A RESOLUTION TO OPPOSE THE TRANSFER OF LICENSE OF LED LOUNGE TO THE PROPOSED LOCATION ON 3RD AND E STREET.

(Substitute Version) March 4, 2022

WHEREAS, the Downtown Community Council (DTCC) is in receipt of applications from the Alcoholic Beverage Control (ABC) Board for transfer of ownership and transfer of location from Robert Alexander to LED Ultra Lounge and Tri Grill LLC (LED) of beverage dispensary license #4531 (Exhibit A) and duplicate licenses #4551 (Exhibit B) to the proposed premise located at 420 W 3rd Ave., Anchorage, Alaska; and

WHEREAS, Anchorage Municipal Code (AMC) 2.40.050(e)(1) determines an advisory function of the Downtown Community Council is to receive and review alcohol beverage control board applications; and

WHEREAS, AMC 2.30.120 and Alaska State Statute (AS) 04.11.480 provide the Anchorage Assembly the opportunity to protest a license transfer upon facts that render the particular application objectionable to the local governing body, or may be based on general public policy with a reasonable basis in fact, not contrary to law, and not patently inapplicable to the particular application; and

WHEREAS, the transfer of location from 901 W 6th Ave. to 420 W 3rd Ave. materially changes the environmental conditions in which the business could create a significant impact on the use and enjoyment of adjacent properties by property owners and occupants; and

WHEREAS, the Downtown Community Council and the Municipality of Anchorage face increasing public safety challenges in the downtown business district area of 3rd Ave. and E st. due to the density of residential homeowners and hotel beds; and

WHEREAS, within the most recent 23-year period, the Anchorage Assembly has protested multiple beverage dispensary license transfers based on operators control of noise and placed specific conditions to alleviate noise problems on other locations within close proximity of the proposed premise, due to the densely populated residential units and hotel beds (Exhibit C); and

WHEREAS, AR 2004-010 highlights the mediation between the previous Woodshed Lounge, located at 535 W 3rd Ave, and the Turnagain Arm Homeowners Association in regards to noise levels, agreeing that entertainment would end by 10:00pm each night and after 10:00pm noise levels would not exceed levels allowed under AMC code (Exhibit D); and
WHEREAS, the previous Woodshed Lounge location is now occupied by Matanuska Brewing Downtown Beverage Dispensary license #1244, d.b.a. The Broken Blender, located at 535 W 3rd Ave.; and

WHEREAS, per AR 2019-328 (Exhibit E), due to the history of continual noise complaints from residents in close proximity to the location, The Broken Blender has the same conditional use provision for their deck that prohibits entertainment after 10:00pm each night and has been successful abiding by the noise ordinances, setting the precedent that a bona fide restaurant can operate effectively in the immediate area with minimal complaints; and

WHEREAS, per AR 2012-298(s) (Exhibit F) and AR 2015-1 (Exhibit G) the precedent has been set by both the DTCC and the Anchorage Assembly that the downtown business district requires more careful scrutiny of certain uses to the negative impacts resulting from a similar club profile business that offers recorded music, live music, and patron dancing, open until 2:30am on weeknights, and 3:00am on weekends operating near a residential area; and

WHEREAS, Exhibit A, page 14 and Exhibit B, page 14, the licensee LED Ultra Lounge & Grill, LLC. completed Form AB-03: Restaurant Designation Permit Application for both license #4531 and #4551 and entered hours of operation as “Monday thru Sunday: each day 11 am – 5am; and

WHEREAS, the licensee is in violation of AMC 10.50.010, “Premises licensed under AS 4.11.080 for the service and consumption of alcoholic beverages shall be closed for the sale, service and consumption of alcoholic beverages between the hours of 2:30am and 10:00am Monday through Friday, and between the hours of 3:00am and 10:00am on Saturday or Sunday or on a legal holiday recognized by the state under AS 44.12.010, except that the following premises may remain open between the hours of 3:00am and 4:00am on Saturday or Sunday or on a legal holiday recognized by the state under AS 44.12.010 ("bar safety hour"); and

WHEREAS, LED Ultra Lounge and Grill meets the definition of a night club, per AMC 21.05.020(8), defined as an enterprise, that, for consideration, provides entertainment to its patrons in the form of floorshows; dance revues; live, recorded, or electronically enhanced music; patron dancing; or performances by live or recorded professional or amateur entertainers. Discotheques, nightclubs, bars, lounges, dance halls, bistros, teen clubs, and any facility that meets the terms of this definition are often, but not exclusively, open during one or more of the hours between 11:00pm and 3:00am; and

WHEREAS, LED has a long standing demonstrated history of events with entertainment between the hours of 11:00pm and 3am, in fact, the majority of previous LED events state that the doors open at 10:00pm, see social media posts and flyers (Exhibit H); and

WHEREAS, Mr. Alexander intends to operate the business the same at the new 420 W 3rd Ave. premise evidenced by his eight caterer’s permit applications that were denied for events between October 9 and November 27, 2021, with the same event name “LED opening event” where the permit was “to cater a typical event with both alcohol and food the same as what I
have done at location 901 W. 6th Ave for the past 7 years. Approx 200-300 people, 21+ only, between the hours 12:00pm and 3:00am” (Exhibit I); and

WHEREAS, the LED Facebook social media page lists LED Ultra Lounge and Grill 2.0 as a Dance & Night Club with 420 W 3rd Ave. as their premise location (Exhibit J); and

WHEREAS, during the periods 2018-2019 there were numerous documented complaints by the neighbors attributed to the LED operation, located at 901 W 6th Ave., and the community outreach flagged the need for the DTCC Alcohol & Marijuana Committee to conduct a mediation on 7/31/2019 between LED and many surrounding neighbors (Exhibit K); and

WHEREAS, AR No. 2020-103 and AR No. 2020-104 (Exhibit L), during the license renewal period in 2020, objections were raised by the Assembly and property owners due to the impact of operations of LED; and

WHEREAS, the commercial lease agreement between Gallo Limited Partnership and the LED Ultra Lounge & Grill for the location 420 W 3rd Ave. identifies the permitted use of premises as restaurant, bar, and night club (Exhibit M); and

WHEREAS, on 2/24/22 Mr. Alexander submitted an application for administrative permit for an unlicensed nightclub to the Municipality of Anchorage Planning Department/ Land Use (Exhibit N); and

WHEREAS, per AMC 21.05.050D.8 in the description of nightclubs, certain types of enterprises have been determined to produce secondary impacts on surrounding land uses. The impacts include a perceived decline in property values, and an increase in the level of criminal activity, including unlawful sales and use of drugs and consumption of alcoholic beverages, and noise conflicts in the vicinity of these types of enterprises; and

WHEREAS, the Hilton Downtown Anchorage located at 500 W 3rd Ave., with 606 beds, is the number two hotel based on assessed value in Downtown Anchorage and is a major economic driver for the municipal government for both bed tax and property tax, paying $830,298.53 in property tax 2021, not included in this number is substantial bed tax as well (Exhibit O); and

WHEREAS, the Hilton Downtown Anchorage opposes the transfer of LED to 420 W 3rd Ave (Exhibit P); and

WHEREAS, per AMC 21.05.050ii, Minimum Distance from Certain Uses, “Except for teen nightclubs and underage dances permitted under AMC chapter 10.55, an unlicensed nightclub shall be located so that all portions of the lot on which the unlicensed nightclub is located shall be 300 feet or more from the lot line of property on which is located: (A) A school or instructional service serving any combination of grades kindergarten through 12; (B) A childcare center; (C) Property zoned residential; or (D) TA-zoned property designated as residential in the Turnagain Arm Comprehensive Plan; and
WHEREAS, the Turnagain Arms Residential Condo Building, located at 525 W 3rd Ave., is occupied as residential property with 69 residential units; and

WHEREAS, the proposed location of 420 W 3rd Ave. is within 300 feet of the Turnagain Arms Residential Condo Building and is in violation of the spirit of AMC 21.05.050ii (Exhibit Q); and

WHEREAS, per AS 04.11.410, Alcoholic beverages restriction of location near churches and schools a) a beverage dispensary or package store license may not be issued and the location of an existing license may not be transferred if the licensed premises would be located in a building the public entrance of which is within 200 feet of a school ground or a church building in which religious services are regularly conducted, measured by the shortest pedestrian route from the outer boundaries of the school ground or the public entrance of the church building; and

WHEREAS, the Anchorage School District Step Up Secondary Alternative school in which classes are regularly conducted is located at 411 W 3rd Ave. (Exhibit R); and

WHEREAS, Exhibit A, page 9 and Exhibit B, page 9, Forms AB-02 the applicant identifies the main public entrance for both applications as the northeast doors opening to the COHO parking lot on W 3rd Ave.; and

WHEREAS, Exhibit N, page 5, the applicant identifies the main public entrance for the nightclub as the northeast doors opening to the COHO parking lot on W 3rd Ave.; and

WHEREAS, in violation of AS 04.11.410, the proposed main entrance, when measured by the shortest pedestrian route from the outer boundary of school ground, is within 200 feet of a school (Exhibit S); and

WHEREAS, in violation of AMC 21.05.050ii, Exhibit S further demonstrates all other entrances and exits of the proposed location of 420 W 3rd Ave. are within 300 feet of a school or instructional service serving any combination of grades kindergarten through 12; and

WHEREAS, per AS 04.11.410, the Anchorage School District (ASD) is officially opposing the transfer of LED to 420 W 3rd Ave. (Exhibit ; and

NOW THEREFORE IT BE RESOLVED, that the Downtown Community Council hereby requests the Assembly to PROTEST the transfer of beverage dispensary licenses #4351 and #4551 to the proposed premise located at 420 W 3rd Ave., Anchorage, Alaska for the following reasons:

1. The application violates AS 04.11.410, where the main entrance is within 200 feet of a school boundary and ASD is opposing it.
2. The application violates AMC 21.05.050ii and creates a special land use conflict, as all entrances and exits are within 300 feet of a school.
3. The application violates the spirit of AMC 21.05.050ii and creates a special land use conflict, as all entrances and exits are within 300 feet of a building occupied as residential property.

4. Based on more than 20 years of history experienced by the Municipality at the proposed location and close vicinity, it has been established that there is a permanent negative impact greater than emancipated from permitted development, on a) pedestrian and vehicular traffic circulation and safety; b) the demand for and availability of public services and facilities; and c) noise and public litter concerns of a nightclub profile.

5. The application presented by LED is inconsistent with State law and Municipal code on numerous counts.

PASSED and APPROVED by the Downtown Community Council this_____ day of March, 2022.

_____________________________

Signed:

Its:

Downtown Community Council
This resolution references the following Exhibits, as attached to this Resolution for ease of tracking and reference:

**Exhibit A** - Application of a Beverage Dispensary Liquor License Transfer of Location and Ownership for Tri Grill, LED Ultra Lounge & Grill #4531.

**Exhibit B** - Application of a Beverage Dispensary Duplicate Liquor License Transfer of Location and Ownership for Tri Grill, LED Ultra Lounge & Grill #4551.

**Exhibit C** - AR 99-121 A Resolution of the Anchorage Municipal Assembly waiving protest of the renewal of the Woodshed’s Beverage Dispensary Liquor License subject to certain conditions.

**Exhibit D** - AR 2004-10 A Resolution of the Anchorage Municipal Assembly approving a conditional use for an alcoholic beverages conditional use in the B-2C district for a duplicate beverage dispensary license per AMC 21.40.170 D.14 for the Woodshed Lounge, located on the lower level floor, Anchorage original townsite, block 17, lot 7a; generally located on the northeast corner of West 3rd Avenue and F Street.

**Exhibit E** - AR 2019-328(S) A Resolution of the Anchorage Municipal Assembly approving an amendment to an alcoholic beverages conditional use for beverage dispensary license number 1244 for Matanuska Brewing downtown, llc, dba Matanuska Brewing Downtown Brewpub; in the b-2c (Central Business District, periphery) district; located at 535 West 3rd Avenue, within lot 7a, block 17, Anchorage Original Townsite; generally located north of West 3rd Avenue, east of F street, south of west 2nd Avenue, and West of E street, in Anchorage (Downtown Community Council) (case 2019-0110), Planning Department.

**Exhibit F** - AR No 2012-298(S) A Resolution of the Anchorage Municipal Assembly setting a hearing regarding the renewal of transfer of Liquor License #4157 for Basilio Gallo dba Rumrunnrner’s Old Towne Bar & Grill, located at 415 E Street, Anchorage, Alaska; stating its protest of the renewal or transfer; and giving notice of violation.

**Exhibit G** - AR 2015-1 A Resolution of the Anchorage Municipal Assembly stating its protest regarding transfer of Beverage Dispensary liquor license #4531 and duplicate licenses #4551 and #4552 for premises located at 901 West 6th Avenue, Anchorage, Alaska; giving notice of reasons for protest; and further providing for Public Hearing before the Assembly on the exercise or waiver of this protest.

**Exhibit H** - Advertising from LED Lounge Facebook page for events during 2019-2021.

**Exhibit I** - 8 denied applications from the State of Alaska Alcohol Beverage Control Board for Catering Permits from October 2021 through November 2021.

**Exhibit J** - LED Facebook page categorized as a nightclub.
Exhibit K - Downtown Community Council Alcohol & Marijuana Committee LED & Neighbors Mediation Meetings Notes 7/31/19 & 9/11/19.

Exhibit L - AR 2020-103 A Resolution of the Anchorage Municipal Assembly regarding the State of Alaska application for the renewal of a Beverage Dispensary-Duplicate Liquor License #4551 for Robert Alexander dba LED Ultra Lounge & Grill located at 901 W 6th., Anchorage, AK 99501, and authorizing the Municipal Clerk to take certain action and AR 2020-104 A Resolution of the Anchorage Municipal Assembly regarding the State of Alaska application for the renewal of a Beverage Dispensary Liquor License #4531 for Robert Alexander dba LED Ultra Lounge & Grill located at 901 W 6th., Anchorage, AK 99501, and authorizing the Municipal Clerk to take certain action.

Exhibit M - Commercial lease agreement between Gallo Limited Partnership and the LED Ultra Lounge & Grill for the location 420 W 3rd Ave.

Exhibit N - LED application for administrative permit for an unlicensed nightclub to the Municipality of Anchorage Planning Department/ Land Use.

Exhibit O - Anchorage Municipality of Anchorage property tax information for Hilton Downtown Anchorage.

Exhibit P - Letter from Hilton Downtown Anchorage in opposition on the LED transfer to 420 W 3rd Ave.

Exhibit Q - Distance as tracked from Anchorage Municipal Website from Turnagain Arms Condo to LED Lounge.

Exhibit R - Letter on Anchorage School District (ASD) letterhead verifying the address of the ASD Step Up Secondary Education School.

Exhibit S - Distance as tracked from Anchorage Municipal website from Anchorage School District School boundary to LED Lounge.

Exhibit T - Letter from Anchorage School District in opposition on the LED transfer to 420 W 3rd Ave. due to the violation of AS 04.11.410.