



Roll Call Number

13-0161

Agenda Item Number

51C

Date January 28, 2013

**PUBLIC HEARING ON ASSESSMENT OF A \$1,500.00 PENALTY AND A 30-DAY
SUSPENSION OF LIQUOR LICENSE TO 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 7/13/12 and was convicted of the charge by a guilty plea; 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 Kum & Go at 2211 University was previously convicted of violating Iowa Code section 123.49(2)(h) by selling an alcoholic beverage to a person under legal age which offense occurred on 8/28/10; 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 civil penalty in the amount of \$1,500.00 and a thirty (30) day suspension of license/permit shall be imposed; 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. Kum & Go located at 2211 University Avenue is assessed a \$1,500.00 civil penalty and a thirty (30) day suspension of its License No. BC0026712 for sale of alcoholic beverages to a person under legal age for a second time in a two-year period.
2. The suspension will commence at 6:00 a.m. Thursday February 28, 2013 and end at 6:00 a.m. Saturday March 30, 2013.
3. The City Clerk is directed to notify the license 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 thirty (30) days to the Alcoholic Beverages Division of the Iowa Department of Commerce, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

MOVED BY Griess TO ADOPT.

FORM APPROVED:

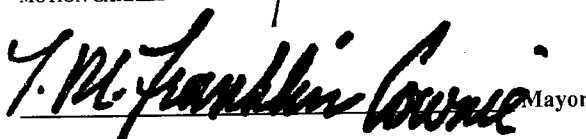


Douglas P. Philip
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

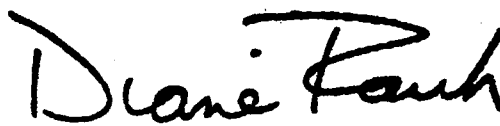


T. M. Franklin
Mayor

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.



Diane Rauh

City Clerk