

00-004-O

ORDINANCE NO. _____

AN ORDINANCE COMBINING THE ALCOHOLIC BEVERAGE BOARD AND THE LAWFUL GAMBLING COMMISSION INTO THE ALCOHOL, GAMBLING AND TOBACCO COMMISSION, AMENDING SECTIONS 8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 8-8, 8-9, 8-10, 8-11, 8-42, 8-43, 8-49, 8-54, 8-58, 8-62, 8-65, 8-67, 10A-10, 10A-11, 10A-12, 10A-14, 10A-15, 10A-17 AND 11-5, AND REPEALING SECTIONS 10A-8 AND 10A-9.

BY COUNCILOR EDWARDS:

The city of Duluth does ordain:

Section 1. That Chapter 8, Article I, Division I, of the Duluth City Code, 1959, as amended, is amended to read as follows:

Article I. Alcoholic Beverages.

Division I. ~~Alcoholic Beverage Board,~~ Gambling and Tobacco Commission.

Section 2. That Section 8-1 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-1. Created.

There is hereby created a nonsalaried board, to be known as the ~~alcoholic beverage board,~~ gambling and tobacco commission of the city.

Section 3. That Section 8-2 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-2. Membership; appointment; term of office.

The ~~alcoholic beverage board,~~ gambling and tobacco commission shall consist of ~~five~~ seven members, who shall be appointed by the mayor, subject to the approval of the council. Each member shall be a citizen of the United States and a resident of the city for at least one year immediately preceding his appointment. Of the persons first appointed for membership on the ~~board commission,~~ one ~~three~~ shall be appointed for one year, ~~one~~ three for two years, ~~and one for three years,~~ one for four years and one for five years. Thereafter, all appointments shall be for the term of three years, except such appointments as may be made for the remainder of unexpired terms. Members of the board shall be eligible for reappointment.

Section 4. That Section 8-3 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-3. Vacancies.

Vacancies on the ~~alcoholic beverage board,~~ gambling and tobacco commission caused by death, resignation or otherwise shall be filled by the mayor only for the unexpired terms, subject to approval of the city council, in the same manner as for initial appointments. Such vacancies shall be filled by the mayor within 30 days after the occurrence of such vacancies. The term of any member of the ~~board commission~~ shall be deemed vacant upon such failure to attend three consecutive meetings, unless such nonattendance resulted from a justifiable cause.

Section 5. That Section 8-4 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-4. Members' oath of office.

Every appointee to the ~~alcoholic beverage board, gambling and tobacco commission~~, before he enters upon the duties of his office, shall make and file with the city clerk an oath or affirmation to support the constitutions of the United States and of the state and to perform faithfully, honestly and impartially the duties of his office, as required by Section 28 of the City Charter. Any appointee who shall fail or neglect to make or file such oath or affirmation within ten days after notification of his appointment shall be deemed to have refused to accept such appointment.

Section 6. That Section 8-5 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-5. Officers; rules of procedure.

Within ten days after the making and filing of the oath prescribed by this Division, the ~~alcoholic beverage board, gambling and tobacco commission~~ shall meet and elect a president and a vice president. The city clerk shall be the secretary and keeper of the minutes and records of the ~~board~~ commission. All minutes and records of the ~~board~~ commission shall be public records, and shall be open to inspection at the office of the city clerk during established business hours of the city. For the conduct of its business, the ~~board~~ commission may adopt such rules and regulations as are not inconsistent with this Division.

Section 7. That Section 8-6 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-6. Meetings.

The ~~alcoholic beverage board, gambling and tobacco commission~~ shall hold at least one regular meeting each month and shall fix the date of such meetings. Special meetings may be called by the president of the ~~board~~ commission and shall be called upon the written request of at least ~~three~~ four members of the ~~board~~ commission. Regular meetings of the ~~board~~ commission shall be public and be held at the city hall. Final action on any matter shall be taken by the ~~board~~ commission at a public meeting. The city attorney or an assistant city attorney designated by the city attorney shall attend all meetings of the ~~board~~ commission. Any applicant or licensee who shall request that a special meeting of the ~~board~~ commission be held to consider said applicant's or licensee's business shall pay to the clerk an additional fee of \$100, if such special meeting is held, to cover costs of the meeting.

Section 8. That Section 8-7 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-7. Advisory power as to issuance of alcoholic beverage licenses and lawful gambling permits and licenses.

(a) The ~~alcoholic beverage board, gambling and tobacco commission~~ shall investigate every application for a license to sell alcoholic beverages within the city and, after such investigation, shall report its findings and make recommendation to the city council as to whether an application for a license should be granted or refused by the city council. The power to grant alcoholic beverage licenses is not delegated to the ~~board~~ commission by this Section. The recommendations of the ~~board~~ commission with respect to the granting or refusal of any alcoholic beverage license shall be merely advisory.

(b) No application for an alcoholic beverage license shall be considered by the ~~alcoholic beverage board, gambling and tobacco commission~~ unless such application has first been filed with the city clerk and reports made thereon by the proper city officers, as required by sections 8-12 to 8-68. Within 60 days after an application for an alcoholic beverage license has been submitted to the ~~board~~ commission for its consideration, the

~~board commission~~ shall, in writing, make and file its report and recommendation thereon. Thereupon, the city clerk shall refer such report and recommendation to the city council for its determination.

(c) The alcohol, gambling and tobacco commission shall, with the assistance of the police department, investigate all applicants for state lawful gambling licenses and premises permits for operations within the city and all applicants for gambling manager licenses and jar operator licenses authorized by Chapter 10A of this Code. After making such investigation, the commission shall recommend to the city council whether to disapprove of any state lawful gambling premises permit or license pursuant to the provisions of Minnesota Statutes, Section 349.213, Subdivision 2, and shall grant or deny all gambling manager licenses and jar operator licenses. Commission recommendations on state lawful gambling licenses and premises permits are advisory only and shall not be binding upon the city council;

(d) The city council shall not waive any statutory time period for objecting to lawful gambling operations until after the alcohol, gambling and tobacco commission has investigated the prospective applicant and made a recommendation to the city council.

Section 9. That Section 8-8 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-8. Complaints and questions as to licenses, laws, etc.

Whenever there shall be filed with the city clerk or with the city council any complaint or question relating to the issuance or granting of alcoholic beverage licenses, lawful gambling licenses or permits, or tobacco licenses or any problem relating to control or enforcement of this ~~Article~~ Chapter or Chapters 10A or 11 or any other regulations of the city relating to alcoholic beverages lawful gambling or tobacco, such complaints or questions shall be referred immediately to the ~~alcoholic beverage board, gambling and tobacco commission~~ and the ~~board commission~~ shall, at its next regular meeting or as soon thereafter as may be, investigate such complaints or give consideration to such questions and report its findings in writing to the city council. Such report and findings shall be filed with the city clerk as a public document.

Section 10. That Section 8-9 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-9. Suspension and revocation of licenses.

(a) When it comes to the attention of the alcoholic beverage board, gambling and tobacco commission that any establishment licensed pursuant to this Chapter may have violated the provisions of this Chapter or any other law relating to the operation of a liquor establishment, or that such establishment may be engaging in other conduct that may constitute good cause for the suspension or revocation of its liquor license, the alcoholic beverage board, gambling and tobacco commission may call for a hearing to determine the validity of the allegations and to determine what, if any, disciplinary measures shall be recommended to the city council for their implementation against the licensee. Any hearing called pursuant to the provisions of this Section shall be held before the alcoholic beverage board, gambling and tobacco commission and shall be held pursuant to the procedural and evidentiary provisions of Minnesota Statutes, sections 14.57 to 14.69, and rules promulgated there under. At such hearing, the board commission shall hear all relevant evidence and arguments from all parties. After due deliberation, the board commission shall determine the validity of the allegations and what, if any, corrective or punitive measures will be recommended to the city council. At the completion of the hearing and deliberations, the board commission shall direct the city clerk to prepare a report to the city council which shall consist of the board's commission's findings of fact, conclusions and recommendation to the city council. The report shall be filed with the city council and served personally or by first class mail upon the parties to the hearing. The

council shall also receive a copy of the transcript of the ~~board's~~ commission's hearing and any exhibits introduced as evidence. The city council shall not render a decision on the matter until at least ten days after it has received the report of the ~~alcoholic beverage board,~~ gambling and tobacco commission. During this ten day period, either party to the hearing may present written exceptions to the report of the ~~alcoholic beverage board,~~ gambling and tobacco commission or make arrangements to be placed on the agenda of the city council to present oral argument to the city council concerning the matter. The city council's decision on the matter shall be in the form of a written resolution which shall contain findings of fact and conclusions on all material issues and shall set forth any punitive action taken against the license. A copy of the resolution shall be served upon the licensee personally or by first class mail;

(b) Without limiting other grounds for suspension or revocation, the following shall be deemed to be good cause for suspension or revocation of a liquor license:

(1) Violation of any law relating to the operation of a liquor establishment, including, but not limited to, state, federal and local laws on liquor, gambling, prostitution, health and fire safety;

(2) The establishment is operated in such a way as to constitute a public nuisance;

(3) The establishment has failed to pay license fees or city or state sales tax or that property taxes on the building have not been paid;

(4) The establishment has failed to file or maintain any insurance or bond required by law;

(5) The establishment is insolvent, bankrupt or otherwise financially unable to continue business;

(6) Refusal to cooperate with the board or the police in any investigation and the refusal to admit police officers into the establishment at any time when people are in the establishment;

(7) Failure to follow the procedures set forth in this Chapter with respect to change of ownership, change of location or changes in serving area of the establishment;

(8) Nonuse of the license;

(9) The filing of a license application containing information or statements known by the applicant to be false;

(c) The city council may request that the ~~alcoholic beverage board,~~ gambling and tobacco commission conduct a hearing concerning the operation of any establishment licensed pursuant to this Chapter. The ~~board~~commission shall conduct any hearings so requested.

Section 11. That Section 8-10 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-10. Conflicts of interest.

~~No member of the alcoholic beverage board directly or indirectly, individually or as a member of a partnership or association or stockholder in a corporation, shall have any~~

~~interest whatsoever in dealing in, manufacturing, transporting or storing alcoholic beverages, nor receive any commission or profit whatsoever from any person authorized to manufacture or sell alcoholic beverages. A violation of this Section by any member of the board, shall disqualify him from membership on the board. No member of the commission, directly or indirectly, individually or as a member of a charitable organization or of a partnership or association or as a stockholder in a corporation, shall have any interest whatsoever in any lawful gambling operation or in the manufacture or distribution of any lawful gambling supplies or equipment, or in the manufacturing, transporting, or storing, or sale of alcoholic beverages or tobacco products. A violation of this Subsection by any member of the commission shall disqualify such person from membership on the commission.~~

Section 12. That Section 8-11 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-11. Duties of administrative assistant and city attorney.

Subject to the provisions of the City Charter, the ~~alcoholic beverage board,~~ gambling and tobacco commission may require the administrative assistant to furnish such information and assistance to the ~~board,~~ commission as the ~~board,~~ commission shall deem necessary in carrying out the provisions of this Division. The city attorney shall be the legal advisor of the ~~board,~~ commission.

Section 13. That Section 8-42 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-42. Issuance or transfer of an on sale license; application procedure; limitation on issuance of inactive licenses.

(a) Whenever there shall be filed with the city clerk an application for the issuance of an on sale alcoholic beverage license or for a transfer thereof, the fire marshal and the St. Louis County health department shall proceed to inspect and examine such premises and make a report to the ~~alcoholic beverage board,~~ gambling and tobacco commission as to whether such premises show substantial compliance with the requirements of this Chapter and other applicable laws. The police department shall investigate the applicant and report whether the applicant is a proper person to receive such license. In the event such reports and any supplementary assurances indicate the building will comply with the requirements of laws relating to on sale alcoholic beverage licenses, including building, fire and health codes, a license may be granted, which shall be held by the city clerk until completion of the proposed premises. Thereafter, a final inspection and report shall be made by each of such officers and if their reports indicate that the premises meet the requirements of all applicable laws and are otherwise suitable for the operation of the business permitted by such license, then the clerk shall physically deliver the license to the applicant. In the event that construction of the proposed premises is not prosecuted by the applicant with reasonable diligence, or in the event the building, when completed, does not comply with the requirements above set forth, the council may revoke such license as provided for in this Chapter;

(b) Except as provided herein, no alcoholic beverage license shall be reissued to any licensee who has held a license for a period of two years or more without using said license by engaging in the business of selling alcoholic beverages on the licensed premises pursuant to said license for a continuous period of 30 days or more. The city council may reissue a liquor license that has been inactive for more than two years for an additional year, but only if it has been shown at a hearing before the ~~alcoholic beverage board,~~ gambling and tobacco commission that the licensee is subject to special circumstances that make it difficult for the licensee to use the license and make it inequitable to divest the licensee of the license. Any licensee wishing a hearing hereunder shall request the hearing at least 45 days before the renewal date of the

license. The request shall be in writing and shall outline the special circumstances affecting the licensee. At the hearing, the ~~alcoholic beverage board,~~ gambling and tobacco commission shall examine the licensee's circumstances and shall make a recommendation for or against reissuance to the city council. The recommendation, together with a transcript of the hearing, shall be sent to the city council. After reviewing the recommendation, the city council shall grant or deny the license. More than one reissuance may be granted, but each reissuance shall require a hearing.

Section 14. That Section 8-43 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-43. Bottle clubs.

(a) Definitions;

(1) Bottle clubs. For the purposes of this Section, a bottle club is a club, as defined in Section 8-13, or an unincorporated society which, except for its lack of incorporation, otherwise meets the requirement of a club, as defined in such Section, and which is not licensed for the sale of intoxicating liquors, either on sale or off sale, or both;

(2) Sale. For the purposes of this Section, sale shall include any form of dispensing;

(b) No administrative officer of the city shall grant approval for issuance of any bottle club permit by the liquor control commissioner of the state of Minnesota unless the city council has authorized such approval by resolution after investigation and recommendation regarding such permit application has been made by the ~~alcoholic beverage board,~~ gambling and tobacco commission pursuant to the procedures set forth in Section 8-7 of this Chapter, except that such recommendation shall be made by the ~~board~~ commission to the council within 30 days after submission of the permit application to the ~~board~~ commission;

(c) All bottle clubs licensed by the state to do business in the city of Duluth shall pay a fee of \$300 annually to the city in addition to any fee paid to the state. The fee payable to the city shall be paid prior to the beginning of operation of a bottle club, and prior to ~~July~~ April 1 of the following and each succeeding year;

(d) The provisions and regulations of sections 8-15, 8-16, 8-24, 8-26, 8-28, 8-34 and 8-35 shall fully and equally apply and regulate establishments holding bottle club licenses from the Minnesota state liquor control commissioner;

(e) No person shall consume or display or allow consumption or display of intoxicating liquor on any premises of a bottle club between the hours of 1:00 a.m. and 8:00 a.m., or between the hours of 1:00 a.m. and 12:00 Noon on any Sunday; ~~or between the hours of 1:00 a.m. and 3:00 p.m. on Memorial Day, or between the hours of 1:00 a.m. and 8:00 p.m. on any election day in the district in which such election shall be held.~~

Section 15. That Section 8-49 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-49. Same--Nonintoxicating malt liquor.

On sale nonintoxicating malt liquor licenses shall be granted only to premises which have been approved by the city council upon advice from the ~~alcoholic beverage board,~~ gambling and tobacco commission. The total number of on sale licenses to be granted under this Section shall not exceed the ratio of one on sale license for every 800

inhabitants of the city or fraction thereof, as determined by the last federal census; provided, that in determining such ratio, clubs shall not be included or limited in such number.

Section 16. That Section 8-54 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-54. License not effective beyond space for which granted; exceptions.

No license shall be effective beyond the compact and contiguous space named therein for which the same was granted. Licensed premises shall include the entire parcel of land on which the establishment is located; provided, however, that no sales or service shall take place outside the designated serving areas approved by the city council in the licensing procedure unless such sales and/or service is authorized on a temporary basis for a special event by city council resolution and shall be subject to any conditions and limitations the council deems appropriate. Before any temporary service area is authorized, the licensee shall make application, accompanied by the appropriate fee and including a diagram of the proposed area, the time and date of the event, and fencing and security measures to be taken, to the city clerk. Thereafter, the ~~alcoholic beverage board,~~ gambling and tobacco commission shall review the matter and make any recommendation it deems appropriate to the city council. The fee for temporary expansions shall be \$250 for the first day of the event and \$125 for each day thereafter. If the application is denied, all but \$25 of the fee shall be refunded to the applicant. No temporary expansion of service area shall be granted for a period of time greater than three consecutive days.

Section 17. That Section 8-58 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-58. Applications for intoxicating liquor licenses.

Applications for intoxicating liquor licenses shall be made to and filed with the city clerk. On sale applications shall be made on forms prescribed by the city council. Off sale applications shall be made on forms prescribed by the liquor control commissioner. All forms shall be supplied by the city clerk. The council or ~~alcoholic beverage board,~~ gambling and tobacco commission may require applicants to furnish information in addition to that contained in the written forms. If required under the provisions of Minnesota Statutes, Chapter 340A, a liability insurance policy shall accompany each application for a license.

The application for an off sale intoxicating liquor license is subject to approval by the state department of public safety. Before such off sale license shall become effective, the application therefor, together with the required insurance policy, shall be approved by the liquor control commissioner.

Section 18. That Section 8-62 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-62. Issuance--generally.

The city clerk shall not issue any license under this Division unless directed to do so by resolution duly adopted by the city council. No application for a license to sell intoxicating liquor shall be received or filed by the city clerk before June 15~~th~~ nor after July 15~~th~~. No application for a license to sell nonintoxicating malt liquor shall be received or filed by the city clerk before February 15~~th~~ nor after March 15~~th~~. Where a license is made available by revocation, abandonment, surrender, cancellation or for some other cause, such available license may, upon application to the city council, be reissued by the city council as determined by a resolution adopted for such purpose. Any resolution granting a license may be conditioned on final departmental approvals, payment of taxes or any

other condition the council deems appropriate. The city clerk shall not issue any license until all such conditions are met.

The ~~alcoholic beverage board, gambling and tobacco commission~~ shall cause an investigation to be made of all of the representations set forth in the applications. Opportunity shall be given at a regular or special meeting of the ~~alcoholic beverage board, gambling and tobacco commission~~ to any person to be heard for or against the granting of any license. After such investigation, the city council shall grant or refuse such license in its discretion; provided, that no off sale intoxicating liquor license shall become effective until it, together with any required insurance policy, has the approval of the liquor control commissioner of the state.

The licensed premises shall have the license posted in a conspicuous place.

Section 19. That Section 8-65 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-65. Payment of taxes.

Except as provided herein, no license shall be issued or any transfer thereof made under this Division unless the applicant for such license or transfer thereof shall accompany the application therefor with written proof of payment of delinquent sales taxes and real estate taxes, as well as all delinquent special assessments for local improvements on the premises for which a license is being sought. Proof of payment shall be evidenced by tax receipt, assessment certificate or a certified copy thereof or a certified copy of so much of any proceedings showing agreement under the laws of the state for the payment of such delinquent taxes and assessments; provided, however, that for the purposes of this Section, the holder of any license, the applicant for such license or the applicant for a transfer of such license shall be permitted to make proof of payment of current real estate taxes by filing with the city clerk a duplicate tax receipt or certified copy of such tax receipt, showing payment not later than June ~~thirtieth~~ 30 of the first 1/2 of such current real estate taxes or not later than November 30 of the second 1/2 of such current real estate taxes.

The city council may grant a license notwithstanding the existence of delinquent real estate taxes and assessments, but only after good cause for an extension to pay such taxes has been shown to exist at a public hearing held before the ~~alcoholic beverage board, gambling and tobacco commission~~. Any applicant owing delinquent real estate taxes or assessments may request in writing a hearing to determine if good cause exists for the granting of such license. At the hearing, the ~~alcoholic beverage board, gambling and tobacco commission~~ shall examine the financial condition of the applicant and the reasons for its inability to promptly pay all real estate taxes and assessments. After hearing all evidence, the ~~alcoholic beverage board, gambling and tobacco commission~~ shall make a recommendation to the city council and forward said recommendation together with a transcript of the hearing to the city council. The city council shall then grant or deny the request. Failure to file proof of payment of current sales taxes and real estate taxes shall be deemed, in addition to all other grounds of revocation, sufficient cause to revoke a license granted or to refuse the application for transfer of such license.

If the applicant for a license or for a transfer of a license is the owner, either in fee or under contract for deed of the real estate where the licensed business is proposed to be located, such applicant shall also obtain a certificate or other written proof from the county auditor, showing that there are no delinquent real estate taxes of record against such real estate.

In the event the applicant does not own the real estate where the licensed business is to be located and there are delinquent taxes of record against such real estate, the city council may nevertheless, by affirmative vote of five members of the council, authorize and direct the issuance of such license or the transfer thereof, but only in the event that the applicant shall file with the city clerk proof that the owner of said real estate and the applicant have entered into a written rental agreement or lease providing that rent paid shall be first applied to such delinquent real estate taxes.

Section 20. That Section 8-67 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-67. Transfer; modification of licensed premises or designated serving area.

(a) No license issued under the provisions of this Subdivision shall be assigned or transferred by the licensee, nor shall a change of address in the location of the licensed premises be permitted, unless a resolution authorizing such assignment, transfer or change of address shall have been first duly passed by the city council. A request for an assignment, transfer or change of address shall be treated in the same manner as an application for a new license under the provisions of this Chapter. Such applications shall be accompanied by a fee of \$200 in the case of an intoxicating liquor license and \$75 in the case of a non-intoxicating malt liquor license. The fee shall be refunded if the application is withdrawn, or the assignment, transfer or change of address is not granted by the city council. No fee for the assignment, transfer or change of address of an off sale nonintoxicating malt liquor license shall be charged when such application is accompanied by an application for assignment, transfer or change of address of an on sale nonintoxicating malt liquor license;

(b) No licensee shall permanently expand its licensed premises or designated serving area, unless such expansion is approved by the city council. A request for such expansion shall be made in writing to the city clerk accompanied by a \$50 fee. Thereafter, the matter shall be reviewed by the ~~alcoholic beverage board~~, gambling and tobacco commission and referred to the city council together with the recommendation of the alcoholic beverage board.

Section 21. That Section 10A-10 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 10A-10. Procedure for review of state lawful gambling or premises permit applications.

(a) The alcohol, gambling and tobacco commission established in Division I of Article I of Chapter 8 of this Code shall review and make recommendations and approvals as provided herein with respect to lawful gambling licenses, premises permits, and gambling manager and jar operator licenses;

(b) Each lawful gambling license or premises permit applicant shall file with the clerk a completed, sworn and verified gambling investigation information form at the time it delivers a copy of its application form to the clerk. The gambling investigation information form shall be available from the clerk. The copy of the lawful gambling license or premises permit application filed with the clerk shall include copies of all required attachments. After receiving these documents, the clerk shall immediately refer the matter to the police department for investigation and, if all documents are received at least five days before the next regularly scheduled meeting of the ~~lawful alcohol~~, gambling and tobacco commission, place the item on the commission's agenda. After the investigation, the police department shall indicate its approval or disapproval of the license or permit application to the commission. If it disapproves of the license or permit, it shall make such disapproval in writing together with a statement stating why it

disapproves of the applicant receiving a license or permit. This statement shall be served upon the applicant by first class mail or personally as soon as is reasonably possible. Representatives of all applicants shall appear before the commission at the time and place where their application is to be heard, unless such appearance is waived in advance by the commission. Applicants may be examined by commission members, police representatives and counsel. The commission may require that questions be answered under oath. The applicant may be represented by counsel and may present testimonial and documentary evidence relevant to issues raised. The applicant may examine the police representative concerning any police objections to the license or permit application and may make reasonable inquiries to commission members and staff. After hearing all relevant evidence and arguments concerning the license or permit application, the commission shall recommend that the city council pass a resolution approving or disapproving of the license or permit. If the commission recommends that the city council disapprove of an application, reasons for the recommendation shall be clearly stated on the record;

~~(b)~~ (c) Any license or permit applicant who receives a recommendation of disapproval from the commission may request a hearing before the city council on its license or permit application. A request for such a hearing must be made in writing to the city clerk within five days after the commission makes its recommendation. If such a request is received, the clerk shall set the matter for hearing before the council within 15 days and in any event at a time no later than five days before the end of the statutory period of time in which the council can take action on the application. The hearing must be held and decided within the period of time in which the council can take action on the license or permit application. At the hearing, the applicant may be represented by counsel, may present any oral and written testimony and arguments relevant to the issues, and may cross-examine adverse witnesses. Testimony taken shall be under oath. At the conclusion of the hearing, the council shall pass a resolution disapproving or approving of the license or permit. Any resolution disapproving of the license or permit shall contain written findings of fact that the council has made which justify disapproval of the license or permit application.

Section 22. That Section 10A-11 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 10A-11. Standards for state lawful gambling license or premises permit disapproval.

The ~~lawful alcohol, gambling and tobacco~~ commission may recommend disapproval of a lawful gambling license or premises permit and the city council may disapprove of a lawful gambling license or premises permit if substantial evidence shows:

(a) That the applicant, its managers or employees violated any ordinance or state or federal statute or regulation which relates to the operation of lawful gambling, or of theft, fraud or bribery;

(b) That the applicant, its managers or employees were convicted of a crime that directly relates to the operation of lawful gambling and have not been rehabilitated within the meaning of Minnesota Statutes, Chapter 364;

(c) That the applicant, its managers or employees have operated lawful gambling games in an unfair manner so as to give some players a better chance of winning than other players;

(d) That the applicant made material misstatements of fact or omissions of fact on its present or past applications or on gambling information investigation form;

- (e) That the applicant, its managers or employees refused to answer questions concerning its application or operations asked by the police, the commission or the city council;
- (f) That the applicant failed to pay any city gambling tax when due;
- (g) A refusal by the applicant or its managers or employees to cooperate with the police or commission in any investigation;
- (h) Employment by the applicant of gambling managers or jar operators who are not lawfully qualified to work in their respective positions;
- (i) Payment by the applicant of any lease fee or other payment for its operating premises in excess of legal limits;
- (j) Participation by the applicant in any conspiracy or scheme to limit the applicant's source of gambling supplies;
- (k) Bribery or fraud by the applicant in securing a license;
- (l) Incompetence by applicant or its managers in conducting and managing lawful gambling games;
- (m) That the applicant failed to keep records of its operation as required by law and consistent with good accounting practices;
- (n) That the applicant's gambling operations constitute a public nuisance or result in the excessive commercialization of lawful gambling;
- (o) That the applicant or its representative failed to appear for its licensing hearing.

Section 23. That Section 10A-12 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 10A-12. Gambling managers and jar operators; license required.

- (a) No person shall work as a gambling manager or jar operator for any licensed lawful gambling operation in the city unless they are first licensed by the ~~lawful alcohol, gambling and tobacco~~ commission pursuant to this Article. A person licensed as a gambling manager may work as a jar operator without further license;
- (b) Applicants for a jar operator's license shall, upon making proper application and paying the license fee, receive a temporary license which shall be valid until the license applicant is acted upon by the ~~lawful alcohol, gambling and tobacco~~ commission;
- (c) In cases of death, disability, resignation or dismissal of a gambling manager or other emergencies beyond the control of a lawful gambling licensee, an interim gambling manager, unlicensed by the city, may be appointed under such terms and conditions as are consistent with state law and, provided further, that the interim manager applies for the license required herein for the next regular ~~lawful alcohol, gambling and tobacco~~ commission meeting.

Section 24. That Section 10A-14 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 10A-14. Investigation; issuance; appeals.

(a) Upon receipt of an application, the clerk shall refer the matter to the police department for investigation. The police shall examine the applicant's qualifications and criminal history and shall report to the ~~lawful alcohol, gambling and tobacco~~ commission its finding. The ~~lawful alcohol, gambling and tobacco~~ commission shall hear each initial license application and shall make inquiries of each applicant for the purpose of establishing applicant's knowledge of gambling laws, competence, and good moral character. After hearing all relevant evidence, the commission shall approve or deny the license. Each applicant shall have all the procedural rights set forth in Section 10A-10(b) in conjunction with the application;

(b) Any person aggrieved by a licensing decision of the ~~lawful alcohol, gambling and tobacco~~ commission may appeal the decision to the city council by serving notice of appeal in writing to the city clerk within ten days after the decision is rendered. The notice shall state the grounds for the appeal. The city council commission shall then hear and decide the appeal, giving the appellant the procedural rights set forth in Section 10A-10(b) of this Chapter.

Section 25. That Section 10A-15 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 10A-15. Suspension and revocation of licenses.

The ~~lawful alcohol, gambling and tobacco~~ commission may suspend a gambling manager or jar operator license for up to 60 days or revoke such license, but only for good cause as provided in this Article. No license shall be suspended or revoked unless the licensee has received at least 20 days' written notice of the proposed reasons for the action and has been given an opportunity for a hearing before the commission. Any licensee requesting a hearing shall make the request in writing to the city clerk. If a hearing is requested, the commission shall hear and determine the matter, affording the licensee the procedural rights set forth in Section 10A-10(b) of this Chapter. The licensee may appeal any adverse decision to the city council as provided in Section 10A-14(b).

Section 26. That Section 10A-17 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 10A-17. Paddlewheels prohibited.

(a) No person shall conduct lawful gambling in the city of Duluth by the operation or use of a paddlewheel as defined in Minnesota Statutes 349.12;

~~(b) The prohibition against the conduct of lawful gambling through the use of paddlewheels shall be suspended for a two year trial period commencing with the effective date of this ordinance. At the end of the two year trial period, the lawful gambling commission, after conferring with the chief of police, shall report to the city council any law enforcement or social problems caused by the introduction of paddlewheels so that the city council may determine whether to permanently allow or prohibit paddlewheels in Duluth. The effective date of this ordinance is October 24, 1993.~~

Section 27. That Section 11-5 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 11-5. Same--Revocation or suspension, administrative penalties.

(a) Every license issued under this Chapter may be suspended up to 60 days or revoked by the ~~alcoholic beverage board~~, gambling and tobacco commission for any cause set forth in paragraph (b) of this Section after a public hearing held for such purpose, notice of which shall be mailed to the licensee at his place of business ten days before the holding of such hearing. Any decision to suspend or revoke a license shall be made in writing. Any licensee aggrieved by a decision of the ~~alcoholic beverage board~~, gambling and tobacco commission may appeal such decision to district court as provided in Minnesota Statutes, Section 461.12, Subd. 7;

(b) The following shall be good cause to revoke or suspend a tobacco license:

(1) That the applicant, its managers or employees violated any ordinance or state or federal statute or regulation which relates to the sale or possession of tobacco or tobacco related devices;

(2) That the applicant, its managers or employees were convicted of a crime that directly relates to the sale of tobacco or tobacco related devices and have not been rehabilitated within the meaning of Minnesota Statutes, Chapter 364;

(3) That the applicant made material misstatements of fact or omissions of fact on its present or past applications;

(4) A refusal by the applicant or its managers or employees to cooperate with the police in any investigation of unlawful tobacco sales;

(c) If a licensee or employee of a licensee sells tobacco to a person under the age of 18 years, or violates any other provision of this Chapter, the licensee shall be charged an administrative penalty of \$75. An administrative penalty of \$200 must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 must be imposed, and the licensee's authority to sell tobacco at that location must be suspended for not less than seven days. No penalty or suspension under this paragraph shall be imposed until the licensee has been served personally by mail with notice of the alleged violation and been given an opportunity for a hearing as provided in paragraph (a) of this Section;

(d) If it appears that a licensee or the licensee's employees acting under the scope of the license have sold tobacco to persons under 18 years of age or otherwise violated this Chapter on four separate occasions during any 24 month period, the ~~alcoholic beverage board~~, gambling and tobacco commission must set a disciplinary hearing for the licensee. If, at the hearing, it is shown that the licensee or licensee's employees did sell tobacco to persons under 18 years of age or otherwise violated this Chapter on four separate occasions in a 24 month period, the ~~alcoholic beverage board~~, gambling and tobacco commission must revoke the license. In addition, the licensee shall be ineligible to apply for a cigarette license in the next succeeding license year;

(e) An individual who sells tobacco to a person under the age of 18 years must be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing as provided in paragraph (a) of this Section.

Section 28. That Sections 10A-8 and 10A-9 of the Duluth City Code, 1959, as amended, be repealed in their entirety.

Section 29. That the title of Article II of Chapter 10A of the Duluth City Code, 1959, as amended, be amended to read:

Article II. ~~Lawful Gambling Commission~~ State Licenses and Permits; Review Procedures.

Section 30. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This ordinance combines the existing Alcohol Beverage Board and Lawful Gambling Commission into a single commission to be known as the "Alcohol, Gambling and Tobacco Commission." In 1999, in Ordinance 9406, the City Council delegated to the Alcoholic Beverage Board the task of hearing and deciding tobacco license suspensions and revocations. In recent years, the workload of the Lawful Gambling Commission has declined significantly and most meetings have been held telephonically. The primary reason for this decline is more effective and comprehensive lawful gambling regulation by the State. Never-the-less, both the police and the gambling industry think the commission's function should continue. With these factors in mind, former administrative assistant Bob Hartl recommended that the two bodies be merged and that the new body cover alcohol, gambling and tobacco matters. This ordinance implements this recommendation. It also accomplishes three "housekeeping" measures in the liquor law area by eliminating an obsolete provision pertaining to paddlewheels in bars and changing two date provisions that are now inconsistent with State law.