

PURCHASING AND LICENSING COMMITTEE

11-0377R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF J & J MILLER, INC. (COPASETIC LOUNGE), 332 EAST CENTRAL ENTRANCE.

CITY PROPOSAL:

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

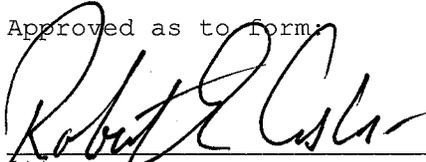
a) On June 1, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of J & J Miller, Inc., d/b/a Copasetic Lounge, 322 East Central Entrance and has submitted its report to the city council of the city of Duluth as Public Document No. \_\_\_\_\_;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on July 18, 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 J & J Miller, Inc., d/b/a Copasetic Lounge, 322 East Central Entrance, 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 civil penalty payable within 30 days of final council action, and that payment of \$250 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar violations.

Approved as to form:

  
\_\_\_\_\_  
Attorney

CLERK JJC:mao 7/5/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on June 1, 2011, regarding the on sale liquor license of Copasetic Lounge. On December 24, 2010, the police department noticed that there were people in the bar at midnight on Christmas Eve. According to State law and city code, liquor sales on December 24<sup>th</sup> end at 8:00 p.m. and according to city code, consumption of alcohol beverages are required to cease one hour after sales of alcoholic beverages are allowed. The owner of the bar was cited for consumption of alcohol past the one hour allotted time. 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 payable within 30 days of council action, and that payment of \$250.00 of the penalty be stayed for a period of one year on the condition that the Licensee have no same or similar violations. The commission stated that mitigating circumstances of no previous violations during the four years they have been open warranted a reduction of the fine.

CITY OF DULUTH  
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

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**REPORT TO THE CITY COUNCIL**

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IN THE MATTER OF: J&J Miller, Inc., d/b/a Copasetic Lounge, 332 E. Central Entrance, Duluth, Minnesota 55811.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on June 1, 2011, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on June 1, 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.

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. Licensee is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at a premise located at 322 East Central Entrance, Duluth, Minnesota.
2. On December 24, 2010, at approximately 11:56 p.m., Joel M. Miller, an employee of Licensee, was serving alcohol beyond the 8:00 p.m. closing

time on Christmas Eve in violation of Duluth City Code section 8-17, reference 8-19. Licensee was issued a citation under Duluth City code for this conduct and convicted of this offense on March 18, 2011, paying a fine of \$250.00.

3. The Commission then issued its Notice of and Order for Hearing and set a hearing date of June 1, 2011.
4. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9. Mitigating circumstances include the following: The Licensee has been in business for four years with no prior violations.

### **CONCLUSIONS**

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

1. Section 8-9(b)(1) of the Duluth City Code provides that the violation of any law relating to the operation of a liquor establishment shall be deemed to be good cause for disciplinary action up to and including imposition of a civil penalty, license suspension or license revocation.
2. Section 8-35 of the Duluth City Code provides that the licensee shall be responsible for the conduct of its place of business and any violation of Chapter 8 of the Duluth City 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.
3. The Licensee is liable for the violation occurring on its licensed premise on December 24, 2010.
4. Section 8-9(c) of the Duluth City Code provides that the presumptive penalty for the current violation is a \$500 civil penalty. Mitigating circumstances exist as follows: The Licensee has been in business for four years with no prior violations.

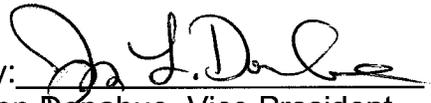
## RECOMMENDATION

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

1. Payment of a \$500 penalty; and
2. That payment of \$250 of the penalty be stayed for a period of one year on the condition that the Licensee have no same or similar offenses within the one year; and
3. That payment of \$250 of the penalty be made within 30 days of final council action.

Dated: 7/5/14

DULUTH ALCOHOL, GAMBLING  
AND TOBACCO COMMISSION

By:   
Jon Donahue, Vice President

**Alcohol, Gambling, and Tobacco Hearing**  
**June 1, 2011**  
**J & J Miller, Inc., d/b/a Copasetic Lounge, 322 East Central Entrance**

Cox: Hearing to decide what, if any regarding the on sale intoxicating liquor license of J & J Miller, Inc., Copasetic Lounge, 322 East Central Entrance.

Donahue: Welcome.

Miller: Hello. I'm Joel Miller

Flaig: Charles Flaig, Co-owner and Partner.

Donahue: Attorney Lehr.

Lehr: Thank you. This matter involves a violation that occurred on December 24, 2010. Under the City Code, sales are supposed to stop at 8:00 p.m. on Christmas Eve. An officer drove by a few minutes before midnight and saw people were in the establishment and went in a spoke with Mr. Miller. The action that was taken was that the licensee was given a ticket under the City Code for allowing consumption of alcohol after closing time on Christmas Eve. The citation was paid on March 8<sup>th</sup> of 2011, and the copy of the ticket and proof of payment are attached to the Notice of Hearing. The City's recommendation is that this be viewed as a first offense with a presumptive \$500.00 penalty. We are submitting the case based on the documents attached to the Notice of Hearing without any additional testimony.

Donahue: Thank you. Do you have anything to respond to?

Miller: It was a case of not completely understanding the City Ordinance. We had an employee Christmas party that night. We were not selling alcohol as the Ordinance reads.

Flaig: Doors were locked.

Miller: Doors were locked. Cash register was shut off and it was employees and their significant other. It was a case of not reading the Ordinance correctly or the Ordinance not letting us know what the proper standard is.

Flaig: I believe there is no state law on this?

Miller: It's a City Ordinance.

Flaig: It's a City Ordinance and it says there are no sales after 8:00 on December 24<sup>th</sup> and we had our Christmas party then with no sales.

Donahue: Apparently that's incorrect.

Lutterman: Yes, Commissioner Donahue. I would direct the Board's attention to Section 8-19(b) of the City Code which prohibits the consumption of alcohol on a licensed premise from one hour after sales of alcoholic beverages on the premises are required by law to cease until at which time sales of alcoholic beverages on the premises are next allowed by law to begin. So under our City Code, even if there's no sales going on, you can't be drinking in a licensed establishment one hour after close of sales.

Donahue: Okay. Thank you.

Miller: True but the way, I guess, that we understood it. Well, we never really looked into it at the time. But looking into it now, the hours of sale, Section 8-17, "No sales of intoxicating liquor shall be made after 1:00 a.m. on Sunday except as permitted by special licenses, such as the 2:00 license nor shall such sales be made after 8:00 p.m. on December 24<sup>th</sup>" and I guess that's where we misunderstood. We weren't selling after 8:00 p.m. We locked the doors and had our orphan's Christmas party for staff and family that didn't have anywhere else to be on Christmas Eve and that's what happened. Doors were locked but apparently that's not the right.

Pekka: I have a question. Since this has happened before, has anything ever been sent out to licensees about, I know it's not your job to give people every single intent of the Code, but since it has happened at least since I've been on the Board, this is the second time a Christmas Eve party has been ticketed. I'm just wondering how the bar owners really know. I think a lot of them probably think as long as we don't sell after eight they are fine. I was just wondering.

Lutterman: I don't know if letters have been sent out to bars explaining to them that you can't have alcohol on the table one hour after close. I think that's fairly commonly understood rule. We really haven't really had a problem as far as I've seen in tables not being cleared at least one hour after the time sales has to be suspended. So, I don't believe we've ever sent out letters reminding people that you can't have alcohol being consumed even if it's not a sale.

Flaig: And we understand that, you know. We understand that on the other 364 days a year. We just thought everybody would have been gone by 2:00 a.m.

Miller: Yeah. It was before normal closing.

Flaig: Right. Before normal closing time and we didn't understand why there was a law like this either. So I don't know. I mean, we understand completely the one hour after close or whatever, but this is kind of confusing and just the Christmas Party, on this one day a year.

Donahue: That won't happen next year.

Flaig: No. Not now.

Donahue: Any further discussion? Any recommendations? Commissioner Birchland?

Birchland: I just can't think of any mitigating circumstance to cover this instance.

Donahue: I know.

Birchland: Not knowing the law is not really a good excuse. I can understand how it could happen.

Donahue: Right.

Birchland: You know, I'd like to find a way to be a little bit more lenient but I'm just trying to figure out a way to explain that to the higher powers.

Donahue: Cause we just make recommendations to the City Council.

Flaig: Well, all we can do is apologize. We had no intention of violating the law cause we locked the doors on Christmas Eve and had the company Christmas party. It was like only eight people there or less and certainly no people we didn't know. It was all staff and friends, and I don't know what else to say.

Birchland: What section covers that again?

Lutterman: It's Section 8-19(b) of the City Code, which speaks to no consumption one hour after close of sales.

Flaig: Also, 8-17 is actually, specifically talks about December 24<sup>th</sup>

Pekkala: But it doesn't say anything about one hour after close in the section they're talking about

Lutterman: No. It's the general rule that applies and it just so happens that on

December 24<sup>th</sup> closing time is earlier than on other times of the year. But regardless of when the legal closing time is, there better not be a drink on the table one hour after close.

Stauber: Has your bar had any prior alcohol related violations?

Miller: No.

Flaig: None.

Stauber: How long have you guys been operating?

Miller: It'll be four years in August.

Flaig: Had a few sting attempts but always passed.

Miller: Always.

Pekkala: I'll make a motion for a \$500.00 fine with \$250.00 stayed if no same or similar offenses in the next year. The \$250.00 will be payable within 30 days of Council action. The mitigating circumstances would be the bar operated in the last four years without any offenses.

Birchland: Second that.

Donahue: Okay we have a motion, a second. All those in favor say "Aye".

Motion passes unanimously. You'll be getting a notice when it will be going on to the City Council docket and you should probably be there to show up in case they pull it off to discuss it and then you can state your case to the Council.

Flaig: Thank you.

Donahue: Thank you very much.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

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**NOTICE OF AND ORDER FOR HEARING**

\* \* \* \* \*

TO: J & J Miller, Inc., d/b/a Copasetic Lounge, 322 E. Central Entrance, Duluth, MN 55811

PLEASE BE ADVISED that on **June 1, 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.

**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. Licensee is licensed by the City of Duluth for “on-sale” Intoxicating Liquor at a premises located at 322 East Central Entrance, Duluth, Minnesota.
2. On or about December 24, 2010, at approximately 11:56 p.m., Joel M. Miller, an employee of Licensee, was serving alcohol at Licensee’s business establishment known as the Copasetic Lounge. Under section 8-17 of the Duluth City Code, no sale of liquor shall be made after 8:00 p.m. on December 24 and no licensee shall permit the premises to remain open. *See City Doc. No. 1 (Duluth Police Department Report ICR# 10-429124).*
3. Licensee was cited under Duluth City Code section 8-17 for this conduct and convicted of this offense on March 8, 2011. *See City Docs. No. 2-3 (City Ordinance Violation Ticket No. LP100001765; and Proof of Payment.)*
4. Pursuant to City Code Sections 8-9(a) and (b)(1) 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.

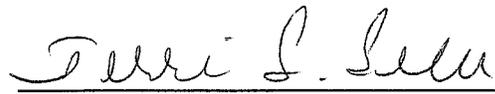
5. This is the Licensee's first offense for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.
6. Pursuant to Duluth City Code section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.

( Records Supporting This Notice Are Attached As City Documents Nos. 1-3).

Dated: 4/29/11

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

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**Duluth Police Department**  
Main Office

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Reported Date: 12/24/2010 Time: 23:56 Case No.: 10429124  
Code: 340A.504 Crime: LIQUOR-SALE AFTER CLOSING  
Class: M4120 Occurrence Date: 12/24/2010  
Location: 322 E CENTRAL ENTRANCE, 1DU, DULUTH, MN, , 55811

===== NARRATIVE =====

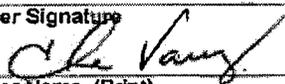
On 12-24-2010, at 23:56 hours, I, Officer Ring, Squad 39, was on routine patrol in the area of Central Entrance. As I drove the Copasetic Lounge at 322 East Central Entrance, I noticed that there were several cars in the parking lot and it appeared there were people inside the business. Knowing that on this date, the business was supposed to be done serving patrons at 20:00 hours, I stopped to further investigate.

I counted seven vehicles in the parking lot of the business and when I looked inside the business window, I noticed several people sitting at the bar drinking alcohol. The exterior doors to the business were locked. I knocked on the window and got the attention of an individual, who later identified himself as, JOEL MATTHEW MILLER; DOB: 08-07-1968. MILLER said he was an employee of Copasetic Lounge and that he was hosting a party for employees. MILLER told me that all of the people inside of the building were employees of the bar. I counted five other people inside of the bar area. MILLER said that he had been serving alcohol to these individuals, but was not selling the alcohol. It appeared to me that MILLER was intoxicated as he had bloodshot and watery eyes, slurred speech, poor balance and an odor of alcoholic beverage coming from his person. I explained to him that the bar must be closed after 20:00 hours and that I would be forwarding a report to our Licensing Officer for follow-up. MILLER said he would end the party.

**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		Date/Time Issued	
10-429124		12-31-2010 @ 1100	
Alleged Violator's Name			
J + J Miller, Inc.			
Address		City	State Zip Code
322 E. Central Ent. Duluth		MA	55811
DOB		Phone Number	
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation		Time of Violation	
12-24-2010		2356	
Location			
322 E. Central Entrance			
Charge		Ordinance No.	
Hours of Sale		8-17	
Description			
Alcohol was consumed after 2000 hours on December 24.			
Officer Signature			
			
Officer Name (Print)		Badge No.	
Cha Vang		325	
Served: In person <input type="checkbox"/>		Positively Identified <input type="checkbox"/>	
By mail <input checked="" type="checkbox"/>			
Date Due:		Minimum Fine Amount Due:	
1-13-2011		<input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: LP10001765			

City Doc No. 2

City of Duluth - Ticket Inquiry 2 - Version 1.0.1

<b>Ticket Info</b>		<b>Defendant Info</b>	
Ticket Number	LP10001755	Driver Lic/State/DOB	<input type="text"/> <input type="text"/> <input type="text"/>
Issue Date	12/24/2010	Name Last/First/MI	MILLER <input type="text"/> <input type="text"/> <input type="text"/>
Issue Time	23:56	Street Address	322 E. CENTRAL ENT.
		City/State/Zip	DULLUTH MN 55811
		<b>Ticket Detail</b>	
		Fine Amount:	200.00
		Penalty:	50.00
		Miscellaneous:	.00
		Bad Check Fee:	.00
		Paid Amount:	250.00
		Dismissed:	.00
		Amount Due:	.00
		Dispositor:	PF
		Disp.Date:	03/08/2011
		Tkt.Entered:	01/04/2011
		Paym.Entered:	03/08/2011
		Return Date:	
		Notice1 Date:	01/10/2011
		Notice2 Date:	01/31/2011
		Notice3 Date:	02/18/2011
		Notice4 Date:	
		Partial Notice:	
		Collection Letter:	
		Ticket Type:	Manual
		Ticket Status:	PAID

City Doc. No. 3



**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	06/30/10
LICENSE #	58060

**LICENSE RENEWAL APPLICATION**

*58272 29th close*

**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:** 09/01/2010 -- 08/31/2011

License Type	Fee	Clerk's Fee	Total
2:00 AM Closing Liquor	\$0.00	\$0.00	\$0.00
On Sale Intox Liquor	\$3,908.00	\$0.00	\$3,908.00
On Sale Sunday	\$167.00	\$0.00	\$167.00
<b>Pay this Amount:</b>			<b>\$4,075.00</b>

**Licensee/Business Address/Premises**

J & J MILLER, INC.  
 322 E CENTRAL ENT  
 MN FL/DECK  
 DULUTH, MN 55811

**Tradename:** COPASETIC LOUNGE

**Business Phone:** 727-2664

**Managers Name/Address/Phone**

JOEL MILLER  
~~GERALD 040-9146~~  
 727-2664 00000  
 000-0000

**Owner of Business Premises**

~~VITO VITOLARO~~  
 Mike Vatalaro  
 00000

**Plat/Parcel:** 00360 / 00540

*Paid  
 7/1 1018.75  
 10/20 1279.75  
 w/penalty*

**Comments:**

~~GERALD MILLER/PRESIDENT~~, JOEL MILLER/SECRETARY;  
 CHUCK FLAIG/TREASURER; 300 SHARES EACH.

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]*  
 (Signature of Applicant)

*[Signature]*  
 Approved David Montgomery Chief Administrative Officer  
 AUG 30 2010

J & J MILLER, INC.  
 DBA: COPASETIC LOUNGE  
 322 E CENTRAL ENT  
 DULUTH, MN 55811