

PURCHASING AND LICENSING COMMITTEE

10-0493R

AS AMENDED

RESOLUTION IN THE MATTER OF THE OFF SALE INTOXICATING LIQUOR LICENSE OF DAJER, INC. (LAKE SUPERIOR BOTTLE SHOP), 31 EAST FIRST STREET.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On July 7, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Dajer, Inc., d/b/a Lake Superior Bottle Shop, 31 East First Street, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on September 27, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. _____ regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Dajer, Inc., d/b/a Lake Superior Bottle Shop, 31 East First Street, are ~~adopted~~ modified as follows: The council finds that an employee of Dajer, Inc., d/b/a Lake Superior Bottle Shop, indirectly sold and furnished an alcoholic beverage to an obviously intoxicated person in violation of Duluth City Code Chapter 8, Section 26; that Dajer, Inc., d/b/a Lake Superior Bottle Shop, is liable for its employee's offense pursuant to Duluth City Code Chapter 8, Section 26; that this violation is the first offense of the licensee under the presumptive penalty language of Duluth City Code Chapter 8, Section 9; that absent significant aggravating or mitigating circumstances, the presumptive penalty for a first offense violation is a \$500 civil penalty.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: the Duluth City

Council ~~impose no penalty in this matter.~~ imposes a \$500 civil penalty, payable within 30 days of council action.

Resolution 10-0493, as amended, was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 8

Nays: Councilor Stauber -- 1

Approved September 27, 2010

Mayor

CLERK JJC:mao 9/14/2010

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on July 7, 2010, regarding the liquor license of Lake Superior Bottle Shop. On April 6, 2010, the police department cited an employee of the liquor store for indirectly selling and furnishing an alcoholic beverage to an obviously intoxicated person which is in violation of City Code Section 8-26. After a lengthy hearing, the vote to decide if the alleged violation occurred resulted in a 2-2 vote. The commission made the following conclusions: 1) that the employee of the licensee sold an alcoholic beverage to an individual who then provided the alcohol to an obviously intoxicated person; 2) that there is insufficient evidence to conclude that the employee of the licensee knew or should have known that the individual who purchased the alcohol was acting as a proxy for the intoxicated individual, and 3) that there is insufficient evidence to conclude that the violation alleged occurred. The recommendation of the Duluth alcohol, gambling and tobacco commission that the Duluth City Council impose no penalty in this matter.