

MINUTES OF THE REGULAR MEETING OF THE ALCOHOL, GAMBLING & TOBACCO COMMISSION

October 3, 2012

The regular meeting of the Alcohol, Gambling & Tobacco Commission was held on Wednesday, October 3, 2012, at 4:45 p.m., in the City Council Chambers, 3rd Floor, City Hall.

ROLL CALL: Present: Dennis Birchland, George Hanson, Chris Pekkala,
Ryan Stauber - 4
Absent: President Donahue - 1

COMMUNICATIONS:

DULUTH SOFTBALL PLAYERS ASSOCIATION SUBMITTING COMMUNICATION REQUESTING REVIEW AND CHANGE TO THE CITY OF CODE RELATIVE TO SALES OF PULL TABS BY BAR EMPLOYEES, DUE TO RECENT MINNESOTA STATUTES. #12-11

John Vaydich was present on behalf of the communication. Mr. Vaydich explained that State law has changed to allow video pull tabs which are played on a tablet. He went on to say that the bartender holds the tablets behind the bar, and when a person wants to play, they get the tablet and all winnings from the tablet are paid out by the bartender. Mr. Vaydich reviewed that the city council passed an ordinance changing the gambling section of the code, but the code wasn't changed in Chapter 8-24 of the liquor code which would allow the bartender to dispense the tablet or any winnings. He continued saying that since the gambling code was changed, there is confusion amongst the bars and organizations if it is allowed to let the bartenders pay out winnings. Mr. Vaydich requested that if a code change was needed, that the commission request an ordinance change for the council to approve to allow the bartenders to pay out winnings. He explained that State law has become very good and has controls built into the lease agreements to protect the organization from the bar or bartender having shortages. To questioning from the commission, Attorney Lutterman replied that the city is in compliance with State law, but the city is able to have more strict rules than State law. Ms. Lutterman suggested that the Commission talk to the State enforcement officer for charitable gambling for information on the problems with this type of gambling. She also stated that she would bring a draft ordinance with proposed changes to the ordinance for the commission to review at their next meeting. To questioning from the commission, Mr. Vaydich replied if there could be an ordinance to the council within the next couple of months it would be helpful to clear up the confusion with bar owners in the city. He also requested that the city look at taking the language from the State statute regarding the conduct of pulltabs but keep the rest of the code as it is. To questioning from the Commission, Ms. Lutterman replied she will have a draft ordinance for their review at the November meeting which will then go to the council and would become effective sometime in January 2014. Mr. Vaydich requested that during this ordinance change process, the city send a letter out to the active charities stating that

tablets are not allowed behind the bar until Section 8-24 is changed by the city council. The clerk's office said a letter would be sent out to the charities regarding this issue.

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE INTOXICATING LIQUOR LICENSE OF OSAKA DULUTH, INC. (OSAKA SUSHI HIBACHI STEAKHOUSE), 5115 BURNING TREE ROAD. #12-07 - Received.

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE INTOXICATING LIQUOR LICENSE OF ROTO OF DULUTH, INC. (UNIVERSITY LIQUOR), 1603 WOODLAND AVENUE. #12-08 - Received.

NEW BUSINESS:

PAK'S GREEN CORNER, LLC. (PAK'S GREEN CORNER) 4131 GRAND AVENUE - APPLICATION FOR AN ON SALE 3.2 PERCENT MALT LIQUOR LICENSE FOR THE PERIOD ENDING APRIL 30, 2013, AND ON SALE WINE LICENSE FOR THE PERIOD ENDING AUGUST 31, 2013, WITH KAMOLPAK WILLIAMS OWNER AND MANAGER.

Kamolpak Williams and Dan Williams were present on behalf of the application. Ms. Williams explained that they recently opened a Thai food restaurant and would like to offer wine and beer with their menu. To questioning from the commission, Mr. Williams explained that they have no experience serving alcohol, but that they will be carding everyone to make sure they are legal to drink alcohol. Ms. Williams that their customers are looking to have a beverage with their meal and would not be coming to the restaurant to drink only. There being no further discussion, Mr. Birchland moved that THE APPLICATION OF PAK'S GREEN CORNER, LLC. (PAK'S GREEN CORNER) 4131 GRAND AVENUE FOR AN ON SALE 3.2 PERCENT MALT LIQUOR LICENSE FOR THE PERIOD ENDING APRIL 30, 2013, AND ON SALE WINE LICENSE FOR THE PERIOD ENDING AUGUST 31, 2013, WITH KAMOLPAK WILLIAMS OWNER AND MANAGER BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Stauber seconded the motion, and it was unanimously approved.

COFFEE CABIN, LLC, (AFTERBURNER LOUNGE) 4701 GRINDEN DRIVE - APPLICATION FOR A PERMANENT EXPANSION OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR THE PERIOD ENDING AUGUST 31, 2013

Clint DeRaas was present on behalf of the application. Mr. DeRaas explained that the expansion of the license is for the new airport terminal that will be open in January 2013. To questioning from the commission, Mr. DeRaas replied that the coffee shop and lounge will now be connected in the new terminal, but that the manager and employees will be the same. He went on to explain that the expansion would also include a private conference room area where alcohol could be served for the airport executives and other designated areas for special events. Mr. DeRaas reviewed that currently they are allowed to serve alcohol on the entire second floor of the terminal, but in the new terminal the alcohol will only be served in the Afterburner Lounge, the executive suite area, and for special event occasions in the designated areas. The commission questioned if there was a compact and

contiguous issue with these separate areas. Attorney Lutterman explained that the State allows the licensing of the whole airport, but the city is requesting that Mr. DeRaas define the areas where the liquor will be served. Mr. DeRaas referred to the map showing the red areas for the permanent serving and the yellow areas for special events. The clerk stated that Officer Vang would need to approve the serving areas before the license was issued. There being no further discussion, Mr. Hanson moved that THE APPLICATION OF COFFEE CABIN, LLC, (AFTERBURNER LOUNGE) 4701 GRINDEN DRIVE FOR A PERMANENT EXPANSION OF THEIR ON SALE INTOXICATING LIQUOR LICENSE FOR THE PERIOD ENDING AUGUST 31, 2013, BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Stauber seconded the motion, and it was unanimously approved.

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE LIQUOR LICENSE OF OSAKA DULUTH, INC. (OSAKA SUSHI HIBACHI STEAKHOUSE), 5115 BURNING TREE ROAD.

(See attached transcript)

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE INTOXICATING LIQUOR LICENSE OF ROTO OF DULUTH, INC. (UNIVERSITY LIQUOR), 1603 WOODLAND AVENUE.

(See attached transcript)

LAWFUL GAMBLING:

Premise Permits

American Indian Community Housing Organization

Hanabi Japanese Cuisine
110 N. 1st Ave. W.

Lori Beth Maki was present on behalf of the application. Ms. Maki explained that they are applying with the State to open a pull tab operation at Hanabi Japanese Cuisine this year. She continued saying that this would be the first site in Duluth for AICHO, but she is the gambling manager for this organization and have other sites in Northern Minnesota. To questioning from the commission, Ms. Maki replied that they will be installing a pull tab dispensing device at this location. The clerk stated that Officer Vang has approved this application. There being on further discussion, Mr. Birchland moved THAT THE PREMISE PERMIT APPLICATION OF AMERICAN INDIAN COMMUNITY HOUSING ORGANIZATION BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Hanson seconded the motion, and it was unanimously approved.

UMD Ducks Unlimited
waiver

Raffle exemption - 60 day

No one from this organization appeared at the meeting. The clerk stated that this is an annual request from this group and they are having a DU banquet in two days and need the waiver for the event, and the city council will be having a special council meeting tomorrow

to approve waiving the 60 day waiting period. Mr. Birchland moved that THE 60 DAY WAIVER REQUEST FOR UMD DUCKS UNLIMITED RAFFLE EXEMPTION BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Stauber seconded the motion, and it was approved on the following vote:

Yeas: Birchland, Stauber, Pekkala - 3

Nay: Hanson - 1

March of Dimes
waiver

Raffle exemption - 60 day

Kim Parameter was present on behalf of the application. Ms. Parameter explained they are hosting a fundraiser at Northland Country Club on November 1st and need a waiver of the 60 day waiting period for the raffle. She continued saying that they hope to raise around \$4000 from the event. There being no further discussion, M. Hanson moved that THE 60 DAY WAIVER REQUEST FOR THE MARCH OF DIMES RAFFLE EXEMPTION BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Birchland seconded the motion, and it was unanimously approved.

There being no further business to bring before the commission, the meeting was adjourned at 5:50 p.m.

Alcohol, Gambling and Tobacco Hearing
October 3, 2012
Osaka Duluth, Inc., d/b/a Osaka Sushi Hibachi Steakhouse
5115 Burning Tree Plaza

Lehr: The commissioners should all have a copy of a stipulation that was signed by Dan Xu, who is the owner of Osaka Duluth, Inc. She is the president. I met with her today and had a conversation with her on the phone a couple of days ago. She told me that she wasn't going to deny that the violation had occurred. It was a sale to a minor. The licensee was issued a ticket as well as the person who made the sale. Both of those matters have been concluded and both were found to be in violation. Ms. Xu indicated to me that it would be her preference not to be at the hearing tonight. She is in agreement with the first presumptive penalty of \$500. She asked that she be excused from the hearing and indicated that she would like the commission to make the recommendation of a \$500 civil penalty. You should have a copy of her signed stipulation.

Hanson: I would have no problem with that. I move that we approve the stipulation and the \$500 fine payable within 30 days of council action.

Birchland: Second.

Pekkala: A motion has been made and seconded. All those in favor?
Motion passes unanimously.

Alcohol, Gambling, and Tobacco Hearing
October 3, 2012
Roto of Duluth, d/b/a University Liquor, 1603 Woodland Avenue

Oswald: The second hearing is for Roto of Duluth, University Liquor, at 1603 Woodland Avenue.

J Walker: My name's Jen Walker.

T Walker: Tony Walker.

Pekkala: Attorney Lehr.

Lehr: Thank you, President Pekkala. This matter is uncontested as well. I spoke with Jennifer Walker, I think a couple of weeks ago and she indicated to me that they are not disputing that the violation occurred. Again, this is a sale to a minor and I indicated to Ms. Walker that she could sign the stipulation whether or not challenging the violation or the facts and she indicated she wanted to do that and she needed to have a copy of the stipulation that she signed. They are here today, however, to answer any questions that you may have and they may, I'm not sure, but I think they may want to be heard in regard to the proposed penalty.

T Walker: I think it was 2010 was our first time that we got caught in a sting and since then we actually put in computer systems, i.d. scanners. This particular matter where it happened, a college kid came in, and our employee swears that this kid has bought at the store before. He said that he'd bought like the weekend before. We actually went back to our cameras if we had seen this kid but, it was just kinda for us. We're trying to have our employees not sell to minors and always ask for i.d.s. We got a system where all you gotta do is go bloop to tell me if they're 21. You know, we're guilty. We're trying to do our best to comply with the law. We actually hired a girl now. She is now the night manager, which she's over 40 years old, and she can be more of an eye for us so this doesn't happen again.

Pekkala: This clerk was pretty young wasn't he?

T Walker: Yeah. Charles. He was 21. He was 22. But you know as foolish as it sounds, it's my understanding, I talked to the cop that was there and he actually asked the buyer if he was working for the cops. And he knew it. As soon as he sold to him, he knew it. But he followed the guy right out the door. He just knew he did wrong. You know. He paid his fine. We paid our fine, and he doesn't work for us any more. We let him go cause we can't have that.

Hanson: Just so you know, we don't expect you to fire the people when they screw up, but we do expect you to make sure they're trained adequately to not make mistakes like that.

T Walker: But the way I look at that is we put \$12,000 into a system so this doesn't happen. That, to me and my wife, is worth firing. You know, it's a bad deal. You know,

especially when he asks "You looking for the cops?" Come on. You know, that was right out and asked so.

So, prior to 2010, there were eight, nine of them that we did pass. And now, the last two that are inexcusable.

Pekkala: Any other questions from the Board?

Hanson: Do you have anything you could tell us that would consist of something that would make us recommend something lesser than the standard fine? What I'm looking for is the reason to offer you a mitigating circumstances in recommendation to the City Council without looking like an idiot.

T Walker: We've put \$12,000 into a system so this doesn't happen and we've hired a woman that's 42 years old at the store at night working with the younger employees so this doesn't happen. That's what we've put in place since all this has happened.

Hanson: Well, that's good.

T Walker: We had a meeting, the kids were coming back. We had an employee meeting and we had said if any of us go to the camera, look at the camera and see anybody that's non-id, I don't care if they're 40 years, you ask for i.d. And you know what, if we see it, it's instant termination. You know, it's all we can do.

Hanson: So what do you figure happened to your employee? Brain freeze?

T Walker: Like Charles said, he came right in front of me and said "I can swear I've sold to this kid before". But you know that's hearsay. He said like last Friday and we went in and couldn't see this kid on the t.v. Because we've got cameras in the store to see all that. I mean, I'm sorry but we're guilty. The fines the fine. We're guilty. You know, there's nothing you can fight over it. Whatever we got to pay we'll pay it.

Pekkala: Anybody have any thoughts?

T Walker: If you think about it this way, being four blocks from a college, been busted twice in eight years and passed probably 10. You know, I gave out a lot of hundred dollar bills cause that's my thing. If a sting comes in and you know it's a sting and we pass, you get a hundred bucks. The employees get a hundred dollars.

Hanson: That's commendable. It seems to me more commendable than the \$12,000 spent on a system that still has to be operated by the human being standing in front of it.

Birchland: When did you purchase that system?

T Walker: Um, 2011 and then this past summer we bought the add on of the scanner so all you gotta do is swipe it, the i.d. It'll go "bloop" and with the sale pulls up and if they're not 21, it denies the sale.

Hanson: What if it's a fake i.d.? Does it tell you that, too?

T Walker: Doesn't.

Hanson: To me, the \$100.00 is worth more as a reward. It's gonna be more beneficial to you than the \$12,000 system cause you still have to have a human being with judgment there monitoring it.

T Walker: That is true. But yeah, that's what we do. The sting came in and we know it, hundred dollar bill. They came in at 7:43 and we'll go back and see who was working, here you go.

Hanson: How many times have you had to pay out the hundred bucks?

T Walker: Oh, many times. I bet cha I've paid it out eight or nine times.

Hanson: Including to the kid that?

T Walker: Ah, no. Nor the other one. But like I say, I mean, you can go back in the records, we've passed many, many stings.

Hanson: Do you send your folks to training?

T Walker: No.

Hanson: You might want to start.

T Walker: Get rid of them too fast. We're actually getting away from, when Jennifer and I bought the store, they had all these young kids working. Younger kids were working and we're getting away from that. Store manager, 60 years old. You know, the night manager is 42 years old. You know, and then we got a 30 year old and then we have two college kids working. Last year at this time, we had actually all college kids except for the manager. So, you know, we're getting away from having the kids.

Birchland: I didn't hear anything that was I would feel comfortable sending on to the City Council that would be mitigating to the charge. I'll make a motion that we go along with the standard \$500.00 fine payable the normal routine manner.

Pekkala: Second?

Hanson: I'll second.

Pekkala: A motion has been made and seconded. All those in favor say "Aye".

Motion passes on the following vote:

Yeas - Birchland, Stauber, President Pekkala

Nays - Hanson

T Walker: Can I ask a question? What would you have liked to have heard?

Hanson: I voted on your behalf.

T Walker: You did?

Hanson: I'm the only guy that voted for you.

T Walker: But what can you do, I mean, as being an owner, I can't be there all the time. You know, and as an owner, you can teach the kids, you can teach the employees, you can instill all this knowledge.

Hanson: I can think of a couple of things you could have done.

T Walker: What's that?

Hanson: One is send them all to training.

T Walker: Right.

Hanson: You're not doing that. You know, it's kind a hard for me to find a mitigating circumstance but the fact that you're giving em a hundred bucks for catching somebody and passing a sting seven or eight times, I'm assuming you're telling me the truth,

T Walker: Absolutely.

Hanson: That's the only reason I voted in your favor. Had you not said that, even despite your \$12,000 system, I would have voted with the rest of the Board. But, and there's one other thing you could do that I think would improve your chances of not showing up here again cause you don't want to come in here again.

T Walker: No, I don't. I've actually thought about selling the liquor store. Is it worth all this nonsense?

Hanson: All right. Here's the other thing. Do you keep an incident log? Do you keep a record, a daily log, that everybody enters anything that happens, goes on? Every person on every shift.

T Walker: We don't really have stuff that goes on like that.

Hanson: Well, you did this time.

T Walker: Once. You know, once. Twice actually.

Hanson: It's not just the fact that you're reporting incidents that may or may not happen, it's the feeling of responsibility for the person that's there. They feel more in charge.

T Walker: Yeah.

Hanson: Rather than, I can't wait to get out of here. So, there's an attitude change that goes along with a little more responsibility. That might help you with, especially with the young guys. You know, young gals or guys that are in college, you'd be amazed how some of them will step up to the plate for you and the fact that you haven't sent anybody to training almost stopped me from voting in your favor. Had you said that, then I'd probably would have made a stronger case for you.

Pekkala: Speaking for myself, too, it's not really even your fault as much as it is the City Council has kind of stepped up and made it, told us you need to have a set, concrete mitigating circumstance that we can see that makes us want to knock 250 off the fine.

T Walker: And usually those are really long delays between previous violations.

Pekkala: Like Sammy's Pizza was in here a couple of months ago, they hadn't had one for 30 years or whatever.

T Walker: Right.

Hanson: We had a guy from the Owl Club, it had been 150 years. It was just a ridiculous number and we had a mitigating circumstance there and you may wish to, let me get this out to you and by all means ask your questions, remember it, but I don't want to forget to tell you this. We make a recommendation. The City Council is the ultimate authority and they've disagreed with us before. Any way, I encourage you to go to the City Council meeting and tell them what you've done.

T Walker: Thank you.