

ORDINANCE NO. 15,080

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 10-1 and 10-43 relating to qualifications to hold an alcoholic beverage license or permit.

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

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 10-1 and 10-43 relating to qualifications to hold an alcoholic beverage license or permit, as follows:

**Sec. 10-1. Definitions.**

Where words and phrases used in this chapter are defined by state law, such definitions shall apply to their use in this chapter and are adopted by reference. Those definitions so adopted that need further definition or that are reiterated and the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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*Designated security employee* means an agent, contract employee, independent contractor, servant, or employee of a licensee or permittee who works in a security position in any capacity at a commercial establishment licensed or permitted under this chapter.  
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*Person of good moral character* means any person who meets all of the following requirements:

- (1) The person has such adequate financial standing and good reputation as will satisfy the city council and the administrator of the alcoholic beverages division of the state's department of commerce that he or she will comply with the state Alcoholic Beverage Control Act and all other laws, ordinances, and regulations applicable to his or her operations under state law. For purposes of this section, "adequate financial standing" may include, but is not limited to, applicant provision of verified source(s) of financial support and adequate operating capital for the applicant's proposed establishment, a

record of prompt payment of local or state taxes or assessments due, a record of prompt payment to the local authority of fees or charges made by a local authority for municipal utilities or other municipal services incurred in conjunction with the proposed establishment, and a record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123. For purposes of this section, "good reputation" may include such factors as, but is not limited to, the following: pattern or practice of sales of alcoholic beverages to persons under legal age for which the licensee or permittee, or the agents or employees of either, have pled or have been found guilty, pattern and practice by the licensee or permittee, or the agents or employees of either, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued, sales to intoxicated persons, licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol, the recency of convictions under laws relating to operating a motor vehicle while under the influence of drugs or alcohol, licensee or permittee misdemeanor convictions, the recency of the misdemeanor convictions.

- (2) The person is not prohibited by section 10-62 of this chapter from obtaining a liquor control license, or a wine or beer permit.
- (3) The person is a citizen of the United States and a resident of this state or is licensed to do business in this state as a corporation. For a partnership, only one partner must be a resident of this state.
- (4) The person has not been convicted of a felony. However, if the conviction of a felony occurred more than five years before the application for a license or permit and if such person's rights of citizenship have been restored by the governor, the city council may determine that such person is a person of good moral character notwithstanding such conviction.
- (5) If such person is a corporation, partnership, association, club, or hotel or motel the requirements of this definition shall apply to each of the officers, directors, and partners of such person and to any person who directly or indirectly owns or controls ten percent or more of any class of stock of such person or has an interest of ten percent or more in the ownership or profits of such person. For the purpose of this subsection, an individual and the individual's spouse shall be regarded as one person.

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**Sec. 10-43. Conditions for approval.**

The following conditions and regulations must be met by an applicant for a liquor control license or a wine or beer permit:

- (1) The applicant must give consent in writing on the application that members of the fire and police departments and the building inspector may enter upon the premises without warrant to inspect for violations of the provisions of state law and of this chapter.
- (2) The premises for which a liquor control license, or a wine or a beer permit is sought must be located within an area where such business is permitted by chapter 134 of this Code and must otherwise conform to the city zoning requirements.
- (3) The premises of a class B beer permit shall, at the time of the application, continue to be equipped with sufficient tables and seats to accommodate 25 persons at one time.
- (4) All permits and licenses provided for in this chapter shall be displayed in a conspicuous place on the premises of the permit or license holder and at all times shall be subject to inspection.
- (5) No liquor control license or a wine or beer permit shall be approved for premises which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.
- (6) Licensed premises located outside the C-3, C-3A, C-3B, C-3R and D-R zoning districts shall conform with the following:
  - a. In addition to subsections (1) through (8) of this section, neither class A, B, C or special class C licenses nor class B beer permits shall be granted for premises which are not operated as a restaurant at least half of whose gross income is derived from the sale of prepared food and food-related services and which are located within 150 feet of any church, school, public park or licensed child care center as defined by I.C. ch. 237A.
  - b. No class B, B native or C native wine permit, class C beer permit, or class E liquor license shall be granted to an applicant whose premises are within 75 feet of any church, school, or public park or licensed child care center as defined by I.C. ch. 237A.
  - c. In determining the distances set out in this subsection, measurements shall be taken on a direct line from the nearest property line of the premises upon which the place of business of an applicant for a permit or license is located and over which such applicant has control, to the nearest property

line of the parcel of real estate upon which the church or school building is situated. These area restrictions shall not affect the right of present permit or license holders who have qualified under the rules heretofore in effect, or their successors by purchase, from renewing their permits or licenses in their present locations.

- (7) a. Except in the C-3, C-3A, C-3B, C-3R and D-R zoning districts, neither new permits or licenses nor transfers of existing permits or licenses, other than class C beer permits and class E liquor licenses, will be granted for locations not currently operating under a permit or license, unless 75 percent of the property abutting on both sides of the same street as the premises for which the license or permit is requested and extending 200 feet to the right and left from the center point of such premises facing such street is either currently put to a commercial use or is commercially zoned by chapter 134 of this Code. An exception to this restriction is permitted where the applicant's premises are operated as a restaurant, at least half of the gross income of which is derived from the sale of prepared food and food-related services.
  - b. In measuring the distances in subsection (7)a. of this section, rights-of-way of intersecting city streets and alleys shall be excluded.
  - c. Where the premises involved are located on a corner lot at the intersection of two streets, it will be sufficient if the usage or zoning so measured along either intersecting street meets the requirements of subsection (7)a. of this section.
- (8) The area restrictions set forth in this section shall not affect the right of present permit or license holders or their successors by purchase from renewing their permits or licenses in their present locations. No property whose principal structure shall be used wholly or in part for residence purposes shall be deemed actually devoted to commercial use unless more than 50 percent of the gross floor area of the structure shall be devoted to commercial use.
  - (9) The subsections of this section concerning the location of new or transferred permits and licenses shall not apply to an application for a permit or license by a college or university where 75 percent of the real estate, exclusive of street rights-of-way, within 200 feet of the structure for which the permit or license is sought, is owned by the college or university.

- (10) a. Subsections (2) and (3) of this section shall not apply to a person who makes application for a class B beer permit in connection with the operation of a concession stand at a city park designated "community" or "major" by the director of the park and recreation department, or at a city-owned golf course. The city council may approve an application for a class B beer permit in connection with the operation of a concession stand at city parks designated "neighborhood" in special circumstances upon review of the facts and taking into account the recommendation of the park and recreation board.
- b. For the purposes of section 10-47 of this chapter, each park at which an applicant desires to operate a concession stand and sell beer shall be deemed a separate place of business for which such applicant shall be required to have a separate license.
- (11) Subsection (2) of this section shall not apply to a club or corporation which makes application for a class A liquor control license in connection with the operation of and located on the land occupied by a private full-sized nine- or 18-hole golf course.
- (12) Subsection (6)a of this section shall not apply to nonprofit corporations which make application for a five-day, 14-day, seasonal, or Sunday sales liquor control license, where the sale of alcoholic beverages does not occur between the hours of 8:00 a.m. and 5:00 p.m., and where the sale of alcoholic beverages is done on a temporary basis for special events and so as to not comprise greater than 50 percent of the gross revenue for each day alcoholic beverages are sold.
- (13) The required separation from any church, school, public park or licensed child care center imposed by subsection (6)a of this section, and the requirements of subsection (7)a of this section, shall not apply to nonprofit corporations which make application for a five-day liquor control license, where the sale of alcoholic beverages occurs only between the hours of 11:00 a.m. and 10:00 p.m., and outside the regular school hours of any school within 150 feet.
- (14) For all class A, B, C or special class C liquor licenses and all class B beer permits the applicant must provide a statement that all designated security employees have received training and certification in security methods. Such training shall be performed and certified to by a third party that is in the training business and shall include a minimum of four hours of training in the following areas: de-escalation techniques, anger management techniques, civil rights or unfair practices

awareness as provided in I.C. § 216.7, recognition of fake or altered identification, information on laws applicable to the serving of alcohol at a licensed premises, use of force and techniques for safely removing patrons, and instruction on proper physical restraint methods used against a person who has become combative.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Jeffrey D. Lester, 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. 12-0226), passed by the City Council of said City at a meeting held February 13, 2012 signed by the Mayor on February 13, 2012 and published as provided by law in the Business Record on March 2, 2012. Authorized by Publication Order No. 7788.

Diane Rauh, City Clerk