

ORDINANCE NO. 13,588

AN ORDINANCE to amend the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, as heretofore amended, by repealing paragraph (2) of subsection (B) of Section 2A-8, and subsection (H) of Section 2A-17 thereof and enacting a new paragraph (2) of subsection (B) of Section 2A-8, and subsection (H) of Section 2A-17, and by adding and enacting a new paragraph (4) to subsection (B) of Section 2A-8, all relating to the permitted location of and alterations to businesses holding a liquor license or a beer or wine permit.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of Des Moines, 1991, adopted by Ordinance No. 11,651, passed April 15, 1991, as restated by the Ninth Supplement thereto adopted June 16, 1997, by Resolution and Roll Call No. 97-2094, be and is hereby amended by repealing paragraph (2) of subsection (B) of Section 2A-8, and subsection (H) of Section 2A-17 thereof and enacting a new paragraph (2) of subsection (B) of Section 2A-8, and subsection (H) of Section 2A-17, and by adding and enacting a new paragraph (4) to subsection (B) of Section 2A-8, all relating to the permitted location of and alterations to businesses holding a liquor license or a beer or wine permit, as follows:

2A-8. NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, AND NON-CONFORMING USE OF STRUCTURES.

Statement of Intent. Within the various districts established by this Ordinance or amendments that may later be adopted there exist structures and uses of land and structures which were lawful prior to the adoption of this Ordinance but which would be prohibited under the provisions of this Ordinance. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance that such non-conformities shall not be enlarged upon, expanded or extended.

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(B) Non-conforming Use of Land, Use of Structures, and Structures in any District Other than an "R" District.

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(2) Non-Conforming Uses of Structures. The regulations governing non-conforming uses of structures in any "R" District as described in Sec. 2A-8(A)(2), subparagraphs (a), (b), (c), (d) and (e), shall also apply to this subsection with the following exception:

Subject to paragraph (4), below, any structure in any district other than an "R" District devoted to a use made non-conforming by this Ordinance may be structurally altered or enlarged in

conformity with the lot area, lot coverage, frontage, yard, height, and parking requirements of the district in which located, provided such construction shall be limited to buildings on land owned of record by the owner of the land devoted to the non-conforming use prior to the effective date of this Ordinance. Such structural alteration or enlargement shall not authorize the substitution of a non-conforming use that is less restrictive than the one to which the structure was devoted at the time of passage of this Ordinance.

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(4) Any structure or portion thereof used by a business holding a liquor license or beer or wine permit which is non-conforming with the requirements of section 2A-17(H) shall not be changed in any way which would alter the occupant capacity of the business premises, structurally altered or enlarged, and if damaged by any means to an extent of sixty (60) percent or more of its value at the time of destruction, exclusive of land, shall not be reconstructed for use by a business holding a liquor license or beer or wine permit, without compliance with section 2A-17(H).

2A-17. "C-2" DISTRICT REGULATIONS. (GENERAL RETAIL AND HIGHWAY ORIENTED COMMERCIAL DISTRICTS).

Statement of Intent. The "C-2" District is intended to provide for major retail shopping areas (other than shopping centers in "C-4" Districts) outside the downtown area. These districts include as well much of the strip commercial property existing along the major streets and highways of the city. The uses permitted are intended to accommodate both the general retail consumer and the needs and services of the automobile traveling consumer.

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(H) Selling of liquor, wine and beer. (1) No business holding a liquor license, or beer or wine permit which is not operated as either:

(a) a grocery store or pharmacy at least half of whose gross income is derived from the sale of merchandise other than liquor, wine or beer; or

(b) a restaurant at least half of whose gross income 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. Notice of such hearing shall be provided to all owners of record of property within 250 feet of the subject property.

(2) The Board shall grant a conditional use permit to a business holding a liquor license, or beer or wine permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the Board, satisfies the following criteria:

(a) 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.

(b) 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.

(c) The business will not unduly increase congestion on the streets in the adjoining residential area.

(d) The operation of the business will not constitute a nuisance.

(3) Any conditional use permit so granted by the Board shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the Board to assure that the above criteria are satisfied:

(a) Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one foot-candle of light on the parking surface at all times.

(b) The business shall comply with the Noise Control Ordinance of the City of Des Moines, section 16-136 et. seq.

(c) No sale of alcoholic beverages shall be made from a drive-through window.

(d) 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.

(e) 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.

(4) 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.

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