

★ **Roll Call Number**

Agenda Item Number

47

Date June 13, 2011

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, as heretofore amended, by amending Sections 10-45 and 10-54, relating to class E alcoholic beverages",

which was considered and voted upon for the first time under Roll Call No. 11- 0817 of May 9, 2011, and considered and voted upon for the second time under Roll Call No. 11- 0913 of May 23, 2011, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED		APPROVED		
_____ Mayor				

CERTIFICATE

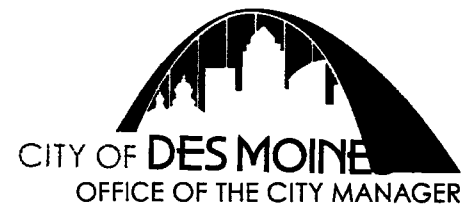
I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

47 11-0913

May 6, 2011



The Honorable Mayor
and
Members of the City Council
City of Des Moines

Re: Affect of State Legislation regarding Liquor Licenses

Dear Mayor and City Council Members:

Staff has reviewed the recent legislative change to the Iowa Code regarding Class "E" liquor licenses. The change now allows convenience stores selling gas to obtain a Class "E" liquor license. A Class "E" license allows the holder of the license to purchase alcoholic liquor from the state department and sell it for consumption off premise. In the past, the convenience store that sold gas could only obtain a license to sell beer and wine. In addition, the new legislation added definitions for grocery store, pharmacy, and school. The definitions for grocery store and pharmacy mirror the definitions found in Chapter 10 of our municipal code. School is now defined as a public or private school with classes between kindergarten and grade twelve.

Our City ordinance will require an amendment to comply with new state law that goes into effect July 1, 2011. This will allow all convenience stores to obtain a Class "E" liquor license. The only current restriction is found in Section 10-43(6)(b), which sets a separation for a premise holding a Class "E" license at 75' from schools, parks, churches, or daycares.

The new state law will allow any convenience store with or without gas sales to apply for a Class "E" liquor license.

The new definition of grocery store in the state law will make it difficult for the City of Des Moines to define a convenience store selling gas as other than a grocery store.

Grocery stores are allowed in C-1 commercial districts, if the zoning district is over five acres. They are also allowed in C-2 commercial districts.

Should a retailer sell more merchandise than liquor and beer, the operation must seek a conditional use permit. A conditional use permit is only allowed in a C-2 commercial district.

The City Council recently amended Chapter 134-954 to increase the sale of merchandise to 60% of gross sales not including tobacco products, liquor, wine and beer. It is unclear how the sale of gas and liquor will affect the percentages for convenience stores that sell gas. Should the increase in gross revenue not be affected

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by the sale of liquor under the current ordinance, the Class "E" license will be allowed by right in any convenience store that meets the percentages.

One option would be to mandate that all establishments that seek a Class "E" license obtain a conditional use permit. This would include Dahl's, Hy-Vee, and a number of other grocers. It should be noted that it seems the new state definitions would allow the Class "E" license to be issued to Menard's, Dollar General, and other sites that are grocery stores.

A second option would be to expand the current separation for a Class "E" license from schools, parks, churches, and daycares to 150 feet. This would match the separation bars must have from schools, parks, churches, or daycares. Another thought would be to institute a separation between Class "E" licensed establishments similar to the pawnbrokers and payday lenders.

Any proposed change would need to be in place prior to July 1, 2011.

Currently, Qwik Trip has submitted applications for Class "E" licenses in each of its stores. These are scheduled to go before City Council on June 13, 2011.

Staff did a quick web search for convenience stores in Des Moines and found upwards of 110 stores located in the city.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick", written over the word "Sincerely,".

Richard A. Clark
City Manager

cc: Community Development Director

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 10-45 and 10-54, relating to class E alcoholic beverages.

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 10-45 and 10-54 relating to class E alcoholic beverages, as follows:

Sec. 10-45. Classes of liquor control licenses.

Liquor control licenses shall be classed as follows:

- (1) *Class A.* A class A liquor control license issued to a club shall authorize the holder to purchase alcoholic liquors from class E liquor control licensees only, wine from class A wine permittees only, and native wines from native wine manufacturers and to sell such liquors, wine, and beer, to bona fide members and their guests by the individual drink for consumption on the premises only.
- (2) *Class B.* A class B liquor control license issued to a hotel or motel shall authorize the holder to purchase alcoholic liquors from class E liquor control licensees only, wine from class A wine permittees only, and native wines from native wine manufacturers and to sell such liquors, wine, and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises. Each such license shall be effective throughout the premises described in the application.
- (3) *Class C.* A class C liquor control license issued to a commercial establishment must be issued in the name of the individual who actually owns the entire business and shall authorize the holder to purchase alcoholic liquors from class E liquor control licensees only, wine from class A wine permittees only, and native wines from native wine manufacturers and to sell such liquors, wine, and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises.

- (4) *Special class C.* A special class C liquor control license shall authorize the holder to purchase wine from class A wine permittees only and to sell wine and beer to patrons by the individual drink for consumption on the premises only. However, beer may also be sold for consumption off the premises.
- (5) *Class E.* A class E liquor control license shall authorize the holder to purchase alcoholic liquor from the state department only and high alcoholic content beer from a state class AA beer permittee only and to sell the alcoholic liquor and high alcoholic content beer to patrons for consumption off the licensed premises and to other liquor control licensees. ~~A class E license shall not be issued to premises at which gasoline is sold.~~ A holder of a class E liquor control license may hold other retail liquor control licenses or retail wine or beer permits, but the premises licensed under a class E liquor control license shall be separate from other licensed premises, though the separate premises may have a common entrance. However, the holder of a class E liquor control license may also hold a class B wine or class C beer permit or both for the premises licensed under a class E liquor control license.
- (6) *Sunday sales.* Any club, hotel, motel, or commercial establishment holding a liquor control license may apply for and receive permission to sell and dispense alcoholic liquor and wine to patrons on Sunday for consumption on the premises only, and beer for consumption on or off the premises between the hours of 10:00 a.m. and 12:00 midnight on Sunday. For the privilege of selling beer, wine, and alcoholic liquor on the premises on Sunday, the liquor control license fee of the applicant shall be increased by 20 percent of the regular fee prescribed for the license pursuant to this article, and the privilege shall be noted on the liquor control license.

Sec. 10-54. Fees.

- (1) The following fees shall be submitted with the respective application for the license or permit required by this article:
 - a. For a class B beer permit the annual fee shall be \$300.00.
 - b. For a class C beer permit the annual fee shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:
 1. Up to 1,500 square feet, \$75.00.
 2. Over 1,500 square feet and up to 2,000 square feet, \$100.00.
 3. Over 2,000 square feet and up to 5,000 square feet, \$200.00.

- 4. Over 5,000 square feet, \$300.00.
- c. For a class A liquor control license the annual fee shall be as follows:
 - 1. A club with 250 members or more, \$600.00 plus state surcharge.
 - 2. A club with less than 250 members, \$400.00 plus state surcharge.
 - 3. A club which is a post, branch, or chapter of a veterans organization chartered by the Congress of the United States, if such club does not sell or permit the consumption of alcoholic beverages on the premises more than one day in any week or more than 52 days in a year, and if the application for a license states that such club does not and will not sell or permit the consumption of alcoholic beverages on the premises more than one day in any week or more than 52 days in a year, \$200.00 plus state surcharge.
- d. For a class B liquor control license the annual fee shall be \$1,300.00 plus state surcharge.
- e. For a class C liquor control license the annual fee shall be \$1,300.00 plus state surcharge.
- ~~f. For a class E liquor control license the annual fee shall be graduated on the basis of the amount of interior floor space which comprises the retail sales area of the premises covered by the permit, as follows:~~
 - ~~1. Up to 1,500 square feet, \$2,500.00.~~
 - ~~2. Over 1,500 square feet and up to 2,000 square feet, \$3,500.00.~~
 - ~~3. Over 2,000 square feet and up to 5,000 square feet, \$5,000.00.~~
 - ~~4. Over 5,000 square feet, \$7,500.00.~~
- f. For a class E liquor control license the annual fee shall be a sum determined as follows:
 - 1. For licensed premises at which gasoline is not sold, a sum of not less than seven hundred and fifty dollars, and not more than seven thousand five hundred dollars as determined on a sliding scale as established by the state alcoholic beverages division taking into account the factors of square footage of the licensed premises, the location of the licensed premises, and the population of the area of the location of the licensed premises.
 - 2. For licensed premises at which gasoline is sold, a sum equal to the greater of five thousand dollars or the amount that would be established pursuant to subparagraph 1. if gasoline were not sold at the premises.
- g. For a special class C liquor control license the annual fee shall be \$450.00 plus state surcharge.


- h. For a class B wine permit the annual fee shall be \$500.00.
- i. For a class B native wine permit the annual fee shall be \$25.00.
- j. For a class C native wine permit the annual fee shall be \$25.00.
- k. For the privilege of selling and dispensing alcoholic liquor, wine, or beer to patrons on Sunday the annual fee shall be increased by 20 percent of the regular prescribed fee plus the designated state surcharge.
- ~~l. For all outdoor service areas added to the licensed or permitted premises after a license or permit has been issued, and for all temporary outdoor services areas an administrative fee in an amount set in the Schedule of Fees adopted by the City council by resolution.~~

(2) The police department is authorized to charge and collect an administrative fee on requests for an exemption certificate pursuant to section 10-8 Article I of this chapter for investigating and processing such exemption certificates. The City Clerk may collect this fee in lieu of the police department. The fee shall be in the amount set in the Schedule of Fees adopted by the City Council by resolution.

(3) The City Clerk is authorized to charge and collect a transfer fee as established by the administrator of the state alcoholic beverages division ~~administrative fees for the review, processing, investigation and inspection process of an applicant seeking a license or permit under this article or when an existing license or permit holder requests a transfer under section 10-60 of this article, however, such fees shall not apply to an application for transfer filed within 60 days prior to the renewal date of an existing license or permit. The City Clerk may collect the fees at the time of application for the license or permit or when request for transfer is made. The fees shall be in the amounts set in the Schedule of Fees adopted by the City Council by resolution.~~

Section 2. 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

11-0913

May 20, 2011



The Honorable Mayor
and
Members of the City Council
City of Des Moines

Re: May 23, 2011, Item No. 47 – Class “E” Liquor License

Dear Mayor and City Council Members:

Iowa Code Chapter 123 has been amended effective July 1, 2011, to allow businesses that sell gasoline to obtain a Class “E” liquor license for the sale of distilled liquor for off-premises consumption. Previously, any business which sold gasoline would need to construct and maintain a separate licensed premise to obtain a Class “E” license and sell liquor. On May 9, 2011, the City Council approved first reading of an amendment to the City's liquor licensing regulations in Chapter 10 of the City Code to match this change in the state code.

The Iowa Alcohol Beverage Division has provided City staff with a list of all businesses in the City of Des Moines that currently have a permit to sell beer and/or wine. The list includes over 125 businesses that could potentially obtain a Class “E” liquor license after July 1, 2011.

The City Council has asked for a report on zoning options to mitigate the impact of this change in the state law. Additionally, Council asked for an indication of the time spent by City staff on review of these licenses.

The purpose of this communication is to identify several options developed by the Community Development staff that may mitigate the impact of the substantial increase in the number of businesses eligible to obtain a Class “E” liquor license under the new state law after July 1, 2011.

If City Council makes no change in the Zoning Ordinance in response to the change in state law, the following will occur:

- 1) Any business that claims to be a grocery store, having at least 60 percent of its gross revenue derived from the sale of merchandise other than tobacco products, liquor, wine or beer, would be eligible to apply for a Class “E” liquor license. The sale of gasoline would no longer disqualify the business from obtaining the license. However, the license could be denied upon renewal should an audit fail to support the claim that the business is a grocery store.
- 2) Grocery stores will continue to be allowed in C-1, C-2, and less restrictive districts.



- 3) Grocery stores will continue to be allowed to be located without any required separation from churches, schools, public parks, and licensed child care centers.
- 4) No Board of Adjustment approval is required for a business that claims to be a grocery store.

The following options could be considered to mitigate the impact of the large number of grocery/convenience stores selling gas that can now apply for a Class "E" liquor license:

- 1) Prohibit the issuance of any Class "E" liquor license in C-1 zoned districts. This would make a number of existing grocery stores and convenience stores without gasoline sales that now hold a Class "E" liquor license non-conforming. These businesses would retain their current rights to sell wine and beer provided at least 60 percent of their gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer. Gas sales would count toward this 60% gross revenue requirement.
- 2) Prohibit the issuance of Class "E" liquor licenses in C-1 zoned districts to businesses that sell gas. This would effectively replace the former licensing prohibition with a zoning prohibition limited to the C-1 district.
- 3) Require all Class "E" liquor licensees to be separated from any church, school, public park, or licensed child care center by 150 feet, to match the current separation requirement for bars and taverns. This would make a number of existing grocery stores and convenience stores that now hold a Class "E" liquor license non-conforming. These businesses would retain their current rights to sell wine and beer provided at least 60 percent of their gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer.
- 4) Establish a minimum floor area threshold within the store devoted to the display of merchandise for retail sale as an additional requirement for approval of a Class "E" liquor license for businesses that wish to be considered "grocery" stores. In practice, a business seeking a Class "E" liquor license as a grocery store would be required to apply to the Zoning Board of Adjustment for a conditional use permit unless its retail sales display area exceeded the threshold and at least 60 percent of its gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer. This would make a number of existing grocery stores and convenience stores below that display area threshold that now hold a Class "E" liquor license non-conforming. These businesses would retain their current rights to sell wine and beer provided at least 60 percent of their gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer.
- 5) Require that any business requesting a Class "E" liquor license obtain a conditional use permit from the Zoning Board of Adjustment. This would make a number of existing grocery stores and convenience stores that now hold a Class "E" liquor license non-conforming. These businesses would retain their current

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rights to sell wine and beer provided at least 60 percent of their gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer.

- 6) Require Class "E" licensees to be separated from adjoining residential districts by a minimum distance. This would make a number of existing grocery stores and convenience stores that now hold a Class "E" liquor license non-conforming. These businesses would retain their current rights to sell wine and beer provided at least 60 percent of their gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer.

Any one or a combination of the above options could be imposed as necessary to achieve the desired level of regulation.

City staff have not conducted a thorough analyses of the options set forth above, and the options have not been considered by the Plan and Zoning Commission or its Regulation and Ordinance Committee. Further study should be completed before any of these options are implemented.

If the City Council desires to consider new zoning restrictions prior to approval of the pending applications for Class "E" liquor licenses, the Council should impose a moratorium of at least 90 days on the commencement of any business selling liquor for off-premises consumption which has not received a conditional use permit from the Zoning Board of Adjustment. This would allow time for City staff to further analyze the impact and effectiveness of the options set forth above.

It appears that the new applications for Class "E" liquor licenses are almost entirely for businesses currently holding a beer or wine permit. The businesses are already inspected pursuant to the issuance of those permits. Staff foresees some limited additional expense for processing the paperwork for issuing Class "E" liquor licenses to these businesses, but no significant impact on inspection levels.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Richard A. Clark
City Manager

cc: Phil Delafield, Community Development Director
Diane Rauh, City Clerk