

HOMER CITY COUNCIL
491 E. PIONEER AVENUE
HOMER, ALASKA
www.cityofhomer-ak.gov



WORKSESSION
4:00 P.M. TUESDAY
APRIL 2, 2019
CITY HALL CONFERENCE ROOM

MAYOR KEN CASTNER
COUNCIL MEMBER DONNA ADERHOLD
COUNCIL MEMBER HEATH SMITH
COUNCIL MEMBER TOM STROOZAS
COUNCIL MEMBER SHELLY ERICKSON
COUNCIL MEMBER CAROLINE VENUTI
COUNCIL MEMBER RACHEL LORD
CITY ATTORNEY HOLLY WELLS
CITY MANAGER KATIE KOESTER
CITY CLERK MELISSA JACOBSEN

WORKSESSION AGENDA

- 1. CALL TO ORDER, 4:00 P.M.**
- 2. AGENDA APPROVAL** (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 6)
- 3. LEGISLATIVE UPDATE –**
 - A. Teleconference report with Representative Vance Staff (pending confirmation)**
 - B. Governor's Budget**
 - C. House Bill 0107A Re: Authority of first class and home rule cities to issue, renew, deny, suspend, revoke, and regulate certain licenses involving alcoholic beverages; and relating to the Alcoholic Beverage Control Board**
- 4. COMMENTS OF THE AUDIENCE**
- 5. ADJOURNMENT**

Next Regular Meeting is Monday, April 8, 2019 at 6:00 p.m., Worksession at 4:00 p.m. and Committee of the Whole at 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

HOUSE BILL NO. 107

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE SULLIVAN-LEONARD BY REQUEST

Introduced: 3/25/19

Referred: Community and Regional Affairs, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the authority of first class cities and home rule cities to issue, renew,
2 deny, suspend, revoke, and regulate certain licenses involving alcoholic beverages; and
3 relating to the Alcoholic Beverage Control Board."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 04.06.090(b) is amended to read:

6 (b) Except as provided under AS 04.11.800 - 04.11.830, the [THE] board
7 shall review all applications for licenses made under this title and may order the
8 director to issue, renew, revoke, transfer, or suspend licenses and permits authorized
9 under this title.

10 * **Sec. 2.** AS 04.11.080 is amended to read:

11 **Sec. 04.11.080. Types of licenses and permits.** Licenses and permits issued
12 under this title are as follows:

- 13 (1) beverage dispensary license;
14 (2) duplicate beverage dispensary license for additional rooms;

- (3) restaurant or eating place license;
- (4) club license;
- (5) bottling works license;
- (6) brewery license;
- (7) package store license;
- (8) general wholesale license;
- (9) wholesale malt beverage and wine license;
- (10) distillery license;
- (11) common carrier dispensary license;
- (12) retail stock sale license;
- (13) recreational site license;
- (14) pub license;
- (15) winery license;
- (16) caterer's permit;
- (17) special events permit;
- (18) conditional contractor's permit;
- (19) brewpub license;
- (20) golf course license;
- (21) outdoor recreation lodge license;
- (22) destination resort license;
- (23) municipal restaurant or eating place license;**
- (24) municipal package store license.**

* **Sec. 3.** AS 04.11.400(a) is amended to read:

(a) Except as provided in (d) - (k) **and (o)** of this section, a new license may not be issued and the board may prohibit relocation of an existing license

(1) outside an established village, incorporated city, unified municipality, or organized borough if, after the issuance or relocation, there would be (A) more than one restaurant or eating place license for each 1,500 population or fraction of that population, or (B) more than one license of each other type, including licenses that have been issued under (d), [OR] (e), **or (o)** of this section, for each 3,000 population or fraction of that population, in a radius of five miles of the licensed

premises, excluding the populations of established villages, incorporated cities, unified municipalities, and organized boroughs that are wholly or partly included within the radius;

(2) inside an established village, incorporated city, or unified municipality if, after the issuance or relocation, there would be inside the established village, incorporated city, or unified municipality

(A) more than one restaurant or eating place license for each 1,500 population or fraction of that population; or

(B) more than one license of each other type, including licenses that have been issued under (d), [OR] (e), or (o) of this section, for each 3,000 population or fraction of that population;

(3) inside an organized borough but outside an established village or incorporated city located within the borough if, after the issuance or relocation, there would be inside the borough, but outside the established villages and incorporated cities located within the borough,

(A) more than one restaurant or eating place license for each 1,500 population or fraction of that population; or

(B) more than one license of each other type, including licenses that have been issued under (d), [OR] (e), or (o) of this section, for each 3,000 population or fraction of that population excluding the population of those established villages that have adopted a local option under AS 04.11.491(b)(1), (3), or (4), and excluding the population of incorporated cities located within the organized borough.

* **Sec. 4.** AS 04.11.400 is amended by adding a new subsection to read:

(o) Notwithstanding the population limits under (a) of this section, the board may approve the issuance of additional brewery licenses under AS 04.11.130, brewpub licenses under AS 04.11.135, winery licenses under AS 04.11.140, or distillery licenses under AS 04.11.170 for a first class or home rule city that meets the criteria in AS 04.11.800(b) if the

(1) city submits to the board

(A) a resolution adopted by the local governing body of the city

petitioning the board for the issuance of the additional licenses; in this subparagraph, "local governing body" has the meaning given in AS 04.11.830; and

(B) proof satisfactory to the board of the total population of the city; and

(2) board finds that issuance of the licenses is in the best interest of the city and the area surrounding the city.

* **Sec. 5.** AS 04.11 is amended by adding new sections to read:

Article 10. Municipal Licenses.

Sec. 04.11.800. Petition for municipal authority. (a) Notwithstanding a contrary provision of this chapter, a first class city or home rule city may petition the board for the authority to issue, renew, deny, suspend, revoke, and regulate, within the boundaries of the city, municipal restaurant or eating place licenses under AS 04.11.805 and municipal package store licenses under AS 04.11.810. The local governing body of the first class city or home rule city shall demonstrate to the board that the city meets the criteria in (b) of this section.

(b) The board, following a public hearing, shall approve the city's petition if the board finds that the

(1) local governing body of the city has adopted a resolution authorizing the city to submit a petition under this section; and

(2) city

(A) serves as a center for commercial activity inside and outside the boundaries of the city;

(B) has adopted a comprehensive plan and zoning regulations;

(C) maintains a local law enforcement department with a chief of police and at least one police officer; and

(D) has adopted a written procedure for the issuance, renewal, denial, suspension, and revocation of licenses under AS 04.11.805 and 04.11.810, including a fee schedule, requirements for public notice and hearing, and a process for applications, inspections, and audits.

(c) The authority granted by the board to a first class city or home rule city

1 under this section does not include the authority to enforce the criminally punishable
 2 provisions of this title and regulations adopted by the board, except that a first class
 3 city or home rule city may suspend or revoke a license issued under AS 04.11.805 or
 4 04.11.810 if the licensee violates a provision of this title or a regulation adopted under
 5 this title.

6 **Sec. 04.11.805. Municipal restaurant or eating place license.** (a) A
 7 municipal restaurant or eating place license authorizes a restaurant or eating place to
 8 sell beer and wine for consumption only on the licensed premises.

9 (b) The local governing body of a first class city or home rule city approved
 10 by the board under AS 04.11.800 may issue a municipal restaurant or eating place
 11 license only if the local governing body determines that the premises to be licensed

12 (1) is a bona fide restaurant or eating place;

13 (2) does not maintain more than one room in which there is a fixed
 14 counter or service bar at which beer and wine are sold or served to members of the
 15 public for consumption, except as provided in (f) of this section; and

16 (3) holds a food service permit from the Department of Environmental
 17 Conservation.

18 (c) The holder of a restaurant or eating place license issued under
 19 AS 04.11.100 who is issued a municipal restaurant or eating place license under this
 20 section for the same licensed premises shall surrender the restaurant or eating place
 21 license issued under AS 04.11.100 to the board or its agent immediately after
 22 obtaining the municipal restaurant or eating place license issued under this section.

23 (d) A license issued under this section may be renewed only if the licensee
 24 provides evidence to the local governing body's satisfaction showing that, for the
 25 preceding calendar year, gross receipts from the sale of beer and wine on the licensed
 26 premises constituted not more than 35 percent of the gross receipts from the sale of
 27 food, beer, and wine on the licensed premises.

28 (e) The holder of a restaurant or eating place license issued under
 29 AS 04.11.100 may, with the board's written consent, apply to the local governing body
 30 of a first class city or home rule city to convert the restaurant or eating place license to
 31 a municipal restaurant or eating place license under this section.

(f) The holder of a municipal restaurant or eating place license may maintain on the licensed premises more than one room in which there is regularly maintained a fixed counter or service bar at which beer and wine are sold or served to members of the public for consumption if the local governing body of a first class city or home rule city issues to the licensee, after investigation, a duplicate of the original license for each of the rooms.

Sec. 04.11.810. Municipal package store license. (a) A municipal package store license authorizes the licensee to sell alcoholic beverages to a person present on the licensed premises or to a person known to the licensee who makes a written solicitation to the licensee for shipment.

(b) The local governing body of a first class city or home rule city approved by the board under AS 04.11.800 may issue a municipal package store license to a retail business only if the

(1) retail business complies with the requirements of AS 04.11.150(a), (c) - (e), and (g) - (k);

(2) square footage of the premises to be licensed is less than 15 percent of the total square footage of the retail business; and

(3) retail business is primarily engaged in selling household products or dispensing pharmaceuticals; in this paragraph, "household products" means groceries, apparel, housewares, or personal care products, but does not include gasoline or diesel fuel.

(c) The holder of a package store license issued under AS 04.11.150 who is issued a municipal package store license under this section for the same licensed premises shall surrender the package store license issued under AS 04.11.150 to the board or its agent immediately after obtaining the municipal package store license issued under this section.

(d) A license issued under this section may be renewed only if the licensee provides evidence to the local governing body's satisfaction showing that, for the preceding calendar year, gross receipts from the sale of alcohol on the licensed premises constituted not more than 15 percent of the gross receipts of the retail business.

1 **Sec. 04.11.815. Renewal.** For renewal of a license issued under AS 04.11.805
 2 or 04.11.810, the licensee shall annually provide the local governing body of a first
 3 class city or home rule city with written evidence showing that the licensee meets the
 4 requirements for original licensure and renewal. The local governing body shall
 5 annually file with the board written documentation of the licensee's compliance with
 6 this section.

7 **Sec. 04.11.820. Appeals.** A person may appeal a decision of the local
 8 governing body of a first class city or home rule city under AS 04.11.800 - 04.11.830
 9 to a hearing officer appointed by the first class city or home rule city.

10 **Sec. 04.11.825. Transfer.** A license issued under AS 04.11.805 or 04.11.810
 11 may not be transferred to another person or a new location.

12 **Sec. 04.11.830. Definitions.** Notwithstanding the definition of "local
 13 governing body" in AS 04.21.080(b), in AS 04.11.800 - 04.11.830, "local governing
 14 body" means a city council or a local alcohol control board established in ordinance by
 15 a city council.

16 * **Sec. 6.** AS 04.16.210 is amended to read:

17 **Sec. 04.16.210. Penalty for making false statement.** If a false statement is
 18 made in an application to the board under AS 04.11.260 - 04.11.290 or in an
 19 application to a municipality under AS 04.11.800 - 04.11.830, the applicant is
 20 guilty of perjury and, upon conviction, is subject to the penalty provided by law for the
 21 crime of perjury under AS 11.56.200.

22 * **Sec. 7.** AS 04.21.020(a) is amended to read:

23 (a) Except as provided under (b) and (d) of this section, a person who provides
 24 alcoholic beverages to another person may not be held civilly liable for injuries
 25 resulting from the intoxication of that person unless the person who provides the
 26 alcoholic beverages holds a license authorized under AS 04.11.080 - 04.11.220,
 27 04.11.805, or 04.11.810 or is an agent or employee of such a licensee and

28 (1) the alcoholic beverages are provided to a person under the age of
 29 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures
 30 in good faith from the person a signed statement, liquor identification card, or driver's
 31 license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the

1 person is 21 years of age or older; or

2 (2) the alcoholic beverages are provided to a drunken person in
3 violation of AS 04.16.030.

4 * **Sec. 8.** AS 04.21.080(b)(15) is amended to read:

5 (15) "licensed premises" means any or all designated portions of a
6 building or structure, rooms or enclosures in the building or structure, or real estate
7 leased, used, controlled, or operated by a licensee in the conduct of business for which
8 the licensee is licensed by the board or a municipality at the specific address for
9 which the license is issued;

10 * **Sec. 9.** AS 04.21.080(b) is amended by adding a new paragraph to read:

11 (21) "bona fide restaurant or eating place" means an establishment or a
12 portion of an establishment where, during all times beer and wine are served or
13 consumed,

14 (A) the patron's principal activity is consumption of food; and

15 (B) a variety of food items appropriate for meals is available
16 for sale as shown on a menu provided to patrons and filed with the board.

17 * **Sec. 10.** AS 09.65.315(b) is amended to read:

18 (b) A person licensed under AS 04.11.080 - 04.11.255, 04.11.805, or
19 04.11.810, or an agent or employee of the person, is not liable for damages resulting
20 from a motor vehicle accident described under (a) of this section. A person or entity
21 that participates in making arrangements for transportation of a vehicle under (a) of
22 this section is not liable for damages resulting from a motor vehicle accident described
23 in (a) of this section.

24 * **Sec. 11.** AS 29.35.080(a) is amended to read:

25 (a) A municipality may regulate the possession, barter, sale, importation, and
26 consumption of alcoholic beverages under AS 04.11.480 - 04.11.509 and
27 AS 04.21.010. This subsection applies to home rule and general law
28 municipalities.

29 * **Sec. 12.** AS 29.35.080 is amended by adding a new subsection to read:

30 (c) A first class city or home rule city may issue, renew, deny, suspend,
31 revoke, and regulate alcoholic beverage licenses under AS 04.11.800 - 04.11.830.

1 * **Sec. 13.** AS 29.35.310(a) is amended to read:

2 (a) **Except for the powers granted to a city under AS 04.11.800 -**
3 **04.11.830, a** [A] city in a first or second class borough may transfer to the borough in
4 which it is located any of its powers or functions, subject to the approval of the
5 assembly.

6 * **Sec. 14.** AS 29.35.080(b) is repealed.