

## **FACTSHEET**

**TITLE:** CHANGE OF ZONE NO. 04043, by the Director of Planning, to amend Title 27 of the Lincoln Municipal Code to allow churches as a permitted conditional use in the I-1 Industrial, I-2 Industrial Park and I-3 Employment Center Districts.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 08/18/04  
Administrative Action: 08/18/04

**STAFF RECOMMENDATION:** Approval.

**RECOMMENDATION:** Approval (7-1: Marvin, Krieser, Sunderman, Carlson, Carroll, Taylor and Bills-Strand voting 'yes'; Pearson voting 'no'; Larson absent).

### **FINDINGS OF FACT:**

1. This text amendment to allow churches as a conditional use in the I-1, I-2 and I-3 zoning districts is in response to an existing illegal church located within an I-1 Industrial District. Churches, along with libraries, schools, hospitals, theaters and residential uses, are not permitted in this district. However, the church and its advisors pointed out to staff that other similar uses are permitted in the industrial districts.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.4-6, concluding that allowing churches to locate in industrial districts may create conflicts in regard to health, safety and general welfare. These conflicts can be lessened or resolved if specific conditions for the protection of the members of a church are met.
3. Special conditions have been added to this proposed ordinance in response to the Health Department's concerns about the handling and storage of hazardous materials by other industrial uses as it relates to the health, safety and general welfare of large assemblies of people. (See p.3).
4. The minutes of the public hearing before the Planning Commission are found on p.4-5.
5. There was testimony in support by Amy Miller, Legal Director of ACLU Nebraska, on behalf of the Church of the Awesome God (p.5 and 6- 7). She pointed out that the City does not place these requirements on other permitted uses, but that the requirements are not burdensome.
6. There was no testimony in opposition.
7. On August 18, 2004, the Planning Commission agreed with the staff recommendation and voted 7-1 to recommend approval (Commissioner Pearson dissenting).

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** August 23, 2004

**REVIEWED BY:** \_\_\_\_\_

**DATE:** August 23, 2004

**REFERENCE NUMBER:** FS\CC\2004\CZ.04043

**LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT**

---

**for August 18, 2004 PLANNING COMMISSION MEETING**

**P.A.S.:** Change of Zone #04043

**PROPOSAL:**

Revise language in the LMC §27.47.020, 27.47.035, 27.47.040, 27.49.020, 27.49.030, 27.49.050, 27.51.040, 27.51.060 to amend the I-1, I-2, I-3 Industrial zoning districts to allow churches as a conditional use in each of those districts.

**CONCLUSION:** Allowing churches to locate in industrial districts may create conflicts in regard to health, safety, and general welfare. These conflicts can be lessened or resolved if certain conditions, for the protection of the members of a church, are met.

<b>RECOMMENDATION:</b>	<b>Approval</b>
------------------------	-----------------

**GENERAL INFORMATION:**

**ANALYSIS:**

1. This is a request to allow churches as a conditional use in the I-1, I-2, I-3 by amending various sections in the zoning ordinance. See attached.
2. This request is in response to an existing illegal church located within an I-1, Industrial Zoning District. Notifications of this violation were made by the Department of Building and Safety to the group occupying the facility. After discussion of this issue, it was felt that the preferred avenue was to proceed with a text amendment. This amendment, although preferred, does raise concerns regarding health, safety, and welfare.
3. Churches are allowed in the R-1, R-2, R-3, R-4, R-5, R-6, and R-7 Residential districts by permitted conditional use, the B-1 Local Business, B-3 Commercial districts, B-4 Lincoln Center Business District, AG Agricultural District, and AGR Agricultural Residential District as permitted uses, and O-3 Office Park District, RT Residential Transition District, B-2 Planned Neighborhood District, by use permit.
4. By approving these amendments to the I-1, I-2, I-3 Industrial Districts would leave only 3 districts, the B-5 Planned Regional Business District, H-1 Interstate Commercial District, and the H-4 General Commercial District, where such a use is not permitted. These districts could be considered less intensive districts as compared to the proposed amended districts.
5. Some uses presently allowed as a permitted use, conditional permitted use, or by special permitted use may not be compatible with large assemblies of people with which churches are normally associated. The handling and storage of hazardous materials presents potential risks to nearby uses in the event of accidents that result in fire, explosion, or emission. To offset these concerns the Lincoln-Lancaster County Health Department has made the following recommendations:

The applicant shall:

- 5.1. Within 48 hours of becoming aware that quantities of hazardous materials requiring a permit under the Lincoln Municipal Code are being stored, transported, dispensed, used or handled on property within 300 feet of the church, notify the Health Department of such condition.
  - 5.2. In the event quantities of hazardous materials requiring a permit under the Lincoln Municipal Code are being stored, transported, dispensed, used or handled on property within 300 feet of the church, Permittee shall work in cooperation and consultation with the Health Department to develop a plan to protect the health, safety, and welfare of persons using Permittee's property. Such plan may include, but not be limited to, the establishment of training programs for employees to detect the presence of hazardous materials and evacuate the premises, the installation of filtration systems in the HVAC system, or other precautionary measures.
  - 5.3. The church shall be equipped with no more than two emergency shut-off switches approved by the Health Department so the air intake systems can be immediately shut down in the case of a hazardous chemical spill in the area. The switches shall be located so they are easily accessible at all times to the Permittee's staff. Permittee's staff shall be trained on how to operate the switches."
- 6 In addition to the conditions of the permitted conditional use above, further assurances of health, safety, and welfare of people must be met regarding accessory uses customarily incidental to churches such as early childhood care facilities and schools. These accessory uses would place more vulnerable populations in conflict for longer time durations with potentially hazardous uses found in the industrial districts. As a part of this amendment, early childhood care facilities and schools are proposed to be excluded as accessory uses within each of the industrial districts.

Prepared by:

Derek Miller  
441-6372, [dlmiller@ci.lincoln.ne.us](mailto:dlmiller@ci.lincoln.ne.us)  
Planner

**Date:** August 5, 2004

**Applicant:** Director of Planning  
Lincoln Lancaster County Planning Department  
555 South 10<sup>th</sup> Street, Suite 213  
Lincoln, Nebraska 68508

**Contact:** Derek Miller, AICP  
Lincoln Lancaster County Planning Department  
555 South 10<sup>th</sup> Street, Suite 213  
Lincoln, Nebraska 68508  
(402) 441-6372

## CHANGE OF ZONE NO. 04043

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 18, 2004

Members present: Marvin, Pearson, Krieser, Sunderman, Carlson, Carroll, Taylor and Bills-Strand; Larson absent.

Staff recommendation: Approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda by staff.

### Proponents

1. **Rick Peo** of the City Law Department stated that the purpose of this text amendment is to allow churches to be a conditional use in the I-1, I-2 and I-3 Industrial zoning districts. This amendment was prompted by a request from a church to locate in the I-1 district. The Law Department found there were other uses that were the same as churches that are allowed in the Industrial districts. To provide equal treatment for churches, they need to be authorized in the Industrial districts as well.

In response to the concerns raised by the Health Department, conditions are imposed such that 1) the church is responsible for notifying the Health Department within 48 hours of becoming aware that quantities of hazardous materials are being stored, transported, dispensed, used or handled on property within 300 feet of the church; 2) in such event, the church is required to work with an abutting property owner who might bring in hazardous materials in cooperation with the Health Department; and 3) the HVAC shut-off breaker switch must be readily accessible to the church members and they should be trained to shut off the breaker switch to stop air filtration into the building while hazard might be passing by. These conditions are satisfactory to Health Department and the staff has had discussions with the church regarding these conditions.

Bills-Strand is concerned that by allowing churches to locate in these industrial areas, it may discourage industrial uses from locating in the area. Peo responded that the business has a right to locate in the industrial area and they will be allowed. We have allowed day care, gymnastics, banquet halls, etc., so we have a multitude of these types of uses in the industrial district, and the purpose of this ordinance is to put the church on equal footing and not discriminate. It does not preclude the industrial use from locating in the district. The church can have a child care facility by special permit.

Carroll confirmed that the burden of notification would be on the church and not on the industrial uses that are permitted. Peo concurred. Conditions are imposed to protect the safety of the occupants of the church and to notify the Health Department if a business locates next to the church so that they can work together to accommodate the uses and work out safety precautions.

Taylor commented that the burden would be on the church to make the report but it would be the burden to respond to the Health Department would be upon the business. Peo clarified that the business would not have a duty to do anything, but he believes they can work together with the Health Department to resolve any concern.

Bills-Strand again expressed concern about discourages business from coming into these areas because of the extra requirements with a church located there. Peo stated that the bottom line is that under federal law we have a duty not to discriminate against the church, and now we are not treating them the same as similar type uses.

Pearson asked for clarification of the early childhood care facilities and schools that are permitted in these districts. Peo stated that private schools and day care can be allowed as a special permitted use. The church would be a conditional use, imposing the same conditions that we have been attaching to special permits. Part of the problem here is the burden for a church to come forward and go through the special permit process. That was one of the reasons of doing it as conditional use if the conditions are satisfactory to the Health Department.

**2. Amy Miller**, legal director for **ACLU Nebraska**, appeared on behalf of the Church of the Awesome God, which has been located in the I-1 zoning district in Lincoln since 2001. Although this proposal is treating churches somewhat differently because there are specific requirements for churches not required of other uses, she does not believe the requirements to be financially burdensome and the Church of the Awesome God can cooperate with those conditions.

There was no testimony in opposition.

Pearson requested clarification on the difference between a conditional use and the special permitted use that day care and private schools have. Peo explained that they are not the same. The idea of a conditional use is that you can get a building permit right away if you can meet the conditions without going through the public hearing process. This is just a question of determining that the conditions are defined appropriately.

Marvin wondered whether this would cause day cares to think they were be discriminated against. Peo does not believe day care is a protected class the same as a church. The issue of conditional or special permitted use could be investigated further in the future, if necessary or desirable.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 18, 2004

Taylor moved approval, seconded by Carlson and carried 7-1: Marvin, Krieser, Sunderman, Carlson, Carroll, Taylor and Bills-Strand voting 'yes'; Pearson voting 'no'; Larson absent. This is a recommendation to the City Council.



**ACLU Nebraska**  
941 'O' Street, Suite 706 • Lincoln, Nebraska 68508  
tel. (402) 476-8091 • fax. (402) 476-8135 • info@aclunebraska.org  
**ETERNAL VIGILANCE IS THE PRICE OF LIBERTY**

August 18, 2004

Re: Text Change for I-1 Zone

Dear Members of the Planning Commission:

This letter is offered in support of the proposed change to the I-1 zoning ordinances which would make churches a permitted use. ACLU Nebraska represents the Church of the Awesome God, a Presbyterian church which has been located in an I-1 zone since 2001. The proposed change is appropriate for several reasons.

First, the city of Lincoln has already allowed a broad number of uses in I-1 zones that are far from the traditional idea of "industrial" uses. For example, retail shops, live adult entertainment bars, daycare clinics and even healthcare clinics have been specifically allowed. The proposed change therefore does not break into "virgin territory" or range far from the already-diverse uses allowed in I-1 zones.

Second, a religious organization contributes in a positive manner to its surroundings. The Church of the Awesome God is providing outreach to northwest Lincoln, an area without any other Presbyterian congregation or many churches of other denominations. The church is a central point for community activities: they've offered their space as a First Aid station during the city's Fourth of July events, held rummage sales for charities like Daywatch, collect donations for the Food Bank, and are positioned to do outreach the neighborhoods such as the nearby university housing. Rather than keeping churches segregated in certain areas of town, the zoning change will allow these positive contributions to reach all citizens.

Third, a religious entity has the right to practice religious services and worship without imposition of zoning restrictions under federal and constitutional law. Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) in 2000. The law specifically prohibits land use regulation (such as zoning restrictions) from being applied to a religious entity unless the government can show a "compelling governmental interest" is at stake. In Lincoln, there has not been any showing of a compelling interest that would compete with churches' First Amendment rights to freely exercise their religion. The city's proposed ordinance would allow the Church of the Awesome God to continue their religious activities and ensure that our local laws do not run afoul of the Constitution and federal law.

Finally, the city has put in place several safety requirements to ensure that people attending church are protected from exposure to hazardous chemicals. The requirements include some training, a requirement to put the city on notice of chemicals in the area, and inspection for a breaker that will shut off the heating/air system in case of an emergency. We note those requirements are not in place for other uses in the I-1 districts--not even for vulnerable populations of the sick at health care clinics or children in daycare. Unlike most daycare centers and health care clinics, churches are generally occupied only for a day or two per week and therefore not facing the day-to-day safety risks of other permitted uses. However, because the requirements are not financially burdensome, the Church of the Awesome God is willing to cooperate with the proposed terms. The city's safety measures should address any safety concerns the Commission may have, especially since these are broader protections than any other permitted or special use entities have to comply with.

We respectfully ask the Commission's support for the proposed ordinance.



Amy A. Miller  
Legal Director