

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: October 10, 2011
	Agenda Item No. 17 Roll Call No. <u>11-1707</u> Communication No. <u>11-629</u> Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Amendments to Chapter 134 regarding Class “E” liquor license to clarify recent amendments.

SYNOPSIS:

On September 12, 2011 the Council passed an amendment to Chapter 134 regarding issuance of Class “E” liquor licenses to businesses. Errors are contained in the ordinance that could cause confusion and misunderstanding in the operation of the ordinance. The changes are intended to clarify the full intent of the changes approved by the Plan and Zoning Commission and the ordinance amendments as approved by the City Council.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

On August 18, 2011 the Plan and Zoning Commission approved a series of amendments to Chapter 134 designed to regulate sale of alcoholic liquor in the City of Des Moines.

The amendments to the ordinance were passed by the City Council on September 12, 2011. There are applications for alcoholic liquor licenses pending. The ordinance was reviewed for application of the enacted provisions and it was determined that there existed a level of ambiguity in applying the language as it related to Class “E” liquor license applications in C-1 zoning districts.

Specifically, the ordinance defined gas station and convenience stores. The intent, as shown by the Plan and Zoning Commission minutes was to create specific guidelines for treatment of Class “E” liquor licenses in limited food, limited retail and gas station/convenience stores. The sale of alcoholic liquor is to be prohibited in limited food, limited retail and gas station/convenience stores is to be prohibited in all C-1 zoning districts. The language in the ordinance does not specifically state in Section 134-842 (s) that the sale of alcoholic liquor is prohibited although it is prohibited from sale in limited food and retail sales establishments in Section 134- 842 (dd). Gas stations that sell food and retail items are in effect a limited retail establishment and would not be allowed a Class “E” liquor license. This amendment will clarify this point and eliminate any confusion.

Additionally, the intent of the amendment was to treat limited food and retail uses in C-2 in the same manner. In Section 134-947 (c) (14) the use of food sales establishment being subject to Section 134-954 is set out. In Section 134-947 (c) (11) regarding retail sales establishments the limitation, due to scrivener’s error, was omitted. A correction to Section 134-947 (c) (11) adding the language subject to

Section 134-954 will eliminate any ambiguity this omission may create in the implementation and enforcement of the ordinance changes.

In Section 134-954 (1) (i), Section 134-954 (2) (i) and Section 134-954 (3) (i) the general or large retail sales establishments are specifically mentioned in regard to sales of alcoholic liquor, wine and beer. General and large food sales establishments are to be treated in the same manner as general or large retail sales establishments and would be considered the same in enforcement of the ordinance. An addition of the language general and large food sales establishments to Section 134-954 (1) (i), Section 134-954 (2) (i) and Section 134-954 (3) (i) would clarify the intent and eliminate any uncertainty this may cause in interpretation of this section of the code.

In Section 134-954 (2) (iv) there is a reference to alcoholic liquor. Section 134-954 (2) defines which businesses are entitled to sell hard liquor without a special use permit. Limited food or retail establishments in a C-1 neighborhood commercial district and more restrictive districts do not allow for sale of alcoholic liquor in limited retail and limited food establishments. By deleting the words alcoholic liquor in Section 134-954 (2) (iv) it will match the restriction on the allowed uses in Section 134-842 prohibiting sale of alcoholic liquor in C-1 zoning districts for limited food sales and retail sales establishments and the restriction on liquor stores in C-1 pursuant to Section 134-844 (4).

The changes are to clarify the full intent of the changes approved by the Plan and Zoning Commission and the ordinance amendments as approved by the City Council. The changes in no way reflect a deviation from the previously approved ordinance amendment. The changes are to clarify allowed uses in the zoning districts and set out more concisely those uses that can apply for a conditional use permits from the Zoning Board of Adjustment.

The ordinance as enacted has not been used for any enforcement but staff feels that the amendments are necessary to clarify determinations on implementation in the future. There are applications for liquor licenses pending before the City Council and applications for conditional use permits pending before the Zoning Board of Adjustment. Staff suggests that the amendments be made prior to any hearing in order to insure correct implementation of the ordinance as intended at passing.

PREVIOUS COUNCIL ACTION(S):

Date: September 12, 2011

Roll Call Number: 11-1600

Action: [On](#) proposed Zoning ordinance text amendment to Chapter 134 with regard to businesses selling liquor, wine, beer and tobacco. **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.**

BOARD/COMMISSION ACTION(S):

Board: Plan and Zoning Commission

Date: August 12, 2011

Resolution Number: 10-2011-5.02

Action: Approval of the proposed amendments to the Zoning Ordinance Text in Chapter 134 with regard to regulation of businesses selling liquor, wine, and beer.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Council approves amendments.

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