

**CITY OF WEST DES MOINES
STAFF REPORT COMMUNICATION**

Meeting Date: April 24, 2023

ITEM: Ordinance Amendment, Amend Title 3 (Business and Licensing), Title 7 (Public Ways and Property) and Title 9 (Zoning) to modify regulations, terminology and definitions pertaining to alcohol service and consumption allowance aspects within establishments – City Initiated – AO-005978-2023

RESOLUTION: Approval of Ordinance Amendment

Background: City staff is initiating an amendment to the chapters and sections identified below in Title 3 (Business and Licensing), Title 7 (Public Ways and Property) and Title 9 (Zoning) to modify regulations and terminology pertaining to establishments that serve or allow the consumption of alcohol with or without the sale of food.

Specifically, the following changes are proposed with this request:

- Title 3: Business and Licensing
 - Chapter 2: *Beer and Liquor Control*, Section 1: *Definitions* to add definitions of bar, bar/restaurant class 1 and class 2, and Bring Your Own Beverage (BYOB) Establishment and to remove the definition of drinking place.
 - Chapter 2: *Beer and Liquor Control*, Section 6: *Location of Premises* to clarify terminology.
 - Chapter 2: *Beer and Liquor Control*, Section 7: *Outdoor Service Areas* to clarify terminology.
 - Chapter 2: *Beer and Liquor Control*, NEW SECTION: *Persons under the Legal Age in Licensed, Permitted or BYOB Establishments* to establish regulations and exemptions pertaining to when and if minors are allowed in certain establishments.
- Title 7: Public Ways and Property
 - Chapter 1: *Streets, Sidewalks, and Alleys*, Section 1: *Use of Public Ways Restricted*, Subsection C: *Certain Commercial Use of Public Sidewalks*, Paragraph 5.a to modify definitions to clarify application to bars and bar/restaurants.
- Title 9: Zoning
 - Chapter 2: *Zoning Rules and Definitions*, Section 2: *Definitions* to modify definitions for Bar/Restaurant, Restaurant, Bar, Event Venue, Nightclub, Outdoor Activity Area, Restaurant – Fast Food.
 - Chapter 4: *Zoning Districts and Map*, Section 3: *Definition of Districts* to clarify allowance of restaurants, bar/restaurants, and bars in the Valley Junction Historic Business District.
 - Chapter 6: *Commercial, Office, and Industrial Zoning District*, Section 4: *Specific Use Regulations*, Subsection A.5 and Flowchart 6.2, to clarify intent of flowchart and modify flowchart to allow determination of classification as restaurant, bar/restaurant class 1 or 2, or a bar.

- Chapter 6: *Commercial, Office, and Industrial Zoning District*, Section 6: *Commercial, Office, and Industrial Use Regulations*, Subsection C, Table 6.1 *Use Matrix: Division G - Retail Trade* to modify drive through allowances for SIC 58, Eating and Drinking Places, add terminology and define allowable zoning districts.
- Chapter 10: *Performance Standards*, Section 4: *Specific Use Regulations*, Subsection A.18: *Outdoor Activity Areas and Operable Storefronts*, Paragraph a.(1) to modify the definition of Outdoor Activity Area.
- Chapter 15: *Off-Street Parking and Loading*, Section 4: *Off-Street Parking Regulations*, Subsection A.10 to clarify inclusion of restaurant, bar/restaurants and bars outside areas are to be included in the establishments square footage in calculating area parking requirements and to modify terminology.
- Chapter 15: *Off-Street Parking and Loading*, Section 7: *Number of Parking Spaces Required*, Subsection C: *Parking Spaces Requirements for Land Uses* to modify terminology.
- Chapter 17: *Adult Entertainment Facilities*, Section 2, *Definitions*, Subsection F, *Adult Nightclub*, and Section 3, *Location of Adult Bookstores, Movie Theatres, Nightclubs, Motels, Adult Businesses And Newsracks*, Subsection B: *Measurement of Distance* to clarify application to a restaurant, bar/restaurant and/or bar accordingly.

Staff Review & Comment:

- *Ordinance Amendment Intent:* Over the past couple years, the police department has had to increase presence and enforcement at certain licensed and BYOB establishments due to minors having access to and consuming alcohol and for other public disturbances. The changes of Title 3, Business and Licensing section of City Code provide an additional tool to help alleviate the recent issues experienced by the police department and the public. The amendments to Title 7, Public Ways and Property and Title 9, Zoning simply brings them into alignment with the changes being made in Title 3.
- *Key Aspects of Proposed Amendment:* The proposed amendments align terminology and regulations related to establishments that serve or allow the consumption of alcoholic beverages across various titles and sections in city code. For policing purposes, Title 3, Business and Licensing, is establishing definitions of a bar, bar/restaurant class 1 and class 2, and BYOB businesses to clarify allowances for determining if and during what times minors can be present in these establishments. Additionally, Title 3 changes include adding a flowchart to support the definitions in determining if an establishment is a restaurant, bar/restaurant class 1 or 2, bar, or BYOB business. The type of business will determine the regulations on whether minors are prohibited in the establishment.

Establishment Operations	Proposed Code Term	Example	Minors Prohibited?
Food only, no alcohol	Restaurant	McDonalds	No prohibition: minors allowed at all times
Serves more food than alcohol on the average over a calendar year	Bar/Restaurant Class 1	Cheesecake Factory	No prohibition: minors allowed at all times
Serves more alcohol than food on the average over a calendar year	Bar/Restaurant Class 2	Wellman's	Yes: minors prohibited after 9pm
Serves only alcohol, no food	Bar	Club Envy	Yes, minors prohibited at all times
Establishment doesn't sell alcohol but allows patrons to bring and consume own alcohol	BYOB establishment	Beach Girls	Yes, minors prohibited at all times

The amendments to Title 3 also include several exceptions, including the following:

- For Bars or BYOB Establishments:
 - The underage person is an employee of the business and is on the premises during their scheduled work hours or is performing a contracted service for the business (e.g., bartender, waiter, DJ);
 - The person is working in conjunction with a law enforcement agency in performance of their official duties; or
 - The business has been granted an Exception Certificate.
- For Bar/Restaurant Class 2:
 - The underage person is an employee of the business and is on the premises during their scheduled work hours or is performing a contracted service for the business (e.g., bartender, waiter, DJ);
 - The underage person is accompanied by a parent, guardian or spouse/domestic partner that is of legal age;
 - The person is working in conjunction with a law enforcement agency in performance of their official duties; or
 - The business has been granted an Exception Certificate.

In addition to the above listed exceptions, there are a number of situations for which an Exception Certificate may be granted:

- General Exception Certificate – may be granted to allow minors to remain in the business after 9 p.m. if it can be shown by a statement of a certified public accountant that the business has more sales from food/services than from alcohol.

- Underage Event Exception Certificate – may be granted for a special event for minors only (e.g., prom after-party). During the event, all alcohol must be removed or stored away so it is not accessible for consumption.
- Entertainment Venue Exception Certificate – may be granted for a business that is an entertainment venue (e.g., Val Air Ballroom). Certain ages will still be regulated – under 16 will be allowed on the premises until 9 p.m., while ages 16-20 will be allowed on the premises until midnight.
- Special Outdoor Event Exception Certificate – may be granted for special events where a street closure has been approved by the City Council (e.g., Valley Junction events).

No certificate will be granted, or a certificate may be revoked if it is established that the business sold alcohol to a minor more than once within the previous year; where the business has failed to cooperate with the police department, or where the business has failed to comply with the terms of the exception certificate.

The proposed changes to Title 9, Zoning, include the elimination of an error with a previous amendment which allowed establishments with alcohol to have a drive through. Overall, no other regulations within the amendment are different from current code; however, different terminology is being used and the modifications to definitions are proposed to be consistent with Title 3 changes. The changes to Title 3 resulted in a realignment of the classifications of restaurants and bars or the terms used for each in Title 9. The table below is included to show how the old and new terminology matches up to operational characteristics that define each:

Establishment Operations	Current Code Term	Proposed Code Term
Food only, no alcohol	Restaurant Class 1	Restaurant
Serves more food than alcohol, closes at midnight or before and allows minors at all times	Restaurant Class 2	Bar/Restaurant Class 1
Serves more alcohol than food, closes after midnight and minors not allowed after a certain time	Bar/Restaurant	Bar/Restaurant Class 2
Serves only alcohol, no food	not used before	Bar
Establishment doesn't sell alcohol but allows patrons to bring and consume own alcohol	not defined before	Bring your own (alcohol) beverage (BYOB) establishment

The flowchart currently in Title 9, Chapter 6 to determine the classification of an establishment is being modified and a flowchart is also being added to Title 3. Although 'bars' is a new addition to Title 9, previously they were included and regulated as a "Bar/Restaurant" thus, no current establishment should be made non-conforming with these changes. The balance of the changes to both Title 9 and Title 7 are being done to reflect and clarify if regulations are directed at restaurants (only serve food),

bar/restaurants (food & alcohol served) and bars (only serve alcohol & BYOB consumption), as appropriate.

- Authority over Title 3 (Business and Licensing) and Title 7 (Public Ways and Property): The Commission has been granted the power to provide recommendations to the City Council for amendments to Title 9, Zoning. The ordinance in its entirety has been provided to the Commission for context; however, the recommendation contained in the resolution will only apply to the changes to Title 9. The Commission does not have any authority over what is or is not included in Title 3 or Title 7 of City Code. The Commission can make suggestions for the Council to consider; however, the Council has ultimate authority over what is adopted as City Code.

Outstanding Issues: There are no outstanding issues.

Planning and Zoning Commission Action:

Date: April 24, 2023

Vote:

Recommendation:

Planning and Zoning Commission Discussion:

City Council First Reading:

Date: May 1, 2023

Vote:

Recommendation: Approve the Ordinance Amendment to City Code.

Lead Staff Member: Kara Tragesser

Approval Meeting Dates:

Planning & Zoning Commission	April 24, 2023
City Council: First Reading	
City Council: Second Reading	
City Council: Third Reading	

Staff Report Reviews

Planning & Zoning Commission	<input checked="" type="checkbox"/> Development Coordinator/Director	<input checked="" type="checkbox"/> Legal Department
City Council	<input type="checkbox"/> Director	<input type="checkbox"/> Legal Department
	<input type="checkbox"/> Appropriations/Finance	<input type="checkbox"/> Agenda Acceptance

Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	4/18/23
Date(s) of Mailed Notices	n/a

Council Subcommittee Review (if applicable)

Subcommittee	Development & Planning			
Date Reviewed	5/1/2023 as an upcoming project			
Recommendation	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>	No Discussion <input type="checkbox"/>

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION
NO. PZC-23-017

WHEREAS, pursuant to the provisions of Title 9, Zoning, of the West Des Moines Municipal Code, staff requests approval of an Ordinance Amendment to the following chapters and sections identified below in Title 9 (Zoning) to modify regulations pertaining to alcohol service or consumption allowance aspects within restaurant, bar/restaurant, and bar establishments as currently regulated within City Code.

- Chapter 2: *Zoning Rules and Definitions, Section 2: Definitions*
- Chapter 4: *Zoning Districts and Map, Section 3: Definition of Districts*
- Chapter 6: *Commercial, Office, and Industrial Zoning District, Section 4: Specific Use Regulations, Subsection A.5 and Flowchart 6.2*
- Chapter 6: *Commercial, Office, and Industrial Zoning District, Section 6: Commercial, Office, and Industrial Use Regulations, Subsection C, Table 6.1 Use Matrix: Division G - Retail Trade*
- Chapter 10: *Performance Standards, Section 4: Specific Use Regulations, Subsection A.18: Outdoor Activity Areas and Operable Storefronts, Paragraph a.(1)*
- Chapter 15: *Off-Street Parking and Loading, Section 4: Off-Street Parking Regulations, Subsection A.10*
- Chapter 17: *Adult Entertainment Facilities, Section 2, Definitions, Subsection F, Adult Nightclub, and Section 3, Location of Adult Bookstores, Movie Theatres, Nightclubs, Motels, Adult Businesses And Newsracks, Subsection B: Measurement of Distance*

WHEREAS, the Ordinance Amendment request complies with the applicable provisions of Iowa Code Chapter 414, the Comprehensive Plan and City Code.

NOW THEREFORE, the Planning and Zoning Commission of the City of West Des Moines recommends the City Council approve the Ordinance Amendment (AO-005978-2023).

PASSED AND ADOPTED on April 24, 2023.

Andy Conlin, Chair
Planning and Zoning Commission

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Planning and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on April 24, 2023, by the following vote:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

ATTEST:

Recording Secretary

Prepared by: Kara Tragesser, City of West Des Moines, Development Services Dept., P.O. Box 65320, West Des Moines, IA 50265-3620, 515-222-3620
When recorded Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

ORDINANCE NO.

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2019, TITLE 3, (BUSINESS AND LICENSING), CHAPTER 2 (BEER AND LIQUOR CONTROL); TITLE 7, (PUBLIC WAYS AND PROPERTY), CHAPTER 1, (STREETS SIDEWALKS, ALLEYS); AND TITLE 9, (ZONING), CHAPTER 2 (ZONING RULES AND DEFINITIONS), CHAPTER 4 (ZONING DISTRICTS AND MAPS), CHAPTER 6 (COMMERCIAL, OFFICE AND INDUSTRIAL DISTRICT), CHAPTER 10, (PERFORMANCE STANDARDS), CHAPTER 15, (OFF-STREET PARKING AND LOADING), AND CHAPTER 17 (ADULT ENTERTAINMENT FACILITIES) PERTAINING TO ESTABLISHMENTS THAT SERVE AND/OR ALLOW THE CONSUMPTION OF ALCOHOL

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:

Section 1. Amendment. Title 3 (Business and Licensing), Chapter 2 (Beer and Liquor Control), Section 1 (Definitions) is hereby amended by adding the text in bold italics in alphabetical order. All other items currently listed in this section but not included here remain as is.

BAR (also known as DRINKING PLACE): Establishment primarily engaged in the retail sale of alcoholic drinks, such as beer, ale, wine, and liquor for consumption on the premises where the selling of food does not occur.

BAR/RESTAURANT: Establishment engaged in the retail sale of food and where the sale of alcoholic drinks, such as beer, ale, wine, and liquor also occur. Food and alcoholic drinks are primarily consumed on the premises where sold; however, the take-out of food & drink may occur. For the purposes of determining if Class 1 or Class 2, a Bar/Restaurant shall be categorized in accordance with the Classification Flowchart in section 3-2-16(E) of this title.

CLASS 1: Establishment whose primary business purpose is not the sale of alcoholic beverages, wine or beer and can establish that on average over a calendar year more than fifty percent (50%) of the establishment's gross

sales on the premises are from the sale of goods or services other than alcoholic beverages, wine or beer.

CLASS 2: Establishment whose primary business purpose is the sale of alcoholic beverages, wine or beer and is unable to establish that on average over a calendar year more than fifty percent (50%) of the establishment's gross sales on the premises are from the sale of goods or services other than alcoholic beverages, wine or beer.

BRING YOUR OWN BEVERAGE ("BYOB") ESTABLISHMENT: Establishment that allows guests/patrons to bring in and consume alcoholic beverages, wine or beer, but does not engage in the retail sale of alcoholic beverages, wine or beer.

~~DRINKING PLACE: A licensed premises primarily engaged in the retail sale of alcoholic drinks, such as beer, ale, wine and liquor, for consumption on the premises. "Primarily engaged" shall mean gross sales of fifty percent (50%) or greater of total gross sales which shall be the burden of the licensee to establish.~~

Section 2. Amendment. Title 3 (Business and Licensing), Chapter 2 (Beer and Liquor Control), Section 6 (Location of Premises) is hereby amended by adding the text in bold italics in alphabetical order. All other items currently listed in City Code but not included here remain as is.

A licensed or permitted premises must be located where the applicable Zoning Ordinance allows such land use. In addition, a licensed or permitted premises must be in compliance with applicable Fire and Building Codes. No such licensed or permitted premises in which a Class A, B, C, or D liquor control license or a Class B beer permit or Class C native wine permit shall be located within two hundred feet (200') of a church, school, preschool, or childcare center building if said premises is a ~~"drinking place"~~ ***"bar" or "bar/restaurant class 2"*** as defined in this chapter. In determining the distance set out in this section, the measurements shall be taken on a direct line from the nearest point of a building wherein the said licensed premises is located to the nearest part of a church, school, preschool, or childcare center building. Any licensed or permitted premises that held such license and permit prior to September 26, 2005, and which does not conform to the provisions of this section, or any licensed or permitted premises that is rendered out of compliance with this section by the establishment of a church, school, preschool or childcare center within two hundred feet (200') of such preexisting ~~drinking place~~ ***bar or bar/restaurant class 2***, shall be permitted to continue at such location, providing the applicant for such license or permit is qualified and complies with the provisions of chapter 123 of the Code of Iowa, as amended, and there is no discontinuance of such use of the premises for a period of six (6) months.

Section 3. Amendment. Title 3 (Business and Licensing), Chapter 2 (Beer and Liquor Control), Section 7 (Outdoor Service Areas) is hereby amended by adding the text in bold italics in alphabetical order. All other items currently listed in this section but not included here remain as is.

A. Intent: To provide standards for the approval of requests for outdoor service areas in conjunction with a ~~bar or restaurant~~ **bar/restaurant or bar** in which the serving and consumption of alcoholic beverages is permitted.

Section 4. Amendment. Title 3 (Business and Licensing), Chapter 2 (Beer and Liquor Control), is hereby amended by adding a new section 16 (Persons under the Legal Age in Licensed, Permitted or BYOB Establishments as provided in the bold and italicized text and renumbering subsequent sections accordingly.

3-2-16: PERSONS UNDER THE LEGAL AGE IN LICENSED, PERMITTED OR BYOB ESTABLISHMENTS

- A. In determining whether an establishment is a Bar/Restaurant Class 1 or a Bar/Restaurant class 2, a licensee may be required to provide a verified statement from an accountant which establishes whether on the average over a calendar year more or less than fifty percent (50%) of the gross sales on the premises are from the sale of goods or services other than alcoholic beverages, wine or beer.**
- 1. Income from fees charged to gain entry to or remain on the premises, such as cover charges, as well as drink mixes, or any part of an alcoholic beverage as defined by state code are to be counted as alcohol sales.**
 - 2. Entertainment fees shall not be considered nonalcoholic sales.**
- B. Minors prohibited in Bars or BYOB Establishments.**
- 1. It is unlawful for a person under twenty-one (21) years of age to enter or be in a Bar or a BYOB Establishment, as defined by this Chapter, or for any person employed with respect to such premises to knowingly permit or fail to take reasonable measures to prevent the entry onto such premises of any and all persons who have not yet attained the age of twenty-one (21).**
 - 2. It shall be the duty of the licensee or permittee and of the person(s) managing such premises to cause to be posted and maintained at all times an easily readable notice stating that persons less than twenty-one (21) years of age are prohibited from entering the premises.**
 - 3. The provisions of subsection 1 shall not apply when:**
 - a. The underage person is an employee of the license/permit holder or performing a contracted service with respect to said premises and is on the premises during their scheduled work hours.**
 - b. The person is working in conjunction with a law enforcement agency in performance of their official duties.**
 - c. The licensee or permittee applies for and is granted an Exception certificate from the chief of police which shall allow the holder to provide entertainment to persons under legal age, as provided in this Chapter.**
- C. Minors prohibited in Bar/Restaurants.**
- 1. Bar/Restaurant Class 1: Minors shall not be prohibited from entering or remaining on the premises at any time.**
 - 2. Bar/Restaurant Class 2: It is unlawful for a person under twenty-one (21) years of age to enter or remain after 9:00 p.m. in a bar/restaurant class 2, as defined by this Chapter, unless:**

- a. *The underage person is an employee of the license/permit holder or performing a contracted service with respect to said premises and is on the premises during their scheduled work hours.*
 - b. *The underage person is accompanied by a parent, guardian, spouse or domestic partner who is of legal age for the purchase of alcoholic beverages.*
 - c. *The person is working in conjunction with a law enforcement agency in performance of their official duties.*
 - d. *The licensee or permittee applies for an qualifies for an exception certificate as defined in this Chapter.*
3. *It shall be the duty of the licensee or permittee of a Bar/Restaurant Class 2 and of the person(s) managing such premises to cause to be posted and maintained at all times an easily readable notice stating that persons less than twenty-one (21) years of age are prohibited from entering or remaining on the premises after 9:00 p.m.*

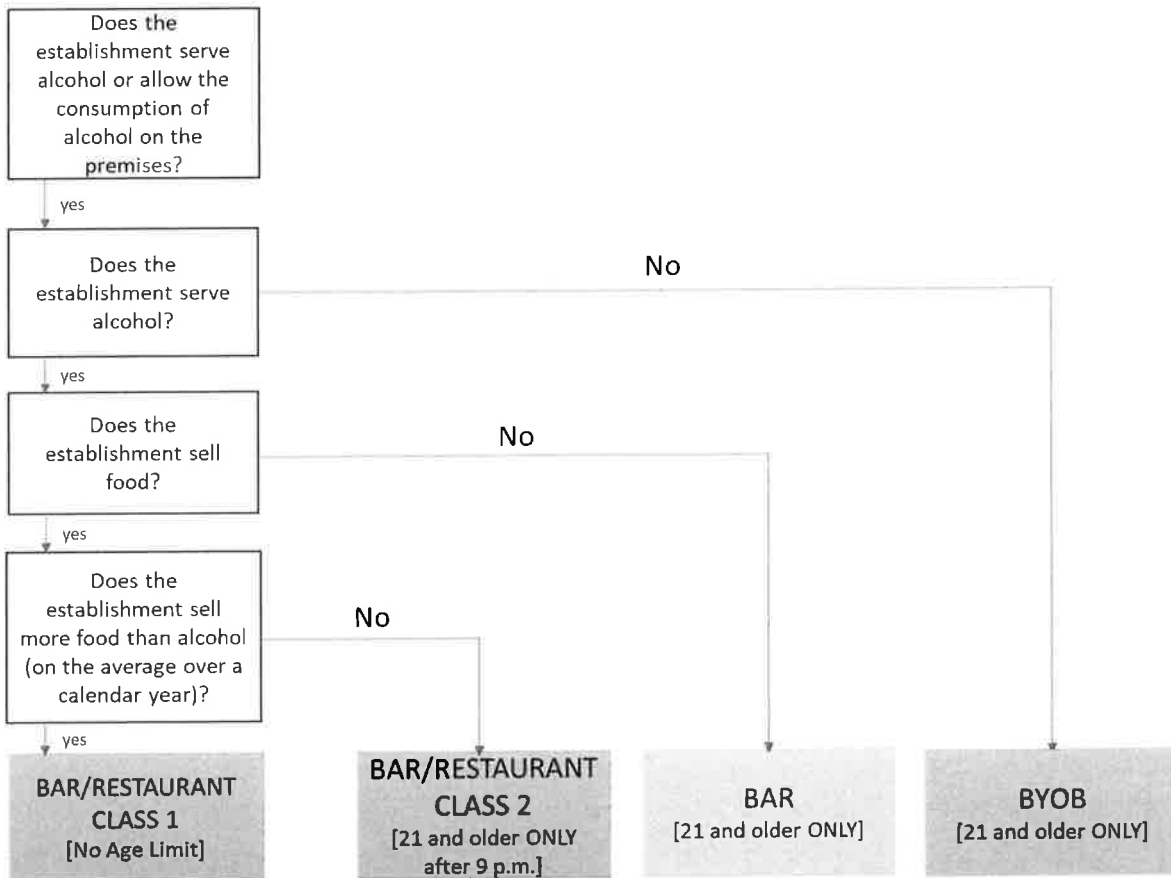
D. Exception Certificates:

1. **General Exception Certificate.** *A general exception certificate may be granted by the chief of police or designee, which shall allow persons under the age of twenty-one (21) to enter or remain in the establishment after 9:00 p.m., as follows:*
 - a. *Submission of a verified statement from a certified public accountant which establishes that more than fifty percent (50%) of the licensee's or permittee's gross sales are from the sale of goods or services other than for the sale of alcoholic beverages, wine or beer which shall not include income from cover charges, entertainment fees, drink mixes or nonalcoholic beverages.*
 - b. *In addition to the statement from a certified public accountant, proof of qualification may include state and federal tax records for the previous year, articles of incorporation, and receipts from specific vendors which itemize goods purchased related to the applicant's primary business purpose from the previous six months as requested by the chief of police or designee.*
 - c. *Minors shall only remain on the premises during such time that the evidence shows the establishment serves more than 50% gross sales from goods/services other than alcohol.*
2. **Underage Event Exception Certificate.** *An exception certificate for an underage event may be granted by the chief of police or designee which shall allow the holder to provide entertainment to person under legal age, as follows:*
 - a. *A licensee or permittee may qualify for a special event exception when an application is submitted to the chief of police or designee at least seven business days prior to the proposed event. Such application shall include the name and address of the licensed or permitted establishment, the type of event for which an exception is applied, the proposed date for the event and the time of the event.*

- b. All alcoholic liquor, wine or beer is removed or stored so that it is not available for sale or consumption during the period of the special event.*
 - c. A special event exception shall be valid through the date of the special event.*
- 3. Entertainment Venue Exception Certificate.** *An exception certificate may be granted by the chief of police or designee for an entertainment venue, which shall allow minors aged sixteen (16) through twenty (20) to enter and remain in the designated venue until midnight (12:00 a.m.) and minors under age sixteen (16) to enter and remain in the designated venue until 9:00 p.m., as follows:*
 - a. The licensee or permittee is a venue defined as booking at least 100 live performances per year, with a dedicated and install stage, and permanently installed professional lighting and sound systems.*
 - b. The designated venue shall demand photo identification at the door and shall identify, by use of a wristband or other equally effective means, those persons twenty-one (21) years of age and older who may legally purchase alcoholic beverages.*
 - c. The venue shall be responsible for the security of the venue and any other areas such as parking lots under its ownership or control.*
 - d. The venue shall make its best effort to provide the police chief or designee with a schedule of events at least thirty (30) days in advance. When an event is booked after submission of the monthly schedule, the venue shall notify the ERU by telephone or electronic mail at least ten (10) days before the event, in which case the event shall be submitted as part of the next monthly schedule.*
 - e. The venue must demonstrate to the police department that at least fifty percent (50%) of its gross receipts are derived from items other than alcohol sales, which may include, but are not limited to, income from cover charges, ticket sales, entertainment fees, articles of apparel, food, drink mixes or non-alcoholic beverages.*
- 4. Special Outdoor Event Exception Certificate.** *An exception for an outdoor event may be granted by the chief of police or designee for special events not exceeding five days in duration where a street closure has been authorized by the city council and a temporary liquor control license has been issued. Such exception shall be limited to the outdoor areas covered by the temporary liquor control license. The chief of police or designee has discretion including but not limited to past experience with policing the same event, staffing, and any special difficulties in policing the proposed event.*
- 5. No certificate will be issued if any of the following are true:**
 - a. A preponderance of the evidence shows that the licensee, permittee, or any employee or agent thereof sold, gave or delivered alcohol to any patron under the legal drinking age more than once within the last year.*

- b. Where operation under the exception certificate would be detrimental to the safety, health and welfare of the residents of the city.
6. Exception certificates may be revoked by the chief of police or designee for good cause, which includes, but is not limited to, the following:
- a. Where a preponderance of the evidence shows that the licensee, permittee, or any employees or agents thereof, sold, gave, or delivered alcohol to any patron under the legal drinking age more than once within the last year; or
 - b. Where the establishment has failed to cooperate fully with the police department;
 - c. Where the establishment has failed to comply with the terms of the exception certificate; or
 - d. Where continued operation under the exception certificate would be detrimental to the safety, health and welfare of the residents of the city.
 - e. Length of Revocation.
 - (1) A first revocation of an exception certificate shall last for six (6) months.
 - (2) A second or subsequent revocation within five (5) years shall last for one (1) year.

E. Classification Flowchart:



Section 5. Amendment. Title 7: *Public Ways and Property*; Chapter 1: *Streets, Sidewalks, and Alleys*; Section 1, *Use of Public Ways Restricted*; Subsection C: *Certain Commercial Use of Public Sidewalks*; Paragraph 5.a is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other aspects currently in code but not reflected below shall remain as is.

Restaurant ***or Bar/Restaurant Class 1 (see Title 9, Zoning, Chapter 6 for classification information)***: a business that serves food to customers and has more than fifty percent (50%) of their sales from food.

Sidewalk Cafe: An outdoor area meeting the requirements of this subsection that is temporarily situated on a public sidewalk and which is adjacent to and contiguous with any side of a building in which a restaurant ***or bar/restaurant Class 1 (see Title 9, Zoning, Chapter 6 for classification information)*** is located, and in which food and beverages are served for consumption by persons sitting or standing at tables within such area. Sidewalk cafes must be situated on the same level as the adjacent sidewalk lying outside the sidewalk cafe

Section 6. Amendment. Title 9: *Zoning*; Chapter 2: *Zoning Rules and Definitions*; Section 2: *Definitions*, is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics accordingly in alphabetical order. All other aspects currently in code but not reflected below shall remain as is.

BAR OR DRINKING PLACE (SIC 5813) an establishment primarily engaged in the retail sale of alcoholic drinks, such as beer, ale, wine, and liquor for consumption on the premises where the selling of food does not occur.

~~BAR/RESTAURANT (Also Known As DRINKING PLACE, BAR, SALOON OR TAVERN): An establishment or part of an establishment primarily engaged in the retail sale of alcoholic drinks, such as beer, ale, wine and liquor, for consumption on the premises. For the purposes of identifying applicable zoning districts bar/restaurant shall be categorized in accordance with section 9-6-4, "Specific Use Regulations", of this title.~~

BAR/RESTAURANT: Establishment engaged in the retail sale of food and where the sale of alcoholic drinks, such as beer, ale, wine, and liquor also occur. Food and alcoholic drinks are primarily consumed on the premises where sold; however, the take-out of food & drink may occur. For the purposes of determining if Class 1 or Class 2, a Bar/Restaurant shall be categorized in accordance with Flow Chart 6.1 in Section 9-6-4, "Specific Use Regulations".

BRING YOUR OWN BEVERAGE (BYOB) ESTABLISHMENT: Establishment that allows guests to bring in and consume their own alcoholic beverages, wine or beer, but does not engage in the retail sale of alcoholic beverages, wine or beer.

EVENT VENUE: A commercial facility ***not part of a restaurant or bar/restaurant*** for hosting functions with the option of having food or drink regardless ***of*** whether such is provided during the event, including, but not limited to, weddings, receptions, banquets, anniversaries, and similar celebrations. May also be used for meeting space, conferences,

or other assembly uses. A small event venue is five thousand (5,000) gross square feet or less in size. A large event venue is over five thousand (5,000) gross square feet in size. A commercial facility is one that charges a fee to use the space, charges an entry fee or cover charge to attend the event, or charges money for food and/or beverages. See chapters 10, "Performance Standards", and 15, "Off Street Parking And Loading", of this title for further regulations. Does not include SIC 58 eating and drinking places.

NIGHTCLUB: A place of business (**SIC 5813**) other than an event venue located within any building or establishment, established and operated for the purpose of supplying entertainment, live or recorded music for dancing, or both. The establishment may or may not serve food or ~~engage in the serving of~~ **alcoholic beverages, such as** beer, ale, wine or liquor for consumption on the premises. ***A nightclub which operates as a Bring Your Own Beverage (BYOB) Establishment shall be considered a bar for regulation purposes.***

RESTAURANT, FAST FOOD: Any establishment whose principal business is the sale of food, frozen desserts, or beverages in ready to consume individual servings, for consumption either within the restaurant building or for carryout, and where either: a) foods, frozen desserts or beverages are usually served in paper, plastic or other disposable containers, and where ~~customers are not served their food, frozen dessert or beverage by a restaurant employee at the same table or counter where the items are consumed~~ **food and drink is ordered at a counter rather than at the table at which the food and drink will be consumed;** or b) the establishment includes a drive-up or drive-through service facility or offers curb **side** service.

Section 7. Amendment. Title 9: *Zoning*; Chapter 4: *Zoning Districts and Map*; Section 3: *Definitions of Districts*; Subsection A.17: *VJHB – Valley Junction Historic Business District* is hereby amended by inserting the text in bold italics. All other aspects currently in code but not reflected below shall remain as is.

- a. The historic business district designation shall be utilized to denote the old downtown area of Valley Junction. Uses within this area shall include professional offices, restaurants, ***bar/restaurants, bars***, specialty retail stores, and other personal services. Development of commercial property shall be in conformance with the Valley Junction subarea plan and historic guidelines

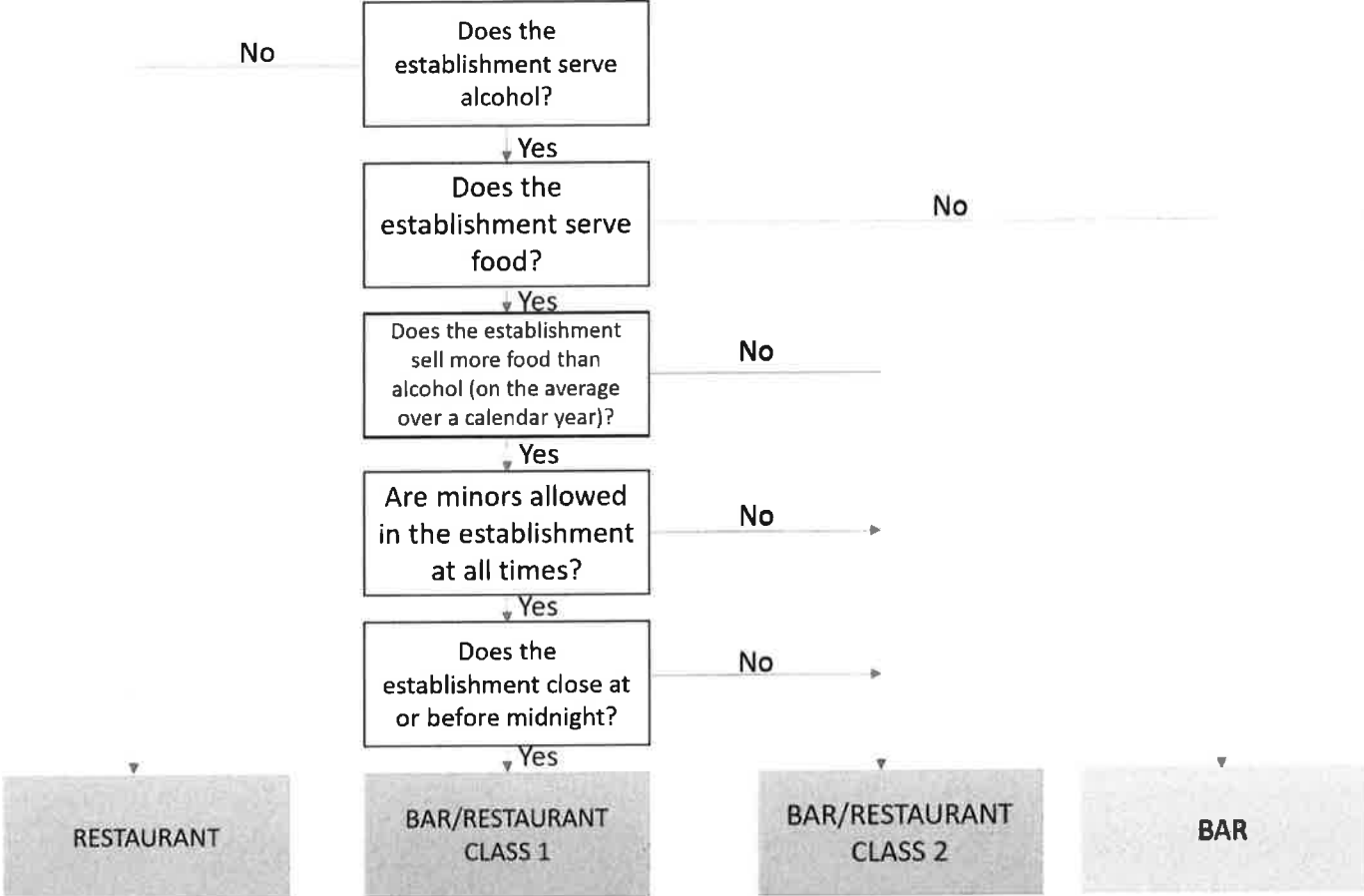
Section 8. Amendment. Title 9: *Zoning*; Chapter 6: *Commercial, Office and Industrial Zoning District*; Section 4: *Specific Use Regulations*; Subsection A.5 is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other aspects currently in code but not reflected below shall remain as is.

5. The intent of this subsection is to create benchmarks to clearly distinguish the differences in restaurants, ***bar/restaurants*** and ***bars (aka drinking places (SIC 5813))***. In determining the variations in the use, businesses that serve food and beverages are divided into ~~three (3)~~ ***four (4)*** class categories. The classes are defined by a list of operational characteristics that help to establish the intensity of how the use operates and help anticipate possible impact to the surrounding area. The following chart shall be used to determine the class category for uses under SIC 58.

Section 9. Amendment. Title 9: Zoning; Chapter 6: Commercial, Office and Industrial Zoning District; Section 4: Specific Use Regulations; Subsection A, Flowchart 6.2 is hereby amended by renumbering to Flowchart 6.1 and replacing the flowchart in its entirety with the following:

Flow Chart 6.2 1

Flowchart to determine class category for businesses that serve food and beverages.



Section 10. Amendment. Title 9: Zoning; Chapter 6: Commercial, Office and Industrial Zoning District; Section 6: Commercial, Office, and Industrial Use Regulations; Subsection C. Table 6.1 – Use Matrix, Division G – Retail Trade SIC 58 Eating and Drinking Places is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other items in table not reflected below shall remain as is.

SIC CODES	RC	CMC	NC	CVC	SC	VJC	VJHB	WR	BP	VJLI	LI	GI	OF	PCP	OS
58 Eating and drinking places ^{1,2}															
- Restaurant	P	P	P	P	P	Pc	P							P	
- Restaurant Class 1 and Class 2 and bar/restaurant with drive-through	P	P			P	Pc									
Bar/Restaurant															
- Bar/Restaurant Class 1	P	P	P	P	P	Pc	P			Pc	Pc	Pc		P	
- Bar/Restaurant Class 2				Pc		Pc			Pc	Pc	Pc	Pc			
- Bar/restaurant Class 2 less than 300 feet from residential	Pc	Pc	Pc		Pc		Pc	Pc			Pc	Pc			
- Bar/restaurant Class 2 300 feet or more from residential	P	P	P		P		P	P			P	P			
Bar															
- Bar - less than 300 feet from residential	Pc	Pc	Pc		Pc		Pc	Pc			Pc	Pc			
- Bar - 300 feet or more from residential	P	P	P		P		P	P			P	P			

1. Any restaurant, bar/restaurant class 1 or class 2, or bar with an outdoor activity area - see Chapter 10, Performance Standards, Section A.18.
2. Any bar/restaurant class 1 or class 2, or bar which serves liquor or allows consumption of alcohol - see Title 3, Business and Licensing, Chapter 2, Beer and Alcohol Control.

Section 11. Amendment. Title 9: Zoning; Chapter 10: Performance Standards; Section 4: Specific Use Regulations; Subsection A.18. Outdoor Activity Areas and Operable Storefronts; Paragraph a.(1): Definitions is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics. All other aspects currently in code but not reflected below shall remain as is.

- (1) Outdoor Activity Areas are exterior areas of a ~~bar, restaurant, bar/restaurant or event venue~~ **any non-residential establishment** designated for food **and/or** beverage services **and/or consumption** and intended for gathering of patrons, with or without designated seating, such as patios, decks, roof decks, or other designated areas of the site.

Section 12. Amendment. Title 9: *Zoning*; Chapter 15: *Off-Street Parking and Loading*; Section 4: *Off-Street Parking Regulations*; Subsection A.10 *Outdoors Areas* is hereby amended by inserting the text in bold italics. All other aspects currently in code but not reflected below shall remain as is.

10. Outdoor Areas: Outdoor patron use areas or areas used for assembly shall be included in the **Gross Floor Area (gfa)** for calculating parking requirements. Outdoor dining areas shall be included in the gfa for restaurants **or bar/restaurants** when calculating parking requirements.

Section 13. Amendment. Title 9: *Zoning*; Chapter 15: *Off-Street Parking and Loading*; Section 7: *Number of Parking Spaces Required*; Subsection C: *Parking Spaces Requirements for Land Uses* is hereby amended by deleting the highlighted strike-through text and inserting the text in bold italics, alphabetize accordingly. All other items in table not reflected below shall remain as is.

Land Use	Requirements
Service and Commercial	
Bar/Restaurant	1.5 spaces per 100 square feet of GFA
Bar/Restaurant Class 1 or 2 - Takeout only	2 spaces per 1,000 square feet of GFA 11 queuing spaces per drive-through (5 of which shall be designated for the ordering station if it is separate from the pickup window) 1 space per employee
Bar/Restaurant Class 1 or 2 - Sit down fast food and/or drive-through	10 spaces per 1,000 square feet of GFA 11 queuing spaces per drive-through (5 of which shall be designated for the ordering station if it is separate from the pickup window)
Restaurant Class 1 or 2 – Coffee Shop, with or without drive-through	10 spaces per 1,000 square feet of GFA 11 queuing spaces per drive-through (5 of which shall be designated for the ordering station if it is separate from the pickup window)
Restaurant Class 1 or 2 – sit-down (no drive-through)	10 spaces per 1,000 square feet of GFA
Restaurant	10 spaces per 1,000 square feet of GFA
Restaurant with Drive Thru	10 spaces per 1,000 square feet of GFA 11 queuing spaces per drive-through (5 of which shall be designated for the ordering station if it is separate from the pickup window)

Section 14. Amendment. Title 9: *Zoning*; Chapter 17: *Adult Entertainment Facilities*; Section 2: *Definitions*; Subsection F: *Adult Nightclub*; is hereby amended by deleting the highlighted strike-through text. All other aspects currently in code but not reflected below shall remain as is.

Adult Nightclub: Any club, cabaret, nightclub, bar, ~~restaurant~~ or similar establishment where an enclosed building or open air facility is used for live performances which are characterized by the exposure of "specified sexual activities" and "specified anatomical areas" for observation by persons therein.

Section 15. Amendment. Title 9: *Zoning*; Chapter 17: *Adult Entertainment Facilities*; Section 3: *Location Of Adult Bookstores, Movie Theaters, Nightclubs, Motels, Adult Businesses And Newsracks*; Subsection B: *Measurement of Distance*; is hereby amended by inserting the text in bold italics. All other aspects currently in code but not reflected below shall remain as is.

B. Measurement of Distance: The distance between any two (2) adult entertainment facilities shall be measured in a straight line, without regard to intervening structures, from the closest exterior structure wall of each business. The distance between any adult entertainment facilities and any religious institution, school or public park, government office, supermarket, restaurant or ***bar/restaurant*** or any property designated for residential use or used for residential purposes shall be measured in a straight line, without regard to intervening structures, from the closest property line of the adult entertainment facilities to the closest property line of the religious institution, school, public park, government office, supermarket, restaurant ***or bar/restaurant*** or the property designated for residential use or used for residential purposes.

Section 16. Repealer. All ordinances of parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 17. Savings Clause. If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

Section 18. Violations and Penalties. Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Title 1, Chapter 4, Section 1 of the City Code of the City of West Des Moines, Iowa.

Section 19. Other Remedies. In addition to the provisions set out in Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

Section 20. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

PASSED AND APPROVED by the City Council on TBD.

Russ Trimble, Mayor

Attest:

Ryan Jacobson, City Clerk

The foregoing Ordinance No. _____ was adopted by the Council for the City of West Des Moines, Iowa, on _____, 2023, and published in the Des Moines Register on _____, 2023.