

PURCHASING AND LICENSING COMMITTEE

11-0501R

RESOLUTION IN THE MATTER OF THE OFF SALE INTOXICATING LIQUOR LICENSE OF ROTO OF DULUTH, LLC, (UNIVERSITY LIQUOR), 1603 WOODLAND AVENUE.

CITY PROPOSAL:

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

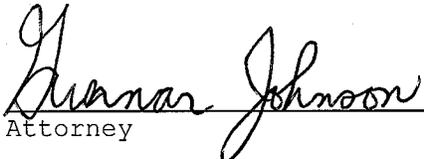
(a) On August 3, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of ROTO of Duluth, LLC, (University Liquor), 1603 Woodland Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on October 10, 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 off sale intoxicating liquor license of ROTO of Duluth, LLC, (University Liquor), 1603 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 30 days of final council action.

Approved as to form:


Attorney

CLERK JJC:mao 9/22/2011

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on August 3, 2011, regarding the liquor license of University Liquor. The police department conducted alcohol compliance checks on October 6, 2010, and this licensee was ticketed for selling alcohol to an underage person. 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. Because the licensee did not appear at the AGTC hearing, the recommendation of the AGTC is to impose a civil penalty of \$500 payable within 30 days of council action.

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **ROTO OF DULUTH, LLC, d/b/a University Liquor**, 1603
Woodland Avenue, Duluth, Minnesota 55803.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on August 3, 2011, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on August 3, 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 failed to appear.

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 "off-sale" at the premises located at 1603 Woodland Avenue, Duluth, Minnesota.
2. On October 6, 2010, an employee of Licensee was issued a citation for sale of intoxicating liquor to a person under the age of 21 in violation of Duluth City Code section 8-28. The employee was convicted of the violation on October 14,

2010.

3. The Licensee was also issued a citation under Duluth City Code section 8-35 for the illegal sale and convicted of this offense on May 16, 2011.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of August 3, 2011.
5. The Licensee failed to appear for the hearing or otherwise communicate with the City Clerk or the City Attorney's Office prior to the hearing. Proof of proper service upon the Licensee of the Notice of and Order for Hearing was shown.
6. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.

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 October 6, 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.

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. Imposition of a \$500 penalty payable within 30 days of final council action.

Dated: 9/7/2011

DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION

By: 
George Hanson, President

Alcohol, Gambling, and Tobacco Hearing
August 3, 2011
Roto of Duluth, LLC, d/b/a University Liquor, 1603 Woodland Avenue

- Hanson: University Liquor isn't here? No phone call?
- Lutterman: They have been properly noticed of this hearing, and it is certainly in your jurisdiction to hear the matter.
- Hanson: Do we have a precedent regarding this type of situation that comes to mind?
- Lutterman: No. Most people show up for a disciplinary hearing. I can't remember anyone not showing or calling with a reason.
- Hanson: Do the best of your knowledge, were they properly notified to the correct address?
- Oswald: The attorney's office sends out a Notice of Hearing with an Affidavit of Mailing, and I also send out a reminder agenda to everyone on the agenda.
- Lehr: I have the service notice that the licensee was served on June 30th.
- Hanson: Can I see it to show the board? Alright. I am looking for suggestions or a recommendation on how to proceed. I am not inclined to look very favorably on this.
- Birchland: That is my thought exactly. It appears that the city did everything they were supposed to legally do, and it is up to the business to be responsible enough to be here. I would make a motion in absentia impose a fine of \$500 payable in 30 days of council action.
- Stauber: Second
- Lehr: I can tell this commission that the notice that was mailed to the licensee was not returned to my office. That would lead me to believe that they did receive the notice. I did not receive a telephone call from an agent or a representative of the licensee. I did try today to call Jen or Tony Walker and received two telephone numbers from Martha Oswald. And I called the business number and got an answering machine. I did not leave a message. I thought it was strange that I got an answering machine at a business. Then I called the cell phone number as well and got an answering machine as well and did not leave a message.
- Hanson: Is that normal procedure if you don't get a human you don't leave a message? Is that what you normally do?
- Lehr: Typically I try not to leave messages especially on cell phones if I don't know if it really is the person who I am trying to contact.
- Hanson: Anyone else have a comment on this? We're in the discussion phase. If not, all in favor? Motion passes unanimously.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

* * * * *

NOTICE OF AND ORDER FOR HEARING

* * * * *

TO: **ROTO OF DULUTH, INC., d/b/a University Liquor**, 1603 Woodland Avenue, Duluth, Minnesota 55803.

PLEASE BE ADVISED that on **August 3, 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. Roto of Duluth, Inc. d/b/a University Liquor is licensed by the City of Duluth to sell “off-sale” intoxicating liquor at the premises located at 1603 Woodland Avenue, Duluth, Minnesota 55803.
2. On or about October 6, 2010, Joseph Trefethren, an employee of Licensee, sold and served an alcoholic beverage to an underage person at Licensee’s business establishment known as University Liquor. Trefethren was cited for the violation and convicted on October 14, 2010. *See City Docs. 1-3 (Duluth Police Department Report ICR# 10-381023; City of Duluth Ordinance Violation Ticket LP10000328; 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 5/16/2011, paying a fine of \$200.00. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket LP10004055 and Proof of Payment of \$200 fine on 5/16/2011.)* (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.

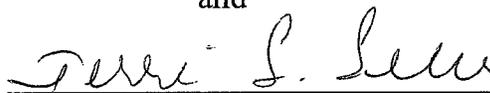
Pursuant to City Code Sections 8-9(a) and (b)(1) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

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

Dated: 6/29/11

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

Duluth Police Department
Main Office

Reported Date: 10/06/2010 Time: 18:29 Case No.: 10381023
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED
Class: M4199 Occurrence Date: 10/06/2010
Location: 1603 WOODLAND AVE, 1DU, DULUTH, MN,

===== NARRATIVE =====

On 10/06/10, Investigator McGovern and I, Investigator Rodman, were doing alcohol compliance checks along with our decoy, NICHOLAS EDWARD PRACHAR.

On 10/06/10 at approximately 1830 hours, we had PRACHAR go into the University Bottle Shop located at 1603 Woodland Avenue to purchase alcohol. PRACHAR entered University Bottle Shop and a short time later he came out with a 40 ounce bottle of Bud Light. PRACHAR and I went back into University Bottle Shop where the lone clerk, JOSEPH TREFETHREN, was working by the counter. I identified myself to TREFETHREN and advised him he had just sold to a minor. TREFETHREN did not ID PRACHAR. TREFETHREN was issued an Administrative citation charging him with Sale to a Minor, 8-28, citation #LP10000328. See written statement by PRACHAR for further details.

The 40 ounce bottle was placed into evidence room in West Duluth.

**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 10-381023		Date/Time Issued 18306 10-06-10	
Alleged Violator's Name Joseph James Trafethren			
Address 508 Roe St Duluth		City	State
DOB 07-06-71		Phone Number	
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation 10-06-10		Time of Violation 1825	
Location University Buttrick			
Charge Sale to Minor	Ordinance No. 8-28		
Description Minor Prachor bought 40oz of Bud Light. Did not Co-D minor			
Officer Signature 			
Officer Name (Print) Jim Rodman		Badge No. 323/387	
Served: In person <input checked="" type="checkbox"/>		Positively Identified <input checked="" type="checkbox"/>	
Date Due: 10-16-10		Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: LP10 000322			



- Main Formals
- Copy
- Other
- Penal Maintenance
- Officer Maintenance
- Daily Ticket Report
- Increase Fine
- Decrease Fine
- Ticket Notes
- Plate Notes
- Alternate Name
- Reprint HM Ticket
- Vehicle Tow Formet
- Local Ordinance

- Letters
- Totals
- Depositions
- Not Guilty/Hold
- Ticket Books
- User Controls

Local Ordinance Ticket Inquiry 2 - Session 1.0.1

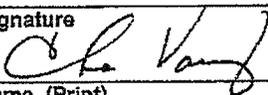
Ticket Info:		Defendant Info:	
Ticket Number	LP10000326	Driver's Lic./State/DOB	[] [] 07/06/1971
Issue Date	10/06/2010	Name Last/First/MI	TREFETHREN JOSEPH J
Issue Time	18:25	Street Address	808 ROSE ST.
		City/State/Zip	DULUTH MN 55803
Ticket Detail:		Fine Amount	200.00
		Penalty	.00
		Miscellaneous	.00
		Bad Check Fee	.00
		Paid Amount	200.00
		Dismissed	.00
		Amount Due	.00
		Disposition	PF
		Disp.Date	10/14/2010
		Tkt.Entered	10/11/2010
		Pays Entered	10/14/2010
		Return Date	
		Notice 1 Date	
		Notice 2 Date	
		Notice 3 Date	
		Notice 4 Date	
		Partial Notice	
		Collection Letter	
		Ticket Type	Manual
		Ticket Status	PAID

[Print Page] [Cancel]

**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 10-381023		Date/Time Issued 5-6-2011 @ 0938	
Alleged Violator's Name Roto of Duluth, Inc.			
Address 1603 Woodland Av Duluth, MN 55803		City	State Zip Code
DOB	Phone Number		
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation 10-6-2010		Time of Violation 1830	
Location 1603 Woodland Av.			
Charge licensee liable		Ordinance No. 8-35	
Description employee sold alcohol to underage. licensee liable for sale			
Officer Signature 			
Officer Name (Print) Cha Vang		Badge No. 35	
Served: In person <input type="checkbox"/> By mail <input checked="" type="checkbox"/>		Positively Identified <input type="checkbox"/>	
Date Due: 5-19-2011		Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: LP10 004055			

Local Ordinance Ticket Inquiry 2 - Version 1.0.4

Ticket Search
 Ticket Number:
 Issue Date:
 Issue Time:

Dependent Info
 District:
 Name Last/First/MI:
 Street Address:
 City/State/Zip:

Ticket Detail

Fine Amount:	<input type="text" value="200.00"/>	Payment Entered:	<input type="text" value="05/17/2011"/>
Penalty:	<input type="text" value="50.00"/>	Return Date:	<input type="text" value=""/>
Miscellaneous:	<input type="text" value="00"/>	Notice1 Date:	<input type="text" value=""/>
Bad Check Fee:	<input type="text" value="00"/>	Notice2 Date:	<input type="text" value=""/>
Paid Amount:	<input type="text" value="200.00"/>	Notice3 Date:	<input type="text" value=""/>
Damages:	<input type="text" value="50.00"/>	Notice4 Date:	<input type="text" value=""/>
Amount Due:	<input type="text" value="00"/>	Notice5 Date:	<input type="text" value=""/>
Disposition:	<input type="text" value="PF"/>	Collection Letter:	<input type="text" value=""/>
Disp. Date:	<input type="text" value="05/16/2011"/>	Ticket Type:	<input type="text" value="Manual"/>
Tk. Entered:	<input type="text" value="05/10/2011"/>	Ticket Status:	<input type="text" value="REDUCED"/>



City of Duluth
Attorney's Office

411 West First Street • Room 410 • Duluth, Minnesota • 55802-1198
218-730-5490 • Fax: 218-730-5918 • www.duluthmn.gov

An Equal Opportunity Employer

June 29, 2011

Roto of Duluth, Inc.
d/b/a University Liquor
1603 Woodland Avenue
Duluth, MN 55803

RE: Notice of Hearing
Alcohol, Gambling and Tobacco Commission

Dear Licensee:

Enclosed and served upon you by U.S. mail please find Notice of and Order for Hearing.

Sincerely,

TERRI L. LEHR
Assistant City Attorney

TLL:dma
Enc.
c/enc: Jeff Cox, City Clerk

Citizens and Government working together to provide an environment in which
our community can enhance its quality of life and continue to prosper

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
COUNTY OF ST. LOUIS) ss.

Dawn M. Anderson, being first duly sworn, on oath, deposes and says that on the 30th day of June, 2011, at the City of Duluth, St. Louis County, Minnesota, she served the attached Notice of and Order for Hearing, by depositing a copy in the United States Mail, in an envelope pre-stamped and addressed to:

Roto of Duluth, Inc.
d/b/a University Liquor
1603 Woodland Avenue
Duluth, MN 55803

Dawn M. Anderson
Dawn M. Anderson

Subscribed and sworn to before
me a notary public this 30th day
of June, 2011/

Kathy Amborn
Notary Public

