

ORDINANCE NO. 15,059

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 134-3, 134-842, 134-844, 134-947, 134-954 and 134-1044, and by adding and enacting a new Section 134-947.1, relating to zoning of establishments selling alcoholic liquors and wine, beer and tobacco.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the following findings are hereby made in support of the amendments to the Zoning Ordinance provided below:

- a) The Code of Iowa was amended effective July 1, 2011 to eliminate the prohibition against the issuance of a class "E" liquor control license to any premises at which gasoline is sold. This amendment allows many of the existing gas stations/convenience stores in the City of Des Moines to seek a license to sell alcoholic liquor.
- b) The City Council is concerned with the number of existing gas stations/convenience stores, limited retail sales establishments, and limited food sales establishments as defined below, that could begin selling alcoholic liquor in the City of Des Moines and the impact this would have on the neighborhoods in which these businesses are located.
- c) The sale of alcoholic liquor, wine and beer by gas stations/convenience stores, limited retail sales establishments, and limited food sales establishments has historically had a much more significant and detrimental impact upon the adjoining neighborhoods than such sales from larger establishments.
- d) The zoning ordinance amendments set forth below are necessary and appropriate to protect the public health, safety and welfare by restricting where alcoholic liquor, wine and beer may be sold by various types of businesses.

Section 2. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as amended by Ordinance No. 13,832, passed June 19, 2000, by Ordinance No. 13,839, passed July 10, 2000, by Ordinance No. 13,889, passed November 20, 2000, by Ordinance No. 14,124, passed September 22, 2002, by Ordinance No. 14,668, passed July 9, 2007, by Ordinance No. 14,768, passed May 19, 2008, by Ordinance No. 14,979, passed December 6, 2010, and by Ordinance No. 15,046, passed September 12, 2011, is hereby amended by

amending Sections 134-3, 134-842, 134-844, 134-947, 134-954 and 134-1044, and by adding and enacting a new Section 134-947.1, relating to zoning of establishments selling alcoholic liquors and wine, beer and tobacco, as follows:

**Sec. 134-3. Definitions.**

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*Food sales establishments* means places of business primarily engaged in the retail sale of food or household products for home consumption. Food sales establishments may include the sale of non-food items. However, no more than 40% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine, beer or tobacco products.

- (1) *Limited food sales establishments*: Establishments occupying facilities of less than 10,000 square feet and as limited by individual zoning district regulations.
- (2) *General food sales establishments*: Establishments occupying facilities larger than 10,000 but less than 40,000 square feet and as limited by individual zoning district regulations.
- (3) *Large food sales establishments*: Establishments occupying facilities larger than 40,000 square feet and as limited by individual zoning district regulations.

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*Gas station/convenience store* means any building or premises that includes the sale of liquefied petroleum products and other products for the propulsion of motor vehicles. A gas station/convenience store may be combined with a food sales establishment or a retail sales establishment provided the conditions for each are satisfied.

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*Liquor store* means an establishment or place of business primarily engaged in the sale for off-premise consumption of alcoholic liquors, wine and beer where more than 40% of gross receipts is derived from the sale of alcoholic liquors, wine, beer and tobacco.

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*Retail sales establishment* means places of business primarily engaged in retail sale or rental primarily of non-food, non-alcohol and non-tobacco related products and services. However, no more than 40% of the gross receipts from sales shall be derived from the sale of alcoholic liquor, wine, beer or tobacco products.

- (1) *Limited retail sales establishments*: Establishments occupying facilities less than 10,000 square feet and as limited by individual zoning district regulations.
- (2) *General retail sales establishments*: Establishments occupying facilities larger than 10,000 and less than 40,000 square feet and as limited by individual zoning district regulations.

- (3) *Large retail sales establishments:* Establishments occupying facilities larger than 40,000 square feet and as limited by individual zoning district regulations.
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**Sec. 134-842. Principal permitted uses.**

Only the following uses of structures or land shall be permitted in the C-1 neighborhood retail commercial district.

- (1) Any use permitted in and as limited in the C-0 and R-4 districts.
- (2) Retail business or service establishments such as the following:
- a. Antique shops.
  - b. Apparel shops.
  - c. Art shops.
  - d. Baby and children's stores.
  - e. Bakeries with a retail sales area where all products produced on the premises are available fresh daily, provided the product preparation and storage area does not exceed 5,000 square feet of gross floor area. Distribution of products to other premises is permitted; however, no semitrailer trucks shall be used for distribution purposes.
  - f. Bicycle shops, sales and repairs.
  - g. Bookstores.
  - h. Camera stores.
  - i. Clothes cleaning and laundry pickup stations.
  - j. Collection office of public utility.
  - k. Confectionery stores, including ice cream or snack bars.
  - l. Dairy stores, retail only.
  - m. Delicatessens.
  - n. Dance studios.
  - o. Pharmacies.
  - p. Dry goods stores.
  - q. Florist shops and greenhouses.
  - r. Furniture stores.
  - s. Gas station/convenience stores, including minor automobile repairs as an accessory but not a principal use, provided that the proposed use has undergone site plan review and approval pursuant to guidelines set forth at section 82-214.8, and the design of the site permits no more than six vehicles to be fueled at a time. Gas stations on the following streets only may be designed to permit up to eight vehicles to be fueled at a time:
    - 1. Army Post Road and East Army Post Road from Fleur Drive to Indianola Road.
    - 2. Douglas Avenue from the west city boundary to Martin Luther King, Jr. Parkway.

3. Euclid Avenue from Martin Luther King, Jr. Parkway to Hubbell Avenue.
  4. Hickman Road from the west city boundary to Fifty-sixth Street.
  5. Hubbell Avenue from Euclid Avenue northeast to the city boundary.
  6. Martin Luther King, Jr. Parkway from Ingersoll Avenue to Euclid Avenue.
  7. Merle Hay Road from Hickman Road to the north city boundary.
  8. East University Avenue from East Fourteenth Street to the east city boundary.
  9. Second Avenue from Euclid Avenue to the north city boundary.
  10. Southeast and East Fourteenth Streets.
  11. Sixty-third Street from the south city limits to Hickman Road.
- t. Gift shops.
  - u. Grocery stores including supermarkets.
  - v. Hardware stores.
  - w. Hobby shops.
  - x. Household appliances, sales and repair.
  - y. Jewelry stores and watch repair shops.
  - z. Key shops.
  - aa. Launderette, coin-operated dry cleaning establishments, and dry cleaning or pressing establishments using only nonflammable solvents.
  - bb. Locker plant for storage and retail sales only.
  - cc. Leather goods stores.
  - dd. Music stores.
  - ee. Music studios.
  - ff. Paint and wallpaper stores.
  - gg. Photographic studios, including film developing and retail sales of photographic equipment and supplies.
  - hh. Post office substations.
  - ii. Radio and television sales and repair shops.
  - jj. Restaurants.
  - kk. Shoe and hat repair shops.
  - ll. Sporting goods stores.
  - mm. Tailor and dressmaking shops.
  - nn. Theaters.
  - oo. Toy stores.
  - pp. Variety stores.
  - qq. Automotive and motorcycle accessory and parts stores, provided that retail sales shall be the only business activity and that any runup or testing of engines shall take place within the store building.
  - rr. Banks, savings and loan associations and similar financial institutions, but not including delayed deposit services or pawnbrokers.
  - ss. Business, secretarial or other commercially operated schools for adults, but not including commercial trade schools, such as gasoline, diesel, or marine engine mechanics schools, or truck driving schools.

- tt. Department stores with no more than 30,000 square feet of gross floor area, including storage.
  - uu. Labor union offices, including assembly halls, not to exceed 1,500 square feet of gross floor area for the assembly hall.
  - vv. Lawn mower repair shops, provided that any runup or testing of engines shall take place within the shop building.
  - ww. Office buildings, not to exceed 30,000 square feet of gross floor area.
  - xx. Photographic printing or developing and photocopying establishments, but not including letter or offset presses.
  - yy. Radio stations, not to exceed 15 watts of power, including the transmitting tower, such tower not to exceed 100 feet in height.
  - zz. Upholstery shops.
  - aaa. Drive-up telephone or telephone booth, erected by a public service corporation, provided the location is approved by the planning director and the city engineer to ensure the facility does not interfere with pedestrian or vehicular circulation on the property, on adjoining property or on the public streets. Such facility shall be exempt from the bulk regulations of this division.
  - bbb. Day nurseries, day care centers and nursery schools.
  - ccc. Parking lots used for the temporary placement of motor vehicles while the driver is engaged in some other activity (i.e., working, shopping, or attending a recreational event, etc.) but not including a storage lot.
- (3) Combinations of the uses in subsection (2) of this section.
  - (4) Business and professional offices supplying commodities or performing services primarily for residents of the neighborhood.

**Sec. 134-844. Special limitations.**

Special limitations in the C-1 neighborhood retail commercial district shall be as follows:

- (1) Storage of any and all materials and equipment shall take place within completely enclosed buildings, except for off-street parking and loading as required by article V of this chapter.
- (2) All open areas not used for off-street parking or loading shall be planted with grass, properly maintained and kept free from refuse and debris.
- (3) Any retail business or service establishment use open to the public for business during the hours from 2:00 a.m. to 6:00 a.m. shall only be permitted subject to approval by the board of adjustment after public hearing. Prior to granting approval of a particular business or service establishment use at the location requested, the board of adjustment must find that such use complies with the following standards:

- a. The proposed location, design, construction and operation of the particular use shall adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property;
  - b. The particular use shall not materially increase congestion, noise, vibration, glare, fumes, odors or electrical interference that will adversely affect surrounding residential uses; and
  - c. The particular use shall not diminish or impair established property values in adjoining or surrounding property.
- (4) Liquor stores shall not be allowed in the C-1 neighborhood retail commercial district.
  - (5) Gas stations/convenience stores, limited food sales establishments and limited retail sales establishments permitted in section 134-842 are prohibited from selling alcoholic liquor.
  - (6) The sale of beer, wine or alcoholic liquor by any other use permitted in section 134-842 other than those referenced in section (5) above is subject to the provisions of section 134-954.

**Sec. 134-947. Principal permitted uses.**

- (a) Only the uses of structures or land listed in this section shall be permitted in the C-2 general retail and highway-oriented commercial district.
- (b) Any use permitted in the C-1 district shall be permitted in the C-2 district, without limitation as to the size, hours of operation or number of fueling stations provided that any proposed use as a gas station or convenience store has undergone site plan review and approval pursuant to guidelines set forth in section 82-214.8.
- (c) Retail, service, or recreational uses, such as the following, shall be permitted:
  - (1) Animal hospitals, veterinary clinics, or kennels, provided any exercising runway shall be at least 200 feet from any R or C-0 district boundary.
  - (2) Automobile accessory stores.
  - (3) Automobile, trailer, motorcycle, boat, and farm implement establishments for display, hire, rental, and sales (including sales lots), including as incidental to these major uses all repair work in connection with their own or customers' vehicles, but not including uses in which the major source of revenue is from body and fender work and not including automobile, tractor, or machinery wrecking and rebuilding and used parts yards. However, all outside storage, display and parking areas shall be used and maintained in conformance with an approved site plan and the parking, display and storage of vehicles for hire, rental or sale shall be limited to the area designated for such use in the site plan.
  - (4) Ballrooms and dancehalls.
  - (5) Billiard parlors, pool halls, and game rooms.
  - (6) Bookbinding.
  - (7) Bowling alleys.

- (8) Trade schools.
- (9) Carpenter and cabinetmaking shops for retail custom work.
- (10) Commercial baseball fields, swimming pools, skating rinks, golf driving ranges, miniature golf courses, trampoline centers, and similar recreational uses and facilities.
- (11) Department stores.
- (12) Drive-in restaurants.
- (13) Drive-in theaters.
- (14) Food sales establishments.
- (15) Gas stations/convenience stores.
- (16) Hotels with no minimum density requirements.
- (17) Laundries.
- (18) Labor union offices, including assembly halls.
- (19) Lumberyards, retail only.
- (20) Miniwarehouse subject to a controlled access and fenced compound.
- (21) Monument sales yards.
- (22) Motels, motor hotels, and tourist courts with no minimum density requirements.
- (23) Office buildings.
- (24) Liquor stores for the sale of alcoholic beverages.
- (25) Pet shops, including aquariums.
- (26) Photographic printing or developing establishments.
- (27) Plumbing and heating shops.
- (28) Printing and lithographing shops.
- (29) Parking garages.
- (30) Physical culture or health establishments.
- (31) Auction businesses.
- (32) Radio or television studios.
- (33) Sheetmetal shops.
- (34) Sign painting shops.
- (35) Taverns and nightclubs, including private clubs, subject to section 134-954.
- (36) Mobile home parks, subject to all of the requirements of the R-5 district.
- (37) Used car sales lots, provided all outside storage, display and parking areas shall be used and maintained in conformance with an approved site plan, and the parking, display and storage of vehicles for hire, rental or sale shall be limited to the area designated for such use in the site plan.
- (38) Garage for general motor vehicle repair, but not including body and fender work and overall painting and steam cleaning, but including upholstery, scratch and dent repair, and minor painting within a completely enclosed building.
- (39) Automobile washing establishments.
- (40) Adult entertainment business. See section 134-953 of this division.
- (41) Bakeries, provided that the retail sales area shall be within 100 feet of the premises on which the bakery is located where all products produced in the bakery are available for sale fresh daily and provided the product preparation and storage area does not exceed 7,500 square feet of gross floor area. Distribution of products to

other premises is permitted; however, no semitrailer trucks shall be used for distribution purposes.

- (42) Bed and breakfast.
- (d) Combinations of the uses in subsection (c) of this section shall be permitted.
- (e) Off-premises advertising signs shall be permitted.
- (f) Communication towers and antennas which are accessory to a permitted use and comply with the bulk regulations for the district in which they are located or which are mounted on and do not extend more than 20 feet above an existing structure shall be permitted. All other communication towers and antennas are subject to section 134-955.

**Sec. 134-947.1. Special Limitations.**

In the C-2 general retail and highway-oriented commercial district and in any district where uses allowed in the C-2 district are allowed by reference, the sale of alcoholic liquor, wine and beer is subject to the provisions of Section 134-954.

**Sec. 134-954. Selling of liquor, wine and beer.**

The use of land in all districts for the sale of alcoholic liquor, wine and beer is subject to the restrictions set forth in this section.

- a. The sale of alcoholic liquor, wine and beer is permitted only in the zoning districts and subject to the conditions applicable to the business identified in the table below:

	Sale of Alcoholic Liquor		Sale of Wine and Beer	
	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts	C-1, C-1A & D-R Districts	C-2, NPC and less restrictive Districts
<b>Food Sales Establishments</b>				
Limited	Not allowed	Condition 2	Condition 2	Condition 2
General	Condition 1	Condition 1	Condition 1	Condition 1
Large	Condition 1	Condition 1	Condition 1	Condition 1
<b>Gas Station/ Convenience Stores</b> (not allowed in D-R)	Not allowed	Condition 2	Condition 1	Condition 1
<b>Liquor Stores</b>	Not allowed	Condition 3	Not allowed	Condition 3
<b>Restaurants</b>	Condition 1	Condition 1	Condition 1	Condition 1
<b>Retail Sales Establishments</b>				
Limited	Not allowed	Condition 2	Condition 2	Condition 2
General	Condition 1	Condition 1	Condition 1	Condition 1
Large	Condition 1	Condition 1	Condition 1	Condition 1
<b>Taverns and Night Clubs</b> (not allowed in C-1 and C-1A)	Condition 3	Condition 3	Condition 3	Condition 3



*Condition 1:* Allowed subject to a 75 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A; and, subject to no more than 40% of gross receipts being from the sale of liquor, wine, beer or tobacco products. However, the separation requirement is not applicable in the C-3, C-3A, C-3B, C3-R and D-R downtown riverfront district.

*Condition 2:* Allowed subject to receipt of a conditional use permit from the board of adjustment as provided in this section below; subject to a 150 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A; and, subject to no more than 40% of gross receipts being from the sale of liquor, wine, beer or tobacco products. However, the separation requirement is not applicable in the C-3, C-3A, C-3B, C3-R and D-R downtown riverfront district.

*Condition 3:* Allowed subject to receipt of a conditional use permit from the board of adjustment as provided in this section below, and subject to a 150 foot separation from any church, school, public park or licensed child care center as defined by I.C. ch. 237A. However, the separation requirement is not applicable in the C-3, C-3A, C-3B, C3-R and D-R downtown riverfront district.

- b. A conditional use permit is required for the use of a premises for the sale of alcoholic liquor, wine or beer, under the circumstances identified in subsection (a), above. The board shall grant such a conditional use permit only where the business, when operated in conformance with such reasonable conditions as may be imposed by the board, satisfies the following criteria:
1. The business conforms with the conditions identified in subsection (a), above.
  2. 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.
  3. 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.
  4. The business will not unduly increase congestion on the streets in the adjoining residential area.
  5. The operation of the business will not constitute a nuisance.
- c. Any conditional use permit granted by the board of adjustment for the use of a premises for the sale of alcoholic liquor, wine and beer shall be subject to the following general conditions, together with such additional special conditions as may be reasonably required by the board to ensure that the criteria in subsection (b), above, are satisfied:
1. Any parking area provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times.

2. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control.
  3. No sale of alcoholic beverages shall be made from a drive-through window.
  4. 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.
  5. 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.
  6. 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.
- d. A business that declares a use as a gas station/convenience store, food sales establishment, retail sales establishment, or restaurant shall be required to submit, upon demand from the zoning enforcement officer, sales and other business records, or an audit prepared and verified by a certified public accountant, stating the percentage of gross revenue of the business derived from sales of merchandise other than tobacco products, liquor, wine and beer.
- e. All gas stations/convenience stores, food sales establishments, retail sales establishments and restaurants which have not continuously held a liquor license or a beer or wine permit since June 1, 2011, shall comply with the requirements of subsections (a), (b) (c) and (d) above. Any gas station/convenience store, food sales establishment, retail sales establishment or restaurant which has continuously held an alcoholic liquor license or a wine or beer permit since June 1, 2011 shall comply with subsections (a), (b), (c) and (d) above, commencing on December 31, 2013, and prior to that date shall continue to be subject to the requirements of subsection (1) of Section 134-954, as it existed on December 1, 2010.

**Sec. 134-1044. Sale of Alcoholic Liquor, Wine and Beer.**

In the D-R downtown riverfront district, the sale of alcoholic liquor, wine and beer shall be subject to the requirements set forth in Section 13-954.

Section 3. 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

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 11-1828), passed by the City Council of said City at a meeting held October 24, 2011 signed by the Mayor on October 24, 2011 and published as provided by law in the Business Record on November 4, 2011. Authorized by Publication Order No. \_\_\_\_\_.

Diane Rauh, City Clerk