



Roll Call Number

11-0914

Agenda Item Number

47A

Date May 23, 2011

RESOLUTION INITIATING AN AMENDMENT TO THE ZONING ORDINANCE TO FURTHER REGULATE THE ALLOWED LOCATION OF BUSINESSES ENGAGED IN THE SALE OF ALCOHOLIC LIQUORS FOR OFF-PREMISES CONSUMPTION, AND IMPOSING A TEMPORARY MORATORIUM ON THE COMMENCEMENT OF ANY SUCH BUSINESS IN THE "C-1" DISTRICT AND AT ANY LOCATION WHICH HAS NOT RECEIVED CONDITIONAL USE APPROVAL FROM THE ZONING BOARD OF ADJUSTMENT

WHEREAS, a recent change in the Iowa Alcoholic Beverage Control Act has removed a longstanding prohibition against the sale of alcoholic liquor for off-premises consumption from any premises at which gasoline is sold; and,

WHEREAS, this change in the state law will allow businesses that now sell beer and/or wine to potentially qualify to sell alcoholic liquors at over 125 locations in Des Moines without any further review or approval by the Zoning Board of Adjustment, or consideration of the impact upon the neighborhoods in which such businesses are located; and,

WHEREAS, businesses which sell alcoholic liquors for off-premises consumption can have a significant detrimental impact upon adjoining properties and the neighborhood in which they are located which potential impact should be considered before such businesses are allowed to commence operation; and,

WHEREAS, Section 134-954 of the Zoning Ordinance now provides in relevant part as follows:

- (1) No business holding a liquor license or a beer or wine permit which is not operated as either (i) a grocery store or pharmacy at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer; or (ii) 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 such business shall first have received a conditional use permit from the board of adjustment after public hearing.

WHEREAS, the City Council believes that the existing exemption in Section 134-954 exempting "any grocery store or pharmacy at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer" from the requirement to obtain a conditional use permit from the Board of Adjustment is overbroad and should be narrowed to expand the jurisdiction of the Board to consider the impact of businesses which sell alcoholic liquors for off-premises consumption upon adjoining properties and the neighborhood in which they are located; and,

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WHEREAS, the City Council further believes that it may be inappropriate to continue to allow businesses which sell alcoholic liquors for off-premises consumption to be located with the "C-1" Neighborhood Commercial Retail District because such businesses do not conform with the intent of the "C-1" district, which is stated in Section 134-841 of the Zoning Ordinance as follows:

The C-1 neighborhood retail commercial district is intended to provide for the convenience shopping of persons living in neighborhood residential areas and for general uses and activities of a retail and personal service character. Only those uses are permitted which are necessary to satisfy the local needs which occur so frequently as to require commercial facilities in proximity to residential areas. In addition, low-intensity business and professional offices are permitted.

WHEREAS, a temporary moratorium on the commencement of any business selling alcoholic liquors for off-premises consumption and upon the conversion of any existing business to one selling alcoholic liquors for off-premises consumption, at locations within the "C-1" Neighborhood Retail Commercial District and at location outside the "C-1" District which have not been reviewed and approved by the Zoning Board of Adjustment pursuant to Section 134-954, is necessary and appropriate to prevent the establishment of such businesses before the Plan and Zoning Commission and the City Council have an opportunity to consider and enact appropriate amendments to the Zoning Ordinance.

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

1. No new business selling alcoholic liquors for off-premises consumption shall be commenced, and no existing business shall be converted to one selling alcoholic liquors for off-premises consumption, at any location within the "C-1" Neighborhood Retail Commercial District. No new business selling alcoholic liquors for off-premises consumption shall be commenced, and no existing business shall be converted to one selling alcoholic liquors for off-premises consumption, at any location outside the "C-1" District which has not been reviewed and approved by the Zoning Board of Adjustment pursuant to Section 134-954 of the Zoning Ordinance. The conversion of any businesses premises from one at which alcoholic liquor is not sold, to one at which alcoholic liquor is sold, is a material change in use requiring a new certificate of occupancy. The City Staff shall not issue any approval, permit, license or certificate of occupancy for any development or business activities which are prohibited by this section.
2. This moratorium shall take effect immediately upon the adoption of this resolution and shall expire on August 9, 2011 (after a term of 78 days), unless terminated or extended by further action of the City Council. The City Council hereby expresses its intent to immediately



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terminate this moratorium if the City Council determines at any time that no further amendment to the Zoning Ordinance is warranted.

- 3. Any party may by written application to the City Clerk request relief from the effect of this moratorium where necessary to avoid unnecessary hardship. The application shall identify the basis for the applicant's contention that the moratorium is causing unnecessary hardship. The application shall be presented for consideration by the City Council at the first regularly scheduled Council meeting more than ten days following the date such application is filed with the City Clerk. If the City Council determines that the application of this moratorium is causing the applicant unnecessary hardship, the City Council shall allow such relief from this moratorium as is necessary to remedy such unnecessary hardship.
- 4. The Community Development Department and Plan and Zoning Commission are hereby directed to diligently proceed with consideration of the appropriate amendments to the Zoning Ordinance to address the concerns identified in the preamble above. The Community Development Department and Plan and Zoning Commission shall endeavor to complete their report and recommendation for receipt by the City Council no later than at its meeting on August 8, 2011.

MOVED by Hensley to adopt; refer to the City Manager to consider restricting distance from schools and sale of small bottles, and to keep the applicants informed throughout the moratorium period.

FORM APPROVED:

Roger K. Brown

Roger K. Brown, Assistant City Attorney

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| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE | ✓ | | | |
| COLEMAN | ✓ | | | |
| GRIESS | ✓ | | | |
| HENSLEY | ✓ | | | |
| MAHAFFEY | ✓ | | | |
| MEYER | | | | ✓ |
| MOORE | ✓ | | | |
| TOTAL | 6 | | | 1 |

MOTION CARRIED

APPROVED

T. M. Franklin Council 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.

Diane Rauh City Clerk