

★ Roll Call Number

Agenda Item Number

Ex. 1

Date..... October 11, 2010

WHEREAS, the City Plan and Zoning Commission has advised in the attached letter that on October 7, 2010, the members recommended by a vote of 9-0 for **APPROVAL** of a report from the Regulation and Ordinance Subcommittee regarding a proposed text amendment that would revise the applicability of Conditional Use Permit requirements for businesses selling liquor, wine and beer and request that the City Council direct the Plan and Zoning Commission notify affected parties and hold a public hearing on the proposed ordinance.

MOVED by _____ to receive and file

FORM APPROVED:



 Michael F. Kelley
 Assistant City Attorney

SPONSOR: Council Member Hensley

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

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.

MOTION CARRIED

APPROVED

 Mayor

 City Clerk

Date _____

Agenda Item EX. 1

Roll Call # _____

October 8, 2010

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held October 7, 2010, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Leisha Barcus				X
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley				X
Dann Flaherty	X			
John "Jack" Hilmes	X			
Joel Huston	X			
Ted Irvine				X
Greg Jones	X			
Jim Martin	X			
Brian Millard				X
William Page	X			
Mike Simonson				X
Kent Sovern	X			

APPROVAL of a report from the Regulation and Ordinance Subcommittee regarding a proposed text amendment that would revise the applicability of Conditional Use Permit requirements for businesses selling liquor, wine and beer and request that the City Council direct the Plan and Zoning Commission notify affected parties and hold a public hearing on the proposed ordinance.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends that the Plan and Zoning Commission receive and file the report from the Regulation and Ordinance Subcommittee regarding the draft ordinance. Staff also recommends that the Commission forward a communication to the City Council requesting that the Plan and Zoning Commission be directed to notify affected parties and hold a public hearing on the proposed ordinance.



CITY PLAN AND ZONING COMMISSION
ARMORY BUILDING
602 ROBERT D. RAY DRIVE
DES MOINES, IOWA 50309 -1881
(515) 283-4182

ALL-AMERICA CITY
1949, 1976, 1981
2003

STAFF REPORT

I. GENERAL INFORMATION

On September 13, 2010 the Des Moines City Council approved a motion directing the Legal Department to prepare an ordinance amendment regarding the applicability of Conditional Use Permit requirements for businesses selling liquor wine or beer.

Chapter 134 of the City Code currently requires a business to obtain a conditional use permit from the Board of Adjustment to sell liquor, wine or beer unless: 1) the business operates as a grocery store or pharmacy at least half of whose gross income is derived from the sale of merchandise other than liquor, wine or beer; or 2) a restaurant, at least half of whose gross income is derived from the sale of prepared food, and food related services.

Several "convenience stores" without fuel sales have established operations in Des Moines. These convenience stores primarily sell two products....alcohol and tobacco. Due to the increased cost of tobacco products, these businesses have avoided the requirement to obtain a conditional use permit to sell liquor, wine and beer.

Per Council directive, the attached draft of a text amendment would modify the exemption for grocery stores and pharmacies to include convenience store uses and require at least 60% of gross income to be derived from the sale of merchandise other than liquor, wine, or beer and tobacco products. Preliminary research by staff has indicated that grocery stores will not likely be impacted by the proposed change. No amendments are proposed to the existing exemption for restaurants.

II. ADDITIONAL APPLICABLE INFORMATION

The Regulation and Ordinance Subcommittee (R&O) reviewed the draft text amendment on September 22, 2010 and concurred with the proposed language. The R&O also advised that current operators should be notified of any public hearing by the Plan and Zoning Commission regarding this matter. The subcommittee and staff recommended that a report be made to the full Plan and Zoning Commission on October 7, 2010 and that a communication from the Commission be forwarded to the City Council for their regular meeting on October 11, 2010. Staff anticipates that the City Council will receive and file the report and refer the draft ordinance back to the Plan and Zoning Commission to notify affected parties and hold a public hearing.

SUMMARY OF DISCUSSION

Mike Ludwig presented staff report and recommendation.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in support or opposition.

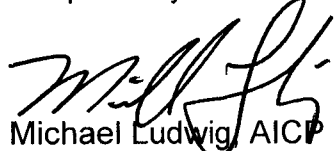
CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION

Greg Jones moved staff recommendation to approve receive and file the report from the Regulation and Ordinance Subcommittee regarding the draft ordinance and to forward a communication to the City Council requesting that the Plan and Zoning Commission be directed to notify affected parties and hold a public hearing on the proposed ordinance.

Motion passed 9-0

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

Attachment

Sec. 134-954. Selling of liquor, wine and beer.

In the C-2 general retail and highway-oriented commercial district, the following shall apply to the sale of liquor, wine and beer:

- (1) No business holding a liquor license or a beer or wine permit which is not operated as either (i) a grocery store, convenience store or pharmacy at least ~~half~~ 60% of whose gross income is derived from the sale of merchandise other than tobacco products, liquor, wine or beer; or (ii) a restaurant, at least half of whose gross income is derived from the sale of prepared food and food-related services, may be located upon any premises, unless such business shall first have received a conditional use permit from the board of adjustment after public hearing. Notice of such hearing shall be provided to all owners of record of property within 250 feet of the subject property.
- (2) A business that declares a use as a grocery store, convenience store, pharmacy or restaurant shall be required to submit, upon demand from the zoning enforcement officer, an audit prepared and verified by a certified public accountant stating the percentage of gross income of the business derived from sales of merchandise other than liquor, wine, beer, tobacco products and food related services.
- ~~(2)~~3 The board shall grant a conditional use permit to a business holding a liquor license or a beer or wine permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:
 - a. The proposed location, design, construction and operation of the particular use adequately safeguards the health, safety and general welfare of persons residing in the adjoining or surrounding residential area.
 - b. 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.

- c. The business will not unduly increase congestion on the streets in the adjoining residential area.
- d. The operation of the business will not constitute a nuisance.

(3)4 Any conditional use permit so granted by the board shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board to ensure that the criteria in subsection (2) of this section are satisfied:

- a. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times.
- b. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control.
- c. No sale of alcoholic beverages shall be made from a drive-through window.
- d. 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.
- e. The conditional use permit is subject to amendment or revocation if the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the conditional use permit.

(4)5 If the zoning enforcement officer determines at any time that the operation of such a business exhibits a pattern of violating the conditions set forth in the conditional use permit, the zoning enforcement officer may apply to the board to reconsider the issuance of the conditional use permit for such business. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of 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 finds that the operation of such business

exhibits a pattern of violating the conditions set forth in the conditional use permit, the board shall have the authority to amend or revoke the conditional use permit.

(O.7226, 7830, 8215, 8242, 8388, 9186, 9213, 9460, 10,142, 10,391, 10,823, 10,940, 11,009, 11,069, 11,083, 11,185, 11,300, 11,376, 11,410, 11,507, 11,761, 12,012, 13,067, 13,179, 13,232, 13,377, 13,484; C91, § 2A-17(H); O.13,588)