

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF HEARING

TO: Fitger's Wine Cellars, LLC d/b/a Fitger's Wine Cellar, 600 East Superior Street, #213, Duluth, Minnesota 55802

PLEASE BE ADVISED that on **August 5, 2020, at 4:45 p.m.** in the Council Chambers at City Hall in the City of Duluth, the Duluth Alcohol, Gambling and Tobacco Commission will hold a hearing, pursuant to Minnesota Statutes §340A.415 and Section 8-9 of the Duluth City Code, to consider what, if any, disciplinary action, including suspension or revocation or a civil fine of not to exceed \$2,000, will be recommended to the Duluth City Council with respect to your intoxicating liquor license.

If you do not appear at said hearing, the Alcohol, Gambling and Tobacco Commission may, in your absence, recommend that the Duluth City Council consider the allegations contained herein to be true.

At the above-mentioned hearing, you may, at your option, be represented by legal counsel.

The Rules for Contested Case Hearings Minnesota Rules Chapter 1400, Part 5550, et. seq, to the extent applicable, and Minnesota Statutes § 14.57 through § 14.69 govern. Copies of these laws and rules may be obtained at the Duluth Public Library or online from the official web site of the State of Minnesota.

The City will present its case, and then you will have an opportunity to present your case. At the time of the hearing, you should be prepared to produce any evidence and arguments you feel are relevant to the issues raised. You or your attorney will be allowed

to cross-examine all adverse witnesses. If needed, subpoenas are available (Minnesota Rules 1400.7000).

You must advise the Commission if you seek to admit evidence that is classified not public. If data that is not public is admitted, it may become public. Relief is available under Minnesota Statutes §14.60, subd. 2. If an interpreter is needed, you must inform the Commission and one will be appointed.

A notice of appearance must be filed with the City Clerk within 20 days of the date of service of the notice of hearing if you intend to appear at the hearing.

The person representing the City, who you should contact to discuss settlement or other concerns is Steven B. Hanke, Deputy City Attorney.

The hearing will be open to the public.

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

1. Licensee is licensed by the City of Duluth for "on-sale/off-sale" Intoxicating Liquor at its premises located at 600 East Superior Street #213, Duluth, Minnesota 55802.
2. On or about February 21, 2020, David Edwin Anderson, an employee of Licensee, sold intoxicating beverages to an underage person at Licensee's business establishment known as University Liquor. Berning was cited for the violation and issued a \$200 fine. *See City Doc. Nos. 1-2 (Duluth Police Report ICR No. 20-028692, City of Duluth Ordinance Violation Citation No. LP11 003473.)*
3. Licensee was cited under Duluth City Code Section 8-35 for the illegal sale. Licensee was cited for the violation and issued a \$200 fine. *See City Docs. No. 1-2 (Duluth Police Report ICR No. 20-02869, City of Duluth Ordinance Violation Citation No. LP11003475.)*
4. Pursuant to City Code Sections 8-9(a) and (b)(1) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good

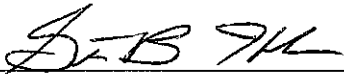
cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

5. This is the Licensee's first offense for purposes of the presumptive penalty schedule provided for in Duluth City Code Section 8-9.
6. Pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a first offense is a \$500.00 civil penalty.
7. Section 8-9(c) provides that "No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action."

(Records supporting this Notice are attached as City Doc. Nos. 1-2)

Dated: February 28, 2020 IAN JOHNSON, Secretary
Alcohol, Gambling and Tobacco
Commission

and


STEVEN B. HANKE, (0387429)
Deputy City Attorney
Attorney for the
Alcohol, Gambling and Tobacco
Commission

**Duluth Police Department
Main Office**

Reported Date: 02/21/2020 Time: 13:49 Case No.: 20028692
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED
Class: M4199 Occurrence Date:
Location: 600 E SUPERIOR ST, DU, DULUTH, MN., 55802; FITGERS WINE CELLARS

NARRATIVE

Synopsis

This report will detail my involvement in an alcohol compliance check at 600 E Superior St, Fitger's Wine Cellars. The clerk, identified as DAVID EDWIN ANDERSON sold a bottle of Smirnoff Vodka to B [REDACTED] and K [REDACTED] who were not 21 years of age, in violation of Duluth City Code 8-28. A citation under LP11003473 was written out and a copy given to ANDERSON. Citation LP11003475 was also written out to Fitger's Wine Cellars LLC, along with a letter was mailed to 600 E Superior St.

Narrative

On 02/21/2020, I, Officer Vang, along with B [REDACTED] and K [REDACTED] were conducting alcohol compliance check early in the day and at 1348 hours B [REDACTED] and K [REDACTED] were dropped off and told to go into the Fitger's Wine Cellars to conduct the alcohol compliance check.

B [REDACTED] and [REDACTED] walked into the Fitger's Complex and approximately 5-6 minutes later walked out with a bottle of Smirnoff Vodka. I, along with B [REDACTED] and K [REDACTED] walked back into the Fitger's Wine Cellars and both identified the clerk, later identified as DAVID ANDERSON, as the person who sold the bottle of vodka to B [REDACTED] and K [REDACTED]. I showed my photo ID and identified myself as a Police Officer with the Duluth Police Department and asked if he just sold a bottle to the two persons leaving, who is B [REDACTED] and K [REDACTED]. ANDERSON said that he did. I asked ANDERSON if he checked their identifications and he said that he did not. I told ANDERSON that both those individuals (B [REDACTED] and K [REDACTED]) were not 21 years of age. I asked for an identification from ANDERSON, which he provided me a MN driver's license which positively identified him as DAVID ANDERSON.

I told ANDERSON that I was going to ticket him for the sale to minor and after I completed filling the citation out I explained it to him. After I completed the citation, I gave ANDERSON a copy and told him that he could either pay the fine or can appeal this citation. I told ANDERSON either way, whatever he decides to do, that the instructions were on the back of the citation. After giving and explaining the citation to ANDERSON I asked if he had any questions and he said that he did not. I then exited the store.

Back in the office, I wrote citation LP11003475 to Fitgers Wine Cellars LLC. That citation, along with a letter was sent to Fitgers Wine Cellars LCC at 600 E Superior St #213.

A photograph was taken of the bottle of vodka and uploaded for evidence. The bottle of vodka was destroyed.

**CITY OF DULUTH
CITY ORDINANCE VIOLATION**

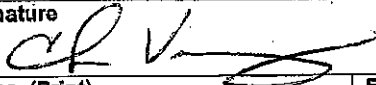
This Citation charges you with a violation
of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number	Date/Time Issued
20028692	2/21/2020 @ 1348
Alleged Violator's Name	
David Edwin Anderson	
Address	City State Zip Code
1055 Brainerd Ave Duluth, MN. 55811	
DOB	Phone Number
05-23-1956	

License No.	State	Reg. Expires
Vehicle Make	Model	Color

Date of Violation	Time of Violation
2/21/2020 @	1348
Location	
600 E. Superior St	
Charge	Ordinance No.
Sale to Minor	8-28
Description	
Sale of Alcohol to person under 21 yoa	

Officer Signature	
	
Officer Name (Print)	Badge No.
Cha Vang	375

Served: In person <input checked="" type="checkbox"/>	Positively Identified <input checked="" type="checkbox"/>
By mail <input type="checkbox"/>	
Date Due:	Minimum Fine Amount Due:
3-5-2020	<input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00

Ticket Number:	LP11 003473
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**CITY OF DULUTH
CITY ORDINANCE VIOLATION**

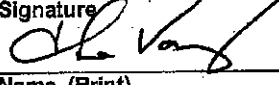
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of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number	Date/Time Issued
20028692	2/21/2020 @ 1528
Alleged Violator's Name	
Fitzger's Wine Cellars LLC	
Address	City State Zip Code
600 E Sup St. #213 Duluth MN 55802	
DOB	Phone Number

License No.	State	Reg. Expires
Vehicle Make	Model	Color

Date of Violation	Time of Violation
2/21/2020	1348
Location	
600 E. Superior St	
Charge	Ordinance No.
licensee liable	8-35
Description	
Clerk sold Alc to minor. licensee liable for the unauth. sale	

Officer Signature	
	
Officer Name (Print)	Badge No.
Cha Vang	375

Served: In person <input type="checkbox"/>	Positively Identified <input type="checkbox"/>
By mail <input checked="" type="checkbox"/>	
Date Due:	Minimum Fine Amount Due:
3-5-2020	<input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00

Ticket Number:	LP11 003475
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