

**SPECIAL ASSEMBLY MEETING
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

March 24, 2014 6:00 PM

Municipal Building - Chambers

Special Assembly Meeting 2014-10; Immediately followed by Assembly Committee of the Whole Worksession

Submitted by: _____
Kimberly A. Kiefer
City and Borough Manager

I. FLAG SALUTE

II. ROLL CALL

III. SPECIAL ORDER OF BUSINESS

**A. Tides Complex, Inc. Dragon Inn Chinese Cuisine d/b/a Chinese Restaurant & Motel
Liquor License #4405 Renewal**

By letter dated February 24, 2014, Tides Complex, Inc. was notified of its obligation to satisfy unpaid utility fees in the amount of \$39,234.08. Tides Complex, Inc. was given until March 20, 2014 to either pay the past due bill, or contact the CBJ to make payment arrangements. Around this same time, the CBJ was notified that the ABC Board had before it a license renewal application from Tides Complex, Inc. If left unpaid, the Tides Complex, Inc., backbill would be cause for the CBJ to protest the renewal application (CBJ 20.25.025(b)(3)). Because this back due billing issue coincided with the CBJ's deadline to protest the renewal application to the ABC Board, the Clerk's office sent notification to Tides Complex, Inc., that its liquor license renewal would be before the Assembly Human Resources Committee (HRC) at its meeting on Monday, March 17 and then the Assembly for final action at its meeting on Monday, March 24.

The HRC passed a motion to recommend the Assembly protest the renewal of liquor license #4405 Tides Complex Inc. d/b/a Dragon Inn Chinese Cuisine Inc. d/b/a Chinese Restaurant & Motel based on the outstanding water/sewer bill owing in the amount of \$38,754.08 plus \$480.00 for lock boxes, unless Tides Complex, Inc., pays, or makes arrangement to pay, the past due bill.

I recommend the Assembly protest the liquor licenserenewal according to the HRC motion from its March 17, 2014 meeting, unlessTides Complex, Inc., has contacted the CBJ to make payment arrangements or haspaid its bill in full. If Tides Complex, Inc., has not paid its bill in full, but made payment arrangements, I recommend the Assembly ask the ABC Board to place conditions on license #4405 requiringthe licensee to stay current with its payment arrangements.

IV. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

V. ASSEMBLY COMMENTS AND QUESTIONS

VI. ADJOURNMENT

Note: Agenda packets are available for review online at www.juneau.org.

ADA accommodations available upon request: Please contact the Clerk's office 72 hours prior to any meeting so arrangements can be made to have a sign language interpreter present or an audiotape containing the Assembly's agenda made available. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: city_clerk@ci.juneau.ak.us

**ASSEMBLY AGENDA/MANAGER'S REPORT
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

Tides Complex, Inc. Dragon Inn Chinese Cuisine d/b/a Chinese Restaurant & Motel Liquor License
#4405 Renewal

MANAGER'S REPORT:

By letter dated February 24, 2014, Tides Complex, Inc. was notified of its obligation to satisfy unpaid utility fees in the amount of \$39,234.08. Tides Complex, Inc. was given until March 20, 2014 to either pay the past due bill, or contact the CBJ to make payment arrangements. Around this same time, the CBJ was notified that the ABC Board had before it a license renewal application from Tides Complex, Inc. If left unpaid, the Tides Complex, Inc., backbill would be cause for the CBJ to protest the renewal application (CBJ 20.25.025(b)(3)). Because this back due billing issue coincided with the CBJ's deadline to protest the renewal application to the ABC Board, the Clerk's office sent notification to Tides Complex, Inc., that its liquor license renewal would be before the Assembly Human Resources Committee (HRC) at its meeting on Monday, March 17 and then the Assembly for final action at its meeting on Monday, March 24.

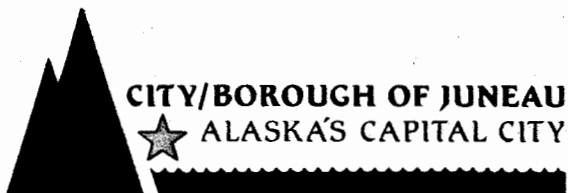
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RECOMMENDATION:

I recommend the Assembly protest the liquor licenserenewal according to the HRC motion from its March 17, 2014 meeting, unlessTides Complex, Inc., has contacted the CBJ to make payment arrangements or haspaid its bill in full. If Tides Complex, Inc., has not paid its bill in full, but made payment arrangements, I recommend the Assembly ask the ABC Board to place conditions on license #4405 requiringthe licensee to stay current with its payment arrangements.

ATTACHMENTS:

Description	Upload Date	Type
☐ March 12, 2014 Letter to Tides Complex Inc. with attachments	3/12/2014	Liquor License



OFFICE OF THE MUNICIPAL CLERK

Ph: (907)586-5278 Fax: (907)586-4552

e-mail: Beth McEwen@ci.juneau.ak.us

March 12, 2014

Via certified & regular mail

Tides Complex, Inc.

Dragon Inn Chinese Cuisine Inc. d/b/a Chinese Restaurant & Motel

5000 Glacier Hwy.

Juneau, AK 99801

Re: Restaurant Eating Place Liquor License #4405 Renewal for 2013-2014

Dear Tides Complex, Inc.

The State of Alaska Alcohol Beverage Control staff has notified the City and Borough of Juneau of your liquor license renewal for 2013-2014 and submitted the renewal for comment before the local governing body.

As is our practice in these matters, the staff from the Fire, Finance, Police, Public Works, and Community Development Departments reviewed your establishment to insure compliance with city code. As you can see from the enclosed February 24, 2014 letter, there is an outstanding water/sewer bill currently owing in the amount of \$38,754.08 (plus \$480.00 for lock boxes).

This item has been scheduled for the Assembly Human Resources Committee (HRC) meeting on Monday, March 17, 2014 at 6:00p.m. in the Assembly Chambers. The HRC will be considering whether to recommend to the Assembly that the Assembly protest the liquor license renewal application, recommend to the ABC that the license be renewed with conditions, or take no action. In the event of a protest recommendation, CBJ 20.25.025 provides you with the right to an informal hearing before the Assembly to defend your liquor license application. Per CBJ 20.25.025, an informal hearing is being scheduled to take place before the assembly on Monday, March 24, 2014 at 6:00p.m. in the Assembly Chambers. At the conclusion of the hearing, the Assembly decision to protest the application shall stand unless the majority of the Assembly votes to withdraw the protest.

Copies of the CBJ Code and Alaska Statutes pertaining to the renewal and protest process are enclosed for your reference.

March 12, 2014

Page 2 of 2

Liquor License Renewal Letter to Tides Complex Inn d/b/a Dragon Inn Chinese Cuisine Inc. d/b/a Chinese Restaurant & Motel

I strongly urge you to contact the contact the CBJ Public Works Water Utility Superintendent Dave Crabtree at (907) 586-0917 or the CBJ Revenue Collector Nicole Tragus at 586-0383 to work out a reasonable plan per the instructions stated in the February 24 letter for paying the amounts owing.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth McEwen". The signature is fluid and cursive, with a large loop at the end.

Beth McEwen
Deputy Clerk

Enclosures:

- January 31, 2014: ABC Notice of Renewal with Liquor License Application
- February 24, 2014 Letter (without attachments) from Assistant City Attorney Christopher Orman re: Past Water and Sewer Use – Back Fees Owed
- Alaska Statutes 04.11.480 and CBJ Code 20.25.025

cc via email:

Assembly Human Resources Committee & Assembly
Liquor License Staff Reviewers



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

ALCOHOLIC BEVERAGE CONTROL BOARD

2400 Viking Drive
Anchorage, Alaska 99501
Main: 907.269.0350
TDD: 907.465.5437
Fax: 907.334.2285

January 31, 2014

Renewal Application Notice

City of Juneau

Attn: City Clerk & Beth McEwen

VIA EMAIL: city_clerk@ci.juneau.ak.us; beth_mcewen@ci.juneau.ak.us

CITY CLERK
FEB 04 2014
RECEIVED

DBA	Lic Type	Lic #	Owner	Premise Address
Breakwater Inn Restaurant & Lounge	Beverage Dispensary- Tourism AS 04.11.400(d)	175	Q Enterprise Inc	1711 Glacier Ave
Imperial Bar	Beverage Dispensary	550	Imperial Bar Inc	241 Front Street
Rendezvous	Beverage Dispensary	772	NYT Inc.	184 S Franklin St
The Broiler	Restaurant/Eating Place	851	Rodfather's LLC	Nugget Mall
Taku Glacier Flightseeing/Salmon Bake	Restaurant/Eating Place	1416	Taku Glacier Lodge Inc	Taku River
Oaken Keg Spirit Shops #1820	Package Store	3507	Carr-Gottstein Foods Co	3011 Vintage Blvd
Triple F Bar & Grill	Beverage Dispensary	3695	64 Thunderbird LLC	9109 Mendenhall Road, Ste. 4B
Flight Deck	Restaurant/Eating Place	3733	Catapult, Inc.	2 Marine Way Ste. 128
Hangar on the Wharf	Beverage Dispensary	3755	Tailwind Inc	#2 Marine Way
Rockwell	Beverage Dispensary	4349	Fishbone, LLC	117 Franklin Street
Dragon Inn	Restaurant/Eating Place	4405	Tides Complex Inc	5000 Glacier Hwy
Hangar on the Wharf Pizzeria Roma	Beverage Dispensary- Duplicate	4788	Tailwind Inc	#2 Marine Way Ste#104

Moved
to 3/17/14
Meeting

Hangar on the Wharf Ballroom	Beverage Dispensary- Duplicate	4797	Tailwind Inc	#2 Marine Way Ste #105
Twisted Fish Company	Beverage Dispensary	4842	Up The Creek Inc	550 S Franklin Street
Specialty Imports	Wholesale - General	4943	Specialty Imports Inc	540 W 8th St

We have received a renewal application for the above listed licenses within your jurisdiction. This is the notice as required under AS 04.11.520. Additional information concerning filing a "protest" by a local governing body under AS 04.11.480 is included in this letter.

A local governing body as defined under AS 04.21.080(11) may protest the approval of an application(s) pursuant to AS 04.11.480 by furnishing the board and the applicant with a clear and concise written statement of reasons in support of a protest within 60 days of receipt of this notice. If a protest is filed, the board will not approve the application unless it finds that the protest is "arbitrary, capricious and unreasonable". Instead, in accordance with AS 04.11.510(b), the board will notify the applicant that the application is denied for reasons stated in the protest. The applicant is entitled to an informal conference with either the director or the board and, if not satisfied by the informal conference, is entitled to a formal hearing in accordance with AS 44.62.330-44.62-630. **IF THE APPLICANT REQUESTS A HEARING, THE LOCAL GOVERNING BODY MUST ASSIST IN OR UNDERTAKE THE DEFENSE OF ITS PROTEST.**

Under AS 04.11.420(a), the board may not issue a license or permit for premises in a municipality where a zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages, unless a variance of the regulation or ordinance has been approved. Under AS 04.11.420(b) municipalities must inform the board of zoning regulations or ordinances which prohibit the sale or consumption of alcoholic beverages. If a municipal zoning regulation or ordinance prohibits the sale or consumption of alcoholic beverages at the proposed premises and no variance of the regulation or ordinance has been approved, please notify us and provide a certified copy of the regulation or ordinance if you have not previously done so.

Protest under AS 04.11.480 and the prohibition of sale or consumption of alcoholic beverages as required by zoning regulation or ordinance under AS 04.11.420(a) are two separate and distinct subjects. Please bear that in mind in responding to this notice.

AS 04.21.010(d), if applicable, requires the municipality to provide written notice to the appropriate community council(s).

If you wish to protest the application referenced above, please do so in the prescribed manner and within the prescribed time. Please show proof of service upon the applicant. For additional information please refer to 13 AAC 104.145, Local Governing Body Protest.

Note: Applications applied for under AS 04.11.400(g), 13 AAC 104.335(a)(3), AS 04.11.090(e), and 13 AAC 104.660(e) must be approved by the governing body.

Sincerely,

SHIRLEY A. COTÉ
Director

/s/ *Christine C. Lambert*
Christine C. Lambert
Licensing & Records Supervisor
Christine.lambert@alaska.gov

2014/2015 Liquor License Renewal – Restaurant Eating Place

License Number	License Type	Establishment Name
4405	Restaurant/Eating Place	Dragon Inn
If Seasonal Lic.	Seasonal Date From:	Seasonal Date To:

Mailing Address	Premises Address
Tides Complex Inc	5000 Glacier Hwy
5000 Glacier Hwy Juneau, AK 99801	City: Juneau, City & Bor Borough: Other
Community Council/s (Anchorage & Mat-Su only)	

Please mark the correct box to answer:

Was your business open at least 30 days for 8 hours each day in 2012? ☒ Yes ☐ No
 Was your business open at least 30 days for 8 hours each day in 2013? ☒ Yes ☐ No
 Has the licensed premises changed from the last diagram submitted? ☐ Yes ☒ No
 Has any person named in this application been convicted of a felony or Title 4 violation? ☐ Yes ☒ No
 Gross receipts from sale of food were at least 50% of total gross receipts for 2012 and 2013? ☒ Yes ☐ No

Please answer the following questions:

What is a good contact phone number for us to use? 907-586-4888
 Please give us a fax number if available or write N/A 907-586-4488
 Give us an email address to use in contacting you QPETERLAM@AOL.COM
 Please write your Employer Identification Number (EIN) here 20-2602125

List all corporation/LLC members, managers and shareholders below:

Name & Mailing Address	Title	Share %	Phone
Quy T. Lam 5000 Glacier Hwy Juneau	President	50%	907-957-0553
THANH NGUYEN 6007 Lemon St Juneau	Vice President	50%	907-780-5810
ELISABETH TRAN 5000 Glacier Hwy Juneau	Treasurer	0%	907-586-4888

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

Name & Mailing Address	Title	Phone
Duy T. Lam 15000 Glenn Hwy Tacoma	President of Corp.	907-586-4888 907. 907-2553

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 or partner), 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 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.

[Signature]
Licensee Signature

Duy T. Lam President of Corp.
Printed Name & Title

[Signature]
Notary Signature
Notary Public in and for the State of Alaska

Subscribed and sworn to before me this
30th day of December, 2013

My commission expires: April, 20, 2016

License Fee	\$ 600.00
Filing Fee	\$ 200.00
TOTAL	\$
Late Fee of \$500.00 – If Received or Postmarked after 12/31/13	\$
Fingerprint Fee – \$51.50 per person (only for new owners/members)	\$
GRAND TOTAL	\$ 800.00



Law Department City & Borough of Juneau

February 24, 2014

USPS Certified and First Class Mail

Tides Complex, Inc.
Calvin Tang
5050 Glacier Hwy.
Juneau, AK 99801

Re: Notice of Past Water and Sewer Use – Back Fees Owed

Dear Mr. Tang:

Your water/sewer bills and accounts for Dragon Inn-Tides Motel have been transferred to the City and Borough of Juneau's Law Department. The CBJ's Public Works Department-Water Utility's file shows that you presently owe a total of \$38,754.08 (plus an additional \$480.00 for the lock boxes) to the City and Borough of Juneau in fees, charges, assessments, and interest for water use, sewer use, and taxes and penalties therein. This amount concerns what the CBJ has determined as your actual water use and thus sewer use from August 2009 until March 21, 2013.

If you have an attorney, he or she should contact me as soon as possible.

Your Utilities account information from August 2009 to March 29, 2013 – March 29, 2013 being the date when a lock box was installed and the meter could not be accessed except by CBJ employees – shows that the meters for your businesses did not accurately register the amount of water actually being used by Tides Motel and Dragon Inn.

The accuracy of your actual water use became of concern when the CBJ examined your account from November 2012 until March 21, 2013, wherein CBJ noted 86 days when your meter did not register any water use by Tides Motel or Dragon Inn.

For example, as to Tides Motel, CBJ accounts indicate the following:

1. From November 15, 2012 to November 27, 2012, the meter registered the same read each day of 860, meaning the meter did not change and thus no water was used over a twelve-day period;
2. From December 10, 2012 to December 28, 2012, the meter registered the same read each day of 1015, meaning the meter did not change over an eighteen-day period;
3. From January 7, 2013 to January 18, 2013, the meter registered the same read each day of 1090, meaning the meter did not change over an eleven-day period;

Amy G. Mead
Municipal Attorney

Jane E. Sebens
Deputy Municipal Attorney

Christopher F. Orman
Assistant Municipal Attorney

Robyn L. Carlisle
Assistant Municipal Attorney

Sherri L. Petticrew
Assistant Municipal Attorney

Robert H. Palmer III
Assistant Municipal Attorney *

Debbie L. Senn
Office Manager

Roxie Starr
Litigation Assistant II

Janet Mehl
Litigation and Civil
Support Assistant

Leo Helmar
Legal Assistant II

Audrey Dean
Litigation and Civil
Support Assistant

4. From January 25, 2013 to January 30, 2013, the meter registered the same read each day of 1160, meaning the meter did not change over an six-day period;
5. From February 4, 2013 to February 28, 2013, the meter registered the same read each day of 1205, meaning the meter did not change over a twenty-four-day period;
6. From March 11, 2013 to March 21, 2013, the meter registered the same read each day of 1340, meaning the meter did not change over a ten-day period.

This information indicates approximately 81 days of little or no water use by Tides Motel during the period of November 1, 2012 to March 21, 2013.

Similarly, as to Dragon Inn, CBJ accounts indicate the following:

1. From November 15, 2012 to November 27, 2012, the meter registered the same read each day of 1910, meaning the meter did not change and thus no water was used over a twelve-day period;
2. From December 10, 2012 to December 28, 2012, the meter registered the same read each day of 2235, meaning the meter did not change over an eighteen-day period;
3. From January 7, 2013 to January 18, 2013, the meter registered the same read each day of 2410, meaning the meter did not change over an eleven-day period;
4. From January 25, 2013 to January 30, 2013, the meter registered the same read each day of 2560, meaning the meter did not change over an five-day period;
5. From February 4, 2013 to February 28, 2013, the meter registered the same read each day of 2650, meaning the meter did not change over a twenty-four-day period;
6. From March 11, 2013 to March 21, 2013, the meter registered the same read each day of 2925, meaning the meter did not change over a ten-day period.

This too indicates a total of approximately 80 days of little to no water use by Dragon Inn from November 1, 2012 to March 21, 2013.

The inconsistencies then continue when examining use or consumption of water by both Tides Motel and Dragon Inn outside the 80 days outlined above. From August, 2009 until March 21, 2013 – meaning before the lock boxes were installed – CBJ Utilities' records establish Tides Motel on average used 20- to 50-thousand gallons of water per month when the meter did register water use. During that same period of time, Dragon Inn indicates a similar average use of 20- to 60-thousand gallons of water use per month. Therefore, it would appear the meter should have registered use during the 80 days outlined above.

Because of concerns about the accuracy of the water use being obtained through your meters, the CBJ installed a lock box on each meter on March 29, 2013. This ensured no one could access the meter, and allowed the CBJ to obtain a clear understanding of Tides Motel's and Dragon Inn's water use.

After the lock boxes were installed, the meters provided readings showing the following for Tides Motel:

1. For May 2013, consumption of 39- thousand gallons of water;
2. For June 2013, consumption of 41- thousand gallons of water;
3. For July 2013, consumption of 43-thousand gallons of water;
4. For August 2013, consumption of 41-thousand gallons of water;
5. For September 2013, consumption of 34-thousand gallons of water; and

6. For October 2013, consumption of 31-thousand gallons of water.

These amounts yield an average monthly consumption by the Tides Motel of 38-thousand gallons of water; therefore close to what the average indicated from August 2009 to March 21, 2013 when the meter was providing a monthly reading. The meter for Dragon Inn provided the following readings :

1. For May 2013, consumption of 92-thousand gallons of water;
2. For June 2013, consumption of 106-thousand gallons of water;
3. For July 2013, consumption of 108-thousand gallons of water;
4. For August 2013, consumption of 110-thousand gallons of water;
5. For September 2013, consumption of 129-thousand gallons of water; and
6. For October 2013, consumption of 111-thousand gallons of water.

These amounts yield an average monthly consumption by the Dragon Inn of 109-thousand gallons; therefore substantially greater than the 20- to 60-thousand gallon average the meter indicated from August 2009 to March 21, 2013 when the meter did provide a monthly reading.

The data culled after the lock boxes had been placed on the meters in question indicates from August 2009 to March 21, 2013, the Dragon Inn and Tides Motel were using significantly more water than the meters registered. The post-lock box readings also call into question the 86 days -- from November 2012 to March 21, 2013 -- where the meter did not register any water use.

Based on these facts, the CBJ Utilities Department has determined you owe -- for both the Tides Motel and Dragon Inn -- \$38,754.08. The amount owed represents the amount of water utilities, sewer utilities, and taxes owed pursuant to the use of water by Tides Motel and Dragon Inn which would have been billed had the meter been operating properly and registering your consumption properly.

As to water, the CBJ Utilities Department estimated your consumption by examining Tides Motel's water use and Dragon Inn's water use over a six-month period after the lock boxes were placed on the CBJ meters on March 29, 2013. Therefore, the CBJ determined what would have been your water use from August 2009 to March 21, 2013 by considering "the use . . . during the same season and under similar circumstances" as outlined under CBJ 75.01.100. This resulted in the CBJ finding Dragon Inn would use an average of 109-thousand gallons of water per month. Furthermore, this resulted in the CBJ finding Tides Motel would use an average of 38-thousand gallons of water per month. The CBJ then took these averages and subtracted what the meter indicated was the water use for each month from August 2009 to March 21, 2013 and then has billed for the difference between what should have been the average use and what the meter actually registered from August 2009 to March 21, 2013.¹ The amount owed is then calculated using the rate schedule under 75.01.180. For both the Tides Motel and Dragon Inn using these code provisions, \$8,180.01 in water use is owed.

As to sewer, again CBJ Utilities bases the water use on what appears to be Tides Motel's and Dragon Inn's average consumption as outlined above. Given the amount of water which the CBJ has calculated would have been used had the meter operated properly, the sewer use charges are then calculated under CBJ 75.02.130. For both the Tides Motel and Dragon Inn, \$28,728.64 in sewer use is owed.

The inclusion of taxes adds an additional \$1,845.43 to the water and sewer use amounts. Therefore, the costs for the additional water use, the costs for the additional sewer use, and the taxes therein result in the total amount of \$38,754.08 owed by you.

¹ See Enclosure showing a spreadsheet of the meter use, what the CBJ has determined would have been the expected use during that months, the difference between what the meter registered and what the CBJ has determined would have been the expected use during those months, and lastly the costs associated with such water use.

Failure to pay the amount owed can have various ramifications.

First, the CBJ can take civil action to collect the amount owed.

Second, under CBJ 75.01.110, your water service may be discontinued immediately for tampering with the meter or 90 days from the time you have been billed for the amount due in this matter. CBJ 75.01.110(a) states "The utility may discontinue service to a customer without advanced written notice . . . [if] the utility has evidence of meter tampering or fraud by the customer." Absent such a showing, CBJ 75.01.110(d)(1) allows the utility provider to discontinue service if the property owner fails to "pay water utility bills, fees, charges, assessments . . . within 90 days after the utility has billed for the amount as part of a statement on the customer's regular account." Accompanying this letter is a bill for the amount of \$38,754.08. Failure to pay within 90 days could result in CBJ discontinuing water service to your properties.

Third, failure to pay the amount owed can also result in the CBJ protesting the issuance of a license or renewal of a license to sell alcoholic beverages. CBJ 20.25.25(b)(3) states:

The assembly may protest the issuance, transfer, renewal, relocation, or continued operation of a license as provided in state law if it determines . . . there is a delinquent charge or assessment owing the City and Borough by the licensee for a municipal service provided for the benefit of the business conducted under the license or for a service or an activity provided or conducted by the municipality at the request of or arising out of an activity of the business conducted under the license.

By not paying the amount owed, Tides Motel and Dragon Inn would not be paying a charge for water and sewer utilities connected to the business. This would then allow the Assembly the right to protest issuance or renewal of an alcohol license to either of these businesses.

Lastly, in addition to the civil remedies available to the CBJ, the CBJ Utilities Department has evidence the meter readings here changed or stopped due to tampering with the meter. CBJ 75.01.220 states:

- (a) *Generally.* It is unlawful for any person, without authority from the public works department, to connect to or operate, or to damage, alter, or otherwise tamper with any water main, service line, meter, or other public works department equipment or facility.
- (b) *Penalty.* Any person who violates any of the provisions of this section is guilty of a Class B misdemeanor and shall be liable to the City and Borough for any expense, loss or damage occasioned by the City and Borough by reasons of such violation. A separate offense shall be deemed committed on each day during which a violation occurs or continues

CBJ 1.40.010 outlines a class B misdemeanor is punishable by up to 90 days in jail and a \$1,000 fine.

At this time, the CBJ is willing to accept a reasonable payment schedule. In order to resolve this matter, the CBJ would require you to agree to the entry of a confession of judgment in the amount of \$38,754.08 (plus \$480.00 for the cost of the lock boxes). In exchange, the CBJ would be willing to enter into a stipulation outlining a payment plan and agreeing to postpone

executing on the judgment, as long as you complied with the agreed-upon payment plan. Failure to make payments under an agreed-upon plan would result in the CBJ proceeding with its legal remedies.

Please contact the CBJ Public Works Water Utility or the Revenue Collections Office by March 20, 2014, and work out a reasonable plan for paying the amounts due. The phone numbers are listed below. If you fail to contact the CBJ by March 15, 2014 and work out a payment plan, legal action may be filed against you by the CBJ without further notice.

Sincerely,



Christopher F. Orman
Assistant City and Borough Attorney
(907) 586-5242

Enclosures:

Dragon Inn and Tides Motel Spreadsheets of Use Prior to Lock Boxes and After Lock Boxes
Meter Readings Spreadsheet for Tides Motel and Dragon Inn from November 2012 to March 21, 2013

Actual Meter Readings for Tides Motel and Dragon Inn (7 pages each)

CBJ Bill in the amount of \$38,754.08

Receipt for costs of the Lock Boxes

cc: Dave Crabtree, Water Utility Superintendent, CBJ Public Works (907) 586-0917
CBJ Collections (907) 586-5268

ALASKA STATUTES AND CBJ CODE SECTIONS
RE: ASSEMBLY LIQUOR LICENSE REVIEW AND PROTEST PROCESS

Alaska Statutes 04.11.480

Sec. 04.11.480. Protest.

(a) A local governing body may protest the issuance, renewal, relocation, or transfer to another person of a license by sending the board and the applicant a protest and the reasons for the protest within 60 days of receipt from the board of notice of filing of the application. A protest received after the 60-day period may not be accepted by the board, and in no event may a protest cause the board to reconsider an approved renewal, relocation, or transfer. The local governing body may protest the continued operation of a license during the second year of the biennial license period by sending the board and the licensee a protest and the reasons for the protest by January 31 of the second year of the license. The procedures for action on a protest of continued operation of a license are the same as the procedures for action on a protest of a renewal application. The board shall consider a protest and testimony received at a hearing conducted under AS 04.11.510(b)(2) or (4) when it considers the application or continued operation, and the protest and the record of the hearing conducted under AS 04.11.510 (b)(2) or (4) shall be kept as part of the board's permanent record of its review. If an application or continued operation is protested, the board shall deny the application or continued operation unless the board finds that the protest is arbitrary, capricious, and unreasonable.

(b) If the permanent residents residing outside of but within two miles of an incorporated city or an established village wish to protest the issuance, renewal, or transfer of a license within the city or village, they shall file with the board a petition meeting the requirements of AS 04.11.510 (b)(3) requesting a public hearing within 30 days of the posting of notice required under AS 04.11.310, or by December 31 of the year application is made for renewal of a license. The board shall consider testimony received at a hearing conducted under AS 04.11.510 (b)(3) when it considers the application, and the record of a hearing conducted under AS 04.11.510 (b)(3) shall be retained as part of the board's permanent record of its review of the application.

(c) A local governing body may recommend that a license be issued, renewed, relocated, or transferred with conditions. The board shall consider recommended conditions and testimony received at a hearing conducted under AS 04.11.510 (b)(2) or (4) when it considers the application or continued operation, and the recommended conditions and the record of the hearing conducted under AS 04.11.510 (b)(2) or (4) shall be kept as part of the board's permanent record of its review. If the local governing body recommends conditions, the board shall impose the recommended conditions unless the board finds that the recommended conditions are arbitrary, capricious, or unreasonable. If a condition recommended by a local governing body is imposed on a licensee, the local governing body shall assume responsibility for monitoring compliance with the condition, except as otherwise provided by the board.

(d) In addition to the right to protest under (a) of this section, a local governing body may notify the board that the local governing body has determined that a licensee has violated a provision of this title or a condition imposed on the licensee by the board. Unless the board finds that the local governing body's determination is arbitrary, capricious, or unreasonable, the board shall prepare the determination as an accusation against the licensee under AS 44.62.360 and conduct proceedings to resolve the matter as described under AS 04.11.510 (c).

CBJ Code 20.25.025

20.25.025 Assembly review of license issuance, renewal, transfer, relocation, or continued operation.

(a) The assembly may protest the issuance, renewal, transfer, relocation, or continued operation of an alcoholic beverage license as provided in state law. The protest shall cite any of the following criteria which the assembly determines to be pertinent:

- (1) The character and public interests of the surrounding neighborhood;
- (2) Actual and potential law enforcement problems, including the proximity of the premises to law enforcement stations and patrols;

- (3) The concentration of other licenses of the same and other types in the area;
- (4) Whether the surrounding area experiences an unacceptable rate of alcohol abuse or of crime or accidents in which the abuse of alcohol is involved;
- (5) The adequacy of parking facilities;
- (6) The safety of ingress to and egress from the premises;
- (7) Compliance with state and local fire, health and safety codes;
- (8) The degree of control the licensee has or proposes to have over the conduct of the licensed business;
- (9) The history of convictions of the applicants and affiliates of the applicants for:
 - (A) Any felony involving moral turpitude;
 - (B) Any violation of AS title 04; and
 - (C) Any violation of the alcoholic beverage control laws of another state as a licensee of that state;
- (10) Whether the applicant or the applicant's affiliates are untrustworthy, unfit to conduct a licensed business or constitute a potential source of harm to the public;
- (11) Any other factor the assembly determines is generally relevant or is relevant to a particular application.
 - (b) The assembly may protest the issuance, transfer, renewal, relocation, or continued operation of a license as provided in state law if it determines any of the following conditions exist:
 - (1) The business operated under the license is, on the date the assembly considers the license, delinquent in the payment of any sales tax or penalty or interest on sales tax arising out of the operation of the licensed premises;
 - (2) There are delinquent property taxes or local improvement district assessments or penalty or interest thereon arising out of real or personal property owned in whole or in part by any person named in the application as an applicant or on the permit which is to be continued where such property is used, or is to be used, in whole or in part in the business conducted or to be conducted under the license;
 - (3) There is a delinquent charge or assessment owing the City and Borough by the licensee for a municipal service provided for the benefit of the business conducted under the license or for a service or an activity provided or conducted by the municipality at the request of or arising out of an activity of the business conducted under the license;
 - (4) If the license requested is for a beverage dispensary and is requested under AS 04.11.400(d)(1), unless the tourist facility will contain 30 or more rooms;
 - (5) If the application is for the issuance or relocation of a license and, after the issuance or relocation, there would be:
 - (A) More than one restaurant or eating place license for each 1,500 population, or fraction thereof, residing within the City and Borough; or

- (B) More than one license of each other type for each 3,000 population or fraction thereof residing within the City and Borough.
- (6) The business operated or to be operated under the license is violating or would violate the zoning code of the City and Borough; or
- (7) The business operated under the license is, on the date the assembly considers the application, in violation of state or local fire, health, or safety codes. A criminal conviction of this violation is not a prerequisite for a protest under this section.
- (c) If the assembly or committee or a subcommittee thereof recommends protest of the issuance, renewal, transfer, relocation, or continued operation of a license it shall state the basis of the protest and the applicant shall be afforded notice and an opportunity to be heard at an abbreviated informal hearing before the assembly to defend the application. For the purposes of this subsection, notice shall be sufficient if sent at least ten days prior to the hearing by certified first class mail to the address last provided by the applicant to the municipal sales tax examiner. At the conclusion of the hearing, the assembly decision to protest the application shall stand unless the majority of the assembly votes to withdraw the protest.
(Serial No. 84-50, § 4, 1984; Serial No. 86-35, §§ 2, 3, 1986; Serial No. 93-25, § 2, 1993; Serial No. 2002-06, § 2, 2-25-2002; Serial No. 2002-44, § 2, 12-2-2002)

State Law References: Assembly protest, AS 04.11.480.