



City of Grand Forks Staff Report

APPROVED & ACCEPTED
by City Council
Maureen Storstad
02/04/2019
Maureen Storstad
City Auditor

Committee of the Whole – January 28, 2019
City Council – February 4, 2019

Agenda Item: Request for waiver of transfer fee for Class 4 (Food & Beverage) Alcoholic Beverage License

Submitted by: Maureen Storstad, Director of Finance
Howard Swanson, City Attorney

Staff Recommended Action: Approve the transfer of the license and deny the request for waiver of the fee.

Committee Recommended Action: Moved to City Council with a recommendation to approve the transfer but deny the request for waiver of the transfer fee.

Council Action:

BACKGROUND: The Finance Department has received the annual renewal application from Mexican Foods of Grand Forks, LLC, dba Paradiso. On the application it was noted that the ownership of the corporation has changed as follows:

| | 2018 Ownership | 2019 Ownership |
|-----------------------------|----------------|----------------|
| Fredoon Anvary | 100% | 30% |
| GTA76 Irrevocable Trust | | 14% |
| NNA78 Irrevocable Trust | | 14% |
| STA79 Irrevocable Trust | | 14% |
| MLA87 Irrevocable Trust | | 14% |
| ZBA90 Irrevocable Trust | | 14% |
| | <hr/> | <hr/> |
| | 100% | 100% |
| Percent of Ownership Change | | 70% |

Grand Forks City Code defines a transfer of ownership when a change of 50% or more of the ownership has changed and must be approved by City Council. City Code requires payment of a transfer fee of \$16,425 upon the approval of a transfer by City Council.

The licensee is requesting City Council approve the ownership transfer, but waive the payment of a transfer fee.

ANALYSIS AND FINDINGS OF FACT:

- Renewal Application for Class 4 Alcoholic Beverage Licenses has been received by the Finance Department. A change in ownership has been reported on the renewal application.
- Renewal Application fee of \$75 and \$3,965 Annual Fee has been paid for the license.
- Renewal Application has been reviewed by various city departments and approved.
- City Code Section 21-0201 (15) defines a transfer of ownership as occurring when 50% or more of the ownership of a license has occurred. The reported change meets the definition of a transfer under City Code.
- City Code requires City Council approval of a transfer and the payment of a transfer fee of \$16,425.
- The licensee is requesting that City Council waive the requirement for payment of the transfer fee.

SUPPORT MATERIALS:

- Letter from Atlas Food Group.
 - City Code Section 21-0201 (15)
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ATLAS

FOOD GROUP

January 17, 2019

City of Grand Forks
Maureen Storstad – Finance Director
PO Box 5200
Grand Forks, ND 58206-5200

RE: Alcohol License Renewal – Paradiso Restaurant

Dear Ms. Storstad:

We received your letter dated January 14, 2019 regarding the change in ownership of the liquor license for our Grand Forks Paradiso restaurant. In your letter, you indicate that a change of ownership as occurring “when 50% or more of the interest in a license has changed”.

First, we apologize for not being aware of this requirement. Had we known, we would have contacted the city regarding the change.

To explain the situation, Mr. Fredoon Anvary was previously the owner of 100% of the restaurant. As part of his estate planning, he set up 5 irrevocable trusts, one for each of his 5 daughters:

- The GTA76 Irrevocable Trust for his daughter Goly Anvary
- The NNA78 Irrevocable Trust for his daughter Nahz Anvary
- The STA79 Irrevocable Trust for his daughter Seema Anvary
- The MLA87 Irrevocable Trust for his daughter Meena Anvary
- The ZBA90 Irrevocable Trust for his daughter Zeeba Anvary

Mr. Anvary then transferred a 14% interest in the restaurant to each of the trusts. The co-trustee of each trust is me, Gregory Pung, an attorney, Jerry Larson and the respective daughter.

We again apologize for not being aware of the transfer requirement, but in our mind, the change was simply an estate planning tool and not a “true” ownership change. In the 44 years this restaurant has been in existence, Mr. Anvary has been in charge of the operations and direction of the restaurant. When he transferred the interest to the trusts, nothing has changed in the operations or management of the restaurant.

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We understand that the city would require a transfer fee when an ownership of the liquor license would change, as we anticipate there would be a background check on the parties purchasing the license. In this instance, the change in ownership is to a trust for a family member and not to an outside party. Other than the technical ownership change, Mr. Anvary maintains control of the restaurant and its operations. Accordingly, we respectfully request that you waive any transfer fee, or reduce it to a nominal amount to reimburse you for the costs you incur.

We will have a representative at the January 28th Committee of a Whole meeting to answer any questions that you may have. In the meantime, if you have any questions, comments or need additional information on the ownership change or the trusts themselves, please feel free to contact me.

Thank you.

Sincerely,



Gregory Pung
CFO
gpung@paradiso.com

21-0201. - Definitions.

For purposes of this article, the following words and phrases shall have the meanings ascribed to them in this section:

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(15) *Transfer.* Any assignment, sale, exchange or other conveyance of any license issued pursuant to the provisions of this article. A transfer shall be deemed to have occurred upon the assignment, sale, exchange, or other conveyance of fifty (50) percent or more of the interest in a license holder partnership or stock in a license holder corporation, whether such assignment, sale, exchange or other conveyance occurred in one (1) single transaction or multiple transactions. However, the term "transfer" shall not apply to the following described conveyances:

- (A) When an individual possessing a license issued pursuant to the provisions of this article has become deceased, the license may, upon application of the personal representative of the decedent, be transferred to another individual, partnership, firm or corporation.
- (B) When any corporation possessing a license issued pursuant to the provisions of this article voluntarily dissolves, the license may be issued to any individual shareholder in such corporation who held the stock at the time of the issuance or last renewal of the license and whose application is approved by the holders owning a majority of the outstanding shares of stock in the corporation prior to the time of dissolution; provided, however, that such shareholder shall be subject to all the requirements of this article relating to the application for a license and the qualifications of license holder.
- (C) When an individual license holder desires to transfer a license to a corporation in which the license holder is the owner of at least a majority of the outstanding shares of stock in the corporation; provided, however, that such license holder's stock ownership in the transferee corporation does not fall below the majority of the outstanding stock in the corporation without the prior approval of the city council and reapplication for license by the transferee corporation. The transferee corporation shall be subject to all the requirements of this article relating to the application for a license and the qualifications of a license holder.
- (D) When a license holder is a corporation or partnership which desires to transfer a license to another corporation or partnership having substantially the same partners or stockholders; provided, however, that such transferee corporation or partnership shall be subject to all the requirements of this article relating to the application for a license and the qualifications of a license holder.
- (E) When an individual license holder desires to transfer a license to a blood relative of the first degree, as defined by the North Dakota Century Code, or to a grandchild of the individual license holder if the grandchild's parents are deceased. For purposes of this subsection only, a similar conveyance of shares of stock in a license holder corporation shall not be considered a "transfer" if the person seeking to convey shares of stock owns at least a majority of the outstanding shares of stock in the corporation or is seeking to convey shares or stock to a blood relative of the first degree as defined by the North Dakota Century Code, or to a grandchild if the grandchild's parents are deceased.
- (F) When a majority of the entire city council adopts a resolution and declares the conveyance not to be a transfer for the purposes of this article.

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