

PURCHASING AND LICENSING COMMITTEE

11-0329R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF TC, INC. (DULUTH INDIA PALACE), 319 WEST SUPERIOR STREET.

CITY PROPOSAL:

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

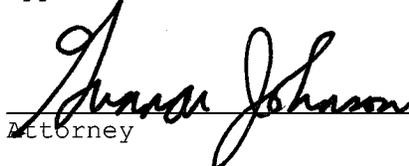
a) On May 4, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of TC, Inc. (Duluth India Palace), 319 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on June 27, 2011, 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 TC, Inc. (Duluth India Palace), 319 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 \$500.00 penalty payable within 30 days of final council action.

Approved as to form:



Attorney

CLERK JJC:mao 6/13/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on May 4, 2011, regarding the liquor license of Duluth India Palace. On November 2, 2010, the police department conducted compliance checks and the bartender was cited for selling alcohol to an underage individual. The licensee is responsible for the actions of its employees and was also cited for selling to an underage individual. 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 payable payable within 30 days of council action.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

**IN THE MATTER OF: TC, INC., d/b/a Duluth India Palace, 319 W. Superior Street,
Duluth, Minnesota 55802.**

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on May 4, 2011, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on May 4, 2011, upon completion of the hearing.

Terri L. Lehr, 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, Mr. Lama.

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, Conclusions 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. Licensee is licensed by the City of Duluth to sell on-sale wine and 3.2 malt liquor at the premises located at 319 W. Superior Street, Duluth, Minnesota.
2. On November 2, 2010, Claire Hanlon, an employee of Licensee, sold and served intoxicating liquor to an underage person at Licensee's business establishment

known as India Palace. Hanlon was cited for the violation and convicted on November 8, 2010.

3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale, was convicted of this offense on November 22, 2010 and paid a fine of \$200.00.
4. The Commission then issued its Notice of Hearing and set a hearing date of May 4, 2011.
5. Section 8-9(b)(1) of the Duluth Legislative Code provides that grounds for disciplinary action include the operation of the 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.
6. This is the Licensee's first violation for purposes of the presumptive penalty.

CONCLUSIONS

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

1. That the violations alleged in the Notice of Hearing occurred.
2. That the Licensee is liable for the violations occurring on its licensed premises on November 2, 2010.
3. Pursuant to Section 8-9(c) of the Duluth City Code, absent mitigating or aggravating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.

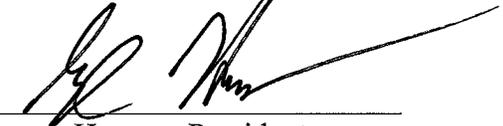
RECOMMENDATION

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.

Dated: June 14, 2011

DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION

By: 
George Hanson, President

Alcohol, Gambling, and Tobacco Hearing
May 4, 2011
TC, Inc, d/b/a India Palace, 319 West Superior Street

Lehr: Thank you, President Hanson. The issue before the Commission today is to decide what disciplinary action should be imposed on TC, Inc., doing business as Duluth India Palace. On November 2nd of 2010, an employee of the Duluth India Palace named Claire Hanlon sold liquor to an underage person. Ms. Hanlon was ticketed under the Duluth City Code Section 8-28 and she was convicted of that on November 8th of 2010. The licensee was also ticketed under Section 8-35 of the City Code and was convicted of that offense on November 22, 2010. For purposes of today's hearing, this is deemed a first offense and so the presumptive penalty of \$500.00 would apply. Attached to the Notice of Hearing are all the documents that support that Notice and I would submit this matter the Commission based on those documents.

Hanson: Any questions regarding Attorney Lehr's presentation so far? I didn't get you name. I'm sorry.

Lama: It's Lo Lama. Last name is Lama.

Hanson: Mr. Lama.

Lama: Yes. Lama.

Hanson: Do you have any questions for Ms. Lehr for starters here?

Lama: I remember last time I was the one serving that night and Claire E. Hanlon, she was host. So she was helping me and she was new at that time and so one of the customer came walking in and asked for beverage. I was doing some other stuff, and then Claire happened to reach the beer and then served it. She was new. I know it is our responsibility to check everyone's i.d. but it was unintentional....an accident or whatever you call it. We do check i.d.s all the time.

Hanson: You will now. Right?

Lama: Yeah. I mean, I do check i.d.s prior to that so

Hanson: Do you dispute anything on the record so far? You admit that it happened and you paid your fine already.

Lama: Yeah. We paid the fine already and I paid for Claire E. Hanlon also. She

couldn't afford a payment. It was only her part-time job.

Hanson: Gets expensive doesn't it?

Lama: Yeah.

Hanson: Do you have anything more....I was actually hoping you would just ask questions of her but do you have more to say regarding your own case?

Lama: No. I just want to say that it won't happen again and I wasn't expecting any more tickets. Is that gonna be charged today or anything like that?

Hanson: Say that again.

Lama: Is there gonna be any charge today?

Hanson: There can be. Yeah, cause there's the presumptive penalty for a first offense is \$500.00 civil fine. So, I guess I want to ask you have you taken any action with you and your staff to make certain that this sort of thing doesn't happen again?

Lama: I make sure and tell my staff to check everyone's i.d., you know, even if they look old enough whatever. So, check i.d. all the time. I tell them to not guess their age. Just have them check no matter.

Hanson: So, if I walked in there, would you card me, you know, if I wanted a beer?

Lama: That be hard to say.

Hanson: How about if Ms. Lehr walked in there and ordered a cocktail? Would you card her?

Lama: I'm sorry. I don't know how to answer that but we usually check if someone look like between 18 to 35.

Hanson: If they look 29 or younger..

Lama: Yeah.

Hanson: If I owned the place and they looked under 50, I would card them because I don't want to pay a \$500.00 plus another \$500.00 criminal and it's just jeopardizing your license. A whole bunch of really ugly things happen when you serve somebody that's underage and you get caught.

Lama: Okay.

Hanson: So, what I've looking for from you, is some kind of action in your establishment that absolutely makes certain that nobody underage gets served again.

Lama: Sure.

Hanson: Nobody gets served alcohol and it's really important cause. This is just your first offense and it can get extremely costly and we can actually recommend closure of your business for your business if it happens again within a year or two. So it's a very serious matter.

Lama: All right.

Hanson: All right.

Hammack: Isn't there a schooling program that they can put their employees through?

Hanson: Absolutely. Are you familiar with that?

Lama: Oh. Schooling for that?

Hanson: Yeah for your employees that serve alcohol.

Lama: Um, no.

Hanson: You can even do it on-line.

Lama: Okay.

Hanson: There happens to be somebody in the audience that knows exactly what you guys need to do. Do you have a card? Would you kindly provide this gentleman one before he leaves? Cause I think it would be helpful. There is a fee for it but believe me, it's less than 500 bucks and I think that that's something I would recommend just to make sure.

Lama: Thank you.

Hanson: Just common sense things that you probably know but not everybody thinks of them all the time. A lot of the places do the classes annually for anybody that serves alcohol and I know you don't have a great big place or anything but you don't have all that many people that need to go to it either. You might want to be the first one to go. Right. Any questions, comments from the Board? Recommendations? Discussion?
Commissioner Birchland.

Birchland: From our past where we've been told that unless there are any aggravating or mitigating circumstances, and I don't see any in this case. In others, we have seen that for a number of reasons. Hopefully someone else can up with something otherwise I would be recommending the \$500.00 civil penalty.

Hanson: Is that a motion?

Birchland: If no one else has anything to say.

Hanson: Procedure is that we make a motion, get a second, and then we discuss it.

Birchland: Then I will make the motion that we recommend a \$500.00 civil penalty payable, usually it's 30 days after City Council approval. That's the motion.

Hammack: I'll second that motion.

Hanson: Okay. Motion's made and seconded. Any discussion? All right. All in favor say "Aye".

Hanson: Motion passes unanimously. This is our recommendation and you have the right to appear in front of the City Council when this matter comes before them. They have the final say on this. So if you wanted to go in and appeal and if you run through this class or something between now and when the City Council meets, perhaps they'd be willing to maybe stay half of it. Show you a little mercy, I guess, and we probably would have recommended something a little better, too, had you done something in between then and now to offer us some kind of mitigating circumstance but there's really nothing that I've heard at this point. The City Clerk's office will notify you when this will go before the City Council. So I suggest you be on hand cause it will probably appear on the Consent Agenda and if you show up, they'll pull it off the Consent Agenda for you so you can speak on you own behalf. So that's all. Thank you very much.

Lama: All right. Thank you.

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

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NOTICE OF HEARING

* * * * *

TO: TC, Inc., d/b/a Duluth India Palace, 319 W. Superior Street, Duluth, Minnesota 55802

PLEASE BE ADVISED that on **May 4, 2011**, at **4:45 p.m.** in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings Minnesota Rules Chapter 1400, Part 5550, et.seq, to the extent applicable, and Minnesota Statutes §14.57 through §14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed

to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission and one will be appointed.

A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of hearing.

The person representing the City, who you should contact to discuss settlement or other concerns is Terri L. Lehr, Assistant City Attorney.

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

1. TC, Inc., d/b/a Duluth India Palace is licensed by the City of Duluth to sell on sale wine and 3.2 malt liquor at the premises located at 319 W. Superior Street, Duluth, Minnesota 55802.
2. On or about November 2, 2010, Claire Hanlon, an employee of Licensee, served and sold intoxicating liquor to an underage person at Licensee's business establishment known as India Palace. Hanlon was cited under Duluth City Code section 8-28 for the violation and convicted on November 8, 2010. *See City Docs. No. 1-2 (Duluth Police Department Report ICR# 10-399260; and Proof of Payment of Ticket by Hanlon).*
3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale and convicted of this offense on November 22, 2010. *See City Docs. No. 3-4 (City of Duluth Ordinance Violation Ticket No. LP10001756; and Proof of Payment of Ticket).*

4. This is the Licensee's first offense for purposes of the presumptive penalty schedule provided for in Duluth City Code Section 8-9(c).
5. Pursuant to Duluth City Code Section 8-9(c), absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.

Pursuant to City Code Section 8-9, the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

(Records Supporting This Notice Are Attached As City Document Numbers 1-4.)

Dated: April 4, 2011

JEFFREY J. COX, Secretary
Alcohol, Gambling and Tobacco
Commission

and



TERRI L. LEHR, (0191668)
Assistant City Attorney

Gunnar B. Johnson, City Attorney
Attorneys for the Alcohol, Gambling and
Tobacco Commission

Duluth Police Department
Main Office

Reported Date: 11/02/2010 Time: 19:40 Case No.: 10399252
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED
Class: M4199 Occurrence Date: 11/02/2010
Location: 319 SUPERIOR ST W, IDU, DULUTH (CITY), , ,

NARRATIVE

SYNOPSIS:

This report involves the citing of CLAIRE ELIZABETH HANLON, dob:04/04/80 for selling alcohol to a minor. CLAIRE is an employee of the India Palace.

NARRATIVE:

On 11/02/2010 at approximately 1940 hours, I, Officer Stovern along with Officer Rodman was working with 19 year old NICHOLAS EDWARD PRACHER on alcohol compliance checks. We pulled up in front of the India Palace restaurant at 319 W. Superior Street and PRACHER entered. We were planning on entering shortly after however PRACHER texted me with his cell phone saying that he had just been served a bottle of beer. Officer Rodman and myself began preparing a citation before going into the bar and noticed a female wearing a black jacket and a blue sash wrapped around her waist quickly exit the bar and quickly walked westbound on Superior Street. It was then I received a second text from PRACHER who was still inside the India Palace saying that the female waitress who served him the beer put on a black jacket and quickly left the bar.

Officer Rodman and myself drove about a half a block and caught up with the girl who was still walking quickly westbound on Superior Street just past 4th Avenue West. We identified ourselves as Police Officers and asked her if she was the waitress at the India Palace Restaurant and she said she was. She said she was in a hurry and was going to vote before going back to the restaurant. We asked her if she had just served a young man a bottle of beer and she said she did just before she left the restaurant to go vote. We then told her that the young male that she sold a bottle of beer to was 19 years old.

HANLON was very sarcastic, angry and seemed unwilling to give us much of her personnel information. She was issued a City ordinance violation for selling alcohol to a minor. She grabbed the ticket from us and angrily walked quickly away from us before we could explain the rest of the citation to her.

I then went back to the India Palace and went inside where 19 year old NICHOLAS PRACHER was sitting alone at a table with his bottle of beer in front of him. I motioned to him that he could now go back to the car and I talked briefly with a store manager informing him of what had happened and that he would be hearing from our licensing officer.

A written statement prepared by PRACHER will be included with this report.

DULUTH POLICE DEPARTMENT
VOLUNTARY STATEMENT
(Not under Arrest)

PAGE 1 OF 1

DATE 11/2/10 TIME 2028

PLACE DPD

I, William Edward Prater, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to WFL Stavern. I volunteer the following information of my own free will.

My date of birth is 02/26/1990 and I live at 29000 Coe Rd 41, Wilks River, MD 28785

Phone Number is: (252) 750-3409

SIGNATURE W. E. Prater

On 11/2/10 at approximately 1935 I was making an underage
deal with DPD and I entered the Tabby Palace. I sat at a table
and ordered a Coors Light. A younger woman wearing a black shirt and
short black skirt with a black/green sash tied around her waist served me
a bottle of Coors Light. She did not ask me for an ID. I gave
her a five dollar bill and she brought me change back and walked away.
I watched her quickly put on a black jacket, grab a black bag and
walk out the door. I used my cell phone and called the monitoring officer
outside.

I have read each page of my statement consisting of 1 page(s), each page bears my signature and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

SIGNATURE W. E. Prater DATE 11/2/10

WITNESS _____ WITNESS _____

I have received a copy of my statement. SIGNATURE _____

ICR:

Local Database Ticket Inquiry 2 Version 1.0.1

Ticket Info:		Defendant Info:	
Ticket Number	LP10000252	Drivers Lic/State/DOB	<input type="text"/> <input type="text"/> 04/04/1980
Issue Date	11/02/2010	Name Last/First/MI	HANLON <input type="text"/> CLAIRE <input type="text"/> E
Issue Time	19:40	Street Address	915 N. LAKE AVE. #4
		City/State/Zip	DULUTH <input type="text"/> MN 55802
<input type="button" value="Print Page"/>		<input type="button" value="Cancel"/>	
Ticket Details:		Ticket Dates:	
Fine Amount:	200.00	Paym. Entered:	11/08/2010
Penalty:	.00	Return Date:	<input type="text"/>
Miscellaneous:	.00	Notice1 Date:	<input type="text"/>
Bad Check Fee:	.00	Notice2 Date:	<input type="text"/>
Paid Amount:	200.00	Notice3 Date:	<input type="text"/>
Dismissed:	.00	Notice4 Date:	<input type="text"/>
Amount Due:	.00	Partial Notice:	<input type="text"/>
Disposition:	PF	Collection Letter:	<input type="text"/>
Disp. Date:	11/09/2010	Ticket Type:	Manual
Tkt. Entered:	11/08/2010	Ticket Status:	PAID

**CITY OF DULUTH
CITY ORDINANCE VIOLATION**

This Citation charges you with a violation
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number 10-399252	Date/Time Issued 11-9-10 @ 0825
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Alleged Violator's Name
TC, Inc.

Address 319 W. Superior St Duluth, MN. 55802	City Duluth	State MN.	Zip Code 55802
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DOB _____	Phone Number (208) 727-8767
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Vehicle Information

License No.	State	Reg. Expires
Vehicle Make	Model	Color

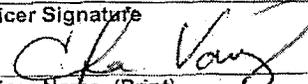
Violation Information

Date of Violation 11-2-2010	Time of Violation 1940
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Location
319 W. Superior St

Charge Licensee liable	Ordinance No. 8-35
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Description
clerk/server sold alcohol to minor and was cited. licensee is liable for unauthorized sale.

Officer Signature


Officer Name (Print) Cha Vang	Badge No. 375
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Served: In person <input type="checkbox"/> By mail <input checked="" type="checkbox"/>	Positively identified <input type="checkbox"/>
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Date Due: 10-22-10	Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00
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Ticket Number: **LP10 001756**

Local Ordinance Ticket Inquiry 2 Version 1.0.1

Ticket Info		Defendant Info	
Ticket Number	LP10001756	Drivers Lic/State/DOB	<input type="text"/> <input type="text"/> <input type="text"/>
Issue Date	11/09/2010	Name Last/First/MI	TC INC. N/A <input type="checkbox"/>
Issue Time	19:40	Street Address	319 W. SUPERIOR ST.
		City/State/Zip	DULUTH MN 55802
Ticket Detail			
Fine Amount:	200.00	Paym. Entered	11/22/2010
Penalty:	.00	Return Date:	<input type="text"/>
Miscellaneous:	.00	Notice1 Date:	<input type="text"/>
Bad Check Fee:	.00	Notice2 Date:	<input type="text"/>
Paid Amount:	200.00	Notice3 Date:	<input type="text"/>
Dismissed:	.00	Notice4 Date:	<input type="text"/>
Amount Due:	.00	Partial Notice	<input type="text"/>
Disposition:	PF	Collection Letter	<input type="text"/>
Disp. Date:	11/22/2010	Ticket Type:	Manual
Tkt. Entered:	11/12/2010	Ticket Status:	PAID