

Memo

To: Honorable Mayor and City Council
From: Joseph Kohlmann, City Administrator
Date: December 9th, 2014
Re: Joey Nova's

Attached is a Resolution incorporating the training requirements recommended to Joey Nova's Pizzeria. This has been sent to the applicant for review and consent. If agreed to by the applicant, Joey Nova's Pizzeria will send all employees to the SLMPD Alcohol Server Awareness Training. It was noted that he will need to provide signed documentation of attendance.

Council Action Requested:
Motion to adopt the attached Resolution.

RESOLUTION NO. 14-

**A RESOLUTION AND CONSENT ORDER
PARS FOOD SERVICE INC.
dba JOEY NOVA'S PIZZERIA**

WHEREAS, the City of Tonka Bay (the "City") has issued licenses for the sale of alcoholic beverages to PARS FOOD SERVICE INC. dba JOEY NOVA'S PIZZERIA (the "Licensee"); and

WHEREAS, an illegal activity has occurred on the licensed premises of the Licensee specifically, sale of an alcoholic beverage to a person under the age of 21 by an employee of Licensee in violation of Minnesota Statutes, § 340A.503 (the "Violation") on December 9, 2013; 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, 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 his understanding of the seriousness of the offenses, and has committed to ensuring that such offenses do not recur; 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, through the Licensee's zero tolerance policy; 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 preventive action; and

WHEREAS, on the basis of such representation and agreement by Licensee and assuming continuing compliance therewith, the City is willing to limit sanctions for the Violations to completion of all preventive actions; and

WHEREAS, were it not for such representation and agreement of continuing compliance 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, § 340a.415, in the event Licensee fails to comply fully with all of the preventive actions 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 complete the preventive actions set forth below, for the consideration set forth herein. The Licensee acknowledges and agrees that it freely executed this agreement, without threat of criminal prosecution, 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, § 340A.415.

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

1. The Licensee agrees to complete the following preventive actions:
 - a. To supplement the training materials provided by PARS FOOD SERVICE INC., employees will also be trained by South Lake Minnetonka Police Department, and the cost will be borne by PARS FOOD SERVICE INC.
2. Licensee waives a written statement of charges, notice of hearing and hearing to which it is entitled by Minnesota Statutes, § 340A.415 and 14.57 and 14.69.
3. The undersigned admits the occurrence of the Violation.
4. This agreement shall not limit the right of the City to pursue civil remedies or to take any action with respect to the license which is authorized by state law or City Code for any activity to which this agreement does not specifically apply and which is a violation of state law or City Code.
5. Except as provided in paragraph 6, in the event of future violations of state law or City Code by Licensee, no additional penalty shall be imposed for unlawful activity covered by this agreement. However, admissions of unlawful activity described herein may be taken into consideration in determining appropriate sanctions in any future cases.
6. In the event the City Council determines that Licensee has failed to comply fully with the Policies and Procedures at any time during the three year period following the date of this Resolution, Licensee agrees that the City may revoke or suspend the Licensee's license or impose civil penalties for the Violations pursuant to Minnesota Statutes, § 340A.415, provided the total penalty including the penalty agreed to pursuant to paragraph 1 hereof shall not exceed amounts authorized by law.
7. 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 within the discretion of the City's 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;
- d. That this agreement is entered into for the sole purpose of resolving and settling any potential civil sanctions imposed pursuant to Minnesota Statutes, § 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 INC.
DBA JOEY NOVA'S PIZZERIA

By: _____
Its _____

Motion introduced by De La Vega and seconded by Folley.

Roll Call Vote:

Ayes –
Nays –
Absent –

By Order of the City Council of the City of Tonka Bay this 9th day of December, 2014.

Gerry De La Vega, Mayor

ATTEST:

Joseph Kohlmann, City Clerk