

PURCHASING AND LICENSING COMMITTEE

11-0398R

RESOLUTION IN THE MATTER OF THE ON SALE 3.2 PERCENT MALT LIQUOR LICENSE OF SAMMY'S PIZZA OF DULUTH, INC. (SAMMY'S PIZZA AND RESTAURANT), 4011 WOODLAND AVENUE.

CITY PROPOSAL:

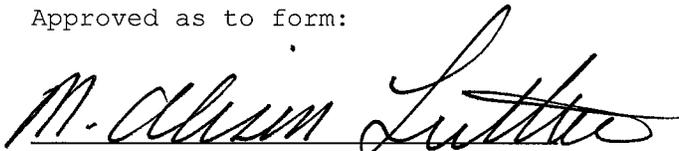
BE IT RESOLVED, On July 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the 3.2 percent malt liquor license of Sammy's Pizza of Duluth, Inc., d/b/a Sammy's Pizza and Restaurant, 4011 Woodland Avenue and has submitted 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 August 15, 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 3.2 percent malt liquor license of Sammy's Pizza of Duluth, Inc., d/b/a Sammy's Pizza and Restaurant, 4011 Woodland Avenue 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 reducing the penalty to \$300 payable within 30 days of final council action.

Approved as to form:

  
Attorney

CLERK JJC:mao 7/26/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on July 6, 2011, regarding the on sale beer license of Sammy's Pizza. On October 6, 2010, the bartender was cited for selling alcohol to an underage individual. Section 8-35 provides that every licensee is responsible for the conduct of its employees and was also cited for the violation. Section 8-9 provides that the presumptive penalty for a first offense is a \$500 penalty. The AGTC stated the mitigating circumstance is that this is the first violation since the restaurant opened in 1956. The AGTC is recommending a \$500 fine and reducing the fine to \$300 payable within 30 days of council action.

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: **SAMMY'S PIZZA OF DUL., INC.**, d/b/a Sammy's Pizza and Restaurant, 4011 Woodland Avenue, Duluth, Minnesota 55803.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on July 6, 2011, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on July 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 Vice-President, Sam Perrella.

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" beer at the premises located at 4011 Woodland Avenue, Duluth, Minnesota.
2. On October 6, 2010, Rachel J. B. Ardren, an employee of Licensee, sold and served beer to an underage person at Licensee's business establishment known as Sammy's Pizza and Restaurant. Ardren was cited for the violation and convicted on October 14, 2010.

3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale and convicted of this offense on May 24, 2011. Licensee paid a \$200.00 fine.
4. The Commission then issued its Notice of Hearing and set a hearing date of July 6, 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. Mitigating circumstances include the following: Sam Perrella, Vice-President of Sammy's Pizza of Duluth, Inc., stated that he will make every effort to eliminate future violations. Sammy's Pizza has been part of the community and in business since 1956 without past violations.

### **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 October 6, 2010.
3. Section 8-9(c) of the Duluth City Code provides that the presumptive penalty for a first offense is a \$500.00 civil penalty. However, mitigating circumstances exist as follows: Sam Perrella, Vice-President of Sammy's Pizza of Duluth, Inc., stated that he will make every effort to eliminate future violations. Sammy's Pizza has been part of the community and in business since 1956 without past violations.

**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; and
2. That the penalty be reduced to \$300.00; and
3. That payment of \$300.00 be made within 30 days of final council action.

Dated: 7/14/11

DULUTH ALCOHOL, GAMBLING  
AND TOBACCO COMMISSION

By:   
George Hanson, President

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

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**NOTICE OF AND ORDER FOR HEARING**

\* \* \* \* \*

TO: **SAMMY'S PIZZA OF DUL., INC.**, Attention: Jeanne Perrella, President, 4011 Woodland Avenue, Duluth, Minnesota 55803.

PLEASE BE ADVISED that on **July 6, 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. Sammy's Pizza of Dul., Inc. d/b/a Sammy's Pizza and Restaurant, is licensed by the City of Duluth to sell "on-sale" beer at the premises located at 4011 Woodland Avenue, Duluth, Minnesota 55803.
2. On or about October 6, 2010, Rachael J. B. Ardren, an employee of Licensee, sold and served beer to an underage person at Licensee's business establishment known as Sammy's Pizza and Restaurant. Ardren was cited for the violation and convicted on October 14, 2010. *See City Docs. 1-3 (Duluth Police Department Report ICR# 10-381013; City of Duluth Ordinance Violation Ticket LP10000327; and Proof of Payment of \$200 fine).*
3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale and convicted of this offense on 5/24/2011. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket No. LP10004052; and Proof of Payment of \$200 fine on 5/24/2011.)* (NOTE: The Licensee was initially cited with a district court ticket, but because it was in "limbo" for several months in the

court system, the City Attorney's Office dismissed it. The administrative ticket was then issued in its place.)

4. This is the Licensee's first violation for purposes of the presumptive penalty under Duluth City Code.
5. Pursuant to Duluth City Code section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for the current violation is a \$500 civil penalty.

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.

(Records Supporting This Notice Are Attached As City Document Numbers 1-5.)

Dated: June 1, 2011

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

and

TERRI L. LEHR

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: 10/06/2010 Time: 18:13 Case No.: 10381013  
Code: DU8,28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED  
Class: M4199 Occurrence Date: 10/06/2010  
Location: 4011 WOODLAND AVE, 1DU, DULUTH, MN, , 55803; SAMMYS PIZZA WOODLAND

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===== NARRATIVE =====

**SYNOPSIS:**

On 10/06/10 at approximately 1800 hours, I, Officer McGovern (Squad 64), along with Officer Rodman (Squad 84), were on special detail doing compliance checks for serving alcohol to underage. One of the listed compliance businesses was Sammy's Pizza, 4011 Woodland Avenue. Upon pulling up to Sammy's Pizza, our decoy, LAVONNE MARIE BELLANGER, DOB: 06/30/1990, went into the business and took a seat. Officer Rodman-323 (Squad 84) went in also and took a seat to observe the transaction. BELLANGER was instructed to order a beer which they have on sale at Sammy's Pizza and if she was served, to pay for it and retrieve the change and then depart and we would then identify ourselves as police officers. I was in our unmarked squad in the parking lot.

Officer Rodman came out and spoke with me and asked and asked me if I could go in and observe the transaction, which I did. As I sat down, approximately ten minutes later the waitress, who was later identified as RACHAEL JOSEPHINE BASS ARDREN, DOB: 07/15/1982, did serve BELLANGER an on-tap beer and the decoy, BELLANGER, paid for the beer and then walked out of the business. I identified myself as a police officer showing my identification to ARDREN and asked if she could sit down and speak with me. We did it privately in a booth and she made a spontaneous utterance of "I didn't check the date well enough on the ID did I?" As I wrote out the Administrative Ticket, ticket #LP10000327, we talked about the importance of checking ID's and ARDREN stated the decoy had also ordered a pizza and asked if we still wanted it. I was surprised to hear that the decoy had ordered a pizza, but with decoy money I did pay for the small pizza which was given to me by ARDREN prior to leaving the business.

I observed ARDREN bring the decoy an on-tap beer in which a ten dollar bill was given to her by the decoy for that prior to walking out. Also see with this report a written statement by BELLANGER and the surveillance record by myself. The fine was in the amount of \$200.00 on an Administrative Fine and it was explained to her how she could pay it if she wished to or to set up a court date.

These reports need to be forwarded to the Licensing Office, Investigator Cha Vang of the Duluth Police Department.

**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 <b>10-381013</b>	Date/Time Issued <b>10/06/10 1810 hrs</b>
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Alleged Violator's Name  
**Rachael Josephine Bass Ardren**

Address  
**206 W. Wabasha St Duluth 55803**

DOB  
**07-18-1982**

Phone Number  
**218-591-3403**

**Vehicle Information**

License No.	State	Reg. Expires

Vehicle Make	Model	Color

**Violation Information**

Date of Violation <b>10/06/10</b>	Time of Violation <b>1800 hrs</b>
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Location  
**Sammys Pizze 401 Woodland**

Charge <b>Sale to Underage of Alcohol</b>	Ordinance No. <b>8-28</b>
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Description  
**- observed sale of on top beer to minor  
detour by Ardren.**

Officer Signature  


Officer Name (Print) <b>Sharon McBovera</b>	Badge No. <b>383</b>
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Served: In person <input checked="" type="checkbox"/>	Positively Identified <input type="checkbox"/>
By mail <input type="checkbox"/>	

Date Due: <b>10/16/10</b>	Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00
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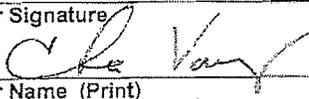
Ticket Number: **LP10000327**

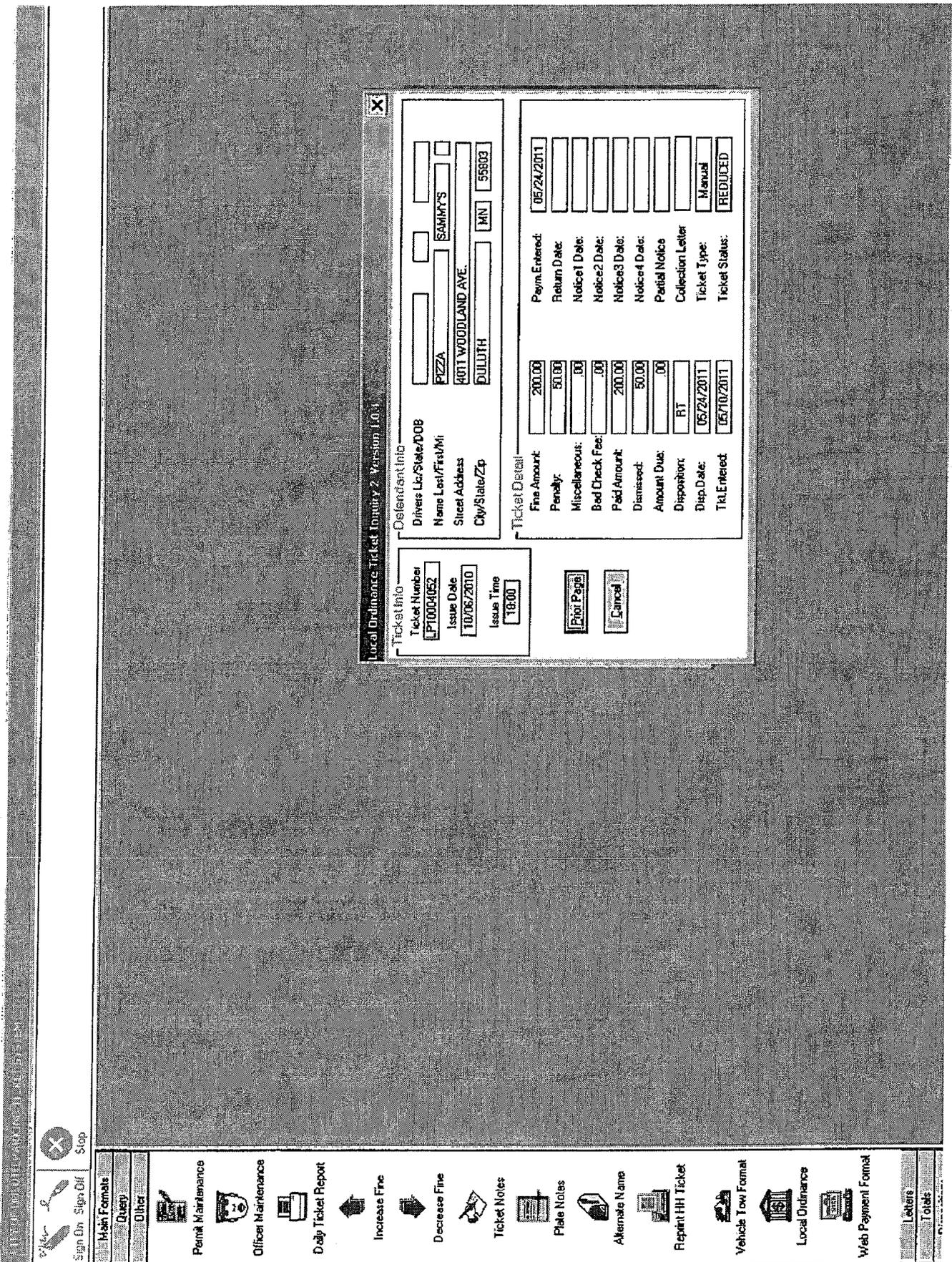


**CITY OF DULUTH  
CITY ORDINANCE VIOLATION**

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

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

ICR Number <b>10-381013</b>		Date/Time Issued <b>5-6-2011@0910</b>
Alleged Violator's Name <b>Sammy's Pizza of Duluth, Inc</b>		
Address <b>4011 Woodland Ave. Duluth, MN 55803</b>		City State Zip Code
DOB	Phone Number	
<b>Vehicle Information</b>		
License No.	State	Reg. Expires
Vehicle Make	Model	Color
<b>Violation Information</b>		
Date of Violation <b>10-6-2010</b>	Time of Violation <b>1800</b>	
Location <b>4011 Woodland Ave</b>		
Charge <b>licensee liable</b>	Ordinance No. <b>8-35</b>	
Description <b>employee sold alcohol to underage. licensee liable for sale.</b>		
Officer Signature 		
Officer Name (Print) <b>Cha Vang</b>		Badge No. <b>325</b>
Served: In person <input type="checkbox"/>	Positively Identified <input type="checkbox"/>	
By mail <input checked="" type="checkbox"/>		
Date Due: <b>5-19-2011</b>	Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: <b>LP10 004052</b>		



**Alcohol, Gambling, and Tobacco Hearing**  
**July 6, 2011**  
**Sammy's Pizza, Inc., d/b/a Sammy's Pizza, 4011 Woodland Avenue**

Hanson: Welcome, Sir.

Perella: My name is Sam Perella. I'm Vice President of Sammy's Pizza, Inc.

Hanson: Welcome. Counselor Lehr.

Lehr: Thank you, President Hanson. The matter before this Commission involves a violation that occurred on October 6, 2010 at Sammy's Pizza and Restaurant located at 4011 Woodland Avenue here in Duluth. The allegations are set forth in the Notice of an Order for Hearing that the server named Rachel Arden served an underage person. Ms. Arden cited for that violation. The violation is attached to the report. She paid the violation which was a \$200.00 penalty. Also, the Licensee was cited under Duluth City Code Section 8-35 for the sale to the minor and initially, the Licensee was given a ticket that was issued through District Court but with the way that the District Court changed the way they process their tickets last July, a number of tickets, including this one, were sort of in a state of limbo for a period of several months. So in conversations with the Police Department, we decided to dismiss that District Court ticket and that one went away. Then the Police Department re-issued an Administrative penalty ticket to a number of licensees including this Licensee. And so the ticket for the October 6, 2010, violation was re-issued May 24<sup>th</sup> of this year and that's why that ticket is so many months later from the violation from the server because of that little glitch that we had with the court system. So when the initial ticket was re-issued, then that ticket was paid by the Licensee and that was paid on May 24<sup>th</sup> and a copy of that ticket as well as the fine that was paid as a penalty are attached to the Notice of an Order for Hearing. This is considered a first violation and so the presumptive penalty on the Code is a \$500.00 civil penalty and that's the recommendation.

Hanson: So was there a change in the....the original ticket that went away. Was there a difference in the fine amount for that compared to the fine that was issued here?

Lehr: I think historically the tickets that went to District Court were actually a higher fine. They were higher than the \$200.00 or \$250.00.

Hanson: Weren't they supposed to be \$300.00 traditionally or \$500.00 even?

Lehr: Traditionally, they were around \$500.00. But there could be some variance because sentencing was up the judge. Sometimes a judge would change the penalty.

Hanson: Yeah.

Lehr: So it was often \$300.00 to \$500.00 plus there would be a state surcharge that would get tacked on the District Court ticket as well which we don't have here.

Hanson: Okay. But seven months is a long time to wait.

Lehr: Yes.

Hanson: So. Okay. Do you have anything more?

Lehr: With that, I would rest on the Notice of Order for Hearing and the documents attached to that.

Hanson: Okay. Mr. Perella?

Perella: Sir, I have no argument with that. We broke the law. She had been trained and she carded the young lady but she really didn't card the young lady. She didn't look at the date well enough and we broke the law and I'm sorry and it won't happen again.

Hanson: You send your employees to alcohol training?

Perella: No. We given them the handbook but no, we do not send them to training and I heard the Officer say earlier to card the age 35 and below and that's good advice.

Hanson: Well, I don't ever recall seeing you in here before.

Perella: No. No, Sir.

Hanson: So what you're doing must be working but I can only encourage you to, you know, have your employees partake in that. It's above and beyond just hearing the same voice telling them to card everybody every day.

Perella: Right.

Hanson: All right. Do you have anything else to add or questions?

Perella: Yeah. I'll make sure it won't happen again.

Hanson: Comments? Questions from the Board here? Then I guess I'd be looking for a motion for some kind of action here or no action.

Hammack: Well, in the past a type of civil penalty has been issued. There has been leniency been showed by this Board in the past that we reduced the \$300.00 instead of \$500.00. I would move that \$300.00 instead of \$500.00.

Hammack: I would move that we reduce the penalty to \$300.00 instead of \$500.00 in keeping with some previous experiences that we on this Board have done.

Hanson: Counselor Lutterman.

Lutterman: Yes. I would just remind the Board that if the Board is choosing to deviate from the presumed penalty in the Code you're gonna need to indicate what the mitigating circumstances for the departure are.

Hanson: Or aggravating. Aggravating or mitigating. Either way. So, Commissioner Hammack, do you have any mitigating circumstances to cite which would make us want to reduce the presumptive penalty?

Hammack: Well, we're hearing from our client here that he's going to make every attempt possible to eliminate this type of thing in the future. If he comes back again, it could be a lot bigger than what it is right now.

Hanson: Okay. Do I have a second for the motion?

Birchland: I'll second and adding the fact that Sammy's has been part of the Duluth community for many, many, many years. When I was a kid, you know, it was the place to be and I don't recall and I don't see anything here that shows that they've had other past problems. I certainly would with the past history of their good reputation that I think that should go somewhat towards the reduction of that fine at this time.

Hanson: Any further discussion? I'm not so sure that I personally find that to be a mitigating circumstance, the fact that they've been in business for a long time. But it seems to me, we kind of gave a break to somebody that had been in business for 107 years without a violation here a couple months ago. So, I don't know, do you approach 107 years, Mr. Perella?

Perella: 1956 we opened.

Hanson: 1956. So for 55 years you've been around. Have you guys ever had a ticket or a citation in that time that you know of? Now is your operation strictly the one on Woodland then?

Perella: Yes. In Woodland, I would say no but over 55 years, we may have been ticketed once or twice in the downtown store but I do not recall being ticketed.

Hanson: I've never seen one before on the one on Woodland.

Perella: Right.

Hanson: Yeah. It's kinda hard to hide out in that one.

Perella: Say hello next time.

Hanson: All right. The motion's been made and seconded. Any further discussion? Otherwise we're gonna vote. All in favor say "Aye".

Hanson: Motion passes unanimously.

Lehr: Can I just ask a question for clarification? Is part of the motion is the intent to stay the balance of the fine for a period of one year on the condition of no same or similar which is typically done or is that not part of the motion?

Hanson: Nah. The motion was strictly a straightforward reduction to \$300.00 with no stay. No time out. No pass go, collect \$200. T

Lehr: Payable?

Hammack: Payable in 30 days.

Lehr: Payable within 30 days of the final Council action?

Hanson: Correct. Yes. And, Mr. Perella, as you probably know, the City Council is the final authority on this. All we do here is recommend.

Perella: Yes, Sir.

Hanson: It may look like we're doing a lot more but we're just recommending and they have overstepped our recommendations in the past. So when this comes before the Council, I would suggest you be on hand just in case.

Perella: Yes, Sir.

Hanson: Cause sometimes somebody just feels they need to be heroes and I wouldn't want you to get taken advantage of by not being there. They usually put the things on the Consent Agenda and if you want to speak,

then you want to be there and let them know you're there so they can pull it off the Consent Agenda. If you're pretty much okay with the recommendation, at least be there so if somebody takes it upon themselves to pull you off the Consent Agenda, then you're there to speak on your own behalf.

Perella: Okay.

Hanson: All right. That's all we have for you, I guess.

Perella: Thanks for your time. Thank you.

Hanson: Thank you.