



## **KENAI PENINSULA BOROUGH**

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**MIKE NAVARRE  
BOROUGH MAYOR**

### **MEMORANDUM**

**TO:** Kelly Cooper, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Mike Navarre, Mayor *up for the mayor*

**FROM:** Colette G. Thompson, Borough Attorney *CT*  
Brandi Harbaugh, Acting Finance Director *BH*

**DATE:** June 15, 2017

**SUBJECT:** Protest of Aqua Pesca, L.L.C. Liquor License

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Aqua Pesca, L.L.C. dba Chinooks Waterfront recently filed for Chapter 7 bankruptcy. The bankruptcy code at 11 U.S.C. §362(a)(6) prohibits a creditor from acting to collect, assess or recover a claim against a debtor who has filed for bankruptcy.

Protesting the transfer of a liquor license in order to obtain payment of the unpaid taxes would appear to violate this prohibition. *See In re Farmers Markets, Inc.*, 792 F.2d 1400 (9<sup>th</sup> Cir. 1986) (“[T]he State’s refusal to transfer the [liquor] licenses constituted an act to collect or recover a claim, and thus violated §362(a)(6).”), 1 Bankruptcy Law Manual §. 7:10 (5<sup>th</sup> Ed.) (“Just about any overt action designed or intended, directly or indirectly, to recover payment on a prepetition claim is covered.”)

Congress has the authority to abrogate state law entitlements in bankruptcy. *In re Farmer’s Market*, supra at 1403. As the borough is a political subdivision of the state, the same applies to borough code. Accordingly, this bankruptcy law also abrogates the borough code requirement that the assembly cause a protest to be filed with the State Alcohol Beverage Control Board on an application submitted for the sale of alcoholic beverages when the applicant is in violation of borough tax ordinances. The administration therefore respectfully requests that the assembly pull this item from its agenda for the June 20, 2017, assembly meeting.