



Roll Call Number

Agenda Item Number

17-F(B)

Date : March 12, 2012

**RESOLUTION FIXING DATE, TIME AND PLACE FOR PUBLIC HEARING
ON ASSESSMENT OF \$1,500.00 PENALTY AND A 30-DAY SUSPENSION
OF LIQUOR LICENSE FOR THE DANLEE CORP d/b/a PHILLIPS 66 (JIFFY)
LOCATED AT 3718 SW 9th FOR VIOLATION OF IOWA ALCOHOLIC BEVERAGE LAWS**

WHEREAS, an employee of Phillips 66 (Jiffy) store located at 3718 SW 9th Street sold an alcoholic beverage to a person under legal age at the place of business in violation of Des Moines Municipal Code Section 10-6(9) on 12/20/11, and plead guilty to the charge; and

WHEREAS, Iowa Code Section 123.39 permits a local authority (city council) to suspend, revoke, or impose a civil penalty upon license/permit holders who violate the alcoholic beverage laws; and

WHEREAS, Iowa Administrative Rule 185-4.8 (123) provides that violations of the alcoholic beverage laws by any employee, agent, or servant of a license or permit holder shall be deemed the act of the licensee or permittee and subject the license or permit holder to civil penalty, suspension or revocation; and

WHEREAS, the violation of Municipal Code Section 10-6(9) is the second violation for selling to a person under legal age within 2 years; An employee of Phillips 66 (Jiffy) at 3718 SW 9th Street was previously convicted of violating 123.49(2)(h) for a sale of an alcoholic beverage to a person under legal age, which offense occurred on 02/17/11; and

WHEREAS, Iowa Code Section 123.50(3) and Des Moines Municipal Code section 10-13(C)(2) provide that for a second conviction of a sale to a person under legal age under either Iowa Code section 123.49(2)(h) or Des Moines Municipal Code section 10-6(9) in a two-year period a local authority shall impose a civil penalty in the amount of \$1,500.00 in addition to a 30 day suspension of license/permit; and

WHEREAS, Iowa law provides that the local authority shall retain the civil penalties where the proceeding to impose the penalty is conducted by the local authority;

17-1(B)

Date : March 12, 2012

(2)

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that:

1. A public hearing is hereby set for March 26, 2012 at 5:00 P.M. in the Council Chambers at City Hall, 400 Robert D. Ray Drive, Des Moines, IA, for the purpose of providing Phillips 66 (Jiffy) on 3718 SW 9th Street an opportunity to be heard concerning the proposed assessment of a \$1,500.00 civil penalty and a 30 day suspension of its License No. BC-0021303 for sale of alcoholic beverages to a person under legal age.
2. The suspension is proposed to commence at 6:00 a.m. Monday April 30, 2012 and to end at 6:00 a.m. Wednesday May 30, 2012.
3. The City Clerk is directed to notify the permit holder by sending through ordinary mail a copy of this resolution at least 10 days in advance of the scheduled hearing.
4. Phillips 66 (Jiffy) may pay the \$1,500.00 civil penalty to the City of Des Moines at the City Clerk's Office in advance of the scheduled public hearing if it does not wish to be heard. The permit holders will have 30 days to appeal from the date City Council takes action on the proposed sanctions. Any appeal would be to the Alcoholic Beverages Division of the Iowa Department of Commerce.

MOVED BY _____
TO ADOPT

FORM APPROVED:


Douglas P. Philip
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

Mayor

City Clerk