

CITY OF TONKA BAY ITEM NO. 4C

RESOLUTION NO. 16-17

RESOLUTION AND CONSENT ORDER IMPOSING A CIVIL PENALTY ON PARS FOOD SERVICE D/B/A JOEY NOVA'S PIZZERIA

WHEREAS, the city of Tonka Bay (the "City") has issued licenses for the sale of intoxicating liquors to Pars Food Service d/b/a Joey Nova's Pizzeria (the "Licensee"); and

WHEREAS, an illegal activity has occurred on the licensed premises of the Licensee specifically, service of an alcoholic beverage to a person under the age of 21 by an employee of Licensee in violation of Minnesota Statutes, Section 340A.503, subd. 2(1) (the "Violation") on December 18, 2016; and

WHEREAS, the occurrence of the Violation is not disputed by the Licensee; and

WHEREAS, the City Council regards such activities as very serious matters warranting the sanctions hereinafter set forth; and

WHEREAS, this is the Licensee's second violation involving the sale of alcohol to a minor; and

WHEREAS, the Licensee has been generally cooperative in the investigation of this matter, has demonstrated a willingness and desire to work with City staff in resolving this matter without putting the City to the expense of an administrative hearing, has expressed an understanding of the seriousness of the offense, and has committed to ensuring that such an offense does not reoccur; and

WHEREAS, Licensee has worked with staff to identify personnel policies and training, operational practices, and other means intended to minimize or eliminate such violations in the future and to assure a more safe, responsible and lawful liquor operation; and

WHEREAS, after due notice to the Licensee, the City Council on May 10, 2016 considered the staff report and evidence presented concerning the violation; and

WHEREAS, Licensee has represented, and by execution of a copy of this Consent Order agreed, that it will faithfully and fully comply with all state and local laws related to the sale of intoxicating liquors; and

WHEREAS, on the basis of such representation and this Agreement, the City is willing to limit sanctions for the Violation to a civil penalty in the amount of two thousand

dollars (\$2,000.00) pursuant to Minnesota Statutes, Section 340A.415 and City Code; and

WHEREAS, were it not for such representation and agreement of continuing compliance with applicable state and local laws by Licensee, the City would not be willing to so limit sanctions and is doing so solely on the basis of such representation and agreements of Licensee and on the basis of the agreement by Licensee that the matter of the sanctions to be imposed for the Violations may be reopened and reconsidered, pursuant to Minnesota Statutes Section 340A.415, in the event Licensee fails to comply fully with all state and local law related to the sale of intoxicating liquor at any time during the three (3) year period following the date of this Resolution, all as hereinafter provided; and

WHEREAS, the Council has determined that this Consent Order, resolving issues relating to sanctions to be imposed by reason of the above described violations is reasonable, necessary and in the best interests of the public; and

WHEREAS, the Licensee has freely agreed to waive a statement of written charges and a hearing thereon and to pay the civil penalty hereinafter described, for the consideration set forth herein. The Licensee acknowledges and agrees that it freely executed this agreement, for the purpose of avoiding a public hearing and resolving issues relating to sanctions to be imposed by the City as the licensing authority, pursuant to Minnesota Statutes Section 340A.415.

ON THE BASIS OF THE FOREGOING, THEREFORE, IT IS RESOLVED THAT THE CITY COUNCIL ORDERS AND AGREES AS FOLLOWS:

1. The licensee will pay to the City, within ten days of receipt of written notification of approval of this Consent Order by the City Council, the sum of two thousand dollars (\$2,000.00).
2. The Licensee shall also cause its entire staff of employees who serve intoxicating liquors to attend an intoxicating liquors server's course sponsored by the South Lake Minnetonka Police Department within six months of this Consent Order. The Licensee further agrees that it will cause all new employees to attend such a course within six months of their initial date of employment.
3. Licensee waives a written statement of the charges, notice of hearing and hearing to which it is entitled by Minnesota Statutes, Section 340A.415.
4. The undersigned admits the occurrence of the Violation.
5. The City will impose, as the sole civil sanction for the Violation, a civil penalty in the amount of two thousand (\$2,000.00) payable as set forth in paragraph 1 hereof. This agreement shall not limit the right of the City to pursue civil remedies or to take any action with respect to the license that is authorized by state law or City Code for any activity to which this

agreement does not specifically apply and that is a violation of state law or City Code.

6. Licensee understands and agrees:

- a. That this agreement does not constitute an agreement not to bring criminal charges for activities described herein;
- b. That a decision whether to bring any charges rests with the discretion of the City prosecuting attorney, the County attorney, or other authorized law enforcement agencies;
- c. That the Licensee freely enters into this agreement without any promises from the City that no criminal charges will be brought or pursued;
- d. That this agreement is entered into for the sole purpose of resolving and settling any potential civil sanctions imposed pursuant to Minnesota Statutes, Section 340A.415, and not for the purpose of resolving or settling any potential criminal issues; and
- e. That in the event criminal charges are brought against the undersigned, the Licensee or any of its employees for activities described herein, Licensee will not contest the validity of this agreement, repudiate, or otherwise challenge this agreement in any way, by reason of the initiation or prosecution of such criminal proceedings.

**PARS FOOD SERVICE d/b/a JOEY
NOVA'S PIZZERIA**

By: _____

It's: _____

By Order of the City Council of the City of Tonka Bay this 24th day of May, 2016.

Gerry De La Vega, Mayor

ATTEST:

Lindy Crawford, City Administrator-Clerk