

Submitted by: ASSEMBLY CHAIR OSSIANDER,  
VICE CHAIR HALL, AND ASSEMBLY  
PUBLIC SAFETY  
COMMITTEE CHAIR HONEMAN

CLERK'S OFFICE

**APPROVED**

Prepared by: Municipal Clerk

For reading: February 14, 2012

Date: 2-14-12

**ANCHORAGE, ALASKA  
AR NO. 2012-43**

**A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY STATING ITS  
PROTEST REGARDING A RENEWAL OF A BEVERAGE DISPENSARY LICENSE #1456  
FOR EAGLE RIVER BOWL LLC dba WHALER BAR & GRILL, LOCATED AT  
171 MULDOON ROAD, AND AUTHORIZING THE MUNICIPAL CLERK TO TAKE  
CERTAIN ACTION.**

WHEREAS, Eagle River Bowl LLC has made an application with the Alcoholic Beverage Control (ABC) Board and has paid the required fee for a Renewal of a Beverage Dispensary Liquor License #1456, to be used for Whaler Bar & Grill, located at 171 Muldoon Road, Anchorage, Alaska; and

WHEREAS, the Assembly must enter any protest to the ABC Board within 60 days following receipt of the application; and

WHEREAS, the Anchorage Municipal Clerk received a copy of this application on December 21, 2011 and has determined that the last day for the Assembly to file a protest is February 20, 2012; and

WHEREAS, the Assembly Meeting on February 14, 2012 is the last scheduled regular meeting of the Anchorage Assembly prior to the expiration of the protest period; and

WHEREAS, the Municipal Clerk reports the following status concerning this location:

1. Any ABC Board violations and/or incidents are on file that would lead to an ABC Board violation are attached;
2. There are taxes owing to the Municipality of Anchorage in the amount of **\$9,676.71**.

WHEREAS, protest by the Assembly is in order pending Municipal Clerk confirmation that outstanding items required for this location have been completed;

**NOW, THEREFORE, THE ANCHORAGE ASSEMBLY RESOLVES:**

Section 1. The Anchorage Assembly hereby enters its **PROTEST** for a Renewal of Beverage Dispensary #1456 until this condition is met:


- Taxes owing to the Municipality of Anchorage in the amount of **\$9,676.71** are paid in full.

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Section 2. A copy of this Assembly Resolution may be presented to the Alcoholic Beverage Control Board as proof that the Anchorage Assembly, as the local governing body, has stated its protest in order to allow the Director of the Alcoholic Beverage Control Board to hold processing of Beverage Dispensary Liquor License # 1456 under local protest, until receipt by the Director of confirmation from the Municipal Clerk that the conditions in Section 1 have been met, and this protest is lifted as authorized by this Assembly Resolution.

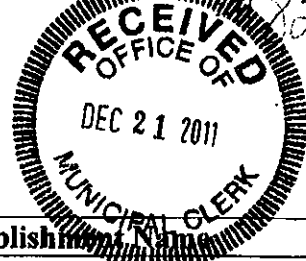
Section 3. The Anchorage Assembly hereby authorizes the Municipal Clerk, upon Municipal Clerk confirmation that all conditions in Section 1 have been met, to provide written notification to the Alcoholic Beverage Control Board that this protest by the Anchorage Assembly is lifted, without further action by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 14<sup>th</sup> day of February, 2012.

  
Chair

ATTEST:

  
Municipal Clerk



## 2012/2013 Liquor License Renewal

<b>License Number</b>	<b>License Type</b>	<b>Establishment Name</b>
1456	Beverage Dispensary	Whaler Bar & Grill
<b>If Seasonal License</b>	<b>Seasonal From:</b>	<b>Seasonal To:</b>

<b>Mailing Address</b>	<b>Premise Address</b>
Eagle River Bowl LLC 12130 Regency Dr Ste 201 Eagle River, AK 99577	171 Muldoon Rd Anchorage, Mun. of Other(Anch,Sit,Jno,Com.Car,WA)

Phone: 907-522-1616	Fax: 907-522-3892
Email: N/A	

Please mark the correct box to answer:

Northeast

1. Was your business open at least 30 days for 8 hours each day in 2010?  Yes  No
2. Was your business open at least 30 days for 8 hours each day in 2011?  Yes  No
3. Has the licensed premise changed from the last diagram submitted?  Yes  No
4. Has any person named in this application been convicted of a felony?  Yes  No

List all corporation members, managers and shareholders below:

Name & Mailing Address	Title	Share %	Phone

If not a corporation - List all individuals, spouses, or partners that own business below:

Name & Mailing Address	Title	Phone
Lynn Lythgae 10070 13220 Jani Dr Anchorage, AK	Member	907-244-8450
Marcia Lythgae 13220 Jani Dr Anchorage, AK	Member	907-522-1616

License Fee	Application Fee	Late Fee	Fingerprint Fee	TOTAL
\$2500.00	\$200.00			\$2700

By affixing my signature below:

I declare under penalty of perjury that I have examined this application and to the best of my knowledge and belief state it is true, correct and complete.

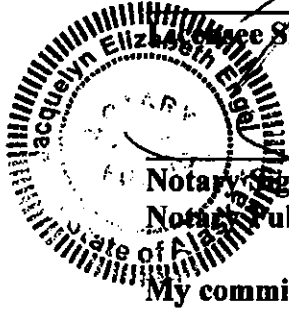
I certify that I have read and am familiar with Title 4 of the Alaska statutes and its regulations.

I agree to provide all information required by the Alcoholic Beverage Control Board in support of this application.

As a licensee (a sole proprietor, partner or officer, director, shareholder, member, of the entity to which license is issued), I certify that I have received alcohol server training and my certification is currently valid.

As a Corporate/LLC licensee, I certify that all agents and employees, who serve, sell or are otherwise responsible for the service/sale/storage of alcoholic beverages have received alcohol server training and their certification is currently valid. I further certify that certain shareholders/officers/directors/members of the entity that are *not directly or indirectly responsible* for the service/sale/storage of alcoholic beverages are not alcohol server training certified, and will not be required to be certified.

As a licensee, I certify that all my agents and employees tasked with patron identification verification have received alcohol server training and their certification is currently valid.


  
 \_\_\_\_\_  
 Licensee Signature  
 \_\_\_\_\_  
 Notary Signature  
 Notary Public in and for the State of Alaska  
 My commission expires: 12/25/11

Lynn Lythgoe Member  
 \_\_\_\_\_  
 Printed Name & Title

Subscribed and sworn to before me this  
6 day of December



Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Date: 1-5-10  
Number: 09-2307  
Page 1 of 2 Pages

## Notice of Violation Third Violation w/in 4 Months

(13AAC 104.625)

Licensee <b>Eagle River Bowl LLC</b>	License Number <b>1456</b>	Type of License <b>Beverage Dispensary</b>
D.B.A. <b>Whaler Bar &amp; Grill 171 Muldoon Road</b>	How Delivered <input checked="" type="checkbox"/> By Certified Mail Number: 7006 3450 0003 7713 3533 <input type="checkbox"/> Personally Served	Law Enforcement Agency <b>Anchorage Police Department</b>
Street or P.O. Box <b>12130 Regency Drive, Ste 201</b>	City, State <b>Eagle River, AK</b>	Zip <b>99577</b>

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

**VIOLATION:** On 12-29-09, at about 2043 hours, The Whaler door security Clinton Allen Brisky allowed an under 21 person to gain access to the establishment. The incident occurred during a compliance check. Brisky was issued a summons for allowing an under 21 person on a licensed premises. A mandatory court date of 1-25-10, 0830 hours, Anchorage District Court was assigned. Also observed was a Texas Hold-em event about to begin. The game was being managed by employee Paul Dembroski. Dembrowski stated it did not cost to play. A patron who wanted to play was given \$5,000.00 in chips. If the patron wanted to more chips or ran out, they could purchase drinks or food and obtain more chips to play. This is a violation and considered a buy in.

Your attention is directed to **AS 04.16.052(2): Furnishing of alcoholic beverages to persons under the age of 21 by licensees.**

A licensee or an agent or employee of the licensee may not with criminal negligence

(2) allow a person under the age of 21 years to enter and remain within licensed premises except as provided in AS 04.16.049 ;

Your attention is directed to **AS . 04.16.015. Pricing and marketing of alcoholic beverages.**

(a) On premises where alcoholic beverages are sold by the drink, a licensee or a licensee's agent or employee may not

- (1) offer or deliver, as a marketing device to the general public, free alcoholic beverages to a patron;
- (2) deliver an alcoholic beverage to a person already possessing two or more;
- (3) sell, offer to sell, deliver alcoholic beverages to a person or group of persons at a price less than the price regularly charged for the beverages during the same calendar week, except at private functions not open to the general public;
- (4) sell, offer to sell, or deliver an unlimited number of alcoholic beverages to a person or group of persons during a set period of time for a fixed price;
- (5) sell, offer to sell, or deliver alcoholic beverages to a person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the general public;
- (6) encourage or permit an organized game or contest on the licensed premises that involves drinking alcoholic beverages or the awarding of alcoholic beverages as prizes.

You are directed to respond to the Director of the Alcohol Beverage Control Board in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a reoccurrence of this violation.

**\*Please include your Alcohol License Number in your response.**

**Shirley A. Gifford, Director  
Alcoholic Beverage Control Board  
5848 E. Tudor Road  
Anchorage, Alaska 99507**

**A Response is Required**

13 AAC 104.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

Receipt:	Violation Observed By: F.R. Hamilton
Filed By: <i>FR Hamilton</i>	Title: Investigator III



Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Date: 1-5-10  
Number: 10-0001  
Page 1 of 2 Pages

## Notice of Violation Fourth Violation w/in 4 Months

(13AAC 104.625)

Licensee <b>Eagle River Bowl LLC</b>	License Number <b>1456</b>	Type of License <b>Beverage Dispensary</b>
D.B.A. <b>Whaler Bar &amp; Grill 171 Muldoon Road</b>	How Delivered <input checked="" type="checkbox"/> By Certified Mail Number: 7006 2760 0002 7713 3571 <input type="checkbox"/> Personally Served	Law Enforcement Agency <b>Anchorage Police Department</b>
Street or P.O. Box <b>12130 Regency Drive, Ste 201</b>	City, State <b>Eagle River, AK</b>	Zip <b>99577</b>

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will received an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

**VIOLATION:** On 1-1-10, at about 0335 hours, Inv. Hamilton conducted a walk thru of the establishment. The premises had closed at 0300 hours on New Years day. Observed on the premises were two individuals, not employees of the establishment. Observed prior to entering, was employee Darren Drembrowski drinking what appeared to be an alcoholic beverage? He later confirmed the beverage he was drinking was a whiskey and water. This is a violation of Anchorage Municipal Code.

Your attention is directed to **AS 04.21.030: Responsibility of Licensee's Agents, and Employees.**

The licensee has a duty to exercise that degree of care that a reasonable person would observe to ensure that a business under the person's control is lawfully conducted. This duty of the licensee includes, but is not limited

- (1) to ensuring the compliance by agents or employees with this title and regulations adopted under this title, including acting with reasonable diligence to determine that agents or employees are advised of the provisions of this title and the regulations adopted under this title, either by securing the agent's or employee's written acknowledgement of posted instructions or otherwise; and
- (2) to ensuring the compliance of the premises with public health, fire, and safety codes and ordinances of the state or municipality having jurisdiction.

Your attention is directed to **Anchorage Municipal Code 10.50.015: Prohibited acts**

It is unlawful:

- A. For a person to barter or sell alcoholic beverages in a business premises that is not licensed by the state alcoholic beverage control board.
- B. For a licensee or the licensee's employee or agent to permit a person to consume an alcoholic beverage on licensed premises not classified for sale and consumption of that alcoholic beverage by the board.
- C. For a licensee or the licensee's employee or agent to sell, attempt to sell, furnish, barter or permit to be consumed alcoholic beverages in any premises licensed under AS 4.11.080 for the service and consumption of alcoholic beverages between the hours of 2:30 a.m. and 10:00 a.m. Monday through Friday, or between the hours of 3:00 a.m. and 10:00 a.m. on Saturday or Sunday or on a legal holiday recognized by the state under AS 44.12.010.

You are directed to respond to the Director of the Alcohol Beverage Control Board in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a reoccurrence of this violation.

**\*Please include your Alcohol License Number in your response.**

**Shirley A. Gifford, Director  
Alcoholic Beverage Control Board  
5848 E. Tudor Road  
Anchorage, Alaska 99507**

**A Response is Required**

13 AAC 104.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

Receipt:	Violation Observed By: F.R. Hamilton
Filed By: <i>F.R. Hamilton</i>	Title: Investigator III





Alcoholic Beverage Control Board  
5848 East Tudor Road  
Anchorage, AK 99507

Date: 8-6-10  
Number: 10-1236  
Page 1 of 2 Pages

## Notice of Violation Fifth Violation w/in 12 Months

(13AAC 104.525)

Licensee <b>Eagle River Bowl LLC</b>	License Number <b>1456</b>	Type of License <b>Beverage Dispensary</b>
D.B.A. <b>Whaler Bar &amp; Grill 171 Muldoon Road</b>	How Delivered <input checked="" type="checkbox"/> By Certified Mail Number: 7009 2820 0001 7253 2989 <input type="checkbox"/> Personally Served	Law Enforcement Agency <b>Anchorage Police Department</b>
Street or P.O. Box <b>12130 Regency Drive, Ste 201</b>	City, State <b>Eagle River, AK</b>	Zip <b>99577</b>

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

**Note: This is not an accusation or a criminal complaint.**

**VIOLATION:** On 7-22-10, at about 2007 hours, The Whaler Bar and Grill bartender Robert William Atchue Jr. sold an alcoholic beverage to a person under the age of 21 and then allowed the underage person to remain on the licensed premises. The sale occurred during a compliance check. As a result of the check, doorman Clinton Allen Brisky was also asked to provide proof of alcohol server education. Atchue and Brisky could not provide proof of server education. They were told to stop performing bartending and ID checking duties until proof was provided to the Alcoholic Beverage Control Enforcement Team. A charge of furnishing alcohol to a person under 21 and allowing an under 21 person to remain on the licensed premises is being referred to the DAO.

Your attention is directed to **AS 04.16.052: Furnishing of alcoholic beverages to persons under the age of 21 by licensees.**

A licensee or an agent or employee of the licensee may not with criminal negligence

(5) while working on licensed premises, furnish or deliver alcoholic beverages to a person under the age of 21 years

Your attention is directed to **13AAC104.465(a): Alcohol Server's Education Course.**

While selling or serving alcoholic beverages, a person required under AS 04.21.025 to complete an alcohol server education course and the person's on-duty supervisor shall carry a current course card certifying completion of an approved alcohol server education course. The card is effective for three years from date of issuance during which time the person shall complete another approved course. The card must be made of or

encased in plastic, and must include the name and birth date of the card holder, the name of the course, date of expiration of the card, and a signature of an authorized course representative. If the card does not include a photograph of the holder, the person shall also carry a valid identification under 13 AAC 104.425(b). The card must be shown upon request of a peace officer or board representative. If the person cannot show a current card or a copy of it on file on the premises, or show a date of hire less than 30 days earlier, the person shall immediately cease selling or serving alcoholic beverages.

Your Attention is directed to: **Anchorage Municipal Code (AMC )10.50.015(R).**

For a licensee to employ in the licensed business in any capacity which involves the sale or dispensing of alcoholic beverages to the public, any person who has not, prior to the commencement of employment, successfully completed a liquor server awareness training program approved by the state alcoholic beverage control board as provided by Sections 2.30.125.B and 10.50.035.B.6.

Your attention is directed to **AS 04.21.030: Responsibility of Licensee's Agents, and Employees.**

The licensee has a duty to exercise that degree of care that a reasonable person would observe to ensure that a business under the person's control is lawfully conducted. This duty of the licensee includes, but is not limited

- (1) to ensuring the compliance by agents or employees with this title and regulations adopted under this title, including acting with reasonable diligence to determine that agents or employees are advised of the provisions of this title and the regulations adopted under this title, either by securing the agent's or employee's written acknowledgement of posted instructions or otherwise; and
- (2) to ensuring the compliance of the premises with public health, fire, and safety codes and ordinances of the state or municipality having jurisdiction.

You are directed to respond to the Director of the Alcohol Beverage Control Board in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a reoccurrence of this violation.

\*Please include your Alcohol License Number in your response.

**Shirley A. Gifford, Director  
Alcoholic Beverage Control Board  
5848 E. Tudor Road  
Anchorage, Alaska 99507**

**A Response is Required**

13 AAC 104.525 (B) provides that upon receipt of a Notice of Violation, a licensee may request to appear before the Director and be heard regarding the Notice of Violation. The request must be made within ten days after receipt of the Notice and the Director must grant an appearance within ten days after receipt of a request. A Licensee shall respond, either orally or in writing, to the Notice.

Receipt:	Violation Observed By: F.R. Hamilton
Filed By: <i>FR Hamilton</i>	Title: Investigator III

**August 16, 2010**

**To Whom It May Concern,**

**This is in response to the violation issued on 7/22/10 to one Robert Atchue Jr. at the Whaler Lounge.**

**Mr. Atchue was terminated the next day for his not adhering to company policy by checking any customer looking to be under the age of 35 years of age and not using the electronic ID machine. As for the two employees that did not have their Tips or Tams cards: Clinton Briskey returned about an hour later with a copy of his Tips card. He originally began his employment at the Homestead Lounge in Eagle River (part of the same company) where a copy of his card was and is on file. His original card was lost along with his wallet over a month ago. A replacement card has been ordered. As for Mr. Atchue, he was a re-hire form 2008 who had just returned to work a week earlier. A copy of his card could not be located.**

**I have recently taken over management of the Whaler Lounge and I can assure you that every effort will be made to educate and train our present and future staff to prevent any violations in the future.**

**Respectfully,**

*Dennis Smith*

**Dennis Smith  
Whaler Bar & Grill  
Manager**

**RECEIVED  
AUG 17 2010  
ABC BOARD**