

Date September 10, 2012

**AS AMENDED FOR SECOND READING**


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 the definitions of Limited and General Food Sales Establishments, and Limited and General Retail Establishments in Section 134-3, and by amending Section 134-954, regarding the allowed location and manner of operation of businesses engaged in the sale of liquor, wine and beer",

which was considered and voted for the first time upon under Roll Call No. 12-1372 of August 27, 2012; and was amended to change the definition of Limited and General Food Sales Establishments and Limited and General Retail Sales Establishments, and to remove the requirement for General Food Sales Establishments and General Retail Sales Establishments to obtain a Conditional Use Permit to sell alcoholic liquor for off-premises consumption, again presented.

MOVED by \_\_\_\_\_ that this ordinance be considered and given second vote for passage.

(Second of three required readings)

FORM APPROVED:

  
 Roger K. Brown  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
<b>TOTAL</b>				

**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.

MOTION CARRIED APPROVED

\_\_\_\_\_  
 Mayor

\_\_\_\_\_  
 City Clerk

## 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 the definitions of Limited and General Food Sales Establishments, and Limited and General Retail Establishments in Section 134-3, and by amending Section 134-954, regarding the allowed location and manner of operation of businesses engaged in the sale of liquor, wine and beer.

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, be and is hereby amended by amending the definitions of Limited and General Food Sales Establishments, and Limited and General Retail Establishments in Section 134-3, and by amending Section 134-954, regarding the allowed location and manner of operation of businesses engaged in the sale of liquor, wine and beer, as follows:

**Sec. 134-3. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

*Food sales establishments* 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. However, no more than 40% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine, beer or tobacco products.

- (1) *Limited food sales establishments*: Establishments occupying facilities of less than 12,000 ~~10,000~~-square feet and as limited by individual zoning district regulations.
- (2) *General food sales establishments*: Establishments occupying facilities equal to or larger than 12,000 ~~10,000~~ but less than 40,000 square feet and as limited by individual zoning district regulations.
- (3) *Large food sales establishments*: Establishments occupying facilities equal to or larger than 40,000 square feet and as limited by individual zoning district regulations.

...

*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. However, no more than 40% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine, beer or tobacco products.

- (1) *Limited retail sales establishments*: Establishments occupying facilities less than 12,000 ~~10,000~~-square feet and as limited by individual zoning district regulations.
- (2) *General retail sales establishments*: Establishments occupying facilities equal to or larger than 12,000 ~~10,000~~ and less than 40,000 square feet and as limited by individual zoning district regulations.
- (3) *Large retail sales establishments*: Establishments occupying facilities equal to or larger than 40,000 square feet and as limited by individual zoning district regulations.

...

**Sec. 134-954. Selling of liquor, wine and beer.**

The use of land in all districts for the sale of alcoholic liquor, wine and beer is subject to the restrictions set forth in this section.

- a. The sale of alcoholic liquor, wine and beer is permitted only in the zoning districts and subject to the conditions applicable to the business identified in the table below:

	Sale of Alcoholic Liquor		Sale of Wine and Beer	
	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts
<b>Food Sales Establishments and Retail Sales Establishments</b>				
Limited (less than 12,000 sq ft)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	CUP 40% of sales 150 feet	CUP 40% of sales 150 feet
General (12,000 sq ft or larger, but less than 40,000 sq ft)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
Large (40,000 sq ft or larger)	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet	40% of sales 75 feet
<b>Gas Station/ Convenience Stores</b> (not allowed in D-R)	Not Allowed	CUP 40% of sales 500 feet 1/4 mile	40% of sales 150 feet (C-1 & C-1A only)	40% of sales 150 feet
<b>Liquor Stores</b>	Not Allowed	CUP 500 feet 1/4 mile	Not Allowed	CUP 150 feet
<b>Restaurants</b>	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet
<b>Taverns and Night</b>	CUP	CUP	CUP	CUP

<b>Clubs</b> (not allowed in C-1 and C-1A)	(D-R only)	150 feet	(D-R only)	150 feet
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Where used in the table above the following terms shall have the meaning identified below:

- 1) CUP means that a conditional use permit must be obtained for such use as further provided in this section.
- 2) 40% of sales means that no more than 40 percent of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.
- 3) 50% of sales means that at least 50 percent of the gross receipts by a restaurant must be derived from the sale of prepared food and food-related services.
- 4) 75 feet means that the premises occupied by such use must be separated by at least 75 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 5) 150 feet means that the premises occupied by such use must be separated by at least 150 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 6) 500 feet means that the premises occupied by such use must be separated by at least 500 feet from any church, school, public park or licensed child care facility as defined by I.C. ch. 237A. However, this condition is not applicable in the C-3, C-3A, C-3B, C3-R and D-R Districts.
- 7) 1/4 mile means that the premises occupied by such use must be separated by at least one-fourth mile from any other limited food sales establishment, limited retail sales establishment, gas station/convenience store and liquor store engaged in the sale of alcoholic liquor. However, in the C-3, C-3A, C-3B, C3-R and D-R Districts this condition is only applicable to liquor stores.

	<b>Sale of Alcoholic Liquor</b>		<b>Sale of Wine and Beer</b>	
	<b>C-1, C-1A &amp; D-R Districts</b>	<b>C-2, NPC and less-restrictive Districts</b>	<b>C-1, C-1A &amp; D-R Districts</b>	<b>C-2, NPC and less-restrictive Districts</b>
<b>Food Sales Establishments</b>				
Limited	Not allowed	Condition 2	Condition 2	Condition 2
General	Condition 1	Condition 1	Condition 1	Condition 1
Large	Condition 1	Condition 1	Condition 1	Condition 1
<b>Gas Station/ Convenience Stores (not allowed)</b>	Not allowed	Condition 2	Condition 1	Condition 1

in D-R)				
<b>Liquor Stores</b>	Not allowed	Condition 3	Not allowed	Condition 3
<b>Restaurants</b>	Condition 1	Condition 1	Condition 1	Condition 1
<b>Retail Sales Establishments</b>				
Limited	Not allowed	Condition 2	Condition 2	Condition 2
General	Condition 1	Condition 1	Condition 1	Condition 1
Large	Condition 1	Condition 1	Condition 1	Condition 1
<b>Taverns and Night Clubs (not allowed in C-1 and C-1A)</b>	Condition 3	Condition 3	Condition 3	Condition 3

*Condition 1:* Allowed subject to a 75 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A; and, subject to no more than 40 percent of gross receipts being from the sale of liquor, wine, beer or tobacco products. However, the separation requirement is not applicable in the C-3, C-3A, C-3B, C3-R and D-R downtown riverfront district.

*Condition 2:* Allowed subject to receipt of a conditional use permit from the board of adjustment as provided in this section below; subject to a 150 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A; and, subject to no more than 40 percent of gross receipts being from the sale of liquor, wine, beer or tobacco products. However, the separation requirement is not applicable in the C-3, C-3A, C-3B, C3-R and D-R downtown riverfront district.

*Condition 3:* Allowed subject to receipt of a conditional use permit from the board of adjustment as provided in this section below, and subject to a 150 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A. However, the separation requirement is not applicable in the C-3, C-3A, C-3B, C3-R and D-R downtown riverfront district.

- b. A conditional use permit is required for the use of a premises for the sale of alcoholic liquor, wine or beer, under the circumstances identified in subsection (a), above. The board shall grant such a conditional use permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:
  - 1. The business conforms with the conditions identified in subsection (a), above.
  - 2. 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.
  - 3. 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.
  - 4. The business will not unduly increase congestion on the streets in the adjoining residential area.

5. The operation of the business will not constitute a nuisance.
- c. Any conditional use permit granted by the board of adjustment for the use of a premises for the sale of alcoholic liquor, wine and beer 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 (b), above, are satisfied:
1. 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. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.
  2. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control. The business shall have no outside speakers or amplified sound except when used in compliance with a type E sound permit.
  3. Any such business must comply with the following requirements:
    - (a) Every limited food sales establishment, limited retail sales establishment and gas station/convenience store shall display alcoholic liquor only in a locked case or behind a counter accessible only to employees. Any other business selling alcoholic liquor for off premises consumption shall either: i) display alcoholic liquor only in a locked case or behind a counter accessible only to employees; ii) employ an electronic security cap or tag system on all containers of alcoholic liquor on display; or iii) have more than one employee on duty at all times the business is open to the public.
    - (b) Conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.
    - (c) Institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.
    - (d) Not dispense alcoholic beverages ~~No sale of alcoholic beverages shall be made~~ from a drive-through window.
  4. 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.
  5. 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.
  6. 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.

d. Upon reasonable suspicion that any gas station/convenience store, food sales establishment or retail sales establishment derives more than 40 percent of its gross receipts from sales, from the sale of alcoholic liquor, wine, beer or tobacco products, the zoning enforcement officer may require that the owner or operator of the business demonstrate within 45 days that during the prior six months no more than 40 percent of its gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products. In such event it shall be presumed that more than 40 percent of the gross receipts from sales are derived from the sale of alcoholic liquor, wine, beer or tobacco products, which presumption may be overcome by the business timely furnishing a statement prepared and verified by a certified public accountant identifying the total dollar volume of all sales, and separately identifying the total dollar volume of sales derived from the sale of alcoholic beverages, from the sale of tobacco products, and from the sale of all other merchandise and food exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months.

e. Upon reasonable suspicion that any restaurant does not derive at least 50 percent of its gross receipts from the sale of prepared food and food-related services, the zoning enforcement officer may require that the owner or operator or the restaurant demonstrate within 45 days that during the prior six months at least 50 percent of its gross receipts were derived from the sale of prepared food and food-related services. In such event it shall be presumed that less than 50 percent of the restaurant's gross receipts are derived from the sale of prepared food and food-related services, which presumption may be overcome by the business timely furnishing a statement prepared and verified by a certified public accountant identifying the total dollar volume of all receipts, and separately identifying the total dollar volume of gross receipts derived from the sale of alcoholic beverages, and from the sale of prepared food and food-related services exclusive of alcoholic beverages and tobacco products, from the business premises in the preceding six months. ~~A business that declares a use as a gas station/convenience store, food sales establishment, retail sales establishment, or restaurant shall be required to submit, upon demand from the zoning enforcement officer, sales and other business records, or an audit prepared and verified by a certified public accountant, stating the percentage of gross revenue of the business derived from sales of merchandise other than tobacco products, liquor, wine and beer.~~

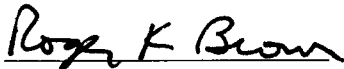
ef. All gas stations/convenience stores, food sales establishments, retail sales establishments and restaurants which have not continuously held an alcoholic liquor license or a beer or wine permit since July 1, 2012, ~~June 1, 2011~~, shall comply with the requirements of subsections (a), (b), (c), ~~and (d) and (e)~~ above. Any gas station/convenience store, food sales establishment, retail sales establishment or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, ~~June 1, 2011~~ shall comply with subsections (a), (b), (c), ~~and (d) and (e)~~ above, exclusive of any changed separation requirements,

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commencing on December 31, 2013, and prior to that date shall continue to be subject to the general regulations regarding legal nonconforming uses set forth in sections 134-155 and 134-1351. ~~requirements of subsection (1) of Section 134-954, as it existed on December 1, 2010.~~

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

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

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