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Date..... July 9, 2007

An Ordinance entitled, "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. 14,269 passed August 25, 2003, and Ordinance No. 14,287 passed October 20, 2003 and Ordinance No. 14,440 passed May 5, 2005 by amending paragraphs (6) and (7) of Section 10-43 regarding the required separation of establishments selling liquor, wine or beer in the downtown area from churches, schools, public parks and licensed child care centers",

which was considered and voted upon under Roll Call No. 07-
1213 of June 18, 2007; again presented.

Moved by _____ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

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Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



**Council
Communication**
Office of the City Manager

Date	June 18, 2007
Agenda Item No.	69 51
Roll Call No.	07-1213
Communication No.	07-385
Submitted by: Richard A. Clark, City Manager	

AGENDA HEADING:

Amending Chapter 10 of the Municipal Code Regarding Required Separation of Establishments Selling Liquor, Wine, or Beer in the Downtown Area.

SYNOPSIS:

Approval of first reading of the ordinance. The proposed amendment removes the separation requirement between establishments selling liquor, wine, or beer and any church, school, public park, or licensed childcare center. This amendment only removes the separation requirement in the downtown zoning districts C-3, C-3A, C-3B, C-3R and D-R.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

The template of downtown development patterns has changed as Des Moines pursues its goal of fostering a Vibrant Downtown Area. Uses that were traditionally confined to distinct office, housing, or entertainment districts are now commingling on the same streets and even the same buildings. This ordinance change was specifically prompted by the developer of the Davis Brown Tower (Paul Rottenberg, Orchestrate Management, 1000 Walnut Street, Ste. 1107, Des Moines, Iowa 50309), who would like to pursue a street-level tenant serving alcohol at the SE corner of 10th and Walnut Streets. The property at the NE corner of 10th and Walnut Streets houses the public Walnut Street School.

This ordinance change (see roll call) is limited only to downtown zoning districts. The separation requirements will remain in place for the balance of the city.

PREVIOUS COUNCIL ACTION(S):

Date: May 5, 2005

Roll Call Number: 05-1093 and 05-1094

Action: Amending Chapter 10 of the Municipal Code regarding Temporary Liquor Licenses for Special Events. (Council Communication No. 05-232)

(A) First consideration of ordinance above. Moved by Hensley that this ordinance be considered and given first vote for passage. Motion Carried 6-1.

(B) Final consideration of ordinance above, (waiver requested by Council Member Brooks), requires 6 votes. Moved by Hensley that the rule requiring that an ordinance must be considered

and voted on for passage at two Council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #14,440. Motion Carried 6-1.

Date: October 20, 2003

Roll Call Number: 03-2425 and 03-2426

Action: Amending Chapter 10 of the Municipal Code regarding civil penalties for liquor licensed establishments, and adding new classification for Native Wine permits. (Council Communication No. 03-517). Moved by Hensley that this ordinance be considered and given second vote for passage. Motion Carried 7-0.

(A) Final consideration of ordinance above, (waiver requested by City Clerk and Legal Department), requires 6 votes. Moved by Hensley that the rule requiring that ordinances must be considered, and voted on for passage at two council meetings prior to the meeting at which it is to be finally passed be suspended, that the ordinance be placed upon its final passage and that the ordinance do now pass, #14,287. Motion Carried 7-0.

Date: August 25, 2003

Roll Call Number: 03-1998 and 03-1999

Action: Amending Chapter 10 of the Municipal Code regarding penalties, fees, refunds and transfers of liquor licenses and permits. Moved by Brooks that this ordinance be considered and given second vote for passage. Motion Carried 6-1. Nays: McPherson.

(A) Final consideration of ordinance above. Moved by Brooks that this ordinance do now pass, #14,269. Motion Carried 6-1. Nays: McPherson.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Second and third readings of ordinance.

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ORDINANCE NO. _____

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. 14,269 passed August 25, 2003, and Ordinance No. 14,287 passed October 20, 2003 and Ordinance No. 14,440 passed May 5, 2005 by amending paragraphs (6) and (7) of Section 10-43 regarding the required separation of establishments selling liquor, wine or beer in the downtown area from churches, schools, public parks and licensed child care centers.

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. 14,269 passed August 25, 2003, and Ordinance No. 14,287 passed October 20, 2003 and Ordinance No. 14,440 passed May 5, 2005 is hereby amended by amending paragraphs (6) and (7) of Section 10-43 regarding the required separation of establishments selling liquor, wine or beer in the downtown area from churches, schools, public parks and licensed child care centers, as follows:

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:

(6) Licensed premises located outside the C-3, C-3A, C-3B, C-3R and D-R zoning districts 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, B native or C native 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 C-3, C-3A, C-3B, C-3R and D-R zoning districts, 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

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

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

FORM APPROVED:

Roger K Brown
Roger K. Brown
Assistant City Attorney