



**Roll Call Number**

**Agenda Item Number**

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**Date** November 9, 2015

Consideration of Class C Liquor License for El Patio Mexican Restaurant, 611 37<sup>th</sup> Street.

Moved by \_\_\_\_\_ to deny for failure to comply with the City of Des Moines Municipal Code Sections 26-135, 134-1353(a)-(d) and 134-1276(t)(3).

**FORM APPROVED:**

Douglas P. Philip  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
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



**COMMUNITY DEVELOPMENT DEPARTMENT  
DEVELOPMENT ZONING DIVISION  
602 Robert D. Ray Drive  
Des Moines, IA 50309**

El Patlo Mexican Food Enterprises, LLC.  
611 37<sup>th</sup> St.  
Des Moines, IA 50312-3305

**Date of Notice: 08-25-2015**

**Date of Inspection: 08-25-2015**

**NOTICE OF VIOLATION OF MUNICIPAL CODE**

**Address of Property: 611 37<sup>th</sup> St.**

**Case Number: COD2015-01680**

**Parcel Number: 090/06075-000-000**

Upon inspection of the property located at and locally known as **611 37<sup>th</sup> St.** there was/were found to be violation(s) of the Municipal Code of the City of Des Moines, IA. Below is a listing of the violation(s) found on the date of the inspection and a recommendation(s) for steps to take to abate the violation(s). You must take action to eliminate the violation within **30 days** of the date of receipt of the notice. If you abate the violation call the Inspector listed at the end of the notice to set an inspection to confirm compliance.

If corrective action is not taken within **30 days** of the date of this notice the City may take the appropriate legal action to obtain a court order directing that the violation(s) be abated. If the City takes legal action a civil suit will be filed in Polk County District Court, pursuant to Section 134-32 of the Municipal Code of the City of Des Moines, Iowa. We may seek a civil penalty and/or an order which will enjoin you from allowing the real estate to be in violation in the future and any other relief the court may deem reasonable to insure compliance with the Municipal Codes of the City of Des Moines, Iowa. We will ask that the Court order all costs of the court action, fines, and the costs incurred by the City to abate the violation be entered against you as a personal judgment and as a judgment in rem against the real estate.

Regardless of timely compliance the City may choose to file a civil infraction to collect a fine in the amount of **\$750.00** as provided in 1-15 of the Municipal Code of the City of Des Moines for the violation as it was found to have occurred as cited in this notice. This is a civil penalty for allowing the violation to have occurred.

If you are aggrieved by this notice you may appeal the decision to the Zoning Board of Adjustment. You may also apply for a variance or exception to the zoning regulations that may allow the continuation of the current use. If an application to the Board of Adjustment is submitted within ten (10) days of the date of this notice enforcement of violations cited in this

notice will be suspended pending completion of the appeal. Applications will be considered by the Zoning Board of Adjustment at a public hearing. You will have the right to present evidence and be represented.

If the violation is deemed by the City to pose an immediate threat of injury to persons or property, subsequent notice may demand immediate abatement of the hazardous condition. An appeal to the Zoning Board of Adjustment will not stay the enforcement of a condition considered to be hazardous.

Below is a list of the violation(s) existing on the date of the inspection and a recommendation as to the remedial action required to correct such violations.

**MUNICIPAL CODE SECTION:**

Chapter 26-135 of the Municipal Code of the City of Des Moines.  
Permits required.

**VIOLATION:**

Upon inspection there was found to be an expansion of the outside deck without the aid of a building permit.

**REMEDIAL ACTION**

Secure a building permit for the expansion of the deck and any and all work done.

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**MUNICIPAL CODE SECTION:**

Chapter 134-1353 (a)-(d) Sec. 134-1353. - Use of land, use of structures and structures in any district other than R district.

**VIOLATION:**

The changes made to this non-conforming site has expanded a non-conformity.

**REMEDIAL ACTION**

Submit a site plan for review to the City of Des Moines to remediate the expansion and bring it into compliance.

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**MUNICIPAL CODE SECTION:**

Chapter 134-1353(a)-(d) of the Municipal Code of the City of Des Moines.  
Sec. 134-1353. - Use of land, use of structures and structures in any district other than R district.

**VIOLATION:**

Upon inspection it was found that the restaurant parking has been expanded to the neighboring residential lot to the north.

**REMEDIAL ACTION**

Cease parking on the neighboring property and provide a site plan that provides a proper buffer and screening between the commercial site and the residential property.

**MUNICIPAL CODE SECTION:**

Chapter 134-1276 (t)(3) of the Municipal Code of the City of Des Moines.

**VIOLATION:**

Upon inspection there was found to be a trash dumpster without an enclosure.

**REMEDIAL ACITON:**

Remove the trash dumpster. OR  
Submit a site plan with an enclosure for review.

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Zoning Inspector:



Erin Tijerino  
Development Zoning Division  
eetijerino@dmgov.org  
Office: (515) 283-4759  
Fax: (515) 283-4270

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October 29, 2015

El Patio Mexican Food Enterprises  
d/b/a El Patio Mexican Restaurant  
Brook Smith, Registered Agent  
3662 Ingersoll Avenue, #407  
Des Moines, IA 50312

El Patio Mexican Restaurant  
Brook Smith  
611 37<sup>th</sup> Street  
Des Moines, IA 50312

Re: El Patio Liquor License  
611 37<sup>th</sup> Street

Dear Mr. Smith,

The application by El Patio Mexican Food Enterprises d/b/a El Patio Mexican Restaurant for renewal of the Class C Liquor License for the El Patio Restaurant is scheduled to come before the City Council for consideration on November 9, 2015.

Pursuant to Section 10-43 of the Municipal Code of the City of Des Moines various conditions must be met prior to approval of a liquor license request. Specifically, the site must comply with zoning requirements pursuant to Section 10-43(2) of the Municipal Code of the City of Des Moines. Additionally, pursuant to Section 10-(5) of the Municipal Code of the City of Des Moines the property must conform to all applicable laws, ordinances, resolutions, and health and fire regulations.

On August 25, 2015 an inspection of the property was completed and it was found that construction of an expanded outside deck had begun without required permits, expansion of a parking lot into the adjoining residential lot without an approved site plan and in violation zoning ordinances. Attached is a copy of the notice of violation issued on August 25, 2015 and by this reference incorporated herein as though set out in full.

On September 24, 2015 you were notified that the violations had yet to be resolved and compliance was requested.

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The deck has yet to be properly permitted with the required architectural plans including, but not limited to, evaluation the deck, exiting fire separation on the south wall, plumbing fixtures and any WRA requirements the expansion may trigger and a site plan.

Since the property is in violation of building and zoning codes the City staff is obligated to recommend that the application be denied.

Sincerely,



SuAnn Donovan

Neighborhood Inspection Zoning Administrator

Deputy Zoning Enforcement Officer

602 Robert D. Ray Drive

Des Moines, IA 50309

[smdonovan@dmgov.org](mailto:smdonovan@dmgov.org)