

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b>	December 6, 2010
	<b>Agenda Item No.</b> <b>Roll Call No.</b> <b>Communication No.</b> <b>Submitted by:</b>	<b>33</b> <u><b>10-2013</b></u> <u><b>10-733</b></u> <b>Phil Delafield</b> <b>Community</b> <b>Development Director</b>

**AGENDA HEADING:**

Second reading on Zoning Text Amendment to revise the applicability of Conditional Use Permit Requirements for businesses selling liquor, wine and/or beer.

**SYNOPSIS:**

The proposed zoning text amendment would modify the exemption provided in Section 134-954 for grocery stores and pharmacies that sell alcohol products to require that at least 60% of gross revenue be derived from the sale of merchandise other than liquor, wine, or beer and tobacco products. Any new or proposed grocery store or pharmacy that does not satisfy this requirement must receive a conditional use permit from the Zoning Board of Adjustment to sell liquor, wine and/or beer. Any existing grocery store or pharmacy that meets the current terms of the exemption (no more than 50% gross revenue from the sale of liquor, wine and/or beer) will be allowed to continue under the existing provisions until at least December 31, 2013. However, an existing grocery store or pharmacy will have to comply with the new terms of the exemption when they apply for their first annual renewal of a liquor license after December 31, 2013. If they do not comply with the new terms of the exemption at that time, they must receive a conditional use permit from the Zoning Board of Adjustment to continue sale of liquor, wine and/or beer. No amendments are proposed to the existing exemption for restaurants. The proposed ordinance also allows the City to require the submittal of financial reports necessary to validate compliance with provisions for the exemption of grocery stores, pharmacies and restaurants. Staff recommends approval of the proposed text amendment.

**FISCAL IMPACT: NONE**

**ADDITIONAL INFORMATION:**

Chapter 134 of the City Code currently requires a business to obtain a conditional use permit from the Board of Adjustment to sell liquor, wine or beer unless: 1) the business operates as a grocery store or pharmacy at least half of whose gross income is derived from the sale of merchandise other than liquor, wine or beer; or 2) a restaurant, at least half of whose gross income is derived from the sale of prepared food, and food related services.

Several “convenience stores without fuel sales” have established operations in Des Moines. They have claimed that they are “grocery stores” who derive less than 50% of their revenue from the sale of liquor, wine and beer. A significant portion of the remaining income generated by these grocery stores is derived from the sale of tobacco products. Some of the grocery stores have minimal products or inventory for sale other than alcohol and tobacco. Preliminary research by staff has indicated that

traditional grocery stores (i.e. Dahl's, Hy-Vee, etc.) will not likely be impacted by the proposed change. In addition, convenience stores with fuel sales will not likely be impacted by the proposed change.

Any new or proposed grocery store or pharmacy that does not satisfy new terms for the exemption must receive a conditional use permit from the Zoning Board of Adjustment to sell liquor, wine and/or beer. Any existing grocery store or pharmacy that meets the current terms for the exemption (no more than 50% gross revenue from the sale of liquor, wine and/or beer) will be allowed to continue under the existing provisions until at least December 31, 2013. However, any existing grocery store or pharmacy will have to comply with the new terms for the exemption when they apply for their first annual renewal of a liquor license after December 31, 2013. If they do not comply with the new terms for the exemption at that time, they will have to receive a conditional use permit from the Zoning Board of Adjustment to continue sale of liquor, wine and/or beer. Staff will provide a letter to the business owner and titleholder reminding them of the new requirements at the time of each annual renewal of a liquor license prior to December 31, 2013.

Conditional Use Permits may only be granted by the Zoning Board of Adjustment after public hearing. Notice of such hearing is provided to all owners of record of property and each neighborhood association that are within 250 feet of the subject property. In addition, the City Clerk will e-mail a web link to the City Council agendas on the Thursday prior to any City Council meeting to all neighborhood association contacts that are on file with the Community Development Department.

Existing Municipal Code Section 134-954 (2) states:

“The board shall grant a conditional use permit to a business holding a liquor license or a beer or wine permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.

- a. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.
- b. The business will not unduly increase congestion on the streets in the adjoining residential area.
- c. The operation of the business will not constitute a nuisance.”

In addition, existing Municipal Code Section 134-954(3) states:

“Any conditional use permit so granted by the board shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board to ensure that the criteria in subsection (2) of this section are satisfied:

- a. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one foot-candle of light on the parking surface at all time.
- b. The business shall comply with article IV of Chapter 42 of the Code pertaining to noise control.

- c. No sale of alcoholic beverages shall be made from a drive-through window.
- d. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
- e. The conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit.”

Finally, existing Municipal Code Section 134-954(4) states:

“If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the conditional use permit, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use permit for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such business exhibits a pattern of violating the conditions set forth in the conditional use permit, the board shall have the authority to amend or revoke the conditional use permit.”

#### **PREVIOUS COUNCIL ACTION(S):**

Date: November 22, 2010

Roll Call Number: 10-1962, 10-1963 and 10-1964

Action: On Zoning Text Amendment request to revise the applicability of Conditional Use Permit requirements for businesses selling liquor, wine or beer. (Council Communication No. 10-699) Moved by Hensley to adopt and approve the Text Amendments to the Municipal Code, subject to final passage of the ordinance. Motion Carried 7-0.

(A) First consideration of ordinance above. Moved by Hensley that this ordinance be considered and given first vote for passage; refer to the City Manager and Legal for review and recommendation regarding a process to amortize the existing businesses into compliance with the 60/40 regulations, and to create a process to notify affected Neighborhood Associations of any new license applications. Motion Carried 7-0.

(B) Communication from Valerie Cramer, 1163 24<sup>th</sup> Street, #200, to speak regarding new ordinance proposal. Moved by Hensley to receive and file comments. Motion Carried 7-0.

Date: November 8, 2010

Roll Call Number: 10-1838

Action: On Zoning Text Amendment request to revise the applicability of Conditional Use Permit requirements for businesses selling liquor, wine or beer, (11-22-10). Moved by Hensley to adopt. Motion Carried 7-0.

Date: October 11, 2010

Roll Call Number: 10-1695

Action: Communication from Planning and Zoning Commission regarding proposed text amendment revising the applicability of Conditional Use Permit requirements for businesses selling liquor, wine and beer. Sponsor: Council Member Hensley. Moved by Hensley to receive, file and adopt. Motion Carried 7-0.

Date: September 13, 2010

Roll Call Number: 10-1428

Action: Approving Alcoholic Beverage License Applications for the following: Moved by Hensley to defer consideration of item CC until October 25, to allow time to conduct an audit to verify the 50% or more in sales of products other than alcohol; also refer to the Legal Department to prepare an ordinance amendment to require 60% or more in sales of products other than alcohol and to also exclude tobacco products. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S):**

Board: Plan and Zoning Commission

Date: November 4, 2010

Resolution Number: 10-2010-5.05

Action: After holding a public hearing, the Plan and Zoning Commission voted 6-4-1 to recommend approval of the proposed Zoning Text Amendment.

Board: Plan and Zoning Commission

Date: October 7, 2010

Resolution Number: 10-2010-5.05

Action: The Plan and Zoning Commission voted 9-0 to approve a report from the Regulation and Ordinance Subcommittee regarding the draft ordinance and to forward a communication to the City Council requesting that the Plan and Zoning Commission be directed to notify affected parties and hold a public hearing on the proposed ordinance.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Third reading of the ordinance unless waived by 6/7th vote of the City Council.

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