

CITY OF DULUTH
ALCOHOL, GAMBLING AND TOBACCO COMMISSION

REPORT TO THE CITY COUNCIL

IN THE MATTER OF: **Roto of Duluth, Inc., d/b/a University Liquor**, 1603 Woodland Avenue, Duluth, Minnesota 55803.

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission (the “Commission”) on December 6, 2017 in the City Council Chambers in Duluth, Minnesota. The hearing record closed on December 6, 2017 upon completion of the hearing.

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. The Licensee did not contact City of Duluth staff or the Commission; the Licensee did not appear at the hearing.

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 “off-sale” at the premises located at 1603 Woodland Avenue, Duluth, Minnesota.
2. On August 31, 2017, an employee of Licensee was issued a citation for sale of intoxicating liquor to a person under the age of 21 in violation of Duluth City

Code section 8-28. The employee was convicted on October 2, 2017. The employee paid his fine of \$200, and a late payment penalty of \$50.

3. The Licensee was also issued a citation under Duluth City Code section 8-35 for the illegal sale and convicted of this offense on September 20, 2017. The Licensee paid its \$200 fine.
4. The Commission then issued its Notice of and Order for Hearing and set a hearing date of December 6, 2017.
5. The Licensee was served with the Notice of and Order for Hearing on October 18, 2017.
6. This is the Licensee's first violation for purposes of the presumptive penalty schedule provided for in Duluth City Code section 8-9.

CONCLUSIONS

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

1. Section 8-9(a) and (b)(1) of the Duluth City Code provides that the violation of any law relating to the operation of a liquor establishment 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 for 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 violation occurring on its licensed premises on August 31, 2017.
4. Section 8-9(c) of the Duluth City Code provides that absent aggravating or mitigating circumstances, the presumptive penalty for the current violation is a \$500 civil penalty.
5. The Duluth Alcohol, Gambling and Tobacco Commission finds that the following aggravating circumstances exist in regards to the violation occurring on August 31, 2017:
 - a. The Licensee has failed every City of Duluth compliance check in at least

the past seven years regarding sales of intoxicating liquor to a person under the age of 21;

- b. The Licensee did not attend the hearing as requested by the Commission; and
- c. The Licensee has not provided evidence of any employee training in regards to identification verification to ensure purchasers are at least 21 years of age.

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 \$1,000 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.

Dated: December 6, 2017

DULUTH ALCOHOL,
GAMBLING
AND TOBACCO COMMISSION

By: /s/ Adam Wisocki
President