

ORDINANCE NO. 14,269

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, and amended by Ordinance No. 13,895, passed December 4, 2000, and Ordinance No. 14,100, passed June 3, 2002 and Ordinance No. 14,179, passed December 16, 2002, by amending Sections 10-13, 10-54, 10-59 and 10-60 thereof, relating to penalties, fees, refunds and transfers of liquor licenses and liquor permits and amending Section 10-43 for correction of Code references.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, and amended by Ordinance No. 13,895, passed December 4, 2000, and Ordinance No. 14,100, passed June 3, 2002, and Ordinance No. 14,179, passed December 16, 2002, is hereby amended by amending Sections 10-13, 10-54, 10-59 and 10-60 thereof, relating to penalties, fees, refunds and transfers of liquor licenses and liquor permits and amending Section 10-43 for correction of Code references, as follows:

Sec. 10-13. Penalties.

(a) Any person who fails to perform an act required by this chapter or who commits an act prohibited by this chapter shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 of this Code.

(b) The conviction of any liquor control licensee, wine permittee, or beer permittee for a violation of any of the provisions of subsection 10-6(a), inclusive, shall, subject to subsection (c) of this section, be grounds for the suspension or revocation of the license or permit by the state department or the city. However, if any liquor control licensee is convicted of any violation of I.C. § 123.49(2)a., d. or e., or any wine or beer permittee is convicted of a violation of subsection (2), paragraphs a or e of such

section of the state Alcoholic Beverage Control Act, the liquor control license, wine permit, or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond, if any, of the license or permit holder shall be forfeited to the state department.

(c) If any licensee, wine permittee, beer permittee, or employee of such licensee or permittee shall be convicted of a violation of subsection 10-6(a)(9) of this chapter or section 123.49(2)(h) of the Code of Iowa; or if a retail wine or beer permittee shall be convicted of a violation of subsection 10-6(a)(10) or section 123.49(2)(i) of the Code of Iowa, the city shall, unless the city makes a request for the Alcoholic Beverages Division of the Iowa Department of Commerce to enforce these state code sections, in addition to the other penalties fixed for such violations by this section or Chapter 123 of the code of Iowa, assess a civil penalty as follows:

(1) Upon a first conviction, the violator's license or permit shall be suspended for a period of fourteen days. However, if the conviction is for a violation of section 10-6(9) of this chapter or section 123.49(2)(h) of the Code of Iowa, the license or permit shall not be suspended, but the violating licensee or permittee shall be assessed a civil penalty in the amount of \$500.00. Failure to pay the civil penalty as ordered will result in automatic suspension of the license or permit for a period of 14 days.

(2) Upon a second conviction within a period of two years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of 30 days. However, if the conviction is for a violation of section 10-6(9) of this chapter or section 123-49(2)(h) of the Code of Iowa, the licensee or permittee shall also be assessed a civil penalty in the amount of \$1,500.00.

(3) Upon a third conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be suspended for a period of 60 days. However, if the conviction is for a violation of section 10-6(9) of this chapter or section 123.49(2)(h) of the Code of Iowa, the licensee or permittee shall also be assessed a civil penalty in the amount of \$1,500.00.

(4) Upon a fourth conviction within a period of three years, the violator's liquor control license, wine permit, or beer permit shall be revoked.

Sec. 10-43. Conditions for approval.

The following conditions and regulations must be met by an applicant for a liquor control license or a wine or beer permit:

(1) The applicant must give consent in writing on the application that members of the fire and police departments and the building inspector may enter upon the premises without warrant to inspect for violations of the provisions of state law and of this chapter.

(2) The premises for which a liquor control license, or a wine or a beer permit is sought must be located within an area where such business is permitted by chapter 134 of this Code and must otherwise conform to the city zoning requirements.

(3) The premises of a class B beer permit shall, at the time of the application, continue to be equipped with sufficient tables and seats to accommodate 25 persons at one time.

(4) All permits and licenses provided for in this chapter shall be displayed in a conspicuous place on the premises of the permit or license holder and at all times shall be subject to inspection.

(5) No liquor control license or a wine or beer permit shall be approved for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.

(6) Licensed premises shall conform with the following:

a. In addition to subsections (1) through (8) of this section, neither class A, B, C or special class C licenses nor class B beer permits shall be granted for premises which are not operated as a restaurant at least half of whose gross income is derived from the sale of prepared food and food-related services and which are located within 150 feet of any church, school, public park or licensed child care center as defined by I.C. ch. 237A.

b. No class B wine permit, class C beer permit, or class E liquor license shall be granted to an applicant whose premises are within 75 feet of any church, school, or public park or licensed child care center as defined by I.C. ch. 237A.

c. In determining the distances set out in this subsection, measurements shall be taken on a direct line from the nearest property line of the premises upon which the place of business of an applicant for a permit or license is located and over which such applicant has control, to the nearest property line of the parcel of real estate upon which the church or school building is situated. These area restrictions shall not affect the

right of present permit or license holders who have qualified under the rules heretofore in effect, or their successors by purchase, from renewing their permits or licenses in their present locations.

(7) a. Except in the geographic areas identified in chapter 134 of this Code as a C-3 commercial (downtown) district, neither new permits or licenses nor transfers of existing permits or licenses, other than class C beer permits and class E liquor licenses, will be granted for locations not currently operating under a permit or license, unless 75 percent of the property abutting on both sides of the same street as the premises for which the license or permit is requested and extending 200 feet to the right and left from the center point of such premises facing such street is either currently put to a commercial use or is commercially zoned by chapter 134 of this Code. An exception to this restriction is permitted where the applicant's premises are operated as a restaurant, at least half of the gross income of which is derived from the sale of prepared food and food-related services.

b. In measuring the distances in subsection (7)a of this section, rights-of-way of intersecting city streets and alleys shall be excluded.

c. Where the premises involved are located on a corner lot at the intersection of two streets, it will be sufficient if the usage or zoning so measured

along either intersecting street meets the requirements of subsection (7)a of this section.

(8) The area restrictions set forth in this section shall not affect the right of present permit or license holders or their successors by purchase from renewing their permits or licenses in their present locations. No property whose principal structure shall be used wholly or in part for residence purposes shall be deemed actually devoted to commercial use unless more than 50 percent of the gross floor area of the structure shall be devoted to commercial use.

(9) The subsections of this section concerning the location of new or transferred permits and licenses shall not apply to an application for a permit or license by a college or university where 75 percent of the real estate, exclusive of street rights-of-way, within 200 feet of the structure for which the permit or license is sought, is owned by the college or university.

(10) a. Subsections (2) and (3) of this section shall not apply to a person who makes application for a class B beer permit in connection with the operation of a concession stand at a city park designated "community" or "major" by the director of the park and recreation department, or at a city-owned golf course. The city council may approve an application for a class B beer permit in connection with the operation of a concession stand at city parks designated "neighborhood" in special circumstances upon review of the facts and taking into account the recommendation of the park and recreation board.

b. For the purposes of section 10-47 of this chapter, each park at which an applicant desires to operate a concession stand and sell beer shall be deemed a separate place of business for which such applicant shall be required to have a separate license.

(11) Subsection (2) of this section shall not apply to a club or corporation which makes application for a class A liquor control license in connection with the operation of and located on the land occupied by a private full-sized nine- or 18-hole golf course.

(12) Subsection (6)a of this section shall not apply to nonprofit corporations which make application for a five-day, 14-day, seasonal, or Sunday sales liquor control license, where the sale of alcoholic beverages does not occur between the hours of 8:00 a.m. and 5:00 p.m., and where the sale of alcoholic beverages is done on a temporary basis for special events and so as to not comprise greater than 50 percent of the gross revenue for each day alcoholic beverages are sold.

(13) For all class A,B,C or special class C liquor licenses and all class B beer permits the applicant must provide a statement that all designated security employees have received training and certification in security methods. Such training shall be performed and certified to by a third party that is in the training business and shall include a minimum of four hours of training in the following areas: mediation techniques, civil rights or unfair practices awareness as provided in the Iowa Code Section 216.7, and proper physical restraint methods used against a person who has become combative.

Sec. 10-54. Fees.

(1) The following fees shall be submitted with the respective application for the license or permit required by this article:

a. For a class B beer permit the annual fee shall be \$300.00.

b. For a class C beer permit the annual fee shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:

1. Up to 1,500 square feet, \$75.00.

2. Over 1,500 square feet and up to 2,000 square feet, \$100.00.

3. Over 2,000 square feet and up to 5,000 square feet, \$200.00.

4. Over 5,000 square feet, \$300.00.

c. For a class A liquor control license the annual fee shall be as follows:

1. A club with 250 members or more, \$600.00 plus state surcharge.

2. A club with less than 250 members, \$400.00 plus state surcharge.

3. A club which is a post, branch, or chapter of a veterans organization chartered by the Congress of the United States, if such club does not sell or permit the consumption of alcoholic beverages on the

premises more than one day in any week, and if the application for a license states that such club does not and will not sell or permit the consumption of alcoholic beverages on the premises more than one day in any week, \$200.00 plus state surcharge.

d. For a class B liquor control license the annual fee shall be \$1,300.00 plus state surcharge.

e. For a class C liquor control license the annual fee shall be \$1,300.00 plus state surcharge.

f. For a class E liquor control license the annual fee shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:

1. Up to 1,500 square feet, \$2,500.00.

2. Over 1,500 square feet and up to 2,000 square feet, \$3,500.00.

3. Over 2,000 square feet and up to 5,000 square feet, \$5,000.00.

4. Over 5,000 square feet, \$7,500.00.

g. For a special class C liquor control license the annual fee shall be \$450.00 plus state surcharge.

h. For a class B wine permit the annual fee shall be \$500.00.

i. For the privilege of selling and dispensing alcoholic liquor, wine, or beer

to patrons on Sunday the annual fee shall be increased by 20 percent of the regular prescribed fee plus the designated state surcharge.

j. For all outdoor service areas added to the licensed or permitted premises after a license or permit has been issued, and for all temporary outdoor services areas an administrative fee in an amount set in the Schedule of Fees adopted by the City council by resolution.

(2) The police department is authorized to charge and collect an administrative fee on requests for an exemption certificate pursuant to section 10-8 Article I of this chapter for investigating and processing such exemption certificates. The City Clerk may collect this fee in lieu of the police department. The fee shall be in the amount set in the Schedule of Fees adopted by the City Council by resolution.

(3) The City Clerk is authorized to charge and collect administrative fees for the review, processing, investigation and inspection process of an applicant seeking a license or permit under this article or when an existing license or permit holder requests a transfer under section 10-60 of this article, however, such fees shall not apply to an application for transfer filed within 60 days prior to the renewal date of an existing license or permit. The City Clerk may collect the fees at the time of application for the license or permit or when request for transfer is made. The fees shall be in the amounts set in the Schedule of Fees adopted by the City Council by resolution.

Sec. 10-59. Refunds.

(a) Under this article, any licensee or permittee or his or her executor, administrator, or any person duly appointed by the court to take charge of and administer the property or assets of the licensee or permittee for the benefit of his or her creditors may voluntarily surrender such license or permit to the state department and when so surrendered the state department shall notify the city. The state department

and the city, or the city by itself in the case of a retail beer permit, shall refund to the person so surrendering the license or permit a proportionate amount of the fee paid for such license or permit as follows:

(1) If surrendered during the first three months of the period for which the license or permit was issued the refund shall be three-fourths of the amount of the fee;

(2) If surrendered more than three months but not more than six months after issuance, the refund shall be one-half of the amount of the fee; or

(3) If surrendered more than six months but not more than nine months after issuance, the refund shall be one-fourth of the amount of the fee.

(b) No refund shall be made, however, for any special liquor permit nor for a liquor control license, wine permit, or beer permit surrendered more than nine months after issuance.

(c) No refund shall be made to any licensee or permittee upon the surrender of his or her license or permit, if there is at the time of the surrender a complaint filed with the state department or the city, charging him or her with a violation of this chapter or provisions of the state Alcoholic Beverage Control Act.

(1) If upon hearing on any such complaint the license or permit is not revoked or suspended, the licensee or permittee shall be eligible, upon surrender of his or her license or permit, to receive a refund as provided in this section.

(2) If his or her license or permit is revoked or suspended upon such hearing, he or she shall not be eligible for the refund of any portion of his or her license or permit fee.

(d) No refund shall be made for seasonal licenses or permits or for 14-day liquor licenses or beer permits.

(e) A refund of administrative fees for the review, processing, investigation and inspection process shall only be made on a license or permit application that is withdrawn or denied and only when the cost(s) for review, processing, investigation and/or inspection process was not incurred by the City.

(f) A refund of administrative fees for the review, processing, investigation and inspection process shall only be made on a request for transfer under section 10-60 of this article when the request is withdrawn or denied and only when the cost(s) for review, processing, investigation and/or inspection process was not incurred by the City.

Sec. 10-60. Transfers.

The council, may, in its discretion, authorize a licensee or permittee to transfer the license or permit from one location to another within the city, provided that the premises to which the transfer is to be made would have been eligible for a license or permit in the first instance and such transfer will not result in the violation of any law or ordinance. The applicant shall procure from the persons who are surety on his or her bond written consent to make such transfer, which shall be filed with the application.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Douglas P. Philiph, Assistant City Attorney

Preston A. Daniels, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an

ordinance (Roll Call No. 03-1999), passed by the City Council of said City at a meeting held August 25, 2003 signed by the Mayor on August 25, 2003 and published as provided by law in the Business Record on September 8, 2003 Authorized by Publication Order No. 3876.

Diane Rauh, City Clerk