

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

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**NOTICE OF HEARING**

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TO: **Duluth Hillside Investment, LLC d/b/a University Liquor**, 1732 London  
-Road, Duluth, Minnesota, 55812

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PLEASE BE ADVISED that on **August 5, 2020, 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 thru §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.

**The person representing the City, who you should contact to discuss settlement or other concerns is Steven B. Hanke, Deputy City Attorney.**

The hearing will be open to the public.

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

1. Licensee is licensed by the City of Duluth for “on-sale/off-sale” Intoxicating Liquor at its premises located at 1603 Woodland Avenue, Duluth Minnesota 55803.
2. On or about February 20, 2020, Robert Brandon Berning, an employee of Licensee, sold intoxicating beverages to an underage person at Licensee’s business establishment known as University Liquor. Berning was cited for the violation and issued a \$200 fine. *See City Doc. Nos.1-2 (Duluth Police Report ICR No. 20-027965, City of Duluth Ordinance Violation Citation No. LP11 003470.)*

3. Licensee was cited under Duluth City Code Section 8-35 for the illegal sale. Licensee was cited for the violation and issued a \$200 fine. *See City Docs. No. 1-2 (Duluth Police Report ICR No. 20-027965, City of Duluth Ordinance Violation Citation No. LP11003471.)*
4. Pursuant to City Code Sections 8-9(a) and (b)(1) 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.
5. This is the Licensee's first offense for purposes of the presumptive penalty schedule provided for in Duluth City Code Section 8-9.
6. University Liquor located at 1603 Woodland Avenue was previously owned by Licensee Roto of Duluth, Inc.
7. On August 31, 2017, an employee of Roto of Duluth, Inc. d/b/a University Liquor sold intoxicating beverages to an underage person in violation of 8-35. The City Council, following the recommendation of the Alcohol, Gambling and Tobacco Commission, imposed a \$1,000 civil penalty.
8. On April 12, 2012, an employee of Roto of Duluth, Inc. d/b/a University Liquor sold intoxicating beverages to an underage person in violation of 8-35. The City Council, following the recommendation of the Alcohol, Gambling and Tobacco Commission, imposed a \$500 civil penalty.
9. On October 6, 2010, an employee of Roto of Duluth, Inc. d/b/a University Liquor sold intoxicating beverages to an underage person

in violation of 8-35. The City Council, following the recommendation of the Alcohol, Gambling and Tobacco Commission, imposed a \$500 civil penalty.

10. 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.

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."

(Records supporting this Notice are attached as City Doc. Nos. 1-2)

Dated:

*February 28, 2020*

IAN JOHNSON, Secretary  
Alcohol, Gambling and Tobacco  
Commission

and



STEVEN B. HANKE, (0387429)  
Deputy City Attorney  
Attorney for the  
Alcohol, Gambling and Tobacco  
Commission

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**Duluth Police Department  
Main Office**

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Reported Date: 02/20/2020 Time: 09:40 Case No.: **200279651**  
Code: DU8.28 Crime: DPD-LIQUOR-SALES TO MINORS PROHIBITED  
Class: M4199 Occurrence Date:  
Location: 1603 WOODLAND AVE, DU, DULUTH, MN., 55803; UNIVERSITY LIQUOR

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**NARRATIVE**

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**SYNOPSIS:**

This report will detail my involvement in conducting an alcohol compliance check at 1603 Woodland Avenue, the University Liquor Store, in which BRANDON BERNING sold a bottle of Captain Morgan to S [REDACTED] who was under the age of 21. BERNING was cited under citation LP11003470 for sale to minor 8-28. A second citation number LP11003471 was written out to Duluth Hillside Investment LLC doing business as University Liquor for licensee liable under ordinance 8-35. A copy of the citation and a letter was mailed to Duluth Hillside Investment LLC 1732 London Road, Duluth, Minnesota.

**NARRATIVE:**

On 02/20/2020, I, Officer Vang, was conducting alcohol compliance checks early in the day and at 0940 hours I parked my vehicle in front of the University Liquor Bottle Shop and had S [REDACTED] go in to the bottle shop in an attempt to purchase alcoholic beverages. S [REDACTED] got out of the passenger seat and walked into the bottle shop.

Approximately, five minutes later S [REDACTED] came out with a bottle of Captain Morgan. S [REDACTED] sat in the front passenger seat and at this time I asked S [REDACTED], what the person who sold the alcohol looked like and he said that it was a male with a white baseball hat. I asked S [REDACTED] if that was the only person inside, and he said that there was a female inside the store also.

S [REDACTED] and I walked into the University Liquor Bottle Shop and he pointed out that the male, who was later identified as BRANDON BERNING, was the male that sold him the Captain Morgan bottle.

After S [REDACTED] identified the male, he left the store. I walked towards the counter and showed this male a photo ID and told him I was with the Duluth Police Department. Before I even started asking questions, it appeared that BERNING knew that he sold an alcoholic beverage to a person under the legal age.

I asked for an identification and BERNING provided a Minnesota driver's license, which positively identified him as BRANDON ROBERT BERNING.

At this time, an older male came into the store who identified himself as the owner of the store. I told this person that I was with the Duluth Police Department and told him that this was a compliance check and the he sold an alcoholic beverage to a minor. I told BERNING that he will be cited for sale to a minor and that I will explain the citation to him once I am done.

After completing the citation, I gave a copy to BERNING and told him that he can either pay the fine or appeal this citation, but either way the instructions were on the back. I then turned my attention to the older male, whom I did not identify at this time. I told this male that I get back to the office; I will write a citation out to the licensee and then mail it to the address that is on the alcohol license application form for University Liquor.

I asked both BERNING and this older male if they had any questions, both responded by saying no. At this point, I left the store.

Back at Headquarters, I completed a citation under LP11003471 to the licensee, which is the Duluth Hillside Investment LLC, doing business as University Liquor, for licensee liable Ordinance 8-35. A copy of that citation and a letter explaining the compliance check was mailed to the address of 1732 London Road. The bottle of Captain Morgan was photographed and that photograph was uploaded into Shield for evidence. The bottle of Captain Morgan was destroyed.

End of report.

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Duluth Police Department  
Main Office

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Reported Date: 02/20/2020 Time: 09:40 Case No.: 20027965

Code: Crime:

Class: Occurrence Date:

Location: 1603 WOODLAND AVE, DU, DULUTH, MN, , 55803; UNIVERSITY LIQUOR

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NARRATIVE

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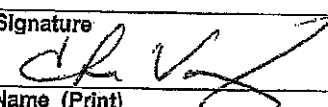
I, [REDACTED] S [REDACTED], working under the supervision of Officer Vang, was conducting compliance checks to local business on 2/20/2020. At 0940 I entered University Liquor located at 1603 Kenwood Ave and walked to the shelf holding bottles of Captain Morgan Spiced Rum. I grabbed a 750 ml bottle of Captain Morgan Spiced Rum and walked to the check out. The clerk scanned the bottle with the total cost being \$19.04, I then handed the clerk a \$20 and I received my change. I walked out and showed my purchase to Officer Vang who was waiting in a car outside. He and I re-entered the store and I pointed to the clerk who had sold me the bottle. I then left the store and waited in the car for Officer Vang.

End of report.

**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 <b>20027965</b>		Date/Time Issued <b>2/20/2020 @ 0940</b>	
Alleged Violator's Name <b>Brandon Robert Berning</b>			
Address <b>8192 County Rd 37NE St. Michael, MN 55376</b>		City State Zip Code	
DOB <b>1/29/1998</b>		Phone Number <b>763-688-3512</b>	
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation <b>2/20/2020</b>		Time of Violation <b>0940</b>	
Location <b>1603 Woodland Ave</b>			
Charge <b>Sale to Minor</b>		Ordinance No. <b>8-28</b>	
Description <b>Sale of Alcoholic bev. to person under 21 years of age</b>			
Officer Signature 			
Officer Name (Print) <b>Cha Vang</b>		Badge No. <b>375</b>	
Served: In person <input checked="" type="checkbox"/> By mail <input type="checkbox"/>		Positively Identified <input checked="" type="checkbox"/>	
Date Due: <b>3-5-2020</b>		Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: <b>LP11 003470</b>			

**CITY OF DULUTH  
CITY ORDINANCE VIOLATION**

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of a Duluth City Ordinance.

For more information, see the reverse side of this ticket.

ICR Number <b>20027965</b>		Date/Time Issued <b>2/20/2020 @ 1038</b>	
Alleged Violator's Name <b>Duluth Hillside Investment LLC</b>			
Address <b>1732 London Rd Duluth, MN 55812</b>		City State Zip Code	
DOB		Phone Number	
Vehicle Information			
License No.	State	Reg. Expires	
Vehicle Make	Model	Color	
Violation Information			
Date of Violation <b>2/20/2020</b>		Time of Violation <b>0940</b>	
Location <b>1603 Woodland Ave</b>			
Charge <b>Licensee liable</b>		Ordinance No. <b>8-35</b>	
Description <b>Clerk sold to minor and licensee is liable for the</b>			
Officer Signature 			
Officer Name (Print) <b>Cha Vang</b>		Badge No. <b>375</b>	
Served: In person <input type="checkbox"/> By mail <input checked="" type="checkbox"/>		Positively Identified <input type="checkbox"/>	
Date Due: <b>3-5-2020</b>		Minimum Fine Amount Due: <input type="checkbox"/> \$50.00 <input checked="" type="checkbox"/> \$200.00 <input type="checkbox"/> \$400.00	
Ticket Number: <b>LP11 003471</b>			