

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

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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 March 6, 2019, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on March 6, 2019 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 indicated to the Duluth Alcohol, Gambling and Tobacco Commission Secretary Roberta Pirkola that she was waiving her appearance on behalf of Licensee. No other person 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. 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, Minnesota 55802.

2. The City of Duluth's 2018-2019 annual fee for an on-sale intoxicating liquor license is \$4,317, plus \$178 for Sunday sales. The City requires payment of this annual fee over four equal quarterly installments.
  - A. Licensee has failed to pay its \$1,123.75 second quarter and \$1,123.75 third quarter quarterly installment payments for its annual on-sale intoxicating liquor license, including Sunday sales license. Licensee is more than eight months' past due on its on-sale annual liquor license.

*See City Doc. No. 1 (Letter from City Clerk's Office)*
3. The City of Duluth Clerk's Office received notice that Licensee's Liquor Liability insurance policy with Illinois Casualty Company was cancelled effective February 22, 2019 due to nonpayment.
4. As of March 6, 2019, Licensee currently owes the City of Duluth \$4,041.50 total for its intoxicating liquor license, Sunday sales license, and applicable late fees.
5. On October 22, 2018, the Duluth City Council determined that Licensee violated Duluth City Code Sections 8-9(a) and (b)(1). The civil penalty determined by the City Council via Resolution 18-0717R was requiring Licensee to pay the City:
  - a. 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. 2 (Duluth City Council Resolution 18-0717R).*
6. On January 14, 2019 via City Council approved Resolution 19-0038R, the Duluth City Council determined that Licensee violated Duluth City Code Sections 8-9(b)(1) and (3). The Council determined this was a second violation for purposes of the presumptive penalty requirements of Duluth City Code Section 8-9(c). No civil penalty was issued due to mitigating circumstances.

*See City Doc. No. 3 (Duluth City Council Resolution 19-0038R).*
7. Duluth City Code Section 8-9 (b) 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;”

8. On March 6, 2019, pursuant to Duluth City Code Sections 8-9(a) and (b)(1) the City of Duluth Alcohol, Tobacco and Gambling Commission considered whether the violation alleged is good cause for suspension or revocation of the liquor license or for the imposition of a civil penalty.
9. This is the Licensee’s third offense for purposes of the presumptive penalty schedule provided for in Duluth City Code Section 8-9.
10. Pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a third offense is a \$2,000 civil penalty and a five (5) day license suspension.
11. 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.”
12. Mitigating circumstances exist as follows:
  - a. Licensee has made monthly payments pursuant to its repayment agreement with the City of Duluth Treasurer’s Office for unremitted City of Duluth Food/Beverage taxes for the months of June, July, August, September, and October 2018 that will fully compensate the City of Duluth by the end of July 2019.
13. Aggravating circumstances exist as follows:
  - a. Licensee has been serving on-sale intoxicating liquor without liquor liability insurance since February 22, 2019.

### CONCLUSIONS

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

- B. 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:
  - 1. violation of local liquor law relating to the operation of a liquor establishment;
  - 3. the establishment has failed to pay license fees.
- C. Licensee violated Duluth City Code Section 8-9(b)(3) by failing to pay its \$1,123.75 second quarter and \$1,123.75 third quarter quarterly installment payments for its annual on-sale intoxicating liquor license, and including Sunday sales license.
- D. Licensee is liable for this violation.
- E. Licensee violated Duluth City Code Section 8-9(b)(1) and 8-61 by liquor liability insurance.
- F. Licensee is liable for this violation.
- G. Duluth City Code Section 8-9(c) provides that absent and aggravating or mitigating circumstances, the presumptive penalty for this violation is a \$2,000 civil penalty and five (5) day licensee suspension.
- H. Mitigating circumstances exist as follows:
  - 1. Licensee has made monthly payments pursuant to its repayment agreement with the City of Duluth Treasurer's Office for unremitted City of Duluth Food/Beverage taxes for the months of June, July, August, September, and October 2018 that will fully compensate the City of Duluth by the end of July 2019.
- I. Aggravating circumstances exist as follows:
  - 1. Licensee has been serving on-sale intoxicating liquor without liquor liability insurance since February 22, 2019.

#### **RECOMMENDATION**

It is the recommendation of the Duluth Alcohol, Gambling and Tobacco Commission that the Duluth City Council find:

- 1. a third violation occurred; and
- 2. impose the following penalty:
  - a. No civil penalty; and

- b. Indefinite suspension of the on-sale intoxicating liquor license of Martha's Daughter, LLC d/b/a Martha's Daughter at 107 East Superior Street, Duluth, Minnesota 55802 until the Licensee:
  - i. Pays all past due on-sale liquor license annual fee installment payments and associated late fees and penalties as of March 25, 2019; and
  - ii. Delivers to the Duluth City Clerk's Office proof of valid liquor liability insurance covering Licensee's business.

Dated: March 18, 2019

**CITY OF DULUTH ALCOHOL,  
GAMBLING AND TOBACCO  
COMMISSION**

By: Patricia Stolee

Patricia Stolee, President