

★ **Roll Call Number**

Agenda Item Number

41

December 4, 2006

Date

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, by amending Chapter 30, Businesses, enacting a new Article IX, After-Hours Business, Sections 30-370 through 30-402 thereof, relating to after-hour businesses",

presented.

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

FORM APPROVED:

(First of three required readings)



Douglas P. Philip
Assistant City Attorney

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

MOTION CARRIED

APPROVED

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

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, by amending Chapter 30, Businesses, enacting a new Article IX, After-Hours Business, Sections 30-370 through 30-402 thereof, relating to after-hour businesses.

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, by amending Chapter 30, Businesses, enacting a new Article IX, After-Hours Business, Sections 30-370 through 30-402 thereof, relating to after-hour businesses, as follows:

ARTICLE IX. AFTER-HOURS BUSINESS

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:

After-hours business means any business open during any time between the hours of 2:00 a.m. to 6:00 a.m. any day of the week, and either where patrons are allowed to bring their own beer and wine onto the business premises, or is a private club as defined in this section.

Business premises or *licensed premises* means all building and property including parking lots owned or leased for the benefit of the operation of the after-hours business.

Business records means all financial accounting records of the after-hours business and a private club's membership records.

Beer means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops, with or without unmalted grains or decorticated and degerminated grains or made by the fermentation of or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight but not including mixed drinks or cocktails.

Hotel or *motel* means premises licensed by the state department of inspections and appeals and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with

twenty or more sleeping rooms.

Person means any individual, association, partnership, corporation, or club owning or operating an after-hours business.

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

- (1) The person has such financial standing and good reputation as will satisfy the City that the person will comply with this article and all laws, ordinances, and regulations applicable to the person's operations under this article.
 - a. In evaluating an applicant's "financial standing" the City may consider the following: An applicant's "financial standing" may include, but is not limited to, verified source(s) of financial support and adequate operating capital for the applicant's proposed after-hours business, a record of prompt payment of local or state taxes due, a record of prompt payment to the City and the various utility companies of fees or charges due the City or the utility companies for municipal services or utilities provided, and prompt payment of or satisfaction of any fine or civil penalty imposed pursuant to any Chapter of the Des Moines Municipal Code.
 - b. In evaluating an applicant's "good reputation" the City may consider such factors as, but not limited to, the following: A pattern or practice of violating any of the requirements or prohibitions set out in this division to which the licensee or licensee's agents or employees have pled or been found guilty in a criminal court or have been otherwise sanctioned under this division, a pattern or practice of violating any of the state alcoholic beverages laws and regulations for which corrective action has been taken, convictions of licensee of laws relating to operating a motor vehicle while under the influence of drugs or alcohol, convictions of any laws relating to illegal drug use, possession or sale, convictions of misdemeanor charges, their recency and severity.
- (2) The person is not subject to or prohibited by section 123.40 of the Code of Iowa from obtaining a liquor control license or a wine or beer permit.
- (3) Notwithstanding paragraph (5), the applicant is a citizen of the United States and a resident of this state, or licensed to do business in this state in the case of a corporation. Notwithstanding paragraph (5), in the case of a partnership, only one general partner need be a resident of this state.
- (4) The person has not been convicted of a felony. However, if the person's conviction of a felony occurred more than five years before the date of the application for a license or permit, and if the person's rights of citizenship have been restored by the governor, the City may determine that the person is of good moral character notwithstanding such

- conviction.
- (5) The requirements of this definition apply to the following:
- a. Each of the officers, directors, and partners of such person.
 - b. A person who directly or indirectly owns or controls ten percent or more of any class of stock of such person.
 - c. A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of such person.
 - d. For the purposes of this subsection, an individual and the individuals spouse shall be regarded as one person.

Private Club means a business not open to the general public but only open to specific identified individuals who are members.

Wine means any beverage containing more than five percent but not more than seventeen percent of alcohol by weight obtained by the fermentation of the natural sugar contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses or cactus.

Sec. 30-371. License required.

No person shall operate an after-hours business in the city without first paying the license fee and procuring an after-hours business license. This article, however, shall not apply to hotels or motels.

Sec. 30-372. Eligibility.

Upon meeting the requirements imposed by this chapter and other city ordinances, a person who is of good moral character, as defined by this chapter, may apply for and hold an after-hours business license. For a corporation, or partnership, the officers of the club or corporation and the partners of a partnership shall be persons of good moral character as defined by this chapter.

Sec. 30-373. Conditions for approval.

The following conditions and regulations must be met by an applicant for an after-hours business license:

- a. 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 business premises without warrant to inspect for violations of the provisions of state law and of this chapter.
- b. The premises for which an after-hours business 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.

- c. All applicable permits and licenses provided for by the Municipal Code shall be displayed in a conspicuous place on the premises of the license holder and at all times shall be subject to inspection.
- d. No after-hours business license shall be approved for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.

Sec. 30-374. License application.

- a. All applicants for an after-hours business license shall apply in writing to the city clerk. Upon receipt of the application by the city clerk, the application information shall be forwarded to the chief of police or his or her designee, who shall conduct an investigation and shall submit a written report on 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 or permit shall be approved until or unless a report has been filed with the city clerk by such officers.
- b. All applications shall be made in the name of the owner of the business, whether an individual, a partnership, or a corporation, and shall contain the following:
 - (1) The full name, residence address, business address, date of birth and social security number of the applicant and, when the applicant is a partnership or corporation, of the partners or officers.
 - (2) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation together with the names and residence addresses of each of the officers, directors, and each stockholder holding more than ten percent of the stock of the corporation; if the applicant is a partnership, the application shall set forth the name and the residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the subsections of this section pertaining to a corporate application apply.
 - (3) The name and address of the owner of the building where such after-hours business will be located.
 - (4) A sketch or diagram of the proposed licensed premises showing the boundaries and locations of entrance and exits of buildings and parking lots and indicating the address of the proposed licensed premises, street names and abutting addresses.
 - (5) A copy of a valid Iowa sales tax permit for operation of the after-hours business.
- c. Upon receipt of departmental inspections and if the city clerk

finds that the applicant has fully complied with all requirements of this article and all applicable ordinances and codes regulating fire, buildings, health and zoning and that the applicant is of good moral character, the city clerk shall approve the application and shall issue the after-hours business license.

Sec. 30-375. License fees.

- (a) An applicant for an after-hours business license shall submit a fee to the city clerk at the time of filing the application.
- (b) All after-hours business licenses, unless sooner suspended or revoked shall expire at 6:00 a.m. one (1) year from the date of issuance.
- (c) An applicant who files for renewal less than thirty (30) days prior to the date of any license expiration shall pay a late fee.
- (d) If the application is denied or if the application is withdrawn before final action is taken by the city clerk, a portion of the application fee shall be retained by the city clerk for the cost of administration.
- (e) The license fee, its nonrefundable portion and the late fee for the after-hours business license shall be in the amounts set in the schedule of fees adopted by the city council by resolution.

Sec. 30-376. Renewal application.

- (a) Upon receipt of an application for the renewal of an after-hours business license, the information shall be forwarded to the chief of police or his or her designee, who shall conduct an investigation and shall submit a written report 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 30-374 of this chapter.

Sec. 30-377. Timely filed status.

- (a) An applicant for a renewal of an after-hours business license may be granted timely filed status if the applicant complies with the following conditions:
 - (1) The applicant files a completed application with the City Clerk's Office at least thirty (30) days in advance of the expiration of an after-hours business license, and
 - (2) The applicant pays the appropriate license fee in full.
- (b) Timely filed status allows the license holder to continue to operate under a license after its expiration and until the City Clerk has finally determined whether the license should be issued. If the application for the license is denied,

timely filed status continues until the last day for appeal of such denial to the City Council.

- (c) Absent timely filed status, an applicant for renewal shall not operate an after-hours business beyond the expiration date of the license.

Sec. 30-378. License assignability.

The licenses granted under this article shall be personal to the licensee and shall not be assignable.

Sec. 30-379. Description of premises.

The licensed premises shall be described in the license by street name and number or other definite description.

Sec. 30-380. Numbering of licenses and retention of stub.

All licenses issued under this division will be numbered, and the city clerk shall keep a duplicate thereof.

Sec. 30-381. License for each place of business.

Any person conducting several or separate places of after-hours businesses shall pay the license fee and procure a license for each such place.

Sec. 30-382. Display of license.

The license for the business premises shall be prominently displayed in full view at the licensed premises.

Sec. 30-383. Records.

Every holder of an after-hours business license shall keep on the licensed premises a daily record of the gross receipts of the holder's business. In the case of an after-hours business that is a private club, a club membership list shall be maintained on the licensed premises. These records shall be maintained for inspection and examination by police or other authorized city employee during the business hours of the licensed business.

Sec. 30-384. Examination of premises and records.

It shall be unlawful for a person to refuse, resist, or attempt to prevent any city employee or any authorized city agent from making a reasonable examination of the business premises and the business records.

Sec. 30-385. Violation by clerks, agents and employees.

Every clerk, agent or employee of any after-hours business shall be subject to and bound by all the sections of this division and be liable to the same penalties and to the same extent as his or her employer or principal for any violation of this division. Any violation of any section of this division by any clerk, agent or employee of a licensee shall be deemed the act of the licensee and shall subject the license of said licensee to civil penalty, suspension or revocation.

Sec. 30-386. Criminal conviction not a prerequisite.

A criminal conviction is not a prerequisite to suspension, revocation, or imposition of a civil penalty pursuant to this division.

Sec. 30-387. Sale or transfer of license.

No after-hours business license shall be sold or transferred. The purchaser of any after-hours business or of the majority of the stock of any corporation operating an after-hours business shall make application for and obtain a new license before operating such business at the location for which the license has been issued.

Sec. 30-388. License renewals.

Every person operating an after-hours business shall apply for an after-hours business license annually as if for an original license. There shall be no automatic renewal. Such application shall be filed and the fee paid not less than thirty (30) days prior to the expiration of the current license.

Sec. 30-389. Failure to maintain records.

No person licensed under this division or his or her agents or employees shall fail to maintain, shall fail to surrender or shall falsify, delete, alter, destroy or otherwise destroy any records required by this division.

Sec. 30-390. Prohibited acts.

No person holding an after-hours business license nor his or her agents or employees shall do any of the following:

- (a) Knowingly permit any gambling, except in accordance with I.C. chs. 99B, 99D, 99E, or 99F, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license.
- (b) Keep or allow to be kept gambling devices of any kind or

description on the licensed premises contrary to state law.

- (c) Engage in, perform, act or cause, permit, procure, counsel or assist any other person who is acting as a waiter, waitress, host, hostess, dancer, or entertainer on the licensed premises to:
 - (1) Expose his or her genitals, pubic hair, buttocks, perineum, anus region, or pubic hair region;
 - (2) Expose or wear any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum, anus region, or pubic hair region; or
 - (3) Expose any portion of the female breast at or below the nipple thereof.

For purposes of this subsection a person shall be deemed a waiter, waitress, host, hostess, dancer, or entertainer if such person acts in that capacity without regard to whether such person is paid any compensation by the after-hours business licensee or his or her agent or employee.

- (d) Knowingly permit solicitation on the licensed premises for purposes of prostitution.
- (e) Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.
- (f) No loud or boisterous language shall be permitted on any licensed premises and such place shall be conducted in a quiet and orderly manner.

Sec. 30-391. Gambling evidence.

The intentional possession or willful keeping of any gambling device, machine or apparatus as defined in Iowa Code section 99A.1 upon the business premises of any establishment licensed by this division shall be prima facie evidence of a violation of Sec 30-390(a) of this division and subject licensee to suspension or revocation.

Sec. 30-392. Security Required.

An after-hours business license holder shall provide adequate security to provide for crowd control and the safety of patrons.

Sec. 30-393. Public dance law.

An after-hours business licensed under this article shall not allow public dancing in accordance with Article III of chapter 14 of this Code unless the licensed business is a private club.

Sec. 30-394. Lighting.

The interior of any building on the licensed premises and any

rooms or booths contained therein shall be illuminated to a minimum of two footcandles as measured by a footcandle meter at a plane of 30 inches from the floor and shall be so lighted that all objects are plainly visible at all times.

Sec. 30-395. Procedures for suspension, revocation, or civil penalty.

- (a) Whenever the city council finds that the licensee or 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 division, any other chapter of this Code, or state law pertaining to the after-hours business, the city council may, impose a civil penalty of up to \$500.00 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 therefore.
- (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 an appropriate 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.
- (e) Failure to pay a civil penalty imposed by the City Council within 30 days of the resolution imposing such penalty if not stayed by appeal shall result in an automatic suspension of the after-hours business license for 20 calendar days. The City Clerk shall issue a suspension order and the 20 days suspension shall commence at 6:00 p.m. one day following service of the order by ordinary mail to the last known address of the license holder.

Sec. 30-396. Enforcement alternatives.

Any person who fails to perform an act required by this division or who commits an act prohibited by this division shall be guilty of a misdemeanor or a municipal infraction punishable by a criminal or civil penalty as provided by section 1-15 of this Code.

The City may file a Municipal Infraction pursuant to Iowa Code Chapter 364.22 as an alternative to the penalty procedures under Sec. 30-395 of this division.

Sec. 30-397. 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. 30-398. Scope.

- (a) An after-hours business 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 permittee or licensee.
- (b) Every permit or license shall be issued in the name of the applicant, and no person holding a permit or license shall allow any other person to use the permit or license.

Sec. 30-399. Causes for suspension, revocation, and civil penalty.

A holder of an after-hours business 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 for any of the following causes:

- (a) Misrepresentation of any material fact in the application for the after-hours business license.
- (b) Violation of any of the provisions of city ordinance or state law pertaining to the operation of the after-hours business.
- (c) Any change in the ownership or interest in the business which change was not previously reported to and approved by the city.
- (d) An event which would have resulted in disqualification from receiving such license or permit when originally issued.
- (e) Any sale, hypothecation, or transfer of such license or permit.
- (f) The failure or refusal on the part of any licensee or permittee to render any report or remit any taxes to the Internal Revenue Service of the State of Iowa that are required by state law.

Sec. 30-400. Emergency Suspension.

- (a) Notwithstanding any other provision of this division, the Chief of Police or his or her designee may temporarily suspend the after-hours business license and order a temporary closure

of the business in a situation involving an immediate danger to public health, safety, or welfare.

- (b) The police department shall give written notice of the temporary suspension/closure order along with a brief statement of the facts and reasons for the decision to suspend to persons who are required to comply with the order. Such notice shall state that the matter of temporary suspension and closure will be heard by the City Council at the first regularly scheduled council meeting after expiration of five calendar days from the temporary suspension/closure. The suspension and order of closure is effective when issued and will remain effective until the city council reviews the facts, circumstances, and reasons for the temporary suspension and closure.
- (c) A copy of the written notice of suspension/closure shall be sent to the City Clerk. Such hearing shall be placed on the council agenda for the next regularly scheduled council meeting after expiration of five days from the temporary suspension/closure.
- (d) The City Council may take any action it is authorized to take under section 30-395 of this division and/or reinstatement of the after-hours business license.

Sec. 30-401. Effect of revocation.

- (a) Any licensee whose license or permit is revoked shall not thereafter be permitted to hold a license in the city 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 or permit has been revoked shall not be issued a license and no 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.

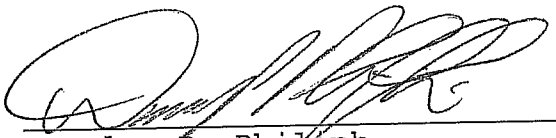
Sec. 30-402. Appeal and hearings.

- (a) The right of appeal to the city council shall be afforded an applicant for an after-hours business license or for a renewal license whose license has been denied by the City Clerk. Such appeal shall be in writing and filed with the City Clerk's Office 10 business days after notice of denial is sent by ordinary mail.
- (b) Any applicant who feels aggrieved by a decision of the city council penalizing, suspending, revoking, or disapproving issuance of a license may appeal from such decision within 30 days to the Polk County District Court.

Sec. 2. Any person operating an After-Hours Business subject to regulation under this ordinance shall have forty-five (45) days after this ordinance becomes effective to obtain the license required by Sec. 30-374.

Sec. 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Douglas P. Philip
Assistant City Attorney