

Request for Council Action

Date: 03/08/2010

Item Num : 12.a

Department Approval



Item Description: Presumptive Penalty Approval – Don Pablo’s Alcohol Compliance Failure.

Background

On April 9th, 2009, all businesses with a liquor license in the City of Roseville were mailed a letter from the Roseville Police Department announcing two alcohol compliance checks would be conducted before the end of the year. Also in the letter were materials for an optional manager server training program and a list of City of Roseville approved training programs. Proof of the completed training by all employees selling or serving alcohol had to be submitted to the Roseville Police Department by or on May 9, 2009.

Council Member Roe discussed concerns with a change in licensees on the Don Pablo’s application for 2008. This information has been reviewed by the City Attorney and it was determined that the license change was proper.

Compliance Failure

On December 28th, 2009, a Roseville Police Officer, along with an underage buyer, entered Don Pablo’s to conduct an alcohol compliance check. The underage buyer approached the cashier and ordered a bottle of Corona Light Beer. The cashier asked the underage buyer for ID and the underage buyer provided the cashier with her real MN Driver License with the words “Under 21” stamped on the license directly over the photo. The cashier took the license, looked at it, and gave it back to the underage purchaser. The cashier then sold the underage buyer a bottle of Corona Light. The cashier was cited for the violation and released. Don Pablo’s did not participate in an optional manager and server training program for 2009. This is Don Pablo’s second documented violation with the previous violation occurring in December of 2007.

Staff Recommendation

Issue and administer the presumptive penalty pursuant to City Code Section 302.15, for on-sale license holders who did not participate in optional manager and server training for a first violation, the mandatory minimum penalty shall be a five hundred dollar (\$500) fine and a one (1) day suspension.

1 **Council Action Requested**

2

3 Allow the Roseville Police Department to issue and administer the presumptive penalty as set forth in
4 Section 302.15, of the Roseville City Code or other action as determined by the Roseville City Council.

5

6 Prepared by: Sgt. Josh Arneson

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

09034485

12/29/2009 09:01:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4102 LIQUOR - SELLING

Primary Reporting Officer: Gehrman, Jason

Name of location/business:

Primary squad: 2599

Location of incident: 2700 LINCOLN DR

Secondary reporting officer:

ROSEVILLE, MN 55113

Approver: Marshall, Matthew

District: 2581

Date & time of occurrence: 12/28/2009 14:17:00 to

Site:

12/29/2009 14:27:00

Arrest made: Yes

Secondary offense:

Secondary MOC:

Police Officer Assaulted or Injured:

Police Officer Assisted Suicide:

Crime Scene Processed:

OFFENSE DETAILS

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Attempt Only:

Appears to be Gang Related:

ARRESTS

Cited

Name: Weir-Moore, Sheila Mae

Booking date: 12/28/2009

Date & time of arrest: 12/28/2009 14:17

Booking time: 14:17

Arrest made on view:

Booking #:

Arrest made on warrant or previous CN:

Warrant number:

Originating agency:

Warrant type:

Charge/Citation/Bail Amount: Selling alcohol to a minor, admin citation#

NAMES

Arrestee

Weir-Moore, Sheila Mae

KNOWN

Nicknames or Aliases

Nick Name:

Alias:

AKA First Name:

AKA Last Name:

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

09034485

12/29/2009 09:01:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4102 LIQUOR - SELLING

Details

Sex: Female Race: _____ DOB: _____ Resident Status: _____
 Hispanic: _____ Age: _____ from _____ to _____

Phones

Home: _____ Cell: _____ Contact: _____
 Work: _____ Fax: _____ Pager: _____

Employment

Occupation: _____ Employer: DON PABLOS

Identification

SSN: _____ License or ID#: _____ License State: MN

Physical Description

US: _____ Metric: _____
 Height: _____ to _____ Build: _____ Hair Length: _____ Hair Color: _____
 Weight: _____ to _____ Skin: _____ Facial Hair: _____ Hair Type: _____
 Teeth: _____ Eye Color: _____ Blood Type: _____

Offender Information

Arrested: Yes Pursuit engaged: _____ Violated Restraining Order: _____
 DUI: _____ Resistance encountered: _____
 Condition: Sober Taken to health care facility: _____ Medical release obtained: _____

Other

Nicknames or Aliases

Nick Name: _____
 Alias: _____
 AKA First Name: _____ AKA Last Name: _____

Details

Sex: Female Race: _____ DOB: _____ Resident Status: _____
 Hispanic: _____ Age: _____ from _____ to _____

Phones

Home: 000-000-0000 Cell: _____ Contact: _____
 Work: _____ Fax: _____ Pager: _____

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

09034485

12/29/2009 09:01:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4102 LIQUOR - SELLING

Employment

Occupation:

Employer:

Identification

SSN:

License or ID#:

License State: MN

SOLVABILITY FACTORS

Suspect can be Identified: Yes

By: Police

Photos Taken: Yes

Stolen Property Traceable:

Evidence Turned In: Yes

Property Turned In:

Related Incident:

Lab

Biological Analysis:

Fingerprints Taken:

Narcotic Analysis:

Items Fingerprinted:

Lab Comments:

Participants:

Person Type:

Name:

Address:

Phone:

Arrestee

Weir-Moore, Sheila Mae

Other

NARRATIVE

On 12/28/2009 , (DOB: _____) acted as my underage alcohol buyer. _____ had previously viewed the underage buyer instructional video. _____ was searched, and had only one valid ID. A digital photo was taken, copied to a CDR and placed in PL# 3.

At approximately 1417 hours, _____ entered Don Pablo's Restaurant, took a seat and ordered a Corona Light Beer. Sheila Mae Weir-Moore (_____) served the Corona Light failing to properly check ID. I approached Moore and informed her of the violation. She stated that she thought it said "1986" and apologized for making a mistake.

Moore was given admin citation# 20928 for underage sale (\$250.00). Don Pablo's management was informed they would be receiving follow up information in the mail.

The Corona Light bottle, a sample of it's contents and sales receipt were placed in PL# 3.

Nothing further

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

09034485

12/29/2009 09:01:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4102 LIQUOR - SELLING

PUBLIC NARRATIVE

Alcohol compliance check.

SUPPLEMENTAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

09034485

01/05/2010 07:25:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

Primary Reporting Officer: Arneson, Joshua

Name of location/business:

Primary squad:

Location of incident: 2700 LINCOLN DR

Secondary reporting officer:

ROSEVILLE, MN 55113

Approver:

District: 2581

Date & time of occurrence: 12/28/2009 14:17:00 to

Site:

12/29/2009 14:27:00

Arrest made:

Secondary offense:

Secondary MOC:

Police Officer Assaulted or Injured:

Police Officer Assisted Suicide:

Crime Scene Processed:

NARRATIVE

On 12-31-09, I mailed Don Pablo's a letter notifying them of their failure and that the City Council would meet on 02-08-10 to determine the penalty.

PUBLIC NARRATIVE

Employer



December 31, 2009

Don Pablo's
DF & R OPERATING CO. INC
Attn: General Manager
2700 Lincoln Dr
Roseville, MN 55113

Dear General Manager:

As you know, the City of Roseville has an ordinance prohibiting the sale of any alcoholic beverage to persons under the age of 21 years. A copy of the amended ordinance is enclosed for your review. Please note Section 302.15, of the local ordinance, where minimum penalties are stipulated.

On November 29, 2009, an employee of your establishment, Sheila Weir-Moore, sold an alcoholic beverage to a minor in violation of the attached ordinance. Our records indicate that your establishment did not participate in a city approved optional manager and server training program. City records also indicate your establishment one previous violations in the past thirty-six (36) months, in December of 2007. Therefore, pursuant to Section 302.15 of the Roseville City Code, the presumptive penalty for a second violation for on-sale license holders who did not participate in the optional manager and server training is a minimum penalty of a \$500.00 fine and a three (3) day suspension.

When a violation occurs, the police department provides information to the City Council, which either will assess the presumptive penalty set forth above or depart upward or downward based on extenuating or aggravating circumstances. The information set forth in this letter regarding the failed compliance check will be passed on to the City Council, as well as information regarding your participation in the optional manager and server training program, and the history of compliance checks at your establishment. The City Council will consider this information at its regular meeting on February 8th, 2010.

A representative of your establishment may appear at that time to offer any information that you deem relevant as to whether the Council should deviate from the presumptive penalties set forth in the Roseville City Code. If you fail to appear at that meeting, the City Council will act without any input from your establishment.



Finally, please be advised that if another violation should occur, further penalties will be invoked. If you have any questions, you can reach me at 651-792-7204.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joshua Arneson', written over a large, decorative flourish.

Sergeant Joshua Arneson

Enclosure

cc: Acting Chief Rick Mathwig
City Council
Bill Malinen, City Manager

CHAPTER 302

LIQUOR CONTROL

SECTION:

- 302.01: Adoption of State Law
- 302.02: License Required
- 302.03: Application
- 302.04: License Fees
- 302.05: Ineligibility
- 302.06: Delinquent Taxes and Charges
- 302.07: Granting of License
- 302.08: Conditions of License
- 302.09: Hours of Sale
- 302.10: Evacuation of On-sale Establishments
- 302.11: Sale Outside of Structure on Licensed Premises
- 302.12: On-sale of Intoxicating Malt Liquor
- 302.13: Off-sale License Regulations
- 302.14: Prohibited Conduct
- 302.15: Civil Penalty

302.01: ADOPTION OF STATE LAW:

Except where inconsistent with this Chapter, the provisions of Minnesota Statutes, chapter 340A, relating to the definition of terms, licensing, consumption, sales, conditions of bonds and licenses, hours of sales and all other matters pertaining to the retail sale, distribution and consumption of non-intoxicating malt liquor, wine and intoxicating liquor are adopted and made a part of this Chapter as if set out in full. (Ord. 972, 5-13-85)

302.02: LICENSE REQUIRED:

- A. General Requirement: No person, except a wholesaler or manufacturer to the extent authorized under State license, shall directly or indirectly deal in, sell or keep for sale in the City any non-intoxicating malt liquor or intoxicating liquor without a license to do so as provided in this Chapter.
- B. Types of Licenses:
 - 1. Intoxicating liquor licenses shall be of five kinds: On-sale, On-sale Wine, Club, Special Sunday and Off-sale.
 - 2. Non-intoxicating malt liquor licenses shall be of two kinds: On-sale and Off-sale.
- C. Expiration: All intoxicating liquor and non-intoxicating malt liquor licenses shall expire on December 31 of each year.
- D. On-sale Intoxicating Liquor Licenses: On-sale intoxicating liquor licenses shall be issued only to hotels and restaurants and shall permit On-sale of intoxicating liquor only, for consumption on the licensed premises only, in conjunction with the sale of food. For the purposes of this Chapter, the following definitions are adopted:
HOTEL: A hotel is any establishment having a resident proprietor or manager where,

in consideration of payment, food and lodging are regularly furnished to transients, which maintains for the use of its guests not less than 50 guest rooms with bedding and other usual, suitable and necessary furnishings in each room, which is provided at the main entrance with a suitable lobby, desk and office for the registration of its guests, which employs an adequate staff to provide suitable and usual service and which maintains, under the same management and control as the rest of the establishment and has, as an integral part of the establishment, a dining room of at least one thousand 1,800 square feet.

Such dining room shall have appropriate facilities for seating not less than one 100 guests at one time. Where the guest seating capacity is between 100 and 174, at least 50% of the gross sales of the restaurant portion of the establishment must be attributable to the service of meals. Where the seating capacity is 175 or more, at least 25% of the gross sales of the restaurant portion of the establishment must be attributable to the service of meals.

RESTAURANT: A restaurant is any establishment, other than a hotel, having appropriate facilities to serve meals, for seating not less than 100 guests at one time and where, in consideration of payment, meals are regularly served at tables to the general public and which employs an adequate staff for the usual and suitable service to its guests.

Where the seating capacity of the establishment is between 100 and 174, at least 50% of the gross sales of the establishment must be attributable to the service of meals.

Where the seating capacity is 175 or more, at least 25% of the gross sales of the establishment must be attributable to the service of meals.

- E. **On-sale Wine Licenses:** On-sale wine licenses shall be issued only to restaurants meeting the qualifications of Minnesota Statutes 340A.404, subdivision 5, and shall permit only the sale of wine not exceeding 14% alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. To qualify for a license under this subsection, a restaurant must have appropriate facilities for seating at least 25 guests at a time, regularly serve meals at tables to the public for a charge and employ an adequate staff. (Ord. 972, 5-13-85)
- F. **Club License:** Club licenses for the sale of intoxicating beverages to be consumed on the licensed premises may be issued to any clubs meeting the requirements of Minnesota Statute 340A.404, subdivision 1. (1995 Code)
- G. **Special License for Sunday Sales:** A special license authorizing sales on Sunday in conjunction with the serving of food may be issued to any hotel, restaurant or club which has an On-sale license. A special Sunday license is not needed for Sunday sales of wine license.
- H. **Off-sale Intoxicating Liquor Licenses:** Off-sale licenses for the sale of intoxicating liquor shall permit the licensee to sell intoxicating liquor in original packages for consumption off the premises only. Such licenses may be issued in accordance with the provisions of this Chapter.
- I. **On-sale Non-intoxicating Malt Liquor Licenses:** On-sale licenses shall permit the licensee to sell non-intoxicating malt liquor for consumption on the premises only.
- J. **Off-sale Non-intoxicating Malt Liquor Licenses:** Off-sale licenses shall permit the licensee to sell non-intoxicating malt liquor in original packages for consumption off the premises only. (Ord. 972, 5-13-1985)
- K. **Temporary On-sale Licenses:** Temporary On-sale licenses may be issued to a club or charitable, religious or nonprofit organization in existence for at least three years in connection with social events within the City, for up to three days in accordance with Minnesota Statutes section 340A.404, subdivision 10. (1995 Code)
- L. **Temporary On-sale License In Central Park:** Upon payment of the fee and submission of a completed application form, the City Manager is authorized to approve a temporary On-sale license for the sale and distribution of non-intoxicating malt liquor to a club, charitable, religious or other nonprofit organization in existence

at least three years, for such sale and distribution in Central Park only for a time not to exceed three consecutive days, provided the following conditions are met:

1. Insurance: Proof of liquor liability insurance in an amount equal to and in the form required by subsection 302.03C of this Chapter is filed with the application.
2. Security Plan: A security plan, approved by the Chief of Police, is filed along with the application.
3. Hours of Sale: In addition to the limitation on hours found elsewhere in this Code, the hours of sale shall be only during the time that Central Park is open to the public. Sales and distribution shall be located only in a shelter building or a temporary shelter, such as a tent, approved by the City Manager.

In the event the City Manager denies the application, for any reason, the applicant may appeal the decision of the City Manager to the City Council. (Ord. 1102, 9-23-1991)

- M. Intoxicating Liquors at The Roseville Skating Center Community Rooms:
Intoxicating liquor may be sold in the Roseville Skating Center Community Rooms only under the following conditions:
1. By the City-designated caterer for the Roseville Skating Center Community Rooms who shall hold retail On-sale intoxicating liquor license issued by the City or by an adjacent municipality.
 2. The caterer must be engaged to dispense intoxicating liquor at an event held by a person or organization permitted to use the Roseville Skating Center Community Rooms, and may dispense intoxicating liquor only to persons attending the event.
 3. The caterer delivers to the City a certificate of insurance providing "off premises" or "catered event" liquor liability coverage naming the City of Roseville, to the full extent of statutory coverage, as an additional named insured.
 4. All other rules and regulations established by the City relating to the sale or dispensing of intoxicating liquor in the Roseville Skating Center Community Rooms are complied with. (Ord. 1217, 12-14-1998)

302.03: APPLICATION:

- A. Requirements: The requirements set forth in this Section shall apply to applications for those licenses named in Section 302.02 of this Chapter.
- B. Form:
1. Information Required: Every application for a license under this Chapter shall state the name of applicant, applicant's age, presentations as to applicant's character, with such references as the City Council may require, applicant's citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant is owner and operator of the business, how long applicant has been in that business at that place and such other information as the City Council may require from time to time.
 2. Verification: In addition to containing such information, the application shall be in the form prescribed by the State Liquor Control Director and shall be verified and filed with the City Manager. No person shall make a false statement in an application.
 3. Subsequent Data: From time to time, at the request of the City Manager, a licensee will provide data to the City concerning that portion of its revenue attributable to the sale of food and the sale of liquor and/or wine. (Ord. 972, 5-13-1985)
- C. Liability Insurance:
1. Policy Limits: Prior to the issuance or renewal of a license under this Chapter, the applicant shall file with the City Manager a certificate of insurance in a form to be provided by the City covering liquor liability, loss of means of support and pecuniary loss in the amount of (\$500,000.00 of coverage because of bodily injury to any one person in any one occurrence; \$1,000,000.00 because of bodily injury to two or more

persons in any one occurrence; \$100,000.00 because of injury to or destruction of property of others in any one occurrence; \$200,000.00 for loss of means of support or pecuniary loss to any one person in any one occurrence; and \$500,000.00 for loss of means of support or pecuniary loss for two or more persons in any one occurrence.

2. Annual Aggregate Limits: Annual aggregate limits as provided by Minnesota Statutes section 340A.409 shall not be less than \$1,000,000.00.

In the event such policy provides for (\$1,000,000.00 annual aggregate limits, said policy shall further require that in the event that the policy limits are reduced in any given year because of the \$1,000,000.00 annual aggregate policy limit, the insurance carrier shall provide the City with written notice of said reduction in policy limits within 30 days of said reduction becoming effective. (Ord. 1175, 10-28-1996)

3. Further Requirements: After the reduction becomes effective, the City Council may require the licensee to take further action with regard to liability insurance in order to protect citizens of the City during the period of the reduced aggregate policy limit.

4. Applicability: The requirements of this Section shall be applicable to new licenses issued after the effective date of this subsection and for renewals applied for after the effective date of this subsection. (Ord. 1046, 9-12-1988)

D. Approval of Insurance: Liability insurance policies shall be approved as to form by the City Attorney. Operation of a licensed business without having on file with the City, at all times, a certificate of insurance as required in subsection C of this Section is a cause for revocation of the license. All insurance policies shall state that the City will be given ten days' notice, in writing, of cancellation. (Ord. 972, 5-13-1985)

E. Insurance Not Required: Subsection C of this Section does not apply to licensees who by affidavit establish that they are not engaged in selling any intoxicating or non-intoxicating malt liquor in Central Park and that:

1. They are On-sale 3.2 percent malt liquor licensees with sales of less than \$10,000.00 of 3.2 percent malt liquor for the preceding year;

2. They are Off-sale 3.2 percent malt liquor licensees with sales of less than \$20,000.00 of 3.2 percent malt liquor for the preceding year;

3. They are holders of On-sale wine licenses with sales of less than \$10,000.00 for wine for the preceding year; or

4. They are holders of temporary wine licenses issued under law. (Ord. 1175, 10-28-1996)

302.04: LICENSE FEES:

A. Annually: Annual license fee shall be as established by the City Fee Schedule in Section 314.05. (Ord. 1379A, 11-17-2008)

B. Fee:

1. Payment: \$500.00 of the On-sale intoxicating liquor and wine licenses and the entire license fee for all other licenses shall be paid at the time of application. The remaining balance, if any, shall be paid prior to the time of issuance of the license.

2. Refund: All fees shall be paid into the General Fund of the City. Upon rejection of any application for a license or upon the withdrawal of the application before approval of the issuance by the City Council, the license fee shall be refunded to the applicant except where the rejection is for willful misstatement on the license application.

3. Proration: The fee for On-sale intoxicating liquor and On-sale wine licenses granted after the commencement of the license year shall be prorated on a monthly basis. The fee for On-sale non-intoxicating malt liquor licenses granted after the commencement of the license year shall be prorated on a quarterly basis.

4. Investigation: At the time of each original application for a license, except special

club, On-sale non-intoxicating malt liquor and Off-sale non-intoxicating malt liquor licenses, the applicant shall pay, in full, an investigation fee. The investigation fee shall be \$300.00. No investigation fee shall be refunded. (Ord. 972, 5-13-1985; amd. 1995 Code)

302.05: INELIGIBILITY:

No license shall be granted to any person made ineligible for such a license by state law¹. (Ord. 972, 5-13-1985)

302.06: DELINQUENT TAXES AND CHARGES:

No license shall be granted for operation on any premises on which taxes, assessments or other financial claims of the city are delinquent and unpaid. (Ord. 972, 5-13-1985)

302.07: GRANTING OF LICENSE:

- A. Investigation and Issuance: The City Council shall investigate all facts set out in the application. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the City Council shall, in its discretion, grant or refuse the application. At least ten days published notice of the hearing shall be given, setting forth the name of the applicant and the address of the premises to be licensed.
- B. Person and Premises Licensed; Transfer: Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without City Council approval. Before a transfer is approved, the transferee shall comply with the requirements for a new application. Any transfer of 50% or more of the stock of a corporate licensee is deemed a transfer of the license and a transfer of stock without prior City Council approval is a ground for revocation of the license. (Ord. 972, 5-13-1985)

302.08: CONDITIONS OF LICENSE:

Every license is subject to the conditions in the following subsections and all other provisions of this chapter and any other applicable ordinance, state law or regulation:

- A. Licensee's Responsibility: Every licensee is responsible for the conduct of licensee's place of business and the conditions of sobriety and order in it. The act of any employee on the licensed premises, authorized to sell intoxicating liquor there, is deemed the act of the licensee as well and the licensee shall be liable to all penalties provided by this chapter and the law equally with the employee.
- B. Inspections: Every licensee shall allow any peace officer, health officer or properly designated officer or employee of the city to enter, inspect and search the premises of the licensee during business hours without a warrant.
- C. Optional Manager and Server Training: Proven participation in this program will reduce licensee holder penalties for failure of an alcohol sales compliance check. If this option is chosen, all licensees and their managers, and all employees or agents employed by the licensee that sell or serve alcohol, shall attend and satisfactorily complete a city approved or provided liquor licensee training program. The required training shall be completed:
 - 1. Prior to licensure or renewal for licensees and managers, or
 - 2. Prior to serving or selling for any employee or agent, and
 - 3. Every year thereafter unless probationary extension is granted for hardship

¹ M.S.A. §340A.402.

reasons. (Ord. 1243, 11-27-2000)

302.09: HOURS OF SALE:

The hours for the sale of intoxicating or non-intoxicating liquor for consumption on the premises shall be those allowed under Minnesota Statute §340A.504. (Ord. 1290, 8-11-2003)

302.10: EVACUATION OF ON-SALE ESTABLISHMENTS:

- A. Thirty Minute Restriction: All patrons of an on-sale establishment selling intoxicating liquor or non-intoxicating malt liquor must vacate the premises within 30 minutes of the termination of sales by Minnesota Statute §340A.504. Any patron who remains on the licensed premises or any licensee or licensee's employee who allows a patron to remain on the licensed premises beyond the 30 minute limit is in violation of this subsection. (Ord. 1056, 3-16-1989) (Ord. 1290, 8-11-2003)
- B. Extension of Restriction for Sale of Food: If an on-sale establishment remains open for the sale of food beyond the 30 minute evacuation limit, all intoxicating liquor and non-intoxicating malt liquor must be secured within the 30 minute limit in such a manner as to prevent consumption. Any patron who consumes intoxicating liquor or non-intoxicating malt liquor on the licensed premises or any licensee or employee of licensee who allows such consumption or allows intoxicating liquor or non-intoxicating malt liquor to remain unsecured on the licensed premises beyond the 30 minute limit is in violation of this subsection. (Ord. 1056, 3-16-1989)

302.11: SALE OUTSIDE OF STRUCTURE ON LICENSED PREMISES:

The sale of wine and intoxicating liquors, pursuant to any of the licenses issued in accordance with this chapter, shall be limited to sale and consumption inside of a structure on the licensed premises, unless the licensee applies for and receives permission from the City Council for sale and consumption outside of a structure on the licensed premises by an endorsement to the license. Issuance of an outside sale and consumption endorsement shall be accomplished as follows:

- A. Application: The licensee shall make written application using forms provided by the city and there shall be a nonrefundable application fee of twenty five dollars (\$25.00) at the time of making application.
- B. Notice: The owners of all property adjacent to the licensed premises will be given written notice of the fact that such an application has been made and of the date and time of the City Council meeting at which the application will be considered by the City Council.
- C. Endorsement: The City Council may, in its discretion, issue such an endorsement or refrain from issuing such an endorsement and may impose conditions to the endorsement such as, but not limited to, screening, time of day limitations and noise limitations. (Ord. 972, 5-13-1985)

302.12: ON-SALE OF INTOXICATING MALT LIQUOR:

The holder of an on-sale wine license who is also licensed to sell non-intoxicating malt liquor and whose gross receipts are at least 60% attributable to the sale of food may sell intoxicating malt liquor at on-sale without an additional license. (Ord. 1021, 9-28-1987)

302.13: OFF-SALE LICENSE REGULATIONS:

In addition to the other requirements of state law or this chapter, the following regulations are applicable to off-sale intoxicating liquor licenses:

- A. Number of Licenses: The number of licenses which may be issued is ten.
- B. Use of License: If a license is not used within one year, the license shall automatically terminate.
- C. Size of Premises: A licensed premises shall have at least 1,600 square feet of sales floor space including sales coolers and excluding walk-in storage coolers.
- D. Considerations: In addition to the other requirements of this chapter and applicable state law in determining whether or not to issue an off-sale license for a particular premises, the City Council shall consider all relevant factors relating to the health, safety and welfare of the citizens of the city such as, but not limited to, effect on market value of neighboring properties, proximity to churches and schools and effect on traffic and parking.
- E. Delivery of Alcoholic Beverages; Identification Required: A person authorized to serve, sell, or deliver alcoholic beverages must determine through legitimate proof of identification that all deliveries of wine, beer, and alcoholic beverages are accepted only by eligible persons who are 21 years of age or older.
- F. Delivery Records: Upon any delivery of alcoholic beverages off the licensed premises, the seller, purchaser, and delivery recipient (if other than the purchaser) must sign an itemized purchase invoice. The invoice shall detail the time, date, and place of delivery. The licensee must retain the delivery records for a period of one year. The records shall be open to inspection by any police officer or other designated officer or employee of the city at any time. (Ord. 1243, 11-27-2000)

302.14: PROHIBITED CONDUCT:

- A. Policy: Certain acts or conduct on premises licensed pursuant to this chapter or licensed pursuant to Minnesota statutes, chapter 340A, are deemed contrary to public welfare and are prohibited and no license issued pursuant to this chapter or licensed pursuant to Minnesota statutes, chapter 340A, may be held or maintained where such acts or conduct is permitted. (Ord. 808, 11-21-1977)
- B. Prohibited Conduct: The prohibited acts or conduct referred to in subsection A of this section are:
 1. The employing or use of any person in the sale or service of beverages in or upon the licensed premises where such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.
 2. The employing or use of the services of any host or hostess while such host or hostess is unclothed or in such attire, costume or clothing as described in subsection B1 of this section.
 3. The encouraging or permitting of any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.
 4. The permitting of any employee or person to wear or use any device or covering exposed to view which simulates the breast, genitals, anus, pubic hair or any portion thereof.
 5. The permitting of any person to perform acts of or acts which simulate:
 - a. With or upon another person, sexual intercourse, sodomy, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - b. Masturbation or bestiality.
 - c. With or upon another person the touching, caressing or fondling of the buttocks, anus, genitals or female breast.
 - d. The displaying of the pubic hair, anus, vulva, genitals or female breasts below the top of the areola.
 6. The permitting of any person to use artificial devices or inanimate objects to depict any of the prohibited activities described in subsections B5a through B5d of this section.

7. The permitting of any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.
 8. The permitting or showing of film, still pictures, electronic reproductions or other reproductions depicting:
 - a. Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - b. Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals.
 - c. Scenes wherein a person displays the vulva, or the anus or the genitals.
 - d. Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the activities described in subsections B1 through B7 of this section.
- C. Revocation of License: Any license issued pursuant to this chapter, licensed pursuant to Minnesota statutes, chapter 340A, shall be revoked if any of the acts of conduct described in this section occur on the licensed premises. (Ord. 808, 11-21-1977; amd. 1995 Code)

302.15: CIVIL PENALTY:

- A. Penalty For Noncompliance: In addition to any criminal penalties which may be imposed by a court of law, the City Council may suspend a license for up to 60 days, may revoke a license and/or may impose a civil fine on a licensee not to exceed \$2,000.00 for each violation on a finding that the license holder or its employee has failed to comply with a statute, rule or ordinance relating to alcoholic beverages, non-intoxicating malt liquor or wine.
- B. Minimum Penalty: The purpose of this section is to establish a standard by which the City Council determines the civil fine, the length of license suspensions and the propriety of revocations, and shall apply to all premises licensed under this chapter. These penalties are presumed to be appropriate for every case; however, the council may deviate in an individual case where the council finds that there exist certain extenuating or aggravating circumstances, making it more appropriate to deviate, such as, but not limited to, a licensee's efforts in combination with the state or city to prevent the sale of alcohol to minors or, in the converse, when a licensee has a history of repeated violations of state or local liquor laws. When deviating from these standards, the council will provide written findings that support the penalty selected. When a violation occurs, the staff shall provide information to the City Council to either assess the presumptive penalty or depart upward or downward based on extenuating or aggravating circumstances. The staff shall notify the licensee of the information being considered and acted upon by the City Council.

The following violations are presumed to require revocation of the license on the first violation:

- Commission of a felony related to the licensed activity.
- Sale of alcoholic beverages while license is under suspension.
- Sale of intoxicating liquor where only license is for 3.2 percent malt liquor.

Other violations, including the following shall have a presumed penalty as indicated below:

- Sale of alcoholic beverages to underage persons.
- Sale of alcoholic beverages to obviously intoxicated person.
- After hours sale/display/consumption of alcoholic beverage.
- Illegal gambling on premises.
- Failure to take reasonable steps to stop person from leaving premises with alcoholic beverages (on-sale allowing off-sale).

1. For on-sale license holders who participate in optional manager and server training and prove the person who sold or served alcohol had received city approved alcohol beverage server training within the previous year:
 - a. For a first violation, the license holder will be given a warning letter.
 - b. For a second violation in 36 months, the mandatory minimum penalty shall be a \$500.00 fine and a one day suspension.
 - c. For a third violation in 36 months, the mandatory minimum penalty shall be a \$500.00 fine and a three day suspension.
 - d. For a fourth violation in 36 months, the mandatory minimum penalty shall be a \$1,000.00 fine and a five day suspension.
 - e. For a fifth violation in 36 months, the license shall be revoked, or in alternative, the license shall not be renewed.
 2. For on-sale license holders who do not participate in optional manager and server training:
 - a. For a first violation, the mandatory minimum penalty shall be a \$500.00 fine and a one day suspension.
 - b. For a second violation in thirty-six (36 months, the mandatory minimum penalty shall be a (\$500.00 fine and a three day suspension.
 - c. For a third violation in 36 months, the mandatory minimum penalty shall be a \$1,000.00 fine and a five day suspension.
 - d. For a fourth violation in 36 months, the license shall be revoked, or in alternative, the license shall not be renewed.
 3. For off-sale license holders who participate in optional manager and server training and prove the person who sold or served alcohol had received city approved alcohol beverage server training within the previous year:
 - a. For a first violation, the license holder will be given a warning letter.
 - b. For a second violation in 36 months, the mandatory minimum penalty shall be a \$500.00 fine.
 - c. For a third violation in 36 months, the mandatory minimum penalty shall be a \$500.00 fine and a three day suspension.
 - d. For a fourth violation in 36 months, the mandatory minimum penalty shall be a one thousand dollar (\$1,000.00 fine and a five day suspension.
 - e. For a fifth violation in 36 months, the license shall be revoked, or in alternative, the license shall not be renewed.
 4. For off-sale license holders who do not participate in optional manager and server training:
 - a. For a first violation, the mandatory minimum penalty shall be a \$500.00 fine.
 - b. For a second violation in 36 months, the mandatory minimum penalty shall be a \$500.00 fine and a three day suspension.
 - c. For a third violation in 36 months, the mandatory minimum penalty shall be a \$1,000.00) fine and a five day suspension.
 - d. For a fourth violation in 36 months, the license shall be revoked, or in alternative, the license shall not be renewed. (Ord. 1280, 03-31-03)
- C. Hearing and Notice: If, after considering the staff's information, the City Council proposes to suspend or revoke a license, the licensee shall be provided written notice of the City Council's proposed action and shall be given the opportunity to request a hearing on the proposed penalty by providing the City a written notice requesting a hearing within ten days of the mailing of the notice of the City Council's proposed action. The notice of the proposed action of the City Council shall state the nature of the charges against the licensee and the action the City Council proposes to take, shall inform the licensee of the right to request a hearing prior to the action being final, and shall inform the licensee of the date the City Council's proposed action will be considered a final decision if a hearing is not requested. Any hearing, if

requested, will be conducted in accordance with Minnesota statutes section 340A.415 and sections 14.57 to 14.69 of the Administrative Procedures Act (“APA”). If a hearing is requested, the licensee shall be provided a hearing notice at least ten days prior to the hearing, which shall state the date, time and place of the hearing and the issues involved in the hearing. An independent hearing officer shall be selected by the City Council to conduct the hearing and shall make a report and recommendation to the City Council pursuant to the provisions of the APA. The City Council shall consider the independent hearing examiner’s recommendation and issue its final decision on the suspension or revocation. (Ord. 1243, 11-27-2000; Ord. 1280, 3-31-03) (Ord, 1336, 5-08-2006)

Don Pablos

facsimile transmittal

To: Sgt. Joshua Arneson

Fax: 651-792-7200

Roseville Police

From: Meschele Clark

Date: 1/19/2010

Re: Sale To Minor Violation

Pages: 3

CC:

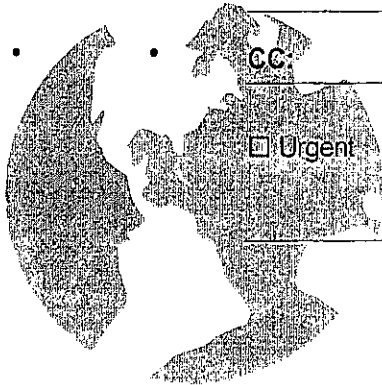
Urgent

For Review

Please Comment

Please Reply

Please Recycle



URGENT – PLEASE REVIEW IMMEDIATELY

[Faded, illegible text]

RITTA

706-342-4552

800-765-7894

150 Hancock St.
Madison, GA 30650

Restaurant Corp.

January 19, 2010

Sergeant Joshua Arneson
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Don Pablo's – Sale to a Minor Violation

Dear Sergeant Arneson:

I am in receipt of your letter dated December 31, 2009 concerning the sale to a minor violation that occurred at our Don Pablo's located at 2700 Lincoln Drive in Roseville Minnesota.

Your records show that this is our second violation within the past thirty-six (36) months with the first one occurring December of 2007. Our company, Don Pablo's Operating, LLC who is the current licensee did not own this location in December of 2007. Our ownership was not effective until February 27, 2008 and all permits were transferred accordingly. The ownership history for this location is set forth below:

Previous Structure

Prior to February 27, 2008, Don Pablo's Operating Corp. (EIN 75-2594685) was the owner/licensee

Current Structure

Effective February 27, 2008, Don Pablo's Operating, LLC (EIN 61-1551986) became owner/licensee

We believe that the violation that occurred on November 29, 2009 should be considered the first violation under the current owner/licensee. Also, we were not aware of our option to participate in a city approved server and training program. We would have made it mandatory that our team to attend.

At Don Pablo's we hold the responsible sale and service of alcohol in the highest regard. We truly understand the importance of complying with regulations concerning the privilege to sale alcohol in our establishment. It is the stated policy of Don Pablo's to never serve a minor and to card anyone that looks under the age of thirty years of age. Furthermore, it is our stated policy that we never serve alcohol to any person without proper identification. We have taken disciplinary measures and have reviewed our policies with our employees in an effort to avoid this occurrence in the future.



Page 2
City of Roseville
January 19, 2010

I would appreciate if you would contact me at 706-343-2405 or MClark@dp-h.com to discuss this matter further prior to the hearing scheduled on February 8, 2009.

Best regards,



Meschele Clark
Director of Legal Affairs

cc: Acting Chief Rick Mathwig
City Council
Bill Malinen, City Manager



MEMORANDUM



DATE: January 21, 2010
TO: Acting Chief Mathwig
FROM: Sergeant Arneson
SUBJECT: Don Pablos Violation of 12/28/2009

After careful review, it is the opinion of the Police Department to continue with the proposed penalty to Don Pablos. Attached is documentation that will be forwarded to the City Manager's office for inclusion in the packets for the January 25, 2010 Council meeting.

I will also be forwarding this information to the City Attorney for their review.

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

07037357

12/15/2007 21:18:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4113 LIQUOR-MS-MINOR PURCHASE OR ATTEMPT TO PURCHASE

Primary Reporting Officer: Jennings, Brooke

Name of location/business:

Primary squad: 2599

Location of incident: 2700 LINCOLN DR

Secondary reporting officer:

ROSEVILLE, MN 55113

Approver: Williams, Scott

District: 2581

Date & time of occurrence: 12/14/2007 13:00:00 to

Site:

12/14/2007 20:00:00

Arrest made: Yes

Secondary offense:

Secondary MOC:

Police Officer Assaulted or Injured:

Police Officer Assisted Suicide:

Crime Scene Processed:

OFFENSE DETAILS**LIQUOR LAW-FURNISHING LIQUOR TO A MINOR**

Attempt Only:

Appears to be Gang Related:

Crime Scene**Method & Point of Entry**

Type: Office/commercial

Force used:

Hid Inside:

Description: Restaurant

Point of entry:

Method:

ARRESTS**Cited**

Name: Springer, Jill Agnus

Booking date: 12/14/2007

Date & time of arrest: 12/14/2007 16:00

Booking time: 16:00

Arrest made on view:

Booking #:

Arrest made on warrant or previous CN:

Warrant number:

Originating agency: RPD

Warrant type:

Charge/Citation/Bail Amount: Admin Citation #17958, \$250 fine

NAMES**Arrestee**

Springer, Jill Agnus

KNOWN

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

07037357

12/15/2007 21:18:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4113 LIQUOR-MS-MINOR PURCHASE OR ATTEMPT TO PURCHASE

Nicknames or Aliases

Nick Name:

Alias:

AKA First Name:

AKA Last Name:

Details

Sex: Female

Race: |

DOB: |

Resident Status:

Hispanic:

Age: |

from

to

Phones

Home:

Cell:

Contact: |

Work: 651-639-3916

Fax:

Pager:

Employment

Occupation:

Employer:

Identification

SSN:

License or ID#: W023294493305

License State: MN

Physical Description

US:

Metric:

Height: to

Build:

Hair Length:

Hair Color:

Weight: to

Skin:

Facial Hair:

Hair Type:

Teeth:

Eye Color:

Blood Type:

Offender Information

Arrested: Yes

Pursuit engaged:

Violated Restraining Order:

DUI:

Resistance encountered:

Condition:

Taken to health care facility:

Medical release obtained:

Other

Nicknames or Aliases

Nick Name:

Alias:

AKA First Name:

AKA Last Name:

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

07037357

12/15/2007 21:18:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4113 LIQUOR-MS-MINOR PURCHASE OR ATTEMPT TO PURCHASE

Details

Sex: Male Race: _____ DOB: _____ Resident Status: _____
 Hispanic: _____ Age: 18 from to

Phones

Home: _____ Cell: _____ Contact: _____
 Work: _____ Fax: _____ Pager: _____

Employment

Occupation: STUDENT Employer: _____

Identification

SSN: _____ License or ID#: N904195907813 License State: MN

Other

Elicerio, Kim Marie
 2700 LINCOLN DR
 ROSEVILLE, MN 55113

Nicknames or Aliases

Nick Name: _____
 Alias: _____
 AKA First Name: _____ AKA Last Name: _____

Details

Sex: Female Race: _____ DOB: _____ Resident Status: _____
 Hispanic: _____ Age: _____ from to

Phones

Home: _____ Cell: _____ Contact: _____
 Work: 651-639-3916 Fax: _____ Pager: _____

Employment

Occupation: MANAGER Employer: _____

Identification

SSN: _____ License or ID#: _____ License State: _____

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

07037357

Date and Time of Report

12/15/2007 21:18:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4113 LIQUOR-MS-MINOR PURCHASE OR ATTEMPT TO PURCHASE

SOLVABILITY FACTORS

Suspect can be Identified: Yes

By: Police

Photos Taken:

Stolen Property Traceable:

Evidence Turned In:

Property Turned In:

Related Incident:

Lab

Biological Analysis:

Fingerprints Taken:

Narcotic Analysis:

Items Fingerprinted:

Lab Comments:

Participants:

Person Type:	Name:	Address:	Phone:
Arrestee	Springer, Jill Agnus		
Other			
Other	Elicerio, Kim Marie	2700 LINCOLN DR ROSEVILLE, MN 55113	

NARRATIVE

On 12/14/2007 at approx 1600hrs, while performing alcohol compliance checks, the bartender at Don Pablo's served to my underage buyer.

(09/18/1989) was the underage buyer. I searched _____ confirming he had only one valid MN DL. A digital photo was taken to document the clothing and identity of the underage buyer. _____ watched the RPD Underage Buyer Educational Video prior to performing the buys. A CDR of the digital photo was placed into PL#9.

At approx 1600hrs _____ entered Don Pablo's, he walked upstairs and sat at the bar. I waited in the car due to a low number patrons at the restaurant. The following is a brief synopsis of _____ underage purchase at Don Pablo's. The bartender later identified as Jill Agnus Springer _____ approached _____ and asked for his order. _____ ordered a bottle of Miller Lite Beer. Springer did not ask for _____ ID, or ask his age. Springer opened a bottle of Miller Lite, and gave it to _____.

_____ placed his coat on the bar stool, came to the main entrance, and motioned me to come in. _____ informed me the Springer had sold an alcoholic beverage to him. We re entered the restaurant, and informed me who sold the alcoholic beverage to him. I approached Springer and informed her she had failed the alcohol compliance check. I also informed Don Pablo's manager Kim Marie Elicerio _____, of the failure. Please note Springer started a "tab" for _____, so no buy money was exchanged.

ORIGINAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

Date and Time of Report

07037357

12/15/2007 21:18:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

M4113 LIQUOR-MS-MINOR PURCHASE OR ATTEMPT TO PURCHASE

Springer was given Administrative Citation #17958 for underage sale, with a fine of \$250.00. Elicerio was told she would be receiving a follow up letter from us in the mail.

The Miller Lite Bottle/contents and a receipt of the sale was placed into PL#9.

Nothing Further.

PUBLIC NARRATIVE

Alcohol Compliance Check, Fail.

SUPPLEMENTAL OFFENSE / INCIDENT REPORT

Complaint Number Reference CN

07037357

Date and Time of Report

02/11/2008 12:25:00

Primary offense:

LIQUOR LAW-FURNISHING LIQUOR TO A MINOR

Primary MOC:

Primary Reporting Officer: Marshall, Matthew*Name of location/business:**Primary squad:**Location of incident:* 2700 LINCOLN DR*Secondary reporting officer:*

ROSEVILLE, MN 55113

*Approver:**District:* 2581*Date & time of occurrence:* 12/14/2007 13:00:00 to*Site:*

12/14/2007 20:00:00

*Arrest made:**Secondary offense:**Secondary MOC:*

*Police Officer Assaulted or Injured:**Police Officer Assisted Suicide:**Crime Scene Processed:*

NARRATIVE

On 01/29/2008, the Roseville City Council meet to hear the facts of the case and after hearing all the evidence presented proposed to impose the presumptive penalty for a first offense for an establishment that does not participate in Roseville's optional manager and server training program of a one day suspension and a \$500.00 fine. The Police Chief has determined the suspension of Don Pablo's liquor license shall occur on Friday February 29, 2008. City of Roseville Administrative Offense Citation #17079, along with a letter of Council's action and appeal process was mailed to Don Pablo's.

PUBLIC NARRATIVE