

MINUTES OF THE REGULAR MEETING OF THE ALCOHOL, GAMBLING & TOBACCO COMMISSION

November 7, 2012

The regular meeting of the Alcohol, Gambling & Tobacco Commission was held on Wednesday, November 7, 2012, at 4:45 p.m., in the City Council Chambers, 3rd Floor, City Hall.

ROLL CALL: Present: Dennis Birchland, Chris Pekkala, Ryan Stauber,
and President Donahue - 4
Absent: George Hanson - 1

COMMUNICATIONS:

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE INTOXICATING LIQUOR LICENSE OF AZTECA'S MEXICAN GRILL, INC. (AZTECA'S MEXICAN GRILL), 2224 MOUNTAIN SHADOW DRIVE. #12-09 - Received.

CITY ATTORNEY SUBMITTING NOTICE OF HEARING AND POLICE REPORT TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE INTOXICATING LIQUOR LICENSE OF LAST CHANCE OF DULUTH, INC. (LAST CHANCE LIQUOR), 619 E. 4TH STREET. #12-10 - Received.

CITY ATTORNEY SUBMITTING PROPOSED AMENDMENTS TO SECTION 8 24 RELATING TO LAWFUL GAMBLING ON LICENSED PREMISES. #12 12 Received.

The clerk stated that letters had been mailed out to the local organizations regarding the proposed changes to code. John Vaydich, gambling manager, reviewed that part of the discussion last month at the board meeting was the city adopting the language from State statute regarding the conduct of the charitable gambling and questioned why the draft ordinance still says the employee of the establishment can't sell pulltabs. He continued saying that the State has very strict controls on gaming now going under the department of Public Safety and adopting those rules would be a good thing for Duluth gaming. Attorney Lutterman reviewed that the city ordinance can be more restrictive than the State and replied if the commission believes that there is no problem the bar employees selling any type of pulltab then she can make the change. Ginny Hinnenkamp, gambling manager, explained that have a bar op situation there is protection for the organization and the burden is on the bar for any shortages, and many of the bar owners don't want their employees working with pulltabs. Ms. Hinnenkamp also stated that adopting the State statute would be beneficial to Duluth. The commission discussed whether to adopt State statute into the city code, and decided to wait until a further time to review this request when they are more familiar with State statute. Mr. Pekkala moved that the attorney's office include also strike out section 8-24(b)(4) prohibiting employees of the establishment selling pulltabs in the draft ordinance and forward the ordinance on to the city council. Mr. Birchland seconded the motion and it was unanimously approved.

NEW BUSINESS:

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE LIQUOR LICENSE OF AZTECA'S MEXICAN GRILL, INC. (AZTECA'S MEXICAN GRILL), 2224 MOUNTAIN SHADOW DRIVE.

Alcohol, Gambling, and Tobacco Hearing
November 7, 2012

Azteca's Mexican Grill, Inc., Azteca's Mexican Grill, 2224 Mountain Shadow Drive

Lehr: This is the matter regarding Azteca's Mexican Grill. I have not heard from the licensee since my office served the Notice of Order for Hearing. This was served on September 21, 2012. So yesterday I made a phone call to the Mexican Grill and the gal that answered the phone, I asked to speak to Juan Vasquez, and she said he wasn't there at the time. She said he would be in later, and she would leave a message for him to call me. I have not received a return phone call from him. I have had no communication with him. I have not received anything from him in the mail. This is a matter where it is a first offense. The presumptive penalty is the \$500 civil penalty. In light of the failure of the licensee to either communicate with me or appear today, we would ask that the commission impose the presumptive penalty.

Pekkala: I move to impose the full \$500 penalty.

Birchland: Second.

Donahue: There is a motion and second to impose a \$500 penalty. All in favor?
Motion passes unanimously.

HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE OFF SALE INTOXICATING LIQUOR LICENSE OF LAST CHANCE OF DULUTH, INC. (LAST CHANCE LIQUOR), 619 E. 4TH STREET.

Alcohol, Gambling, and Tobacco Hearing
November 7, 2012

Last Chance of Duluth, Inc. (Last Chance Liquor), 619 East Fourth Street

Lehr: I spoke with David Katoski who is here on behalf of Last Chance Liquor. We had quite a lengthy conversation yesterday. Mr. Katoski does not dispute the violation occurred. But he would like to make a position statement to the commission today. I would simply submit our case on the documents that were filed with the commissioners with the understanding that Mr. Katoski doesn't dispute the violation. But I think he has a few things he wants to cover with the commissioners including some of the policies at his premise,

including the training with the employees and the reward program he has for his employees.

Donahue: Welcome.

Katoski: Thank you. I am not going to dispute that my clerk, who is no longer employed at the store, did violate not only the law, but violated our store policy that we have had for quite a few years. He did make the sale. We have the Minnesota License Beverage Association training that every employee has to go through once a year. We have a reward policy in place for the confiscation of ID's. He didn't follow the policy we have and got caught. My only contention that happened this time, and it was noted at my hearing with Mr. Envall, that Peter Greenwood, who made the sale, asked for the ID from the decoy. It has always been our understanding and that which was presented from Office Vang, that if the ID was asked for, it was our understanding from the off sale association, that once the ID was asked for, he was supposed to leave the premises. He was not supposed to misrepresent that and have an ID. In this case, and after talking Office Vang, and talking with the officer who was in charge that night of the sting, and you can see on Page 6 of the Hearing Decision, Mr. Envall stated..... "It is apparent that the misrepresentation was neither intended nor desired by the Duluth Police Department, who had instructed Mr. Rude to not misrepresent his age." However, on two occasions when he went in there he did. My employee did like what he was supposed at first. He asked for his identification. The decoy reached in for his wallet, fumbled through it for a few seconds, said he didn't have it. Peter asked if he was 21? He said yea. That's when Peter should have stopped the sale. He didn't. He violated the law. I am not going to deny it. In the same sense, as Mr. Envall, the hearing officer, said at the hearing on Page 6, it wasn't the intended desire by the Duluth Police Department misrepresent his age, but he did twice. I asked Officer Vang if that is going to be the common policy? It is our understanding you come if asked for the ID, then walk out. We are going to have a meeting, I was told by Ms. Lehr, that we are going to be able to set up a meeting. Mr. Envall did note in his decision that my contention is of good reason, it was a bit over reaching and the way it was handled that evening. My contention is that he violated the ordinance and he should have asked for the ID. My contention is that if the police officers are going to have their decoy come in and be asked for an ID, it is my contention that it has been all along been that way, with Officer Vang, the decoys are supposed to leave the premises. They are not supposed to sit there and search through their wallet and pretend or deceive the clerk that they might have an ID on them while all along they do know they don't have one. The policy should be straight forward. If they are asked for an ID, if you don't have one, turn around and walk out. Don't deceive. I think it is a bad policy of the city of Duluth, and I am not going to argue the point of fake ID's. We have hundreds of them at our store.

Another contention that I wish that as s commission, we could work with the police department, I know that stings are going to happen, they should. But I wish we could put some responsibility on the kids trying to get into the stores and bars. Show them some violations have occurred and scare them. Word gets around. With all the fake ID's the cops have gotten since September, it has just stopped with all the fake ID's. The word has gotten around not to go into Last Chance, don't go into Mt. Royal, don't go into Lake Aire, because they know about these fake ID's. That was all I was contending. Just the policy of the Duluth Police Department. I was just wishing it was more direct. If something is asked. Nope. Turn around and walk out. That's all.

Donahue: Attorney Lehr. Do you have anything to say?

Lehr: Mr. Katoski and I have discussed this to address his concerns. I think he is aware that the decoy was told not to lie if he was asked how old he was. It is the department's policy to instruct the decoy that way. Regardless, the clerk should have followed through and not made the sale until he saw the ID. Mr. Katoski acknowledges that the clerk should have followed through and gotten the ID before he made the transaction. Interesting, Mr. Katoski and employees have been catching people with fake ID's in the recent weeks and have turned over a considerable number of fake ID's. We are going to follow up with Mr. Katoski with what happened with those. The point with the employee here is that he should have not made the transaction until he had gotten the ID. That is what the law requires that he actually looks at the ID, ask for it, and if that would have happened, then the sale wouldn't have happened.

Donahue: Any questions? Mr. Katoski, you have to understand that we have this much wiggle room when it comes to the city council and this stuff. If I was to say what your penalty should be, do you have any idea?

Katoski: I have talked to Ms. Lehr about this and she said the penalty is \$500. Half would be good. How can I contest it?

Birchland: I have seen something that I haven't seen in the many hearings that we've had so far. I can list several mitigating circumstances why we could either reduce or stay the complete penalty. The employee is not working there anymore, they have a reward policy that we have thought is a very good idea for confiscating fake ID's, or for turning way people that are too young. They already use a training program. It is a very busy location. They have many people in and out of the doors. This is the first under this circumstance that we've had. The biggest problem that I have is that even from the narrative of the police report, it talks about the decoy being told how to do it, and he didn't do it the way he was told to do it. With those, I am going to make a motion to stay the penalty for 1 year with no same or similar and those mitigating circumstances would be the reason for that. And hopefully the city council would see that. Also, the police department would make sure the decoys know the procedure and follow that procedure to the letter that they are given. And if it changes, then I don't have a problem straying away from our normal penalties.

Pekkala: Second.

Lehr: Commissioners. I believe the city code currently doesn't allow the commission to stay any portion of the fine, so if you wanted to do a lesser fine, you could do a \$250 fine. If you look at paragraph seven in the Notice of Order for Hearing, I cite the section of the city ordinance that says that. I think what has happened in the past, rather than do a \$500 penalty and staying half, you would just impose a \$250 penalty. And then articulate the mitigating circumstances.

Pekkala: Or whatever dollar amount you want.

Birchland: Then I make a motion to impose a \$100 fine payable 30 days after city council action.

Pekkala: Second.

Donahue: All in favor? Motion passes unanimously. This will go to the city council and you may want to consider to show up for that meeting as they can change the amount.

Katoski: Thank you.

There being no further business to bring before the commission, the meeting was declared adjourned at 5:30 p.m.