

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: Nov 14, 2011
Item No.: 12.d

Department Approval

City Manager Approval



Item Description: **PRESUMPTIVE PENALTY APPROVAL—COURTYARD
MARRIOTT ALCOHOL COMPLIANCE FAILURE**

1
2 **Background**

3 On March 28th, 2011, all businesses with a liquor license in the City of Roseville were mailed a letter from the
4 Roseville Police Department announcing two alcohol compliance checks would be conducted before the end of the
5 year. The letter included notice of recent changes to Roseville City Ordinances regarding mandatory liquor licensee
6 training programs and penalties for noncompliance. Also in the letter were instructions for the City of Roseville
7 mandatory liquor licensee training program and the name of a police contact should a business need additional
8 information on the licensee program. Training was to be completed by every employee prior to the employee selling
9 or serving alcohol and documentation of this training was to be completed and kept on file by the business.

10
11 **Compliance Failure**

12 On Tuesday, September 27, 2011, a plain clothes Roseville Police Officer, along with an underage buyer, entered the
13 Courtyard Marriott, 2905 Centre Pointe Dr, Roseville, MN to conduct an alcohol compliance check. The underage
14 buyer approached the bar and ordered a bottle of Bud Light beer. The bartender never asked the underage buyer for
15 identification. The bartender then sold the underage buyer a bottle of Bud Light beer. The bartender was
16 administratively cited for the violation and released. On October 5, 2011, Courtyard Marriott was mailed a letter
17 requesting documentation of a City of Roseville approved liquor licensee training program. This documentation was
18 to be received by the Police Department no later than October 14, 2011. Lt. Rosand received correspondence from
19 Courtyard Marriott management on October 10, 2011, which documented the employee in question had last
20 completed a City of Roseville approved liquor license training program on July 25, 2006. This is Courtyard
21 Marriott's second liquor compliance failure/violation in the last thirty six (36) months. Courtyard Marriott's first
22 violation occurred on June 24, 2010.

23
24 **Staff Recommendation**

25 Issue and administer the presumptive penalty pursuant to City Code Section 302.15, for on-sale license holders for
26 the second violation within thirty-six (36) months. The mandatory minimum penalty shall be a two thousand dollar
27 (\$2,000.00) fine and a five (5) day suspension.

28
29 Discuss violation of City Code Section 302.08, *Manager and Server Training*. Failure to comply with this provision
30 in its entirety is sufficient grounds for denial or nonrenewal of a requested license in 2012.

31
32 **Penalty For Noncompliance:** In addition to any criminal penalties which may be imposed by a court of law, the
33 City Council may suspend a license for up to 60 days, may revoke a license and/or may impose a civil fine on a
34 licensee not to exceed \$2,000.00 for each violation on a finding that the license holder or its employee has failed to
35 comply with a statute, rule or ordinance relating to alcoholic beverages, non-intoxicating malt liquor or wine.

36
37 **Council should also be aware of the following:**

38 **Minnesota Statute 340A.402 PERSONS ELIGIBLE.**

39 No retail license may be issued to:

- 40 (1) a person under 21 years of age;
- 41 (2) a person who has had an intoxicating liquor or 3.2 percent malt liquor license revoked
- 42 within five years of the license application, or to any person who at the time of the violation owns
- 43 any interest, whether as a holder of more than five percent of the capital stock of a corporation
- 44 licensee, as a partner or otherwise, in the premises or in the business conducted thereon, or to a
- 45 corporation, partnership, association, enterprise, business, or firm in which any such person is
- 46 in any manner interested;
- 47 (3) a person not of good moral character and repute; or
- 48 (4) a person who has a direct or indirect interest in a manufacturer, brewer, or wholesaler.
- 49 In addition, no new retail license may be issued to, and the governing body of a municipality
- 50 may refuse to renew the license of, a person who, within five years of the license application,
- 51 has been convicted of a felony or a willful violation of a federal or state law or local ordinance
- 52 governing the manufacture, sale, distribution, or possession for sale or distribution of an alcoholic
- 53 beverage. The Alcohol and Gambling Enforcement Division or licensing authority may require
- 54 that fingerprints be taken and forwarded to the Federal Bureau of Investigation for purposes
- 55 of a criminal history check.

56

57 **Council Action Requested**

58 Allow the Roseville Police Department to issue and administer the presumptive penalty as set forth in Section

59 302.15, of the Roseville City Code or other action as determined by the Roseville City Council.

60

Prepared by: Lt. Lorne Rosand

Attachments:

- A: Police Report
- B: Letter announcing compliance checks
- C: Notifications of failure and investigation
- D: Documentation from Courtyard Marriott regarding training
- E: Letters announcing Council Meeting

61



ROSEVILLE POLICE DEPARTMENT

INCIDENT REPORT

ICR# 11027913	AGENCY ORI# MN0620800	JUVENILE:
INCIDENT	Reported: 09-27-2011 1822 First Assigned: 1822 First Arrived: 1822 Last Cleared: 1900 Committed Start: 09-27-2011 1808 Committed End: 09-27-2011 1810 Title: Alcohol Violations How Received: None Selected Short Description: Alcohol Compliance check failed. See Report to be completed this week at completion of checks. Summary: On Sale Alcohol Violation- Serve alcohol to person under 21. Report will be completed this week. Location(s) The Courtyard By Marriot Address: 2905 CENTRE POINTE DR City: Roseville State: MN Zip: 55113	
	Officer Assigned: Johnson, Sean Badge No: S-19 Primary: Yes Dt/tm Assigned: -- Time Arrived: Time Cleared:	
	MOC: M4102 Literal: LIQUOR - SELLING Statute: 340A-401 UCR: 22	
	Names Involvement: Cited Name: Gutz, Patricia Ann DOB: Age: Sex: Race: Height: Weight: Address: 10211 Isetta St City: CIRCLE PINES State: MN Zip: 55014 Phone: (Cell) (763)516-1491 Phone: (Business) (651)746-8000 ID Number(s) ID Type: DL / ID Number ID #: State: MN Year: Class: D	
Involvement: Other Name: DOB: Age: Sex: Race: Height: Weight: Address: 10035 RUSSELL AVE N City: BROOKLYN PARK State: MN Zip: 55444 Phone: (Home) (612)987-6682 Phone: (Work) (651)367-2032 Phone: (Business) (651)746-8000 Eye Color: Hair Color: ID Number(s) ID Type: DL / ID Number ID #: State: Year: Class: D		
Involvement: Other Name: XXXXXXXXXXXXXXX XXXXXXXX XXXXXX DOB: XX-XX-1991 Age: 20 Sex: M Race: Height: XXX Weight: XXX Address: XXXX XXXXX XX City: XXXXXXXXXXX State: XX Zip: XXXXX Phone: XXXXXX XXXXXXXXXXXXXXX Eye Color: XXX Hair Color: ID Number(s) ID Type: DL / ID Number ID #: XXXXXXXXXXXXXXX State: Year: Class: X		
Involvement: Mentioned Name: Harris, Alan DOB: -- Age: Sex: Race: Height: 0 Weight: 0		

Address: 2905 Centre Pointe Drive

City: Roseville

State: MN

Zip: 55113

Phone: (Work) (651)367-2031 **Email:** (Work)aharris@csmpcorp.net

Supplemental Report

ICR: 11027913

09-29-2011 1557

Title: Sale to Person under 21 Violation

Created By: Sean Johnson

On 09/27/2011 I conducted alcohol compliance checks in the city of Roseville. My under 21 buyer was XXXXXXXX XXXXXX XXXXXXXXXXXX (XXXXX/1991). Both XXXXXXXXXXXX and myself were in plain clothes.

We entered The Courtyard by Marriot restaurant and bar area at approximately 1806 hours and the under 21 person XX XXXXXXXXXXXX sat down at the bar. I stood approximately 6-8 feet away and observed the server, later identified via MN DL as Patricia Ann Gutz (07/23/1958), approach and asked XXXXXXXXXXXX if he would like something to drink. XXXXXXXXXXXX requested a bottle Bud Light beer. Gutz never asked to see any form of identification for XXXXXXXXXXXX.

Gutz came back a short time later and handed XXXXXXXXXXXX the Bud Light bottle of beer and took his \$20.00 (dept issued buy money) and place it in the register.

I identified myself as a Roseville Police Officer and made my department issued badge available to see. I asked Gutz if she checked XXXXXXXXXXXX's ID which she stated she did not because he looked of age. I advised Gutz that XXXXXXXXXXXX's MN DL clearly showed he was under 21 years of age. I asked Gutz if I could speak to her manager.

Manager Christie Gambino presented herself and I advised her of the situation.

Gutz was issued administrative citation #22493 for selling on sale alcohol to a person under 21 years of age. Gutz was released on scene.

A copy of XXXXXXXXXXXX's MN DL was placed in the paperwork portion of the report.

A photo of the beer provided to XXXXXXXXXXXX by Gutz was taken with a copy being placed in the media portion of the report.

Nothing Further.

Supplemental Report

ICR: 11027913

10-13-2011 1615

Title: Supplement Report

Created By: Lorne Rosand

On Wednesday, October 10th, the Courtyard general manager e-mailed me Patricia Gutz's server training record. See attachment.

Upon review of the document, I learned Gutz received her alcohol server training back on July 25, 2006. Gutz's alcohol training is well outside of the server city code limits - 302.08C.

On this same date, I learned Gutz had paid her administrative penalty in full on September 30, 2011.

Report is for informational purposes.

Supplemental Report

ICR: 11027913

10-13-2011 1629

Title: New General Manager Information

Created By: Lorne Rosand

On Wednesday, October 12, 2011, I received an e-mail from Alan Harris who identified himself as the new general manager of the Courtyard by Marriott.

Harris also provided me an electronic copy of Gutz's alcohol server training certificate.

I have added Harris' contact information to the incident report.



March 28, 2011

Applebee's Neighborhood Grill
ATTN: MANAGER
1893 West Highway 36
Roseville, MN 55113

*- Sample -
This letter was sent to
all businesses.*

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. The Roseville Police Department does 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 a Liquor Control Ordinance. It is Chapter 302 of the Roseville City Code. The Roseville Police Department encourages you to become familiar with the Liquor Control Ordinance of Roseville. It can be obtained at the Roseville City Hall. It can also be reviewed and downloaded by going to the City of Roseville website, www.ci.roseville.mn.us.

The civil penalties for underage alcoholic beverage sales are set forth in the Roseville City Code. There are presumptive penalties 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.

March 28, 2011

Page 2

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 provided liquor licensee training program. Free training packets are available from the City. You can obtain information regarding the program by contacting Kelly Roberto of the Roseville Police Department, at kelly.roberto@ci.roseville.mn.us.

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.

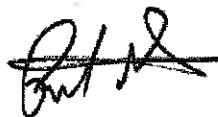
The mandatory minimum penalty for the sale of alcoholic beverages to underage individuals is a \$1,000 fine and a one day suspension.

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 do two compliance checks in 2011 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



October 5, 2011

Christie Gambino
Courtyard by Marriot
2905 Centre Pointe Drive
Roseville Minnesota 55113

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

On September 27, 2011, a Courtyard by Marriot employee named Patricia Gutz sold an alcoholic beverage to a minor in violation of the attached code. Our records indicate that this is your second violation in the previous thirty-six (36) months. Therefore, pursuant to Section 302.15 of Roseville City Code, the presumptive penalty for a second violation for sale of an alcoholic beverage to a person under the age of twenty-one is a minimum penalty of a \$2,000.00 fine and a five (5) day suspension.

This incident is currently under investigation by the Roseville Police Department. You are being asked to provide a training certificate documenting Patricia Gutz has completed a city approved or provided liquor license training program. **I must receive a copy of Gutz's training certification from you by Friday, October 14th. Failure to provide this training certification may result in additional penalties because of non compliance.**

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

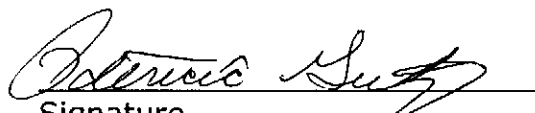
Enclosure

Cc: Rick Mathwig – Chief of Police
Bill Malinen – City Manager

RESPONSIBLE MANAGER/SERVER TRAINING CERTIFICATION

Courtyard Roseville 2905 Centre Pointe DR.
Establishment & Address Roseville, MN. 55113

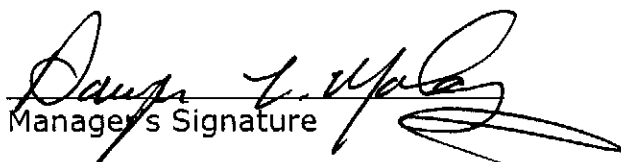
I acknowledge that I have been taught and understand the attached training material on responsible alcohol beverage serving and I have been given the opportunity to ask questions about any portion I do not understand. I have been given a copy of the training material to keep and review. I acknowledge, as a condition of employment, that I am responsible for compliance with the attached training material and I will manage my behavior to attain zero errors in performance.


Signature

7-25-06
Date

PATRICIA GOETZ
Printed name

6-28-2004
Date of Hire


Manager's Signature

7-25-2006
Date of Training

Darryn Maloney
Manager's Printed Name

EDUCATIONAL INSTITUTE
AMERICAN HOTEL & LODGING ASSOCIATION



Phone: 517-372-8800 • Fax: 517-372-5141 • E-mail: contact@ei-ahla.org • www.ei-ahla.org
2113 N. High St., Lansing, MI 48906, USA

May 10, 2006

Dear Patricia A. Gutz:

Congratulations on successfully completing Controlling Alcohol Risks Effectively (CARE) for Servers, the Educational Institute's responsible alcohol service program. Your score of 84 percent or greater on the CARE exam shows that you are well aware of the issues and concerns involved in the responsible service of alcohol. Your CARE for Servers card is attached. You can present this card as proof of your training to those who request it. This letter also includes verification of your training for your employee file. Please detach the Verification Record, located at the lower left of this letter, and give it to your employer or other appropriate person. If you have any questions, please contact your instructor or the Educational Institute.

Once again, congratulations on your achievement, and best of luck to you in your hospitality career.

Scott Pierce
President

(Detach this lower part and give to your employer)



Verification Record for Employee File

Educational Institute of the
American Hotel and Lodging Association

Hereby confirms that **Patricia A. Gutz**
has successfully completed the Controlling Alcohol
Risks Effectively (CARE) Program on **April 30, 2006**

President

CARE® for Servers

The recipient of this card: **Patricia A. Gutz**
has successfully completed the Controlling Alcohol
Risks Effectively (CARE) Program on **April 30, 2006**

President



CARE® for Servers

The recipient of this card: **Patricia A. Gutz**
has successfully completed the Controlling Alcohol
Risks Effectively (CARE) Program on April 30, 2006

President



On Premise	SSN:	XXX-XX-XXXX
10/23/2007	Expires:	8/22/2010
Issued: 2258518	D.O.B.:	XX/XX/XXXX
ID#:		

TRISH GUTZ
2905 CENTER POINT
Falcon Heights, MN 55113

For service visit us online at www.gettips.com
Joel Dahlberg, 45806



October 28, 2011

Alan Harris
General Manager
Courtyard by Marriott
2905 Centre Pointe Drive
Roseville Minnesota 55113

Mr. Alan Harris;

Reference: September 27, 2011 Courtyard by Marriott Alcohol Compliance Failure.

On Monday, November 14, 2011, the Roseville City Council will discuss the September 27, 2011 alcohol compliance failure at the Courtyard by Marriott. Staff has recommend Council impose the presumptive penalty of a \$2,000.00 fine and five (5) day liquor suspension. The penalty for non compliance with mandatory liquor licensee training program may be considered for non renewal or denial of your 2012 liquor license.

A representative of your establishment may appear at the time of 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 28, 2011: All businesses with a liquor license in the City of Roseville were mailed a letter from Roseville Police Department announcing two alcohol compliance checks would be conducted before the end of the year.

September 27, 2011: A Courtyard by Marriott employee serves an underage compliance buyer an alcoholic beverage without asking the buyer for identification. This violation is witnessed by a plain clothing police officer. The employee server is administratively cited for the violation.

September 30, 2011: The Courtyard by Marriott server/violator pays a \$250.00 administrative fine to the City of Roseville for violating city code.

October 10, 2011: The Courtyard by Marriott provides server training documentation showing the offending server last received alcohol server training on July 25 2006 well outside of the alcohol server code.

Roseville City Council will consider staff recommendation specific to this violation at its regular meeting scheduled for **Monday, November 14, 2011**. 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 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