



Roll Call Number

10-1841

Agenda Item Number

26

Date November 8, 2010

**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 DEN LOCATED  
AT 4369 MERLE HAY ROAD FOR VIOLATION OF IOWA ALCOHOLIC BEVERAGE LAWS**

WHEREAS, an employee of The Den located at 4369 Merle Hay 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 9/02/10, 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 Iowa Code Section 123.49(2)(h) is the second violation within 2 years; An employee of The Den at 4369 Merle Hay Road was previously convicted of violating 123.49(2)(h) which offense occurred on 05/29/09; 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. A public hearing is hereby set for November 22, 2010 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 The Den on 4369 Merle Hay Road an opportunity to be heard concerning the proposed assessment of a \$1,500.00 civil penalty and a 30 day suspension of its Liquor License No. LC-0034671 for sale of alcoholic beverages to a person under legal age.
2. The suspension is proposed to commence at 6:00 a.m. Monday November 29, 2010 and to end at 6:00 a.m. Wednesday December 29, 2010.
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. The Den 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 Hensley  
TO ADOPT

FORM APPROVED:

Douglas P. Philip  
Assistant City Attorney

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

T. M. Franklin Mayor

Diane Rauh City Clerk