

★ Roll Call Number

Agenda Item Number

33

Date December 6, 2010

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 Section 134-954, relating to applicability of Conditional Use Permit requirements for businesses selling liquor, wine and beer",

which was considered and voted upon under Roll Call No. 10-1963 of November 22, 2010; and after further consideration by the City staff was amended to require existing businesses to comply with the 60%/40% requirements effective December 31, 2013; again presented.

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

(Second of three required readings)

(Council Communication No. 10-733)

| 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

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 Section 134-954, relating to applicability of Conditional Use Permit requirements for businesses selling liquor, wine and beer.

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, is hereby amended by amending Section 134-954, relating to applicability of Conditional Use Permit requirements for businesses selling liquor, wine and beer, as follows:

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 or pharmacy at least ~~half~~ 60% of whose gross ~~income~~ revenue 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~~ revenue 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 and any recognized neighborhood association within 250 feet of the subject property.
- (2) A business that declares a use as a grocery store, pharmacy or restaurant shall be required to submit, upon demand from the zoning enforcement officer, sales and other business records, or an audit prepared and verified by a certified public accountant, stating the percentage of gross revenue of the business derived from sales of merchandise other than liquor, wine, beer and tobacco products.

(3) All grocery stores and pharmacies which have not continuously held a liquor license or a beer or wine permit since December 31, 2010, shall comply with the requirements of subsection (1) above. Any grocery store or pharmacy which has continuously held a liquor license or a beer or wine permit since December 31, 2010 shall comply with subsection (1) above commencing on December 31, 2013, and prior to that date shall continue to be subject to the requirements of subsection (1) above as it existed on December 1, 2010.

(24) 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.

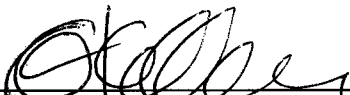
(35) Any conditional use permit so granted by the board shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board to ensure that the criteria in subsection (2) of this section are satisfied:

- 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.
- (46) 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.

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

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney