

★ **Roll Call Number**

11-1603

Agenda Item Number

42C

Date September 12, 2011

**ALTERNATE RESOLUTION EXTENDING UNTIL OCTOBER 25, 2011
THE TEMPORARY MORATORIUMS ON:**

- 1) THE ESTABLISHMENT OF ANY FREESTANDING LIQUOR STORES IN THE "C-3", "C-3A", "C-3B", AND "C-3R" DISTRICTS;
AND
- 2) THE ESTABLISHMENT OF ANY BUSINESSES ENGAGED IN THE SALE OF ALCOHOLIC LIQUORS FOR OFF-PREMISES CONSUMPTION IN THE "C-1" DISTRICT AND AT ANY LOCATION WHICH HAS NOT RECEIVED CONDITIONAL USE APPROVAL FROM THE ZONING BOARD OF ADJUSTMENT

WHEREAS, on April 25, 2011, by Roll Call No. 11-0748, the City council imposed a temporary moratorium effective through July 11, 2011, on the commencement of any freestanding liquor store within the "C-3" Central Business District Commercial District, "C-3A" Central Business District Support Commercial District, "C-3B" Central Business Mixed-Use District or "C-3R" Central Business District Mixed-Residential District; and,

WHEREAS, on May 23, 2011, by Roll Call No. 11-0914, the City Council imposed a temporary moratorium effective through August 9, 2011, on the commencement of any new business selling alcoholic liquors for off-premises consumption and on the conversion of any existing business to one selling alcoholic liquors for off-premises consumption, at any location within the "C-1" Neighborhood Retail Commercial District, and 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; and,

WHEREAS, on July 11, 2011 by Roll Call No. 1253, City Council extended the temporary moratorium until September 13, 2011; and,

WHEREAS, the Community Development Department and Plan and Zoning Commission have prepared amendments to the Zoning Ordinance to address the concerns identified by the City Council in the resolutions establishing the two temporary moratoriums identified above as more specifically described in the accompanying Council Communication; and,

WHEREAS, a public hearing regarding these amendments to the Zoning Ordinance Text in Chapter 134 has been set for September 12, 2011 at 5:00 p.m. in City Council Chambers. The Director of the Community Development Department has requested waiver of the second and third readings of these amendments; and,

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WHEREAS, if City Council does not approve waiver of the second and third readings, extension of the three temporary moratoriums 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 fully consider and enact appropriate amendments to the Zoning Ordinance; and,

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

1. No freestanding liquor store shall be commenced within the "C-3" Central Business District Commercial District, "C-3A" Central Business District Support Commercial District, "C-3B" Central Business Mixed-Use District or "C-3R" Central Business District Mixed-Residential District, and no structures shall be constructed or altered for such a business, and no site plans, building permits or new liquor licenses shall be approved or issued for the construction, improvement or operation of such a business within such districts. As used in this resolution, a "freestanding liquor store" shall mean a business holding a Class "E" Liquor Control License which is not operated as either 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.
2. 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.
3. The City Staff shall not issue any approval, permit, license or certificate of occupancy for any development or business activities which are prohibited by paragraphs 1 and 2, above.
4. The temporary moratoriums identified above shall remain in full force and effect until October 25, 2011, unless terminated or extended by further action of the City Council. The City Council hereby expresses its intent to immediately terminate these moratoriums if the City Council determines at any time that no further amendment to the Zoning Ordinance is warranted.

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- 5. Any party may by written application to the City Clerk request relief from the effect of these moratoriums 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 the applicable moratorium is causing the applicant unnecessary hardship, the City Council shall allow such relief from the moratorium as is necessary to remedy such unnecessary hardship.

MOVED by _____ to adopt.

FORM APPROVED:



 Michael F. Kelley
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
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