

PURCHASING AND LICENSING COMMITTEE

13-0153R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING
LIQUOR LICENSE OF TB DULUTH, LLC (RADISSON HOTEL), 505
WEST SUPERIOR STREET.

CITY PROPOSAL:

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

(a) On March 6, 2013, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of TB Duluth, LLC (Radisson Hotel), 505 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. _____;

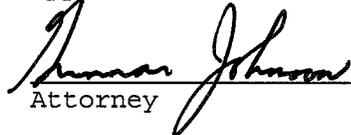
(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on April 1, 2013, the city council considered the records and evidence submitted;

(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 TB Duluth, LLC (Radisson Hotel), 505 West Superior 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: due to the mitigating circumstance that the alcohol, gambling and tobacco commission was unable to meet

for three consecutive months, the Duluth City Council reduce the presumptive \$500 penalty and fine the licensee \$100 payable within 30 days of final city action.

Approved as to form:



Attorney

AGTC/CLK JJC:mao 3/18/2013

Alcohol, gambling and tobacco commission discussion of 3/6/13: The alcohol, gambling and tobacco commission (AGTC) held a hearing on March 6, 2013, regarding the on sale liquor license of the Radisson Hotel. The police department conducted alcohol compliance checks on July 18, 2012, and the bartender 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. This was the first offense for the licensee. The AGTC found that a mitigating circumstance existed due to the fact the AGTC canceled the hearing three months in a row and reduced the presumptive penalty of \$500 to \$100 payable in 30 days after final council action.

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **TB DULUTH, LLC, d/b/a Radisson Hotel/Harborview**, 505 W. Superior Street, Duluth, Minnesota 55802.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on March 6, 2013, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on March 6, 2013 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. Jeffrey Briner, General Manager and 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, Conclusions 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 its premises located at 505 West Superior Street, Duluth, Minnesota.
2. On July 18, 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 October 4, 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 August 15, 2012.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of December 5, 2012. The hearing was rescheduled three times due to a lack of a quorum of the Commission and finally held on March 6, 2013.
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 July 18, 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 Licensee prepared for and made arrangements to attend and/or attended three separate monthly meetings of the AGT Commission, and due to a lack of quorum of the Commission members at each of the previously-scheduled meetings, this matter was not heard until March 6, 2013.

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 \$100 penalty; and
2. That payment of the \$100 penalty be made within 30 days of final council action.

Dated: _____

**DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION**

By: _____
Chris Pekkala, Vice-President

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF AND ORDER FOR HEARING

TO: **TB DULUTH, LLC, d/b/a Radisson Hotel/Harborview**, Attention: Brendan Taylor and Anthony Spears, 505 W. Superior Street, Duluth, MN 55802.

PLEASE BE ADVISED that on **December 5, 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.

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. Licensee is licensed by the City of Duluth for "on-sale" Intoxicating Liquor at its premises located at 505 West Superior Street, Duluth, Minnesota.
2. On or about July 18, 2012, Khrystin R. Ockuly, an employee of Licensee, sold and served intoxicating liquor to an underage person at Licensee's business establishment known as the Bowery Brothers Bar. Ockuly was cited for the violation, convicted on October 4, 2012 and paid a fine of \$62.50. *See City Docs. No. 1-3 (Duluth Police Department Report ICR# 12-135435; City of Duluth City Ordinance Violation Ticket No. LP10003969; and Proof of Payment).*
3. Licensee was cited under Duluth City Code section 8-35 for the illegal sale, convicted of this offense on August 15, 2012 and paid a fine of \$200.00. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket No. LP10004066; and Proof of Payment).*
4. 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.

5. This is the Licensee's first offense for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.
6. Pursuant to Duluth City Code section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.
7. 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."

(Records Supporting This Notice Are Attached As City Documents Nos. 1-5).

Dated: 11/1/12

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

STIPULATION

Parties to this Stipulation are the City of Duluth and TB Duluth, LLC, d/b/a Radisson Hotel/Harborview ("Licensee").

Parties stipulate as follows:

1. Licensee is the holder of an on-sale intoxicating liquor license issued by the City of Duluth.
2. The Duluth Alcohol, Gambling and Tobacco Commission has jurisdiction over a license and enforcement issue involving an alleged violation occurring on July 18, 2012, at the Licensee's licensed premises known as the Bowery Brothers Bar located at 505 West Superior Street, Duluth, Minnesota.
3. The Notice of and Order for Hearing was served on the Licensee by United States Mail on November 1, 2012. In addition, Licensee was furnished with reports of the incident. Licensee waives any defects in service.
4. Licensee waives the right to a hearing but does not waive its right to address the Commission on the issue of penalty. Licensee admits the allegations of fact set forth in the Notice of and Order for Hearing.
5. The Commission will determine what, if any, action it will take.

Dated: 11/12/12

CITY OF DULUTH

TB DULUTH, LLC, Licensee

By: *Tara S. Leu*
Assistant City Attorney

By: *Jeffrey Briner*
Its GENERAL MANAGER
Printed Name Jeffrey Briner.

Duluth Police Department
Main Office

Reported Date: 07/18/2012 **Time:** 18:09 **Case No.:** 12135435

Code: **Crime:**

Class: **Occurrence Date:**

Location: 505 SUPERIOR ST W, 1DU, DULUTH (CITY), . .

===== NARRATIVE =====

Narrative:

On the evening of 07/18/2012, I, Officer Greenwalt, along with Officer Sewell was working alcohol and tobacco compliance check detail. In this particular portion of the detail we were conducting alcohol compliance checks using decoy JESSE SCHILLING, who is 20 years of age.

Prior to leaving Duluth Police HQ, SCHILLING, was briefed on his role. SCHILLING was asked to attempt to buy alcohol at local establishments. If he was asked for his identification he was to say that he must have left it at home and leave the establishment. SCHILLING was asked not to debate his age or try to engage the employee in further conversation. However, if the employee engaged SCHILLING in conversation suggesting the sale of alcohol without checking identification he was to continue with the purchase. It was explained to SCHILLING the purpose of this detail was to make sure the establishments were checking identification prior to selling alcohol.

After doing several compliance checks at local establishments we responded to Bowery Brothers Bar at 505 W Superior St. SCHILLING went into the bar and sent a text shortly thereafter to Officer Sewell indicating he had purchased a beer. I entered the establishment and identified the loan bartender as KHRYSTIN ROSE OCKULY DOB 04/01/1988 by Minnesota driver's license.

SCHILLING told me he had purchased a bottle of Coors Light beer, which he left on the bar as he exited. OCKULY admitted she had sold the Coors Light. I informed her the person whom she sold the alcohol was an underage decoy. OCKULY admitted to me she did not ask for identification.

I issued OCKULY a citation for Sale of Alcohol to a Minor and explained her options on responding to this citation. I also spoke with OCKULY's manager, explaining there may be an additional citation for the establishment issued by Officer Vang, Licensing Officer.

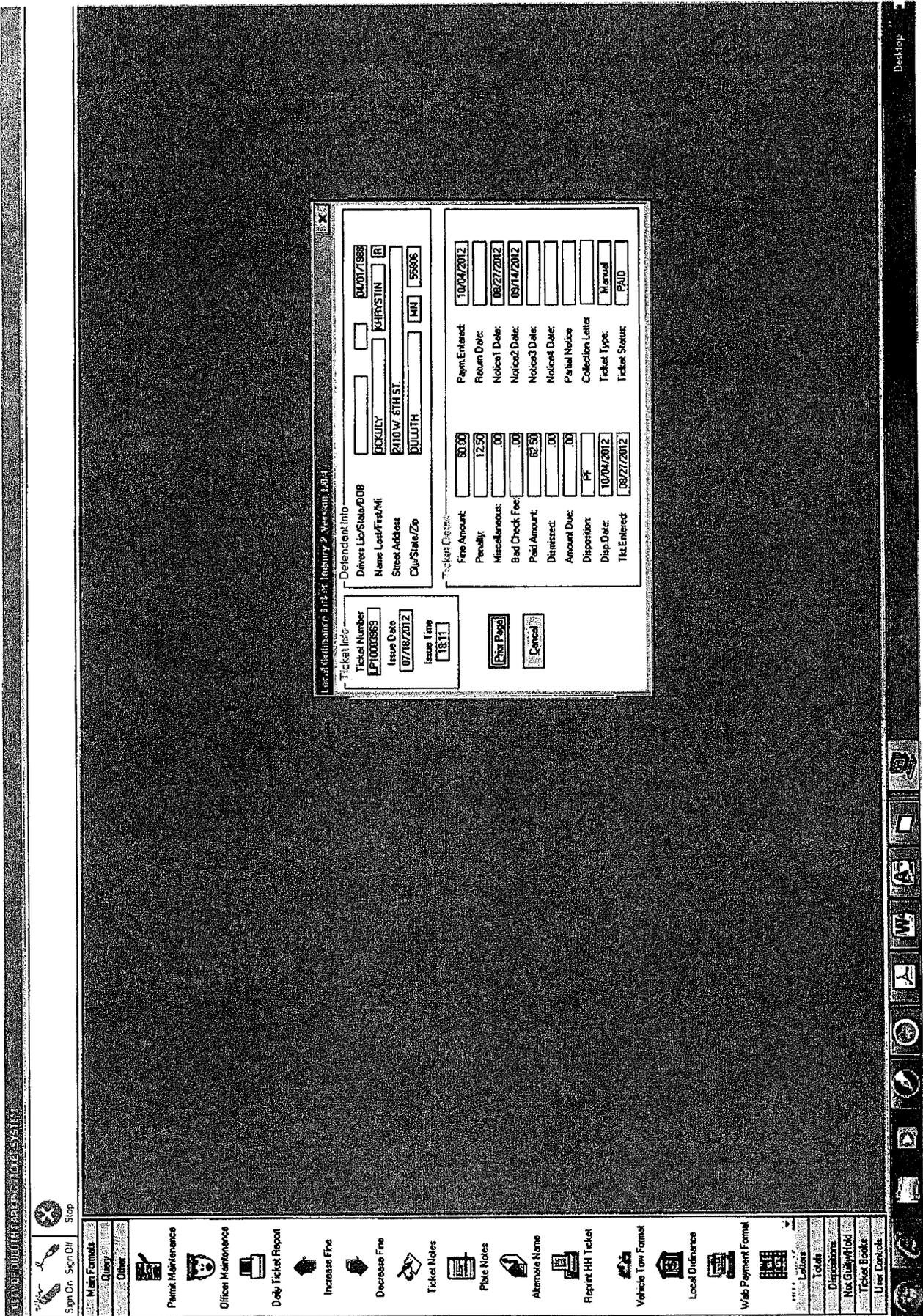
OCKULY was obviously remorseful and realized she had made a mistake. OCKULY's manager was respectful and indicated he would revisit policy and training programs related to checking identification and sale to minors, with his staff.

**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 12-135435		Date/Time Issued 7-18-12 1811	
Alleged Violator's Name Kirstin Rose Ockuly			
Address 2410 W 6th St Duluth MN 55806		City Duluth	State MN
Zip Code 55806		Phone Number 218-763-5283081	
DOB 4-1-88		Phone Number 218-763-5283081	
Vehicle Information			
License No. —	State —	Reg. Expires —	
Vehicle Make —	Model —	Color —	
Violation Information			
Date of Violation 7-18-12		Time of Violation 1811	
Location 505 W. Superior St.			
Charge Sale of Alc for minor		Ordinance No. 8-28	
Description Ockuly Sold Cars Lt. to Decoy. Did not ask for ID. Ockuly Affected not asking			
Officer Signature <i>Kelly Greenwall</i>			
Officer Name (Print) Kelly Greenwall		Badge No. 374	
Served: In person <input checked="" type="checkbox"/> By mail <input type="checkbox"/>		Positively Identified <input checked="" type="checkbox"/>	
Date Due: 7-28-12		Minimum Fine Amount Due: <input checked="" type="checkbox"/> \$50.00 <input type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: LP10 003969			



**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 12-135435		Date/Time Issued 7-30-12 @ 0936	
Alleged Violator's Name TB Duluth, LLC			
Address 505 W. Superior St		City Duluth, MN	Zip Code 55802
DOB	Phone Number 218-727-8981		
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation 7-18-2012		Time of Violation 1809	
Location 505 W. Superior St			
Charge Licensee liable		Ordinance No. 8-35	
Description Employee sold alcoholiz beverage to underage person, licensee liable for sale.			
Officer Signature 			
Officer Name (Print) Cha Vang		Badge No. 375	
Served: In person <input type="checkbox"/> By mail <input checked="" type="checkbox"/>		Positively Identified <input type="checkbox"/>	
Date Due: Aug 9, 2012		Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number:		LP10 004066	



- Main Formals
- Queue
- 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
- Web Payment Format
- Letters
- Totals
- Dispositions
- Not Guilty/Hold
- Ticket Books
- User Controls

Local Ordinance Ticket Inquiry 2 - Version 1.0.4

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"/>	Paym. Entered:	<input type="text" value="08/15/2012"/>
Penalty:	<input type="text" value="50.00"/>	Return Date:	<input type="text" value="08/01/2012"/>
Miscellaneous:	<input type="text" value=".00"/>	Notice1 Date:	<input type="text"/>
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=".00"/>	Partial Notice:	<input type="text"/>
Disposition:	<input type="text" value="RT"/>	Collection Letter:	<input type="text"/>
Disp. Date:	<input type="text" value="08/15/2012"/>	Ticket Type:	<input type="text" value="Manual"/>
Tkt. Entered:	<input type="text" value="07/31/2012"/>	Ticket Status:	<input type="text" value="REDUCED"/>

Alcohol, Gambling, and Tobacco Hearing
March 6, 2013
TB Duluth, LLC, (Radisson Hotel), 505 West Superior Street

- Attorney Lehr: Thank you Vice President Pekkela, Commissioners. This matter is resolved with regard to the facts. Does everyone have a copy of the stipulation that was signed by myself and Mr. Briner? This matter involves a violation that occurred on July 18th of 2012. It was a sale to a minor. The licensee acknowledges that the violation occurred and they are here today to address the commissioners regarding what the penalty should be with regard to this matter. The presumptive penalty is a \$500 civil penalty. This is a first offense for this licensee.
- Briner: Jeff Briner, General Manager for the Radisson. The person that was in violation was disciplined. We did have some liquor training afterwards with all other bartenders, and it has been addressed, not only with her, but with everybody. It was the first offense that the property has had in the 42 years that it's been here. I was not the manager at the time. I came in a month later. Since then, everybody's been retrained. We've had our so-called different meetings: we actually have a bartender meeting on Friday afternoon and we focus on this issue.
- Stauber: Were you here for the January meeting that we didn't have a quorum for?
- Briner: Yes. I've been schedule for three meetings.
- Stauber: If there's no questions, I've got a motion. I'd like to reduce the civil penalty to \$100 with the extra circumstances that you've had to essentially prepare for three meetings and it's bad government that we can't provide a quorum and we didn't at the time.
- Birchland: Second.
- Pekkala: All in favor?
Motion passes unanimously.
- Briner: Thank you.
- Oswald: This recommendation goes to our city council for approval, which will probably take a couple weeks before it goes, and then you'll get a letter telling you when it's going to the council. So you have an opportunity, if you want, to come to the council meeting. Either way

I'll send you a copy of the resolution once it's approved. Your fine will be paid after that.

Briner: Very good. Thank you.

Attorney Lutterman: Yes, and you should be aware that the commission's action today here is a recommendation to the city council. The city council has the authority to go along with the commission's recommendation, reject the commission's recommendation, modify the commission's recommendation, so it's always in your best interest to appear at city council.

Briner: Thank you for the information.