

**AGENDA OF THE REGULAR MEETING OF THE  
ALCOHOL, GAMBLING & TOBACCO COMMISSION**

January 2, 2019

The regular meeting of the Alcohol, Gambling & Tobacco Commission will be held on Wednesday, January 2, 2018, at 4:45 p.m., in the City Council Chambers, 3rd Floor of City Hall.

**ANYONE WHO HAS BUSINESS BEFORE THIS**

**BOARD SHOULD MAKE PLANS TO ATTEND**

**ROLL CALL:** President Patricia Stolee, Bjorn Braaten, Mark Osthus, Adam Wisocki, Ryan Stauber, Lon Hanson, Jeff Rosenthal

Approval of the December 5, 2018 Alcohol, Gambling, and Tobacco Commission minutes.

**COMMUNICATIONS:** CITY ATTORNEY SUBMITTING NOTICE OF JANUARY 2, 2019, HEARING TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE INTOXICATING LIQUOR LICENSE OF MARTHA'S DAUGHTER, LLC. D/B/A MARTHA'S DAUGHTER, 107 EAST SUPERIOR STREET, DULUTH, MN 55802

**OLD BUSINESS:**

**LAWFUL GAMBLING:**

**NEW BUSINESS:**

**LETICA'S IRON MUG, LLC** – APPLICATION TO TRANSFER THE ON SALE WINE LICENSE WITH MIKE LETICA, 100% OWNER FROM PAUL JOHNSON (IRON MUG COFFEE HOUSE) FOR THE PERIOD ENDING AUGUST 31, 2019.

**LETICA'S IRON MUG, LLC** – APPLICATION TO TRANSFER THE ON SALE BEER LICENSE WITH MIKE LETICA, 100% OWNER FROM PAUL JOHNSON (IRON MUG COFFEE HOUSE) FOR THE PERIOD ENDING APRIL 30, 2019.

**HEARING** TO DECIDE WHAT, IF ANY, DISCIPLINARY ACTION SHOULD BE TAKEN REGARDING THE ON SALE INTOXICATING LIQUOR LICENSE OF MARTHA'S DAUGHTER, LLC. D/B/A MARTHA'S DAUGHTER, 107 EAST SUPERIOR STREET, DULUTH, MN 55802

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

December 6, 2018

The regular meeting of the Alcohol, Gambling & Tobacco Commission was held on Wednesday, December 5, 2018, at 4:45 p.m., in the City Council Chambers, 3rd Floor, City Hall.

ROLL CALL: President Patricia Stolee, Vice President Lon Hanson,  
Jeff Rosenthal, Mark Osthus.

Approval of October 3, 2018 and November 7, 2018 minutes. Unanimously approved.

**LAWFUL GAMBLING:**

**NEW BUSINESS:**

**NOMINATIONS FOR PRESIDENT AND VICE PRESENT** – Commissioner Rosenthal nominated Patricia Stolee for President. Commissioner Hanson made a second. The vote was unanimous. Commissioner Rosenthal nominated Lon Hanson for Vice President, and commissioner Osthus made a second motion. The vote was unanimous.

**MINNESOTA BALLET** - APPLICATION FOR THE ISSUANCE OF A TEMPORARY ON-SALE INTOXICATING LIQUOR LICENSE FOR FEBRUARY 7, 2018, FROM 6:00 P.M. – 10:00 P.M., FOR THE CELEBRITY DANCE CHALLENGE, TO BE HELD AT THE MARSHALL SCHOOL WITH MARY GUMMERSON / MANAGER.

Mary Gummerson was present on behalf of the application, and explained that they have had the event many years now, and that it was one of the Ballet's primary fundraisers. A motion to approve was made by Vice President Hanson, and a second was made by commissioner Osthus. The vote was unanimous.

**ARROWSTAR HOSPITALITY PARTNERS, LLC** – APPLICATION FOR THE ISSUANCE OF AN ON-SALE 3.2 NON INTOXICATING MALT LIQUOR LICENSE AND AN ON-SALE WINE LICENSE FOR THE PERIODS ENDING APRIL 30, 2019 AND AUGUST 31, 2019, RESPECTIVELY, WITH JAN LEFEBVRE, MANAGER.

Jan LeFebvre was present on behalf of the application. Ms. LeFebvre explained that they would like to offer beer and wine at the Duluth Grill. The hours of operation would be 6:00 a.m. to 10:00 p.m.

Commissioner Rosenthal explained that they could not serve alcohol until 8:00 a.m. and was affirmed by Officer Vang. A letter will be sent reminding the manager of hours they may serve alcohol.

Officer Vang reminded her to be sure to check IDs and ensure 100% compliance. Ms. LeFebvre agreed.

There being no further discussion, commissioner Rosenthal moved that the application for the issuance of an On-Sale 3.2 Non Intoxicating Malt Liquor License and an On-Sale Wine license for the periods ending April 30, 2019 and August 31, 2019, respectively, with Jan LeFebvre, manager, be approved and the same be recommended to the city council for approval. Vice President Hanson seconded the motion, and it was unanimously approved.

Meeting adjourned at 4:53 p.m.



**CITY OF DULUTH**  
**CITY CLERK'S OFFICE**  
 330 City Hall | 411 West First Street  
 Duluth, Minnesota 55802-1189  
 Phone (218) 730-5500  
 Fax (218) 730-5923

**FOR OFFICE USE ONLY**  
 DATE 12/26/18  
 LICENSE # 700029

**GOVERNMENT DATA PRACTICES ACT - CLASSIFICATION WARNING:** The data you supply on this form will be used to process the license you are applying for. You are not legally required to provide this data, but we will not be able to process the license without it. Some of the data will be classified as public data if and when the license is granted. Private financial information including a tax identification number and social security number are classified as private data and will be available to governmental personnel and other governmental agencies whose access is necessary to perform their official duties.

**APPLICATION TO TRANSFER ON SALE WINE LIQUOR LICENSE**

LICENSE	New fees:	Transfer fees:	Indicate fees below:
Initial Investigation Fee (one time)	\$209		\$209
On Sale Wine Transfer Liquor		\$358	358
Dancing	980	n/c	
Additional Bar	571	n/c	
After Hours Entertainment	262	n/c	
2:00 a.m. (Issued by State)	See State form	n/c	
		<b>TOTAL:</b>	<b>\$567</b>

**LICENSEE LEGAL NAME, ADDRESS & PHONE:**  
 (Individual, Corporation, Partnership, LLC)

Leticia's Iron Mug LLC  
1096 88th Ave W.  
Duluth, Mn. 55808  
218-464-5408

**BUSINESS NAME, ADDRESS, & PHONE:**

Leticia's Iron Mug LLC  
1096 88th Ave W.  
Duluth, Mn. 55808  
218-464-5408

**MANAGER'S NAME, ADDRESS & PHONE:**

Mike Leticia  
1096 88th Ave W.  
Duluth, Mn. 55808  
218-464-5408

**NAME & ADDRESS OF PROPERTY OWNER:**

Mike Leticia  
3424 Lindell Road  
Duluth, Mn. 55810  
218-390-5563

**LICENSE PERIOD:** Ending 8/31/

**License transferred from (provide documentation from existing licensee approving transfer):**

Paul Johnson

**I HEREBY STATE THAT ALL INFORMATION HERE IS TRUE AND CORRECT AND THAT I SHALL COMPLY WITH ALL PROVISIONS OF THE ORDINANCES OF THE CITY OF DULUTH AND LAWS OF THE STATE OF MINNESOTA AND THEIR AMENDMENTS.**

Michael Leticia  
 Signature of Applicant

**MAILING ADDRESS:**

1096 88th Ave W.  
Duluth, Mn. 55808



**CITY OF DULUTH**  
**CITY CLERK'S OFFICE**  
 330 City Hall | 411 West First Street  
 Duluth, Minnesota 55802-1189  
 Phone (218)730-5500  
 Fax (218) 730-5923

**FOR OFFICE USE ONLY**  
 DATE 12/26/18  
 LICENSE # 760033

**GOVERNMENT DATA PRACTICES ACT - CLASSIFICATION WARNING:** The data you supply on this form will be used to process the license you are applying for. You are not legally required to provide this data, but we will not be able to process the license without it. Some of the data will be classified as public data if and when the license is granted. Private financial information including a tax identification number and social security number are classified as private data and will be available to governmental personnel and other governmental agencies whose access is necessary to perform their official duties.

**TRANSFER NON INTOXICATING BEER LICENSE**

LICENSE	FEE	TOTAL
ON SALE BEER TRANSFER LEVEL 2 INVESTIGATION FEE	\$119.00 42.00	\$161.00
OFF SALE BEER TRANSFER LEVEL 1 INVESTIGATION FEE	\$119.00 31.00	\$ <del>X</del>

LICENSEE NAME/ADDRESS/PHONE NO.  
(Individual or Corporate)

Leticia's Iron Mug LLC  
1006 88th Ave W.  
Duluth, MN 55805  
218-390-5563

TRADE NAME

Leticia's Iron Mug LLC

BUSINESS PHONE:

218-464-5408

OWNER OF BUSINESS PREMISES:

Michael Leticia

MANAGER'S NAME/HOME ADDR/PHONE  
(Home address, not work address)

Same

LICENSE PERIOD: Ending 4/30

PLAT/PARCEL# \_\_\_\_\_

Comments: \_\_\_\_\_

MAILING ADDRESS IF OTHER THAN BUSINESS ADDRESS

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I HEREBY STATE THAT ALL INFORMATION HERE IS TRUE AND CORRECT AND THAT I SHALL COMPLY WITH ALL PROVISION OF THE ORDINANCES OF THE CITY OF DULUTH AND LAWS OF THE STATE OF MINNESOTA AND THEIR AMENDMENTS.

Michael Leticia  
 Signature of Applicant



**CITY OF DULUTH**  
**CITY CLERK'S OFFICE**  
 330 City Hall  
 411 West First Street  
 Duluth, Minnesota 55802-1189  
 Phone (218) 730-5500  
 Fax (218) 730-5923

**APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE**

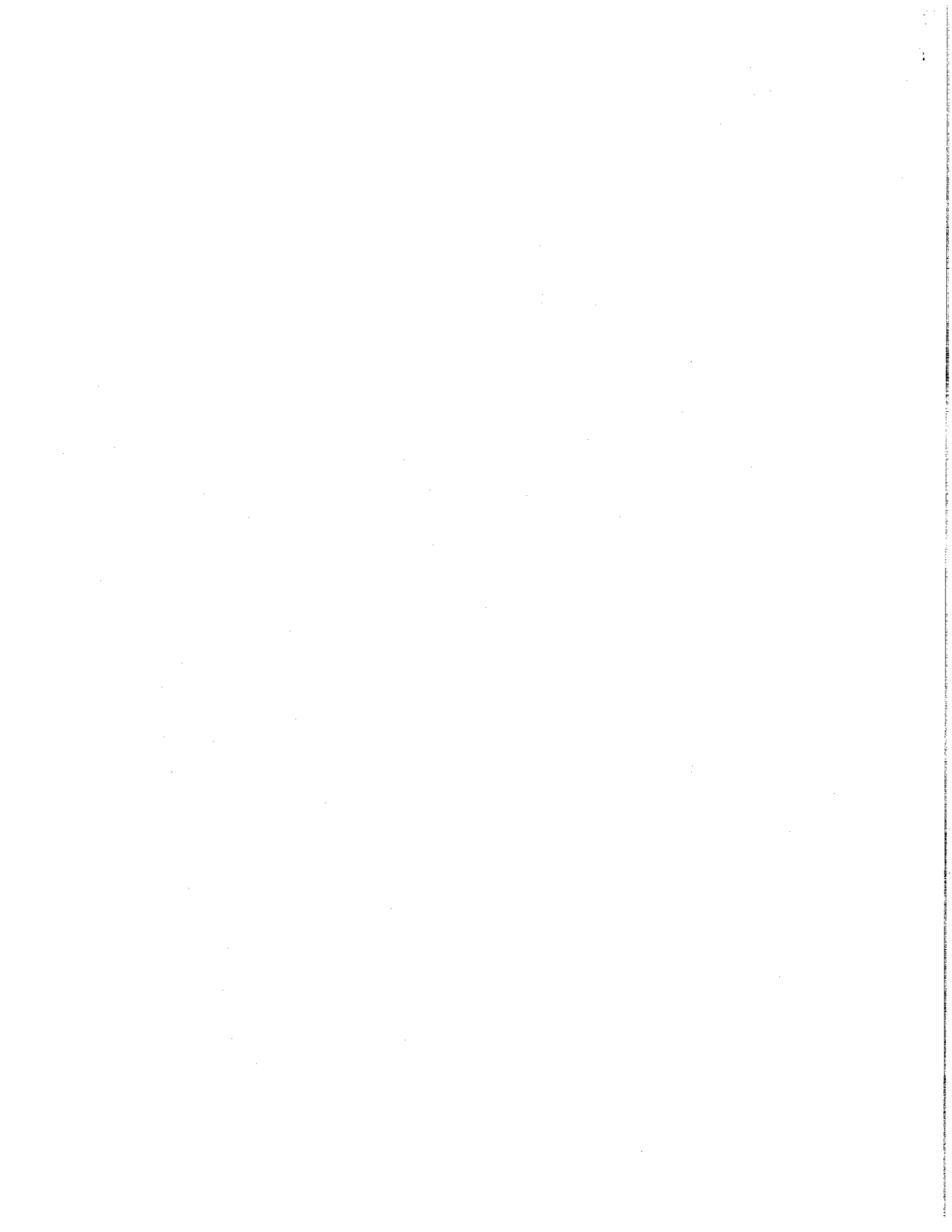
1. Name of Applicant (**individual, partnership or corporation or association**) that owns the business to be licensed: Michael Letica
2. Trade Name: Leticia's Iron Mug LLC
3. Address of place to be licensed: 1096 88th Ave W.
4. Designated Serving Areas (i.e. ground floor, second, deck, etc.) ground floor
5. Name and address of owner of building: Paul Johnson  
 Any connection with applicant? NO Who receives the rent: Maynard Properties
6. Who will direct the operation of the business or serve as manager on the premises? List name, address & title:  
Michael Letica, 3424 Lindell Rd. Duluth Mn, owner
- 7.. If partnership, give name of each partner and percent of ownership, and if limited partnership, give details:  
N/A
8. If corporation, list all stockholders, directors, officers and percent of stock or number of shares owned by each:  
N/A
9. State approximate distance of this establishment from nearest academy, college, university, church or school:  
1/4 mile
10. State whether any consideration, money or property, has been paid, or will be paid, given, exchanged or pledged, by anyone, and to whom, for the purchase or operation of this business. State the amounts in detail:  
N/A

COPY

**Failure to answer all questions truthfully on this application and attached "Exhibit A" which is made a part thereof, will be just cause for revocation of your license.**

I (we) hereby certify that the applicant will be the sole owner and operator of this business to be conducted under the license and I (we) will notify the City Council in writing of any change in ownership in this business before the change is made, for the approval of the Alcohol Gambling & Tobacco Commission and City Council. I (we) have read the foregoing questions, and answers to said questions are true of my knowledge. I (we) will comply with all the provisions of the Alcoholic Beverage Code and the laws and regulations and their amendments.

Signature: Michael Letica Date: 12/26/18  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_





City of Duluth  
Attorney's Office

411 West First Street • Room 410 • Duluth, Minnesota • 55802-1198  
218-730-5490 • Fax: 218-730-5918 • www.duluthmn.gov

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December 4, 2018

Martha's Daughter  
Attn: Nyanyika Banda  
107 East Superior Street  
Duluth, MN 55802

RE: Notice of Hearing  
Alcohol, Gambling and Tobacco Commission

Dear Licensee:

Enclosed please find a Notice of Hearing hereby served upon you by U.S. certified mail.

Sincerely,

Steven B. Hanke  
Deputy City Attorney

Cc/enc: Chelsea Helmer, City Clerk



CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

\*\*\*\*\*

**NOTICE OF AND ORDER FOR HEARING**

\*\*\*\*\*

TO: Martha's Daughter, LLC d/b/a Martha's Daughter, 107 East Superior Street  
Duluth, MN 55802

PLEASE BE ADVISED that on **January 2, 2019, 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 are governed by Minnesota Rules Chapter 1400, Part 5550, *et. seq.*, to the extent applicable, and Minnesota Statutes §14.57 thru §14.69. 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 as 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.

**The City is represented by Steven B. Hanke, Deputy City Attorney. He may be contacted at (218) 730-5271 or shanke@duluthmn.gov.**

The hearing will be open to the public.

The following facts give rise to the inquiry and hearing mentioned above:

1. Martha's Daughter, LLC d/b/a Martha's Daughter ("Licensee") is licensed by the City of Duluth to sell Intoxicating Liquor on an "on-sale" basis at its licensed premises located at 107 East Superior Street Duluth, MN 55802.
2. On or about December 1, 2018, Licensee was notified by the City of Duluth Treasurer's Office that it owes the City \$6,977.80 for estimated unpaid City of Duluth Food/Beverage Tourism Tax for June, July, August, September, and November of 2018. See *City Doc. No. 1 (Letter: Notice of Past Due Sales Tax Invoice dated December 1, 2018)*.
3. On or about December 3, 2018, Licensee was notified by the City of Duluth Treasurer's Office that it owes the City \$8,845.95 for estimated unpaid City of Duluth Food/Beverage Tourism Tax for June, July, August, September, October, November, and December of 2018. See *City Doc. No. 2 (Letter: Notice of Estimates Filed dated December 3, 2018)*.
4. The City has not received Licensee's June, July, August, September, October, November, or December of 2018 City of Duluth Food/Beverage Tourism Tax payments.
5. **As of December 3, 2018, the total amount unpaid and past due City tax, penalty, and interest by Licensee for June, July, August, September, October, November, and December of 2018 is approximately \$8,845.95. The final actual amount depends on actual sales records.**

6. The City Council approved Resolution 18-0717 on October 22, 2018. Pursuant to the final order of the City Council, Licensee must submit the following payments via check made payable to "The City of Duluth" to the Duluth City Clerk's Office, City Hall Room 330, 411 West First Street Duluth, MN 55802 no later than Friday, November 30, 2018:

a. \$100 civil penalty; and

b. City of Duluth Food/Beverage taxes due for the period June, July, and August of 2018, in the estimated amount of \$4,713.69.

*See City Doc. No. 3 (Letter to Martha's Daughter -Report to Council, Council Resolution, and Requesting Payment of \$100 Civil Penalty).*

7. **As of December 3, 2018, the City has not received the \$100 civil penalty from the Licensee. This \$100 civil penalty was ordered by the Duluth City Council on October 22, 2018 to be paid by Licensee no later than November 30, 2018.**

8. Section 8-9 (b) of the Duluth City Code provides that "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;"

...

"(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."

...

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

9. Pursuant to Duluth City Code Sections 8-9(a) and (b)(1) the City of Duluth 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.

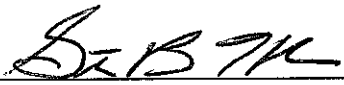
10. This is the Licensee's second offense for purposes of the presumptive penalty schedule provided for in Duluth City Code Section 8-9.
11. **Pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a second offense is a \$1,000 civil penalty and a one (1) day license suspension.**
12. 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 Docs. No. 1-3)*

Dated: December 4, 2018

CHELESEA J. HELMER, Secretary  
Alcohol, Gambling and Tobacco  
Commission

and

  
\_\_\_\_\_  
STEVEN B. HANKE (#0387429)  
Deputy City Attorney

Gunnar B. Johnson, City Attorney  
Attorneys for the Alcohol, Gambling  
and Tobacco Commission



City of Duluth  
City Treasurer

# City Doc. No. 1

411 West First Street • Room 105 • Duluth, Minnesota • 55802  
218-730-5350 • Fax: 218-730-5917

An Equal Opportunity Employer

## NOTICE OF PAST DUE SALES TAX

SALES TAX PERMIT NUMBER	DATE OF NOTICE
1590	12/1/2018

Martha's Daughter  
107 East Superior Street  
Duluth, MN 55802

Location: Martha's Daughter  
Type: Food/Beverage

### STATEMENT OF ACCOUNT

### RETURN COPY WITH REMITTANCE

PERIOD	TAX	PENALTY	INTEREST	TOTAL
06/2018	\$1,032.16	\$103.21	\$75.04	\$1,210.41
07/2018	\$1,687.50	\$168.75	\$94.29	\$1,950.54
08/2018	\$1,687.50	\$168.75	\$65.91	\$1,922.16
09/2018	\$1,687.50	\$168.75	\$38.44	\$1,894.69
10/2018		***** Not Submitted *****		
Total	\$6,094.66	\$609.46	\$273.68	\$6,977.80

Make checks payable to City of Duluth and remit to the above address.

**THIS STATEMENT REPRESENTS PENALTY AND INTEREST FOR FAILURE TO FILE TIMELY. ALL REMITTANCES ARE CREDITED FIRST TO PENALTIES, NEXT TO INTEREST, AND THEN TO TAX DUE.**



City of Duluth  
City Treasurer

411 West First Street • Room 105 • Duluth, Minnesota • 55802  
218-730-5350 • Fax: 218-730-5917

An Equal Opportunity Employer

## NOTICE OF PAST DUE SALES TAX

SALES TAX PERMIT NUMBER	DATE OF NOTICE
1590	12/1/2018

Martha's Daughter  
107 East Superior Street  
Duluth, MN 55802

Location: Martha's Daughter  
Type: Food/Beverage

### STATEMENT OF ACCOUNT

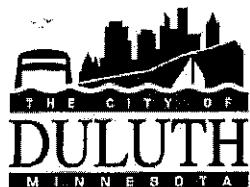
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10/2018		***** Not Submitted *****		
Total	\$6,094.66	\$609.46	\$273.68	\$6,977.80

Make checks payable to City of Duluth and remit to the above address.

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## City Doc. No. 2



### Treasurer's Office

411 West First Street • Duluth, Minnesota • 55802-1190  
Telephone: 218-730-5350 • Fax: 218-730-5917 • [www.duluthmn.gov](http://www.duluthmn.gov)

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Martha's Daughter dba: Martha's Daughter  
Attn: Nyanyika Banda  
107 East Superior Street  
Duluth MN 55802

Date: December 3rd, 2018

Permit: 1590

#### Notice of Estimates Filed City of Duluth Food/Beverage Tourism Tax

Per the final notification dated November 20th, 2018 informing of unfiled City of Duluth Tourism Tax Food/Beverage return (s) and the failure to file by the demand date, sales have been estimated and filings entered for you. Included in this mailing is the notice of Past Due Sales Tax due per the estimated sales filed in your behalf. Estimates will continue to be filed for each open filing period going forward. Amounts due include Penalty and Interest based from estimates filed.

Upon receipt of actual sales and payment of tax due, estimates will be removed. Penalty and interest will apply to actual filings received.

The balance reflected on the estimate has been added to the balance reflected on the December 2018 statement. The total due on the account as of December 3<sup>rd</sup>, 2018 is **\$8,845.95**. The open Revenue Recapture claim has been revised to reflect the amount of \$8,845.95.

Be advised Chapter 8: Section 8-9 (b), City officials may be asked to consider disciplinary action regarding liquor licensing. See ordinance verbiage below.

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:

- (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;

Should you have questions my contact information is below.

Sincerely,

Ruthann Grace  
Administrator Credit and Collections | Email: [rgrace@duluthmn.gov](mailto:rgrace@duluthmn.gov) | Phone: (218) 730-5047

Cc:  
City Attorney's Office  
City Clerk's Office



City of Duluth  
Attorney's Office

## City Doc. No. 3

411 West First Street • Room 410 • Duluth, Minnesota • 55802-1198  
218-730-5490 • Fax: 218-730-5918 • www.duluthmn.gov

An Equal Opportunity Employer

October 25, 2018

Martha's Daughter  
Attn: Nyanyika Banda  
107 East Superior Street  
Duluth, MN 55802

**RE: Report to Council – \$100 Civil Penalty and City Taxes Due  
City of Duluth Alcohol, Gambling and Tobacco Commission**

Dear Licensee:

Enclosed please find copies of the Report to City Council from the Duluth Alcohol Gambling and Tobacco Commission and City Council Resolution 18-0717:

**RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF  
MARTHA'S DAUGHTER, 107 EAST SUPERIOR STREET, DULUTH, MINNESOTA 55802.**

The City Council approved Resolution 18-0717 on October 22, 2018. Pursuant to the final order of the City Council, you must submit the following payments via check made payable to "The City of Duluth" to the Duluth City Clerk's Office, City Hall Room 330, 411 West First Street Duluth, MN 55802 no later than Friday, November 30, 2018:

1. \$100 civil penalty; and
2. City of Duluth Food/Beverage taxes due for the period June, July, and August of 2018, in the estimated amount of \$4,713.69.

Failure to make these timely payments may result in further discipline, including suspension or revocation or a civil fine of not to exceed \$2,000, pursuant to Minn. Stat. §340A.415 and Duluth City Code Section 8-9.

Sincerely,

Steven B. Hanke  
Deputy City Attorney

Cc/enc: Chelsea Helmer, City Clerk  
Ruthann Grace, City Administrator Credit and Collections

Citizens and Government working together to provide an environment in which  
our community can enhance its quality of life and continue to prosper

The City of Duluth uses paper that is 100% recycled, including 10% post consumer waste.

## City Doc. No. 3



# City Doc. No. 3

## City of Duluth

411 West First Street  
Duluth, Minnesota 55802

### Master

File Number: 18-0717R

File ID: 18-0717R	Type: Resolution	Status: Passed
Version: 1	Agenda Section:	Committee: Purchasing and Licensing
Department:	Cost:	File Created: 10/08/2018
Subject:		Final Action: 10/22/2018

Title: RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF MARTHA'S DAUGHTER, 107 EAST SUPERIOR STREET, DULUTH, MINNESOTA 55802.

#### Internal Notes:

#### Code Sections:

Agenda Date: 10/22/2018

#### Indexes:

Agenda Number: 7.

#### Sponsors:

Enactment Date:

Attachments: Signed Report to City Council - Martha's Daughter

Enactment Number:

#### Recommendation:

Hearing Date:

Drafter: shanke@duluthmn.gov

Effective Date:

#### Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	10/8/2018	Steve Hanke	Approve	10/10/2018

#### History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	10/22/2018	adopted				
	Action Text:	This Resolution was adopted unanimously. Absent: Councilor Westerlund					
	Notes:						



# City Doc. No. 3

Master Continued (18-0717R)

Text of Legislative File 18-0717R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF MARTHA'S DAUGHTER, 107 EAST SUPERIOR STREET, DULUTH, MINNESOTA 55802.

## CITY PROPOSAL:

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

- (a) On October 3, 2018, the city of Duluth Alcohol, Gambling and Tobacco Commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Martha's Daughter, LLC d/b/a Martha's Daughter, 107 East Superior Street, Duluth, MN 55802, and has submitted its report to the city council of the city of Duluth as attachment A.
- (b) Pursuant to the Duluth City Code Chapter 8, Section 9 (a), on October 22, 2018, the city council considered the records and evidence submitted;
- (c) The finding of facts as set forth in attachment A regarding any suspension, revocation and /or civil penalty relating to the on-sale intoxicating liquor license of Martha's Daughter. are adopted.

FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: the city council hereby adopts the recommended penalty of the Alcohol Gambling & Tobacco Commission and imposes a civil penalty of \$100 due and payable by licensee within 30 days of final council action. the licensee shall also pay City of Duluth Food/Beverage taxes due for the period June, July, and August of 2018, in the estimated amount of \$4,713.69 within 30 days of final council action.

STATEMENT OF PURPOSE: This resolution establishes the Duluth City Council's decision in the disciplinary matter of the on sale intoxicating liquor license of Martha's Daughter, LLC d/b/a Martha's Daughter, 107 East Superior Street, Duluth, MN 55802, pursuant to Duluth City Code Section 8-9. The City of Duluth Alcohol, Gambling and Tobacco Commission reviewed this matter on October 3, 2018 and recommends the City Council impose a penalty in the amount of \$100.

# City Doc. No. 3

## CITY OF DULUTH

### ALCOHOL, GAMBLING AND TOBACCO COMMISSION

\*\*\*\*\*

#### REPORT TO THE CITY COUNCIL

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**IN THE MATTER OF: Martha's Daughter, LLC d/b/a Martha's Daughter, 107 East Superior Street, Duluth, MN 55802**

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on October 3, 2018, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on October 3, 2018 upon completion of the hearing.

Steven B. Hanke, Deputy City Attorney, City of Duluth, Office of the City Attorney, Room 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the City licensing staff. Ms. Nyanyika Banda appeared on behalf of 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, Conclusion and Recommendations contained herein. Pursuant to Minn. Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

#### FINDINGS OF FACT

The commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at the premises located at 107 East Superior Street, Duluth, Minnesota 55802.
2. Licensee is a Minnesota Corporation owned by Nyanyika Banda.
3. Licensee did not and has not yet filed or remitted its June, July, and August 2018 City of Duluth Food/Beverage Tourism Tax.
4. Licensee collected City of Duluth Food/Beverage Tourism Tax in the months of

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June, July, and August of 2018.

5. As of October 3, 2018, the total amount unpaid and past due City Food/Beverage Tourism Tax by Licensee for June, July, and August of 2018 is approximately \$4,713.69. Since the tax depends on actual sales, and Licensee has not yet reported sales, said \$4,713.69 is estimated based on an average of Licensee's past monthly Food/Beverage Tourism Tax filings.
6. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.
7. Mitigating circumstances exist as follows:
  - a. Licensee is a small business that has been open less than one year;
  - b. Failure to pay City of Duluth Food/Beverage Tourism Tax was caused in part by Licensee's past accounting practices. Licensee has changed accounts and accounting practices; and
  - c. The \$500 presumptive penalty would effectively close Licensee's business permanently due to Licensee's dire financial situation.

### CONCLUSIONS

Based upon these facts, the Commission makes the following conclusions:

1. Duluth City Code Section 8-9(b)(3) provides that the following shall be deemed to be good cause for suspension or revocation of a liquor license: the establishment has failed to pay license fees or city or state sales tax.
2. Licensee violated Section 8-9(b)(3) of the Duluth City Code by failing to pay City Food/Beverage Tourism Tax for the months of June, July, and August of 2018.
3. Licensee is liable for this violation
4. Duluth City Code Section 8-9(c) provides that absent and aggravating or mitigating circumstances, the presumptive penalty for this violation is a \$500 civil penalty.
5. Mitigating circumstances exist as follows:
  - a. Licensee is a small business that has been open less than one year;
  - b. Licensee's failure to pay City of Duluth Food/Beverage Tourism Tax was caused in part by Licensee's past accounting practices. Licensee has changed accounts and accounting practices; and

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- c. The \$500 presumptive penalty would effectively close Licensee's business permanently due to Licensee's dire financial situation.

### 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. Pursuant to Duluth City Code Section 8-9(c), the civil penalty is due and payable within 30 days of council action.

In addition, the licensee will need to pay City of Duluth Food/Beverage taxes due for the period June, July, and August of 2018, in the estimated amount of \$4,713.69, or make payment arrangements with the City.

Dated: 10-5-2018

CITY OF DULUTH ALCOHOL,  
GAMBLING

AND TOBACCO  
COMMISSION

By:

Patricia Stolee  
Patricia Stolee, President



## Treasurer's Office

411 West First Street • Duluth, Minnesota • 55802-1190

Telephone: 218-730-5350 • Fax: 218-730-5917 • [www.duluthmn.gov](http://www.duluthmn.gov)

An Equal Opportunity Employer

Martha's Daughter  
Attn: Nyanyika Banda  
107 East Superior Street  
Duluth MN 55802

December 17th, 2018

Re: City of Duluth Food/Beverage Tourism Sales Tax Account 1590/Martha's Daughter

Dear Ms. Banda:

Thank you for coming to City Hall today to remit check 400011105 paying the November 2018 Tourism Tax. The payment of \$439.56 pays in full the tax due on the November period. The remaining back Tourism Tax balance for the months of June 2018 through October 2018 is \$3,193.55.

Per our conversation of December 17, 2018, you have agreed to make payments of \$500 per month against the back tax amounts due. The back tax payments will begin with January 2019 and, if kept as arranged, will end in July of 2019. You had requested to make the back tax payment in bi weekly payments during the month. This is acceptable as long as the full \$500 in back tax payment is received by the last day of each month.

In addition, you have agreed all future Tourism Food/Beverage Tax will be filed and tax remitted by the 20<sup>th</sup> of each month, which is the due date for Tourism Tax filings. Failure to file and remit a filing period would nullify the negotiated payment plan on back tax. Should a filing period be missed or a back tax payment be missed, collection action may be resumed.

If you have any questions or concerns concerning the contents of this letter, please contact me no later than Friday, December 20<sup>th</sup>, 2018.

Sincerely,

Ruthann Grace  
Administrator/Credit and Collections  
[rgrace@duluthmn.gov](mailto:rgrace@duluthmn.gov)  
218-730-5047

Cc: John Ludwig-Serenity Accounting, City Attorney's Office, City Clerk's Office



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