

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **THE DUKES PARTNERS, LLC, d/b/a Spurs on 1st**, 109 West 1st Street, Duluth, Minnesota 55802.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on July 5, 2017 in the City Council Chambers in Duluth, Minnesota. The hearing record closed on upon completion of the hearing on August 2, 2017.

Steven Hanke Assistant City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota, 55802, appeared on behalf of the city of Duluth (“City”). Nickolas Patronas (“Patronas”), owner and authorized agent, appeared on behalf of The Duke’s Partners, LLC, d/b/a Spurs on 1st (“Licensee”).

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn.Stat. §14.61, the final decision of the Council shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the City Council. Parties should contact the City Clerk to ascertain the procedure for filing exceptions or presenting argument.

FINDINGS OF FACT

The Commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth to sell intoxicating liquor “on-sale” at the premises located at 109 West 1st Street, Duluth, Minnesota.
2. Section 8-9(b)(1) of the Duluth City Code provides that violation of state, federal and local health laws shall be deemed good cause for suspension or revocation of a liquor license.

3. A food and beverage service establishment license (“license”) is required pursuant to Minnesota Statutes Section 157.16 for “every person, firm, or corporation engaged in the business of conducting a food and beverage service establishment.”
4. Licensee operated Spurs on 1st without a license issued by the Minnesota Department of Health (“State”) from January 1, 2017 through June 14, 2017.
5. The license issued to the Licensee in 2016 expired on December 31, 2016. Although Licensee submitted an application for renewal, the fees for the license were not paid until June 14, 2017.
6. Licensee was sent written notification dated January 26, 2017 by the State that the form of payment tendered by the Licensee for its 2017 license (License No. 26750 –Spurs on 1st) was returned due to non-sufficient funds (NSF) and the State requested payment within 10 days via money order or cashier’s check.
7. The January 26, 2017 notification was sent via U.S.P.S. Certified Mail to 109 West 1st Street, Duluth, MN 55802. 109 West 1st Street is the registered office address for THE DUKES PARTNERS, LLC, and is the registered business address for Spurs on 1st. An agent of THE DUKES PARTNERS, LLC acknowledged receipt of the January 26, 2017 correspondence via U.S. Certified Mail on February 1, 2017.
8. Licensee was sent written notification dated March 1, 2017 from the Minnesota Department of Health that Licensee was operating Spurs on 1st without the required license in violation of Minnesota Statutes §157.16, Subd. 1. The notification included an Administrative Penalty Order dated March 1, 2017. Licensee was requested to tender payment of the license fee and the administrative penalty within 30 days.
9. The March 1, 2017 Administrative Penalty Order was sent via U.S.P.S certified mail to 109 West 1st Street, Duluth, MN 55802. 109 West First Street is the registered office address for THE DUKES PARTNERS, LLC, and is the registered business address for Spurs on 1st. Postal records indicated that the correspondence was delivered on March 6, 2017, but the State was unable to provide a copy of the signature receipt.

10. Licensee was sent written notification dated May 4, 2017 by the State that THE DUKES PARTNERS, LLC was continuing to operate Spurs on 1st without a license in violation of Minnesota Statutes §157.16, Subd. 1. The notification advised that THE DUKES PARTNERS, LLC failed to comply with the March 1, 2017 Administrative Penalty Order and ordered the Licensee as follows: “You are hereby ordered to discontinue operating Spurs on 1st until the corrective actions have been completed. You are hereby ordered to discontinue operating Spurs on 1st until the license fees have been paid and a license obtained.” Licensee was also directed to tender payment of the license fee and the administrative penalty within 30 days.
11. The May 4, 2017 Closure Order was sent vial U.S.P.S. certified mail to 109 West 1st Street, Duluth, MN 55802. 109 West First Street is the registered office address for THE DUKES PARTNERS, LLC, and is the registered business address for Spurs on 1st. Postal records indicated that the mail was delivered on May 10, 2017 but the State was unable to produce a copy of the signature receipt.
12. Licensee operated Spurs on 1st from January 1, 2017 through approximately June 14th, 2017 without a food and beverage service establishment license issued by the Minnesota Department Health.
13. The City contended that the Licensee knew it was operating Spurs on 1st without the required license because it had failed to tender the license payment and had not been issued the license.
14. The Commission issued its Notice of and Order for Hearing and set a hearing date of July 5, 2017. The Licensee was timely served with the Notice of and Order for Hearing. The hearing commenced on July 5, 2017. Patronas appeared on behalf of the Licensee. The hearing was adjourned and continued to August 2, 2017 to allow the city time to obtain additional evidence from State documenting signature receipt by the Licensee of the certified mail dated March 1, 2017 and May 4, 2017. The Licensee was timely served with a notice of the date for the continued hearing and Patronas appeared at the hearing on August 2, 2017 on behalf of the Licensee.
15. The Licensee admitted that it failed to timely pay the license fee and was

operating for a period of time without the required license; but it denied that it had received the May 4, 2017 order from the State ordering closure of the establishment. The Licensee further claimed that when notified by the City's licensing officer of the closure order, the establishment was closed and remained closed for one day while the Licensee tendered payment to the State of the license fee and administrative penalty.

CONCLUSIONS

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

1. Section 8-9(b)(1) of the Duluth City Code provides that violation of state, federal and local health laws shall be deemed good cause for suspension or revocation of a liquor license.
2. While the facts support the conclusion that the Licensee operated without the required State of Minnesota food and beverage service establishment license after the May 4, 2017 closure order was issued by the State, the evidence presented also supports the conclusion that the Licensee did not receive notice of the closure order sent via U.S.P.S. via certified mail and did not willfully operate in violation of the closure order.
3. That given the lack of notice of the closure order issued by the Minnesota Department of Health, a violation of Minnesota licensing law as alleged in the Notice of and Order for Hearing has NOT be proven.
4. That good cause DOES NOT exist to impose discipline upon the Licensee.

RECOMMENDATION

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council decline to find a violation and also recommends that no penalty be imposed.

Dated: 10-4-17

**DULUTH
ALCOHOL, GAMBLING
AND TOBACCO COMMISSION**

By: 
Adam Wisoki, President