

★ Roll Call Number

08-342

Agenda Item Number

49

Date February 25, 2008

**PUBLIC HEARING ON ASSESSMENT OF \$1,500.00 PENALTY AND  
30-DAY SUSPENSION OF ALCOHOLIC BEVERAGE PERMIT TO  
THE FAMILY PANTRY STORE LOCATED AT 4538 LOWER BEAVER RD  
FOR VIOLATION OF IOWA ALCOHOLIC BEVERAGE LAWS**

WHEREAS, an employee of the Family Pantry Store located at 4538 Lower Beaver Rd. sold an alcoholic beverage to a person under legal age at the place of business in violation of Iowa Code Section 123.49(2)(h) on 11/15/07, and was convicted of 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 suspension or revocation; and

WHEREAS, the violation of Iowa Code Section 123.49(2)(h) is the second conviction within 2 years; A Family Pantry employee at 4538 Lower Beaver Rd. was previously convicted of violating 123.49(2)(h) on 04/05/07; and

WHEREAS, Iowa Code Section 123.50(3) and Des Moines Ordinance 10-13(C)(2) provide that for a second conviction of Iowa code Section 123.49(2)(h) 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.

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(2)

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

1. The Family Pantry Store located at 4538 Lower Beaver Rd. is assessed a civil penalty in the amount of \$1,500.00 and shall serve a 30 day suspension of its liquor license No. LE-0001169 for sale of alcoholic beverages to persons under legal age.
2. The suspension will commence at 6:00 a.m. Monday, March 3, 2008 and end at 6:00 a.m. Wednesday, April 2, 2008.
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. The permit holder 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 thirty (30) days to the Administrator of Alcoholic Beverages Division of the Iowa Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

MOVED BY Mahaffey TO ADOPT.

FORM APPROVED:

Douglas P. Philip  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	7			

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  
T. M. Franklin Mayor

Diane Rauh City Clerk