

PURCHASING AND LICENSING COMMITTEE

10-0614R

AS AMENDED

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF BERGEY'S, LLC, (BERGEY'S), 2232 WEST SUPERIOR STREET.

CITY PROPOSAL:

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

(a) On September 1, 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 Bergey's, LLC, d/b/a Bergey's, 2232 West Superior 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 December 20, 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 on sale intoxicating liquor license of Bergey's, LLC, d/b/a Bergey's, 2232 West Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a ~~\$500~~ \$750 civil penalty and that payment of \$250 of the penalty be stayed for a period of one year and be abated if no same or similar violations occur during that one year period, and that payment of ~~\$250~~ \$500 of the penalty be payable within 30 days of final council action.

Resolution 10-0614, as amended, was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilors Fosle and Stauber -- 2

Approved December 20, 2010

Mayor

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on September 1, 2010, regarding the liquor license of Bergey's, LLC. On April 8, 2010, the police department conducted a alcohol compliance check and an employee of the licensee sold intoxicating liquor to a person under the age of 21 which is in violation of City Code and state law. Section 8-35 of city code provides that the licensee is responsible for the conduct of its place of business. This is the first offense for the licensee, and Section 8-9 provides that the presumptive penalty for a first offense is a \$500 penalty. The recommendation of the AGTC is to impose a civil penalty of \$500 with \$250 of the penalty be payable within 30 days of council action, and \$250 stayed for one year and abated if no same or similar during the year.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF THE INTOXICATING LIQUOR LICENSE OF BERGEY'S LLC d/b/a BERGEY'S, 2232 West Superior Street, Duluth, Minnesota 55806.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on September 1, 2010, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on September 1, 2010, upon completion of the hearing.

Steven B. Hanke, Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Licensee appeared through its managing agent, William Berg.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusion and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The commission makes the following findings of fact.

1. Bergey's LLC ("Licensee") is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at a premises located at 2232 West Superior

Street, Duluth, Minnesota 55806.

2. On April 8, 2010, an employee of the Licensee sold intoxicating liquor to a person under the age of 21 years old in violation of Duluth City Code Section 8-28. The employee was convicted of the offense in St. Louis County District Court on July 1, 2010.
3. The Licensee was also charged as licensee liable for an unauthorized sale in violation of Duluth City Code Section 8-35. The Licensee was convicted of the offense in St. Louis County District Court on June 22, 2010.
4. The Commission then issued its Notice and Order for Hearing and set a hearing date of September 1, 2010.
5. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code 8-9.
7. Section 8-9(b)(1) of the Duluth Legislative Code provides that grounds for disciplinary action include the operation of a liquor establishment in violation of any law. Section 8-35 provides that every licensee shall be responsible for the conduct of the licensee's place of business and that any violation of Chapter 8 of the Duluth Legislative Code committed on the licensed premises by an employee of the licensee shall be deemed the act of the licensee as well as the employee.

CONCLUSIONS

Based upon these facts, the commission makes the following conclusions:

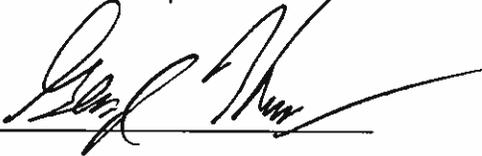
1. That the violation as alleged in the Notice of Hearing occurred.
2. That the Licensee is responsible for the violation.
3. That pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.

RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council impose the following civil penalty:

1. Payment of a \$500.00 penalty within 30 days of final council action, \$250.00 of said \$500.00 penalty stayed for a period of one year and abated if the Licensee has no same or similar violations for a period of one year from the violation date of April 8, 2010.

Dated: 11/3/2010

By: 

George Hanson, President

**DULUTH ALCOHOL,
GAMBLING
AND TOBACCO
COMMISSION**

Alcohol, Gambling, and Tobacco Hearing
September 1, 2010
Bergey's LLC, d/b/a Bergey's Bar, 2232 West Superior Street

Hanson: Next on the list here. Bergey's LLC. Bergey's Bar.

Berg: I'm Bill Berg.

Hanson: Well, we go by pretty much the same procedure we did last time. You heard all the details, and we'll let Counselor Hanke start with the City side.

Hanke: Thank you, President Hanson. Commissioners. This matter is regarding an alleged violation of Bergey's, LLC, doing business as Bergey's. It's located at 2232 West Superior Street in Duluth, Minnesota. Bergey's, LLC, doing business as Bergey's, is licensed by the City of Duluth to sell intoxicating liquor on sale at the premises located 2232 West Superior Street in Duluth. On April 8th of this year, an employee of the licensee sold intoxicating liquor to a person under the age of 21 years old in violation of Duluth City Code Section 8-28. That employee was subsequently convicted of the offense on July 1st of this year. The licensee was also cited for this violation as the licensee's liability for the offense in violation of Duluth City Code Section 8-35. The licensee was convicted on June 22nd of this year. Again, for the purposes of the presumptive penalty as indicated in Duluth City Code, Section 8-9, this would be the licensee's first violation. I need to note and make record that the licensee also had a violation for selling to an underage individual and that offense date was June 30, 2008 and this Commission did find that a violation occurred in 2008. Based on the presumptive penalty, it would be City Administration's recommendation that a \$500.00 civil penalty be imposed. I don't have anything further at this point.

Hanson: Okay, Mr. Berg.

Berg: Well, she did it. There's nothing I can say that would do it other than admitting she did it. But, it was kinda funny, we were talking about rewards programs, we have started a \$25.00 reward program for bartenders or servers catching underage drinkers. That policy has been in effect for about two months now.

Hanson: Is that working for you?

Berg: It's cost me \$50.00 so far. You know, because they don't have their i.d. on them isn't catching somebody under the age.

Hanson: I see.

Berg: You understand and we do keep a log. We've kept a log since right before last time I was here. So, since 2008 we've had a log going and on the log we also put when we cut somebody off and when we call somebody a cab or find them an appropriate ride home.

Hanson: Or 911.

Berg: Actually, we do. We do put it in, but if you ask Mr. Vang over there, I don't think we have any 911 calls. We have a couple of medical calls that I've had to call, but we don't have any problems when we call 911. And then I was talking to one of the other West End bar owners, I wanted to start doing our own compliance check. I got some nieces and nephews that are like 19, 18, 19 years old where I'd like to send em in and, of course, there still would be the \$25.00 reward caught on that and I hope they don't serve them.

Hanson: You want to save the 25 bucks.

Berg: And everyone at our place has been to numerous MLBA classes. You know every time, once a year they go. I did make a few little notes here and I'm still admitting that we did it cause we did it. The only thing that I kinda don't like is when I look at the police report, Page 1 of 2, the police department report. It says "Synopsis and narrative" if you go to the second paragraph of the narrative, the guy and I know it's totally legal, the guy was one month from being 21 and he was way over six feet tall. I was there that night and the girl was four months away, but she was a little shorter and looked a little younger. I would have carded them. But Debbie thought she recognized the person, probably from a softball team or a dart team or something. But he looked old. I'll be very honest. I was sitting there. I didn't even have a beer that night. In fact, I went behind the bar when the officers were giving Debbie her ticket. I went behind the bar and tended bar and that's all I gotta say for myself.

Hanson: Any questions from the Board? Commissioner Peterson.

Peterson: Thank you. Were there any mitigating circumstances with this bartender? She was born in 1963. Obviously has been here for a while. What was going on with her that she didn't card in this situation?

Berg: I know. It wasn't like it was that busy there. I just think she thought she recognized the person, you know, from a sports team that hangs out there. I know she's got a little kid at home and she puts in some long days. She's got a three year old son. Single mother and I've actually

worked with her since I've owed the place for five years. I've worked there for 22 years and I think I've worked with her for 20 years. She's a very good employee. Honest. It's not gonna happen to her again. I can guarantee you that.

Hanson: Anything. You're resting your case then?

Berg: I really have no case. You know, it's written right here. She did serve underage people. I would just kind of wish that there were some guidelines that maybe you couldn't use like a six foot two gorilla that would come into and buy beer. They said they have photo i.d.'s of em and you know, he wasn't a big guy but he was, I'm not lying. He was at least 6'2".

Hanson: Just so you don't feel bad, there was a person that they used last month, and I think they got about seven or eight out of I don't know how many they tested but they had eight busts. It was unbelievable.

Berg: I mean, at 17 I had a beard.

Hanson: If they look younger than Mr. Hammack, I think you should card em.

Berg: Ever since it happened to me, I said if I don't know em, I card em. You know, if I know you as a regular customer, I'm not going to card him. If this gentleman comes in three days a week after work and I know his name and I'm not gonna card him.

Hanson: I would card.

Berg: Actually, if he walked in the bar, I would ask him for his i.d. But if he was a regular customer, no I'm not gonna ask him and that's what we deal with. We deal with the same people seven days a week. Borderline alcoholics.

Hanson: 99 percent of the time. You got hooked on the one percent. Any more questions? Mr. Berg or Counselor Hanke?

Hanke: I don't have anything to add just to note that the licensee did admit liability and that the violation did occur for the record.

Hanson: All right. Looking for a motion.

Peterson: I'll make a motion that we follow the recommended fine.

Hanson: Which is? For the record.

Peterson: \$500.00.

Hanson: With no stay?

Peterson: No stay.

Hanson: Looking for a second. A motion's been made. I have no second. So, I guess that motion doesn't carry. Do we have any other motions?

Donahue: I make a motion of \$500.00 fine stayed \$250.00 for one year for no same or similar violations within 30 days of City Council.

Hammack: Second.

Hanson: I have a second. Any discussion? All in favor say "Aye".

Hanson: Opposed?

Peterson: Opposed.

Hanson: Motion carries 4-1. Mr. Berg, I'll give you the same advice as I gave the last gentleman. If you want to talk to the City Council regarding any of this, they're the ones with the final authority, so you'll be notified by the Clerk's office.

Duluth Police Department
Main Office

Reported Date: 04/08/2010 Time: 17:33 Case No.: 10257955
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED
Class: M4199 Occurrence Date: 04/08/2010
Location: 2232 SUPERIOR ST W, IDU, DULUTH (CITY), , ,

===== NARRATIVE =====

SYNOPSIS:

On 04/08/2010 at 1733 hours, I, Officer M. Tinsley/410, (Squad 53) along with Investigator N. Lukovsky, (Squad 33) conducted a compliance check at the address of 2232 W. Superior Street. We were there to check the compliance with the sale of alcohol, we sent in two cooperating parties who were under the age of 21 to see if they would be checked for their age. I was notified by both parties that they were in fact served alcohol at that location. I cited on female bartender identified as DEBRA LEE CISOTTO, dob:06/12/63. CISOTTO admitted to not carding and/or checking the identification of these two individuals. She was issued a citation for sale of alcohol to a minor, 8-28. See body of report for full details.

NARRATIVE:

On 04/08/2010 at 1733 hours, I, Officer M. Tinsley/410, (Squad 53) along with Investigator N. Lukovsky, (Squad 33) conducted a compliance check at the address of 2232 W. Superior Street.

During this time we were there to check Bergey's Bar to see if they were in compliance with the sale of alcohol. We used two cooperating people who are under the age of 21. They are identified as JUSTINE LYNN DICKENSON, dob:10/21/89 and ANDREW JOSEPH LUDWIG, dob:05/08/89. Prior to this detail I took a picture of DICKENSON and LUDWIG'S driver's license as well as a photograph of their clothing and appearance prior to this detail.

At 1730 hours I had DICKENSON and LUDWIG enter the front of Bergey's Bar where they were to attempt to purchase alcohol. They were given a \$20.00 bill. At 1733 hours

I was contacted by DICKENSON who stated that they had been in fact served alcohol. Investigator N. Lukovsky entered BERGEY'S Bar and retrieved DICKENSON and LUDWIG. He observed that they had a tap beer and a Bud light beer on the table in front of them.

I went and spoke with the only bartender at that location. She was identified by both DICKENSON and LUDWIG as being their server. She was identified as DEBRA LEE CISOTTO, dob:06/12/63. I identified myself as a Duluth Police Officer to CISOTTO and asked if I could speak with her for a moment. She had a patron stand behind the bar as she came over to the side. I identified her with a Minnesota driver's license. I explained to her that I was conducting a compliance check and informed her that she had just sold to two persons who were under the age of 21. She looked at the two individuals who were walking out the door with Investigator Lukovsky and then looked at the two drinks that she had served. I asked her if she had carded the two people that she was looking at. She said that she thought the male looked familiar. She told me that she had served them a Miller lite on tap and a Bud lite bottle. I asked her how long she has worked there she told me that she has worked there for approximately 20 years. I asked specifically "did you card them?" She stated "no I didn't".

CISOTTO began crying, I issued her a citation for sale of alcohol to a minor, 8-28 with a court date of 06/08/2010 at 0815 hours. I asked CISOTTO if she understood the citation and she stated that she did. The alcohol was left at the bar and I instructed CISOTTO to pour it out. The total amount paid for the alcohol was \$4.50. This report is to be forwarded to the licensing Officer for review.

STATE OF MINNESOTA
COUNTY OF ST. LOUIS
DISTRICT COURT

COMPLAINT

Court Number

DIVISION CO CD

DRIVER LICENSE NUMBER	STATE <input type="checkbox"/> MN	ICR NUMBER 10-257955
NAME - FIRST/MIDDLE/MAIDEN Bergrey's LLC		LAST
STREET ADDRESS 2232 W. Superior St		
CITY Duluth	STATE ZIP CODE MN 55802	

DATE OF BIRTH	EYES	HEIGHT	WEIGHT	SEX	JUV. PAR./GUAR.
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VEHICLE LICENSE PLATE	STATE	MAKE	MODEL	COLOR
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DATE OF OFFENSE 4-8-10	TIME 1:33 P.M.	<input type="checkbox"/> Endanger Life or Property <input type="checkbox"/> Unsafe Conditions (2 or more) <input type="checkbox"/> Accident Type: <input type="checkbox"/> PD <input type="checkbox"/> Injury <input type="checkbox"/> Fatal <input type="checkbox"/> PEC	<input type="checkbox"/> Hazardous Material <input type="checkbox"/> Commercial Vehicle
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LOCATION & CITY (IF APPLICABLE) 2232 W. Superior St	MILEPOST Duluth
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OFFENSE DESCRIPTION NO. 1 DRIVER OWNER PASSENGER OPERATE PARK
Licensee liable for unauthorized sale

STATUTE ORDINANCE 8-35	SPEED (Over) Limit 1004 mph in zone
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OFFENSE DESCRIPTION NO. 2 DRIVER OWNER PASSENGER OPERATE PARK

STATUTE ORDINANCE

OFFENSE DESCRIPTION NO. 3 DRIVER OWNER PASSENGER OPERATE PARK

STATUTE ORDINANCE

OFFENSE DESCRIPTION NO. 4 DRIVER OWNER PASSENGER OPERATE PARK

STATUTE ORDINANCE

COURT NAME AND LOCATION:

COURT ADMINISTRATOR - 100 N. 5th AVE. W. - ROOM 109
DULUTH, MN 55802 (218) 726-2464

COURT DATE 6-22-10	COURT TIME 8:15 A.M.	NOTE: Refer to Back of Summons For Further Information
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The Undersigned being duly sworn, deposes and says that the person named on this complaint did commit the above offense(s).

OFFICER Vank	BADGE 375
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D053602



CITY OF DULUTH
CITY CLERK'S OFFICE
 330 City Hall • 411 West First Street
 Duluth, Minnesota 55802
 Phone: (218) 730-5500
 FAX: (218) 730-5923

FOR OFFICE USE ONLY	
DATE	<u>7-15-09</u>
LICENSE #	<u>57202</u>

LICENSE RENEWAL APPLICATION

GOVERNMENT DATA PRACTICES ACT - CLASSIFICATION WARNING: The data you supply on this form will be used to process the license you are applying for. You are not legally required to provide this data, but we will not be able to process the license without it. Some of the data will be classified as public data if and when the license is granted. Private financial information including a tax identification number and social security number are classified as private data and will be available to governmental personnel and other governmental agencies whose access is necessary to perform their official duties.

Period: 09/01/2009 - 08/31/2010

<u>License Type</u>	<u>Fee</u>	<u>Clerk's Fee</u>	<u>Total</u>
On Sale Intox Liquor	\$3,876.00	\$0.00	\$3,876.00
On Sale Sunday	\$166.00	\$0.00	\$166.00
	Pay this Amount:		\$4,042.00

Licensee/Business Address/Premises

BERGEY'S LLC
 2232 W SUPERIOR ST
 MN FL
 DULUTH, MN 55806

Tradenname: BERGEY'S
Business Phone: 349-6224

Managers Name/Address/Phone

WM BERG
 526 N 41ST AV WE
 DULUTH, MN 00000
 000-0000

Owner of Business Premises

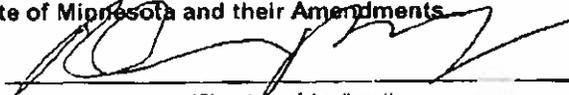
STEVE SPANIE

 00000
 Plat/Parcel: 01120 / 02900

Comments:

WILLIAM BERG, 50%; NANCY BENNETT, 50%

I hereby state that all information here is true and correct and that I shall comply with all the provisions of the Ordinances of the City of Duluth and Laws of the State of Minnesota and their Amendments.


 (Signature of Applicant)

BERGEY'S LLC
 DBA: BERGEY'S
 2232 W SUPERIOR ST
 DULUTH, MN 55806

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 AUG 23 2009 AET

AUG 24 2009

HV
 SF
 001881



City of Duluth Police Department - Licensing Unit
Officer Cha Vang

411 West First Street • Room 104A • Duluth, Minnesota • 55802
218-730-5421 • Email: cvang@duluthmn.gov • www.duluthmn.gov

An Equal Opportunity Employer

May 21, 2010

Bergey's LLC.
C/O WM Berg
2232 W Superior St
Duluth, MN 55806

This letter is to notify you that on April 8, 2010 at 1733 hours, the Duluth Police Department conducted alcohol compliance check and a clerk/bartender working at Bergey's sold alcoholic beverages to a minor under the age of 21. The clerk/bartender was cited for sale to a minor. Along with this notice is a citation written out to the Licensee, Bergey's LLC. A court date was set for June 22, 2010 at 8:15 am at the Duluth court house. If you have any questions or concerns, you can reach me at 218-730-5421.

Sincerely,

Officer Cha Vang
Duluth Police Licensing Office