

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	October 24, 2011
	Agenda Item No.	55
	Roll Call No.	<u>11-1826</u>
	Communication No.	<u>11-664</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. Ambiguities occur in the ordinance that could cause confusion and misunderstanding in the operation of the ordinance. These amendments 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

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

On August 18, 2011 the Plan and Zoning Commission approved a series of amendments to Chapter 134 designed to regulate the sale of alcoholic liquor in the City of Des Moines. The intent, of the Plan and Zoning Commission was to create specific guidelines for treatment of Class “E” liquor licenses. The sale of alcoholic liquor is to be prohibited in limited food, limited retail and gas station/convenience stores prohibited in all C-1 zoning districts. Additionally, the intent of the amendment was to treat limited food and retail uses in C-2 with the same limitations. In addition the changes increased the separation distance from a church, school, public park or licensed day care for some businesses.

The amendments to Chapter 134 were passed by the City Council on September 12, 2011, Ordinance No. 15,046. Currently, there are applications for alcoholic liquor licenses still pending. The ordinance was reviewed for application of the enacted provisions and it was determined that a level of ambiguity existed in applying the language as it related to Class “E” liquor license applications in C-1 zoning districts. Changes in the allowed uses in C-1 and C-2 created unintended consequence allowing the possible argument that uses not previously allowed in the district would be permitted.

The amendments contained in Ordinance No. 15,046 contained specific definitions for gas station and convenience stores, limited food sales, retail sales establishments, general food sales establishments, large food sales establishments, large retail sales establishments, general retail sales establishments,

general sales establishments and liquor stores. The definitions in Ordinance No. 15,046 were used to define uses that would be allowed to obtain a Class “E” liquor license in district regulations contained in Section 134-842 and Section 134-947. The use of the definitions for this purpose caused undue confusion and unintended consequences. The permitted uses in C-1 and C-2 districts will return to the uses permitted prior to the September 12, 2011, Ordinance No. 15, 046 revision.

The language in the ordinance did 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.

In C-1 zoned districts, special limitations will be added to specifically address the sale of alcoholic liquor in gas station/convenience stores, limited food sales establishments, and limited retail sales establishments by excluding sale of alcoholic liquor. Additionally, the special limitations will set out that wine and beer sales are allowed in C-1 zoned districts subject to meeting separation requirements and Board of Adjustment conditional use permit requirements as set out in Section 134-954

In C-2 zoned districts, special limitations will be added to specifically address limitations as set out in Section 134-954 regarding separation requirements and Board of Adjustment conditional use permit requirements of sale of alcoholic liquor, wine and beer.

It was the intent of the amendment to not allow the sale of alcoholic liquor in limited food and retail uses in C-2. In Section 134-947 (c) (11) regarding retail sales establishments the limitation, due to scrivener’s error, was omitted. The current amendment will clean up the use of the definitions and move the determination of allowed sales in C-2 zoning districts to Section 134-954.

The application of the definitions for the specific uses is being moved to Section 134-954 to eliminate the unintended consequences and to better clarify the businesses that require separation from churches, schools, public parks or licensed day cares centers and who are required to seek a conditional use permit from the Zoning Board of Adjustment.

In Ordinance No. 15,046 there were a number of things that caused confusion. Specifically, 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 were intended 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. 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.

In order to eliminate unnecessary confusion as set out above in ascertaining which businesses require specific separation from schools, public parks, churches or licensed day care centers a table will be included in Section 134-954.

This table will be an addition to Section 134-954, the use of land in all districts for the sale of alcoholic liquor, wine and beer is subject to the restrictions set forth in this section.

Table

The sale of alcoholic liquor, wine and beer is permitted only in the zoning districts and subject to the conditions applicable to the business identified in the table below:

Type of Business (see definitions in Section 134-3)	The sale of alcoholic liquor is allowed in the following districts subject to the conditions identified below		The sale of wine and beer is allowed in the following districts subject to the conditions identified below	
	C-1, C-1A, NPC & D-R Districts	C-2 and less restrictive Districts	C-1, C-1A, NPC & DR Districts	C-2 and less restrictive Districts
Food Sales Establishments				
Limited	Not allowed	Condition 2	Condition 2	Condition 2
General	Condition 1	Condition 1	Condition 1	Condition 1
Large	Condition 1	Condition 1	Condition 1	Condition 1
Gas Station/ Convenience Stores	Not allowed	Condition 2	Condition 1	Condition 1
Restaurants	Condition 1	Condition 1	Condition 1	Condition 1
Retail Sales Establishments				
Limited	Not allowed	Condition 2	Condition 2	Condition 2
General	Condition 1	Condition 1	Condition 1	Condition 1
Large	Condition 1	Condition 1	Condition 1	Condition 1
Taverns and Night Clubs	Not Allowed	Condition 3	Condition 3	Condition 3

Condition 1: Allowed subject to a 75 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A, and subject to no more than 40% of gross revenue being from the sale of liquor, wine, beer or tobacco products. However, no separation requirement is applicable in the D-R downtown riverfront district.

Condition 2: Allowed subject to approval by the board of adjustment as provided in this section below, subject to a 75 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A, and subject to no more than 40% of gross revenue being from the sale of liquor, wine, beer or tobacco products. However, no separation requirement is applicable in the D-R downtown riverfront district.

Condition 3: Allowed subject to approval by the board of adjustment as provided in this section below, and subject to a 150 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A. However, no separation requirement is applicable in the D-R downtown riverfront district.

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 permit 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 approval of the amendments.

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