

PURCHASING AND LICENSING COMMITTEE

11-0389R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING
LIQUOR LICENSE OF RRR RESTAURANTS, INC. (R BAR), 21
NORTH FOURTH AVENUE WEST.

CITY PROPOSAL:

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

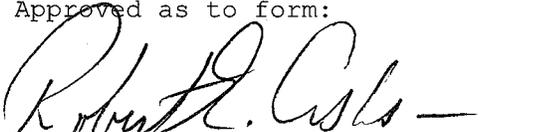
(a) On April 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of RRR Restaurants, Inc., d/b/a R Bar, 21 North Fourth Avenue West, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on April 25, 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 RRR Restaurants, Inc., d/b/a R Bar, 21 North Fourth Avenue West, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: revoke the liquor license of the licensee due to failure to maintain liquor liability insurance if the licensee does not have such insurance in place by the time the city council reviews this matter.

Approved as to form:



Attorney

CLERK JJC:mao 7/11/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on April 6, 2011, regarding the on sale intoxicating liquor license of the R Bar regarding the lack of liquor liability insurance. Minn. Stat. §340A.409, subd. 1 provides that no retail license may be maintained unless the applicant demonstrates proof of financial responsibility with regard to liquor liability insurance and licensee had failed to demonstrate such proof.

- On February 11, 2011, the City Clerk's office was notified that the R Bar had been operating without liquor liability insurance since December 4, 2010. The clerk's office notified the licensee and requested a copy of liquor liability insurance immediately.

- On or about March 1, 2011, the city was provided with a Certificate of Liability Insurance.

- A Notice of Cancellation of Insurance Policy dated March 1, 2011, was sent to the licensee and the city clerk's office stating that the liquor liability policy was being canceled for nonpayment of the premium that was past due as of 2/16/2011.

- At the hearing held on April 6, 2011, Licensee was unable to provide proof that he has liquor liability insurance as required by state and local laws.

- The licensee supplied the city clerk with a certificate of liquor liability insurance on April 8, 2011.

- The liquor liability insurance expired on July 9, 2011, for nonpayment of the premium.

- At the July 6, 2011 Alcohol, Gambling and Tobacco Commission affirmed its April 6th prior action to revoke the license due to lack of liquor liability insurance of the R Bar.

- This resolution will close the record on this violation process through council action. This will also provide history in case the licensee applies for a new license with the city.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

**IN THE MATTER OF: RRR Restaurant, Inc., d/b/a R Bar, 21 N. 4th Ave. West #100,
Duluth, Minnesota 55802.**

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on April 6, 2011, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on April 6, 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, Ronald Rushmeyer.

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. RRR Restaurants, Inc. d/b/a R Bar, is licensed by the City of Duluth to sell intoxicating liquor “on-sale” at the premises located at 21 N. 4th Ave. West #100, Duluth, Minnesota 55802.
2. Licensee is required by Minn. Stat. section 340A.409 and Duluth City Code section 8-9(b)(4) to demonstrate proof of financial responsibility by filing a certificate that there is in effect for the license period an insurance policy issued

by an insurer that meets the statutory minimum requirements.

3. When Licensee submitted its license renewal application in August of 2010, Licensee provided proof of insurance with a certificate of liability insurance issued by Otis-Magie Insurance Agency, Inc. showing a policy period of 09/01/10 through 09/01/11.
4. On February 11, 2011, the City Clerk's office was notified that the R Bar has been operating without liquor liability insurance since December 4, 2010. City Clerk staff was able to contact Ronald Rushmeyer on February 11, 2011 to discuss this matter. Mr. Rushmeyer stated that he would bring in the proof of insurance on Monday, February 14, 2011. He also stated that he had an active insurance policy on his bar in Proctor and that policy included a rider that provided coverage on the R Bar in Duluth. Mr. Rushmeyer did not provide the proof of insurance to the clerk's office on February 14, 2011 as promised. Staff had not received any contact from Mr. Rushmeyer as of Wednesday, February 16, 2011. On that date, city clerk staff called Otis-Magie Insurance Agency to inquire about the status of the insurance policy. Otis Magie advised staff that the insurance policy on R Bar had been canceled for non-payment of the premium and they were unwilling to provide coverage for the R Bar. Otis Magie also advised that they did have a policy of insurance on the Proctor Bar, but that policy did not include a rider or any coverage for the R Bar.
5. The Commission issued its Notice of Hearing and set a hearing date of April 6, 2011.
6. On or about March 1, 2011, the city was provided with a Certificate of Liability Insurance. Said Certificate is dated 3/1/2011 and indicates that RRR Restaurants, Inc., d/b/a/ R Bar is insured for liquor liability with a policy effective date of 2/16/11 to 2/16/12, with the insurer identified as Illinois Casualty Company.

7. Shortly thereafter, the city was provided with a Notice of Cancellation of Insurance Policy. Said notice indicated that the liquor liability policy with Illinois Casualty Company was being canceled for nonpayment of the premium that was **past due as of 2/16/2011**. Said notice was mailed on March 1, 2011 and addressed to RRR Restaurants, Inc. with a copy also provided to the City of Duluth.
8. At the hearing held on 4/6/11, Licensee was unable to provide proof that he has liquor liability insurance as required by state and local laws.
9. Section 8-9 of the Duluth City Code provides that failure to file or maintain any insurance required by law shall be deemed good cause for disciplinary action.
10. Pursuant to section 340A.409 of the Minnesota Statutes, “No retail license may be issued, **maintained** or renewed unless the applicant demonstrates proof of financial responsibility with regard to liability imposed by section 340A.801.” (Chapter 340A.801, et. seq., is known as The Dram Shop Act).

CONCLUSIONS

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

1. That the violation alleged in the Notice of Hearing occurred.
2. That good cause exists to impose discipline upon the Licensee as a result of the violation.
3. That Minn. Stat. §340A.409, subd. 1 provides that no retail license may be maintained unless the applicant demonstrates proof of financial responsibility with regard to liquor liability insurance and Licensee has failed to demonstrate such proof.

RECOMMENDATION

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

1. Revoke the liquor license of the Licensee due to failure to maintain liquor liability insurance if the Licensee does not have such insurance in place by the time the city council reviews this matter.

Dated: April 14, 2011

DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION

By: 
George Hanson, President

M E M O

TO: AGT Commission
FROM: Terri Lehr, Assistant City Attorney
RE: RRR Restaurant, Inc.
DATE: June 17, 2011

The purpose of this memo is to give you an update regarding the status of RRR Restaurant, Inc., d/b/a R Bar.

At the April 6, 2011 Alcohol, Gambling and Tobacco Commission meeting, a hearing was held to determine what, if any, disciplinary action should be recommended to the Duluth City Council with respect to the intoxicating liquor license of RRR Restaurant, Inc. You may recall that the issue was the lack of liquor liability insurance. The city clerk's office had received notice on Friday, February 11, 2011 from the R Bar's insurance agent that the bar had been without liquor liability insurance since December 4, 2010. Mr. Rushmeyer, when contacted by the clerk's office regarding this issue, promised to bring in proof of insurance the following Monday, February 14, 2011. However, the proof of insurance was not provided to the clerk's office as promised. So, on February 28, 2011, the Commission issued its Notice of Hearing, setting this matter for hearing on April 6, 2011. On or about March 1, 2011, the city was provided with a Certificate of Liability Insurance indicating that the Licensee was insured for liquor liability effective 2/16/11. Shortly thereafter, the City was provided with a Notice of Cancellation of Insurance Policy, which notice indicated that the policy was being cancelled for nonpayment of the premium that was past due as of 2/16/11. The Licensee had not taken any action in response to this Notice of Cancellation prior to the April 6, 2011 hearing. This Commission recommended that the Licensee's liquor license be revoked due to failure to maintain liquor liability insurance if the Licensee did not have the insurance in place by the time this matter was reviewed by the city council.

Following the April 6, 2011 hearing, the Report to City Council was prepared and filed. On April 8, 2011, the Licensee supplied the city clerk with a certificate of liquor liability insurance. On or about April 25, 2011, the R Bar closed for business. In light of this development, there was a request to verify the existence (or lack thereof) of the liquor liability insurance. I was asked to follow up regarding this issue.

I contacted Cartier Agency on May 3, 2011 and was advised that a down payment was made to secure the policy, but that a premium would be due shortly. I asked that the city be notified if a Notice of Cancellation of Insurance was issued. I did not hear further from Cartier Agency, so I contacted them again on June 13, 2011. I was advised that the policy was being cancelled due to non-payment of the premium. I asked the company to forward me a copy of the Notice of

Cancellation. I am including with this memo a copy of the Notice of Cancellation which was issued June 8, 2011 and states that the policy will be cancelled effective July 9, 2011 for nonpayment of the premium.

Does the Commission wish to revise its recommendation? The liquor license will expire August 31st. It's unlikely the Licensee will apply for a renewal in light of these circumstances. In addition, the third quarter liquor payment that was due January 15th was NSF. The fourth quarter liquor payment remains unpaid.

NOTICE OF CANCELLATION

FORM: 59134 (06-99)

COMPANY AUTO-OWNERS INSURANCE COMPANY
6101 ANACAPRI BLVD
LANSING, MI 48917-3968

DATE OF NOTICE
06-08-2011

POLICY NUMBER
114606 08785979

AGENCY CARTIER AGENCY INC
06-0081-00 PO BOX 16567
U-067 DULUTH, MN 55816-0567

DESCRIPTION OF POLICY
TAILORED PROTECTION

INSURED RRR RESTAURANTS INC
21 N 4TH AVE W
DULUTH, MN 55802-1509

EFFECTIVE DATE
JULY 09, 2011

AGENCY'S COPY

The company hereby notifies you that in accordance with the terms and conditions of your policy, your insurance will cease at 12:01 A.M. on the effective date shown above.

The excess, if any, of paid premium above the earned premium for the time the policy was in force will be refunded.

REASON FOR CANCELLATION: NONPAYMENT OF PREMIUM DUE

TAILORED PROTECTION POLICY

CANCELLATION

Auto-Owners

INSURANCE COMPANY
6101 ANACAPRI BLVD LANSING MI 48917-3968

INSURED: RRR RESTAURANTS INC

21 N 4TH AVE W

DULUTH

MN 55802-1509

POLICY NUMBER 114606 08785979 11
AGENCY BILL

AGENCY:06-0081-00 MKT TERR: 067 PRODUCER:
CARTIER AGENCY INC
PO BOX 16567
DULUTH MN 55816-0567
(218) 727-5992

POLICY TERM: 04-07-2011 TO 04-07-2012

CANCELLATION INVOICE

THIS POLICY IS CANCELLED AS OF 12:01 A.M. ON 07-09-2011.

A CANCELLATION CREDIT OF \$1,713.27 HAS BEEN
APPLIED TO YOUR BILLING ACCOUNT. THIS CREDIT
MAY OR MAY NOT RESULT IN A PREMIUM REFUND
DEPENDING ON YOUR ACCOUNT BALANCE.

PLEASE CONTACT YOUR AGENT CONCERNING ANY
QUESTIONS.