

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: Fitger's Wine Cellars, LLC d/b/a Fitger's Wine Cellar, 600 East Superior Street, #213, Duluth, Minnesota 55802**

The above-entitled matter came on for hearing before the Duluth Alcohol, Gambling and Tobacco Commission on August 5, 2020, in the City Council Chambers in Duluth, Minnesota. The hearing record closed on August 5, 2020 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. A representative of Licensee appeared.

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 City of Duluth Alcohol, Gambling and Tobacco Commission makes the following findings of fact.

1. Licensee is licensed by the City of Duluth for "on-sale/off-sale" Intoxicating Liquor at its premises located at 600 East Superior Street, #213, Duluth, Minnesota 55802.
2. On February 21, 2020, an employee of Licensee sold intoxicating beverages to an underage person at Licensee's business establishment known as Fitger's Wine

Cellar. The employee was cited under Duluth City Code Section 8-28 (Sales to minors prohibited) for the violation and issued a \$200 fine.

3. The Licensee was cited under Duluth City Code Section 8-35 (Licensee personally liable for unauthorized sales) for the violation and issued a \$200 fine.
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. More details can be found in the Notice of Hearing attached hereto and incorporated by reference.

### **CONCLUSIONS**

Based upon these facts, the City of Duluth Alcohol, Gambling and Tobacco Commission makes the following conclusions:

1. Duluth City Code Section 8-9(b)(1) provides that violation of any law relating to the operation of a liquor establishment, including, but not limited to, state, federal and local laws on liquor 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. Duluth City Code Section 8-34 (Licensee to maintain order on premises) provides that every licensee shall be responsible for the conduct of his place of business and the conditions of sobriety and order therein. Any violation of Duluth City Chapter 8 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. Duluth City Code Section 8-35 (Licensee personally liable for unauthorized sales) provides that every licensee shall be responsible for its employee's unauthorized sale of alcoholic beverages to a minor.
4. The Licensee is liable for the violation occurring on its licensed premise on February 21, 2020.

5. Duluth City Code Section 8-9 (Suspension and revocation of licenses; civil penalty; presumptive penalties) provides that absent aggravating or mitigating circumstances the presumptive penalty for a first offense is a \$500.00 civil penalty.
6. There are no aggravating or mitigating circumstances applicable to this violation.

#### **RECOMMENDATION**

The City of Duluth Alcohol, Gambling and Tobacco Commission recommends that the Duluth City Council impose a civil penalty as follows:

1. Payment of a \$500 penalty due and payable within 30 days of City Council action.

Dated: August 10, 2020

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

/s/Patricia Stolee, President