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Date April 8, 2013

**PUBLIC HEARING ON ASSESSMENT OF \$1,500.00 PENALTY
AND A 60-DAY SUSPENSION OF LIQUOR LICENSE FOR
KUM & GO LOCATED AT 2211 UNIVERSITY AVE
FOR VIOLATION OF IOWA ALCOHOLIC BEVERAGE LAWS**

WHEREAS, an employee of Kum & Go located at 2211 University Avenue 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 2/1/13, 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 third violation for selling to a person under legal age within 3 years; employees of Kum & Go at 2211 University Avenue sold alcoholic beverages to under aged persons in violation of Iowa Code section 123.49(2)(h) and/or Des Moines Municipal Code section 10-6(9) on 8/28/10 and 7/13/12 and were convicted of the charges; and

WHEREAS, Iowa Code Section 123.50(3) and Des Moines Municipal Code section 10-13(C)(2) provide that for a third 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 three-year period a local authority shall impose a civil penalty in the amount of \$1,500.00 in addition to a 60 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;

Date April 8, 2013

(2)

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

1. Kum & Go located at 2211 University Avenue is assessed a \$1,500.00 civil penalty and a 60 day suspension of its License No. BC0026712 for sale of alcoholic beverages to a person under legal age.
2. The suspension will commence at 6:00 a.m. Thursday May 9, 2013 and end at 6:00 a.m. Monday July 8, 2013.
3. The City Clerk is directed to notify the permit holder by sending through ordinary mail a copy of this resolution as soon as possible.
4. Kum & Go shall pay the \$1,500.00 civil penalty to the City of Des Moines at the City Clerk's Office.
5. This City Council action may be appealed within (30) days to the Alcoholic Beverages Division of the Iowa Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

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				

MOTION CARRIED

APPROVED

Mayor

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.

City Clerk