

Date February 28, 2011

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on February 17, 2011, its members voted 10-1 in support of a motion to recommend **APPROVAL** of Zoning Text Amendments to Chapter 134-982 "C-3A" Central Business District Support Commercial Regulations and Chapter 134-1017 "C-3" Central Business District Regulations to prohibit gas stations and fuel retail sales businesses as permitted uses in those districts.

WHEREAS, the proposed text amendment is on file in the office of the City Clerk.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the meeting of the City Council at which the proposed text amendment is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on March 14, 2011, at which time the City Council will hear both those who oppose and those who favor the proposal.
2. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

  
 Michael F. Kelley  
 Assistant City Attorney

(10-2011-5.01)

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

Date February 28, 2011

Agenda Item 23

Roll Call # \_\_\_\_\_

February 23, 2011

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 February 17, 2011, the following action was taken:

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 10-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
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			
CJ Stephens	X			

**APPROVAL** of the amendments to Chapter 134-982 "C-3A" Central Business District Support Commercial Regulations and Chapter 134-1017 "C-3" Central Business District Regulations to prohibit gas stations and fuel retail sales businesses as permitted uses in those districts. (10-2011-5.01)

**STAFF RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends approval of the amendments to Chapter 134-982 "C-3A" Central Business District Support Commercial Regulations and Chapter 134-1017 "C-3" Central Business District Regulations to prohibit gas stations and fuel retail sales businesses as permitted uses in those districts.

**STAFF REPORT**

**I. GENERAL INFORMATION**

On January 24, 2011 the City Council voted 7-0 to initiate amendments to Chapter 134-982 "C-3A" Central Business District Support Commercial



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

Regulations and Chapter 134-1017 “C-3” Central Business District Regulations to prohibit gas stations and fuel retail sales businesses as permitted uses in those districts.

The “C-3” and the “C-3A” districts encompass the entire downtown core and many fringe areas of the core. While no existing gas stations or businesses engaged in the retail sale of fuels for motor vehicles are found within the “C-3 and “C-3A” districts currently, development has now been proposed that is incompatible with, or may impede redevelopment opportunities in or near the downtown core and the Western Gateway Redevelopment area. Incompatible, predominantly auto-oriented uses such as gas stations by the very nature of their function do not preserve or enhance the existing traditional urban development pattern that is prevalent in downtown Des Moines. Further, such uses threaten to jeopardize the extensive investment the City and many private landowners and businesses have made throughout downtown, including the Western Gateway Redevelopment area, which has now transitioned from the city’s former “Auto Row” to a dynamic, modern urban neighborhood and extension of the core business district.

On March 10, 2008, by Roll Call 08-432, City Council adopted the downtown comprehensive plan titled “What’s Next Downtown”. Encouraging appropriately scaled development consisting of high quality materials, mixing uses on single sites and adding to the building and population densities are listed as several of the crucial conventions of the ‘District Planning and Design Guidelines’ section of the plan. New development that caters predominantly to the motor vehicle, like gas stations, rarely exhibits the urban design qualities as described in the adopted plan.

City-initiated consideration of a proposal to amend the Zoning Ordinance to no longer allow gas stations and other businesses engaged in the retail sale of fuel in the “C-3 and “C-3A” districts is a logical step needed to prevent similar uses found contrary to the development pattern of downtown from locating in or immediately near the downtown core.

Gas stations and fuel retail sales businesses serve a valid purpose in modern day life and are necessary conveniences in urban metropolitan areas. This proposed amendment to the Zoning Ordinance is not intended to discourage the existence of gas station and fuel retail sales businesses in the community, but rather to steer developers of such businesses to find suitable locations that protect the best interest of the community and investment by the City. Staff will work closely with developers proposing fuel sales businesses in the subject zoning districts to find alternate and opportune locations.

## **II. ADDITIONAL APPLICABLE INFORMATION**

On January 24, 2011 voted 7-0 to establish a temporary moratorium on the approval of site plans and permits for the construction or development of gas stations and other businesses engaged in the retail sale of fuels for motor vehicles in the “C-3” and “C-3A” Districts.

Any party may, by written application to the City Clerk, request relief from the effect of this moratorium to avoid unnecessary hardship. The application shall identify the basis for the applicant’s contention that the moratorium is causing unnecessary hardship. The application shall be presented for consideration by the City Council at the first regularly scheduled Council meeting more than ten days following the date such application is filed with the City Clerk. If the City Council determines that the application of this moratorium is

causing the applicant unnecessary hardship, the City Council shall allow such relief from this moratorium as is necessary to remedy such hardship.

The Council directed the Community Development Department and Plan and Zoning Commission to immediately proceed with consideration of an amendment to the Zoning Ordinance. The following is the tentative schedule for consideration of the proposed amendments:

- February 17, 2011: Plan and Zoning Commission public hearing
- February 28, 2011: City Council receives and files P&Z recommendation and sets date of public hearing for March 14, 2011.
- March 14, 2011: City Council public hearing (5 PM)
- March 28, 2011: City Council 2<sup>nd</sup> Reading (4:30 PM; unless waived)
- April 11, 2011: City Council 3<sup>rd</sup> Reading (4:30 PM; unless waived)
- April 12, 2011: Moratorium expires (unless terminated or extended by action of the City Council).

## **SUMMARY OF DISCUSSION**

Mike Ludwig presented the staff report and recommendation.

John "Jack" Hilmes asked for the definition of fuel, does it include electric, natural gas, some form of hydrogen fossil fuel.

Mike Ludwig stated that proposed revisions would prohibit all "fuel" on the property. (gas, electric, hydrogen, etc.)

## **CHAIRPERSON OPENED THE PUBLIC HEARING**

*The following spoke in opposition of request*

Dave Lemons 6400 Westown Parkway, West Des Moines, representing Kum & Go stated that as a company that would like to grow in Des Moines and this community would be very willing and able to work with the City in developing this site in a way that meets what the city is looking to have in the Western Gateway. They understand the City's concern and what they are trying to do. Kum & Go just requests that they be invited to the game and allowed to play.

Mike Ludwig stated that if the text amendment is approved, the use would not be allowed on the property. If they had two acres they could come in and request a PUD rezoning of the property. Even without the two acres they could request a rezoning of the property.

Brian Millard asked if Kum & Go currently has a site that is within this area.

Dave Lemons stated that they have a contractual interest in the 17<sup>th</sup> & Grand Iowa Paint site that has been referenced and has prompted this text amendment.

Ted Irvine asked if there was an opportunity for a different site downtown that was not facing the sculpture garden would Kum & Go consider coming back with another site adjacent to downtown or in downtown if they could not have the 17<sup>th</sup> & Grand site.

Dave Lemons stated that Kum & Go is interested in the area and being able to do business. They are interested in being in that area whether it is this site or another site. There are limitations to some of the other sites that are available.

CJ Stephens asked if Kum & Go is planning to offer other types of fuel, i.e. electric.

Dave Lemons stated they have built a number of sites that have electric charging stations but have suspended doing that in an effort to come up with the best product to do it. What they have is fairly inefficient, so they are looking at better ways.

### **CHAIRPERSON CLOSED THE PUBLIC HEARING**

Brian Millard stated that he was not aware there was an active site that generated this amendment. He would like for staff to give him a heads up that this is all because there is a proposed gas station that possibly could go in near our sculpture park or something.

Will Page stated that there was some discussion on this site during the director's report two weeks ago.

Kent Sovern stated that Mike Ludwig mentioned for the purpose of the R&O Committee meeting. Therefore, he thought the Commission had a heads up.

### **COMMISSION ACTION:**

Kent Sovern moved staff recommendation to approve the amendments to Chapter 134-982 "C-3A" Central Business District Support Commercial Regulations and Chapter 134-1017 "C-3" Central Business District Regulations to prohibit gas stations and fuel retail sales businesses as permitted uses in those districts.

Motion passed 10-1 (Brian Millard voted in opposition)

Respectfully submitted,

  
Michael Ludwig, AICP  
Planning Administrator

MGL:clw

cc: File

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, as heretofore amended, by amending Sections 134-982 and 134-1017, relating to principal permitted uses in Zoning Districts C-3A Central Business District Support Commercial and C-3 Central Business District Commercial.

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 Sections 134-982 and 134-1017 relating to principal permitted uses in Zoning Districts C-3A Central Business District Support Commercial and C-3 Central Business District Commercial, as follows:

**Sec. 134-982. Principal permitted uses.**

Only the uses of structures or land similar to those that follow shall be permitted in the C-3A central business district support commercial district:

- (1) Any use permitted in and as limited in the C-2 district, except gas stations and retail fuel sales businesses.
- (2) Assembly and packaging of small components from the following previously prepared materials: metal, wood, plastic, paper or rubber.
- (3) Automobile body and fender repair shop, but not including wrecking or used parts yards or outside storage of automobile component parts.
- (4) Lumberyards and building material sales yards.
- (5) Manufacturing, packaging and storage of dairy products.
- (6) Manufacture or treatment of products incidental to the conduct of a retail business carried out on the premises.
- (7) Printing and publishing houses.

- (8) Storage of nonflammable and nonexplosive goods.
- (9) Transportation passenger terminals, including bus stations, railroad passenger stations or other passenger terminals.
- (10) Truck rental establishments.
- (11) Warehousing, retail or wholesale.
- (12) Combinations of the uses in subsections (1) through (11) of this section.
- (13) Off-premises advertising signs.
- (14) Machine shops.

**Sec. 134-1017. Principal permitted uses.**

Only the use of structures or land similar to those that follow shall be permitted in the C-3 central business district commercial district:

- (1) Any use permitted in and as limited in the C-2 district, except that no off-premises advertising signs, gas stations or retail fuel sales businesses shall be permitted in the C-3 district.
- (2) Manufacture or treatment of products incidental to the conduct of a retail business carried out on the premises, provided all activities shall take place within completely enclosed buildings.
- (3) Printing or publishing houses.
- (4) Storage of nonflammable, nonexplosive, and nonperishable goods.
- (5) Transportation passenger terminals, including bus stations, railroad passenger stations, or other passenger terminals.
- (6) Combinations of the uses in subsections (1) through (5) of this section.
- (7) Shelter for homeless, subject to the following conditions:

- a. Each such facility shall contain a minimum of 70 square feet of usable floor space per occupant. For purposes of computation of usable floor space, that part of the room having no less than seven feet of ceiling height shall be used. Usable floor space shall not include bathrooms.
- b. Each such facility shall contain at least one lavatory and one toilet per each ten or fewer residents and one tub or shower per each 15 or fewer residents. There shall be a minimum of one bathroom with tub or shower, toilet and lavatory on each floor which has resident bedrooms.
- c. Each such facility shall comply with all applicable health, safety and welfare regulations.
- d. No such facility shall be operated until a permit has been issued by the zoning enforcement officer, based upon a finding that the proposed facility complies with all applicable zoning regulations.

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

FORM APPROVED:

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Michael F. Kelley  
Assistant City Attorney