

PURCHASING AND LICENSING COMMITTEE

12-0606R

RESOLUTION IN THE MATTER OF THE ON SALE LIQUOR LICENSE
OF OSAKA DULUTH, INC. (OSAKA SUSHI HIBACHI STEAKHOUSE),
5115 BURNING TREE ROAD.

CITY PROPOSAL:

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

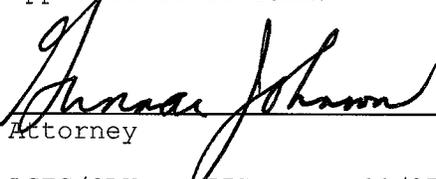
(a) On October 3, 2012, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Osaka Duluth, Inc. (Osaka Sushi Hibachi Steakhouse), 5115 Burning Tree Road, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on December 17, 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 on sale liquor license of Osaka Duluth, Inc. (Osaka Sushi Hibachi Steakhouse), 5115 Burning Tree Road, 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 first offense payable within 30 days of final city action.

Approved as to form:



Attorney

AGTC/CLK UJC:mao 11/27/2012

Alcohol, gambling and tobacco commission discussion of 10/3/12: The Alcohol, Gambling and Tobacco commission (AGTC) held a hearing on October 3, 2012, regarding the on sale liquor license of Osaka Sushi Hibachi Steakhouse. The police department conducted alcohol compliance checks on April 11, 2012, and the clerk was issued a ticket for selling alcohol to an underage individual. According to City Code, the licensee is responsible for the actions of the employees, and the licensee was issued a ticket for an illegal sale. Th AGTC fined the licensee \$500 which is accordance with the guidelines set forth in Section 8-9 of the City Code.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **Osaka Duluth, Inc., d/b/a Osaka Sushi Hibachi Steakhouse**, 5115 Burning Tree Road #309, Duluth, Minnesota 55811.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on October 3, 2012, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on October 3, 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. Licensee waived its appearance at the hearing under a written Stipulation.

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 5115 Burning Tree Road #309, Duluth, Minnesota.
2. On April 11, 2012, 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 June 25, 2012.

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 April 27, 2012.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of October 3, 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.

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 premises on April 11, 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.

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. 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: _____
Chris Pekkala, Vice-President

STIPULATION

In re: Osaka Duluth, Inc., d/b/a Osaka Sushi Hibachi Steakhouse, 5115 Burning Tree Road # 309, Duluth, Minnesota.

The parties to this Stipulation are the City of Duluth and Osaka Duluth, Inc., Licensee.

The parties hereby stipulate as follows:

1. Osaka Duluth, Inc. is the holder of an "on sale" intoxicating liquor license issued by the City of Duluth at a premises located at 5115 Burning Tree Road # 309, Duluth, Minnesota.
2. Dan Xu is the owner/agent of Licensee.
3. The Duluth Alcohol, Gambling and Tobacco Commission has jurisdiction over a license and enforcement issue involving a violation occurring at the Licensee's premises on April 11, 2012.
4. The Notice of and Order for Hearing was served on the Licensee by U.S. mail on August 30, 2012 and Licensee acknowledges proper service of the same.
5. Licensee admits the allegations contained in the Notice of and Order for Hearing.
6. Licensee waives the right to a hearing.
7. Licensee waives its appearance at the hearing scheduled for October 3, 2012 and is in agreement with the presumptive penalty of a \$500 civil fine.
8. Licensee requests that the Duluth Alcohol, Gambling and Tobacco Commission impose the presumptive penalty of a \$500 civil fine.

Dated: October 3, 2012.

CITY OF DULUTH

By *Tari S. Selu*
Assistant City Attorney (#191668)

OSAKA DULUTH, INC.

By *Dan Xu*
Its: *Dan Xu*
Printed Name: DAN XU