

Date August 29, 2011

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on August 18, 2011, its members voted 12-0-1 in support of a motion to recommend **APPROVAL** of Zoning Ordinance Text in Chapter 134 with regard to regulation of businesses selling liquor, wine, and beer.

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 September 12, 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

(10-2011-5.02)

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

August 24, 2011

Date _____

Agenda Item 24

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 August 18, 2011, the following action was taken:

COMMISSION RECOMMENDATION:

After public hearing, the members voted 12-0-1 as follows:

Commission Action:	Yes	Nays	Pass	Absent
JoAnne Corigliano	X			
Shirley Daniels	X			
Jacqueline Easley	X			
Tim Fitzgerald	X			
Dann Flaherty	X			
John "Jack" Hilmes	X			
Joel Huston			X	
Ted Irvine	X			
Greg Jones	X			
William Page	X			
Christine Pardee	X			
Mike Simonson				X
Kent Sovern	X			
CJ Stephens	X			

APPROVAL of the Zoning Ordinance Text in Chapter 134 with regard to regulation of businesses selling liquor, wine, and beer. (10-2011-5.02)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the proposed amendments to the Zoning Ordinance Text in Chapter 134 with regard to regulation of businesses selling liquor, wine, and beer.

STAFF REPORT

I. GENERAL INFORMATION

On December 6, 2010 the City Council approved Ordinance No. 14,980. The ordinance requires any business selling beer, wine and/or liquor that derives more than 40% of its gross revenue from the sale of alcohol or tobacco to obtain a conditional use permit from the Zoning Board of Adjustment. Exceptions to Zoning Board of Adjustment review were retained for grocery



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ARMORY BUILDING
602 ROBERT D. RAY DRIVE
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ALL-AMERICA CITY
1949, 1976, 1981
2003

stores and pharmacies provided no more than 40% of gross revenue of such a business is derived from the sale of alcohol or tobacco. An exception to Zoning Board of Adjustment review was also retained for restaurants provided that no more than 50% of gross revenue of such a business is derived from the sale of alcohol. Any grocery store or pharmacy which had continuously held a beer, wine and/or liquor license prior to December 31, 2010 in compliance with prior gross revenue restrictions is given until December 31, 2013 to comply with the new gross revenue restriction.

During the 2011 legislative session the Iowa Legislature loosened regulations regarding sale of liquor in businesses with gas sales. Previously, Iowa Code only allowed sale of liquor in a separate room at a gas station or convenience store. Now, the Iowa Code allows liquor to be sold in the same room as beer and/or wine sales. Possible affects of the new law include:

- ▶ An increase in the number of businesses requesting class E liquor licenses in close proximity to a church, school, public park or licensed child care center.
- ▶ An increase in nuisance behaviors in close proximity to residential neighborhoods.
- ▶ A detrimental impact on the quality of life in the city.

In addition, the City has experienced numerous issues with businesses that establish operations as small "grocery stores" but whose actual operations and sales receipts more closely resemble a liquor store.

On April 25, 2011 the City Council initiated amendments to the Zoning Ordinance to prohibit freestanding liquor stores in the "C-3", "C-3A", "C-3B" and "C-3R" zoning districts and established a moratorium on new freestanding liquor stores in such districts. On May 23, 2011 the City Council initiated an amendment to the Zoning Ordinance to further regulate any business engaged in the sale of alcoholic liquors (i.e. requires "Class E" liquor license) and imposed a temporary moratorium on the commencement of any such business in the "C-1" District and at any location (citywide) which has not received conditional use approval from the Zoning Board of Adjustment. On July 11, 2011 the City Council extended both moratoriums until September 13, 2011.

While the topics of each moratorium are interrelated, Staff does not believe that a permanent prohibition on liquor stores in the downtown district is necessary for the following reasons:

- The downtown is a mixed-use neighborhood that is commercially dominated with no known liquor stores. Conversely, there are numerous examples of liquor stores in C-2 districts that are adjacent to, or in closer proximity to, purely residential districts. Based on the City's goal for the downtown to be a thriving, mixed-use neighborhood with additional residential uses and activity 24 hours per day / 7 days per week, it is staff's opinion that there will be market demand for a downtown liquor store at an appropriate location in the future.
- Bars/taverns are permitted in each of the referenced downtown districts subject to a conditional use permit review by the Board of Adjustment and have similar impacts to liquor stores. The City Council has not requested and staff does not recommend a prohibition of bars /taverns in downtown districts. Allowing bars/taverns in downtown districts but prohibiting liquor stores treats uses with similar impacts differently.

- Recent changes to State Code and City Code allow c-stores to possess a class E liquor license without a separate entrance, cash register, etc. This means that additional uses are allowed in the downtown districts that will have similar impacts to liquor stores. Allowing c-stores but prohibiting liquor stores will treat uses with similar impacts differently.
- Liquor stores and bars/taverns have historically been treated equally by zoning in the City of Des Moines as they both require approval of a conditional use permit by the Board of Adjustment.
- The Board of Adjustment 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.
- Any conditional use permit so granted by the board shall also be subject to the following general conditions:
 - 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.
- 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.
- The Board of Adjustment has denied requests for a conditional use permit if the applicant has previously demonstrated operational issues with similar businesses or if

there is a high concentration of liquor stores and bars/taverns in close proximity to a site.

However, staff does believe that additional regulations are necessary to more clearly define and regulate uses with beer, wine and liquor sales.

II. ADDITIONAL APPLICABLE INFORMATION

In summary, the proposed amendments to Chapter 134 of the City Code implement the following:

• CREATE AND/OR AMEND DEFINITIONS

Gas Station / Convenience Store- means any building or premises that includes the sale of liquefied petroleum products and other products for the propulsion of motor vehicles. *Examples: Dahl's Fuel, Hy-Vee Fuel, Git-N-Go, Kum&Go, Casey's, Quik Trip, Star, etc.*

Food Sales Establishments- places of business primarily engaged in the retail sale of food or household products for home consumption. Food Sales establishments may include the sale of non-food items.

- a. **Limited:** Establishments occupying facilities of less than 10,000 square feet and as limited by individual zoning district regulations. *Examples: Stam's, Highland Park Bakery, B&B Grocery, Findlay's Butcher Shop and Deli, Linn's Food Store.*
- b. **General:** Establishments occupying facilities of at least 10,000 square feet but less than 40,000 square feet and as limited by individual zoning district regulations. *Examples: Gateway Market, Latapatia Grocery, Beaverdale Dahl's, Park Fair Fareway.*
- c. **Large:** Establishments occupying facilities of at least 40,000 square feet and as limited by individual zoning district regulations. *Examples: Ingersoll Dahl's, Fleur Hy-Vee, etc.*

Retail Sales Establishments - means places of business primarily engaged in retail sale or rental primarily of non-food, non-alcohol and non-tobacco related products and services.

- a. **Limited:** Establishments occupying facilities of less than 10,000 square feet and as limited by individual zoning district regulations. *Examples: Medicap Pharmacy, Ingersoll Dollar General.*
- b. **General:** Establishments occupying facilities of at least 10,000 square feet but less than 40,000 square feet and as limited by individual zoning district regulations. *Examples: Ingersoll Walgreens, Beaverdale Walgreens.*
- c. **Large:** Establishments occupying facilities of at least 40,000 square feet and as limited by individual zoning district regulations. *Examples: SE 14th Wal-Mart, Merle Hay Target.*

Liquor Store - means an establishment or place of business engaged in retail sale for off-premise consumption of alcoholic liquors, wine and beer where more than 40% of revenue is derived from the sale of alcohol and tobacco. *Examples: Ingersoll Liquor and potentially Forest Mart, Tobacco Outlets, Plaza Pantry, Oasis.*

• **USES WITH BEER AND WINE SALES**

	Yes - 1	Yes - 1
• Gas sales	Yes - 1	Yes - 1
• Food sales		
Limited	Yes - 2	Yes - 2
General	Yes - 1	Yes - 1
Large	Yes - 1	Yes - 1
• Retail sales		
Limited	Yes - 2	Yes - 2
General	Yes - 1	Yes - 1
Large	Yes - 1	Yes - 1
• Liquor store	No	Yes - 3

* - Excludes R, C-0 and C-1A districts

- 1 - Allowed by right with 75-foot separation from church, licensed daycare, park or school and subject to no more than 40% of gross revenue from alcohol/tobacco sales.
- 2 - Allowed subject to BOA review with 150-foot separation from church, licensed daycare, park or school and subject to no more than 40% of gross revenue from alcohol/tobacco sales.
- 3 - Allowed subject to BOA review with 150-foot separation from church, licensed daycare, park or school.

• **USES WITH CLASS E LIQUOR SALES**

• Gas sales	No	Yes - 2
• Food sales		
Limited	No	Yes - 2
General	Yes - 1	Yes - 1
Large	Yes - 1	Yes - 1
• Retail sales		
Limited	No	Yes - 2
General	Yes - 1	Yes - 1
Large	Yes - 1	Yes - 1
• Liquor store	No	Yes - 3

* - Excludes R, C-0 and C-1A districts

1 - Allowed by right with 75-foot separation from church, licensed daycare, park or school and subject to no more than 40% of gross revenue from alcohol/tobacco sales.

2 - Allowed subject to BOA review with 150-foot separation from church, licensed daycare, park or school and subject to no more than 40% of gross revenue from alcohol/tobacco sales.

3 - Allowed subject to BOA review with 150-foot separation from church, licensed daycare, park or school.

SUMMARY OF DISCUSSION

Su Donovan presented the staff report and recommendation.

Mike Ludwig pointed out that the staff recommendation provides examples of the types of businesses in Des Moines for each use definition. There are some grocery stores in town that are smaller than 10,000 square feet. Under the proposed changes, businesses such as Tobacco Outlet would be classified as a liquor store.

Dann Flaherty asked what the R&O Committee recommended.

Greg Jones stated that R&O is in support of staff recommendation.

CHAIRPERSON OPENED THE PUBLIC HEARING

The following spoke in favor of the applicant's request

Joe Capuccio 1084 24th Street stated that he supports these changes.

CHAIRPERSON CLOSED THE PUBLIC HEARING

John "Jack" Hilmes asked that the letter of support be received and filed.

COMMISSION ACTION:

Greg Jones moved staff recommendation to approve the proposed amendments to the Zoning Ordinance Text in Chapter 134 with regard to regulation of businesses selling liquor, wine, and beer.

Motion passed 12-0-1 (Joel Huston abstained)

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

cc: File

August 18, 2011

Members of Des Moines Plan and Zoning
City Hall
400 Robert Ray Dr.
Des Moines, Iowa 50309

To all Members:

Thank you for considering rules to keep more abandoned gas/grocery stations from becoming liquor stores or tobacco shops.

You know all of the health, environmental and social reasons to avoid this situation from happening in any neighborhood. Beyond that, please pay special attention to the deserted station on the south east corner of NE 14th St. and (E) Hull Ave. It is an infested "field of weeds".

This corner is a long standing disgrace to Des Moines in general and specifically to Grand View University and Luther Care Services. It has contained an incredibly dirty tire store and in addition to the closed station it has a closed hardware store. I do not expect this property will improve in the near future. Families, who pass this corner as they bring students or parents to either non-profit organization, surely question their decision...at least once!

Therefore, stop this corner's deterioration. Do not allow the "station" to reopen as another business that detracts from the beautiful development efforts of two organizations that have independently invested millions into a unique neighborhood that both launches children's futures and offers safe and affordable housing to central Iowa's seniors. If it means condemning the gas station, please do it. And then keep an eye on the hardware store.

I appreciate your time to read this letter and hope you are successful in your efforts. If you have any questions of me, please call at 515-681-2907. Thank you.

Sincerely and respectfully,



Ray Main