

**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: June 9, 2014  
Item No.: 13.d

Department Approval

City Manager Approval



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Item Description:      **PRESUMPTIVE PENALTY APPROVAL —SMASHBURGER  
RESTAURANT ALCOHOL COMPLIANCE FAILURE**

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2      **Background**

3      On or about March 31st, 2014, all businesses with a city liquor license were mailed a packet from the Roseville  
4      Police Department announcing two city wide alcohol compliance checks to be conducted before the end of the  
5      calendar year. On the front of the packet envelope stamped in 3/8" letters were the words "ALCOHOL  
6      COMPLIANCE!" The 3/8" stamped words were intentionally placed on the front of the envelope to ensure the  
7      mailing would be directed to the business owner/manager/alcohol compliance employee. The envelope packet  
8      included notice of recent changes to Roseville City Ordinances regarding mandatory liquor licensee training  
9      programs and penalties for noncompliance. Also in the letter was a complete copy of the City of Roseville Manager  
10     and Server Training Program and the name and telephone number of a police contact should a business have any  
11     questions/concerns relating to alcohol compliance.  
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13     **Compliance Failure**

14     On Thursday, May 1, 2014, at 4:40 p.m., a plain clothes Roseville Police Officer, along with a 19-year old underage  
15     buyer, entered the Smashburger Restaurant, 2100 North Snelling Avenue, Roseville Minnesota, to conduct an  
16     alcohol compliance check. The underage buyer and the plain clothes police officer approached the restaurant's  
17     service counter. A server approached and asked the underage compliance checker for her order. The underage  
18     compliance checker asked for a bottle of Summit EPA Ale. The server asked the underage compliance checker for  
19     her identification. The compliance checker provided the server her Minnesota photo drivers license which displays  
20     her date of birth as 10-24-1994. The server looked at the compliance checker's license and then provided the  
21     underage compliance checker with an open bottle of Summit EPA Ale. The server asked the compliance checker for  
22     \$3.28 for the ale which the checker provided. The officer identified himself as police officer and asked the server  
23     why she served alcohol to an underage person? The server stated she was confused with the dates on the  
24     identification. The server was administratively cited for the violation and released.  
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26     On Friday, May 23, 2014, an attorney representing Smashburger Restaurant advised the department none of the  
27     restaurant's employees had completed manager/server alcohol training.  
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29     This is the Smashburger Restaurant's second liquor compliance failure/violation within the last thirty six (36)  
30     months. Smashburger's first compliance violation occurred on September 13, 2011. At the November 14, 2011  
31     council meeting, council ordered a 1-day liquor license suspension and a \$1,000.00 fine.  
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33     **Staff Recommendation**

34     Issue and administer the presumptive penalty pursuant to City Code Section 302.15, for on-sale license holders for  
35     the second violation within thirty-six (36) months. The mandatory minimum penalty shall be a two thousand dollar  
36     (\$2,000.00) fine and a five (5) day suspension.  
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38     Discuss violation of City Code Section 308.08C, Manager and Server Training. Failure to comply with this  
39     provision in its entirety is sufficient grounds for denial or non-renewal of a requested license in 2014.

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**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 CN/14011435
- B: Letter announcing compliance checks and enclosures
- C: Letter announcing Council Meeting

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The FP and I approached the service counter where they were met by employee, Sharae Michelle Pierson DOB 08/19/1992 . The FP then asked for a Bottle of Summit EPA and nothing else. Pierson then asked for the FP's identification which the FP provided to her. After looking at the identification Pierson provided the FP with an opened bottle of Summit EPA.

Pierson told FP that she owed \$3.28. The FP gave her a \$10.00 bill, and received the proper change. A copy of the receipt was scanned to the report.

I identified myself as a police officer and made contact with the server, Pierson. Pierson was informed of the violation and she advised me that she was confused with the dates on the identification.

I spoke with Peres (Manager) about the situation. She told me that she understood what I had explained, and that she would follow up with the police department in the next week. I gave her a business card for Lt. Rosand.

Pierson was issued administrative citation #11364 for selling to an underage party.

See attached for additional information.

#### Supplemental Report

**ICR:** 14011435

**Last Modified:** 05-21-2014 0852

**Title:** Attorney Information

**Created By:** Lorne Rosand

On Tuesday, May 20, 2014, I received a telephone call from a woman who identified herself as Kate Becker (mentioned).

Becker said she is the attorney representing Smashburger Restaurant specific to the May 1, 2014 alcohol compliance failure. Attorney Becker asked all future correspondence specific to the compliance failure go through her office.

Report for informational purposes.

#### Supplemental Report

**ICR:** 14011435

**Last Modified:** 05-23-2014 1208

**Title:** Sharae Pierson - Formal Charging Supplement

**Created By:** Lorne Rosand

On Wednesday, May 21, 2014, I issued citation number 620800100146 to Sharae Pierson (cited) for violating Minnesota State Statute 340A.503 Subd 2(1) - serving alcohol to a person under the age of 21-years, a misdemeanor offense.

It was on Thursday, May 1, 2014 at 1640 hours, Pierson was employed as a cashier/server at Smashburger restaurant when she sold alcohol to a 19-year old police compliance checker. On the day of the violation, Officer Dattilo issued Pierson an administrative citation (#11364) for the offense.

When the administrative citation (\$250.00) wasn't paid, I attempted to contact Pierson but learned the telephone number she had provided Officer Dattilo was not her telephone number.

After waiting 3-weeks for the payment of this administrative fine, I issued Pierson the attached criminal citation and mailed it along with a cover letter to Pierson's last reported home address (according to DVS records).

See the report's media file for a scanned copy of the criminal citation and cover letter mailed to Pierson.

On Friday, May 23, 2014, I was informed by the Roseville City Attorney's office that selling alcohol to a minor is in fact a gross misdemeanor violation of Minnesota State Statute 340A.702(8).

On same date, I requested the above listed misdemeanor citation be dismissed by the courts.

On same date, I mailed Pierson the attached letter advising her citation had been dismissed and she will be formally charged by the Roseville City Attorney's Office at a later date.

I scanned my May 23, 2014 letter to Pierson to the report's media file.

Report for informational purposes.

#### Supplemental Report

**ICR:** 14011435

**Last Modified:** 05-23-2014 1310

**Title:** Manager/Server Training Records

**Created By:** Lorne Rosand

On Thursday, May 15, 2014 at 1330 hours, I traveled to Smashburger Restaurant located at 2100 North Snelling Avenue.

Upon my arrival, I entered the restaurant, approached the counter and asked to speak with the on-duty manager.

I was directed to a woman who identified herself as Elizabeth Peres (assistant manager).

Upon meeting Peres, I provide her my business card and paper copy of Roseville City Ordinance 302 - Liquor Control.

I explained to Peres I was in need of copies of all employee alcohol server training documentation.

Peres explained Larry Fitzpatrick was the restaurant's general manager but was out for the day. Peres said she would pass my business card and documentation onto Fitzpatrick when he returns to work the following day. I advised Peres I needed all employee alcohol server training documents no later than Thursday, May 22, 2014. Peres understood.

On Tuesday, May 20, 2014, I received a telephone call from a woman who identified herself as Kate Becker (mentioned). Becker explained she was the attorney representing Smashburger specific to the May 1, 2014 Alcohol Compliance Failure.

Becker advised me she would be the point of contact person for all future contacts/correspondence with Smashburger Restaurant.

Becker said she was aware I was seeking manager/server alcohol training documentation on all employees who serve alcohol at the Roseville Smashburger Restaurant location. Becker said she was working with restaurant management to obtain those documents and would have them to me by my Thursday, May 22, 2014 deadline.

On Thursday, May 22, 2014, I received a late afternoon voice mail message from Becker indicating she had a late afternoon situation she needed to attend and promised to call me Friday, May 23, 2014 to discuss Smashburger's training records.

On Friday, May 23, 2014 at approximately 9:00 a.m., Becker called to advise Smashburger had **no** manager/server alcohol training records to provide police. Becker advised since the May 1, 2014 alcohol compliance violation, management and employees who serve alcohol have completed the Roseville Alcohol Server Training. Becker said she would e-mail me a PDF showing proof Smashburger management and staff had completed their mandated training.

Becker did in fact e-mail me two PDF files showing Smashburger employees had in fact completed Roseville Alcohol Server Training but all training was completed post May 1, 2014 alcohol compliance failure.

On Friday, May 23, 2014, I mailed Attorney Becker as well as Smashburger General Manager Fitzpatrick the attached letter advising the Roseville City Council will take action (RCA) specific to the May 1, 2014 alcohol compliance failure at their Monday, June 9, 2014 council meeting.

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

I will supplement this report after the Monday, June 9, 2014 Roseville Council meeting.

Report 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. For your convenience, a complete copy of Roseville Liquor Control Ordinance Chapter 302 has been enclosed for your review. Roseville's ordinances are also available for on-line viewing at [www.cityofroseville.com](http://www.cityofroseville.com)

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. A City of Roseville Manager/Server Approved Training Program is included in this packet for your convenience.

Additional city approved licensee training/resources are listed in the enclosed manager/server training packet.

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.

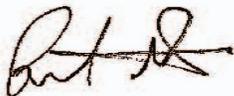
**The mandatory minimum penalty (imposed upon the licensee) for the sale of alcoholic beverages to underage individuals is a \$1,000 fine and a one day suspension.**

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 a minimum of two compliance checks in 2014 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

Enclosures:  
Roseville City Code Chapter 302  
Roseville City Approved Manager and Server Training Program

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May 23, 2014

Lawrence Fitzpatrick  
General Manager  
Smashburger Restaurant  
2100 North Snelling Avenue  
Roseville Minnesota 55113

Mr. Lawrence Fitzpatrick;

Reference Roseville PD Case File 14-011435: May 1, 2014 Smashburger Restaurant Alcohol Compliance Failure

On Monday, June 9, 2014, the Roseville City Council will discuss the May 1, 2014 alcohol compliance failure at Smashburger Restaurant. Staff has recommended Council impose the presumptive penalty of a \$2000.00 fine and five (5) 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 31, 2014: 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 will be conducted before the end of the year.
- May 1, 2014: A Smashburger Restaurant employee served an underage compliance buyer an alcoholic beverage. The Smashburger Restaurant employee/server provided an underage alcohol compliance checker with a Summit EPA Ale. This violation was witnessed by a plain clothing police officer.
- May 23, 2014: The attorney representing Smashburger Restaurant specific to this violation informed police the restaurant does not have any current manager/server alcohol documents for any of their employees who serve alcoholic beverages as required by city code.

Roseville City Council will consider staff recommendation specific to this violation at its regular meeting scheduled for Monday, June 9, 2014. 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  
Patrick Trudgeon – City Manager  
Roseville City Council  
Smashburger Attorney Kate Becker