ORDINANCE NO. 16,510

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, is hereby amended, by amending Chapter 134 and 135, specifically Sections 134-3.5.16 and 134-3.9.9, relating to liquor/tobacco sales, Sections 134-9.15, 134-9.19, 134-9.23, and 135-12.21, relating to definitions, Sections 134-6.7.6 and 134-6.7.7, relating to the review and approval procedures of a zoning variance, Sections 134-3.9.2 and 135-2.22.2, relating to accessory dwelling units, and Sections 134-7.3.3 and 134-7.3.6, relating to pole signs.

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, is hereby amended, by amending Chapter 134 and 135, specifically Sections 134-3.5.16 and 134-3.9.9, relating to liquor/tobacco sales, Sections 134-9.15, 134-9.19, 134-9.23, and 135-12.21, relating to definitions, Sections 134-6.7.6 and 134-6.7.7, relating to the review and approval procedures of a zoning variance, Sections 134-3.9.2 and 135-2.22.2, relating to accessory dwelling units, and Sections 134-7.3.3 and 134-7.3.6, relating to pole signs, as follows:

Article 3. USES

134-3.5 COMMERCIAL USE CATEGORY

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3.5.16 RETAIL SALES

Uses involving the sale, lease or rental of new or used goods to the ultimate consumer. Examples of specific retail use types include retail sales of convenience goods, consumer shopping goods and building supplies and equipment.

- **A. Limited Retail Sales.** Retail sales establishments occupying no more than 12,000 square feet of floor area.
- **B. General Retail Sales.** Retail sales establishments occupying more than 12,000 square feet of floor area but no more than 40,000 square feet of floor area.
- **C. Large-Format Retail Sales.** Retail sales establishments occupying more than 40,000 square feet of floor area.

134-3.9 ACCESSORY USES

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3.9.2 ACCESSORY DWELLING UNITS (ADU)

- **A. Where Allowed.** Accessory dwelling units (ADUs) that comply with this section 134-3.9.2, and with all other applicable sections of this code, are permitted in the A, DXR, RX1, RX2, N and NX districts where accessory to a one household dwelling on the same lot.
- **B. Number Allowed.** No more than one ADU is permitted on a single lot.

C. Location. ADUs may be located internally within the principal dwelling unit or in a detached accessory outbuilding pursuant to section 135-2.22 of this code.

D. Floor Area. The floor area of an ADU may not exceed 50% of the floor area within the principal household unit or 1,000 square feet, whichever is larger.

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3.9.9 LIQUOR, WINE, AND BEER SALES

A. Description. The retail sale of alcoholic liquor, wine and beer is permitted as a principal use, or as an accessory use to a permitted principal use where determined by the neighborhood services director that said accessory use is customary and incidental to such permitted principal use, only in the zoning districts and subject to the conditions indicated in Table 134-3.1-1 and Table 134-3.9-1 of this article and pursuant to this section.

B. Conditional Use Approval Criteria. Conditional use approval is required for the use of any premises, either as a principal or an accessory use, for the sale of alcoholic liquor, wine or beer, under the circumstances identified in Table 134-3.1-1 and Table 134-3.9-1 of this article. The board of adjustment is authorized to grant conditional use approval for such uses only when the business, operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:

1. The business conforms with the conditions identified in indicated in Table 134-3.9-1 of this article.
2. The proposed location, design, construction and operation of the particular use adequately safeguard the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.
3. The business is sufficiently separated from the adjoining residential area by distance, landscaping, walls or structures to prevent any noise, vibration or light generated by the business from having a significant detrimental impact upon the adjoining residential uses.
4. The business will not unduly increase congestion on the streets in the adjoining residential area.
5. The operation of the business will not constitute a nuisance.

C. S**upplemental Use Regulations.**

Any conditional use approval granted by the board of adjustment for the use of a premises, either as a principal or an accessory use, for the sale of alcoholic liquor, wine and beer is subject to the following supplemental use regulations, together with such additional special conditions as may be reasonably required by the board of adjustment to ensure that the conditional use review approval criteria of paragraph B of this subsection, are satisfied:

1. Any parking area provided for the use of customers of the business must be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site must be landscaped and illuminated so as to minimize hiding places for possible criminal activity.

2. The business shall comply with the noise control regulations of article IV of chapter 42 of this code. Outside speakers and amplified sound are prohibited except when used in compliance with a type E sound permit.
3. Any such business must comply with the following requirements:
   a. Every retail sales establishment, fuel station, liquor store, and tobacco store selling alcoholic liquor for off-premises consumption shall have more than one employee on duty at all times the business is open to the public. In addition, any limited retail sales establishment, fuel station, and tobacco store selling alcoholic liquor for off premises consumption shall either:
      i. Display alcoholic liquor only in a locked case or behind a counter accessible only to employees or
      ii. Employ an electronic security cap or tag system on all containers of alcoholic liquor on display.
   b. Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
   c. Not dispense alcoholic beverages from a drive-through window.
4. Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of such business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
5. If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions of the conditional use approval, the zoning enforcement officer may apply to the board of adjustment to reconsider conditional use approval for such business. A copy of such application and notice of the hearing before the board on such business at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board of adjustment finds that the operation of such business exhibits a pattern of violating the conditions of the conditional use, the board shall have the authority to amend or revoke the conditional use approval.

D. Report of Findings.

1. **Report of Findings – Alcoholic Liquor, Wine, or Beer.** Upon reasonable suspicion that any retail sales establishment other than a liquor store, fuel station or tobacco store derives more than 40% of its gross receipts from the sale of alcoholic liquor, wine, or beer, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, or beer. If the business does not provide documentation demonstrating that less than 40% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, or beer within 45 days of the zoning enforcement officer's demand for such documentation, it shall be presumed that the business's principal use is as a liquor store and must comply with all provisions of this chapter pertaining to liquor stores**.** Such presumption may be overcome by the business timely furnishing a report of findings showing compliance with the alcohol sales percentage requirements of this section for businesses other than liquor stores, prepared and verified by a certified public

accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages, and from the sale of all other merchandise and food exclusive of alcoholic beverages, from the business premises in the preceding six months.

If the presumption is not overcome in the time and manner set forth in the preceding paragraph, then any fuel station or retail sales establishment shall be deemed a liquor store for purposes of this zoning code and shall be subject to the enforcement provisions of this zoning code for any violation thereof.

2. **Report of Findings - Tobacco.** Upon reasonable suspicion that any retail sales establishment other than a tobacco store, fuel station or liquor store, , derives more than 40% of its gross receipts from the sale of tobacco products, cigarettes, vapor products, and/or alternative nicotine products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40% of its gross receipts from sales are derived from the sale of tobacco products, cigarettes, vapor products, and/or alternative nicotine products. If the business does not provide documentation demonstrating that less than 40% of its gross receipts from sales are derived from the sale of tobacco products, cigarettes, vapor products, and/or alternative nicotine products within 45 days of the zoning enforcement officer's demand for such documentation, it shall be presumed that the business's principal use is as a tobacco store and must comply with all provisions of this chapter pertaining to tobacco stores. Such presumption may be overcome by the business timely furnishing a report of findings showing compliance with the tobacco sales percentage requirements of this section for businesses other than tobacco stores, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of tobacco products, cigarettes, vapor products, and/or alternative nicotine products and from the sale of all other merchandise and food exclusive of tobacco products, cigarettes, vapor products, and/or alternative nicotine products, from the business premises in the preceding six months.

   If the presumption is not overcome in the time and manner set forth in the preceding paragraph, then the business shall be deemed a tobacco store for purposes of this zoning code and shall be subject to the enforcement provisions of this zoning code for any violation thereof.

3. **Report of Findings – Restaurant or Other Uses with On-Premises Alcoholic Consumption.** Upon reasonable suspicion that any restaurant or "Other" use with on-site alcoholic consumption does not derive at least 50% of its gross receipts from the sale of prepared food, food-related services, non-alcoholic beverages, goods other than alcoholic liquor, wine, and beer, admission fees, rental or other facility-use charges, or services the zoning enforcement officer may require that the owner or operator or the restaurant or "Other" use with on-site alcoholic consumption demonstrate within 45 days that during the prior six months at least 50% of its gross receipts were derived from the sale of prepared food, food-related services, non-alcoholic beverages, goods other than

alcoholic liquor, wine, and beer, admission fees, rental or other facility-use charges, or services. If the business does not provide documentation demonstrating that at least 50% of its gross receipts were derived from the sale of prepared food, food-related services, non-alcoholic beverages, goods other than alcoholic liquor, wine, and beer, admission fees, rental or other facility-use charges, or services, within 45 days of the zoning enforcement officer's demand for such documentation, it shall be presumed that the business's principal use is as a bar and must comply with all provisions of this chapter pertaining to bars. Such presumption may be overcome by the business timely furnishing a report of findings showing compliance with the percentage requirements of this section for restaurants, prepared and verified by a certified public accountant as the result of an agreed-upon procedures engagement, identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages and from the sale of prepared food and food-related services exclusive of alcoholic beverages, from the business premises in the preceding six months.

E. Prohibited Accounting for Alcoholic Beverages. The sale of an alcoholic beverage and any of its component ingredients whether mixed into one beverage or sold separately to the same customer, regardless of intent, shall not be divided for accounting purposes under this chapter.

F. Effective Date.

1. All fuel stations, retail sales establishments, tobacco stores and restaurants that have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, shall comply with the requirements of paragraphs A., B., C., D., and E. of this sub-section.
2. Any fuel station, retail sales establishment, tobacco store or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, shall comply with paragraphs A., B., C., D., and E. of this subsection, exclusive of any changed separation requirements, commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding nonconforming uses, as set forth in section 134-7.2 of this code.
3. Section 134-3.9.9(C) shall be effective on and after November 1, 2025. Every limited retail sales establishment, fuel station and tobacco store which held a liquor license on October 31, 2025 and continuously holding such liquor license shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees.

Article 6. REVIEW AND APPROVAL PROCEDURES

134 -6.7 ZONING VARIANCES

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6.7.6 BOARD OF ADJUSTMENT DECISION

A. Following receipt of a complete zoning variance application, the board of adjustment must hold a public hearing to consider the requested zoning variance. Following the close of the public hearing, the board of adjustment must act to approve the requested zoning variance, approve the zoning variance with conditions, or deny the zoning variance request based on the applicable standards and review criteria of section 134-6.7.7 of this article. Approval of a zoning variance requires an affirmative vote of at least four members of the board of adjustment and may occur on the consent portion of the board of adjustment's agenda.

B. In approving a zoning variance, the board of adjustment is authorized to impose such conditions and restrictions as the board determines to be necessary to ensure compliance with the standards of section 134-6.7.7 of this article, to reduce or minimize the effect of the zoning variance upon other properties in the area, and to better carry out the general purpose and intent of this zoning ordinance.

6.7.7 STANDARDS AND REVIEW CRITERIA

A. General. Except for variances with respect to the area, dimensional, or other numerical limitations, a zoning variance may only be approved when the variance will not be contrary to the public interest, and where owing to special conditions a literal enforcement of the regulations of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.

A zoning variance with respect to the area, dimensional, or other numerical limitations will be governed by the review criteria, conditions, and limitations set forth in subsection (C), below.

A zoning variance under this subsection (A) further may not be approved unless the board of adjustment determines that all of the following facts have been established by the applicant:

1. The subject property cannot yield a reasonable return from any use permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to maintain a more profitable use;
2. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the subject property and not to general conditions in the neighborhood; and
3. The use or construction to be authorized by the zoning variance will not alter the essential character of the area in which the subject property is located.

B. Floodplain Variances. No zoning variance from the F zoning district regulations may be approved unless the board of adjustment determines that the general zoning variance standards and review criteria of paragraph A of this section have been met and that all of the following additional following facts have been established by the owner of the subject property:

1. Zoning variances from the F zoning district regulations may only be granted upon:
    a. A showing of good and sufficient cause;

b. A determination that the zoning variance is the minimum necessary, considering the flood hazard, to afford relief;

c. A showing that the Iowa Department of Natural Resources and the city engineer has been notified of the requested zoning variance and offers no objection; and

d. A showing that the proposed variance does not impede emergency access to the subject property or surrounding neighborhood.

C. Area, Dimensional, or Other Numerical Limitations

1. The board of adjustment may grant variances with respect to the area, dimensional, or other numerical limitations as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in practical difficulties to the property owner in making a beneficial use of the property allowed by the zoning ordinance, and so that the spirit of the ordinance shall be observed and substantial justice done.
2. For purposes of this subsection, “area, dimensional, or other numerical limitations” subject to variance include, but are not limited to requirements for minimum lot size, setbacks, yard widths, height, bulk, sidewalks, fencing, signage, and off-street parking.
3. To receive the requested area, dimensional, or other numerical variance under this section, the property owner must prove:
   a. that the practical difficulties faced are unique to the property at issue;
   b. that the practical difficulties faced are not self-created; and
   c. that granting the variance will not significantly alter the essential character of the surrounding neighborhood.

Article 7 NONCONFOMITIES

134-7.3 NONCONFORMING SIGNS

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7.3.3 ALTERATION, ENLARGEMENT OR EXPANSION

Nonconforming signs may not be enlarged or altered in a way which increases their nonconformity. Notwithstanding the foregoing, the following enlargements or expansions of a nonconforming sign are allowed:

A. Enlargement or expansion of a pole sign, to an extent less than 15% of the sign area, as determined by the original, nonconforming pole sign area; or

B. Repair or replacement of a pole sign, to an extent not more than 115% of the original sign area or pole height, as determined by the original, nonconforming pole sign area; or

C. As set forth in subsection 7.3.6.

7.3.6 DAMAGE OR DESTRUCTION

A. Unless authorized by section 7.3.3(A), if a nonconforming sign is damaged or destroyed by any means, including repair, alteration, replacement or upgrade, to the extent of 50% or more of its replacement cost at the time of damage or destruction, exclusive of the foundation and supporting elements below the bottom of the sign, the nonconforming sign must be removed.

B. If a nonconforming sign is damaged or destroyed by any means, including repair, alteration, replacement or upgrade, to an extent of less than 50% of its replacement cost at the time of the damage or destruction, exclusive of the foundation and supporting elements below the bottom of the sign, the nonconforming sign may be re-established to the extent it existed before the damage, provided that a building permit application to re-establish the sign is filed within six months of the date of damage or destruction.

C. For purposes of this subsection, as it applies to all signs, other than general advertising signs and pole signs containing electronic or multi-vision display sign faces, the phrase "damaged or destroyed" includes removal of the sign face for repair, alteration, replacement or upgrade.

D. For purposes of this subsection as it applies to general advertising signs and pole signs containing electronic or multi-vision display sign faces, the phrase "damaged or destroyed" does not include removal of the electronic or multi-vision display sign face for repair or replacement if the sign structure and the sign face type (electronic or multi-vision display) are neither modified nor altered and if the size of the repaired or replacement electronic or multi-vision sign face remains the same as the size of the previously existing electronic or multi-vision sign face.

E. For purposes of this subsection as it applies to pole signs not originally containing electronic or multi-vision display sign faces, as determined by the neighborhood services director, the phrase "damaged or destroyed" does include alteration, upgrade or modification of the pole sign to allow for the installation of an electronic or multi-vision display sign face, if the size of the alteration, upgrade or modification is no greater than 12 square feet, only if approved in accordance with the Type 1 zoning exception procedures of section 134-6.5 of this chapter.

Article 9 DEFINITIONS

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134-9.15 Terms Beginning with "L"

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Liquor store: an establishment or place of business primarily engaged in the sale for off-premise consumption of alcoholic liquors, wine and beer.

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134-9.19 Terms Beginning with "P"

Principal use or primary use: the main use of land or structures as distinguished from an accessory use.

Primarily engaged in: a business will be considered to be primarily engaged in sales of a product or category of products if more than 40% of the business's gross income is derived from the sale of such product or category of products.

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134-9.23 Terms Beginning with "T"

Tobacco store: a place of business primarily engaged in the retail sale of tobacco related products, cigarettes, alternative nicotine products, and vapor products, or any combination thereof, all as defined in Iowa Code chapter 453A, or any successor provision thereto.

135-2. BUILDING TYPES

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2.22.2 ACCESSORY BUILDINGS

Accessory buildings shall be fully enclosed, unless otherwise stated. The following are classified as accessory buildings:

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- **F. Accessory Dwelling Unit (ADU) Building.** A stand-alone accessory structure for a permitted accessory dwelling unit use.
    1. Location. ADU buildings must be located in the rear yard.
    2. Setback. ADU buildings shall be setback a minimum of five feet from any lot line.
    3. Height. The height shall not exceed the maximum height permitted for the principal building.
    4. Roof Type. Permitted roof types shall be limited to those allowed for permitted principal buildings.

Article 12. DEFINITIONS

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135-12.21 Terms Beginning with "S"

Single housekeeping unit: an interactive group of persons with established ties and familiarity with each other, jointly occupying a single household, including joint access to and use of all common areas including living, kitchen and eating areas within the household unit, and sharing household activities and responsibilities such as chores, expenses, meals and maintenance. Residence in the household is fairly stable as opposed to transient and members of the household have some control over who becomes a member of the household. Factors that a residence is not operating as a single housekeeping unit may include, but are not limited to: the residents do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have separate food storage facilities, such as separate refrigerators.

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

FORM APPROVED: Chas M. Cahill, Assistant City Attorney

Connie Boesen, 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. 25-1440), passed by the City Council of said City at the meeting held on October 20, 2025 and signed by the Mayor on October 20, 2025 and published and provided by law in the Business Record on November 7, 2025. Authorized by Publication Order No. 13166.

Laura Baumgartner, City Clerk