# REQUEST FOR COUNCIL ACTION

Date: June 11, 2012 Item No.: 12.b

Department Approval

City Manager Approval



Item Description: ADMINISTER PRESUMPTIVE PENALTY APPROVAL — GREEN

MILL RESTAURANT ALCOHOL COMPLIANCE FAILURE

#### **Background**

On March 26<sup>th</sup>, 2012, 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. The letter included notice of recent changes to Roseville City Ordinances regarding mandatory liquor licensee training programs and penalties for noncompliance. Also in the letter were instructions for the City of Roseville mandatory liquor licensee training program and the name of a police contact should a business need additional information on the licensee program. Training was to be completed by every employee prior to the employee selling or serving alcohol and documentation of this training was to be completed and kept on file by the business.

#### **Compliance Failure**

On Saturday, April 14, 2012, a plain clothes Roseville Police Officer, along with an underage buyer, entered Green Mill Restaurant, 1595 West Hwy. 36, Roseville, MN to conduct an alcohol compliance check. The underage buyer and the plain clothes police officer entered the business and the underage buyer and officer went directly to the bar. The underage buyer requested a Miller Lite beer. The bartender asked the underage buyer for his identification. The underage buyer provided the bartender his Minnesota photo driver's license. The bartender looked at the license and handed it back to the buyer and sold him a bottle of Miller Lite beer for \$2.85. The underage buyer provided the bartender a \$20.00 bill for payment and received change. The plain clothing police officer then administratively cited the bartender for the violation and released him. On May 3, 2012, Green Mill Restaurant was mailed a letter requesting documentation of a City of Roseville approved liquor licensee training program. This documentation was to be received by the police department no later than May 11, 2012. Lt. Rosand received correspondence from Green Mill Restaurant management on May 9, 2012, which documented the employee in question had last completed an approved liquor license training program on July 23, 2011. This is Green Mill Restaurant's first liquor compliance failure/violation in the last thirty six (36) months.

#### **Staff Recommendation**

Issue and administer the presumptive penalty pursuant to City Code Section 302.15, for on-sale license holders for the first violation within thirty-six (36) months. The mandatory minimum penalty shall be a one thousand dollar (\$1,000.00) fine and a one (1) day suspension.

#### **Council Action Requested**

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

#### Prepared by: Lt. Lorne Rosand

#### Attachments:

- A: Police Report
- B: Letter announcing compliance checksC: Notifications of failure and investigation
- D: Documentation from Green Mill Restaurant regarding training
- E: Letter announcing Council Meeting



## ROSEVILLE POLICE DEPARTMENT INCIDENT REPORT

ICR# 12009930 JUVENILE: AGENCY ORI# MN0620800 **Reported:** 04-14-2012 1652 First Assigned: 1652 Commited Start: 04-14-2012 1652 Commited End: 04-14-2012 Title: Alcohol Compliance Failure How Received: None Selected Summary: Sale of alcohol to underage 21 person at business. Location(s) GREEN MILL Address: 1595 HIGHWAY 36 W City: Roseville State: MN **Zip:** 55113 Country: USA OFFICERS Officer Assigned: Johnson, Sean Badge No: S-19 **Primary:** Yes Officer Assigned: Rosand, Lorne (Administrative Action) Badge No: 3 Primary: No MOC: M4102 Literal: LIQUOR - SELLING Statute: 340A-401 UCR: 22 Involvement: Subject
Address: 1595 Highway 36
Phone: (Business) (651)633-2108 Name: Green Mill City: Roseville State: MN **Zip:** 55113 Country: **Involvement:** Cited DOB: Name: Rolfes, Ryan Charles Age Sex: Race: Height: Weight: Address: 24643 260TH ST City: RICHMOND State: MN **Zip:** 56368 Country: Phone: (Work) (651)633-2100 Phone: (Cell) + Eye Color: BLU Hair Color: DOB: --**Involvement:** Other Name: Sabaluro, William Age: Sex: Race: Height: 0 Weight: 0 Phone: (Work) (651)633-2100

**Involvement:** Mentioned Name: Gillen, John DOB: --

Sex: Height: 0 Age: Race: Weight: 0 Address: 1595 Hwy. 36 West City: Roseville State: MN **Zip:** 55113 Country: USA

Phone: (Cell) (952)564-7080

Bin: A44 Value: \$ 3.12 EVIDENCE **BarCode:** 12-08290 Item Type: Alcohol Container, empty

Description: Miller Lite Beer bottle

Location

Address: 1595 HIGHWAY 36 W City: Roseville State: MN **Zip:** 55113 Country: USA

#### Supplemental Report

ICR: 12009930 04-17-2012 1906

**Title:** Failed Alcohol Compliance Check Created By: Sean Johnson

On 04-14-2012, XXXXXX XXXX (XXXXXXXXXXX) acted as my underage alcohol buyer. XXXX viewed the underage buyer instructional video prior to beginning compliance checks. I searched XXXX and noted he only had one Valid ID (a MN photo DL, which clearly stated he was underage 21. I took a digital photograph of XXXX, and made a photocopy of his drivers license.

At appx 1642 hours, XXXX and I walked into the Rosedale Green Mill (1595 Hwy 36) and went to the bar. XXXX requested a Miller Lite bottle. Rolfes (MN photo ID) brought the bottle to the bar, and requested identification from XXXX. XXXX provided him with his license. Rolfes handed the beer to XXXX. XXXX was initially charged \$ 2.85 for the beer and handed \$20.00 to Rolfes which was later retrieved by management and returned to me.

I identified myself as a Roseville police officer and advised Rolfes that he served alcohol to an 18 year old. I advised store manager of the incident and that police department would be following up with the business.

I propertied the Miller Lite bottle and receipt of sale and placed them as evidence in PL#9.

I cited Rolfes with administrative citation #22118 for selling alcohol to an underage person.

Nothing further.

#### Supplemental Report

ICR: 12009930 05-03-2012 0904

Title: Administrative Citation Paid Created By: Lorne Rosand

On Monday, April 16, 2012 at 0959 hours, Ryan Rolfes paid his \$250.00 administrative fine for serving alcohol to a minor. I attached the paid receipt to the media file of report.

Rolfes portion of this investigation has been completed.

Report for informational purposes.

#### Supplemental Report

ICR: 12009930 05-03-2012 0943

Title: Training Records Request Created By: Lorne Rosand

On Thursday, May 3, 2012, the attached letter titled 05-03-2012 Green Mill Letter was sent to bar manager John Gillen. In this letter to Gillen, I am asking for all alcohol server training records for this establishment.

Gillen has a deadline of Friday, May 11, 2012 to provide me with all alcohol server records.

#### Supplemental Report

ICR: 12009930 05-10-2012 1036

Title: Server Training Records Created By: Lorne Rosand

On Wednesday, May 9, 2012, I received a manila envelope from John Gillen who is the manager of Green Mill Restaurant located at Rosedale Center.

Inside of the envelope, was a copy of the *Green Mill Responsible Beverage Service* training document every employee who serves alcohol is required to read. I have reviewed this training document and am of the opinion this document meets the city's training alcohol server requirements.

I have attached a copy of this training document to the Media section of this case file.

The packet from Gillen also contained copies of server training records for 16 Green Mill employees who completed the Green Mill Responsible Beverage Service training. Included in the training records was a signed training certificate indicating Ryan Rolfes (server who sold alcohol to minor) had last completed alcohol server training on **July 23, 2011**. See attached Media file document labeled Ryan Rolfes Training.

Of the 15 remaining server training records:

- 7 employees received their alcohol server training *after* the April 14, 2012 alcohol violation.
- 2 employees received their alcohol server training on 4-7-2012.

- 1 employee received alcohol server training on 4-30-2011. I should note it appears the date of training has been altered on this specific certificate.
- 2 employees received their alcohol server training in 2010.
- 2 employees received their alcohol server training in 2007.
- 1 employee has a signed certificate but no date documenting when training occurred.

In summary, of the 16 employee server documents I received from Green Mill, approximately 1/3 of the employees are not current with their alcohol server training.

Report is for informational purposes.

#### Supplemental Report

ICR: 12009930 05-18-2012 1716

Title: Council Meeting Letter Created By: Lorne Rosand

On Friday, May 18, 2012, I sent the attached letter to John Gillen who is the general manager of Green Mill restaurant summarizing the April 14, 2012 underage alcohol violation and advising him of the June 11, 2012 council meeting.

I have scanned and attached a copy of this letter in the report's media file.

Report is for informational purposes.



Date

Business Address Roseville, MN 55113

ATTN: MANAGER

Please thoroughly review the following information as it pertains to alcohol compliance checks conducted by the Roseville Police Department, relative to your establishment.

The City of Roseville began alcohol compliance checks on licensed alcoholic beverage sellers in 1997. At that time, the compliance rate was only 70%. Nearly 30% of our licensees failed those compliance checks. Our goal is to achieve 100% compliance. We need your cooperation to make that happen.

The Roseville Police Department conducts yearly compliance checks to insure licensed alcoholic beverage sellers in the City of Roseville are complying with State law and Roseville Code Provisions relating to the selling of alcoholic beverages.

Please review the following relating to sales of alcohol to underage persons:

Minnesota Statute Chapter 340A.503 PERSONS UNDER 21; ILLEGAL ACTS.

- Subdivision 1. Consumption.
  (a) It is unlawful for any:
  - (1) retail intoxicating liquor or 3.2 percent malt liquor licensee, municipal liquor store, or bottle club permit holder under section 340A.414, to permit any person under the age of 21 years to drink alcoholic beverages on the licensed premises or within the municipal liquor store;
- Subdivision 2. Purchasing. It is unlawful for any person:
  - (1) to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age;

The City of Roseville has passed Chapter 302, Roseville's Liquor Control Ordinance. The Roseville Police Department encourages you to become familiar with the Liquor Control Ordinance. It can be obtained at the Roseville City Hall or in the city code at www.ci.roseville.mn.us.

The civil penalties for underage alcoholic beverage sales are set forth in the Roseville City Code. Presumptive penalties are set forth in § 302.15 of the Code. These penalties vary depending upon whether it is a first time violation, a second time violation, a third time violation, etc.

The Roseville Police Department has worked with City alcoholic beverage licensees to promote training for both servers and managers to prevent sales of alcohol to underage persons, and to prevent other violations of the Liquor Control Ordinance. All licensees and their managers, and all employees or agents employed by the licensee that sell or serve alcohol, must complete a city approved or city provided liquor licensee training program. Free training packets are available from the City. Contact Kelly Roberto of the Roseville Police Department at kelly.roberto@ci.roseville.mn.us to receive a packet or the names of approved trainers.

#### Both the City's approval and 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.

Your business must maintain documentation that you have properly trained every employee that sells or serves alcohol, and produce such documentation upon reasonable request made by a peace officer, health officer or properly designated officer or employee of the city. The City will not maintain these records for you. Additional penalties may be assessed if you are unable to provide documentation or it is determined the employee did not under-go the required training.

## The mandatory minimum penalty for the sale of alcoholic beverages to underage individuals is a \$1,000 fine and a one day suspension.

These penalties are civil in nature. Please be aware criminal penalties may also be imposed for violations of the Liquor Control Ordinance.

The Roseville Police Department will conduct two compliance checks in 2012 beginning this spring. Please remind your employees of their legal and moral responsibility not to sell or serve alcoholic beverages to anyone under the age of 21.

Once again, we encourage you to review Roseville City Code, Chapter 302, to insure that you have familiarized yourself with the local regulations applicable to your establishment. If you have any questions, please contact Lt. Lorne Rosand at 651-792-7211.

Sincerely,

Rick Mathwig Chief of Police



May 3, 2012

John Gillen Green Mill Restaurant 145 Rosedale Center Roseville Minnesota 55113

John Gillen and/or General Manager:

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 Roseville Code 302 has been enclosed for your review. Please note Section 302.15 of code where minimum penalties are stipulated.

On April 14, 2012, a Green Mill Restaurant employee named Ryan Rolfes sold an alcoholic beverage to a minor in violation of the attached code. Our records indicate that this is your first violation in the previous thirty-six (36) months. Therefore, pursuant to Section 302.15 of Roseville City Code, the presumptive penalty for a first violation for sale of an alcoholic beverage to a person under the age of twenty-one is a minimum penalty of a \$1,000.00 fine and a one (1) day suspension.

This incident is currently under investigation by the Roseville Police Department. You are being asked to provide a training certificate documenting Ryan Rolfes has completed a city approved or provided liquor license training program. I must receive a copy of Rolfe's training certification from you by Friday, May 11, 2012. Failure to provide this training certification may result in additional penalties because of non compliance. You are also being mandated to provide server training records for all employees who are authorized to serve liquor at your establishment. These server training documents are also due by Friday, May 11, 2012.

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 manager and server training program and the history of compliance checks at your establishment. Once the date of the Council meeting is established, I will send you notice.

A representative of your establishment may appear at the Council meeting 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 during normal business hours at my desk telephone number of 651-792-7211.

Sincerely,

Lorne R. Rosand Lieutenant

Roseville Police Department

**Enclosure** 

Cc: Rick Mathwig – Chief of Police

Bill Malinen - City Manager



## Responsible Beverage Service

#### 5 Steps to Responsible Alcohol Service:

#### 1. Carding:

- You must ALWAYS check the identification of each guest who looks under the age of 30 for alcohol purchases and under the age of 18 for tobacco purchases.
- The only acceptable form of ID is a valid driver's license with a picture.
- If any person gives you trouble about checking their ID, or presents and ID that looks like it has been tampered with or is false, notify your Manager immediately. Check birth dates, expiration dates, and pictures closely.
- Talk to your guests before they order anything. This allows you to take a careful look at the person to compare with the ID and enables you to establish a base personality of the person.
- POLITELY ASK your guests to remove their ID from their wallet. This way you can check for any alterations, such as breaks in the state seal or too much lamination.

Minors tend to "give themselves away" by

- Being nervous or uncomfortable
- Avoiding eye contact with you
- Look too young
- If you are not sure about the date, check the date in your server book. If you were born before this date in this year. Do the math if you need to be sure.

#### 2. Monitor:

- As a server of alcohol, you are responsible for knowing who is consuming those beverages. Watch for minors who join the table. Be cautious of parents sharing alcoholic beverages with their underage children.
- Count drinks served to each guest and the time frame in which they were consumed. Slowing down consumption rather than stopping service is a lot easier for everyone.
- Suggest food when guests first begin drinking. Alcohol in small quantities increases appetite while heavy drinking decreases appetite. Promoting food will also increase your sales, which in turn will increase your tips.
- People drink less while they are eating

#### 3. Identify:

• Intoxication is not always easy to determine; however, there are visible signs which most people display when they are under the influence. You must be aware of these changes in behavior. They are:

Inhibitions: As people relax with a drink, so do their inhibitions. Signs: Overfriendliness, loudness, sudden mood swings.

<u>Judgments:</u> As people drink more, their ability to make rational decisions decreases, including the decision to drive.

Signs: Drinking faster, ordering doubles, becoming argumentative.

Reaction: A person who has slowed reactions is either close to or at the blood alcohol concentration point to be considered legally drunk.

Signs: Forgetfulness, glassy eyes, loss of balance, sloppiness.

Coordination: Too much alcohol causes impaired coordination. Most people at this stage are easy to spot!

Signs: Trouble walking, spilling drinks, difficulty lighting a cigarette.

#### 4. Intervene:

- Never accuse a guest of being drunk. If they are, their judgment is impaired and they might create a scene. If they are not, you have made an insulting accusation.
- Managers will always be responsible for intervening in the event a guest needs to be denied service or sale of alcohol.
- When all else fails, blame it on the law. You can be personally held responsible if something was to happen. Penalties are stiff!

## 5. Know and Obey the Law:

- The Dram Shop Act: is a state law that basically states that if a guest is served an alcoholic beverage by an employee and then is involved in any type of accident that harms him/her or a third party, the person who served the last drink, you, can be personally sued as can Green Mill. This is an extremely important law for you to know and it should enable you to feel comfortable about denying service to or "cutting guests off".
- It is illegal to serve 1) a minor and 2) an intoxicated person.



## Useful Tips for Valid ID's

#### What to Look For:

- The card's expiration date. Do not accept the license if the date is expired.
- The word "duplicate" on the front of the card. Someone else may have the original card.
- Glue lines or bumpy surfaces by the picture or birth date. Uneven surfaces often indicate tampering.
- Consistency of numbers. The typeset for the birth date should match the lettering used on the rest of the license.
- Use a black-light or magnifying glass for close inspection of security features such as ultraviolet printing or micro-printing.
- The state logo. A state seal or logo that is partially missing or appears altered is another clue to a fake card.
- Pin holes on the surface. Bleach may have been inserted to "white out" certain aspects of a date.
- The card's reverse side lettering. While the front may appear flawless, often counterfeiters merely photocopy the reverse side. Look for blurring lettering.
- Size, color, lettering, thickness and corners. Compare the questionable ID against a "standard"-your own driver's license.

#### What to Ask if you Spot Anyone of These Problems:

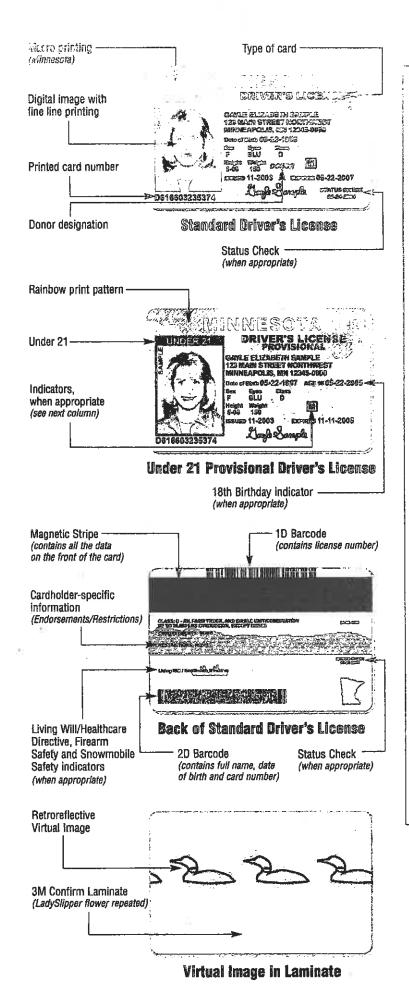
- Ask for a second piece of ID. People with fake ID's rarely carry backup identification.
- Quiz the cardholder about basic information on the card, such as birth date middle initial, zip code, etc.

#### **Bottom Line:**

• If you are not absolutely convinced that the card is authentic, DO NOT SERVE the guest.

#### Proof of Age:

- A valid driver's license issued by Minnesota, another state or Canada that includes the photograph, date of birth and expiration date.
- A valid state ID card issued by Minnesota, another state or Canada province that includes the photograph, date of birth and expiration date.
- A military ID with expiration date.
- A valid passport by a visitor from a foreign country other than Canada. This DOES NOT include a US Passport.



- Each card is the size and shape of a standard credit card but is more flexible and has a somewhat different texture.
- On the front of the card, a virtual image of a loon appears to float above or sink below the surface as the viewing angle changes.
- A digital image of the cardholder is fused with heat into the card plastic. Fine line printing over the image reveals tampering attempts. The image always appears on the left.
- A red border around the image indicates "Under 21."
- If the cardholder is under 18, date of 18th birthday appears in red.
- "Status Check" indicates a temporary visitor to the United States and the date the cardhoider's authorized presence in this country is expected to end.
- Information, including restrictions and endorsements, is specific to each cardholder.
- A holographic state seal that appears on the front of the card is visible only under ultraviolet light.
- Indicators on front of card:
  - A Metro Mobility
  - T Senior Citizen Public Transit Reduced Fare
  - L Limited Mobility
  - M Medical Alert
  - P Standby or Temporary Custodian

Minnesota Department of Public Safety
Driver and Vehicle Services
444 Cedar Street
St. Paul, MN 55101
www.mndriveinfo.org



This establishment maintains a consistent, firm, written policy on the service and sale of alcoholic beverages and tobacco products to the public. All employees must follow this policy; failure to do so may result in an employee's immediate dismissal.

- 1. Alcoholic beverages will be served or sold only by designated employees who have been trained to discover if patrons are of legal age and who have been trained to determine if a patron is approaching or is visibly intoxicated.
- 2. No employee will serve a patron an alcoholic beverage or sell tobacco products that are under-age.
- 3. No employee will serve a patron who is "obviously', or "visibly" intoxicated.
- 4. If any customer of this establishment has been refused service or been denied a purchase because of or condition of intoxication, all employees will exercise caution that this customer does not possess or consume any alcoholic beverage, regardless of how it was obtained by this customer.
- 5. It is policy of this establishment that servers of alcoholic beverages or salespeople selling alcohol report to management their observations and evidence that a patron may be approaching intoxication. These observations may be based on calculating approximate Blood Alcohol Levels, on the actual behavior of patrons, regardless of how many drinks consumed, or upon judgment of the employee alone.
- 6. Management takes the responsibility of the intervening in the event a customer needs to be denied service or sale of alcohol.
- 7. Once a decision has been made to deny service or a sale to any customer, that decision cannot be reversed for the rest of the day. In other words, once someone has be "cut off", they remain "cut off" for the day.
- 8. Every reasonable effort will be made to help prevent a patron who is nearly or "obviously" intoxicated from driving upon leaving our establishment. In the event an employee feels the patron is unable to operate a vehicle responsibly, he or she will notify management who may call the police if necessary to handle the matter.
- 9. A brief report on the form provided or as instructed must be completed to describe any incidents, which relate to these policies. It is both your and our documentation that an incident was handled in compliance with these policies.

I agree to follow all points in this policy statement to the best of my ability.

7-23-11
Employee Signature

Date





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05/04/12 Date



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Employee Signature Date



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Employee Signature

A-30-7012 Date



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Mandy Wirrwoord 4/7/18

Employee Signature Date



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Tancal 14-29-10



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Employee Signature



May 18, 2012

John Gillen General Manager Green Mill Restaurant 1595 West Hwy. 36 Roseville Minnesota 55113

John Gillen;

Reference Roseville PD Case File 12-009930: April 14, 2012 Green Mill Restaurant Alcohol Compliance Failure.

On Monday, June 11, 2012, the Roseville City Council will discuss the April 14, 2012 alcohol compliance failure at Green Mill Restaurant. Staff has recommended Council impose the presumptive penalty of a \$1000.00 fine and one (1) day liquor license suspension.

A representative of your establishment may appear at the time of the council discussion 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 this meeting, the City Council will act without any input from your establishment.

#### Summary of Violation:

March 26, 2012:

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.

April 14, 2012:

A Green Mill Restaurant bar employee served an underage compliance buyer an alcoholic beverage. The Green Mill employee server looked at the compliance checker's driver's license and sold him a Miller Lite Beer. This violation was witnessed by a plain clothing police officer. The employee server

was administratively cited for the violation.

April 16, 2012:

The Green Mill Restaurant server/violator pays a \$250.00 administrative fine to the City of Roseville

for violating city code.

May 9, 2012:

Green Mill Restaurant provides server training documentation showing the offending server last

received alcohol server training on July 23, 2011.

Roseville City Council will consider staff recommendation specific to this violation at its regular meeting scheduled for <u>Monday, June 11, 2012.</u> Council discussion of this violation will occur during the "Business Actions" segment of the meeting.

Finally, please be advised if another violation should occur, further penalties will be invoked. If you have any questions, you can reach me at my desk telephone number of 651-792-7211 during normal business hours.

Sincerely,

Lorne Rosand Lieutenant

Cc:

Rick Mathwig – Chief of Police Bill Malinen – City Manager Roseville City Council