

★ Roll Call Number
09-343

Agenda Item Number
62

Date February 23, 2009

PUBLIC HEARING ON ASSESSMENT OF \$1,500.00 PENALTY AND
30-DAY SUSPENSION OF BEER PERMIT AND LIQUOR LICENSE FOR
USA PETROLEUM LLC LOCATED AT 727 SE 14TH STREET
FOR VIOLATION OF IOWA ALCOHOLIC BEVERAGE LAWS

WHEREAS, an employee of USA Petroleum located at 727 SE 14th Street 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 10/16/08, 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 violation within 2 years; A USA Petroleum employee at 727 SE 14th Street previously violated 123.49(2)(h) on 11/15/07 and USA Petroleum paid a \$500.00 civil penalty for the first violation; and

WHEREAS, Iowa Code Section 123.50(3) provides that for a second violation of Iowa code Section 123.49(2)(h) within two-years shall subject the licensee or permittee to a thirty (30) day suspension and a civil penalty in the amount of \$1,500.00; 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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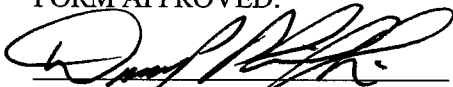
(2)

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

1. USA Petroleum LLC located at 727 SE 14th Street is assessed a civil penalty in the amount of \$1,500.00 and shall serve a 30 day suspension of its beer permit No. BC-0028272 and Liquor License No. LE0001474 for sale of alcoholic beverages to persons under legal age.
2. The suspension will commence at 6:00 a.m. Monday, March 30, 2009 and end at 6:00 a.m. Wednesday, April 29, 2009.
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 Kiernan TO ADOPT

FORM APPROVED:

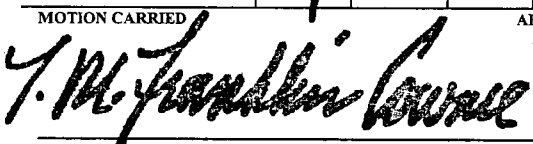

 Douglas P. Philip
 Assistant City Attorney

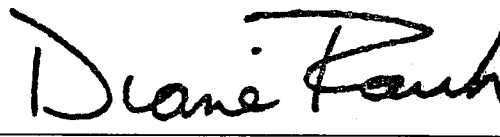
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	7			

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.


 Y. M. Franklin
 Mayor


 Diane Rauh
 City Clerk