



## CITY of NOVI CITY COUNCIL

**Agenda Item L**  
**November 13, 2017**

**SUBJECT:** Approval of a request from Haggerty Novi Owner, LLC for a variance from Chapter 3, Article II, Section 3-16 of the City of Novi Code of Ordinances regarding the transfer of an existing liquor license for the continued operation of the Novi Sheraton, located at 21111 Haggerty Rd, Novi, MI 48375, to allow the applicant to continue operating the existing business under the same liquor license for an additional fourteen (14) days pending the completion of the City's investigation required pursuant to Section 3-16 of the Code of Ordinances, and subsequent City Council consideration of the transfer application.

**SUBMITTING DEPARTMENT:** City Clerk 

**CITY MANAGER APPROVAL:** 

### **BACKGROUND INFORMATION:**

The applicant, Haggerty Novi Owner, LLC, is requesting a variance from Chapter 3, Article II, Section 3-16 of the City of Novi Code of Ordinances, to allow it to continue operating the existing hotel, restaurant and bar business under the same liquor license for an additional fourteen (14) days pending the completion of the City's investigation required pursuant to Section 3-16 of the Code of Ordinances, and subsequent City Council consideration of the transfer application.

The applicant has entered in to a Purchase Agreement to purchase the existing hotel with restaurant and bar operation located at 21111 Haggerty Rd, Novi, MI 48375. The seller of the hotel has an existing liquor license and has authorized the Michigan Liquor Control Commission to transfer the existing liquor license to the Applicant to continue operating the same business upon completion of the sale of the hotel, which is expected to close on November 17, 2017.

The MLCC has issued the applicant a "conditional" license to continue operating the hotel, restaurant and associated bars pending its review of the transfer application, pursuant to Section 525 the State Liquor Control Code of 1998, as set forth in MCL 436.1525.

The applicant has also submitted its application to the City for the transfer of the liquor license from the current owner to the applicant to continue operating the same business in the same location upon closing of the sale of the hotel. Due to the delayed submittal of application materials by the applicant to the City, the City's investigations required under Section 3-16 of the Code cannot be completed within the timeframe necessary to place the matter on the November 13, 2017 City Council Agenda for consideration of the transfer.

The City does not allow a "conditional" license, under the City's Alcoholic Liquor Ordinance, and Section 3-16 of the Code requires City Council to approve the transfer of a liquor license *prior to before any use and occupancy of the facility* to which the license is being transferred is permitted. In this case, the use and occupancy of the hotel, restaurant and bar facility is on-going and the license is proposed to remain in place for the *continued operation of the same facilities in the same location, rather than operation of a new business at a new location with the transferred license*. On that basis, the applicant has requested a variance from the strict application of Section 3-16 of the Code for a temporary (14-day) period. Section 1-12 of the City of Novi Code provides for City Council to consider a variance from any Section of the Code that does not otherwise provide a specific variance process. The standards for a variance under Section 1-12 are as follows:

Sec. 1-12. - General appeal.

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(c) A variance may be granted by the city council from regulatory provisions of this Code when all of the following conditions are satisfied:

- (1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- (2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and
- (3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

In this case, the basis of the variance request for a temporary (14-day) period is based on the continued operation of the same business, and is primarily requested to prevent inconvenience to the current guests and patrons of the hotel, bar and restaurant, as well as prospective visitors to the City, who expect the hotel to offer the same services it typically offers, and/or that were offered at the time rooms and banquet facilities were reserved.

The variance request was reviewed by the City Clerk's Office, the City Manager's Office, and the City Attorney's Office using the criteria stated for this section. City staff takes no exception to this request because the variance is temporary and short-term, the cessation of services while application is pending, under the circumstances, may inconvenience existing guests in the hotel, and the operations proposed are subject to the same conditions under the existing liquor license.

In the event that City Council is inclined to grant the temporary variance from Section 3-16 of the Code, it would be conditioned upon the applicant entering into the attached Temporary Agreement Permitting the Continuation of Operations, which acknowledges, among other things, that the applicant will cease service of alcoholic liquor at the premises at the end of fourteen (14) days in the event the required City Council approval of the transfer application is not granted

**RECOMMENDED ACTION:** Approval of a request from Haggerty Novi Owner, LLC for a variance from Chapter 3, Article II, Section 3-16 of the City of Novi Code of Ordinances regarding the transfer of an existing liquor license for the continued operation of the Novi Sheraton, located at 21111 Haggerty Rd, Novi, MI 48375, to allow the applicant to continue operating the existing business under the same liquor license for an additional fourteen (14) days pending the completion of the City's investigation required pursuant to Section 3-16 of the Code of Ordinances and subsequent City Council consideration of the transfer application.



LAW OFFICES

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KEVIN M. CHUDLER  
SARAH J. GABIS  
LINDA S. MAYER

November 9, 2017

Via Electronic Mail

Cortney Hanson, Clerk  
City of Novi  
45175 Ten Mile Rd.  
Novi, MI 48375

**Re: Sheraton Detroit Novi  
2111 Haggerty Rd.  
Novi, Michigan 48375  
Request for Variance**

Dear Ms. Hanson:

We represent the buyer of the Sheraton Detroit Novi Hotel located at 21111 Haggerty Road in Novi ("Sheraton").

The Sheraton is a well-known hotel which has served the City of Novi and its customers who visit Novi for years.

The buyer of the Sheraton is a well-known hotel operator which owns and operates many hotels across the country and in South America. The buyer is Haggerty Novi Owner, LLC ("Haggerty Novi"), which is ultimately owned by the Driftwood Hospitality Companies.

Haggerty Novi will close on the purchase of the Sheraton on November 17, 2017 ("Closing Date").

Haggerty Novi filed the requisite applications with the Michigan Liquor Control Commission ("MLCC") and the City to obtain approval to transfer the B-Hotel license from the current owner, VI-LCP Novi Owner, LLC, to Haggerty Novi.

The MLCC approved a Conditional liquor license for Haggerty Novi on November 8, 2017.

On the Closing Date, Haggerty Novi must obtain the Conditional license from the MLCC and begin its operation of the Sheraton. The goal in the transaction is to have the ownership

change appear seamless to the hotel guests and the surrounding communities.

It is our understanding that the City application for approval to transfer the B-Hotel license will be considered at the November 27<sup>th</sup> City Council meeting.

This means that a literal application of the City's substantive requirement that Haggerty Novi obtain prior approval of the transfer of the B-Hotel license, as set forth in the City's Alcoholic Liquor Ordinance and Section 3-16 of the Code, would require the Sheraton to cease its alcohol service for a period of ten days (from the Closing Date of November 17<sup>th</sup> to the City's anticipated approval on November 27<sup>th</sup>).

In order to not inconvenience hotel guests or disrupt the economic flow of providing conference and food and beverage service to various groups, Haggerty Novi respectfully requests a variance from Section 3-16 of the Code.

The variance is requested in conjunction with a "Temporary Agreement Permitting the Continuation of Operations," which agreement will be executed by the City and Haggerty Novi.

Further, Section 1-12(c) of the Code provides for the granting of a variance when all of the following conditions are satisfied:

1. A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant.

RESPONSE: As set forth above, a literal application of the substantive requirement of prior approval of the transfer of the liquor license would result in the Sheraton being required to cease certain bar and restaurant and conference activities involving the sale and service of alcohol.

2. The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards.

RESPONSE: The Agreement between the City and Haggerty Novi is an alternative which is adequate for the intended use of alcohol service and does not substantially deviate from the performance by strict enforcement of the Code because the operations will continue seamlessly to the public.

3. The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

RESPONSE: The creation of the variance will not be detrimental to the public health, safety or welfare, nor will it be injurious to any adjoining property, nor is it contrary to the overall purposes of the City's Alcoholic Liquor Ordinance.


Haggerty Novi continues to be subject to all of the conditions required by the existing B-Hotel license, as well as all any other ordinances or regulations of the City, as well as the Liquor Code's rules and regulations pertaining to its status as a Conditional licensee.

Attached to this letter is the Agreement which Haggerty Novi has executed.

Haggerty Novi is extremely grateful to the City for this accommodation, and is hopeful that the City Council will grant this request. Please call me if you have any questions.

Very truly yours,

**ADKISON, NEED, ALLEN, & RENTROP, PLLC**



Kelly A. Allen

KAA/kjf  
Enclosure

Cc: Jackie Gerstenfeld  
(Director of Legal Administration, Driftwood Hospitality Management)  
Elizabeth Kudla Saarela  
(City Attorney)

**TEMPORARY AGREEMENT PERMITTING  
THE CONTINUATION OF OPERATIONS**

THIS AGREEMENT AUTHORIZING THE TEMPORARY CONTINUATION OF OPERATIONS PENDING THE APPROVAL OF A LIQUOR LICENSE TRANSFER ("Agreement") is by and between Haggerty Novi Owner, LLC, whose address is 21111 Haggerty Rd, Novi, MI 48375 ("Applicant") and the CITY OF NOVI, a Michigan municipal corporation, whose address is 45375 Ten Mile, Novi, Michigan 48375 ("City"), has been entered into in the County of Oakland, State of Michigan, and shall be dated and effective as of the date on which it has been fully executed by Applicant and City dated ( the "Effective Date").

As of the effective date of this Agreement, Applicant has entered in to a Purchase Agreement to purchase an existing hotel with restaurant and bar operation located at 21111 Haggerty Rd, Novi, MI 48375 ("Existing Business) as set forth in the attached and incorporated Exhibit A, Application for Transfer of a Liquor License.

The seller of the Existing Business, VI-LCP Novi Owner, LLC, ("Seller") has an existing liquor license and has applied with the Michigan Liquor Control Commission ("MLCC") with Applicant to transfer the existing liquor license to the Applicant upon completion of the sale of the Existing Business to Applicant.

The MLCC has issued Applicant a Conditional License to continue operating the Existing Business pending the MLCC's review of the transfer application, pursuant to Section 525 the State Liquor Control Code of 1998, as set forth in MCL 436.1525.

The Applicant has also submitted an application to the City for the transfer of the liquor license from the Existing Business to Applicant from Seller to continue operating the same business in the same location. Due to the delayed submittal of application materials by the Applicant to the City, and although the investigations required by City ordinance for the application to transfer a liquor license are in process and are pending, they cannot be completed within the timeframe necessary to be placed on the November 13, 2017 City Council Agenda for consideration of the transfer.

The City's Alcoholic Liquor Ordinance, and Section 3-16 of the Code requires City Council to approve the transfer of a liquor license prior to any use and occupancy of the facility to which the license is being transferred is permitted. Although the ordinance does not allow a "conditional"

license, in this case, the use and occupancy of the hotel, restaurant and bar facility is on-going and the license is proposed to remain in place for the continued operation of the same facilities in the same location. On that basis, and in order to prevent inconvenience to the current guests and patrons of the Existing Business, and current and prospective visitors to the City, while the liquor license transfer is pending for consideration with the City, the City hereby agrees to allow the continuation of the Existing Business in the same location, under the same conditions as required by the existing liquor license for an additional fourteen (14) days from the effective date of this Agreement, or through November 27<sup>th</sup>, 2017, which is the expected date for consideration by the City of the transfer application.

In the event that the MLCC and/or the City deny the transfer of the liquor license as proposed, this Agreement shall be of no further force and effect and Applicant shall cease service of alcoholic liquor as required by state law and local ordinance.

APPLICANT AND CITY HEREBY AGREE, to the temporary continued operation of the Existing Business under the same liquor license, and subject to the same conditions, as follows:

1. Applicant acknowledges, understands, and accepts that the City is under no obligation in law or equity to permit the activity contemplated hereunder. The authorization of this Temporary Agreement Permitting the Continuation of Operations is based upon the unique circumstances of this Application and shall have no bearing or effect on the City's rights or authority with any other requests by the Applicant or any other business owner within the City.
2. Applicant hereby acquires no rights other than those set forth herein and nothing herein affects City Council's authority to take action under City Ordinance to otherwise authorize or deny Applicant's transfer in accordance with all applicable ordinance standards.
3. The Applicant's agreement, hereby, to release, indemnify, and hold harmless the City from any and all claims, demands, causes of action, or damages of any kind or nature, against the City, its employees, agents, representatives, or designees arising due to the Temporary authorization provided within this Agreement.
4. The Applicant's agreement hereby to cease service of alcoholic liquor at the premises which are the subject of this Temporary Agreement Permitting the Continuation of Operations at the end of fourteen (14) days from the date of execution of Temporary Agreement Permitting the Continuation of Operations in the event the required City Council approval of the transfer application is not granted on November 27, 2017.
5. The City and Applicant agree that this Agreement contains the entire agreement between them and that there are no agreements, representations, statements or understandings that have been relied upon by them that are not stated in this Agreement.
6. This Agreement shall be governed by and construed in accordance with the statutes and laws of the State of Michigan. In the event that any provision herein shall be



held by any court of competent jurisdiction to be illegal or unenforceable, such provision shall be deemed severable and severed therefrom and the remaining provisions herein shall remain in full force and effect between the parties.

CITY OF NOVI

By: \_\_\_\_\_  
Robert J. Gatt, Mayor


By: \_\_\_\_\_  
Cortney Hanson, City Clerk

STATE OF MICHIGAN        )  
  ) ss.  
COUNTY OF OAKLAND     )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me, a Notary Public, personally appeared Robert Gatt and Cortney Hanson, who, being duly sworn, did say that they are the Mayor and Clerk of the City of Novi and that they executed this Agreement in their capacity as Mayor and Clerk for the City of Novi.

\_\_\_\_\_  
Notary Public  
Acting in Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

APPLICANT  
HAGGERTY NOVI OWNER, LLC

By:   
David Buddemeyer, Manager

STATE OF FLORIDA            )  
  ) ss.  
COUNTY OF PALM BEACH    )

On this 8th day of November, 2017, before me, a Notary Public, personally appeared David Buddemeyer, who, being duly sworn, did say that he is a Manager and Vice President of Haggerty Novi Owner and that he executed this Agreement in his capacity as Manager and Vice President of Haggerty Novi Owner, LLC.



JACKIE GERSTENFELD  
Commission # GG 104272  
Expires September 11, 2021  
Bonded Thru Budget Notary Services

  
Notary Public STATE OF FLORIDA AT LARGE  
Acting in Oakland County, Michigan  
My Commission Expires: 9/11/2021