

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	August 13, 2012
	Agenda Item No.	55B
	Roll Call No.	<u>12-1293</u>
	Communication No.	<u>12-436</u>
	Submitted by:	Phillip Delafield, Community Development Director

AGENDA HEADING:

Denial of request to vacate and lease agreement for sidewalk café at 214 3rd Street.

SYNOPSIS:

Recommend denial of request to vacate and lease agreement for a sidewalk café at 214 3rd Street. The owner of the Komodo Club, Jason Smithson, located at 214 3rd Street is requesting an area in front and adjacent to the business be vacated and a portion of the sidewalk be leased for a sidewalk café. The sidewalk left after the lease would barely allow the required six (6) feet of open sidewalk. A lease of the area would impact pedestrian traffic and may cause people to be forced to walk in the street. The Des Moines Police Department is increasingly concerned about pedestrians walking and standing in the street along this stretch of 3rd Street.

FISCAL IMPACT:

Amount: \$635.10 for a three year lease agreement

Funding Source: FY 2012 Operating Budget, GE001 - CDD130100

ADDITIONAL INFORMATION:

On May 18, 2009, Tommy Mauro, operator of the Pelican Bar located at 208 3rd Street, requested the vacation and lease of a 5 x 27ft. (135 sq ft) portion of the right-of-way for use as a sidewalk café serving alcohol. The lease presented for approval by the City Council required the applicant to maintain a six foot clear pathway for pedestrian travel upon the public sidewalks as required by the adopted design standards.

The Design Standards for Sidewalk Cafes adopted by the City Council on July 10, 2006, by Roll Call No. 06-136, requires that a six foot wide unobstructed pedestrian pathway be maintained upon the public sidewalk. Mr. Mauro sought to lease and enclose an area that would leave a clear pathway to pedestrian travel of less than six feet in width and around an existing power pole.

On May 18, 2009, by Roll Call No. 09-909, City Council approved the application and the adjacent area to 208 3rd Street was vacated and leased to Tommy Mauro.

On or about February 10, 2012, the new owners of the establishment located at 208 3rd Street, DBR, LLC d/b/a Standard, applied for a lease agreement. This lease agreement is also on the City Council meeting of August 13, 2012.

On, or about May 7, 2012, the owner of the Komodo Club located at 214 3rd Street applied to have an area of the sidewalk adjacent to his business vacated for a patio bar.

Community Development staff has met with police officers that patrol the Court Avenue District regarding concerns revolving around foot traffic on 3rd Street. The police officers are increasingly concerned that the leased area is causing congestion on the sidewalk. This is forcing pedestrians to walk and stand in the street.

The Police Department feels that the pedestrian flow in this area is extremely high throughout the evening and late night hours and this area was recently posted as a no parking zone in an attempt to stop people from congregating near their cars and blocking the sidewalk. There is a constant stream of people into and out of these bars, with a large number already congregating in front of the entrances to smoke and talk.

Staff believes this area on 3rd Street is not wide enough to support sidewalk cafes. Measurements were taken of the sidewalk in front of the Komodo Club and from the building; the sidewalk is approximately 11 feet, 11 inches wide. To maintain a six foot clear pathway for pedestrian travel upon the public sidewalk, the patio area in front of the Komodo Club would only be 5 feet, 1 inch wide. Farther to the south at 208 3rd Street, there is only about 50 inches between the existing sidewalk café railing and a utility pole.

Adding a sidewalk café to an area that is relatively narrow may force pedestrians into the street when the sidewalk is congested, creating a safety hazard. The Police Department does not support these requests.

Staff feels that the sidewalk should be left open to pedestrian traffic. This is the best and safest use of the sidewalk for the intended public purpose.

City Council heard this matter on July 23, 2012, and continued the hearing to the August 13, 2012 agenda to grant staff time to gather input from the Downtown Community Alliance and the Court Avenue Business District. Meetings were held with both groups to review the Police Departments safety concerns. The Downtown Community Alliance expressed similar concerns regarding the hazards posed by the patio areas on Third Street. The Court Avenue Business Association discussed the issue and supports a temporary denial of the lease application for the area adjacent to 208 3rd Street in order to determine if this is the best use of public sidewalk.

PREVIOUS COUNCIL ACTION(S):

Date: July 23, 2012

Roll Call Number: [12-1179](#)

Action: On application by the Komodo Club, 214 3rd Street, for vacation and a lease agreement for a portion of the adjoining sidewalk for a sidewalk café serving alcohol. Moved by Hensley to continue the hearing to the August 13, 2012 meeting. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Zoning Board of Adjustment

Date: May 23, 2012

Action: Approved expansion of area to serve alcohol to a patio upon approval of vacation and lease by the City Council.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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