

ORDINANCE NO. 16,278

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, as heretofore amended, by amending Sections 10-43, 10-45, 10-46, 10-47, 10-48, 10-49, 10-50, 10-51, 10-52, 10-53, 10-54, 10-55, 10-56, 10-57, 10-58, 10-59, 10-60, 10-61, 10-62, 10-63, 30-370, 74-96 and repealing 10-44, relating liquor, wine or beer licenses.

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, as heretofore amended, Sections 10-43, 10-45, 10-46, 10-47, 10-48, 10-49, 10-50, 10-51, 10-52, 10-53, 10-54, 10-55, 10-56, 10-57, 10-58, 10-59, 10-60, 10-61, 10-62, 10-63, 30-370, 74-96 and repealing 10-44, relating liquor, wine or beer licenses, as follows:

Sec. 10-43. Conditions for approval.

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

- (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, wine or a beer license 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 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 licenses provided for in this chapter shall be displayed in a conspicuous place on the premises of the license holder and at all times shall be subject to inspection.
- (5) No liquor, wine or beer license shall be approved for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.
- (6) Licensed premises located outside the DX1, DX2 and DXR zoning districts shall conform with the following:
 - a. In addition to subsections (1) through (8) of this section, neither class C or special class C licenses nor class F license 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, special class B native wine, or class E 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 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, public park, licensed child care center 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 DX1, DX2 and DXR zoning districts, neither new licenses nor transfers of existing licenses, other than class B and class E licenses, will be granted for locations not currently operating under a license, unless 75 percent of the property abutting on both sides of the same street as the premises for which the license 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 licenses shall not apply to an application for a 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 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 C license, or a special class C license in connection with the operation of a concession stand or event 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 C license, or a special class C license in connection with the operation of a concession stand or event 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 or event and sell alcoholic beverages 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 F 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 liquor 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) The required separation from any church, school, public park or licensed child care center imposed by subsection (6)a. of this section, and the requirements of subsection (7)a. of this section, shall not apply to nonprofit corporations which make application for a five-day liquor license, where the sale of alcoholic beverages occurs only between the hours of 11:00 a.m. and 10:00 p.m., and outside the regular school hours of any school within 150 feet.
- (14) For all class C, special class C and class F licenses 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: de-escalation techniques, anger management techniques, civil rights or unfair practices awareness as provided in I.C. § 216.7, recognition of fake or altered identification, information on laws applicable to the serving of alcohol at a licensed premises, use of force and techniques for safely removing patrons, and instruction on proper physical restraint methods used against a person who has become combative.

Sec. 10-44. Repealed by Ord. No. 16,278

Sec. 10-45. Classes of liquor licenses.

Liquor control licenses shall be classed as follows:

- (1) *Class F.* A class F license issued to a club shall authorize the holder to purchase alcoholic liquors from class E liquor licensees only, wine from class A wine permittees or class E or B licenses only, and beer from a class A beer permittees or class E or B licensees only, to bona fide members and their guests by the individual drink for consumption on the premises only.
- (2) *Class C.* A class C license issued to a commercial establishment must be issued in the name of the individual who actually owns the entire business and shall authorize the holder to purchase alcoholic liquors from class E licensees only, wine from class A wine permittees, class E or B licensees only, and beer from class A beer

permittees or E or B licensees to patrons by the individual drink for consumption on the premises only. However, liquor, wine and beer in original unopened containers may also be sold for consumption off the premises. In addition, mixed drinks or cocktails may also be sold for consumption off the premises subject to the requirements of section 123.49, subsection 2, paragraph “d”.

- (3) *Special class C.* A special class C license shall authorize the holder to purchase wine from class A wine permittees or class E or B licensees and beer from class A beer permittees or class E or B licensees only and to sell wine and beer to patrons by the individual drink for consumption on the premises only. However, wine and beer in original unopened containers may also be sold for consumption off the premises.
- (4) *Class E.* A class E license shall authorize the holder to purchase alcoholic liquor from the state department only, wine from class A wine permittees only and beer from class A beer permittees only and to sell the alcoholic liquor, wine and beer to patrons for consumption off the licensed premises and to other liquor licensees. A holder of a class E license may hold other retail liquor licenses, but the premises licensed under a class E license shall be separate from other licensed premises, though the separate premises may have a common entrance.

Sec. 10-46. Class of wine license.

- (1) *Special Class B native wine license.* A special class B native wine license shall authorize the holder to purchase wine from a native winery holding a class A wine permit and allow the holder to sell at retail native wine only for consumption in original containers only off premises.

Sec. 10-47. Separate locations.

Every person holding a liquor, wine or beer license, having more than one place of business where such liquor, wine or beer is sold, shall be required to have a separate license for each separate place of business, except as otherwise provided by state law.

Sec. 10-48. Contents of application; bond.

- (a) A verified application for the original issuance or the renewal of a liquor, wine or beer license, shall be submitted electronically in a manner prescribed by the administrator of the alcoholic beverages division.
- (b) Except for class E 1 license applications, the application shall be accompanied by the required fee and shall be filed with the city clerk for city council approval or disapproval 30 days prior to the first date of sale or 30 days prior to the renewal date.
- (c) A class E liquor application shall be accompanied by the required fee and a bond in a sum of not less than \$5,000.00 nor more than \$15,000.00, as established by the state department, and in a form prescribed by the administrator of the alcoholic beverages division. The application shall be deemed timely filed when filed with the city clerk for city council approval or disapproval 30 days prior to the first date of sale or 30 days prior to the renewal date.

Sec. 10-49. Investigation of applicant and premises.

Upon receipt of an original application for a liquor, wine or beer license, by the city clerk, information shall be forwarded to the chief of police or his or her designee, who shall conduct an investigation and shall approve or disapprove the applicant as to the truth of the facts averred in the application. It shall be the duty of the building official, zoning enforcement officer and the fire chief or their designees to inspect the premises to determine if they conform to the city's requirements, and no license shall be approved until o inspections are completed.

Sec. 10-50. Procedures for suspension, revocation, or civil penalty.

- (a) Whenever the city council finds that the licensee, his or her employees or agents has furnished any false information required under this article or has violated or failed to comply with any of the requirements of this chapter, any other chapter of this Code, or state law, the city council may, impose a civil penalty upon the licensee, and/or suspend or revoke the license.
- (b) No civil penalty, suspension or revocation shall issue except upon notice delivered to the licensee by mailing notice in the regular mail, addressed to the licensee at the licensed premises, a minimum of ten days prior to the date set for hearing before the council. Such notice shall inform the licensee of the time, date and place of hearing and shall set out briefly the reasons therefor.
- (c) If, after such hearing, the city council makes a finding based on substantial evidence that a violation of this chapter or another chapter of this Code or state law did in fact take place as alleged, the city council may impose a civil penalty and/or suspend or revoke the license; the determination of whether to impose a civil penalty and/or suspend or revoke such license shall be in the discretion of the city council and shall be dependent upon the circumstances surrounding the violation and its severity.
- (d) A licensee whose license has been revoked shall not be eligible for another such license for a period of two years after such revocation.

Sec. 10-51. Renewal application.

- (a) Upon receipt of an application for the renewal of a liquor, wine or beer license, the information shall be forwarded to the chief of police or his or her designee, who shall conduct an investigation on the applicant as to the truth of the facts averred in the application.
- (b) Inspection of the premises will be the same as under section 10-49 of this chapter.

Sec. 10-52. Notice of change of management.

If a different person becomes manager or any officer dies or is removed, the business licensed pursuant to this article shall notify the office of the city clerk within three days, stating the name of the new manager or officer.

Sec. 10-53. Civil liability.

Every liquor, wine or beer licensee shall furnish proof of financial responsibility as required by I.C. § 123.92 either by the existence of a liability insurance policy or by posting bond in such amount as determined by the state department.

Sec. 10-54. Fees.

- (a) The following fees shall be submitted with the respective application for the license or permit required by this article:
 - (1) For a class B 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:
 - a. Up to 1,500 square feet, \$250.00.
 - b. Over 1,500 square feet and up to 2,000 square feet, \$350.00.
 - c. Over 2,000 square feet and up to 5,000 square feet, \$500.00.
 - d. Over 5,000 square feet, \$750.00.
 - (2) For a class F license the annual fee shall be as follows:
 - a. A club with 250 members or more, \$600.00 plus state surcharge.
 - b. A club with less than 250 members, \$400.00 plus state surcharge.
 - c. 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 or more than 52 days in a year, 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 or more than 52 days in a year, \$200.00 plus state surcharge.
 - (3) For a class C license the annual fee shall be \$1,250.00 plus state surcharge.
 - (4) For a class E license the annual fee shall be a sum determined as follows:
 - a. Up to 1,500 square feet, \$2,500.00.
 - b. Over 1,500 square feet and up to 2,000 square feet, \$3,500.00
 - c. Over 2,000 square feet and up to 5,000 square feet, \$5,000.00.
 - d. Over 5,000 square feet, \$7,500.00.
 - (5) For a special class C license the annual fee shall be \$450.00 plus state surcharge.
 - (6) For a special class B native wine license the annual fee shall be \$125.00.
- (b) 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.

Sec. 10-55. Scope.

- (a) A liquor, wine or beer license, shall be a purely personal privilege and shall be revocable for cause. It shall not constitute property nor be subject to attachment and execution nor be alienable or assignable, and in any case it shall cease upon the death of the licensee.

- (b) However, the administrator of the alcoholic beverages division may in his or her discretion allow the executor or administrator of a licensee to operate the business of the decedent for a reasonable time not to exceed the expiration date of the license.
- (c) Every license shall be issued in the name of the applicant, and no person holding a license shall allow any other person to use the license.

State law reference(s)--Similar provisions, I.C. § 123.38.

Sec. 10-56. City council action.

Action taken by the city council pursuant to this article shall be so endorsed on the application, for such further action as is provided by law.

Sec. 10-57. Expiration.

Notwithstanding section 10-58, all liquor, wine or beer licenses, unless sooner suspended or revoked, shall expire one year from the date of issuance.

State law reference(s)--Similar provisions, I.C. § 123.354(1).

Sec. 10-58. Five-day, 14-day and seasonal licenses.

- (a) Applications for eight-month seasonal licenses, class F, class C or special class C licenses may be accepted by the city council for a proportionate part of the license fee.
- (b) The city council may accept applications for 14-day class F, class C or special class C licenses. A 14-day liquor license, if granted, is valid for 14 consecutive days. The fee for a 14-day liquor license is one quarter of the annual fee for that class of liquor license.
- (c) The city council may accept applications for five-day class F, class C or special class C licenses. A five-day license, if granted, is valid for five consecutive days. The fee for the five-day liquor license is one-eighth of the annual fee for that class of license.
- (d) No seasonal license shall be renewed.

State law reference(s)--Similar provisions, I.C. § 123.34.

Sec. 10-59. Refunds.

- (a) Under this article, any licensee 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 for the benefit of his or her creditors may voluntarily surrender such license to the alcoholic beverage division and when so surrendered the alcoholic beverage division shall notify the city. The alcoholic beverage division and/or the city, shall refund to the person so surrendering the license a proportionate amount of the fee paid for such license as follows:
 - (1) If surrendered during the first three months of the period for which the license 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 liquor, wine or beer license surrendered more than nine months after issuance.
- (c) No refund shall be made to any licensee upon the surrender of his or her license, 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 is not revoked or suspended, the licensee shall be eligible, upon surrender of his or her license, to receive a refund as provided in this section.
 - (2) If his or her license 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 fee.
- (d) No refund shall be made for seasonal, 5-day or for 14-day licenses.

Sec. 10-60. Transfers.

The council, may, in its discretion, authorize a licensee to transfer the license 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 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.

State law reference(s)--Authority to permit license and permit transfers, I.C. § 123.38.

Sec. 10-61. Causes for suspension, revocation, and civil penalty.

A holder of a liquor, wine or beer license may be required to pay a civil penalty and/or have the license suspended for a period up to one year or revoked for violations of law, including city ordinances, following notice and hearing, and may be penalized and/or suspended or revoked in accordance with the provisions of state law for any of the following causes:

- (1) Misrepresentation of any material fact in the application for such license.
- (2) Violation of any of the provisions of the state Alcoholic Beverage Control Act.
- (3) Any change in the ownership or interest in the business operated under any liquor license, which change was not previously reported to and approved by the city and the alcoholic beverage division.
- (4) An event which would have resulted in disqualification from receiving such license when originally issued.
- (5) Any sale, hypothecation, or transfer of such license.
- (6) The failure or refusal on the part of any licensee to render any report or remit any taxes to the state department under the state act.

State law reference(s)--Similar provisions, I.C. § 123.39(1)(a), (b).

Sec. 10-62. Effect of revocation.

- (a) Any liquor, wine or beer licensee whose license is revoked under the state Alcoholic Beverage Control Act shall not thereafter be permitted to hold a liquor, wine or beer license, in the state for a period of two years from the date of such revocation.
- (b) A spouse or business associate holding ten percent or more of the capital stock or ownership interest in the business of a person whose license has been revoked shall not be issued a liquor, wine or beer license, and no liquor, wine or beer license, shall be issued which covers any business in which such person has a financial interest for a period of two years from the date of such revocation.
- (c) If a license is revoked, the premises which has been covered by such license shall not be relicensed for one year.

State law reference(s)--Similar provisions, I.C. § 123.40.

Sec. 10-63. Appeal and hearings.

- (a) The right of appeal to the alcoholic beverages division of the state department of commerce shall be afforded a liquor, wine or beer licensee whose license has been suspended or revoked, or when a civil penalty has been imposed.
- (b) Any applicant who feels aggrieved by a decision of the administrator of the alcoholic beverages division of the state's department of commerce or the city penalizing, suspending, revoking, or disapproving issuance of a liquor, wine or beer license may, provided such applicant has exercised his or her right of administrative appeal as provided by state law, appeal from such decision within 30 days to the district court of the county wherein the premises covered by the application are situated.
- (c) The city may appeal a decision of the administrator of the alcoholic beverages division of the state department of commerce within 30 days to the district court of the county wherein the premises covered by the application are situated.

Sec. 30-370. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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Person of good moral character means any person who meets all of the following requirements:

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- (2) The person is not subject to or prohibited by section 123.40 of the Code of Iowa from obtaining a liquor, wine or beer license.

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Sec. 74-96. Glass containers and waste material.

- (a) No person shall bring into, use or possess in or on any park, trail or other recreation facility a bottle, jar, drinking cup or other container made of glass, except by approval of the parks and recreation director by permit for a special event or when a liquor, wine or beer license has been obtained.
- (b) No person shall litter the ground with any form of waste material. All waste material shall be deposited in receptacles provided for that purpose or shall otherwise be legally disposed of elsewhere. Park waste receptacles shall not be used for dumping trash or rubbish introduced in that form to the park.

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

FORM APPROVED: Megan E. Norberg, Assistant City Attorney

T.M. Franklin Cownie, Mayor

Attest: I, Laura Baumgartner, 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. 23-1277), passed by the City Council of said City at the meeting held on September 11, 2023 and signed by the Mayor on September 11, 2023 and published and provided by law in the Business Record on September 29, 2023. Authorized by Publication Order No. 12413.

Laura Baumgartner, City Clerk