

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF AND ORDER FOR HEARING

TO: **JOEL'S, LLC, d/b/a Mexico Lindo**, 600 East Superior Street #201, Duluth, Minnesota 55802

PLEASE BE ADVISED that on **September 4, 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, 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 unless the hearing date is less than 20 days from the issuance of the notice of hearing.

The person representing the City is Steven B. Hanke, Deputy City Attorney. His telephone number is (218)730-5271, email: shanke@duluthmn.gov.

The hearing will be open to the public.

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

1. JOEL'S, LLC, d/b/a Mexico Lindo, is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at the premises located at 600 East Superior Street #201, Duluth, Minnesota 55802.
2. An employee of the Licensee sold alcoholic beverages on the premises to two persons under the age of 21 at approximately 4:00 p.m. on Thursday, June 27, 2019 in violation of Duluth City Code Section 8-28 (Sales to minors prohibited). The employee was issued an administrative citation for said violation. The Licensee was also issued an administrative citation for its employee's violation pursuant to Duluth City Code Section 8-35 (Licensee personally liable for unauthorized sales). *See City Docs. No. 1-2 (Duluth Police Department Report Case No. 19100500; City of Duluth Ordinance Violation Tickets.)*
3. The employee pled guilty by paying his administrative citation on or about August 1, 2019.
4. Licensee has not yet paid his administrative citation.
5. Licensee's on-sale liquor license renewal application dated July 10, 2019 acknowledges that on "06-27-19 - *Employee sold alcoholic beverage to underage.*")
6. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code 8-9.

7. 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.
8. 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."

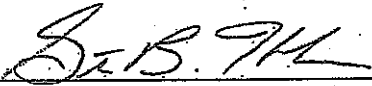
Pursuant to City Code Sections 8-9(a) and (b) the Alcohol, Tobacco and Gambling Commission will consider whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.

(Records Supporting This Notice Are Attached As City Document Numbers 1-2.)

Dated: August 13, 2019

Ian B. Johnson, Secretary
Alcohol, Gambling and Tobacco
Commission

and



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

**Duluth Police Department
Main Office**

Reported Date: 06/27/2019 Time: 16:16 Case No.: 19100500
Code: .. Crime:
Class: Occurrence Date:
Location: 600 E SUPERIOR ST, DU, DULUTH, MN, , 55802; MEXICO LINDO

NARRATIVE

SYNOPSIS

This report will detail my involvement with an alcohol compliance check at Mexico Lindo, 600 E Superior St, in which a server, RIVERA-REYES, was cited for Sale to a Minor, City Ordinance 8-28, and the licensee was cited for Licensee Liable for Unauthorized Sale, City Ordinance 8-35.

NARRATIVE

On 06/27/2019 at approximately 1600 hours, I, Officer C. Vang, working in plainclothes along with my underage decoys, [REDACTED] and [REDACTED], went to the Mexico Lindo Restaurant located at 600 E Superior St to conduct an alcohol compliance check because of numerous complaints about staff serving underage patrons.

I waited outside of the restaurant in the hallway of the Fitgers complex while [REDACTED] and [REDACTED] went into the restaurant to try and obtain alcoholic beverages. I told [REDACTED] and [REDACTED] text me if the restaurant sold them alcoholic beverages. Approximately 15 minutes later, I received a text saying that the server served alcoholic beverages. I entered the restaurant and sat with [REDACTED] and [REDACTED] could see a strawberry margarita sitting on the table top and Stein said he had a "Blue Moon" beer. [REDACTED] and [REDACTED] said that the server was the male wearing a red shirt and that he never ask for identifications. A few minutes later the server, whom [REDACTED] and [REDACTED] identified as the one who served them the drink came to the table that we were sitting at. At this time, I identified myself as a police officer and asked if he served

[REDACTED] and [REDACTED] the alcoholic beverages and he said that he did. I asked the server if he had a driver's license and he said that he did. The MN driver's license identified the server as JUAN LUIS RIVERA-REYES, DOB [REDACTED]

I asked RIVERA-REYES if there was a manager around and he went and got another person who identified himself as the manager ESTEBAN MAGANA [REDACTED]

While RIVERA-REYES and MAGANA were standing next to the table we were sitting at, I heard RIVERA-REYES utter to MAGANA that he served alcohol and did not ask for identifications. I asked if there was a place we could talk and I, along with [REDACTED], RIVERA-REYES, and MAGANA, went to the back right seating area of the restaurant where there were no other people around.

While sitting in the back right part of the restaurant, I explained to RIVERA-REYES and MAGANA that RIVERA-REYES had served alcoholic drinks to two underage patrons and that he was going to be cited for this violation, but that the licensee was also liable for the unauthorized sale, so that there would be two different citations at this point. I wrote out Citation #003459 to RIVERA-REYES for sale to minor and explained to him that he could pay the fine or appeal it, but that he needs to follow the directions on the back of the citation. After the completed citation was given to RIVERA-REYES, he went on about his business as a server. The manager, MAGANA, was sitting at the table this whole time with me and after filling out the citation for Licensee Liable for unauthorized sale, I gave that citation to MAGANA and also advised him they can pay the fine or if they want to appeal it, just follow the directions on the back of the citation. MAGANA told me that he's told all his employees to make sure that they check identifications, but apparently today RIVERA-REYES did not. I told MAGANA that I was conducting compliance checks on all alcohol establishments this last winter/spring and was at Mexico Lindo and at that time, I told the manager whom I thought was MAGANA but he corrected me and said it was another manager, that they needed to check identifications.

MAGANA asked me if these citations would affect their liquor license and I told him that they would have to come before the Alcohol, Gambling, and Tobacco Commission Board meeting at a later date, but I don't see, as this being their first time violating this ordinance, that their license would be suspended or revoked. MAGANA did not have any further question so we left the restaurant at this point.

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
19100500	6/27/19 @ 1630
Alleged Violator's Name	
Joel's LLC	
Address	
600 E. Superior St. Duluth, MN 55	
City State Zip Code	
Duluth MN 55	
DOB	
[Redacted]	
Phone Number	
[Redacted]	
Vehicle Information	
License No.	State
	Reg. Expires
Vehicle Make	Model
	Color
Violation Information	
Date of Violation	Time of Violation
6/27/19	1620
Location	
600 E. Superior St.	
Charge	Ordinance No.
Licensee liable	8-35
Description	
Employee sold alcoholic	

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
19100500	6/27/19 @ 1620
Alleged Violator's Name	
Juan Luis Rivera-Reyes	
Address	
[Redacted]	
City State Zip Code	
[Redacted]	
DOB	
[Redacted]	
Phone Number	
[Redacted]	
Vehicle Information	
License No.	State
	Reg. Expires
Vehicle Make	Model
	Color
Violation Information	
Date of Violation	Time of Violation
6/27/19	1620
Location	
600 E. Superior St.	
Charge	Ordinance No.
Sale to Minor	8-28
Description	
Sale to Underage Minor.	