

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	September 10, 2012
	Agenda Item No.	33
	Roll Call No.	<u>12-1446</u>
	Communication No.	<u>12-487</u>
	Submitted by:	Phillip Delafield, Community Development Director

AGENDA HEADING:

Second reading of amendments to Section 134-954 of the Zoning Ordinance regarding regulation of businesses selling liquor, wine, and beer.

SYNOPSIS:

Staff has prepared two (2) alternate ordinances for the Council’s consideration. Option A is the original ordinance as approved at first reading on August 27, 2012 and defines Limited Food Sales and Limited Retail Sales establishments as those that are less than 10,000 square feet in size. Option A requires General Food Sales and General Retail Sales establishments (10,000 square feet or larger, but less than 40,000 square feet) to obtain a conditional use permit to sell liquor. Option B defines Limited Food Sales and Limited Retail Sales establishments as those that are less than 12,000 square feet in size but exempts General Food Sales and General Retail Sales establishments (12,000 square feet or larger, but less than 40,000 square feet) from obtaining a conditional use permit to sell liquor. Staff recommends approval of Ordinance Option B. The Community Development Director requests that third reading of the ordinance be waived.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

On April 19, 2012, the Des Moines City Council imposed a temporary moratorium on the commencement of any new business selling alcoholic liquors for off-premises consumption and upon the conversion of any existing business to one selling alcoholic liquors for off-premises consumption, from any business premises that is operated as a Limited Food Sales Establishment, Limited Retail Sales Establishment, Gas Station/Convenience Store, or Liquor Store. The moratorium was subsequently extended and is currently set to expire on August 28, 2012.

On June 25, 2012, staff presented alternatives for regulation of such establishments at a City Council Workshop. The City Council directed staff to prepare an ordinance for consideration (see Option A).

In general, the proposed ordinance (Option A and Option B) would:

- Require any new Limited Food Sales Establishment, Limited Retail Sales Establishment, Gas Station/Convenience Store or Liquor Store selling liquor to be separated by at least ¼ mile from any existing Limited Food Sales Establishment, Limited Retail Sales Establishment, Gas Station/Convenience Store or Liquor Store selling liquor.

- Require any new Limited Food Sales Establishment, Limited Retail Sales Establishment, Gas Station/Convenience Store or Liquor Store selling liquor to be separated by at least 500 feet from any church, school, park or licensed daycare.
- Require any new Limited Food Sales Establishment, Limited Retail Sales Establishment, Gas Station/Convenience Store or Liquor Store selling beer or wine to be separated by at least 150 feet from any church, school, park or licensed daycare.
- Require any General Food Sales Establishment or General Retail Sales Establishment to obtain a Conditional Use Permit from the Zoning Board of Adjustment (subject to the existing separation requirement of 75 feet from a church school, park or licensed daycare). --**Option A only**
- Enhance Conditional Use Permit Standards to include the following:
 - Increase exterior lighting and eliminate hiding places, but not detrimentally impact adjoining residential uses.
 - Post “No Loitering” signs.
 - Require permit for outside speakers for amplified sound at background levels.
 - Clearly impose burden of proof on applicant to demonstrate compliance.
 - Require Limited Food / Retail, Convenience Stores to display liquor in a locked cabinet or behind a counter in an area accessible only to employee.
 - Require other establishments, except Limited Food/Retail, Convenience-stores, to
 - Employ an electronic security cap or tag system on liquor bottles, or
 - Have more than one employee in the store at all times.
 - Require business owner contact information to be posted in prominent location within the store.

Staff forwarded the proposed ordinance (Option A) to the State of Iowa Alcoholic Beverages Division for review and comment. The Iowa Attorney General’s staff assigned to the Alcoholic Beverages Division has indicated to City staff that the proposed ordinance is considered a proper use of local zoning authority. However, staff was advised that any local limitation on the size of bottle sold or brand of liquor sold would be considered an unauthorized preemption of the Iowa Code.

A public information meeting was held on July 27, 2012 from 4:30 PM to 8:00 PM in the City Council Chambers. Post-card notices were mailed to all existing establishments who are licensed to sell beer, wine and liquor for off-premise consumption. Notices were also mailed to all pending applicants for such licenses. Approximately twelve individuals attended the information meeting. Most concerns were addressed by legal non-conforming right provisions of the city code. Iowa CVS attorney, Chris Pose, expressed concern that general food and retail sales establishments would be required to obtain a conditional use permit from the Zoning Board of Adjustment.

On August 2, 2012 the Plan and Zoning Commission held a public hearing regarding the proposed ordinance (Option A). The Commission received and filed a proposal from Iowa CVS attorney, Chris Pose, to exempt pharmacies from obtaining a conditional use permit. Staff advised the Commission that such an exemption for a single type of general food and general retail sales establishment could jeopardize the validity of the proposed ordinance. The Plan and Zoning Commission voted 11-0-1 to recommend approval of the ordinance (Option A).

At the August 27, 2012 City Council meeting, there was discussion suggesting that the existing 10,000 square foot threshold for a Limited Food Sales or Limited Retail Sales establishment should be slightly higher (i.e. up to 12,000 square feet). If the threshold were increased, then it may not be necessary for General Food Sales or General Retail Sales establishments (greater than 12,000 square feet but less

than 40,000 square feet in size) to obtain a conditional use permit from the Zoning Board of Adjustment to sell liquor. Large Food or Retail Sales establishments (greater than 40,000 square feet in size) are already exempt from obtaining a conditional use permit from the Zoning Board of Adjustment to sell liquor. Staff research indicates that 12,000 square feet is generally a break point between traditional grocery stores or larger chain pharmacies and other smaller retailers. The smaller retailers generally have a more limited inventory and fewer employees during hours of operation which creates greater difficulty in complying with the 40% limit on revenue from the sale of beer, wine, liquor and tobacco and in monitoring customer activity. In contrast, traditional grocery stores and larger chain pharmacies have not generated complaints generally due to a more diverse inventory, greater number of employees and site setbacks. Therefore, Ordinance Option B was prepared. Ordinance Option B defines limited food and retail sales establishments as those that are less than 12,000 square feet in size. The ordinance exempts General Food Sales and General Retail Sales establishments (12,000 square feet or larger, but less than 40,000 square feet) from obtaining a conditional use permit to sell liquor but includes all remaining portions of Ordinance Option A.

PREVIOUS COUNCIL ACTION(S):

Date: August 27, 2012

Roll Call Number: [12-1371](#)

Action: On proposed amendments to Section 134-954 of the Zoning Ordinance, regarding allowed location and operation of businesses engaged in the sale of liquor, wine and beer and approving subject to final passage of the enacting ordinance. Moved by Coleman to adopt and approve, subject to final passage of the enacting ordinance; refer to the City Manager and City Attorney to prepare an alternative ordinance for the September 10, 2012 Council meeting, that places the upper level in the 10,000-12,000 range, and to report on possible consequences of this change. Motion Carried 5-2. Nays: Griess and Meyer.

Date: August 27, 2012

Roll Call Number: [12-1372](#)

Action: (A) [First](#) consideration of ordinance above. Moved by Coleman that this ordinance be considered and given first vote for passage. Motion Carried 5-2. Nays: Griess and Meyer.

Date: August 27, 2012

Roll Call Number: [12-1374](#).

Action: (C) [Continuing](#) the temporary moratorium on new or converted business selling for off-premises consumption and operated as a Limited or General Food or Retail Sales Establishment, Gas Station/Convenience Store or a Liquor Store. ([Council Communication No. 12-462](#)) Moved by Meyer to adopt. Motion Carried 7-0.

Date: August 13, 2012

Roll Call Number: [12-1251](#)

Action: On amendment to Section 134-954 of the Zoning Ordinance regarding regulation of businesses selling liquor, wine and beer, (8-27-12). Moved by Hensley to adopt. Motion Carried 7-0.

Date: June 25, 2012

Roll Call Number: [12-1056](#)

Action: Extending the current Class E Liquor License moratorium until August 28, 2012. Moved by Moore to adopt. Motion Carried 6-1. Absent: Griess.

Date: May 21, 2012

Roll Call Number: [12-0843](#)

Action: Consideration of an amendment to the Zoning ordinance to further regulate the allowed location of businesses engaged in the sale of alcoholic liquor for off-premise consumption and imposing an expanded temporary moratorium. Moved by Hensley to adopt. Motion Carried 6-1. Nays: Coleman.

Date: April 9, 2012

Roll Call Number: [12-0572](#)

Action: Initiating an amendment to the zoning ordinance to further regulate the allowed location of businesses engaged in the sale of alcoholic liquor for off-premises consumption, and imposing a temporary moratorium. Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Plan and Zoning Commission

Date: August 2, 2012

Resolution Number: 10-2012-5.01

Action: Recommend approval of the proposed ordinance as presented by staff and receive and file the proposal from Iowa CVS by a vote of 11-0-1 (Fitzgerald abstained).

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Third reading of the ordinance unless waived by the City Council.

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