



Roll Call Number

Agenda Item Number

69

Date August 7, 2023

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 Section 134-6.5.2, Section 134-3.8.1 and Table 134-3.1-1 and Table 134-3.9-1, relating to consumer fireworks sales; alcoholic liquor, wine, beer sales; and utility and public service infrastructure repair or modification",

presented.

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

FORM APPROVED:

(First of three required readings)

/s/ Gary D. Goudelock Jr.
Gary D. Goudelock Jr.
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	

CERTIFICATE

I, LAURA BAUMGARTNER, 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.

_____ 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 Section 134-6.5.2, Section 134-3.8.1 and Table 134-3.1-1 and Table 134-3.9-1, relating to consumer fireworks sales; alcoholic liquor, wine, beer sales; and utility and public service infrastructure repair or modification.

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, s heretofore amended, is hereby amended, amending Section 134-6.5.2, Section 134-3.8.1 and Table 134-3.1-1 and Table 134-3.9-1, relating to consumer fireworks sales; alcoholic liquor, wine, beer sales; and utility and public service infrastructure repair or modification, as follows:

6.5.2 AUTHORIZED TYPE1 ZONING EXCEPTIONS

Unless otherwise allowed by this ordinance, only the following may be approved as Type 1 zoning exceptions:

.....

11. Exceptions to allow repair, modification, or upgrade of existing utility or public service infrastructure services and equipment.

~~11.12.~~ Other exceptions expressly provided in this chapter.

3.8.1 CONSUMER FIREWORKS SALES

A. Retail sales of Consumer Fireworks, as defined in chapter 46 of this code, shall be permitted only in those zoning districts where such sales are specifically classified as permitted uses by applicable district regulations.

~~B. In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be permitted only as a principal permitted use and not as an accessory use.~~

CB. In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be undertaken in full compliance with chapter 46 of this code.

Tables 134-3.1-1 and 134-3.9-1

Revising Table 134-3.1-1 and Table 134-3.9-1 as shown on attachment hereto, and by this reference made a part hereof, as follows:

Table 134-3.1-1. Principal Use Table

Expansion of Consumer Fireworks Sales to include DX1, DX2, DXR, MX1, MX2, MX3, RX1, RX2, CX, and EX as permitted by right (4) and supplemental use regulations apply (*).

language added to KEY:

○= requires conditional use approval unless eligible for Type 1 Zoning Exception

Table 134-3.9-1. Alcoholic Liquor, Wine and Beer Sales

- Delete Alcoholic Liquor, Wine, Beer Sales under Limited Retail Sales in RX1/RX2.
- Delete Alcoholic Liquor, Wine, Beer Sales under Fuel Station in MX1.

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

FORM APPROVED:

/s/ Gary D. Goudelock Jr.
Gary D. Goudelock Jr.
Assistant City Attorney

Date August 7, 2023
 Agenda Item 109
 Roll Call # _____

August 1, 2023

Communication from the City Plan and Zoning Commission advising that at their July 20, 2023 meeting, the following action was taken regarding a consideration of the following proposed City initiated Zoning Text Amendments:

- A) Amendment to Section 134-6.5.2 and Table 134-3.1-1 to allow repair, modification or upgrade of existing utility or public service infrastructure services and equipment as a Type 1 zoning exception.
- B) Amendment to Table 134-3.1-1 and Section 134-3.8.1 to allow Consumer Fireworks Sales in districts zoned for commercial use to comply with State Law.
- C) Amendment to Table 134-3.9-1 to remove the allowance for alcoholic liquor sales by Limited Retail Sales uses in the RX1 & RX2 Districts and by Fuel Station uses in the MX1 District.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-0 as follows.

Commission Action:	Yes	Nays	Pass	Abstain	Absent
Francis Boggus					X
Leah Rudolphi	X				
Carol Maher	X				
Abby Chungath					X
Kayla Berkson	X				
Chris Draper	X				
Todd Garner	X				
Johnny Alcivar					X
Justyn Lewis	X				
Carolyn Jenison	X				
William Page					X
Andrew Lorentzen					X
Emily Webb	X				
Katie Gillette					X
Rick Trower	X				

APPROVAL of the proposed Zoning Ordinance text amendments.

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the proposed Zoning Ordinance text amendments.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

Staff is proposing an amendment to revise sections of the Municipal Code that will help simplify an existing process, allow conformance with State Law, and correct minor inconsistencies. A summary and intent of the amendments are outlined below. The specific amendments within the code sections and tables are attached with the staff report.

The proposed amendment to Section 134-6.5.2 and Table 134-3.1-1, would allow any major repair, modification or upgrade of existing utility or public service infrastructure services and equipment to be reviewed as a Type 1 Zoning Exception. Currently, modifications to an existing utility facility are treated the same as a new facility and require Conditional Use approval from the Zoning Board of Adjustment. The impact of a new facility versus replacing equipment at an existing facility are not the same on surrounding property. In fact, equipment replacement is often driven by a failure and are needed to return services in the area to normal operations. Allowing an administrative review process balances the need to have a review of this type of work with the need for efficiency in providing services.

The proposed amendment to Table 134-3.1-1 to allow Consumer Fireworks Sales in districts zoned for commercial use would bring the Zoning Ordinance into conformance with State Law. The language in the City's Zoning Ordinance currently limits fireworks sales to the I1 and I2 Districts, which is not enforceable. The proposed amendment would show fireworks sales as permitted in the DX1, DX2, MX1, MX2, MX3, RX1, RX2, CX and EX Districts. The corresponding change in Section 134-3.8.1 removes subsection "B" language that prohibits fireworks sales as an accessory use, which also contradicts State Law and is not enforceable.

The proposed amendment to Table 134-3.9-1 would remove minor inconsistencies and oversight regarding the allowance for alcoholic liquor sales by Limited Retail Sales uses in the RX1 & RX2 Districts and by Fuel Station uses in the MX1 District.

RX districts are intended for transitional areas between the N and MX districts. Therefore, they are intended to include less intensive uses than the MX districts. Currently, alcoholic liquor sales are allowed by Limited Retail Sales uses within the RX1 and RX2 Districts, whereas they are prohibited in the MX1 and MX2 Districts. The intent of the Zoning Ordinance is to prohibit alcoholic liquor sales in districts with less intense uses that are more transitional to less intense uses, such as residential.

Table 134-3.1-1 currently identifies fuel stations with liquor sales as being eligible for Conditional Use approval. However, fuel stations are not a permitted use in the MX1 District. The proposed amendment corrects this contradiction.

SUMMARY OF DISCUSSION

Leah Rudolphi asked if any member of the public or commission desired to speak on the item. No one requested to speak.

COMMISSION ACTION:

Justyn Lewis made a motion for approval of the proposed Zoning Ordinance text amendments.

Motion passed: 9-0

Respectfully submitted,



Bert Drost, AICP
Deputy Planning Administrator

BAD:tjh

134-6.REVIEW AND APPROVAL PROCEDURES

Type 1 Zoning Exceptions

6.5.1 INTENT

Type 1 zoning exceptions are intended to provide a streamlined approval procedure for minor modifications of selected zoning ordinance regulations. Type 1 zoning exceptions are further intended to:

- A. Allow development and construction that is in keeping with the general purpose and intent of zoning ordinance regulations and the established character of the area in which the development or construction is located; and
- B. Provide flexibility that will help promote rehabilitation and reuse of existing buildings and new construction when such flexibility will not adversely affect nearby properties or neighborhood character.

6.5.2 AUTHORIZED TYPE 1 ZONING EXCEPTIONS

Unless otherwise allowed by this ordinance, only the following may be approved as Type 1 zoning exceptions:

1. Exceptions to supplemental regulations that apply to household living uses, as set forth in section [134-3.1.1 of this chapter](#), if such exceptions are determined by the city legal department to be required by federal or state law;
2. Exceptions to supplemental regulations that apply to family home uses, as set forth in section [134-3.3.2 of this chapter](#), if such exceptions are determined by the city legal department to be required by federal or state law;
3. Exceptions to supplemental regulations that apply to home and community-based services waiver recipient residence uses, as set forth in section [134-3.3.2 of this chapter](#), if such exceptions are determined by the city legal department to be required by federal or state law;
4. Exceptions to allow alternative durable materials for a monument sign base;
5. Exceptions to allow less than or equal to 50% variation in height of a monument sign base;
6. Exceptions to allow signs used on a temporary basis in districts A, N, NM, or NX that are greater than four square feet in total area for all signs used on a temporary basis on one lot but less than or equal to 12 square feet in total area for all signs used on a temporary basis on one lot;
7. Exceptions to allow signs used on a temporary basis in all districts other than A, N, NM, or NX

that are greater than 32 square feet in total area for all signs used on a temporary basis on one lot but less than or equal to 100 square feet in total area for all signs used on a temporary basis on one lot;

8. Exceptions to allow two to six signs on a temporary basis in all districts other than A, N, NX, and NM districts;
9. Exceptions to allow a nonconforming residential use within an one-household or two-household residential structure to expand or extend and occupy land outside said structure by addition thereto, provided that the expansion or extension has an estimated cost for building permit purposes that does not exceed thirty percent (30%) of the assessed value of the existing residential structure at the time of permit request. For purposes of this Type 1 zoning exception, the valuation of expansions and extensions shall be measured cumulatively from the effective date of this chapter, using all building permits issued by the city's permit and development center, county assessor's records, insurance records if no assessor's records are available, and other documentation determined necessary by the neighborhood services director, related solely to the principal structure being expanded or extended;
10. Exceptions to allow Type 2 home occupation accessory uses pursuant to section [134-3.9.4 of this chapter](#); and
11. Exceptions to allow repair, modification, or upgrade of existing utility or public service infrastructure services and equipment.
12. Other exceptions expressly provided in this chapter.

6.5.3 AUTHORITY TO FILE

Type 1 zoning exception applications may be filed only with the consent of all record titleholders, or with the consent of all record contract purchasers when applicable, of the real property on which the Type 1 zoning exception is proposed.

6.5.4 APPLICATION FILING

Complete applications for Type 1 zoning exceptions must be filed with the neighborhood services director.

6.5.5 ACTION BY NEIGHBORHOOD SERVICES DIRECTOR

- A. The neighborhood services director must act to approve the Type 1 zoning exception application,

Section 134-6.5.2, added new number 11. Renumbered current 134-6.5.2.11 to 134-6.5.2.12.

134-3.USES

Principal Uses

TABLE 134-3.1-1. PRINCIPAL USE TABLE

USE CATEGORY Use Subcategory Specific Use Type	DISTRICTS																	Reference					
	A	DX1	DX2	DXR	MX1	MX2	MX3	RX1	RX2	CX	EX	I1	I2	N1, N2, N3, N4, N5	NX1	NX2, NX2a	NX3		NM	P1	P2	F	
Storage, Distribution and Wholesaling																							
Equipment & Material Storage, Outdoor	-	-	-	-	-	-	-	-	-	-	-	●*	●*	-	-	-	-	-	-	○*	-	134-3.6.3	
Trucking & Transportation Terminal	-	-	-	-	-	-	-	-	-	-	-	Ⓜ*	Ⓜ*	-	-	-	-	-	-	○*	-	134-3.6.3	
Warehouse	-	-	-	-	-	-	-	-	-	●*	●*	●*	●*	-	-	-	-	-	-	○*	-	134-3.6.3	
Wholesale sales and distribution	-	-	-	-	-	-	-	-	-	●*	●*	●*	●*	-	-	-	-	-	-	-	-	134-3.6.3	
Junk or Salvage Yard	-	-	-	-	-	-	-	-	-	-	-	-	○*	-	-	-	-	-	-	-	-	134-3.6.4	
Mining or Mineral Processing	-	-	-	-	-	-	-	-	-	-	-	-	○	-	-	-	-	-	-	-	○	134-3.6.5	
AGRICULTURAL																							
Community and Urban Garden	●	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	○*	134-3.7.1	
Crop Production	●	-	-	-	-	-	-	-	-	○	○	○	○	-	-	-	-	-	-	●	●	○	134-3.7.2
Nursery or Truck Farm	●	-	-	-	-	-	-	-	-	○	○	○	○	-	-	-	-	-	-	●	●	○	134-3.7.3
OTHER																							
Consumer Fireworks Sales	-	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	●*	-	-	-	-	-	-	-	-	134-3.8.1	
Wireless Telecommunications	Refer to article 4 of this chapter.																						

KEY: ●=permitted by right | ●=permitted on upper floors only within primary footage, and in ground floor within non-primary frontage or corner lot
 | ○=requires conditional use approval **unless eligible for Type 1 Zoning Exception** | *supplemental use regulations apply | -=prohibited
 ②=permitted by right where district includes "-2" extension | ④=permitted by right where district includes "-4" extension
 Ⓜ = permitted except where district includes "-V" extension | Ⓜ = permitted with conditional use approval in NX2a district only
 Ⓜ = permitted on major commercial corridors only

Expansion of Consumer Fireworks Sales to include DX1, DX2, DXR, MX1, MX2, MX3, RX1, RX2, CX, and EX as Permitted by Right Use and Supplemental Use Regulations Apply.

Added language "unless eligible for Type 1 Zoning Exception" when Use requires conditional use approval as related to the amendment for utilities.

134-3. USES

Agricultural Use Category

adequate provision for the collection and disposal of fluids and wastes.

5. Any junk or salvage yard shall provide a paved area for the receipt and temporary storage of material, which is screened from the adjoining public right-of-way.
6. The best practical control technology shall be employed to minimize any obnoxious or offensive odor, dust, smoke, gas, noise, or similar nuisance generated by the proposed use, and the best practical means known shall be employed for the disposal of refuse matter.
7. Any junk or salvage yard requiring a license or permit from the Iowa Department of Natural Resources or similar State agency shall provide proof of valid license or permit, as applicable, to the neighborhood services department prior to commencing such use and following any amendment or renewal to said license or permit.

3.6.5 MINING OR MINERAL PROCESSING

The mining or extraction of mineral or aggregate resources from the ground for off-site use. Examples include quarrying or dredging for sand, gravel or other aggregate materials; mining; and oil or gas.

134-3.7 Agricultural Use Category

3.7.1 COMMUNITY AND URBAN GARDEN

Areas that are managed and maintained by an individual or a group of individuals to grow and harvest food crops or non-food crops (e.g., flowers). A community garden area may be divided into separate garden plots for cultivation by one or more individuals or may be farmed collectively by members of the group. Community gardens are subject to the following supplemental use regulations:

- A. Unless permitted in the subject zoning district or approved as a conditional use, on-site sales of community garden products or other items is prohibited.
- B. All equipment must be stored in a completely enclosed building.
- C. The community garden site must be designed and maintained to prevent any chemical pesticide, fertilizer or other garden waste from draining on to adjacent properties.
- D. On-site trash, recyclable and compost containers must be located and maintained as far as practicable from residential household units located on other lots.

- E. A sign must be posted on the subject property identifying the name and phone number of the property owner or the owner's agent. The sign must be at least four and no more than six square feet in area and be posted so that it is legible from the public right-of-way.
- F. The property must be maintained free of tall weeds and debris. Dead garden plants must be regularly removed.
- G. The perimeter of all community and urban gardens must be fenced.
- H. Gardens that are accessory to a household living use are exempt from this section.
- I. Any animal husbandry shall be in compliance with chapter 18 of this code.

3.7.2 CROP PRODUCTION

An area managed and maintained by an individual, group or business entity to grow crops.

3.7.3 NURSERY OR TRUCK FARM

The propagation and growth of trees or food or non-food crops for wholesale or retail sales and distribution. Does not include on-site retail sales unless such sales are otherwise allowed in the subject zoning district. Typical uses include plant nurseries, the growing of vegetables and non-food crops primarily for local wholesale and retail sales.

134-3.8 Other Use Category

This category includes uses that are not covered, in full or in part, by the previously described use categories of this article.

3.8.1 CONSUMER FIREWORKS SALES

- A. Retail sales of Consumer Fireworks, as defined in chapter 46 of this code, shall be permitted only in those zoning districts where such sales are specifically classified as permitted uses by applicable district regulations.
- B. In each zoning district where retail sales of Consumer Fireworks, as defined in chapter 46 of this code, are classified as a permitted use, such sales shall be undertaken in full compliance with chapter 46 of this code.

134-3.8.1.B was removed.
134-3.8.1.C was renumbered
as 134-3.8.1.B.

134-3.USES

Accessory Uses

TABLE 134-3.9-1. ALCOHOLIC LIQUOR, WINE AND BEER SALES

USE	DISTRICTS											
	DX1	DX2	DXR	MX1	MX2	MX3	RX1, RX2	CX, EX, I1	I2	NX2, NX2A	P1, P2	F
Retail Sales												
Limited												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○* 40%/500 1320	■	○* 40%/500 1320	-	-	-	-
Wine and Beer Sales	-	○* 40%/150	○* 40%/150	○* 40%/150	○* 40%/150	○* 40%/150	○* 40%/150	○* 40%/150	-	-	-	-
General												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	40%/75	-	40%/75	40%/75	-	40%/75	-	-	-	-
Large												
Alcoholic Liquor, Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Wine and Beer Sales	40%/75	40%/75	-	-	-	-	-	40%/75	-	-	-	-
Fuel Station												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	■	○* 40%/500 1320	○* 40%/500 1320	-	○* 40%/500 1320	○* 40%/500 1320	-	-	-
Wine and Beer Sales	-	40%/150	40%/150	-	40%/150	40%/150	-	40%/150	40%/150	-	-	-
Liquor Store												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○* 500 1320	-	○* 500 1320	○* 500 1320	-	-	-
Wine and Beer Sales	-	○* 150	○* 150	○* 150	○* 150	○* 150	-	○* 150	○* 150	-	-	-
Tobacco Store												
Alcoholic Liquor, Wine and Beer Sales	-	-	-	-	-	○* 25%/500 1320	-	○* 25%/500 1320	○* 25%/500 1320	-	-	-
Wine and Beer Sales	-	○* 25%/150	○* 25%/150	○* 25%/150	○* 25%/150	○* 25%/150	-	○* 25%/150	○* 25%/150	-	-	-
Restaurant, Bar, Other Uses												
Restaurant with Alcoholic Liquor, Wine and Beer Sales	50%	50%	50%	50%	50%/75	50%/75	50%/75	50%/75	50%/75	○* 50%/75	○* 50%/75	-
Bar	○*	○*	○*	-	○* 150	○* 150	-	○* 150	-	-	○* 150	-
Other Uses with Alcoholic Liquor, Wine and Beer Sales	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*	○*

KEY: ○=requires conditional use approval | * = supplemental use regulations apply | - = prohibited

Table Notes

○ = Uses identified with a ○ symbol are allowed only if reviewed and approved in accordance with the conditional use procedures of [134-6.4 of this chapter](#).

40% = no more than 40% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine, beer or tobacco products.

50% = at least 50% of the gross receipts from sales from the premises must be derived from the sale of prepared food and food-related services. The sale of an alcoholic beverage is not the sale of prepared food and food-related services.

25% = no more than 25% of the gross receipts from sales from the premises may be derived from the sale of alcoholic liquor, wine or beer.

75 = the licensed premises occupied by such use must be separated by at least 75 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

150 = the licensed premises occupied by such use must be separated by at least 150 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

500 = the licensed premises occupied by such use must be separated by at least 500 feet from the property line of the lot where any church or place of worship, school, public park or licensed child care facility as defined by Iowa Code Chapter 237A, are located. However, this condition is not applicable in the DX1, DX2, and DXR districts.

1320 = the licensed premises occupied by such use must be separated by at least 1320 feet from the property line of the lot where any limited retail sales, fuel stations, liquor stores and tobacco stores engaged in the sale of alcoholic liquor is located.

Strike Alcoholic Liquor, Wine and Beer Sales for Fuel Station in MX1.

Strike Alcoholic Liquor, Wine and Beer Sales for Retail Sales, Limited in RX1/RX2.