

Date December 5, 2011

**RESOLUTION TO RECEIVE AND FILE REPORT
FROM THE MANAGER'S OFFICE REGARDING
SHOP N SAVE AT 1829 6TH AVENUE**

WHEREAS, at the November 21, 2011 city council meeting item 4(V) was continued until December 5th with a report to be brought back on a plan to address the concerns raised by citizens about the Shop N Save store as well as the criteria for declaring a business as a nuisance; and

WHEREAS, city staff has met with neighborhood leaders and the owners of Shop N Save and an agreement has been drafted that is amicable and the requested report is now submitted;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the report from the city manager regarding Shop N Save is received and filed.

Moved by _____ to approve.

APPROVED AS TO FORM:

Douglas P. Philip, 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

December 2, 2011



The Honorable Mayor
and
Members of the City Council
City of Des Moines

Re: Concerns Related to Shop N Save, 1829 6th Avenue

Dear Mayor and City Council Members:

At the November 21, 2011 Council meeting, by Roll Call No. 11-1934, Council requested that staff work with the Police, Community Development and Legal Departments to develop a comprehensive strategy with which to address issues presented at the November 21, 2011 council meeting. Police enforcement as well as zoning enforcement strategies will be reviewed and consideration given to legislation which may be helpful in addressing the issues which were raised. Staff will also work with the Legal Department to provide the criteria which is necessary in order to declare a business as a public nuisance.

The City Code, Section 42-348(11), allows the prosecution of a business as a nuisance if the operation or maintenance of the business adversely impacts nearby residential or commercial uses. In addition to proof of adverse impact, the ordinance requires additional facts to be proven for a business to be a nuisance. The additional facts are:

- a. Jeopardizes or endangers the public health or safety, or the health or safety of persons residing or working on the premises or in the surrounding area; or
- b. Has resulted in or facilitated any of the following activities: disturbances of the peace, illegal drug activity including sales or possession thereof, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public vandalism, excessive littering, illegal parking, excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.), noxious smells or fumes, traffic violations, or police detention, citations or arrests; or
- c. Violates any other section of the nuisance ordinance or any other city, state or federal regulation, ordinance or statute.

The burden of proof required to establish nuisance is by the greater weight of the evidence. Circumstances as to severity, frequency, and duration of the problems need to be evaluated in deciding whether to pursue a nuisance case. A realistic assessment should be done by staff to determine if the desired outcome in court can be achieved. The court will weigh and balance all facts and circumstances of the case and make an equitable decision. An appropriate injunction would be requested as a remedy.

December 2, 2011

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Before any court action is taken, the ordinance requires written notice to be served upon the business. This notice outlines the problems causing the nuisance. See Municipal Code Section 42-359(b). This gives the business an opportunity to correct the problems prior to taking court action. A copy of a blank notice form is attached for your information.

Although not discussed at the meeting, another ordinance that is available to combat criminal problems on property is the specified crimes property ordinance. See Municipal Code Sections 70-211 through 70-219. This ordinance allows police to declare a property as a specified crimes property when certain criminal activity has occurred on the property such as drug activity, prostitution, or weapons related crimes. The declaration is made by letter to the owner of the property putting the owner on notice of the crimes and requiring the owner to abate the problem. There is an administrative appeal process available to the owner if the declaration is in dispute. If the specified crime recurs, a civil infraction may be filed with the small claims court seeking a \$750.00 civil penalty.

An evaluation of the facts concerning the Shop N Save on 6th Avenue was made by the Des Moines Police Vice and Narcotics Division. It was determined that there is not enough evidence to support a business nuisance action at this time. Also, there are no police cases made that would support a specified crimes letter.

Staff did meet with the business owners and their attorney, the property owners, and members of the Riverbend Neighborhood Association board on Thursday, December 1, to discuss the neighborhood's areas of concern including loitering, trash, noise, parking, and overall policing of the property. The attached agreement has been drafted and sent to the business owners for their signature and will be presented to you once it has been signed.

During the upcoming 2012 legislative session, staff will work with the Council's Legislative Subcommittee to review the police enforcement as well as zoning enforcement strategies regarding Class E liquor licenses.

Please feel free to contact me with any questions or concerns.

Sincerely,



Richard A. Clark
City Manager

RAC:kr

Attachments

**NOTICE OF NUISANCE AND
DEMAND FOR ABATEMENT**

To: _____ **Date:** _____
 [Name of Business]

 [Name of Business owner or responsible person]
Re: _____
 [Business address]

Be Advised that the Police Department of the City of Des Moines, Iowa, pursuant to Sec. 42-359(b) of the Municipal Code has determined that a nuisance exists at and around the above-described business address _____ at all times, or _____ between the hours of approximately _____ p.m. and _____ a.m., because of the operation and maintenance of the business causing an adverse impact to nearby residential and/or commercial uses.

The operation and maintenance of your business at the above-referenced location and at the times referenced above is a nuisance pursuant to Municipal Code Section 42-348(11) in that it adversely impacts nearby residential and commercial uses in one or more of the particulars stated below

[check all that apply]:

Jeopardizes or endangers the public health or safety, or the health and safety of persons residing or working on the premises or in the surrounding area; and/or

Has resulted in or facilitated any of the following activities:

- | | |
|---|--------------------|
| disturbances of the peace | public drunkenness |
| harassment of passersby | drinking in public |
| gambling | prostitution |
| sale of stolen goods | public urination |
| theft | assaults |
| batteries | acts of vandalism |
| excessive littering | illegal parking |
| noxious smells or fumes | traffic violations |
| police detention, citations or arrests | |
| illegal drug activity including sales or possession thereof | |
| excessive noise (particularly between the hours of 11:00 p.m. and 7:00 a.m.) | |
| violations of other city, state, or federal regulation, ordinance, or statute _____ | |
| | [specify] |

Be Further Advised that the above-referenced business and its owner are jointly and severally responsible for the presence of the nuisance and shall ensure that the nuisance is abated immediately.

Be Further Advised that failure to immediately comply with the notice and abate the nuisance cause the City to file an action against you in the district court seeking both injunctive and such additional relief as to which it may be entitled.

Service tendered/accepted by: _____ **Issued by Officer:** _____

THIS NOTICE IS ISSUED BY THE CITY OF DES MOINES POLICE DEPARTMENT. IF YOU HAVE QUESTIONS ABOUT THIS NOTICE, PLEASE DIRECT THEM TO:
CITY OF DES MOINES POLICE DEPARTMENT
25 East First Street, Des Moines, IA 50309
Telephone 515-283-_____

Shop N Save, 1829 6th Avenue, Agreement

I Muhammad Imran, owner of the Shop N Save business located at 1829 6th Avenue, agree and pledge to the City Council and the River Bend Neighborhood Association that I will implement the list of management items that follow (some of which are completed) in order to work with the neighborhood association as a good neighbor and improve the safety and cleanliness of the property and the neighborhood.

1. I have signed a trespass letter for the Des Moines Police Department.
2. I will place "No Loitering" signs on both the North and South walls of the building in plain view to the public by December 3, 2011. The sign will state in smaller print that "violators will be prosecuted with trespass, IA Code § 716.4" My employees will enforce this policy by asking violators to leave the property and by calling the police if necessary.
3. I have installed an additional outdoor camera to view the fourteen (14) space parking lot.
4. I will staff a third employee to assist in monitoring the parking lot from the hours of 7:00 p.m. to 9:00 p.m., Thursday through Saturday until at least the end of May 2012. However, I will work with the River Bend Neighborhood Association to assess the effectiveness of this measure. If determined necessary, I will continue to employ a third person on these days and hours. Also, if the Neighborhood Association does not feel that my employees are effectively controlling behavior in our parking lot, I will hire security personnel or an off-duty police officer on these days and for these hours for a period of months agreed upon through consultation with the neighborhood association. I understand the neighborhood association will assess the effectiveness of the additional employee two (2) months from the date of this agreement and I will work with them to resolve any issues.
5. I have installed an additional trash bin in the parking lot.
6. I will instruct my employees to police the lot and the adjacent street area for trash and paper to include abutting properties to the extent of litter reasonably coming from the Shop N Save property.
7. If it is determined to be necessary, I will remove the pay phones located outside the store. I will work with the neighborhood association on this decision.
8. I or a designee will attend the River Bend Neighborhood Association meetings on a regular basis. I will work with the association to try to solve problems immediately and will seek assistance from city officials if necessary.
9. I will advise delivery trucks to park in a position so as not to block the view of 6th Avenue and notice will be given each supplier advising where to park.
10. I will advise my employees to call police when they observe suspected crimes occurring. This includes violation of the city noise ordinance when necessary to gain compliance.
11. I will install a sign on the exterior of the building that reads, "Noise Ordinance Violations including Music from Vehicles Will be Prosecuted. City Code § 42-259(d)" I will require that my employees enforce this provision by informing my customers to turn down or off the music coming from vehicles or elsewhere.

This agreement and pledge is in the spirit of wanting to be a good neighbor where any problems will be addressed and worked on for the betterment of the neighborhood.

Date: _____

White Rose LLC
d/b/a Shop N Save

by:

Muhammad Imran, Owner