



Roll Call Number

Agenda Item Number

39

Date May 6, 2013

An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 1734 East University Avenue and 1213 East 17th Court from the C-2 General Retail and Highway Oriented Commercial District to the Limited C-2 General Retail and Highway Oriented Commercial District classification",

which was considered and voted upon for the first time under Roll Call No. 13- 0592 of April 8, 2013, and considered and voted upon for the second time under Roll Call No. 13- 0661 of April 22, 2013, again presented.

Moved by _____ that this ordinance do now pass.

ORDINANCE NO. _____

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

13-0661

13-0592
3529

ORDINANCE NO. _____

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located in the vicinity of 1734 East University Avenue and 1213 East 17th Court from the C-2 General Retail and Highway Oriented Commercial District to the Limited C-2 General Retail and Highway Oriented Commercial District classification.

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

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located in the vicinity of 1734 East University Avenue and 1213 East 17th Court, more fully described as follows, from the C-2 General Retail and Highway Oriented Commercial District to the Limited C-2 General Retail and Highway Oriented Commercial District classification:

(except beginning at the Southwest corner of Lot 18; thence East 125.03 feet to the Southeast corner of Lot 18; thence North 10.18 feet; thence Southwest 125.29 feet; thence South 2.05 feet to Point of Beginning) Lots 18, 19, and 20, Block 8, Stalford & Dixons Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Section 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:

- 1) Prohibit use of the property for adult business, taverns and nightclubs, liquor stores, off-premises advertising signs, or delayed deposit services and pawn brokerages.
- 2) Any reuse of the property for a use not permitted in "C-1" shall require a Site Plan as approved by the Permit and Development Center that is in conformance with current design guidelines and landscaping.

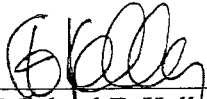
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Section 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Section 4. The City Clerk is hereby authorized and directed to cause a certified copy of the Acceptance of Rezoning Ordinance, this ordinance, a vicinity map, and proof of publication of this ordinance, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:



Michael F. Kelley
Assistant City Attorney

13-06661

13-0592
480
3/29

Prepared by: Michael F. Kelley, Assistant City Attorney, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4124
Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309
Taxpayer: No change
Title of Document: Acceptance of Rezoning Ordinance
Grantor's Name: P.E., L.L.C. and EP Co., LLC
Grantee's Name: City of Des Moines, Iowa
Legal Description: (except beginning at the Southwest corner of Lot 18; thence East 125.03 feet to the Southeast corner of Lot 18; thence North 10.18 feet; thence Southwest 125.29 feet; thence South 2.05 feet to Point of Beginning) Lots 18, 19, and 20, Block 8, Stalford & Dixons Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby states, warrants and agrees as follows:

1. That P.E., L.L.C., an Iowa limited liability company, and EP Co., LLC, an Iowa limited liability company, are the sole owners of the Property in the vicinity of 1734 East University Avenue and 1213 East 17th Court, more specifically described above.

2. That in the event the City of Des Moines, Iowa, acts to rezone the Property from the C-2 General Retail and Highway Oriented Commercial District, to a Limited C-2 General Retail and Highway Oriented Commercial District classification, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

- 1) Prohibit use of the property for adult business, taverns and nightclubs, liquor stores, off-premises advertising signs, or delayed deposit services and pawn brokerages.
- 2) Any reuse of the property for a use not permitted in "C-1" shall require a Site Plan as approved by the Permit and Development Center that is in conformance with current design guidelines and landscaping.

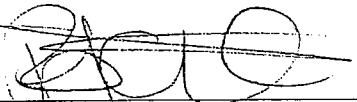
3. A certified copy of the rezoning ordinance shall be attached hereto, and a certified copy of this document and the rezoning ordinance shall be recorded by the City in the land records of the County Recorder to memorialize the rezoning of the Property as identified above.

4. That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited C-2, then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

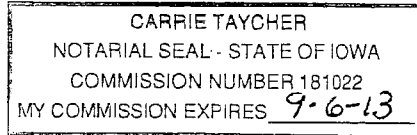
The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

P.E., L.L.C.

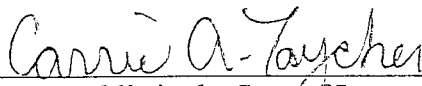
an Iowa limited liability company

By: 
Phil Ebert, President

State of Iowa)
) ss:
County of Polk)



This instrument was acknowledged before me on April 1, 2013, by Phil Ebert as the President of P.E., L.L.C., an Iowa limited liability company, on behalf of whom the instrument was executed.

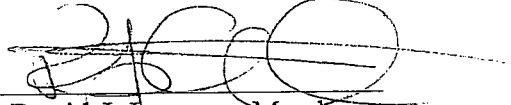

Notary Public in the State of Iowa

13-0661

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3539

EP Co., LLC

an Iowa limited liability company

By: 
David J. Isaacson, Member
Phil Ebert

State of Iowa)

) ss:

County of Polk)

CARRIE TAYCHER
NOTARIAL SEAL - STATE OF IOWA
COMMISSION NUMBER 181022
MY COMMISSION EXPIRES 9-6-13

Phil Ebert This instrument was acknowledged before me on April 1, 2013, by Phil Ebert David J. Isaacson as a Member of EP Co., LLC, an Iowa limited liability company, on behalf of whom the instrument was executed.

Carrie A. Taycher
Notary Public in the State of Iowa