

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: VIII. G.

From: Bill Neuendorf
Economic Development Manager

Action
Discussion
Information

Date: June 17, 2014

Subject: Second Reading: Ordinance 2014-8 Concerning On-Sale Liquor Licenses with Amusement Devices in PCD-3 Zoning District

Action Requested:

Grant second reading and approve Ordinance 2014-8.

Information / Background:

Simon Properties, the owner of Southdale Center has investigated several concepts to reoccupy the mostly vacant third floor space at the mall. There is strong interest to extensively remodel much of that level to accommodate a new destination restaurant. Edina's City Code, however, currently prohibits the type of business that the property owner believes will be most successful in this location.

Dave and Busters has strong interest in locating at the renovated Southdale Center. Dave and Busters is a national restaurant group that combines dining and entertainment. They feature a full-service lunch and dinner menu, a full bar and amusement games. They do not offer gambling or games of chance. An overview of Dave and Busters' business model and summary of their proposed location at Southdale Center was presented and discussed at the June 3, 2014 City Council meeting.

During the first reading, individual Council members identified four concerns with the proposed Ordinance change: (1) proximity to residential buildings, (2) policy regarding under-21 customers, (3) inclusion of alcoholic beverages in menu, and (4) sale of alcoholic beverages in a "beer tube". Staff has discussed each of these concerns with Dave and Busters representatives. They have submitted a letter that responds to the identified concerns.

The proposed Ordinance is amended to address the proximity of a licensed premise to residential buildings. A minimum distance of 500 feet is recommended to be included in Section 4-34(g)(6). This is based on an evaluation of existing residential buildings in or near the PCD-3 Zoning District as summarized below.

Location in PCD-3 District	Distance
Yorktown Mall, Panera Bread, Joann Fabric, etc.	133 feet
Galleria Edina, Barnes & Noble, Westin condominiums	150 feet
Centennial Shoppes, Pinstripes	261 feet
Galleria Edina, Crate & Barrel, Westin condominiums	767 feet
Southdale Center, other outlots	775 feet
Southdale Center, One Southdale Place	850 feet

Staff recommends that the City Council amend the City Code to allow the issuance of full-service liquor licenses with restaurants that also offer amusement games of skill. This recommendation is based on the following points about this type of business located at a multi-tenant, multi-use regional shopping destination like Southdale Center:

- Appeals to wide variety of customers: couples, singles, family, and friends
- appeals to a younger demographic that is currently underserved in the Southdale market
- is a destination that will serve local residents and draw customers from the metro area
- likely to create synergy with other businesses in and near Southdale Center
- will create new job opportunities
- will provide another multi-million dollar business investment in Edina
- will provide new option for corporate events and community special events

Proposed amendments to the City Code are attached for consideration by the Council. If approved, these changes would allow this type of businesses in a limited number of sites in the greater Southdale area. Additionally, the City has the right to review the business practices related to the alcohol service. Penalties could be assessed or the license suspended or revoked if there are violations of the City liquor ordinance or other applicable provisions of the City Code.

Attachments:

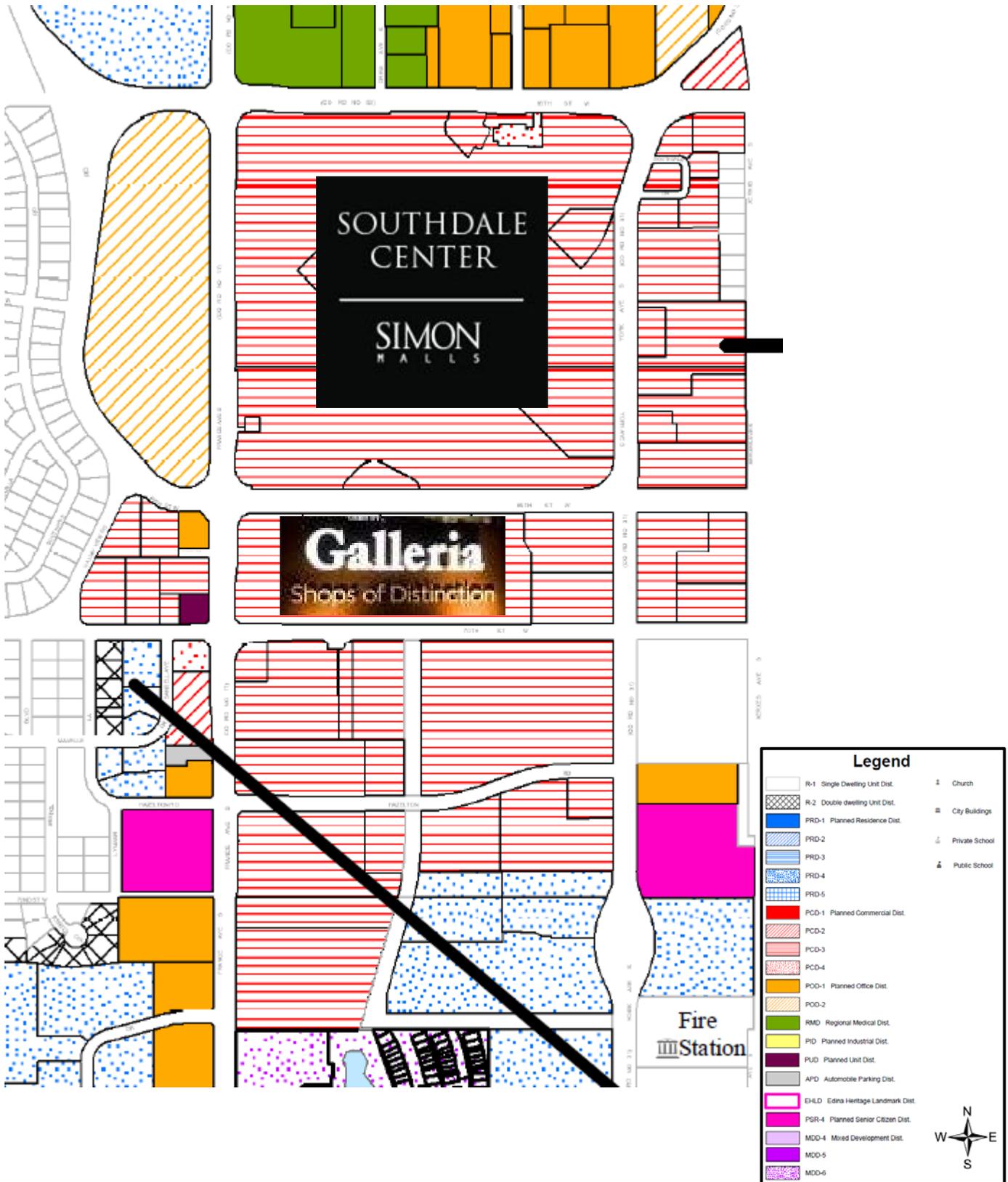
PCD-3 Zoning Map with potential locations highlighted

Memo from Dave and Busters dated June 12, 2014

Proposed Ordinance No. 2014-8 with June 3 amendments

City of Edina

PCD-3 Zoning District with potential locations for businesses with both On-Sale Liquor Licenses and Amusement Device Licenses: Southdale Center and Galleria Edina



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June 12, 2014

Edina City Council Members and Mayor
4801 W. 50th Street
Edina, MN 55424

Council Members and Mayor:

Thank you for the opportunity to present Dave & Buster's to the City of Edina on June 3rd. As a follow up to some of the Council Member's questions raised about Dave & Buster's operations, we have given each item full consideration and would like to respond prior to next Tuesday's meeting with the following:

- 1) **Placement of beverage selections in the front of the Menu:** Our menu is consistent with other national casual dining brands, including Chili's, Applebee's, Cheesecake Factory, TGI Friday's, and Ruby Tuesday's. Within the casual dining and entertainment industries, it is common to place the beverage offerings at the front of the menu and to showcase Food and Beverage both in words and through photography.

As discussed previously, our breakdown between Food and Beverage offerings is noted below:

Nationwide:

- Food 70%
- Alcohol 30%

Maple Grove:

- Food 71%
- Alcohol 29%

We believe our beverage percentage is at or below industry average.

- 2) **Beer Containers:** We sell beer by the glass or in larger containers that offer 50 oz. and 100 oz. These are offered as "Beer Tubes". They are comparable to pitchers that are offered at other competitive restaurants. Our policy requires that at least two (2) guests over the age of 21 must be present to order a 50 oz. container. This is the equivalent of 2 pints of beer per person. Our policy for the 100 oz. containers requires that at least four (4) guests over the age of 21 must be present. This is also the equivalent of 2 pints of beers per person. These offerings are consistent with the sizes of pitchers or other containers offered by other restaurants. If an underage guest accompanies a group and the group purchases a beer container, in accordance with our house policies and alcohol service procedures, the underage guest is monitored by our staff, including servers, Captains (during peak hours) and other front of the house employees. In addition, the underage guest is not provided a glass for the beer.

- 3) **Percentage of “Family” Guests:** While we do not track all guests in our locations, we do have information of guests that participate in our Guest Pulse Program. These are guests that opt-in to complete a survey about their overall experience and demographic information is captured each time. Here is a demographic breakdown from the data in the Guest Pulse Program:

Guests with Children:

	12 or under	13 to 20	21 to 35	35+
National Average	15.3%	14.1%	50.2%	20.5%
Maple Grove	25.4%	16.8%	42.8%	14.9%

We believe the guests with children under the age of 20 are generally visiting as a family unit. System-wide this represents about 30% of our guests, but it is higher in Maple Grove at about 42%. Based on the demographic and retail nature of the Edina market, we would anticipate similar results in our proposed location.

In addition to being a popular family destination, Dave & Buster’s customizes Special Events for the under 21 guests. Examples of such events are as follows:

- After-Prom Gatherings
- After-Graduation Celebrations
- Lock-Ins
- Other school or Community Events
- Birthday Parties
- Bat Mitzvah/Bar Mitzvah

Our expectation to attract families and guests under 21 make it important for Dave & Buster’s to maintain standard operating hours and procedures. If we imposed a policy that requires minors to leave by a certain hour, we believe the location becomes less attractive to families and creates a perception of a more bar-like destination. In addition, the restriction would eliminate the above-referenced Special Events, which would be a disservice to the Edina community.

- 4) **Operating Policies:** As discussed during our June 3rd Meeting, we feel our house policies and operating procedures exceed industry standard. A summary of our policies and procedures are set forth below:

- All service employees to be ServSafe Certified within 30 days of employment, which is a National Restaurant Association program;
- All front of the house positions, i.e. Winner Circle clerk, Technicians and Hosts, completes the ServSafe Training Course with a ServSafe Certified Instructor and takes an in-house test. As a rule in addition to service staff and managers, we use Captains, Security and other front of the house staff members to assist in monitoring consumption throughout the building;
- Managers must be ServSafe Instructor Certified and are required to complete an in-house manager training course, and employees in a leadership role, such as class trainers, must be ServSafe Instructor Certified;
- We enforce a one ID / One drink policy to prevent passing of drinks;

- Guardian Policy - All under the age of 18 must be accompanied by a guardian at least 25 years or older. Six minors to one adult limit. Minors are not allowed to 'roam' freely in the building. The Guardian must accompany minors into and throughout the Midway, which avoids parents in the dining room and minors unaccompanied elsewhere in the building. We feel this policy is a good match for this mall location; and
- D&B uses the BARS Program, which consists of two compliance checks per month per store on an anonymous basis to verify the ID checks, in accordance with our policy (ID if under 30). This program is often referred to as a "Secret Shopper Program." If the employee requests the ID during the compliance check, the employee receives a Green Card. If the employee fails to request the ID during the compliance check, the employee receives a Red Card. When an employee receives a Red Card, the manager is notified and the employee receives a written warning. If an employee receives two (2) Red Cards in a two (2) year period, he or she is automatically terminated. From Year 2013, on average D&B stores received 94% Green Cards and 6% Red Cards. For Year 2013, Maple Grove received 100% Green Cards.

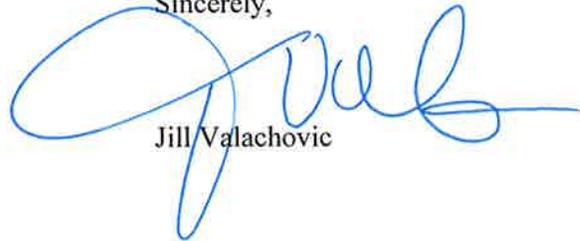
We look forward to meeting with you on June 17th. Thank you so much for your consideration.

Sincerely,



Lisa Warren

Sincerely,



Jill Valachovic

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ORDINANCE NO. 2014-8

AN ORDINANCE AMENDING CHAPTERS 4 AND 6 OF THE EDINA CITY CODE CONCERNING ALCOHOLIC BEVERAGES AND AMUSEMENT DEVICES

THE CITY OF EDINA ORDAINS:

Section 1. Section 4-34, subsection (e) of the Edina City Code is amended to read as follows:

(e) On-sale intoxicating liquor licenses. In addition to the requirements of subsection (a) of this section, no on-sale intoxicating liquor license shall be granted to any establishment other than a restaurant or hotel located in the PCD-2, PCD-3, POD-2 subdistricts or the mixed development district as established by chapter 36.; ~~any amusement or recreation establishment including amusement arcades, pool halls or establishments offering amusement devices which means:~~

- ~~(1) A machine which upon the insertion of a coin, slug or other token, or upon payment of a fee, operates, or may be operated, as a game, contest or other amusement.~~
- ~~(2) Miniature pool tables, bowling machines, shuffle boards, electric rifle or gun ranges, and machines patterned after baseball, basketball, hockey and similar games and like machines.~~
- ~~(3) Amusement devices designated for and used exclusively by children, such as, but not limited to, kiddie cars, miniature airplane rides, mechanical horses and other miniature mechanical devices.~~

Section 2. Section 4-34 of the Edina City Code is amended by adding subsection (g) to read as follows:

(g) In addition, no on-sale intoxicating liquor license shall be granted to any establishment that has amusement devices, except to a restaurant in the PCD-3 subdistrict subject to the following:

- (1) The licensed premises shall be at least 30,000 square feet in gross floor area.
- (2) The licensed premises shall be located on a site that provides at least 250,000 square feet in total building area, including primary buildings and any outlot building.

(3) Not more than 40 percent (40%) of the gross floor area of the licensed premises shall be used for operation of amusement devices regulated by this section.

(4) The licensed premises shall contain at least 200 seats and provide a full food menu during all hours that it is open to the general public.

(5) All regulated amusement devices shall be licensed in accordance with Section 6-92 and shall be located on the interior of the premises.

(6) The licensed premises shall be at least 500 feet from single-family or multi-family residential buildings. This distance shall be measured from the perimeter of the licensed premises to the closest face of the residential building.

Section 3. Sections 6-91, 6-100 and 6-101 of the Edina City Code are amended to read as follows:

Section 6-91. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Machine or amusement device means any machine, contrivance or device, including, without limitation, video, electronic or mechanical, of any of the following types:

(1) A machine which upon the insertion of a coin, slug or other token, or upon payment of a fee, operates, or may be operated, as a game, contest or other amusement only and which contains no automatic payoff device for the return of money, coins, merchandise, checks, tokens or any other thing or item of value; provided, however, that such machine may be equipped to permit a free play or game or allow the payoffs provided in Sections 6-100 and 6-101.

(2) Miniature pool tables, bowling machines, shuffle boards, electric rifle or gun ranges, and machines patterned after baseball, basketball, hockey and similar games and like machines which may be played solely for amusement and not as gambling devices, and which machines are played by the insertion of a coin, slug or other token, or upon payment of a fee and which may be equipped to permit a free play or game or allow the payoffs provided in Sections 6-100 and 6-101.

(3) Amusement devices designated for and used exclusively by children, such as, but not limited to, kiddie cars, miniature airplane rides, mechanical horses, and other miniature mechanical devices, not operated as a part of or in connection with any carnival, circus, show or other entertainment or exhibition.

Sec. 6-100. Payoff.

It shall be unlawful for the licensee, or for the owner, lessee or operator of the establishment where such machine is located, to give any money, prize or reward other than a free game registered to the same machine. Provided, however, payoffs based on the skill of the player, may be given by discharge of tickets, tokens, merchandise or any other thing of value which has a wholesale value no greater than ten (10) times the cost to play or operate the machine a single time, but not to exceed ten dollars (\$10.00). ~~token, merchandise or any other thing of value or any reward or prize in lieu of free games registered to such machine, and all free games so registered shall be played on the machine registering such free game, and there shall be no device on the machine whereby the operator can cancel registered free games.~~

Sec. 6-101. Automatic payoff.

No person shall keep, maintain, sell or permit to be operated any machine which has been converted into an automatic payoff device which shall discharge coins, checks or other tokens to the operator or player of such machine. No person shall convert any machine into an automatic payoff device. Provided, however, machines which, based on the skill of the player, discharge money, checks, tickets, tokens, merchandise or any other thing of value which has a wholesale value no greater than ten (10) times the cost to play or operate the machine a single time, but not to exceed ten dollars (\$10.00) may be kept, maintained or operated subject to the provisions of this article.

Section 4. This ordinance is effective immediately upon its passage and publication.

First Reading: June 3, 2014
Second Reading: June 17, 2014
Published: June 26, 2014

ATTEST:

Debra A. Mangen, City Clerk

James B. Hovland, Mayor