



City of Duluth
Attorney's Office

411 West First Street • Room 410 • Duluth, Minnesota • 55802-1198
218-730-5490 • Fax: 218-730-5918 • www.duluthmn.gov

An Equal Opportunity Employer

December 4, 2018

Martha's Daughter
Attn: Nyanyika Banda
107 East Superior Street
Duluth, MN 55802

RE: Notice of Hearing
Alcohol, Gambling and Tobacco Commission

Dear Licensee:

Enclosed please find a Notice of Hearing hereby served upon you by U.S. certified mail.

Sincerely,

Steven B. Hanke
Deputy City Attorney

Cc/enc: Chelsea Helmer, City Clerk

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

NOTICE OF AND ORDER FOR HEARING

TO: Martha's Daughter, LLC d/b/a Martha's Daughter, 107 East Superior Street
Duluth, MN 55802

PLEASE BE ADVISED that on **January 2, 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 are governed by Minnesota Rules Chapter 1400, Part 5550, *et. seq.*, to the extent applicable, and Minnesota Statutes §14.57 thru §14.69. 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 as 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.

The City is represented by Steven B. Hanke, Deputy City Attorney. He may be contacted at (218) 730-5271 or shanke@duluthmn.gov.

The hearing will be open to the public.

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

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, MN 55802.
2. On or about December 1, 2018, Licensee was notified by the City of Duluth Treasurer's Office that it owes the City \$6,977.80 for estimated unpaid City of Duluth Food/Beverage Tourism Tax for June, July, August, September, and November of 2018. See *City Doc. No. 1 (Letter: Notice of Past Due Sales Tax Invoice dated December 1, 2018)*.
3. On or about December 3, 2018, Licensee was notified by the City of Duluth Treasurer's Office that it owes the City \$8,845.95 for estimated unpaid City of Duluth Food/Beverage Tourism Tax for June, July, August, September, October, November, and December of 2018. See *City Doc. No. 2 (Letter: Notice of Estimates Filed dated December 3, 2018)*.
4. The City has not received Licensee's June, July, August, September, October, November, or December of 2018 City of Duluth Food/Beverage Tourism Tax payments.
5. **As of December 3, 2018, the total amount unpaid and past due City tax, penalty, and interest by Licensee for June, July, August, September, October, November, and December of 2018 is approximately \$8,845.95. The final actual amount depends on actual sales records.**

6. The City Council approved Resolution 18-0717 on October 22, 2018. Pursuant to the final order of the City Council, Licensee must submit the following payments via check made payable to "The City of Duluth" to the Duluth City Clerk's Office, City Hall Room 330, 411 West First Street Duluth, MN 55802 no later than Friday, November 30, 2018:

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. 3 (Letter to Martha's Daughter -Report to Council, Council Resolution, and Requesting Payment of \$100 Civil Penalty).

7. **As of December 3, 2018, the City has not received the \$100 civil penalty from the Licensee. This \$100 civil penalty was ordered by the Duluth City Council on October 22, 2018 to be paid by Licensee no later than November 30, 2018.**

8. Section 8-9 (b) of the Duluth City Code 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;"

9. Pursuant to Duluth City Code Sections 8-9(a) and (b)(1) the City of Duluth 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.

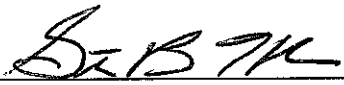
10. This is the Licensee's second offense for purposes of the presumptive penalty schedule provided for in Duluth City Code Section 8-9.
11. **Pursuant to Duluth City Code Section 8-9, absent aggravating or mitigating circumstances, the presumptive penalty for a second offense is a \$1,000 civil penalty and a one (1) day license suspension.**
12. 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 Docs. No. 1-3)

Dated: December 4, 2018

CHELESEA J. HELMER, Secretary
Alcohol, Gambling and Tobacco
Commission

and



STEVEN B. HANKE (#0387429)
Deputy City Attorney

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



City of Duluth
City Treasurer

City Doc. No. 1

411 West First Street • Room 105 • Duluth, Minnesota • 55802
218-730-5350 • Fax: 218-730-5917

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NOTICE OF PAST DUE SALES TAX

| SALES TAX PERMIT NUMBER | DATE OF NOTICE |
|-------------------------|----------------|
| 1590 | 12/1/2018 |

Martha's Daughter
107 East Superior Street
Duluth, MN 55802

Location: Martha's Daughter
Type: Food/Beverage

STATEMENT OF ACCOUNT

RETURN COPY WITH REMITTANCE

| PERIOD | TAX | PENALTY | INTEREST | TOTAL |
|---------|------------|---------------------------|----------|------------|
| 06/2018 | \$1,032.16 | \$103.21 | \$75.04 | \$1,210.41 |
| 07/2018 | \$1,687.50 | \$168.75 | \$94.29 | \$1,950.54 |
| 08/2018 | \$1,687.50 | \$168.75 | \$65.91 | \$1,922.16 |
| 09/2018 | \$1,687.50 | \$168.75 | \$38.44 | \$1,894.69 |
| 10/2018 | | ***** Not Submitted ***** | | |
| Total | \$6,094.66 | \$609.46 | \$273.68 | \$6,977.80 |

Make checks payable to City of Duluth and remit to the above address.

THIS STATEMENT REPRESENTS PENALTY AND INTEREST FOR FAILURE TO FILE TIMELY. ALL REMITTANCES ARE CREDITED FIRST TO PENALTIES, NEXT TO INTEREST, AND THEN TO TAX DUE.



City of Duluth
City Treasurer

411 West First Street • Room 105 • Duluth, Minnesota • 55802
218-730-5350 • Fax: 218-730-5917

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NOTICE OF PAST DUE SALES TAX

| SALES TAX PERMIT NUMBER | DATE OF NOTICE |
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| 1590 | 12/1/2018 |

Martha's Daughter
107 East Superior Street
Duluth, MN 55802

Location: Martha's Daughter
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City Doc. No. 2



Treasurer's Office

411 West First Street • Duluth, Minnesota • 55802-1190
Telephone: 218-730-5350 • Fax: 218-730-5917 • www.duluthmn.gov

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Martha's Daughter dba: Martha's Daughter
Attn: Nyanyika Banda
107 East Superior Street
Duluth MN 55802

Date: December 3rd, 2018

Permit: 1590

Notice of Estimates Filed City of Duluth Food/Beverage Tourism Tax

Per the final notification dated November 20th, 2018 informing of unfiled City of Duluth Tourism Tax Food/Beverage return (s) and the failure to file by the demand date, sales have been estimated and filings entered for you. Included in this mailing is the notice of Past Due Sales Tax due per the estimated sales filed in your behalf. Estimates will continue to be filed for each open filing period going forward. Amounts due include Penalty and Interest based from estimates filed.

Upon receipt of actual sales and payment of tax due, estimates will be removed. Penalty and interest will apply to actual filings received.

The balance reflected on the estimate has been added to the balance reflected on the December 2018 statement. The total due on the account as of December 3rd, 2018 is **\$8,845.95**. The open Revenue Recapture claim has been revised to reflect the amount of \$8,845.95.

Be advised Chapter 8: Section 8-9 (b), City officials may be asked to consider disciplinary action regarding liquor licensing. See ordinance verbiage below.

Without limiting other grounds for suspension or revocation, the following shall be deemed to be good cause for suspension or revocation of a liquor license:

- (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;

Should you have questions my contact information is below.

Sincerely,

Ruthann Grace
Administrator Credit and Collections | Email: rgrace@duluthmn.gov | Phone: (218) 730-5047

Cc:
City Attorney's Office
City Clerk's Office



City of Duluth
Attorney's Office

City Doc. No. 3

411 West First Street • Room 410 • Duluth, Minnesota • 55802-1198
218-730-5490 • Fax: 218-730-5918 • www.duluthmn.gov

An Equal Opportunity Employer

October 25, 2018

Martha's Daughter
Attn: Nyanyika Banda
107 East Superior Street
Duluth, MN 55802

**RE: Report to Council – \$100 Civil Penalty and City Taxes Due
City of Duluth Alcohol, Gambling and Tobacco Commission**

Dear Licensee:

Enclosed please find copies of the Report to City Council from the Duluth Alcohol Gambling and Tobacco Commission and City Council Resolution 18-0717:

**RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF
MARTHA'S DAUGHTER, 107 EAST SUPERIOR STREET, DULUTH, MINNESOTA 55802.**

The City Council approved Resolution 18-0717 on October 22, 2018. Pursuant to the final order of the City Council, you must submit the following payments via check made payable to "The City of Duluth" to the Duluth City Clerk's Office, City Hall Room 330, 411 West First Street Duluth, MN 55802 no later than Friday, November 30, 2018:

1. \$100 civil penalty; and
2. City of Duluth Food/Beverage taxes due for the period June, July, and August of 2018, in the estimated amount of \$4,713.69.

Failure to make these timely payments may result in further discipline, including suspension or revocation or a civil fine of not to exceed \$2,000, pursuant to Minn. Stat. §340A.415 and Duluth City Code Section 8-9.

Sincerely,

Steven B. Hanke
Deputy City Attorney

Cc/enc: Chelsea Helmer, City Clerk
Ruthann Grace, City Administrator Credit and Collections

Citizens and Government working together to provide an environment in which
our community can enhance its quality of life and continue to prosper

The City of Duluth uses paper that is 100% recycled, including 100% post consumer waste.

City Doc. No. 3



City Doc. No. 3

City of Duluth

411 West First Street
Duluth, Minnesota 55802

Master

File Number: 18-0717R

| | | |
|-------------------|------------------|-------------------------------------|
| File ID: 18-0717R | Type: Resolution | Status: Passed |
| Version: 1 | Agenda Section: | Committee: Purchasing and Licensing |
| Department: | Cost: | File Created: 10/08/2018 |
| Subject: | | Final Action: 10/22/2018 |

Title: RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF MARTHA'S DAUGHTER, 107 EAST SUPERIOR STREET, DULUTH, MINNESOTA 55802.

Internal Notes:

Code Sections:

Agenda Date: 10/22/2018

Indexes:

Agenda Number: 7.

Sponsors:

Enactment Date:

Attachments: Signed Report to City Council - Martha's Daughter

Enactment Number:

Recommendation:

Hearing Date:

Drafter: shanke@duluthmn.gov

Effective Date:

Approval History

| Version | Seq # | Action Date | Approver | Action | Due Date |
|---------|-------|-------------|-------------|---------|------------|
| 1 | 1 | 10/8/2018 | Steve Hanke | Approve | 10/10/2018 |

History of Legislative File

| Version: | Acting Body: | Date: | Action: | Sent To: | Due Date: | Return Date: | Result: |
|----------|--------------|--|---------|----------|-----------|--------------|---------|
| 1 | City Council | 10/22/2018 | adopted | | | | |
| | Action Text: | This Resolution was adopted unanimously. Absent: Councilor Westerlund | | | | | |
| | Notes: | | | | | | |

City Doc. No. 3

Master Continued (18-0717R)

Text of Legislative File 18-0717R

RESOLUTION IN THE MATTER OF THE ON SALE INTOXICATING LIQUOR LICENSE OF MARTHA'S DAUGHTER, 107 EAST SUPERIOR STREET, DULUTH, MINNESOTA 55802.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

- (a) On October 3, 2018, the city of Duluth Alcohol, Gambling and Tobacco Commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Martha's Daughter, LLC d/b/a Martha's Daughter, 107 East Superior Street, Duluth, MN 55802, and has submitted its report to the city council of the city of Duluth as attachment A.
- (b) Pursuant to the Duluth City Code Chapter 8, Section 9 (a), on October 22, 2018, the city council considered the records and evidence submitted;
- (c) The finding of facts as set forth in attachment A regarding any suspension, revocation and /or civil penalty relating to the on-sale intoxicating liquor license of Martha's Daughter. are adopted.

FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: the city council hereby adopts the recommended penalty of the Alcohol Gambling & Tobacco Commission and imposes a civil penalty of \$100 due and payable by licensee within 30 days of final council action. the licensee shall also pay City of Duluth Food/Beverage taxes due for the period June, July, and August of 2018, in the estimated amount of \$4,713.69 within 30 days of final council action.

STATEMENT OF PURPOSE: This resolution establishes the Duluth City Council's decision in the disciplinary matter of the on sale intoxicating liquor license of Martha's Daughter, LLC d/b/a Martha's Daughter, 107 East Superior Street, Duluth, MN 55802, pursuant to Duluth City Code Section 8-9. The City of Duluth Alcohol, Gambling and Tobacco Commission reviewed this matter on October 3, 2018 and recommends the City Council impose a penalty in the amount of \$100.

City Doc. No. 3

CITY OF DULUTH

ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

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 October 3, 2018, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on October 3, 2018 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 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. Licensee is licensed by the City of Duluth to sell intoxicating liquor "on-sale" at the premises located at 107 East Superior Street, Duluth, Minnesota 55802.
2. Licensee is a Minnesota Corporation owned by Nyanyika Banda.
3. Licensee did not and has not yet filed or remitted its June, July, and August 2018 City of Duluth Food/Beverage Tourism Tax.
4. Licensee collected City of Duluth Food/Beverage Tourism Tax in the months of

City Doc. No. 3

- June, July, and August of 2018.
5. As of October 3, 2018, the total amount unpaid and past due City Food/Beverage Tourism Tax by Licensee for June, July, and August of 2018 is approximately \$4,713.69. Since the tax depends on actual sales, and Licensee has not yet reported sales, said \$4,713.69 is estimated based on an average of Licensee's past monthly Food/Beverage Tourism Tax filings.
 6. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.
 7. Mitigating circumstances exist as follows:
 - a. Licensee is a small business that has been open less than one year;
 - b. Failure to pay City of Duluth Food/Beverage Tourism Tax was caused in part by Licensee's past accounting practices. Licensee has changed accounts and accounting practices; and
 - c. The \$500 presumptive penalty would effectively close Licensee's business permanently due to Licensee's dire financial situation.

CONCLUSIONS

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

1. 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: the establishment has failed to pay license fees or city or state sales tax.
2. Licensee violated Section 8-9(b)(3) of the Duluth City Code by failing to pay City Food/Beverage Tourism Tax for the months of June, July, and August of 2018.
3. Licensee is liable for this violation
4. Duluth City Code Section 8-9(c) provides that absent and aggravating or mitigating circumstances, the presumptive penalty for this violation is a \$500 civil penalty.
5. Mitigating circumstances exist as follows:
 - a. Licensee is a small business that has been open less than one year;
 - b. Licensee's failure to pay City of Duluth Food/Beverage Tourism Tax was caused in part by Licensee's past accounting practices. Licensee has changed accounts and accounting practices; and

City Doc. No. 3

- c. The \$500 presumptive penalty would effectively close Licensee's business permanently due to Licensee's dire financial situation.

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 \$100 penalty; and
2. Pursuant to Duluth City Code Section 8-9(c), the civil penalty is due and payable within 30 days of council action.

In addition, the licensee will need to pay City of Duluth Food/Beverage taxes due for the period June, July, and August of 2018, in the estimated amount of \$4,713.69, or make payment arrangements with the City.

Dated: 10-5-2018

CITY OF DULUTH ALCOHOL,
GAMBLING

AND TOBACCO
COMMISSION

By:

Patricia Stolee
Patricia Stolee, President