

PURCHASING AND LICENSING COMMITTEE

11-0503R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING
LIQUOR LICENSE OF HOSPITALITY ASSOCIATES OF DULUTH, LLC,
(ACES ON FIRST), 113 WEST FIRST STREET.

CITY PROPOSAL:

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

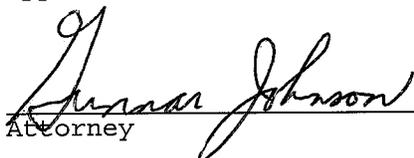
(a) On August 3, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Hospitality Associates of Duluth, LLC, (Aces on First), 113 West First Street, and has submitted its report to the 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 on sale intoxicating liquor license of Hospitality Associates of Duluth, LLC, (Aces on First), 113 West First Street, 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; and that payment of \$300 of the penalty be payable within 30 days of final council action, and \$200 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar offenses with the one year.

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 Aces on First. The police department conducted alcohol compliance checks on October 6, 2010, and the 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. Based on mitigating circumstances, the recommendation of the AGTC is to impose a civil penalty of \$500, with \$300 payable within 30 days of council action, and \$200 is stayed for one year pending no further violations.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **HOSPITALITY ASSOCIATES OF DULUTH, LLC, d/b/a Aces on First**, 113 W. 1st Street, Duluth, Minnesota 55802.

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 appeared through its managing agent, Nick Patronas.

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 the premises located at 113 W. 1st Street, 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 20, 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 June 1, 2011.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of August 3, 2011.
5. 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 is a well-run operation and Nick Patronas provided information regarding the number of I.D.'s it has confiscated last year and this year. Nick Patronas also stated that his business has been commended by the police department for checking I.D.'s and has not had any police calls in six years, in spite of the location of the business. This incident was this employee's first night working at this particular location and she subsequently participated in a training.

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. Mitigating circumstances exist as follows: The Licensee is a well-run operation and Nick Patronas provided information regarding the number of I.D.'s it has confiscated last year and this year as part of its I.D. checking practices. Nick Patronas also stated that his business has been commended by the police department for checking I.D.'s and

has not had any police calls in six years, in spite of the location of the business. This incident was this employee's first night working at this particular location and she subsequently participated in a training.

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 \$200 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 \$300 of the penalty be made 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
Hospitality Associates of Duluth, LLC, d/b/a Aces on First, 113 West 1st Street

LEHR: Thank you President Hanson. The basis for this matter is a sale to an underage person on October 6, 2010. The sale took place at Aces on First and the bartender was Jordan Tollerude. She was issued a citation for the unlawful sale and she was convicted of that violation on October 20 of 2010. She paid a \$200 fine for that violation. The licensee was also ticketed by the city code and the licensee paid that ticket. It was a \$200 fine and it was paid on June 1st of this year. We have a conviction on both tickets. The notice of hearing does give information regarding a prior violation dating back to June 8th of 2008. But it is the city's position that the violation would not be counted as part of this hearing because it is a one year look back period. The city views this as a first offense and is recommending the \$500 presumptive penalty for first violation. With that I would rest on the reports that were filed with notice of order for a hearing.

HANSON: Do you have anything you want to say?

PATRONAS: Thank you. I don't make excuses. Jordan was on her first night at Aces in Duluth. She is from Aces in Superior and never had any training over here. She did serve someone that looked like he was in his middle 30's. I think she knows better now. I will say that this happened last October, and nine months later I got something from the city saying you owe criminal fines. I paid the criminal fine, so when this came up, I was kind of shocked. I thought it was all done.

I just want to say a couple things. My people do have alcohol training every year. MLBA puts it on at Spirit Mountain. We always go. I have spent \$7000 so far this year on door guys taking license checks at the door. Last year we spent almost \$18000 making sure people check ID's. Especially being a younger place where people come in. We have confiscated 17 licenses so far this year. I call the police department and I tell them, and they say they don't care. Just so everybody knows that. In being in business six years there, we have never had a police call down there. I usually work Friday and Saturday nights. We have three letters recommendation from the police department on checks that we have done a good job in the last six years, checking minors. Twenty-two times in the past

year and six months we have had police officers in our store on a Friday or Saturday night just to check ID's. I have no problem with that. That's fine. I just want you to know I usually work Friday and Saturday nights and I am diligent on this situation. This was a Thursday night before our doorman came on. She should have checked the ID and now she does.

HANSON: Any questions from the commission? Looking for a motion?

BIRCHLAND: It sounds from the discussion it is a very well organization. I haven't heard that kind of testimony from anyone who has come in here before of the number of ID's that have been confiscated. Sounds like they are doing a very good job of that. Also the fact that it was the first night in that location instead of Superior, I would make a motion and follow what we did on the last one and suspend \$200 of the \$500 fine with no same or similar for the next year payable in 30 days of council action.

DONAHUE: I would second that.

BIRCHLAND: The circumstances are the letters from the police department that shows they have been doing a very good job checking ID's and the fact that it was the first night the person was working and she has now gone to training, and the clean record especially because of the location shows a pretty good business.

PATRONAS: Thank you.

HANSON: Any further discussion? I was thinking just a couple blocks down the street there was a place that had over 500 police calls, if I remember correctly, not too long ago. Given that those two locations being that close to each other with so few problems, I think that clearly is mitigating circumstances. If there is no further discussion, I'll ask for a vote. All in favor.
Motion passes unanimously.

Martha will send the letter when it goes to council and you should plan on going, as the council could pull the resolution off the consent agenda.

PATRONAS: Thank you.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

* * * * *

NOTICE OF AND ORDER FOR HEARING

* * * * *

TO: HOSPITALITY ASSOCIATES OF DULUTH, LLC, d/b/a Aces on First, 113 W. 1st Street, Duluth, Minnesota 55802.

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. Hospitality Associates of Duluth, LLC, d/b/a Aces on First is licensed by the City of Duluth to sell “on-sale” intoxicating liquor at the premises located at 113 W. 1st Street, Duluth, Minnesota 55802.
2. On or about October 6, 2010, Jordan Ashley Tollerude, an employee of Licensee, sold and served an alcoholic beverage to an underage person at Licensee’s business establishment known as Aces on First. Tollerude was cited for the violation and convicted on October 20, 2010. *See City Docs. 1-3 (Duluth Police Department Report ICR# 10-381102; City of Duluth Ordinance Violation Ticket LP10000332; 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 6/01/2011, paying a fine of \$200.00. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket LP10004051 and Proof of Payment of \$200 fine on 6/01/2011.)* (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. Licensee was also previously disciplined on May 11, 2009, as a result of a similar violation occurring on June 8, 2008. As a result of that violation, a \$500 civil penalty was imposed with \$250 of the penalty being stayed for one year on the condition of no same or similar violations. *See City Doc. No. 6 (Resolution 09-0274R approved on May 11, 2009)*. However, the June 8, 2008 offense is outside of the look-back period for purposes of the presumptive penalty for the current violation.
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.

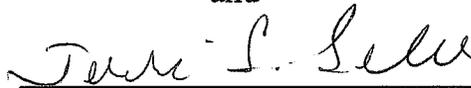
Pursuant to City Code Sections 8-9(a) and (b)(1) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

(Records Supporting This Notice Are Attached As City Document Numbers 1-6.)

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: 20:46 Case No.: 10381102
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED
Class: M4199 Occurrence Date: 10/06/2010
Location: 113 1 ST W, 1DU, DULUTH (CITY), , ,

===== NARRATIVE =====

SYNOPSIS

This report involves the arrest of JORDAN ASHLEY TOLLERUDE (DOB 02-16-1990) for selling alcohol to a minor. TOLLERUDE is a bartender at the Ace's Bar at 113 West 1st Street and was issued an administrative citation.

NARRATIVE

On 10-06-2010, I, Officer Stovern/#327 along with Officer Rodman/#323 was working alcohol compliance checks with 20-year old NICHOLAS EDWARD PRACHAR (DOB 02-26-1990). At approximately 2046 hours we asked PRACHAR to enter the Ace's Bar at 113 West 1st Street. He entered and shortly after exited saying he had been served a bottle of Bud Light and was not carded. PRACHAR showed us a receipt from Ace's for \$4.

Officer Rodman and myself then entered Ace's and along with PRACHAR, the bottle of Bud Light beer was still sitting on the bar at a stool where PRACHAR said he sat. PRACHAR identified the only bartender working as the one who sold him the Bud Light beer. She identified herself with a Minnesota photo ID as JORDAN ASHLEY TOLLERUDE (DOB 02-16-1990). TOLLERUDE was issued an administrative citation charging her with selling alcohol to a minor under city ordinance 8-27.

**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 10-381102	Date/Time Issued 10-6-10 2046
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Alleged Violator's Name JORDAN ASHLEY TOLLERUD	
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Address 209 PARK AVE	City DULUTH	State MINN	Zip Code 55820
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DOB 2-16-90	Phone Number 218 879 0052
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Vehicle Information

License No.	State	Reg. Expires
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Vehicle Make	Model	Color
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Violation Information

Date of Violation 10-6-10	Time of Violation 2043
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Location
ACES - 113 W 1ST ST

Charge SELL ALCOHOL TO MINOR	Ordinance No. 8-28
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Description
**MINOR NICHOLAS PRACHAR
SOLD BOTTLE BUS LIGHT
WAS NOT CARDSO**

Officer Signature
TJ [Signature]

Officer Name (Print) STOURN	Badge No. 327
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Served: In person <input checked="" type="checkbox"/> By mail <input type="checkbox"/>	Positively Identified <input checked="" type="checkbox"/>
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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
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Ticket Number: **LP10 000332**

Sign On Sign Off Stop

Main Formats
 Query
 Other

Permit Maintenance
 Officer Maintenance
 Daily Ticket Report
 Increase Fine
 Decrease Fine
 Ticket Notes
 Plate Notes
 Alternate Name
 Reprint HH Ticket
 Vehicle Tow Format
 Local Ordinance

Letters
 Totals
 Dispositions
 Not Guilty/ Hold
 Ticket Banks
 User Controls

Local Ordinance Ticket Inquiry 2 Version 1.0

Ticket Info
 Ticket Number: LP10000332
 Issue Date: 10/06/2010
 Issue Time: 20:43

Driver Info
 Drivers Lic/State/DOB: [] [] [02/16/1990]
 Name Last/First/Mi: TOLLERUD JORDAN A
 Street Address: 209 PARK AVENUE
 City/State/Zip: CLOQUET MN 55720

Ticket Details
 Fine Amount: 200.00
 Penalty: 50.00
 Miscellaneous: .00
 Bad Check Fee: .00
 Paid Amount: 200.00
 Dismissed: 50.00
 Amount Due: .00
 Disposition: PF
 Disp. Date: 10/20/2010
 Tkt. Entered: 10/08/2010

Payment Info
 Pymt. Entered: 10/20/2010
 Return Date: []
 Notice1 Date: []
 Notice2 Date: []
 Notice3 Date: []
 Notice4 Date: []
 Partial Notice: []
 Collection Letter: []
 Ticket Type: Manual
 Ticket Status: REDUCED

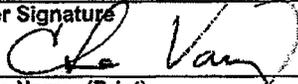
Print Page
 Cancel

Taskbar: Start, Novel GroupWise - 2, Mail from: Tomasz, Mail from: knot@ca..., Judd: TIF, AutoSLA..., WordPerfect 11.0, Adobe Acrobat Pro

**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 10-381102		Date/Time Issued 5-6-2011@0900
Alleged Violator's Name Hospitality Assoc. Dul. LLC		
Address City State Zip Code 113 W. 1st Street Duluth, MN 55802		
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 2046	
Location 113 W. 1st		
Charge Licensee liable	Ordinance No. 8-35	
Description Bartender sold to underage, licensee liable for sale also.		
Officer Signature 		
Officer Name (Print) Cha Vang		Badge No. 375
Served: In person <input checked="" 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 004051		

Sign On Sign Off
 Stop

Main Forms
 Query
 Other

Penalty Maintenance
 Officer Maintenance
 Daily Ticket Report

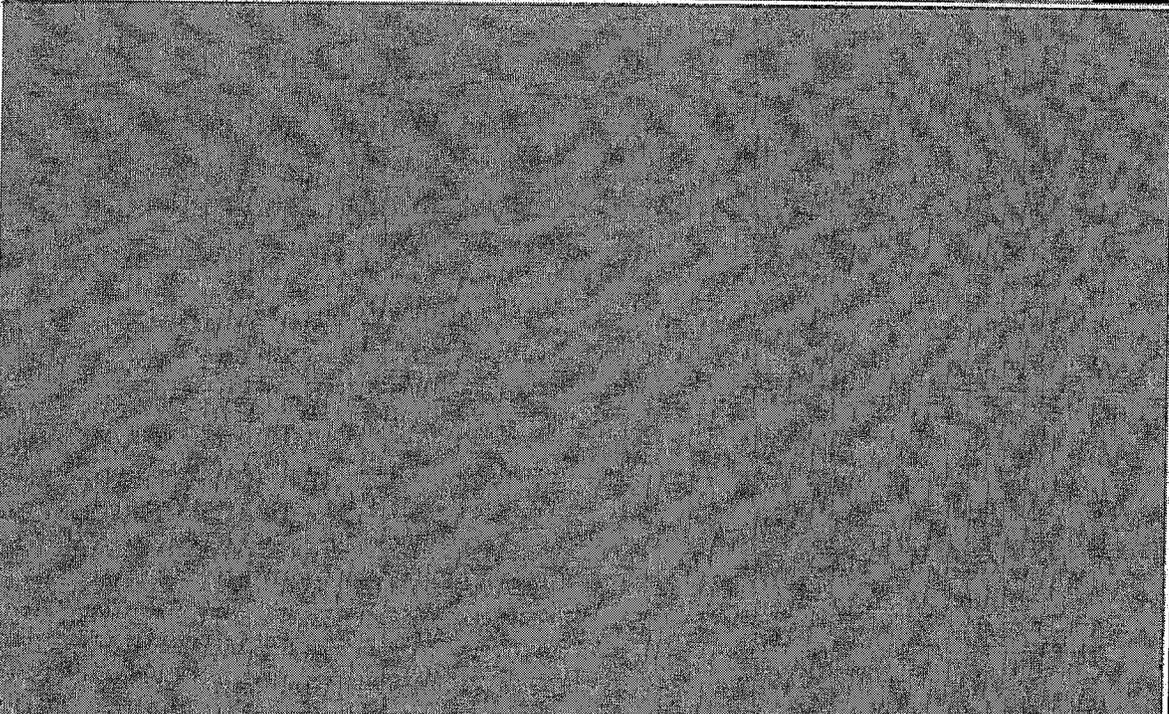
Increase Fine
 Decrease Fine

Ticket Notes
 Plate Notes
 Alternate Name

Repair HH Ticket
 Vehicle Tow Formak
 Local Ordinance

Valid Payment Formak

Print Page
 Cancel



Local Ordinance Ticket Inquiry - Version 1.0.1

Ticket Info

Ticket Number:
 Issue Date:
 Issue Time:

Defendant Info

Drivers Lic/State/DOB:
 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="06/01/2011"/>
Penalty:	<input type="text" value="50.00"/>	Return Date:	<input type="text"/>
Miscellaneous:	<input type="text" value=".00"/>	Notice1 Date:	<input type="text" value="05/24/2011"/>
Bad Check Fee:	<input type="text" value=".00"/>	Notice2 Date:	<input type="text"/>
Paid Amount:	<input type="text" value="200.00"/>	Notice3 Date:	<input type="text"/>
Dismissed:	<input type="text" value="50.00"/>	Notice4 Date:	<input type="text"/>
Amount Due:	<input type="text" value="100"/>	Partial Notice:	<input type="text"/>
Disposition:	<input type="text" value="PF"/>	Collection Letter:	<input type="text"/>
Disp Date:	<input type="text" value="06/01/2011"/>	Ticket Type:	<input type="text" value="Manual"/>
Tk Entered:	<input type="text" value="05/10/2011"/>	Ticket Status:	<input type="text" value="REDUCED"/>

PURCHASING AND LICENSING COMMITTEE

09-0274R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF HOSPITALITY ASSOCIATES OF DULUTH, LLC (ACES ON FIRST), 113 WEST FIRST STREET.

CITY PROPOSAL:

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

(a) On April 1, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Hospitality Associates of Duluth, LLC, d/b/a Aces on First, 113 West First Street, 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 May 11, 2009, 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 Hospitality Associates of Duluth, LLC, d/b/a Aces on First, 113 West First Street, 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 Duluth City Council fine the licensee \$500 for the offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine

amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Approved as to form:

Attorney

CLERK JJC:mao 4/15/2009

Alcohol, gambling and tobacco commission discussion: the alcohol, gambling and tobacco commission (AGTC) held a hearing on April 1, 2009, regarding the on sale intoxicating liquor license of Hospitality Associates of Duluth, LLC (Aces on First), 113 West First Street. The police department conducted alcohol compliance checks on June 9, 2008, at several on and off sale intoxicating liquor license establishments. 17 establishments were written tickets for selling alcohol to an underage individual. This was the first offense for Aces on First and the AGTC fined the licensee \$500, but stayed \$250 of the fine if no same or similar violations occur during a one year period which is in accordance with the guidelines set forth in Section 8-9 of the City Code, with the remaining penalty of \$250 payable in 30 days from final council action.