

PURCHASING AND LICENSING COMMITTEE

12-0462R

RESOLUTION IN THE MATTER OF THE OFF SALE INTOXICATING LIQUOR LICENSE OF JNC LIQUORS, INC. (WILD WEST LIQUOR), 318 NORTH CENTRAL AVENUE.

CITY PROPOSAL:

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

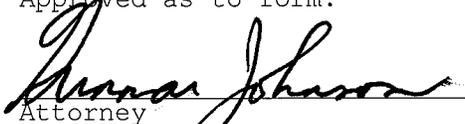
(a) On July 10, 2012, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of JNC Liquors, Inc., d/b/a Wild West Liquor, 318 North Central Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. \_\_\_\_\_;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on September 24, 2012, 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 liquor license of JNC Liquors, Inc., d/b/a Wild West Liquor, 318 North Central 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: due to the mitigating circumstances adopted in the finding of facts, the city council imposes a \$300 civil penalty payable within 30 days of final council action.

Approved as to form:

  
Attorney

CLERK JJC:mao 9/5/2012

STATEMENT OF PURPOSE: The alcohol, gambling and tobacco commission (AGTC) held a hearing on July 10, 2012, regarding the off sale liquor license of Wild West Liquor. On March 29, 2012, the police department conducted alcohol compliance checks and the employee was ticketed for sale of alcohol to an underage individual. The licensee is responsible for the conduct of the employees and was also ticketed for sale of alcohol to an underage individual. 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. The AGTC concluded that because licensee stated the employee has been a loyal employee for 12 years with no other problems and will undergo training, mitigating circumstances exist and are recommending the civil penalty be reduced to \$300 payable within 30 days of council action.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

\*\*\*\*\*

**REPORT TO THE CITY COUNCIL**

\*\*\*\*\*

IN THE MATTER OF: **JNC Liquors, Inc., d/b/a Wild West Liquor**, 318 N. Central Avenue, Duluth, Minnesota 55807.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on July 10, 2012, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on July 10, 2012 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. Jeff Flynn, authorized agent, appeared on behalf of the Licensee.

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 318 N. Central Avenue, Duluth, Minnesota.
2. On April 3, 2012, an employee of Licensee was issued a citation for sale of an alcoholic beverage to a person under the age of 21 in violation of Duluth City Code section 8-28. The employee was convicted of this offense on April 11, 2012 and paid a fine of \$50.00.

3. The Licensee was also issued a citation under Duluth City Code section 8-35 for the illegal sale, was convicted of this offense on May 8, 2012 and paid a fine of \$250.00.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of July 10, 2012.
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 employee who made the unlawful sale has been a loyal employee of Licensee for 12 years and has presented no other problems. At the time of this violation, the employee was undergoing a stressful personal situation. Also, the employee will undergo additional 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 April 3, 2012.
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 employee who made the unlawful sale has been a loyal employee of Licensee for 12 years and has presented no other problems. At the time of this violation, the employee was undergoing a stressful personal situation. Also, the employee will undergo additional 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 \$300 penalty; and
2. Pursuant to Duluth City Code Section 8-9 (c), the civil penalty is due and payable within 30 days of council action.

Dated: \_\_\_\_\_

DULUTH ALCOHOL, GAMBLING  
AND TOBACCO COMMISSION

By: \_\_\_\_\_  
Jon Donahue, President

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

\*\*\*\*\*

**NOTICE OF HEARING**

\*\*\*\*\*

TO:JNC Liquors, Inc., d/b/a Wild West Liquor, Attention: Jeff and Callin Flynn, 318 N. Central Avenue, Duluth, Minnesota 55807.

PLEASE BE ADVISED that on **July 10, 2012**, 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. JNC Liquors, Inc. d/b/a Wild West Liquor, is licensed by the City of Duluth to sell intoxicating liquor "off-sale" at the premises located at 318 N. Central Avenue, Duluth, Minnesota 55807.
2. On or about April 3, 2012, Mark A. Severson, an employee of Licensee, sold an alcoholic beverage to an underage person at Licensee's business establishment known as Wild West Liquor. Severson was cited for the violation and convicted on April 11, 2012. *See City Docs. 1-3 (Duluth Police Department Report ICR# 12-056813; City of Duluth Ordinance Violation Ticket LP100004751; and Proof of Payment of \$50 fine).*
3. Licensee was cited under Duluth City Code section 8-35 for the unlawful sale and convicted of this offense on May 8, 2012, paying a fine of \$250.00. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket LP100001770 and Proof of Payment of \$250 fine on 5/08/2012.)*

4. This is the Licensee's first violation for purpose of the presumptive penalty schedule provided for in Duluth City Code section 8-9. The presumptive penalty on a first offense is a \$500 civil penalty.
5. Section 8-9(b)(1) provides that violation of any law relating to the operation of a liquor establishment shall be deemed good cause for suspension or revocation of a liquor license.
6. Section 8-9 (c) provides that "No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action."

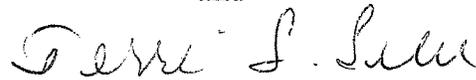
Pursuant to City Code Sections 8-9(a) and (b) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

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

Dated: 5/18/12

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

245603424154

\*\*\*\*\*  
\* Changes made to this file will not be saved in Shield \*  
\*\*\*\*\*

\*\*\*\*\* WILD WEST LIQUOR, 1DU

(None)

FOR SALE OF ALCOHOL TO MINOR - CITY ORDINANCE

PPR

TAGGED FOR SALE OF ETOH TO MINOR DURING COMPLIANCE CHECK / 13 HOLLY LANE / 624.  
1997

MINOR THAT WAS SOLD TO/ 940.3399

RUDE WAS UNDERAGE DECOY ASSISTING S76 AND I WITH ETOH COMPLIANCE CHECKS. HE IS NOT 21 YO AND THIS WAS CONFIRMED WITH HIS MN DL. RUDE WALKED INTO STORE AND SAID A MALE WHO HE DESCRIBED AS SEVERSON SOLD HIM BEER. RUDE WALKED OUT WITH A 6 PACK OF MICHELOB GOLDEN LIGHT BOTTLES WHICH HE PAID \$6.68. SEVERSON ADMITTED THIS TO US AND WAS ONLY ONE IN THE STORE. HE SAID HE WAS GOING TO LOSE HIS JOB AS THIS WAS THE 2ND TIME HE'D DONE THIS AND THAT HE WAS DISAPPOINTED SINCE HE JUST FOUND OUT HIS WIFE HAS CANCER. SEVERSON WAS COOPERATIVE AND POLITE. SEVERSON ADMITTED HE DIDN'T CHECK RUDE'S ID. DIGITAL PICS TAKEN OF ETOH AND ETOH DESTROYED PER ADVISE OF INV. VANG. SEVERSON ISSUED ADMIN CITATION FOR SALES TO MINOR'S PROBITED, DULUTH CITY ORD 8-28.

UNIT	START TIME	END TIME	ST	ASSIGNEE1
S67	04/11/12 21:40:03	- 21:49:12	DP	1DU427
S67	04/11/12 21:49:12	-	A	1DU427
S76	04/03/12 21:20:50	- 21:20:50	DP	1DU457
S76	04/03/12 21:20:50	- 21:20:50	E	1DU457
S76	04/03/12 21:20:50	- 21:28:35	S	1DU457
S76	04/03/12 21:28:35	- 21:49:12	A	1DU457

CITY-1

**CITY OF DULUTH  
CITY ORDINANCE VIOLATION**

Vehicle Query

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>12-056813</b>		Date/Fine Issued <b>4/13/12</b>	
Alleged Violator's Name <b>Mark Alan Severson (PIPS) MN 20</b>			
Address <b>13 Holly Ln Duluth MN 55810</b>		City	State Zip Code
DOB <b>10/04/56</b>	Phone Number <b>218-624-1997</b>		
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Date of Violation <b>4/13/12</b>		Time of Violation <b>2122</b>	
Location <b>318 N Central Ave (wild west liquor)</b>			
Charge <b>Sale to minor Prohibited</b>		Ordinance No. <b>8-28</b>	
Description <b>Sold Archelos Golden Light Bottles 6 - Pack to minor Sold (19 YO male) To Tyler Ruble (delay)</b>			
Officer Signature <i>Dozdowski</i>			
Officer Name (Print) <b>Dozdowski</b>		Badge No. <b>427</b>	
Served: In person <input checked="" type="checkbox"/>		Positively Identified <input checked="" type="checkbox"/>	
By mail <input type="checkbox"/>			
Date Due: <b>4/13/12</b>	Minimum Fine Amount Due: <input checked="" type="checkbox"/> \$50.00 <input type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00		
Ticket Number: <b>LP10 004751</b>			

**PS120401041 As of 4/11/2012 21:57:52**

**COMPLIAN  
J at 318 CENTRAL AVE N, 1DU  
MSEY ST**

**pe:ALCCK - ALCOHOL COMPLIAN  
24 RD:14P245XX**

318 CENTRAL AVE N, 1DU Type:ROPE Group:1DPD  
5XX TypeDesc:REPEAT OFFENDER LocDesc:btwn  
5T and RAMSEY ST Priority:2 Agency:1DPD  
24 LocType:S

2056813

21:20:50	DISPOS		S76 Location:318 CENTRAL AVE N, 1DU OperID:1DU457 OperNames:LEPAK,NICHOLAS
21:20:50	-PRIU		S76
21:20:50	-NPREMS		Comment:(None)
21:21:34	CHANGE		S76 Location:318 CENTRAL AVE N, 1DU-->WILD WEST LIQUOR, 1DU
21:21:34	-NPREMS		Comment:(None)
21:21:47	CHANGE		S76 Type:ROPE-->ALCCK Priority:2-->4 TypeDesc:REPEAT OFFENDER-->ALCOHOL COMPLIAN
21:28:35	CLEAR	185/1PH1	S76 Dispo:TAG DispoLevel:0 Comment:FOR SALE OF ALCOHOL TO MINOR - CITY ORDINANCE
21:28:35	-CLEAR		
21:28:35	CLOSE		



Ticket Info

Ticket Number: P10004751  
Issue Date: 04/03/2012  
Issue Time: 21:22

Print Page  
Cancel

Defendant Info

Diversion Lic/State/DOB: [ ] [ ] [10/02/1956]  
Name Last/First/MI: SEVERSON MARK [A]  
Street Address: 13 HOLLY LANE  
City/State/Zip: DULUTH MN 55810

Ticket Detail

Fine Amount: 50.00  
Penalty: .00  
Miscellaneous: .00  
Bad Check Fee: .00  
Paid Amount: 50.00  
Dismissed: .00  
Amount Due: .00  
Disposition: PF  
Disp. Date: 04/11/2012  
TKL Entered: 04/11/2012  
Pymt. Entered: 04/11/2012  
Return Date: [ ]  
Notice1 Date: [ ]  
Notice2 Date: [ ]  
Notice3 Date: [ ]  
Notice4 Date: [ ]  
Partial Notice: [ ]  
Collection Letter: [ ]  
Ticket Type: MANUAL  
Ticket Status: PAID

**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	18-056813	Date/Time Issued	4-16-2012 @ 0800
Alleged Violator's Name	JNC Liquors, Inc.		
Address	318 N. Central Ave	City	Duluth, MN 55803
DQB	Phone Number		
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation	4-3-2012	Time of Violation	2:20
Location	318 N. Central Ave	Ordinance No.	8-35
Charge	Licensee (wholesale for sale) sold alcohol to minor(s) during compliance check. Licensee is personally liable for <del>wholesale</del> 2nd sale.		
Officer Signature	<i>Cher Vant</i>		
Officer Name (Print)	Cher Vant	Badge No.	375
Served: In person	<input checked="" type="checkbox"/>	Positively Identified	<input type="checkbox"/>
By mail	<input type="checkbox"/>	Minimum Fine Amount Due:	<input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00
Date Due:	4-26-12		
Ticket Number:	LP10 001770		

Ticket Fee

Ticket Number: 17000170  
Issue Date: 04/03/2012  
Issue Time: 21:20

Print Page  
Cancel

Defendant Info

Defens Loc/State/DOB: 1010085  
Name Last/First/MI: 018 CENTRAL AVE  
Street Address: DULUTH  
City/State/Zip: MN 55803

Ticket Detail

Free Amount:	200.00	Pymt Entered:	05/08/2012
Penalty:	50.00	Return Date:	
Miscellaneous:	.00	Notice1 Date:	04/24/2012
Bad Check Fee:	.00	Notice2 Date:	
Paid Amount:	230.00	Notice3 Date:	
Dismissed:	.00	Notice4 Date:	
Amount Due:	.00	Partial Notice:	
Disposition:	FF	Collection Letter:	
Disp Date:	05/08/2012	Ticket Type:	Manual
Tkt Entered:	04/18/2012	Ticket Status:	PAID



**Alcohol, Gambling, and Tobacco Hearing**  
**July 10, 2012**  
**JNC Liquors, d/b/a Wild West Liquor, 318 N. Central Ave.**

Lehr: This is the matter of JNC Liquors, Inc., doing business as Wild West Liquors. This matter is not contested. I've spoken with the agent for the licensee, Jeff Flynn, and he advised me that he acknowledges that the violation did occur which was the sale of alcohol to a minor. The employee and the licensee have paid their tickets, so Mr. Flynn is here to answer questions the Commission may have.

Donahue: That being said, does anyone have any questions?

Hickok: I would just like to know, are you taking steps training your staff? Was it an issue of new staff that was untrained?

Flynn: No. It was one of my staff that has been with me for twelve years and who's a great employee. He does great things for me. I like him a lot. He does a good job to my standards definitely. The problem is the structure on underage, you know, there are classes for that and I told him I would send him to them. I'm not gonna get rid of him. I just trust him too much. He's such a great guy and he told the officer that he had just gotten a phone call about his wife. She's been suffering from cancer and was having problems. But we will do some stuff with some education though.

Donahue: Jeff, I read the report but just in laymen's terms. What happened that he told you. I want to hear it from you.

Flynn: He did just get off the phone with his wife. She had just started her first chemo and was having problems with it so his mind just was not there. Then the underage person came in and he was not using his best judgment, because he does have good judgment. And he's got grandchildren. There's no way he wants to sell to underage people. It was just something that happened.

Birchland: When was your last violation or were there any other violations?

Flynn: There was one in 2008.

Birchland: April or something like that, four years ago.

Flynn: Yes.

Lehr: In 2010.

Donahue: This is one of those 500 or 250 stayed for one year. I think we'd have to give mitigating circumstances.

Lutterman: You can't stay a penalty any more. The code has been changed. You can recommend a reduction in the fine amount due to mitigating circumstances but you can not stay any part of the fine.

Donahue: Oh, okay. When did that take effect?

Lutterman: That was all the changes that went into effect. It says, "No portion of the payment of the civil penalty or period of suspension may be stayed or excused absent aggravating or mitigating circumstances the presumptive penalty are..." So, the presumptive penalty on the first offense is a \$500.00 civil penalty.

Donahue: Okay.

Lutterman: If you believe there are mitigating circumstances that justify a downward departure from the \$500.00 civil penalty, you can do that. You can recommend to the City Council that the presumed penalty be reduced because of the existence of mitigating circumstances. But then you should indicate in your recommendation what those mitigating circumstances are. You used to basically do that by doing stays or whatever but that just got to be too administratively cumbersome and what happened was that there wasn't really a good evaluation of whether mitigating circumstances actually existed or not. So this way, if there's no mitigating circumstances it's \$500.00. If there are mitigating circumstances that you think justify a downward departure, you have the authority to recommend to the Council, but as I indicated, you should give the Council the reasons why you feel mitigation exists.

Donahue: So hypothetically if someone were to pay like \$400.00, I'll throw a number out there, and that would be just what they would be with the mitigating circumstances and we wouldn't say stayed.

Lutterman: No. That's right. No. You would say "We believe this is a first offense. We believe mitigating circumstances exist and therefore ..... and those circumstances being X Y Z, therefore we recommend Council impose a penalty of from zero to \$500.

Donahue: okay.

Hickok: Just a question. Does the establishment and the employee get fined in this case?

Lutterman: In this matter, and the matter before you, it's the establishment being

fined. As a separate matter that you don't involve yourself in is the administrative penalty, the ticket, if you will. A ticket gets issued to the employee who committed the offense and a ticket gets issued to the licensee. That's a separate matter. Those matters used to go to District Court, but we found that District Court wasn't effectively and efficiently handling those ticket matters, and so the City has chosen to exercise it's authority to issue administrative penalties. We deal with it with a separate administrative process that's authorized under Chapter 12 of the Duluth City Code.

Hickok: Thank you. Okay. Just curious. This is my first case.

Lehr: In this case, the employee paid a \$50.00 fine on his ticket and the licensee paid a \$250.00 fine on the licensee ticket.

Donahue: I was conflicted a little bit. All I can say is that having the wife have breast cancer, I just remember when the phone call came in initially, like your mind would just explode. I can understand how he got in that situation. I mean I know where he was at mentally cause I've been there.

Birchland: It would be very difficult to articulate mitigating circumstances. I'd love to be able to do that if I could find some way. Obviously a 12 year employee with no other problems and a good employee, so I'll move that we reduce that penalty to \$300.00 and the mitigating circumstances will be the fact that we have a good loyal employee who was undergoing a very stressful situation and is going to be going through more training to assure that this is not going to happen again. My motion being reducing it to \$300.00.

Donahue: I would second that. We have a motion with mitigating circumstances

Hickok: And I put the clause with the training

Donahue: With training with the circumstances and we have a second. All in favor say "Aye".

Motion passes unanimously.

Donahue: And, Jeff, I hope we don't see you now. This is my fourth year. It could be my last but really I hope we don't see you again and for this reason.

Flynn: Thanks. Thanks very much.