

PURCHASING AND LICENSING COMMITTEE

12-0132R

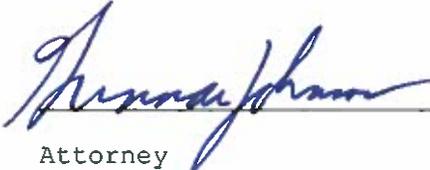
RESOLUTION ISSUING AN ON SALE THEATER LIQUOR LICENSE TO
FAMILY ENTERTAINMENT, LLC (DULUTH CINEMA), 300 HARBOR
DRIVE.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale theater liquor license for the period ending August 31, 2012, subject to departmental approvals and the payment of sales and property taxes:

Family Entertainment, LLC (Duluth Cinema), 300 Harbor Drive, with Marcus Theaters Corporation sole member of Family Entertainment, with Douglas A. Neis, president and treasurer and Thomas F. Kissinger, vice president and secretary.

Approved as to form:



Attorney

CLERK JJC:mao 3/7/2012

Alcohol, Gambling and Tobacco Commission discussion: 3/5/12

FAMILY ENTERTAINMENT, LLC, (DULUTH CINEMA), 300 HARBOR DRIVE - APPLICATION FOR AN ON SALE INTOXICATING LIQUOR LICENSE AND ON SALE SUNDAY LICENSE FOR THE PERIOD ENDING AUGUST 31, 2011, WITH MARCUS THEATERS CORPORATION SOLE MEMBER OF FAMILY ENTERTAINMENT.

Jeff Tomachek and Shawn Fennessey were present on behalf of the application. Mr. Tomachek explained they are applying for a liquor license for the movie theater complex and putting a bar and lounge into to the area that was previously the Omni Max lobby area. He continued saying that they are applying for a full liquor license and will be having a full scale menu of appetizers in the lounge area for people to eat. Mr. Tomachek also explained that they are requesting to allow their patrons to bring their alcohol beverage into the theater while watching the movie and would put their beverage into a clear plastic glass that has the theater's logo on it. He went on to say that the managers and staff will be trained on the rules and regulations of selling alcohol, and that the ushers will be trained to go into the theaters during the movie to monitor the patrons who have a beverage. The commission questioned if they could have certain number of theaters designated as "alcohol free" . Mr. Tomachek replied that it would be hard to have that designation as the movies don't always stay in the same theater and can change daily. Mr. Tomachek also explained that the trend in the movie industry is to allow alcohol in the theaters, and they currently have theaters in Wisconsin and St. Cloud and have not had any problems in their locations.

Assistant City Attorney Lutterman questioned if the license they are applying for is a "old" liquor license or a theater license. She explained that a theater license only allows the licensee to serve alcohol to patrons who have paid to go to the movie but would not allow the public to come into the lounge and have a alcoholic beverage. Mr. Tomachek replied that their intent would be to allow the public to stop at their lounge for a beverage while in the Canal Park area or on the way to the DECC for an event which he understood to be allowed with the regular liquor license. Ms. Lutterman stated that according to her brief research, State law does not allow the issuance of an on sale liquor license to a theater. The Commission questioned how is it possible for St. Cloud to issue a liquor license to this applicant but it is not allowed in Duluth. Ms. Lutterman stated she would research this issue with the State.

The commission stated that if city code does not allow the issuance of a regular liquor license to this applicant, the code needs to be amended to allow this. They stated they would like this applicant be allowed to have the public into their facility and the council needs to make sure that they can get the code changed to allow it.

Officer Vang questioned how the ushers and staff would prevent someone bringing their drink into the theater and not passing it on to a minor. He also questioned how the ushers would be able to distinguish between a 21 and a 20 year old in a dark movie theater. Mr. Tomachek replied they take the selling of liquor very seriously and plan carding everyone who buys a drink. He continued saying that the ushers will look very carefully who has a drink in the theater, and if they have a concern that a minor is drinking, a manager will be brought in to question the people. Officer Vang also questioned how they would prevent anyone from leaving the lounge area with their drink and walking up the stairs to the skywalk. Mr. Fennessey replied that they will have ushers with garbage cans at the exit of the theater which is at the base of the corridor to the stairs to allow people to throw their glasses away.

The commission questioned when they plan on opening the new lounge area, and Mr. Tomachek replied they hope to be open mid May. The commission discussed whether to table the application until the attorney's office decides on whether a theater license or on sale liquor license is applicable in this case. Mr. Tomachek replied that they need to know as soon as possible on their liquor license status in order to proceed with their construction at the theater. Ms. Lutterman suggested the commission make a motion approving both types of licenses so that it would cover whatever license is decided on.

There being no further discussion, Mr. Hanson moved that THE APPLICATION FOR AN ON SALE THEATER LICENSE OR ON SALE INTOXICATING LIQUOR LICENSE AND SUNDAY LICENSE BE APPROVED, AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR APPROVAL. Mr. Birchland seconded the motion, and it was unanimously approved.

Mr. Hanson made a motion that if the applicant does not qualify for an on sale liquor license and it is allowed by the State, the city council amend the city code to allow on sale liquor licenses be issued to movie theaters. Mr. Birchland seconded the motion, and it was unanimously approved.

*****NOTE:** After the conclusion of the meeting, Ms. Lutterman researched the State law and the City Code to see what type of liquor license a movie theater is allowed to be issued. Ms. Lutterman found that State law allows the issuance of an on sale liquor license to a theater, but that the City Code is more restrictive and does not allow a full on sale liquor license to be issued to a theater. Therefore, the applicant can only apply for an on sale theater license which limits the sale of alcohol to the patrons who buy a movie theater ticket.