

PURCHASING AND LICENSING COMMITTEE

11-0399R

RESOLUTION IN THE MATTER OF THE ON SALE WINE AND 3.2 PERCENT MALT LIQUOR LICENSE OF LOY KRATHONG, INC. (SALA THAI RESTAURANT), 4023 WOODLAND AVENUE.

CITY PROPOSAL:

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

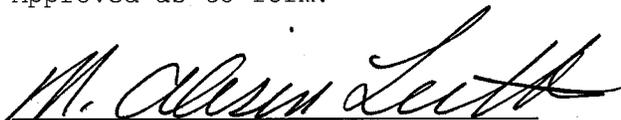
(a) On July 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the on sale wine and 3.2 percent malt liquor license of Loy Krathong, Inc., d/b/a Sala Thai Restaurant, 4023 Woodland Avenue and has submitted its report 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 wine and 3.2 percent malt liquor license of Loy Krathong, Inc., d/b/a Sala Thai Restaurant, 4023 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 payable within with \$300 payable within 30 days of final council action, and \$200 of the penalty by 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 7/26/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on July 6, 2011, regarding the liquor license of Sala Thai. On October 6, 2010, the owner of the restaurant was cited for selling alcohol to an underage individual. Section 8-9 provides that the presumptive penalty for a first offense is a \$500 penalty. This is the licensee's first violation, and the mitigating circumstances include the server cited for the sale is also the owner of the restaurant and will change her carding procedures to prevent another violation. The AGTC is recommending a \$500 fine for the first violation with \$300 of the fine payable within 30 days of council action and \$200 stayed for one year pending no further violations.

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: **LOY KRATHONG, INC.**, d/b/a Sala Thai Restaurant, 4023 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 President, Sumlee Beede.

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 at the premises located at 4023 Woodland Avenue, Duluth, Minnesota.
2. On October 6, 2010, Sumlee Beede, an owner of Licensee, sold and served beer to an underage person at Licensee’s business establishment known as Sala Thai Restaurant. Sumlee was cited for the violation and convicted on October 8, 2010, paying a \$200 fine.

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: Sumlee Beede, President of Loy Krathong, Inc., was also the server who was cited for the unlawful sale and has learned her lesson. She stated that, in the future, she will card everyone who looks forty years of age or younger. Sala Thai Restaurant has been in business for three years 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: Sumlee Beede, President of Loy Krathong, Inc., was also the server who was cited for the unlawful sale and has learned her lesson. She stated that, in the future, she will card everyone who looks forty years of age or younger.

Sala Thai Restaurant has been in business for three years 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 \$200 of the penalty be stayed for a period of one year on the condition of no same or similar violations; 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: **LOY KRATHONG, INC.**, Attention: Sumlee Beede, President, 4023 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. Loy Krathong, Inc. d/b/a Sala Thai Restaurant, is licensed by the City of Duluth to sell “on-sale” wine at the premises located at 4023 Woodland Avenue, Duluth, Minnesota 55803.
2. On or about October 6, 2010, Sumlee Beede, an owner of Licensee, sold and served beer to an underage person at Licensee’s business establishment known as Sala Thai Restaurant. Sumlee was cited for the violation and convicted on October 8, 2010. *See City Docs. 1-3 (Duluth Police Department Report ICR# 10-381013; City of Duluth Ordinance Violation Ticket LP10000326; 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. LP10004053; 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: 18:01 Case No.: 10381002  
Code: Crime:  
Class: Occurrence Date:  
Location: 4023 1/2 WOODLAND AVE, 1DU, DULUTH, MN, , 55803

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===== NARRATIVE =====

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On 10/06/10, Investigator McGovern, along with myself, Investigator Rodman, was working an alcohol compliance detail. We also had two decoys, NICHOLAS EDWARD PRACHER, DOB: 02/26/1990 and \_\_\_\_\_.

At approximately 1800 hours, we were doing an alcohol compliance check at the Sala Thai restaurant located at 4023 ½ Woodland Avenue. Our decoy, PRACHER, went into the restaurant and was seated. PRACHER asked for a beer, was not carded and was served the beer by SUMLEE SRIAK BEEDE. PRACHER left the beer and left the restaurant. I went into the restaurant; identified myself, told BEEDE she had just served an underage male. BEEDE was issued a City Ordinance violation, citation #LP10000326 and was advised to follow the directions on the back of the Administration Citation to take care of the fine. See also attached to this report the written statement by decoy PRACHER.

**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<br><i>18</i><br><b>10-381002</b>  |   | Date/Time Issued<br><b>10-06-10 1805hr</b>                |                |
|--|---|---|----------------|
| Alleged Violator's Name<br><b>Sumner Srikak Beede</b>  |   |   |                |
| Address<br><b>4023 Woodland Ave Duluth</b>   |   | City  | State Zip Code |
| DOB<br><b>12-01-50</b>   | Phone Number<br><b>728-4822</b>   |   |                |
| Vehicle Information  |   |   |                |
| License No.  | State   | Reg. Expires  |                |
| Vehicle Make   | Model   | Color   |                |
| Violation Information  |   |   |                |
| Date of Violation<br><b>10-06-10</b>   |   | Time of Violation<br><b>1800</b>                          |                |
| Location<br><b>Sala Thai 4023 Woodland Ave</b>   |   |   |                |
| Charge<br><b>Safe to Minor</b>   | Ordinance No.<br><b>8-25</b>  |   |                |
| Description<br><b>Minor with Pracher ordered a beer and was served by abop w/out being carded by Bob White</b> |   |   |                |
| Officer Signature<br>       |   |   |                |
| Officer Name (Print)<br><b>Jim Radman</b>  |   | Badge No.<br><b>323</b>                                   |                |
| Served: In person <input checked="" type="checkbox"/>  |   | Positively Identified <input checked="" type="checkbox"/> |                |
| By mail <input type="checkbox"/>   |   |   |                |
| Date Due:<br><b>10-16-10</b>   | Minimum Fine Amount Due:<br><input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00 |   |                |
| Ticket Number: <b>LP10 000325</b>  |   |   |                |

Sign On Sign Off Stop

Main Formats  
Query  
Other

Decrease Fine

Ticket Notes

Plate Notes

Alternate Name

Reprint HH Ticket

Vehicle Tow Format

Local Ordinance

Letters  
Totals  
Dispositions  
Not Guilty/Hold  
Ticket Books  
User Controls

Local Ordinance Ticket Inquiry 2 - Version 1.0.4

|  |  |  |  |   |  |
|--|--|--|--|---|--|
| <b>Ticket Info</b><br>Ticket Number: LP10000326<br>Issue Date: 10/06/2010<br>Issue Time: 18:00 |  | <b>Defendant Info</b><br>Drivers Lic/State/DOB: [ ] [ ] 12/01/1950<br>Name Last/First/Mi: BEEDE [ ] SUMLER [S]<br>Street Address: 4023 WOODLAND AVENUE<br>City/State/Zip: DULUTH [ ] MN 55803  |  |   |  |
| Print Page<br>Cancel   |  | <b>Ticket Detail</b><br>Fine Amount: 200.00<br>Penalty: .00<br>Miscellaneous: .00<br>Bad Check Fee: .00<br>Paid Amount: 200.00<br>Dismissed: .00<br>Amount Due: .00<br>Disposition: PF<br>Disp.Date: 10/06/2010<br>Tkt.Entered: 10/08/2010 |  | Paym.Entered: 10/08/2010<br>Return Date:<br>Notice1 Date:<br>Notice2 Date:<br>Notice3 Date:<br>Notice4 Date:<br>Partial Notice:<br>Collection Letter:<br>Ticket Type: Manual<br>Ticket Status: PAID |  |

start

Novell Gr Adobe Ac WordPerf 12:48 PM Duluth - T...

**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.

Duluth Police Department  
Main Office

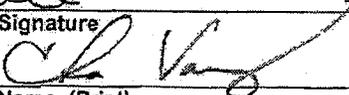
Citation No.: 10381002

DULUTH, MN, 55803

NARRATIVE = =====

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We also had two decoys, NICHOLAS EDWARD

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BEEDE. PRACHER left the beer and left the  
identified myself, told BEEDE she had just served  
d a City Ordinance violation, citation #LP10000326  
ns on the back of the Administration Citation to  
d to this report the written statement by decoy

|  |       |  |       |
|--|-------|--|-------|
| ICR Number<br><b>10-381002</b>   |       | Date/Time Issued<br><b>5-6-2011 @ 0920</b>   |       |
| Alleged Violator's Name<br><b>Loy Krathong, Inc.</b>   |       |  |       |
| Address<br><b>4023 Woodland Ave Duluth, MN 55803</b>   |       | City   | State |
| DOB  |       | Phone Number   |       |
| <b>Vehicle Information</b>   |       |  |       |
| License No.  | State | Reg. Expires   |       |
| Vehicle Make   | Model | Color  |       |
| <b>Violation Information</b>   |       |  |       |
| Date of Violation<br><b>10-6-2010</b>  |       | Time of Violation<br><b>1800</b>   |       |
| Location<br><b>4023 Woodland Ave</b>   |       |  |       |
| Charge<br><b>licensee liable</b>   |       | Ordinance No.<br><b>8-35</b>   |       |
| Description<br><b>employee sold alcohol to underage. licensee liable for sale</b>                        |       |  |       |
| Officer Signature<br> |       |  |       |
| Officer Name (Print)<br><b>Cha Vang</b>  |       | Badge No.<br><b>325</b>  |       |
| Served: In person <input type="checkbox"/><br>By mail <input checked="" type="checkbox"/>                |       | Positively Identified <input type="checkbox"/>   |       |
| Date Due:<br><b>5-19-2011</b>  |       | Minimum Fine Amount Due:<br><input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00<br><input type="checkbox"/> \$400.00 |       |
| Ticket Number: <b>LP10 004053</b>  |       |  |       |

Sign On  
 Sign Off  
 Supv

Main Formals  
 Queue  
 Other  
 Penalty Maintenance  
 Officer Maintenance  
 Daily Ticket Report  
 Increase Fine  
 Decrease Fine  
 Ticket Notes  
 Plate Notes  
 Alternate Name  
 Reprint HH Ticket  
 Vehicle Tow Form  
 Local Ordinance  
 Web Payment Form  
 Letters  
 Labels  
 Dispositions  
 ABG Liability Hold  
 Ticket Books  
 User Controls

Local Ordinance Ticket Inquiry 2 - Version 1.0.4

Defendant Info

Drivers Lic/State/DOB:     
 Name Last/First/Mi: KRATHANG LOY  
 Street Address: 4023 WOODLAND AVE.  
 City/State/Zip: DULUTH MN 55803

Ticket Info

Ticket Number: EPT0000053  
 Issue Date: 10/06/2010  
 Issue Time: 18:00

Ticket Detail

|                |            |                    |            |
|----------------|------------|--------------------|------------|
| Fine Amount:   | 200.00     | Paysm. Entered:    | 05/24/2011 |
| Penalty:       | 50.00      | Return Date:       |            |
| Miscellaneous: | 00         | Notice1 Date:      | 06/24/2011 |
| Bad Check Fee: | 00         | Notice2 Date:      |            |
| Paid Amount:   | 200.00     | Notice3 Date:      |            |
| Dismissed:     | 50.00      | Notice4 Date:      |            |
| Amount Due:    | 00         | Partial Notice:    |            |
| Disposition:   | PF         | Collection Letter: | Manual     |
| Disp. Date:    | 05/24/2011 | Ticket Type:       | REDUCED    |
| Tkt. Entered:  | 06/10/2011 | Ticket Status:     |            |

Print Page  
 Cancel



**Alcohol, Gambling, and Tobacco Hearing**  
**July 6, 2011**  
**Loy Krathong, Inc., d/b/a Sala Thai, 4023 Woodland Avenue**

Beede: Sumlee Beede, President of Thai Restaurant and Thai Krathong, Inc.

Hanson: Okay. Welcome. We're gonna follow pretty much the same procedure we did before. The City will go first and you'll have a chance to contest or state your own case and then we'll make a recommendation.

Lehr: Thank you. Commissioners, this matter is uncontested. I had a telephone conversation with Ms. Beede on June 6<sup>th</sup> of this year, and she and I chatted about what's contained in a Notice for Hearing. Ms. Beede does not dispute that on October 6, 2010, she had served beer to an underage person at her place of business. She was the server and she was given a ticket for that violation and she paid the fine, which was a \$200.00 fine. Also as the owner of the licensed premises, she received a ticket under Section 8-35. This was another one of those tickets that was issued initially in District Court. But then we ended up dismissing the District Court ticket and Ms. Beede tells me she never got service of a District Court ticket. I told her I don't have any reason to dispute that, and it's really not an issue here because when she got the Administrative ticket she paid that ticket. So that matter has been paid and she paid a \$200.00 fine on the initiative ticket that was issued. The District Court's ticket was also dismissed like in the past case. So, there was one ticket to her as the server and one ticket to the Licensee. Both tickets have been paid. \$200.00 each on those two tickets for a total of \$400.00 What Ms. Beede would like to do is to address this Commission with regard to what the civil penalty would be. I did explain to her as is set forth in the Notice that the presumptive penalty is a \$500.00 civil penalty. But she would like to address the Commission with regard to that penalty and with that I would rest on the documents attached to the Notice of Hearing and the Notice of Hearing.

Hanson: All right. Thank you, Terri. Ms. Beede, go ahead.

Beede: Chairman of the Board and memberd of the Board. I have followed all the rules and paid my fine and learned my lesson, and I have also spoken with all my employees and remind them virtually daily. It was my flaw to overlook my action of that night and I totally regret it. I'm here today to ask you, all you Board members, to find in your hearts for leniency. We are small business. We practice very tight budget and very tight finances. I am asking for the leniency with the fine and I know it is not all your decision, but I would like you to take this time to give full consideration for

this request of leniency of your fine.

Hanson: Have you taken part in any of the training classes for regarding serving minors.

Beede: No, I have not other than reading the brochure and understand the rules that I should not be handing anything out to minors. Now that I know that anyone under 40 should be carded.

Hanson: I know you guys have a web site and I think there's access to this information on line and I would encourage you to review that.

Beede: Okay.

Hanson: And you were the offending party, correct?

Beede: Yes.

Hanson: So you look at yourself in the mirror and you say, "Don't do that". Right?

Beede: Absolutely.

Hanson: Okay. You guys haven't been open there that long, have you?

Beede: It's going on three years next month. Yes.

Hanson: Did you have another business in town here also?

Beede: Yes. On First Street. Next to Coney Island.

Hanson: Okay. Was that under a different name?

Beede: That was a different name. Yes.

Hanson: Okay. You had a fair number of years in there, didn't you? On First?

Beede: Yes. On First. Thai Krathong

Hanson: Lunch buffets as I remember.

Beede: Yes.

Hanson: All right. Any more to say before I turn it over to the Board to start discussing?

Beede: No other than just please do keep in mind for the request of the leniency of your fine. Thank you.

Hanson: Okay. Any comments? Discussion? Motions? I don't hear any comments or motions for discussion, I'm just gonna dismiss this case. I don't know if I have the authority to do that but I'm inclined to.

Lutterman: Your role is to make a recommendation to City Council so you certainly could bring the motion to recommend to the City Council with no penalty.

Hanson: Well, I don't believe it's appropriate for me to make a motion but I think I have some control over where the agenda goes.

Lutterman: Well, the only other way to control the agenda is to bring a motion to table.

Hanson: I still wouldn't want to bring a motion. So, if we take no action, then there is no action.

Birchland: I'll try one. Going along with what we did before, I'll make a motion that we reduce the fine to \$300.00, stay the extra \$200.00 for one year with no same or similar and my reasoning behind that first of all, it's a first violation. The sole offender who is also the owner is here in court. I would certainly believe that a lesson has been learned. I hear from her testimony that now if someone looks like they're 40 years old, they will get carded. I think that's a good start. By the way, I'm not offended when I get carded. In fact, I think it's really, really nice. So that would be my reasoning for reduction and that would be payable 30 days after City Council approval.

Hammack: I second.

Hanson: Motions made and seconded. Any further discussion? Okay, barring any further discussion, then we'll vote. All in favor say "Aye".

Hanson: Motion passes unanimously. Ms Beede, did you hear everything I said regarding City Council being the final authority on this? So, you're gonna want to be there and be prepared to plead your case again in case somebody takes it upon themselves to pull you off the Consent Agenda. We want you to stay in business. We want you to do well. We just don't want anybody serving minors.

Beede: I understand. Thank you.