



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: City Administrator Dan Wietecha
Date: May 18, 2020
Item: Froth & Cork On-Sale 3.2% Malt Liquor and Wine Licenses

Council Action Requested:

Consider either approving or denying the request of Jim Biermaier to fully refund liquor license fees paid for period of January 1 through June 30, 2020

Background Information

On-Sale 3.2% Malt Liquor and Wine Licenses for Froth & Cork, LLC were approved by the City Council on January 6, 2020.

Per ordinance, the licenses run from July 1 to June 30 with annual fees of \$300 for the On-Sale 3.2% Malt Liquor License and \$275 for the Wine License, for a total of \$575. Per ordinance, licenses approved after the first of the year are pro-rated in half, in this case \$287.50. The City's practice has been to round pro-rated licenses down, so Froth & Cork's fee was \$285 for licenses running January 6 to June 30.

Froth & Cork did not open for business until mid-March, and in an awful coincidence of timing was closed within days due the Governor's executive order closing bars, restaurants, and other places of public accommodation in response to the COVID-19 pandemic.

During its April 20 meeting, the City Council approved refunding license fees for businesses unable to utilize City liquor, tobacco, massage, and pawn shop licenses due to the Governor's executive orders. For liquor licenses, the period was March 17 to June 30 (106 days). The City Council planned for an emergency ordinance to formally approve the refunds during its next meeting on May 4.

In the meantime, City staff notified the 57 licensed businesses of the pending refunds. On April 28, Jim Biermaier e-mailed me requesting that I refund the full amount of the license fees for Froth & Cork. I explained that I did not have the authority to do so but would forward his request for the City Council's consideration. On May 3, Mr. Biermaier repeated his request through the City's e-mail portal for public comments, as follows:

RE: FROTH & CORK Liquor license Fee's

I'm asking for the city to give us a full refund (not just a prorated amount from 3/16-6/30) of the full years Liq. License Fee's due to COVID-19...here's why;

We asked for our liquor license paperwork in Sept.-Oct. 2019 as we were told it could take a couple of months to get everything completed and approved. We paid all the fee's and showed proof of insurance coverage. At that time, we were hoping to be open by January 1st, 2020 but with the lack of response with questions/resolution on WAC/SAC by the mayor and the council, we were delayed. We finally opened on March 16th and closed the next day due to the Governor's orders, we have been closed since. The credit from 3/17-6/30 that businesses are being given makes sense as they had an opportunity to operate from June-2019 to present (in some cases), our business has not. As I've mentioned before, our average ring is too low to be categorized as a restaurant and it made no financial sense to try and do curbside and off-sale liquor beer/wine sales.

I would propose the following;

Do not refund any fee's to us but use the proceeds we paid in 2019 to cover our June 2020-June 2021 liquor license expense.

Thank you for your time with this,

Jim R Biermaier Jr
FINANCIAL ADVISOR

Both e-mails were forwarded to the full City Council on May 4, prior to that evening's meeting. During the meeting, the emergency ordinance providing pro-rated refunds was approved as presented. There was no exception made for the request brought by Froth & Cork to have a full refund.

With 106 days applied on the license period of a full 365-day year, the refund for Froth & Cork was calculated at \$82.77 and was applied as a credit for Froth & Cork's upcoming license renewal as requested by Mr. Biermaier. Please note, however, the correct calculation should have been based on the half year of these particular licenses; this amount is \$165.54. This mistaken calculation will be corrected with an additional credit for Froth & Cork's upcoming renewal.

The morning after the City Council meeting, Councilmember Lund asked that Froth & Cork's request be placed on the agenda for the next City Council meeting. Please note that Mr. Biermaier's e-mail contained two requests: 1) a full refund of the license fees and 2) that the refund be applied as a credit for the upcoming license renewal which has already been handled administratively.

If the City Council is reconsidering the refund of license fees for Froth & Cork, some of the timeline may assist the discussion:

- Froth & Cork initially applied and paid license fees for the liquor licenses on October 15 and submitted its required proof of insurance about November 26.
- Noting that Froth & Cork had not progressed on requirements for a certificate of occupancy, I pulled the approval of the liquor license from the December 16 City Council agenda. Specifically, Froth & Cork had shown plans for building renovations to another agency but had not yet applied for a building permit from the City. Once a liquor license is approved by the City it is sent to the Alcohol Gambling Enforcement office, and they schedule an inspection of the property. They will not conduct an inspection until renovations are a minimum of 90% complete, and if food is being served, a Department of Health inspection has been completed. Additionally, Mr. Biermaier had stated through e-mails to councilmembers and staff that he would not pay required Sewer and Water Access Charges (SAC/WAC).
- Mr. Biermaier and I met on December 20. Mr. Biermaier submitted the building permit application on December 20. Mr. Biermaier paid the building permit application fees, including the SAC/WAC on January 3. The liquor license application was approved by the City Council during its next meeting on January 6.

As a matter of procedure, the amount of the license fees and the possibility of refund is governed by City ordinance. If desired by the City Council, the City Attorney would draft an amendment to the emergency ordinance already adopted on May 4 which can be considered at the Council's June 1 meeting to provide a full refund of liquor license to Froth & Cork. As with all ordinances, subsequent publication would also be required.

Financial Impact

A full refund of Froth & Cork's license fees would include an additional credit of \$123.46 being applied toward their 2020-2021 renewal.

Advisory Commission Discussion:

N/A

Council Committee Discussion:

N/A

Attachments:

N/A