

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date:</b> July 11, 2011
	<b>Agenda Item No.</b> 59 <b>Roll Call No.</b> <u>11-1253</u> <b>Communication No.</b> <u>11-451</u> <b>Submitted by:</b> Phillip Delafield, Community Development Director

**AGENDA HEADING:**

Extension of the temporary moratorium to prohibit new freestanding liquor stores in “C-3”, “C-3A”, “C-3B” and “C-3R” zoning districts and the temporary moratorium on the commencement of a business selling alcoholic liquors in the “C-1” District and at any location (citywide) which has not received a conditional use approval from the Zoning Board of Adjustment until September 13, 2011.

**SYNOPSIS:**

Community Development and Legal staff are working to prepare ordinances for consideration by the Plan and Zoning Commission and City Council. Staff recommends that both temporary moratoriums be extended to at least September 13, 2011 in order to accommodate code drafting, public information meetings, public hearing by P&Z, and public hearing and at least first reading by the City Council.

**FISCAL IMPACT: NONE**

Amount: N/A

Funding Source: N/A

**ADDITIONAL INFORMATION:**

On April 25, 2011 the City Council initiated amendments to the zoning ordinance to prohibit freestanding liquor stores in the “C-3”, “C-3A”, “C-3B” and “C-3R” zoning districts and established a moratorium on new freestanding liquor stores in such districts. The moratorium is scheduled to expire on July 11, 2011.

On May 23, 2011 the City Council initiated an amendment to the zoning ordinance to further regulate any business engaged in the sale of alcoholic liquors (i.e. requires “Class E” liquor license) and imposed a temporary moratorium on the commencement of any such business in the “C-1” District and at any location (citywide) which has not received a conditional use approval from the Zoning Board of Adjustment. The moratorium is scheduled to expire on August 9, 2011.

While the topics of each moratorium are interrelated, Staff does not believe that a permanent prohibition on liquor stores in the downtown district is necessary for the following reasons:

- The downtown is a mixed-use neighborhood that is commercially dominated with no known liquor stores. Conversely, there are numerous examples of liquor stores in C-2 districts that are

adjacent to, or in closer proximity to, purely residential districts. Based on the City's goal for the downtown to be a thriving, mixed-use neighborhood with additional residential uses and activity 24 hours per day / 7 days per week, it is staff's opinion that there will be market demand for a downtown liquor store at an appropriate location in the future.

- Bars/taverns are permitted in each of the referenced downtown districts subject to a conditional use permit review by the Board of Adjustment and have similar impacts to liquor stores. The City Council has not requested and staff does not recommend a prohibition of bars /taverns in the downtown districts. Allowing bars/taverns in downtown but prohibiting liquor stores treats uses with similar impacts differently.
- Recent changes to state code and city code allow c-stores to possess a class E liquor license without a separate entrance, cash register, etc. This means that additional uses are allowed in the downtown districts that will have similar impacts to liquor stores. Allowing c-stores but prohibiting liquor stores will treat uses with similar impacts differently.
- Liquor stores and bars/taverns have historically been treated equally by zoning in the City of Des Moines as they both require approval of a conditional use permit by the Board of Adjustment.
- 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:
  - a. 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.
  - b. 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.
  - c. The business will not unduly increase congestion on the streets in the adjoining residential area.
  - d. The operation of the business will not constitute a nuisance.
- Any conditional use permit so granted by the board shall also be subject to the following general conditions:
  - a. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times.
  - b. The business shall comply with article IV of chapter 42 of this 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.

- 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.
- The Board of adjustment has denied requests for a conditional use permit if the applicant has previously demonstrated operational issues with similar businesses or if there is a high concentration of liquor stores and bars/taverns in close proximity to a site.

However, after preliminary discussions with the Regulation and Ordinance Subcommittee of the Plan and Zoning Commission, staff believes that a single set of regulations can address the issues of both moratoriums and treat uses of similar impact and intensity equally. The following is a preliminary summary of proposed regulations:

- Create and/or amend definitions

***Gas Station / Convenience Store***- Any building or premises used for the retail sale of liquefied petroleum products for the propulsion of motor vehicles, and including such products as kerosene, fuel oil, packaged naphtha, lubricants, tires, batteries, antifreeze, motor vehicle accessories, and other items customarily associated with the sale of such products; for the rendering of services and making of adjustments and replacements to motor vehicles, and the washing, waxing, and polishing of motor vehicles, as incidental to other services rendered; and the making of repairs to motor vehicles except those of a major type. Repairs of a major type are defined to be spray painting; body, fender, clutch, transmission, differential, axle, spring and frame repairs; major overhauling of engines requiring the removal of an engine cylinder head or crankcase pan; repairs to radiators requiring the removal thereof; or complete recapping or retreading of tires. Examples: Dahl's Fuel, Hy-Vee Fuel, Git-N-Go, Kum&Go, Casey's, Quik Trip, Star, etc.

***Food Sales*** - Establishments or places of business primarily engaged in the retail sale of food or household products for home consumption. Food Sales establishments may include the sale of non-food items. Typical uses include groceries, delicatessens, meat markets, retail bakeries, and candy shops.

- Limited:** Establishments occupying facilities of less than 10,000 square feet; and characterized by sales of specialty foods or a limited variety of general items, but excluding the accessory sale of fuel for motor vehicles. Typical uses include delicatessens, meat markets, retail bakeries, candy shops, small grocery stores. Examples: Stam's, Highland Park Bakery, B&B Grocery, Findlay's Butcher Shop and Deli, Linn's Food Store.
- General:** Establishments selling a wide variety of food commodities and related items, using facilities larger than 10,000 but less than 40,000 square feet. Typical uses include grocery stores and locker plants. Examples: Gateway Market, Latapatia Grocery, Beaverdale Dahl's, Park Fair Fareway.
- Large:** Establishments selling a wide variety of food commodities, related items, and often providing a variety of non-food goods and services, using facilities larger than 40,000 square feet. Typical uses include large grocery stores. Examples: Ingersoll Dahl's, Fleur Hy-Vee, etc.

**Retail Sales and Services** - Sale or rental with incidental service of commonly used goods and merchandise for personal or household use but excludes those classified more specifically by these use type classifications. Typical uses include department stores, apparel stores, or establishments providing the following products or services: Household cleaning and maintenance products; drugs, cards, stationery, notions, books, cosmetics, and specialty items; flowers, plants, hobby materials, toys, and handcrafted items; apparel jewelry, fabrics and like items; cameras, photograph services, household electronic equipment, records, sporting equipment, kitchen utensils, supplies and framing, arts and antiques; interior decorating services; office supplies; mail order or catalog sales; bicycles; and automotive parts and accessories (excluding service and installation). Retail Sales and Services include:

- a. **Limited:** Establishments providing retail services, occupying facilities less than 10,000 square feet in a single establishment or multi-tenant facility. Typical establishments provide for specialty retailing or general purpose retailing oriented to Des Moines and its surrounding vicinity. Examples: Medicap Pharmacy, Ingersoll Dollar General.
- b. **General:** Establishments providing retail services, occupying facilities between 10,001 and 40,000 square feet in a single establishment or multi-tenant facility. Typical establishments provide for specialty retailing or general purpose retailing oriented to Des Moines and its surrounding vicinity. Examples: Ingersoll Walgreens, Beavertdale Walgreens.
- c. **Large:** Establishments providing retail services, occupying facilities over 40,000 square feet in a single establishment or multi-tenant facility. Typical establishments provide for general purpose retailing oriented to Des Moines and the surrounding region. Examples: SE 14th Wal-Mart, Merle Hay Target.

**Liquor Stores** - establishments or places of business engaged in retail sale for off-premise consumption of alcoholic beverages where more than 40% of revenue is derived from the sale of alcohol and tobacco. Examples: Ingersoll Liquor and potentially Forest Mart, Tobacco Outlets, Plaza Pantry, Oasis.

- Where Class E Liquor Sales should be allowed

	<b>C-1</b>	<b>C-2</b>	<b>C-3</b>	<b>C-3A</b>	<b>C-3B</b>	<b>C-3R</b>
<b>Gas Stations / Convenience Stores</b>	NO <sup>1</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>
<b>Food sales</b>						
Limited	NO <sup>1</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>
General	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>
Large	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>
<b>Retail sales</b>						
Limited	NO <sup>1</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>	YES <sup>1,3</sup>
General	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>
Large	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>	YES <sup>1,2</sup>
<b>Liquor Store</b>	NO	YES <sup>4</sup>	YES <sup>4</sup>	YES <sup>4</sup>	YES <sup>4</sup>	YES <sup>4</sup>

1 - beer and wine sales permitted by-right provided no more than 40% of revenue is derived from sale of beer, wine and/or tobacco.

- 2- beer, wine and liquor sales permitted by-right provided no more than 40% of revenue is derived from sale of beer, wine, liquor and/or tobacco
  - 3- liquor sales permitted subject to Conditional Use Permit from Board of Adjustment and provided no more than 40% of revenue is derived from the sale of beer, wine and liquor and/or tobacco
  - 4- liquor store permitted subject to conditional use permit from Board of Adjustment
- Increase the separation required for Class E liquor licenses from a church, daycare, park or school to 150 feet from 50 feet as zoning regulation.

Community Development and Legal staff are working to prepare the above regulations in ordinance form for consideration by the Plan and Zoning Commission and City Council. The following schedule is proposed:

July 2011	Complete draft of the ordinance
August 3, 2011	Public information meeting in City Council Chambers at 5 pm & 7 pm
August 18, 2011	Plan and Zoning Commission public hearing 6pm
August 29, 2011	City Council sets date of public hearing for September 12, 2011
September 12, 2011	City Council holds public hearing and first reading of the ordinance
September 26, 2011	City Council 2 <sup>nd</sup> reading of ordinance (unless waived)
October 10, 2011	City Council 3 <sup>rd</sup> reading of ordinance (unless waived)

**PREVIOUS COUNCIL ACTION(S):**

Date: May 23, 2011

Roll Call Number: 11-0914

Action: [Amending](#) Chapter 10 of the Municipal Code, regarding Class E Liquor Licenses, (amendment required due to recent State Code changes). **Moved by Hensley that this ordinance be considered and given second vote for passage. Motion Carried 7-0.**

(A) Initiating amendment to Zoning Ordinance to further regulate the allowed location of businesses engaged in the sale of alcoholic liquors for off-premise consumption, and imposing a temporary moratorium on the commencement of any such business in the “C-1” (Neighborhood Retail Commercial) District and at any location which has not received conditional use approval from the Zoning Board of Adjustment. **Moved by Hensley to adopt; refer to the City Manager to consider restricting distance from schools and sale of small bottles, and to keep the applicants informed throughout the moratorium period. Motion Carried 6-1. Absent: Meyer.**

Date: April 25, 2011

Roll Call Number: 11-0748

Action: [Initiating](#) an amendment to the Zoning Ordinance to prohibit freestanding liquor stores in “C-3”, “C-3A”, “C-3B” and “C-3R” Districts and establishing a temporary moratorium on new freestanding liquor stores in these Districts. **Moved by Meyer to adopt a 90-day moratorium and bring this back at the July 11 Council meeting. Motion Carried 7-0.**

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Set and hold public hearings and ordinance readings as proposed.

For more information on this and other agenda items, please call the City Clerk’s Office at 515-283-4209 or visit the Clerk’s Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk’s Office on Thursday afternoon preceding Monday’s Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk’s Office or sending their request via email to [cityclerk@dmgov.org](mailto:cityclerk@dmgov.org).