

PURCHASING AND LICENSING COMMITTEE

13-0171R

RESOLUTION IN THE MATTER OF THE OFF SALE 3.2 PERCENT
MALT LIQUOR LICENSE OF D & C LETOURNEAU, ENT. (D & C
LAKESIDE MILKHOUSE).

CITY PROPOSAL:

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

(a) On April 3, 2013, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the 3.2 percent malt liquor license of D & C Letourneau, Ent. (D & C Lakeside Milkhouse), 5402 East 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 22, 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 3.2 percent malt liquor license of D & C Letourneau, Ent. (D & C Lakeside Milkhouse), 5402 East 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/CLH JJC:mao 4/8/2013

Alcohol, gambling and tobacco commission discussion of 4/3/13: The alcohol, gambling and tobacco commission (AGTC) held a hearing on April 3, 2013, regarding the off sale 3.2 percent malt liquor license of D & C Lakeside Milkhouse. The police department conducted alcohol compliance checks on July 18, 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. This was the first offense for the licensee at this location. 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: **D & C LETOURNEAU ENT., d/b/a D & C Lakeside Milkhouse**,
5402 E. Superior Street, Duluth, Minnesota 55804.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on April 3, 2013, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on April 3, 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. Pursuant to the terms of a Stipulation filed with the Commission, Licensee waived its appearance.

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 “off-sale beer” at its premises located at 5402 E. Superior Street, Duluth, Minnesota.
2. On July 18, 2012, an employee of Licensee was issued a citation for sale of a six-pack of beer 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 July 23, 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 13, 2012.

4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of January 2, 2013. The hearing was rescheduled two times due to a lack of a quorum of the Commission and finally held on April 3, 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 two 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 April 3, 2013. Licensee wishes to be treated the same as the 3 other similarly-situated licensees who appeared before the Commission in March. In March, this Commission recommended a civil penalty of \$100 for the other 3 licensees, which recommendation was adopted by

the Duluth City Council. Licensee has signed a Stipulation, which was filed with the Commission, wherein Licensee agrees with and requests that a civil penalty of \$100 be imposed.

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

STIPULATION

In re: D & C Letourneau Ent. d/b/a D & C Lakeside Milkhouse, 5402 E. Superior Street, Duluth, Minnesota.

The parties to this Stipulation are the City of Duluth and D & C Letourneau, Ent., Licensee.

The parties hereby stipulate as follows:

1. D & C Letourneau Ent. is the holder of an "off-sale beer" license issued by the City of Duluth at a premises located at 5402 E. Superior Street, Duluth, Minnesota.
2. Donald and Cathy Letourneau are the owners of D & C Letourneau Ent.
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 July 18, 2012.
4. The Notice of and Order for Hearing was served on the Licensee by U.S. mail on November 29, 2012 and Licensee acknowledges proper service of the same. The Notice of and Order for Hearing set the hearing for January 2, 2013.
5. Licensee admits the allegations contained in the Notice of and Order for Hearing. However, Licensee has been in business for 24 years in five locations. Licensee trains all of its employees on the law regarding sale of alcohol. Licensee has a "zero tolerance" policy regarding sale of alcohol to minors and enforces the policy with termination of employment of any employee who violates the policy.
6. Licensee prepared for and made arrangements to attend and/or attended two separate monthly meetings of the Alcohol, Gambling and Tobacco Commission, but due to a lack of quorum of the Commission members at these meetings, this matter was not heard and had to be rescheduled again. Licensee is aware that the other three licensees with matters before this Commission under similar circumstances received a \$100 penalty. Licensee is requesting that she be treated the same as the others. Under these circumstances, Licensee waives the right to a hearing regarding the issue of the penalty and requests that this Commission impose a civil penalty of \$100.

Dated: April 3, 2013

CITY OF DULUTH

D & C LETOURNEAU ENT., d/b/a
D & C Lakeside Milkhouse

By *Dani L. Leu*
Assistant City Attorney (#191668)

By *Cecilia*
Its: *owner*
Printed Name: *Catherine Leu*

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF AND ORDER FOR HEARING

TO: **D & C Letourneau Ent., d/b/a D & C Lakeside Milkhouse**, Attention: Catherine and Donald Letourneau, 5402 E. Superior Street, Duluth, MN 55804.

PLEASE BE ADVISED that on **January 2, 2013**, 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 "off-sale beer" at its premises located at 5402 E. Superior Street, Duluth, Minnesota.
2. On or about July 18, 2012, Jennifer M. Hanson, an employee of Licensee, sold a six-pack of beer to an underage person at Licensee's business establishment known as D & C Lakeside Milkhouse. Hanson was cited for the violation, convicted on July 23, 2012 and paid a fine of \$50.00. *See City Docs. No. 1-3 (Duluth Police Department Report ICR# 12-135339; City of Duluth City Ordinance Violation Ticket No. LP10003967; 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 13, 2012 and paid a fine of \$200.00. *See City Docs. No. 4-5 (City of Duluth Ordinance Violation Ticket No. LP10004068; 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: 11/29/12

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

Duluth Police Department
Main Office

Reported Date: 07/18/2012 Time: 16:17 Case No.: 12135339
Code: Crime:
Class: Occurrence Date:
Location: 5402 SUPERIOR ST E, 1DU, DULUTH (CITY), . .

===== NARRATIVE =====

Narrative:

On the evening of 07/18/2012, I, Officer Greenwalt, along with Officer Sewell, was working an alcohol/tobacco compliance check detail. On 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 SCHILLING was asked for his identification he was to say 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 establishments were checking identification prior to selling alcohol.

After doing several compliance checks we responded to the Lakeside Milk house at 5402 E Superior St. SCHILLING went into the store and returned with a 6 pack of Heineken beer. SCHILLING told me there was only one clerk in the store and she did not ask for his identification upon purchase.

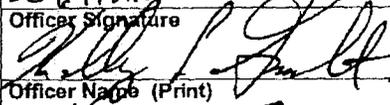
I went inside the store and identified the clerk as JENNIFER MARGRET HANSON DOB 04/24/1993 by Minnesota state identification card. HANSON admitted to selling a 6 pack of beer to SCHILLING, not asking for identification.

After issuing HANSON the citation, I explained her options on responding to the citation.

**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 12-135339 12-135339		Date/Time Issued 7-18-12 1617	
Alleged Violator's Name Jennifer Margaret Hassan			
Address 5721 Oneida St. Duluth MN 55804		City	State
DOB 4-24-93		Phone Number 218-391-1813	
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation 7-18-12		Time of Violation 1617	
Location 5402 E Superior St.			
Charge Sale of Alc to minor		Ordinance No. 8-28	
Description Hasson sold Heinek - cPK to Decoy. Did not ask for ID Schilling			
Officer Signature 			
Officer Name (Print) Kelly Greenwalt		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: LP10003967			

- 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
- Web Payment Format
- Letters
- Totals
- Dispositions
- Not Guilty/Hold
- Ticket Books

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:

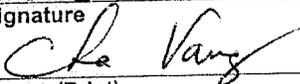
Ticket Detail

Fine Amount:	<input type="text" value="50.00"/>	Paym. Entered:	<input type="text" value="07/23/2012"/>
Penalty:	<input type="text" value=".00"/>	Return Date:	<input type="text" value=""/>
Miscellaneous:	<input type="text" value=".00"/>	Notice1 Date:	<input type="text" value=""/>
Bad Check Fee:	<input type="text" value=".00"/>	Notice2 Date:	<input type="text" value=""/>
Paid Amount:	<input type="text" value="50.00"/>	Notice3 Date:	<input type="text" value=""/>
Dismissed:	<input type="text" value=".00"/>	Notice4 Date:	<input type="text" value=""/>
Amount Due:	<input type="text" value=".00"/>	Partial Notice	<input type="text" value=""/>
Disposition:	<input type="text" value="PF"/>	Collection Letter	<input type="text" value="Manual"/>
Disp. Date:	<input type="text" value="07/23/2012"/>	Ticket Type:	<input type="text" value="PAID"/>
Tkt. Entered:	<input type="text" value="07/23/2012"/>	Ticket Status:	<input type="text" value=""/>

**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 12-135339		Date/Time Issued 7-30-12 @ 0945	
Alleged Violator's Name D+C Letourneau Ent. as Lakeside Milk			
Address 5402 E. Superior St Duluth, MN 55804		City	State
DOB	Phone Number 218-525-3702		
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation 7-18-2012		Time of Violation 1617	
Location 5402 E. Superior St.			
Charge licensee liable		Ordinance No. 8-35	
Description Employee sold alcoholic beverage to underage person, licensee liable.			
Officer Signature 			
Officer Name (Print) Cha Vang		Badge No. 375	
Served: In person <input type="checkbox"/>	Positively Identified <input type="checkbox"/>		
By mail <input checked="" 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 004068	

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
- Web Payment Format
- Letters
- Totals
- Dispositions
- Not Guilty/Hold

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="08/13/2012"/>
Penalty:	<input type="text" value="50.00"/>	Return Date:	<input type="text"/>
Miscellaneous:	<input type="text" value=".00"/>	Notice1 Date:	<input type="text" value="08/07/2012"/>
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="08/13/2012"/>	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
D & C Lakeside Milkhouse, 5402 East Superior Street

Attorney Lehr: Good evening. I spoke with Catherine Letourneau today, and she is one of the people who had appeared in January and then again in February. She was not able to make it last month and this month, but she is aware of the recommendation of this body at last month's hearing. Ms. Letourneau has indicated to me that she would very much like to be treated the same way as the other three licensees that were here before the commission last month. Based on what she wanted to do I prepared a stipulation which she came into my office earlier today and signed. First of all, she's admitting the violation and then she wanted to add some additional information about the history of what they do and how they deal with these types of violations. Then she's simply requesting that she receive the same decision from this body as the other three did. So she'd be okay with a penalty of \$100 fine.

President Pekkala: Any questions?

Stauber: I would make the motion that we accept the stipulations and impose \$100 civil fine.

Birchland: Second.

Pekkala: Motion made and seconded. Motion passes unanimously.