

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: OSAKA DULUTH, INC. d/b/a Osaka Sushi Hibachi Steakhouse
Steakhouse, 5115 Burning Tree Road, Suite 309, Duluth, Minnesota 55811.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission (the "Commission") on August 8, 2018 in the City Council Chambers, 411 West First Street, Duluth, Minnesota.

Steven B. Hanke, Deputy City Attorney, City of Duluth, Office of the City Attorney, 410 City Hall, Duluth, Minnesota 55802, appeared on behalf of the city licensing staff. Licensee appeared in person and through their legal counsel, Attorney Patrick Spott.

This Report is a recommendation, not a final decision. The Duluth City Council will make the final decision after a review of the Stipulated Findings and may adopt, reject or refer for contested hearing the matter herein. Pursuant to Minn. Stat. sec. 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 and Licensee stipulate to the following findings of fact:

1. Osaka Duluth, Inc. d/b/a Osaka Sushi Hibachi Steakhouse ("Licensee") is licensed by the City of Duluth to sell Intoxicating Liquor on an "on-sale" basis at its licensed premises located at 5115 Burning Tree Road, Suite 309, Duluth, Minnesota 55811 ("Licensed Premises").
2. Licensee is a Minnesota Corporation owned by Zhong Wei Lin of Duluth and Juan Ye of Grand Rapids. Each owns 50% of the corporation.
3. On April 20, 2018 two employees, Zhong Wei Lin and Dan Xu, of Licensee each pled guilty to one charge of Failure to Pay Sales Tax on March 20, 2015 in violation of Minn. Stat. 289A.63.1(b). Other related charges were dismissed.
4. On April 20, 2018 corporate Licensee Osaka Duluth, Inc. pled guilty to seventeen (17) charges of Failure to Pay Sales Tax on seventeen instances between December 21, 2015 and September 20, 2016.
5. On April 20, 2018 corporate Licensee Osaka Duluth, Inc. and said two employees of Licensee, Zhong Wei Lin and Dan Xu, were ordered to jointly pay restitution of \$292,760.00 and court fees. Zhong Wei Lin and Dan Xu each received a Stay of Imposition of Sentence and were put on unsupervised probation for one year (until April 20, 2019) on the condition that they each have no same or similar offenses and jointly pay the required restitution.
6. Juan Ye, who owns 50% of corporate Licensee Osaka Duluth, Inc. was not convicted of any crime or violation.
7. On April 20, 2018 corporate Licensee Osaka Duluth, Inc., Zhong Wei Lin and Dan Xu paid all required restitution of \$292,760.00.
8. There are no further charges against Licensee and Zhong Wei Lin and Dan Xu represent that the software that resulted in the violations has been removed and that Licensee is in strict compliance with all state and city tax laws to this date and ongoing.

9. The Commission then issued its Notice for Hearing and set a hearing date of July 11, 2018. Said Hearing was reset for August 1, 2018.

10. Mitigating circumstances exist as follows:

a. Licensee has paid all sales tax as ordered in the above referenced disposition.

b. Licensee's employees' first language is Mandarin. Their command of the English language is limited. There were language and cultural issues contributing to the situation.

c. Licensee has corrected the situation, installed new software and is in all respects in compliance with all applicable sales tax laws, rules and regulations.

d. Licensee has operated since December of 2010, employing approximately 20 full and part time employees. Licensee buys from local suppliers whenever possible, pays rent and participates in local charity events on a monthly basis.

e. Licensee has had no other violations of any kind in compliance with the terms of its employees' sentence. Licensee is committed to strict compliance with all required sales tax laws.

f. Licensee will have to close its business at the Licensed Premises if it were to lose its license to sell Intoxicating Liquor "on sale" at the Licensed Premises. Closing Licensee's restaurant will result in the loss of 20 full and part time jobs, the loss of the sale and liquor tax revenue to the state and city, the loss of the money Licensee spends at other local businesses, the loss of Licensee's local charitable contributions, and the loss of a minority owned business.

g. Juan Ye, a 50% co-owner of Licensee, did not commit any know violations and will suffer substantial hardship should Licensee's business close.

CONCLUSIONS

Based upon these stipulated Findings of Fact, the Commission makes the following conclusions:

1. Section 8-9(b) of the Duluth City Code provides that the violation of any law related to the operation of a liquor establishment and/or the failure to pay licensee fees or city or state sales tax shall be deemed to be good cause for disciplinary action up to and including imposition of a civil penalty, license suspension or license revocation.
2. Section 8-35 of the Duluth City Code provides that the Licensee shall be responsible of the conduct of its place of business and any violation of Chapter 8 of the Duluth City Code committed on the Licensed Premises by an employee of the Licensee shall be deemed the act of the Licensee as well as the employee.
3. The Licensee is liable for the failure to pay sales tax violations that took place on its premises.
4. Mitigating circumstances exist as follows:
 - a. Licensee has paid all sales tax as ordered in the above referenced disposition.
 - b. Licensee's employees' first language is Mandarin. Their command of the English language is limited. There were language and cultural issues contributing to the situation.
 - c. Licensee has corrected the situation, installed new software and is in all respects in compliance with all applicable sales tax laws, rules and regulations.
 - d. Licensee has operated since December of 2010, employing approximately 20 full and part time employees. Licensee buys from local suppliers whenever possible, pays rent and participates in local charity events on a monthly basis.
 - e. Licensee has had no other violations of any kind in compliance with the terms of its employees' sentence. Licensee is committed to strict compliance with all required sales tax laws.

f. Licensee will have to close its business at the Licensed Premises if it were to lose its license to sell Intoxicating Liquor "on sale" at the Licensed Premises. Closing Licensee's restaurant will result in the loss of 20 full and part time jobs, the loss of the sale and liquor tax revenue to the state and city, the loss of the money Licensee spends at other local businesses, the loss of Licensee's local charitable contributions, and the loss of a minority owned business.

g. Juan Ye, a 50% co-owner of Licensee, did not commit any know violations and will suffer substantial hardship should Licensee's business close.

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 \$5,500 penalty within thirty (30) calendar days of final Duluth City Council action;
2. Licensee shall have no same or similar violations during the next five (5) years from August 8, 2018.

Should such a violation occur within the next five (5) years beginning August 8, 2018, Licensee's license will be revoked for a five (5) year period.

Dated: August 8, 2018

DULUTH ALCOHOL, GAMBLING
AND TOBACCO COMMISSION

By: 
Patricia Stolee, President