

★ Roll Call Number

Agenda Item Number

41A

Date May 19, 2014

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 repealing Section 134-954 thereof, and enacting a new Section 134-954, and by adding a definition for tobacco store in section 134-3, to regulate the sale of alcoholic beverages by tobacco stores",

presented.

MOVED by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Roger K Brown
Roger K. Brown
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, TOTAL, MOTION CARRIED, APPROVED.

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.

Mayor

City Clerk

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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 repealing Section 134-954 thereof, and enacting a new Section 134-954, and by adding a definition for tobacco store in section 134-3, to regulate the sale of alcoholic beverages by tobacco stores.

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 repealing Section 134-954 thereof, and enacting a new Section 134-954, and by adding and a definition for tobacco store in section 134-3, to regulate the sale of alcoholic beverages by tobacco stores 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:

...
Tobacco Store means a place of business primarily engaged in the retail sale of tobacco and tobacco related products, provided however that no more than 25% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine or beer, and all sales of alcoholic liquor, wine or beer are for off-premises consumption only.
...

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
Food Sales Establishments and Retail Sales Establishments				
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
Gas Station/ Convenience Stores (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
Liquor Stores	Not Allowed	CUP 500 feet 1/4 mile	Not Allowed	CUP 150 feet
<u>Tobacco Stores</u>	<u>Not Allowed</u>	<u>CUP</u> <u>25%</u> <u>500 feet</u> <u>1/4 mile</u>	<u>CUP</u> <u>25%</u> <u>150 feet</u>	<u>CUP</u> <u>25%</u> <u>150 feet</u>
Restaurants	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet	50% of sales 75 feet
Taverns and Night Clubs (not allowed in C-1 and C-1A)	CUP (D-R only)	CUP 150 feet	CUP (D-R only)	CUP 150 feet

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) 25% means that no more than 25% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine or beer.
 - 45) *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.
 - 56) *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.
 - 67) *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.
 - 78) *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 and tobacco 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. 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 and tobacco 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 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.
- f. Upon reasonable suspicion that any tobacco store derives more than 25% of its gross receipts from sales from the sale of alcoholic liquor, wine or beer, 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 25% of the

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gross receipts from sales were derived from the sale of alcoholic liquor, wine or beer. In such event it shall be presumed more than 25% of its gross receipts from sales are derived from the sale of alcoholic liquor, wine or beer, 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.

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

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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