



## MEMORANDUM

TO: Alcoholic Beverage Control Board

DATE: January 7, 2022

FROM: Carrie Craig, RLS

RE: Competing Applications

### Regulatory Authority:

#### **3 AAC 304.110 Mutually exclusive and competing applications**

- (a) When the board receives applications for more licenses of a type than can be supported by the population under AS 04.11.400(a), so that the board is required to deny one or more applications, the applications are "mutually exclusive" under this section.
- (b) The board will consider, and grant or deny, mutually exclusive applications in the order in which they are received. However, all "competing applications," as defined under (c) of this section, will be treated as if they were received at the same time, and will be considered together.
- (c) "Competing applications" are those mutually exclusive applications for licenses
  - (1) inside a unified municipality, organized borough, or incorporated city that,
    - (A) if the applications are for one or more licenses which have become available because of a change of local option or a change in population, are received during the 30-day period beginning on the date the license or licenses first become available; or
    - (B) if the applications are for the last available license other than a license described in (A) of this paragraph, are received within the same 30-day period beginning on the date the board received the first application for the license; and
  - (2) outside a unified municipality, organized borough, or incorporated city, that are received 30 days or less after the immediately preceding application for the license.
- (d) Nothing in this section may be interpreted to allow the 90-day time limit for a decision on an application, set by AS 04.11.510, to be exceeded.

#### **3 AAC 304.112. Selection among competing applications within incorporated cities, organized boroughs, and unified municipalities**

- (a) Within an incorporated city, organized borough, or unified municipality, all competing applications, as defined in 3 AAC 304.110(c), will be considered together by the board under this section.
- (b) If affiliates, or persons who are related by birth or marriage, have filed competing applications for premises at a single location, the board will, in its discretion, deny all but one of those applications.
- (c) The board will deny any competing applications which are required to be denied under AS 04.11.320 (Denial of new licenses), 04.11.340 (Denial of request for relocation), or 04.11.480 (Local governing body protest).
- (d) If the denial of one or more competing applications under (b) or (c) of this section causes
- (e) any other competing applications to cease to be mutually exclusive, the board will, in its

- (f) discretion, approve the applications which are no longer mutually exclusive.
- (g) If there continue to be competing applications after the steps in (b), (c), and (d) of this section are taken, the board will, in its discretion, grant any applications the board considers most in the public interest. The factors the board will, in its discretion, consider in determining the public interest include the safety, suitability, and proximity to other licensed premises of the location of the proposed premises; the size of the proposed premises; community amenities associated with the premises, including entertainment, dining facilities, and tourist accommodations; and preferences or priorities expressed by the local governing body.
- (h) If there continue to be competing applications after the steps in (b), (c), (d), and (e) of this section are taken, the board will, in its discretion, conduct a drawing to determine which remaining competing applications to approve.
- (i) A competing application not granted under this section will be denied without prejudice to future application.
- (j) A license granted under this section will be issued after the time within which unsuccessful competing applicants may appeal the denial of their applications, and after all statutory requirements are met by the successful applicant.

**Sec. 04.11.320. Denial of new licenses and permits.**

- (a) An application requesting issuance of a new license shall be denied if
  - (1) the board finds, after review of all relevant information, that issuance of the license would not be in the best interests of the public;
  - (2) issuance of the license is prohibited by AS 04.11.410, relating to location of premises near churches and schools;
  - (3) the application has not been completed in accordance with AS 04.11.260;
  - (4) issuance of the license would violate the restrictions pertaining to the particular license imposed under this title;
  - (5) issuance of the license is prohibited under this title as a result of an election conducted under AS 04.11.507;
  - (6) the requirements of AS 04.11.420 — 04.11.450 relating to zoning, ownership and location of the license, and the identity and financing of a licensee have not been met;
  - (7) issuance of the license is prohibited under AS 04.11.400(a) or prohibition of issuance of the license is found necessary under AS 04.11.400(b);
  - (8) the application contains false statements of material fact;
  - (9) the license is sought for the sale of alcoholic beverages in a first or second class city where there are no licensed premises at the time of application unless a majority of the voters have voted not to approve a local option to restrict or prohibit the sale of alcoholic beverages under AS 04.11.491, have voted to approve a local option to allow the type of premises under AS 04.11.491(a)(2) or (3), or have voted to remove a restriction or prohibition on the sale of alcoholic beverages under AS 04.11.495; or
  - (10) the license is sought for the sale of alcoholic beverages in an established village where there are no licensed premises at the time of application unless a majority of the voters have voted not to approve a local option to restrict or prohibit the sale of alcoholic beverages under AS 04.11.491, have voted to approve a local option to allow the type of premises under AS 04.11.491(b)(2), or have voted to remove a restriction or prohibition on the sale of alcoholic beverages under AS 04.11.495

**Background:** The City of Cordova allows for one brewery license based on the population limits set forth in AS 04.11.400. On October 19, 2021 AMCO received a new brewery license application for Witch Kitchen and on October 26, 2021 we received another new brewery license application for No Road Brewing – both located in the City of Cordova. The City of Cordova has waived their right to protest both applications.