditional Use Permit, which would allow issuance of a liquor license to Fantasies On 5th.

Members of the Council voiced concern that the stretch of 5th Avenue between Airport Heights Road and Alaska Sales & Service might become a reincarnation of 1960's 4th Avenue. Members also questioned the need for another liquor license in the Downtown area, which currently has at least 83 licensed premises, and they are leery of criminal elements which licensed adult entertainment establishments generally attract.

The Council's decision was made after a presentation by Ms. Hatman, and others associated with Debco Incorporate. The Council's position is not moralistic: we have not raised any concerns about the current adult entertainment that goes on at Fantasies on 5th. Rather, we are concerned by the criminal elements that would be attracted if the establishment acquires a liquor license.

The Fairview Community Council hopes that the Anchorage Assembly will oppose issuance of a CUP to Debco Incorporated, and not support another liquor license in an area where residents and businesses live with the negative impacts of alcohol.

Thanks for considering the Council's position, and if you have any questions, please give me a call.

Darrel Hess
Chair, Fairview Community Council
258-3714
gimpeon@alaska.net

Cc: FVCC Executive Board, Mayor Mark Begich, Senator Johnny Ellis, Representative Les Gara, Chief Rob Heun

The Government Hill Community Council
Julie Jessal, President
901 Anderson St.
Anchorage, AK 99501

Dan Coffey
Chair, Anchorage Assembly
P.O. Box 196650
Anchorage, AK 99519-6650

Dear Chairman Coffey,

During the last meeting of Government Hill Community Council on January 17, 2008, a quorum of the general membership voted unanimously to oppose Debco Incorporated's application for a Conditional Use Permit, which would allow issuance of a liquor license to Fantasies on 5th.

The GHCC members question the need for another liquor license in the downtown area not only for potential attraction of criminal elements, but also the precedence this action sets in regards to granting applications that extend beyond existing MOA regulations. In a larger sense, we join others who are anxious to maintain the city's past and current efforts to create a positive, healthy environment that reflects a thriving community for ourselves and visitors to our city.

The Government Hill Community Council hopes that the Anchorage Assembly will oppose issuance of a Conditional Use Permit to Debco Incorporated, and not support another liquor license in an area where residents and businesses live with the negative impacts of alcohol.

Thank you for considering the GHCC's position. Please give me a call if you have questions.

Julie Jessal
President, Government Hill Community Council
346-3424
juliejessal@gci.net

Mountain View Community Council

1989 USA Neighborhood of the Year

Resolution

A RESOLUTION SUPPORTING THE HARTMAN SISTERS' APPLICATION FOR A DUPLICATE LIQUOR LICENSE AND ALL ASSOCIATED LAND USE APPROVALS AT 1911 E. 5TH AVENUE.

WHEREAS, the Mountain View Community Council (the Council) supports small business.

Whereas, the Council believes in the long American tradition of freedom, including freedom from undue governmental interference, freedom to conduct commerce and freedom of individuals to conduct their lives and make their own choices.

Whereas the Council believes that the owners of the business have been unfairly targeted by Assemblyman Tesche.

Whereas the Hartman's request is reasonable.


Whereas Fantasies on 5th and Club Elixir are in the Mountain Community Council district.

Whereas Fantasies on 5th/ Club Elixir and their owners, the Hartman sisters, have been stalwart commercial citizens, proactively preventing and/or reporting illegal activity on their property, and regularly interacting with the council and supporting its annual clean-up efforts.

THEREFORE, LET IT BE RESOLVED that the MVCC supports the Hartman's request for a duplicate liquor license and all associated land use approvals at their location of business.

Passed this 14th day of January 2008 by a vote of 10-4, with one abstention. .

ATTEST:



Hugh Wade, Vice President
Mountain View Community Council

PO Box 142824 ANCHORAGE AK 99514-2824
TAKE PRIDE IN MOUNTAIN VIEW
Working Together FOR A DRUG & CRIME FREE Mountain View



Municipality of Anchorage


P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 843-4431 • Fax: (907) 843-4499 <http://www.muni.org>

Mayor Mark Begich

Office of the Mayor

MEMORANDUM

To: Municipal Clerk Barbara Gruenstein
Assembly Chair Dan Coffey

From: Mayor Mark Begich 

Date: February 18, 2008

Re: AR 2008-1

With this memorandum, I am informing you that I have vetoed AR 2008-1, A resolution of the Anchorage Municipal Assembly approving an alcoholic beverages conditional use in the B-3 (General Business) District for a duplicate beverage dispensary use per AMC 21.40.180 D.8, for Debco, Inc., **Fantasies on 5th**, passed by the Anchorage Assembly on February 12, 2008.

2008 FEB 18 AM 8:05

CLERK'S OFFICE

Community, Security, Prosperity



Municipality of Anchorage

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Mayor Mark Begich

Office of the Mayor

MEMORANDUM

To: Municipal Clerk Barbara Gruenstein
Assembly Chair Dan Coffey

From: Mayor Mark Begich

Date: February 18, 2008

Re: AR 2008-1, a conditional use for Fantasies on 5th

With this memorandum, I am informing you of the reasons that I have vetoed AR 2008-1, a resolution of the Anchorage Municipal Assembly approving an alcoholic beverages conditional use in the B-3 (General Business) District for a duplicate beverage dispensary use per AMC 21.40.180 D.8, for Decco, Inc., **Fantasies on 5th**, passed by the Anchorage Assembly on February 12, 2008.

I have vetoed this resolution because I believe the Assembly failed to fully consider all the information regarding the full ramifications of a new duplicate alcoholic beverage dispensary at this location. The Assembly action allows the sale of alcoholic beverages in an expanded 83-seat strip club at 1911 East 5th Avenue. Currently that space is used as a non-alcoholic strip club catering to those under the age of 21, which in itself presents challenges for our Police Department and the Community.

During the Assembly's consideration of AR 2008-1, the debate was cut off by a motion to call the question prior to additional information from the Anchorage Police Department. Had the police testified, they would have informed the Assembly that APD had been called 198 times in 2006 to these clubs to deal with drugs, assaults and other disturbances. Those police calls increased to 218 in 2007, an average of more than one every other day. If the duplicate license is awarded, police calls will almost certainly increase without significant operational improvement. I believe this information should have been considered by the Assembly before it approved a conditional use permit.

Instead, the Assembly closed debate, preventing additional information to be considered. It is noteworthy that the presiding officer of the Assembly, the vice chair and the Assembly member in whose district this establishment is located all voted against closing debate and in favor of hearing additional information.

I believe strongly in an open and transparent process where all information regarding a Municipal action is considered in full public view. For these reasons, I have vetoed AR 2008-1 to allow an additional two weeks for the assembly to consider the Police Departments information, which could be shared through a work session.

Community, Security, Prosperity



Municipality of Anchorage

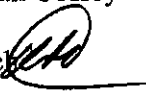
P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 343-4431 • Fax: (907) 343-4499 <http://www.muni.org>

Mayor Mark Begich

Office of the Mayor

MEMORANDUM

To: Municipal Clerk Barbara Gruenstein
Assembly Chair Dan Coffey

From: Mayor Mark Begich 

Date: February 18, 2008

Re: AR 2008-1

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*Veto overridden
2/26/08
BSJ*

2008 FEB 13 11:08:05
CLERK'S OFFICE

Community, Security, Prosperity