

★ **Roll Call Number**

Agenda Item Number
5

Date February 9, 2015

Be it resolved by the City Council of the City of Des Moines, Iowa.

That the following application is hereby submitted for consideration to the Iowa Alcoholic Beverages Division of the Iowa Department of Commerce:

Mexican Market, 1456 2nd Avenue, renewal Class C Beer Permit. **(Zoning Department recommends denial).**

Moved by _____ to deny.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

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



October 29, 2014

Paul Phanmaha
 Mexican Market
 1456 2nd Avenue
 Des Moines, IA 50314

Re: Liquor License, 1456 2nd Avenue
 Des Moines Food and Liquor

Dear Sir/Madam,

The liquor license for the business located 1456 2nd Avenue, is pending renewal and due to recent zoning amendments, Section 134-954 of the Municipal Code of the City of Des Moines, a conditional use permit is required prior to approval of the license.

The property at 1456 2nd Avenue, is located in an M-1 zoned district. The building is less than 12,000 square feet in area and is considered a Limited Food/Retail Sales Establishment. The sale of alcohol, wine and beer is allowed with a conditional use permit.

If the business is to be considered a food and/or retail sales establishment it must meet the requirement that no more than 40 percent of the gross receipts be derived from the sale of alcoholic liquor, wine, beer or tobacco products. In order to determine if the business meets this requirements we will require the submission of an audit. Your company will need to submit a statement prepared and verified by a certified public account licensed in the state of Iowa identifying the total dollar volume of all sales, and separately identifying the total dollar amount 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 and all other products for the preceding six months. The audit must be presented within 45 days of the date of this communication.

If the audit determines the business is a food and/or retail sales establishment a conditional use permits must be granted by the Zoning Board of Adjustment to allow a license to sell alcohol, wine and beer as a limited food/retail sales establishment.

Should the audit not confirm the establishment meets the 40 percent sales threshold the property might be considered a liquor store. In order to continue operation as a liquor store the

property would require a rezoning to C-2 and a conditional use permit from the Zoning Board of Adjustment.

Application forms to request a hearing before the Zoning Board of Adjustment can be found on the City of Des Moines web site. This link should get you to the page the application is located on

<http://www.dmgov.org/Departments/CommunityDevelopment/Pages/ZBOAApplication.aspx>

Or the forms are available at the Permit and Development Center counter, at 602 Robert D. Ray Drive, Des Moines, IA. If you wish to appeal this determination you must file an application within 10 days with the required fees.

You will be allowed to continued operation pending the outcome of the audit and for up to three months to allow application to the Zoning Board of Adjustment.

Sincerely,



SuAnn Donovan
Neighborhood Inspection Zoning Administrator
602 Robert D. Ray Drive
Des Moines, IA 50309
smdonovan@dmgov.org

NOTE: Any order, decision or determination made by this office in the enforcement of the Zoning Ordinance may be appealed to the Zoning Board of Adjustment. The Procedural Rules of the Zoning Board of Adjustment provide that you, as the party to whom this communication is directed, must file the appeal with the Community Development Department within ten days of the date of this communication. Any other aggrieved person seeking to appeal this order, decision or determination must file the appeal within ten days of actual notice by such person of such order, decision, or determination, which in no event shall be later than ten days after commencement of such physical construction or use. Any appeal not timely filed may be rejected by the Board.



February 5, 2015

Mexican Market
 Paul Phanmaha
 1456 2nd Avenue
 Des Moines, IA 50314

Re: Liquor License Renewal
 Subject Property – Mexican Market, 1456 2nd Avenue, Des Moines

Dear Mr. Phanmaha:

The liquor license for the Mexican Market store on the subject property listed was set to expire on November 7, 2014. Chapter 10 of the Des Moines Municipal Code requires said license to be renewed in order for sales of alcoholic liquor and/or wine and beer, as applicable per the license, to continue after November 7, 2014. The City has received your application to renew the liquor license and you were given timely filed status to come into compliance with zoning conditions regarding renewal of the liquor license.

As set forth in the Notice of Zoning Violation dated February 5, 2015, the store is not in compliance with Section 134-954 of the City of Des Moines Zoning Ordinance for (1) failure to obtain a Conditional Use Permit; (2) failure to submit an audit showing beer and tobacco products to be 40 percent or less of the gross receipts from all sales as requested on October 29, 2014.

Your application for renewal of the liquor license for this store is scheduled to come before the Des Moines City Council for consideration on February 9, 2015. Due to the ongoing zoning violations, the City staff will be obligated to recommend that the application be denied, or that the consideration of the application be continued to a later date to allow time to remedy the zoning violations. If the application is continued, the existing license will continue in effect until a final decision is made on the pending application.

The City staff will consider supporting a continuance only if the business has demonstrated a willingness to timely remedy the zoning violations as provided in the Notice. If the business does not demonstrate a willingness to timely remedy the zoning violations, Staff will have no option but to request denial of the liquor license.

Sincerely,



SaAnn Donovan

Neighborhood Inspection Zoning Administrator

602 Robert D. Ray Drive

Des Moines, IA 50309

smdonovan@dmgov.org



February 5, 2015

Mexican Market
Paul Phanmaha
1456 2nd Avenue
Des Moines, IA 50314

Re: Notice of Zoning Violation
Subject Property – Mexican Market, 1456 2nd Avenue

Dear Mr. Phanmaha:

The operation of the Mexican Market store on the subject property listed above has been treated as a legal non-conforming use of the property as a Limited Food Sales Establishment, in the M-1 Light Industrial District. Pursuant to Section 134-1352 (b) of the Municipal Code of the City of Des Moines, a legal nonconforming use as a Limited Food Sales Establishment is allowed to continue so long as it remains otherwise lawful. However, the City has imposed new zoning regulations which more specifically distinguish between those business to be treated as a Limited Food Sales Establishment with accessory sales of alcoholic beverages, and those businesses which will be treated as a Liquor Store because of their impact upon neighboring properties.

Mexican Market is in violation of the City of Des Moines Zoning Ordinance as follows:

1. The business is not in compliance with Section 134-954 for continuing to sell beer without a Conditional Use Permit.

Ordinance No. 15,133, passed September 10, 2012, amended Section 134-954 of the Des Moines Municipal Code, to require all new businesses selling alcoholic liquor, wine or beer obtain a conditional use permit before commencing operation, and to require all existing businesses that have continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012, obtain a Conditional Use Permit to continue selling alcoholic liquor, wine or beer after December 31, 2013.
2. Mexican Market is not in compliance with Section 134-954 for failure to provide and audit within 45 days of the October 29, 2014 request showing a limit of sales of beer or tobacco products to 40 percent or less of the gross receipts from all sales.
 - a) Ordinance No. 15,133, passed September 10, 2012, amended Section 134-954 of the Des Moines Municipal Code, to require that a Limited Food Sales Establishment

derive no more than 40% of its gross receipts from the sale of alcoholic liquor, wine, beer or tobacco products. This requirement was immediately applicable to new Limited Food Sales Establishments, and became applicable on December 31, 2013, to establishments that have continuously held an alcoholic liquor license or a wine or beer permit since July 1, 2012.

The Mexican Market must process an application to the Zoning Board of Adjustment within thirty (30) days from the date of this notice, in order to remedy the above-stated zoning violations, and continue the process to obtain a Conditional Use Permit from the Zoning Board of Adjustment:

- as a Limited Food Sales Establishment with compliance with the 40 percent sales limit on beer and tobacco products; or
- as a Liquor Store.

If you have questions you can contact City staff at 283-4200 to set up a development conference to discuss the application for a Conditional Use Permit.

If you fail to take action to bring the process to obtain a Conditional Use Permit within thirty (30) days from the date of this notice to remedy the zoning violations, the City may take the appropriate legal action to obtain a court order directing that the violation(s) be abated. If so, a civil suit may be filed in Polk County District Court, pursuant to Section 134-32 of the Municipal Code of the City of Des Moines, Iowa. A civil penalty and/or an order will be sought by the City to enjoin you from allowing the subject property to remain in violation and any other relief the court may deem reasonable to ensure compliance. The City may also ask that the Court order all costs of the court action, fines, and any other costs incurred by the City to abate the violation be entered against you as a personal judgment and/or against the subject property as an in rem judgment.

If you feel that you have received this notice in error or disagree with the determination of the violation, you may appeal this determination to the Zoning Board of Adjustment for the City of Des Moines by filing a notice of appeal within 10 days.

Sincerely,



SuAnn Donovan
Neighborhood Inspection Administrator
Deputy Zoning Enforcement Officer
602 Robert D. Ray Drive
Des Moines, IA 50309
smdonovan@dmgov.org

NOTE: Any order, decision or determination made by this office in the enforcement of the Zoning Ordinance may be appealed to the Zoning Board of Adjustment. The Procedural Rules of the Zoning Board of Adjustment provide that you, as the party to whom this communication is directed, must file the appeal with the Community Development Department within ten days of the date of this communication. Any other aggrieved person seeking to appeal this order, decision or determination must file the appeal within ten days of actual notice by such person of such order, decision, or determination, which in no event shall be later than ten days after commencement of such physical construction or use. Any appeal not timely filed may be rejected by the Board.
