

★ **Roll Call Number**

Agenda Item Number

42A

Date September 12, 2011

An Ordinance entitled, "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, relating to zoning of establishments selling alcoholic liquors and wine, beer and tobacco",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)


 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

ORDINANCE NO. _____

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, 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 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 134-3, 134-842, 134-844, 134-947, 134-954 and 134-1044, relating to zoning of establishments selling alcoholic liquors and wine, beer and tobacco, as follows:

Sec. 134-3. Definitions.

Food sales establishment 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.

(1) Limited food sales: Establishments occupying facilities of less than 10,000 square feet and as limited by individual zoning district regulations.

(2) General food sales: Establishments selling a wide variety of food commodities and related items, using 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 larger than 40,000 square feet and as limited by individual zoning district regulations.

Gas station/convenience store means any building or a premise that includes the sale of liquefied petroleum products and other products for the propulsion of motor vehicles.

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

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.

(1) Limited retail sales establishment: Establishments occupying facilities less than 10,000 square feet and as limited by district regulations.

(2) General retail sales establishment: Establishments occupying facilities larger than 10,000 and less than 40,000 square feet and as limited by district regulations.

(3) Large retail sales establishment: Establishments occupying facilities larger than 40,000 square feet and as limited by district regulations.

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. Drugstores.
- p. Dry goods stores.
- q. Florist shops and greenhouses.
- r. Furniture stores.
- s. Gas stations, 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.~~

u. General and large food sales establishments,
subject to section 134-954.

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. Limited food and retail sales establishments without sale of alcoholic liquor.

deee. Music stores.

eeff. Music studios.

ffgg. Paint and wallpaper stores.

gghh. Photographic studios, including film developing and retail sales of photographic equipment and supplies.

hhii. Post office substations.

iijj. Radio and television sales and repair shops.

jjkk. Restaurants, subject to section 134-954.

kkll. Shoe and hat repair shops.

llmm. Sporting goods stores.

nnnn. Tailor and dressmaking shops.

nooo. Theaters.

oopp. Toy stores.

ppqq. Variety stores.

qerr. 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.

rrss. Banks, savings and loan associations and similar financial institutions, but not including delayed deposit services or pawnbrokers.

sttt. 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
- uu. Retail sales establishments with no more than 30,000 square feet of gross floor area, including storage.
- ~~uvv.~~ Labor union offices, including assembly halls, not to exceed 1,500 square feet of gross floor area for the assembly hall.
- ~~vww.~~ Lawn mower repair shops, provided that any runup or testing of engines shall take place within the shop building.
- ~~wwx.~~ Office buildings, not to exceed 30,000 square feet of gross floor area.
- ~~xyy.~~ Photographic printing or developing and photocopying establishments, but not including letter or offset presses.
- ~~yyzz.~~ Radio stations, not to exceed 15 watts of power, including the transmitting tower, such tower not to exceed 100 feet in height.
- ~~zaaa.~~ Upholstery shops.
- ~~aaa~~
- bbb. 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.~~ ccc. Day nurseries, day care centers and nursery schools.
- ~~ccc.~~ Package goods stores for the sale of alcoholic beverages, subject to section 134-954, and further subject to the restriction that such uses shall be permitted only where the area of the C-1 district, or the area of the C-1 district combined with the area of any contiguous district other than an R, PUD or C-0 district, comprises five acres or more, exclusive of streets, highways and alleys.

ddd. 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.

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~~Retail sales establishments.
 - (12) Drive-in restaurants.

- (13) Drive-in theaters.
- (14) Food sales establishments, subject to section 134-954.
- (15) Gas stations and convenience stores, subject to section 134-954.
- ~~(14)~~ (16) Hotels with no minimum density requirements.
- ~~(15)~~ (17) Laundries.
- ~~(16)~~ (18) Labor union offices, including assembly halls.
- ~~(17)~~ (19) Lumberyards, retail only.
- ~~(18)~~ (20) Miniwarehouse subject to a controlled access and fenced compound.
- ~~(19)~~ (21) Monument sales yards.
- ~~(20)~~ (22) Motels, motor hotels, and tourist courts with no minimum density requirements.
- ~~(21)~~ (23) Office buildings.
- ~~(22)~~ (24) ~~Package goods~~ Liquor stores for the sale of alcoholic beverages, subject to section 134-954.
- ~~(23)~~ (25) Pet shops, including aquariums.
- ~~(24)~~ (26) Photographic printing or developing establishments.
- ~~(25)~~ (27) Plumbing and heating shops.
- ~~(26)~~ (28) Printing and lithographing shops.
- ~~(27)~~ (29) Parking garages.
- ~~(28)~~ (30) Physical culture or health establishments.
- ~~(29)~~ (31) Auction businesses.
- ~~(30)~~ (32) Radio or television studios.
- ~~(31)~~ (33) Sheetmetal shops.
- ~~(32)~~ (34) Sign painting shops.
- ~~(33)~~ (35) Taverns and nightclubs, including private clubs, subject to section 134-954.
- ~~(34)~~ (36) Mobile home parks, subject to all of the requirements of the R-5 district.
- ~~(35)~~ (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.
- ~~(36)~~ (38) Garage for general motor vehicle repair, but not including body and fender work and overall painting and steam cleaning, but including upholstering, scratch and dent repair, and minor painting within a completely enclosed building.
- ~~(37)~~ (39) Automobile washing establishments.
- ~~(38)~~ (40) Adult entertainment business. See section 134-953 of this division.
- ~~(39)~~ (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.

(4042) 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. 134-954. Selling of liquor, wine and beer.

In ~~the C-2 general retail and highway-oriented commercial district~~all districts, the following shall apply to the sale of liquor, wine and beer:

- (1) No business ~~holding a~~ which sells alcoholic liquor license or a, beer or wine ~~permit~~may be located upon any premise which is not operated as either-:

~~_____~~ (i) ~~a grocery store~~ a general or large retail sales establishment or pharmacy at least 60% percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer; or

~~_____~~ (ii) ~~_____~~ a restaurant, at least half of whose gross revenue 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 has been obtained for such use of the premises from the board of adjustment after public hearing. Notice of such hearing shall be provided to all owners of record of property and any recognized neighborhood association within 250 feet of the subject property.

- (2) In the C-1 neighborhood retail commercial district and more restrictive districts, no business selling alcoholic liquor, wine or beer may be located upon any premises, unless such premises is operated as either:

(i) a general and large food sales establishment at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer;

(ii) a pharmacy at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer; or

(iii) a restaurant at least half of whose gross revenue is derived from the sale of prepared food and food-related services,

(iv) a limited food or retail sales establishment at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer.

or, for which a conditional use permit has been obtained for such use of the premises from the board of adjustment after public hearing. Notice of such hearing shall be provided to all owners or record of property and any recognized neighborhood association within 250 feet of the subject property.

(3) In the C-2 general retail and highway-oriented commercial district and less restrictive districts not including R, C-0 and C-1A districts, no business selling alcoholic liquor, wine or beer may be located upon any premises, unless such premises is operated as either:

(i) a general or large food sales establishment at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer; or

(ii) a pharmacy at least 60 percent of whose gross revenue is derived from the sale of merchandise other than tobacco products, alcoholic liquor, wine or beer; or

(iii) a restaurant at least half of whose gross revenue is derived from the sale of prepared food and food-related services,

(iv) a gas station/convenience store, limited food or retail food sales establishment, at least 60 percent of whose gross revenue is derived from the

sale of merchandise other than tobacco products,
alcoholic liquor, wine or beer

or, for which a conditional use permit has been obtained
for such use of the premises from the board of adjustment
after public hearing. Notice of such hearing shall be
provided to all owners of record of property and any
recognized neighborhood association within 250 feet of
the subject property.

(24) A business that declares a use as a ~~grocery store~~gas
station/convenience store, food sales establishment,
retail sales establishment, pharmacy 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, beer and tobacco
products~~beer~~.

(35) All ~~grocery~~gas stations/convenience stores, food sales
establishments, retail sales establishments and
pharmacies which have not continuously held a liquor
license or a beer or wine permit since ~~December 31,
2010~~June 1, 2011, shall comply with the requirements of
subsection ~~(1), (2), (3) and (4)~~ (1), (2), (3) and (4) above.
Any ~~grocery~~gas station/convenience store, food sales
establishment, retail sales establishment or pharmacy
which has continuously held ~~an alcoholic~~ liquor license
or a wine or beer ~~or wine~~ permit since ~~December 31,
2010~~June 1, 2011 shall comply with subsection
~~(1), (2), (3) and (4)~~ (1), (2), (3) and (4) above, commencing on
December 31, 2013, and prior to that date shall continue
to be subject to the requirements of subsection (1)
above as it existed on December 1, 2010.

(46) The board shall grant a conditional use permit ~~to a
business holding a~~ for the use of any premises for the
sale of alcoholic liquor license, wine or a 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.
- e. No conditional use permit shall be granted to a limited food or retail sales establishment, a gas station/convenience store or liquor store selling alcoholic liquor, wine or beer whose premises is within 150 feet of any church, school, public park or licensed child care center as defined by I.C. ch. 237A.
- f. No conditional use permit shall be granted to a gas station/convenience store holding a wine or beer permit whose premises is within 75 feet of any church, school, public park or licensed child care center as defined in I.C. ch. 237A.
- g. 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.

(57) 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 ensure that the criteria in subsection (2) of this section 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 footcandle of light on the parking surface at all times.
- b. The business shall comply with article IV of chapter 42 of this Code pertaining to noise control.

- 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.

(68) 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. 134-1044. Taverns and Nightclubs.

In the D-R Downtown Riverfront District, the following shall apply to the sale of liquor, wine and beer:

- (1) No business ~~holding a selling alcoholic liquor license, wine or a beer or wine permit~~ may be located upon any premises which is not operated as either:
 - a. ~~a grocery store~~ a food sales establishment, retail sales establishment or pharmacy at least ~~half~~ 60% of whose gross ~~income~~ revenue is derived from the sale of merchandise other than tobacco products, liquor, wine or beer, and disregarding any sales of fuel or petroleum products; or
 - b. a restaurant, at least half of whose gross ~~income~~ revenue 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~~ has been obtained for such use of the premises from the ~~Board~~ 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~~ for the use of any premises for the sale of alcoholic liquor license or a beer or, wine permit or beer 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 location and manner of operation of the business will advance the stated intent of the D-R Downtown Riverfront District.
 - b. The proposed location, design, construction and operation of the particular use, including any associated parking adequately safeguards the public health, safety and general welfare.
 - c. The business is sufficiently separated from adjoining residential uses 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.
 - d. The business will not unduly increase vehicular congestion on the streets in any adjoining residential area.
 - e. 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 ensure that the criteria in subsection (2) of this section 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 article IV of chapter 42 of this Code pertaining to noise control.
 - 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.

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

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney