



Roll Call Number

09-187

Agenda Item Number

23

February 9, 2009

Date

**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 USA PETROLEUM LLC LOCATED
AT 727 SE 14TH STREET FOR VIOLATION OF IOWA ALCOHOLIC BEVERAGE LAWS**

WHEREAS, an employee of USA Petroleum LLC 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 plead guilty to the charge; and

WHEREAS, Iowa Code Section 123.39 permits a local authority (city counsel) 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 conviction within 2 years; An employee of USA Petroleum LLC at 727 SE 14th Street was previously convicted of violating 123.49(2)(h) which offense occurred on 11/15/07; 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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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 February 23, 2009 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 USA Petroleum LLC on 727 SE 14th Street 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. BC-0028272 for sale of alcoholic beverages to a person under legal age.
2. The suspension is proposed to commence at 6:00 a.m. Monday March 30, 2009 and to 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 at least 10 days in advance of the scheduled hearing.
4. USA Petroleum LLC 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
TO ADOPT

Vlassis

FORM APPROVED:

Douglas P. Philip
Douglas P. Philip
Assistant City Attorney

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