

★ Roll Call Number

13-0467

Agenda Item Number

26

Date : March 25, 2013

**RESOLUTION FIXING DATE, TIME AND PLACE FOR 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;

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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 April 8, 2013 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 Kum & Go on 2211 University Avenue an opportunity to be heard concerning the proposed assessment of 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 is proposed to commence at 6:00 a.m. Thursday May 9, 2013 and to 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 at least 10 days in advance of the scheduled hearing.
4. Kum & Go 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 holder 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
TO ADOPT.

Hensley

FORM APPROVED:

Douglas P. Philip

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