



Roll Call Number

12-0823

Agenda Item Number

52B

Date May 21, 2012

ALTERNATIVE RESOLUTION

RESOLUTION GRANTING APPEAL BY TONY DASSAN FOR RELIEF FROM  
MORATORIUM TO ALLOW CONSIDERATION OF HIS APPLICATION TO SELL  
ALCOHOLIC LIQUOR FOR OFF-PREMISES CONSUMPTION AT THE BP SERVICE  
STATION AT 727 SE 14th STREET

WHEREAS, on April 9, 2012, by Roll Call No. 12-0572, the City Council established a temporary moratorium extending until June 26, 2012, on the commencement of any new business and on the conversion of any existing business to one selling alcoholic liquor for off-premises consumption, from any business premises which is operated as a Limited Food Sales Establishment, Limited Retail Sales Establishment, Gas Station/Convenience Store or Liquor Store; and,

WHEREAS, Roll Call No. 12-0572 further provides that any party may, by written application to the City Clerk request relief from the effect of the moratorium where necessary to avoid undue hardship; and,

WHEREAS, on April 23, 2012, Tony Dassan, through counsel, filed an application with the City Clerk seeking relief from the moratorium to allow him to seek the necessary approvals to engage in the business of selling alcoholic liquor for off-premises consumption at the BP service station (also known as the Super Stop) at 727 SE 14th Street, being at the intersection of SE 14th and Maury Streets; and,

WHEREAS, on May 7, 2012, by Roll Call No. 12-0698, it was duly resolved by the City Council that the application of Tony Dassan for relief from the moratorium as applied to the BP service station at 727 SE 14th Street, be set down for hearing on May 21, 2012, at 5:00 P.M., in the Council Chambers at City Hall; and,

WHEREAS, due notice of said hearing was published in the Des Moines Register on May 10, 2012, setting forth the time and place for such hearing; and,

WHEREAS, in accordance with said notice those interested in the application, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; NOW THEREFORE,

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

1. Upon due consideration of the facts, statements of interested persons and arguments of counsel, the objections to the application for relief from the moratorium are hereby overruled, and the hearing is closed.
2. The City Council hereby makes the following findings:
  - a) The BP service station at 727 SE14th Street is located more than 1/2 mile from any other business holding a Class E Liquor Control License, more than 250 feet from any "R" and "C-O" zoning district, and more than 150 feet from any known church, school, public park or licensed child care center as defined by I.C. ch. 237A.

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- b) A Class E Liquor Control License was previously issued for the operation of a liquor store in the same building with the BP service station. That license was most recently held by Narpinder Sahi, a tenant of Tony Dassan. Narpinder Sahi voluntarily surrendered the license on October 20, 2011.
  - c) On October 25, 2011, Tony Dassan applied for a Class E Liquor Control License for the BP service station and the application received all necessary staff approvals. That application was not presented to the City Council because Tony Dassan did not pay the required fees, and the application was voluntarily withdrawn by Tony Dassan on February 20, 2012.
  - d) Tony Dassan had demonstrated to the City Council's satisfaction that the surrender of the Class E Liquor Control License was made by a prior tenant contrary to the wishes of Tony Dassan; that the inability to sell alcoholic liquor has caused a substantial reduction in the overall sales from the BP service station; and that the business is not financially viable without the sale of alcoholic liquor.
  - e) The moratorium is causing Tony Dassan an undue hardship under the unique circumstances of this case.
3. The application of Tony Dassan for relief from the moratorium to allow him to seek the necessary approvals to allow the BP service station at SE 14th and Maury Street to engage in the business of selling alcoholic liquor for off-premises consumption, is hereby granted.

MOVED by Meyer to adopt and approve the application for relief from the moratorium. **MOTION FAILED**

**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	3	4		

MOTION CARRIED

APPROVED

T. M. Franklin

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