

Date..... September 12, 2011

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on August 18, 2011, its members voted in support of a motion to recommend **APPROVAL** of a Zoning Ordinance Text including amendments to Municipal Code Chapter 134 regarding regulation of businesses selling liquor, wine and beer; and

WHEREAS, on August 29, 2011 by Roll Call No. 11-1447, it was duly resolved by the City Council that the proposed Zoning Text amendments to the Municipal Code be set down for hearing 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; and

WHEREAS, due notice of the hearing was published in the Des Moines Register on September 1, 2011, as provided by law, setting forth the time and place for hearing on the proposed amendment to the Zoning Ordinance; and

WHEREAS, the Legal Department has prepared Text Amendments including amendments to the Municipal Code Chapter 134 regarding regulation of businesses selling liquor, wine or beer; 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.

(Continued on Page 2)

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Date September 12, 2011


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

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 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

August 24, 2011

Date September 12, 2011
Agenda Item 22742
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



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

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**

	C-0	C-1A
• 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.

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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:

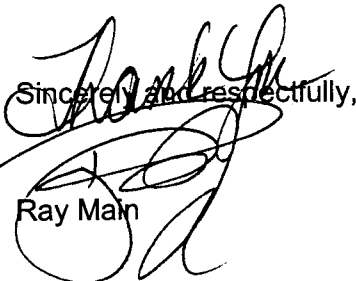
Thank you for considering rules to keep more abandoned gas/grocery stations from becoming liquor stores or tobacco shops.

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

Sec. 134-3. Definitions.

Food sales establishment means 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.

- (1) *Limited food sales:* Establishments occupying facilities of less than 10,000 square feet and as limited by individual zoning district regulations.
 - (2) *General food sales:* Establishments selling a wide variety of food commodities and related items, using facilities larger than 10,000 but less than 40,000 square feet and as limited by individual zoning district regulations.
 - (3) *Large food sales:* Establishments larger than 40,000 square feet and as limited by individual zoning district regulations.
-

Gas station/convenience store means any building or a premise that includes the sale of liquefied petroleum products and other products for the propulsion of motor vehicles.

Liquor store means an establishment or place of business primarily 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 alcoholic liquors, wine, beer and tobacco.

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

- (1) *Limited retail sales establishment:* Establishments occupying facilities less than 10,000 square feet and as limited by district regulations.
- (2) *General retail sales establishment:* Establishments occupying facilities larger than 10,000 and less than

- h. Camera stores.
- i. Clothes cleaning and laundry pickup stations.
- j. Collection office of public utility.
- k. Confectionery stores, including ice cream or snack bars.
- l. Dairy stores, retail only.
- m. Delicatessens.
- n. Dance studios.
- o. Drugstores.
- p. Dry goods stores.
- q. Florist shops and greenhouses.
- r. Furniture stores.
- s. Gas stations, including minor automobile repairs as an accessory but not a principal use, provided that the proposed use has undergone site plan review and approval pursuant to guidelines set forth at section 82-214.8, and the design of the site permits no more than six vehicles to be fueled at a time. Gas stations on the following streets only may be designed to permit up to eight vehicles to be fueled at a time:
 - 1. Army Post Road and East Army Post Road from Fleur Drive to Indianola Road.
 - 2. Douglas Avenue from the west city boundary to Martin Luther King, Jr. Parkway.
 - 3. Euclid Avenue from Martin Luther King, Jr. Parkway to Hubbell Avenue.
 - 4. Hickman Road from the west city boundary to Fifty-sixth Street.
 - 5. Hubbell Avenue from Euclid Avenue northeast to the city boundary.

- hh. Photographic studios, including film developing and retail sales of photographic equipment and supplies.
- ii. Post office substations.
- jj. Radio and television sales and repair shops.
- kk. Restaurants, subject to section 134-954.
- ll. Shoe and hat repair shops.
- mm. Sporting goods stores.
- nn. Tailor and dressmaking shops.
- oo. Theaters.
- pp. Toy stores.
- qq. Variety stores.
- rr. Automotive and motorcycle accessory and parts stores, provided that retail sales shall be the only business activity and that any runup or testing of engines shall take place within the store building.
- ss. Banks, savings and loan associations and similar financial institutions, but not including delayed deposit services or pawnbrokers.
- tt. Business, secretarial or other commercially operated schools for adults, but not including commercial trade schools, such as gasoline, diesel, or marine engine mechanics schools, or truck driving schools.
- uu. Retail sales establishments with no more than 30,000 square feet of gross floor area, including storage.
- vv. Labor union offices, including assembly halls, not to exceed 1,500 square feet of gross floor area for the assembly hall.
- ww. Lawn mower repair shops, provided that any runup or testing of engines shall take place within the shop building.

for off-street parking and loading as required by article V of this chapter.

- (2) All open areas not used for off-street parking or loading shall be planted with grass, properly maintained and kept free from refuse and debris.
- (3) Any retail business or service establishment use open to the public for business during the hours from 2:00 a.m. to 6:00 a.m. shall only be permitted subject to approval by the board of adjustment after public hearing. Prior to granting approval of a particular business or service establishment use at the location requested, the board of adjustment must find that such use complies with the following standards:
 - a. The proposed location, design, construction and operation of the particular use shall adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property;
 - b. The particular use shall not materially increase congestion, noise, vibration, glare, fumes, odors or electrical interference that will adversely affect surrounding residential uses; and
 - c. The particular use shall not diminish or impair established property values in adjoining or surrounding property.
- (4) Liquor stores shall not be allowed in the C-1 neighborhood retail commercial district.

(O.7226, 7830, 7975, 8208, 8242, 8269, 9213, 10,142, 10,152, 10,258, 10,602, 10,940, 11,009, 11,069, 11,083, 11,119, 11,185, 11,300, 11,376, 11,410, 11,454, 13,005, 13,067, 13,232, 13,318; C91, § 2A-16(C); C00, § 134-844, 0.15,---)

DIVISION 20. C-2 GENERAL RETAIL AND HIGHWAY-ORIENTED COMMERCIAL*

Sec. 134-947. Principal permitted uses.

- (a) Only the uses of structures or land listed in this section shall be permitted in the C-2 general retail and highway-oriented commercial district.
- (b) Any use permitted in the C-1 district shall be permitted in the C-2 district, without limitation as to the size, hours of operation or number of fueling stations provided that any

- (21) Monument sales yards.
- (22) Motels, motor hotels, and tourist courts with no minimum density requirements.
- (23) Office buildings.
- (24) Liquor stores for the sale of alcoholic beverages, subject to section 134-954.
- (25) Pet shops, including aquariums.
- (26) Photographic printing or developing establishments.
- (27) Plumbing and heating shops.
- (28) Printing and lithographing shops.
- (29) Parking garages.
- (30) Physical culture or health establishments.
- (31) Auction businesses.
- (32) Radio or television studios.
- (33) Sheetmetal shops.
- (34) Sign painting shops.
- (35) Taverns and nightclubs, including private clubs, subject to section 134-954.
- (36) Mobile home parks, subject to all of the requirements of the R-5 district.
- (37) Used car sales lots, provided all outside storage, display and parking areas shall be used and maintained in conformance with an approved site plan, and the parking, display and storage of vehicles for hire, rental or sale shall be limited to the area designated for such use in the site plan.
- (38) Garage for general motor vehicle repair, but not including body and fender work and overall painting and steam cleaning, but including upholstering, scratch and dent repair, and minor painting within a completely enclosed building.
- (39) Automobile washing establishments.
- (40) Adult entertainment business. See section 134-953 of this division.
- (41) Bakeries, provided that the retail sales area shall be within 100 feet of the premises on which the bakery is located where all products produced in the bakery are available for sale fresh daily and provided the product preparation and storage area does not exceed 7,500 square feet of gross floor area. Distribution of products to other premises is permitted; however, no semitrailer trucks shall be used for distribution purposes.
- (42) Bed and breakfast.
- (d) Combinations of the uses in subsection (c) of this section shall be permitted.
- (e) Off-premises advertising signs shall be permitted.
- (f) Communication towers and antennas which are accessory to a permitted use and comply with the bulk regulations for the district in which they are located or which are mounted on

(iii) a restaurant at least half of whose gross revenue is derived from the sale of prepared food and food-related services,

(iv) a limited food or retail sales establishment at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer.

or, for which a conditional use permit has been obtained for such use of the premises from the board of adjustment after public hearing. Notice of such hearing shall be provided to all owners or record of property and any recognized neighborhood association within 250 feet of the subject property.

(3) In the C-2 general retail and highway-oriented commercial district and less restrictive districts not including R, C-O and C-1A districts, no business selling alcoholic liquor, wine or beer may be located upon any premises, unless such premises is operated as either:

(i) a general or large food sales establishment at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer; or

(ii) a pharmacy at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer; or

(iii) a restaurant at least half of whose gross revenue is derived from the sale of prepared food and food-related services,

(iv) a gas station/convenience store, limited food or retail food sales establishment, at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer

or, for which a conditional use permit has been obtained for such use of the premises 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.

- d. The operation of the business will not constitute a nuisance.
 - e. No conditional use permit shall be granted to a limited food or retail sales establishment, a gas station/convenience store or liquor store selling alcoholic liquor, wine or beer whose premises is within 150 feet of any church, school, public park or licensed child care center as defined by I.C. ch. 237A.
 - f. No conditional use permit shall be granted to a gas station/convenience store holding a wine or beer permit whose premises is within 75 feet of any church, school, public park or licensed child care center as defined in I.C. ch. 237A.
 - g. No class B, B native or C native wine permit, class C beer permit, or class E liquor license shall be granted to an applicant whose premises are within 75 feet of any church, school, or public park or licensed child care center as defined by I.C. ch. 237A.
- (7) 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.

Sec. 134-1044. Taverns and Nightclubs.

In the D-R Downtown Riverfront District, the following shall apply to the sale of liquor, wine and beer:

(1) No business selling alcoholic liquor, wine or beer may be located upon any premises which is not operated as either:

a. a food sales establishment, retail sales establishment or pharmacy at least 60% of whose gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer, and disregarding any sales of fuel or petroleum products; or

b. a restaurant, at least half of whose gross revenue is derived from the sale of prepared food and food-related services, may be located upon any premises unless a conditional use permit has been obtained for such use of the premises from the board of adjustment after public hearing. Notice of such hearing shall be provided to all owners of record of property within 250 feet of the subject property.

(2) The board shall grant a conditional use permit for the use of any premises for the sale of alcoholic liquor, wine or beer 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 location and manner of operation of the business will advance the stated intent of the D-R Downtown Riverfront District.

b. The proposed location, design, construction and operation of the particular use, including any associated parking adequately safeguards the public health, safety and general welfare.

c. The business is sufficiently separated from adjoining residential uses 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.

d. The business will not unduly increase vehicular congestion on the streets in any adjoining residential area.

e. The operation of the business will not constitute a nuisance.

(3) Any conditional use permit so granted by the board 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 foot-candle 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.

(4) 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.

(C00, § 134-1044; O.14,293, 15,---)