

Date..... March 14, 2011

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

WHEREAS, on February 28, 2011 by Roll Call No. 11-0308, the City Council duly resolved that the proposed Zoning Text Amendments to the Municipal Code be set down for hearing in Council Chambers, City Hall, Des Moines, Iowa at 5:00 p.m. on March 14, 2011, at which time the City Council would hear both those who oppose and those who favor the proposal; and

WHEREAS, due notice of the hearing was published in the Des Moines Register on March 3, 2011, as provided by law, setting forth the time and place for hearing on the proposed amendments to the Zoning Ordinance; and

WHEREAS, the C-3A and C-3 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 with 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.

WHEREAS, on March 10, 2008, by Roll Call No. 08-432, the 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.

WHEREAS, 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.

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WHEREAS, the Legal Department has prepared Text Amendments including amendments to the Municipal Code Sections 134-982 district regulations and 134-1017 district regulations prohibiting gas stations and fuel retail sales businesses as permitted uses in the C-3A and C-3 districts; and

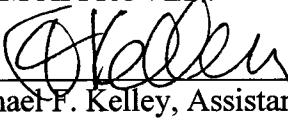
WHEREAS, in accordance with the notice those interested in the proposed rezoning, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

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

1. The City Council hereby adopts the statements set forth above in the Preamble as findings of fact.
2. That upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the proposed Text Amendments, including amendments to the Municipal Code Chapters 134-982 and 134-1017 are hereby overruled, the hearing is closed and the Text Amendments are hereby APPROVED.

MOVED by \_\_\_\_\_ to adopt and approve the Text Amendments to the Municipal Code, subject to final passage of the ordinance.

FORM APPROVED:

  
 \_\_\_\_\_  
 Michael F. Kelley, Assistant City Attorney

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

February 23, 2011

Date \_\_\_\_\_

Agenda Item 39

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

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:



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

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

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