




FLUEGEL LAW FIRM P.A.

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To: Honorable Mayor & City Council
From: Daniel J. Fluegel, City Attorney 
Date: February 12, 2020
Item: Alcohol Compliance Check Failures – Jake's Discount Liquor LLC

Council Action Requested.

The City Council is requested to conduct a hearing, unless waived, and consider the administrative penalty to be assessed against Jake's Discount Liquor LLC which failed a recent alcohol compliance check.

Background Information.

As the Council is aware, the Hastings Police Department conducted routine alcohol compliance checks on December 17, 2019 at several licensed establishments in the City of Hastings. The compliance checks resulted in a failure at Jake's Discount Liquor LLC located at 1608 Vermillion Street in Hastings. This is a first time violation for this establishment and this establishment is not currently enrolled in the Best Practices Program identified in Hastings City Code §111.10.

City Code §111.10 provides presumptive penalties for alcohol compliance check failures and in this case when the licensee is not enrolled in the Best Practices Program, the presumptive penalty identified by the ordinance is a \$1,000.00 civil penalty and a three day license suspension with at least one of the suspension days being on a Friday or Saturday.

Following notice to the City Council, I had notified the licensee of the violation and provided an opportunity for the business to enter into a written stipulation acknowledging the liquor license violation and accepting the presumptive penalty set forth above. I spoke with Richard Jacobson on behalf of the licensee and based on that conversation, it is my understanding they will request a hearing before the City Council.

It remains possible I will receive some contact after the date of this memo but before the City Council meeting. If no stipulation is returned and a hearing is not waived by the licensee, then I will intend to call the police officer who conducted the alcohol compliance checks and also the underage buyer to testify as to the circumstances surrounding the alleged violation. The City Council will need to make written findings as to that violation, and then will need to impose a penalty consistent with the ordinance and state law. The licensee has the right to written notice of the hearing (which has been provided) an opportunity to present evidence in the form of testimony or document evidence, to cross examine any witnesses brought by the City, to be present personally or with an attorney, to have the proceedings transcribed by a court reporter at

their cost, to have the City make an audio recording of the proceedings, and to a written order establishing the findings and issuing a decision.

Minnesota Statute §340A.415 and Hastings City Code §111.10 provide that the City Council may revoke a license, suspend a license for up to 60 days, or impose a civil penalty not exceeding \$2,000.00 for each violation of state law or the City's Liquor License Ordinance. The City Council is therefore authorized to consider any request on behalf of the licensee to impose any penalty within these parameters.

As an aside, the employee who sold to a minor causing this failure has been charged by formal complaint with the gross misdemeanor crime of providing alcohol to minors. The criminal process involving this individual is completely separate from any administrative penalty imposed by the City relating to the liquor license of the establishment.

If I receive any additional information prior to the hearing, I will update the Council when introducing this matter on Tuesday night. As always please do not hesitate to contact me if you have any questions regarding this matter.

Financial Impact.

None.

Attachments.

Proposed Resolution Making Findings, Conclusion and Decision Imposing Civil Penalty upon Licensee.

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**CITY OF HASTINGS
DAKOTA COUNTY, MINNESOTA**

RESOLUTION 2- -20

**A RESOLUTION MAKING FINDINGS, CONCLUSION AND DECISION IMPOSING
A CIVIL PENALTY UPON JAKE'S DISCOUNT LIQUOR LLC**

BE IT RESOLVED, by the City Council of the City of Hastings, Minnesota, as follows:

WHEREAS, a hearing was held by the City Council pursuant to Hastings City Code Section 111.10, and Minnesota Statute § 340A.415 on February 18, 2020, at which testimony and written evidence were received; and

WHEREAS, a representative of Jake's Discount Liquor LLC was present and was afforded the opportunity to and did participate in the hearing on behalf of the licensee.

NOW, THEREFORE, based upon the evidence and testimony the City Council of the City of Hastings makes the following:

FINDINGS

1. Jake's Discount Liquor LLC (hereinafter "Jake's Discount Liquor"), 1608 Vermillion Street, Hastings, Minnesota holds an off-sale intoxicating liquor license issued by the City of Hastings.
2. On December 17, 2019, an employee of Jake's Discount Liquor sold an alcoholic beverage to an underage customer, who was an undercover person authorized by the City of Hastings to assist with compliance checks of alcohol license holders.
3. The employee of Jake's Discount Liquor is subject to prosecution in Dakota County District Court for selling alcohol to a person under the age of 21 in violation of Minnesota Statute § 340A.503, Subd. 2(1) and Hastings City Code Section 111.13(B)(8).
4. Jake's Discount Liquor has had no prior liquor license violations for sales to underage persons.
5. Jake's Discount Liquor is not currently enrolled in the City of Hastings Best Practices Program as established under Hastings City Code Section 111.10.

CONCLUSION

1. Jake's Discount Liquor sold alcoholic beverages to a person under the age of 21 in violation of Minnesota Statutes § 340.503, Subd. 2(1) and Hastings City Code Section 111.13(B)(8).
2. The presumptive penalties for a liquor licensee is a \$1,000.00 civil penalty and a three day license suspension with at least one suspension day being a Friday or Saturday. The suspension dates shall be determined by the City Administrator.

ORDER

IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 340A.415 and Hastings City Code Section 111.10, that Jake's Discount Liquor is subject to a \$1,000.00 civil penalty and a three day license suspension with at least one suspension day to be on a Friday or Saturday and the suspension date to be determined by the City Administrator. The civil penalty must be paid within 30 days of the date of this order. Failure to comply with this order will subject the licensee to further sanctions.

By order of the City Council of the City of Hastings, Minnesota, February 18, 2019.

Mary D. Fasbender, Mayor

ATTEST:

Julie A. Flaten, Administrative Services Director