

## **FACTSHEET**

**TITLE:** **CHANGE OF ZONE NO. 11018**, text amendments to Chapter 27.41 of the Lincoln Municipal Code, requested by Jennifer Strand, relating to the H-2 Highway Business District.

**STAFF RECOMMENDATION:** Approval.

**ASSOCIATED REQUEST:** Conditional Zoning Agreement (11R-137) and Change of Zone No. 11017 (11-85).

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 06/01/11  
Administrative Action: 06/01/11

**RECOMMENDATION:** Approval (9-0: Gaylor Baird, Cornelius, Esseks, Francis, Larson, Lust, Partington, Taylor and Sunderman voting 'yes').

### **FINDINGS:**

1. This proposed text amendment and Change of Zone No. 11017 from B-1 to H-2 were heard at the same time before the Planning Commission.
2. This proposed text amendment amends Chapter 27.41 of the Lincoln Municipal Code relating to the H-2 Highway Business District by amending Section 27.41.020 to delete the square footage restriction on stores or shops for the sale of goods at retail not otherwise permitted in this chapter; amending Section 27.41.030 to add assembly facilities, including but not limited to the assembly of equipment, instruments, and appliances such as computers and musical instruments, as a permitted conditional use in the H-2 District.
3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-3, concluding that the "assembly facilities" are similar to other uses allowed in the H-2 district. Eliminating the floor area limit of 20,000 square feet for retail stores will allow for greater flexibility in the district. The staff presentation is found on p.5-6.
4. The applicant's testimony is found on p.6-7. The applicant will make use of this text amendment at the Gordmans site at 45<sup>th</sup> & Vine Streets, with one-third of the 100,000 sq. ft. building used for light assembly and two-thirds used for office/corporate headquarters.
5. Testimony in opposition is found on p.7, with concerns about the definition of "Assembly Facilities" because the text amendment would apply to all H-2 zoned properties city-wide and the potential for noise and fumes. The response by Rick Peo on behalf of the City Law Department is found on p.7.
6. On June 1, 2011, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval of the text amendment (See Minutes, p.8).
7. On June 1, 2011, the Planning Commission also voted 9-0 to recommend approval of the associated Change of Zone No. 11017 at 45<sup>th</sup> & Vine Streets, with amendment to require a conditional zoning agreement limiting the more intensive uses in the H-2 district, to the satisfaction of the Planning Department. That conditional zoning agreement is being introduced on June 13, 2011, as Bill #11R-137.

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

**DATE:** June 7, 2011

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

**DATE:** June 7, 2011

**REFERENCE NUMBER:** Q:\FS\CC\2011\CZ11018+

# LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JUNE 1, 2011 PLANNING COMMISSION MEETING

**PROJECT #:** Change of Zone No.11018

**PROPOSAL:** To add “assembly facilities” as a conditional use in the H-2 District and to remove the limit of 20,000 square feet of floor area for retail stores.

**CONCLUSION:** Assembly facilities are similar to other uses allowed in the H-2 district. Eliminating the floor area limit of 20,000 square feet for retail stores will allow for greater flexibility in the district.

<b>RECOMMENDATION:</b>	Approval
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**HISTORY:**  
March 23, 1998 CZ#3107 to add assembly facilities as a conditional use to the H-3 District was approved by the City Council.

**ANALYSIS:**

1. This is a request for a text change to the H-2 district to allow “assembly facilities” as a conditional use and eliminate the limit of 20,000 square feet of floor area for retail stores.
2. The proposed new conditional use “assembly facilities” reads as follows:  

Assembly facilities, including but not limited to the assembly of equipment, instruments and appliances such as computers and musical instruments.

  1. Assembly facilities may include limited fabrication of finished parts to be used in such assembly.
  2. Assembly facilities shall not be converted to a permitted use unless all parking requirements of Section 27.67.020 for such use are met.
  3. All storage and display of merchandise shall be screened from public view by a fence, walls, shrubs, material obstruction, or all such storage and display shall be within the enclosure walls of a building.
3. In addition to the screening requirement above, any outdoor storage would also have to meet the City Design Standards. City Design Standards require outdoor storage to be screened if located within 150 feet of street right-of-way and within the public view or abutting a residential district. The screen shall be 60% of the surface area of a vertical plane from the ground elevation to a height ten feet. Fences shall be softened by landscaping.
4. Assembly facilities are allowed in the H-3 district, however the building may not exceed 50,000 square feet in size. The other difference in conditions between the H-3 and the proposed text is that in the H-3 the screening for outdoor storage is regulated by the City Design Standards only.

5. Assembly facilities does not allow manufacturing. This use allows assembling pre-made components into finished products. Assembly facilities may include limited fabrication of finished parts. Assembly facilities today are less intensive than manufacturing of 20 years ago.
6. The H-2 district currently allows contractor yards, recycling centers, vehicle body repair shops and auto sales as conditional uses. Assembly facilities are compatible with these uses. Any outside storage is required to be screened from public view.
7. Currently in H-2 a building for the sale of goods at retail cannot exceed 20,000 square feet of floor area. This application proposes to delete the 20,000 square feet size limit. The B-1 district does not have this size limitation.
8. The H-2 district is mainly found along N. 48<sup>th</sup> Street north from "O" Street to Holdrege Street and along "O" Street from 40<sup>th</sup> Street to Cotner Boulevard. The only other site of H-2 is on N. 70<sup>th</sup> Street just south of Arbor Road.
9. Other stores such as Target and Super Saver have their parking lot inn H-2, but the building is in the B-1 district to get around the 20,000 square feet limitation. Best Buy and Office Depot are also not zoned H-2 to avoid the size limitation. All of these store are adjacent H-2 zoning.
10. The H-2 and B-1 districts are intended for uses to serve neighborhoods. Retail stores in excess of 20,000 square feet have been built along N.48<sup>th</sup> Street and "O" Street. A change of zone from H-2 to B-3 was approved in September 2006 for the Hy-Vee store at 52<sup>nd</sup> and "O" Street to avoid the 20,000 square feet size limit. Approving this text change will eliminate the need to rezone property from H-2 to B districts to allow retail stores in excess of 20,000 square feet.

Prepared by:

Tom Cajka  
Planner

**DATE:** May 17, 2011

**APPLICANT:** Jennifer Strand  
301 S. 13<sup>th</sup> St. Suite 500  
Lincoln, NE 68508  
402-473-8522

**OWNER:** AG Realty Limited Partnership  
444 Regency Parkway Dr. Suite 202  
Omaha, NE 68114  
402-391-4220

**CONTACT:** Same as applicant

**CHANGE OF ZONE NO. 11018  
and  
CHANGE OF ZONE NO. 11017**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

June 1, 2011

Members present: Partington, Esseks, Francis, Cornelius, Gaylor Baird, Taylor, Larson, Lust and Sunderman.

Ex Parte Communications: None.

Staff recommendation: Approval.

Staff presentation: **Tom Cajka of Planning staff** submitted one letter in opposition from the owner of the property in the shopping center on the south side of Vine Street, with concerns that the change of zone is inconsistent with the retail corridor and there are no incentives to draw people to the area. She believes this use should be in an industrial park area. Cajka also submitted a letter in support from the general partner of Gordmans in support, suggesting that light assembly is compatible with the uses in the H-2 district and is less intensive than manufacturing.

Cajka explained that the purpose of the proposed text amendment is to add assembly facilities as a conditional use in the H-2 Highway Business District and to eliminate the 20,000 sq. ft. floor area limitation in this district. The specific text provides:

(k) Assembly facilities, including but not limited to the assembly of equipment, instruments and appliances such as computers and musical instruments.

(1) Assembly facilities may include limited fabrication of finished parts to be used in such assembly.

(2) Assembly facilities shall not be converted to a permitted use unless all parking requirements of Section 27.67.020 for such use are met.

(3) All storage and display of merchandise shall be screened from public view by a fence, walls, shrubs, material obstruction, or all such storage and display shall be within the enclosure walls of a building.

Cajka further explained that “assembly facilities” are not manufacturing – it is assembly of pre-made components into finished products. Other conditional uses allowed in H-2 include contractor yards, recycling centers, vehicle body repair shops, auto sales, etc., and staff believes that assembly facilities are compatible with other uses currently allowed in H-2.

Cajka further pointed out that the second part of the text amendment is to eliminate the 20,000 sq. ft. limitation of floor area for retail in H-2. B-1 does not have this size limitation. Along this North 48<sup>th</sup> Street corridor there are several big boxes that are adjacent, including Target, Super Saver, Best Buy, etc., which are in B-1 zoning but their parking is H-2 zoning. This was a way to get

around the 20,000 sq. ft. limit in the H-2 district. More recently, the new HyVee was rezoned in order to also get around the 20,000 sq. ft. limitation. Staff believes that eliminating the 20,000 sq. ft. limitation will eliminate future rezoning requests to get around that limitation.

With regard to Change of Zone No. 11017 from B-1 to H-2 on property on the north side of Vine Street (the former Gordmans Store) from 45<sup>th</sup> Street east, Cajka explained that this change of zone is being requested to have an assembly facility in the building. H-2 is defined as a district for redeveloping areas intended to provide business and services oriented to major arterial streets. This H-2 would be across from residential, although there are several areas that already have existing H-2 abutting a residential district. Along the south side of O Street there are single family and duplex developments. Throughout the area there is quite a bit of H-2 abutting residential districts. The setbacks between H-2 and B-1 are the same for the front yard and rear yard. If abutting a residential district, the side yard is larger in H-2 than in B-1. A lot of the uses are similar between the B-1 and H-2, such as bank, service station, restaurants, retail uses. Some uses in H-2 but not B-1 include auto sales, mini-warehouses, recycling center, vehicle body repair shops. Although those uses are allowed in H-2, it is unlikely that anyone would use the building for any of those uses in this specific situation with the building being 100,000 sq. ft.

Upon further discussion, it was agreed that the word “chapter” should not be stricken from Line 21 on page 2 of the ordinance.

Cornelius wondered whether assembly facility is a use by special permit in either B-1 or H-2. Cajka stated that it is not. Currently, assembly facility is only in H-3 as a conditional use.

Esseks suggested that because this particular property is next to residential uses, the possibility of excessive sound or smell has to be taken into consideration. What is “limited fabrication of finished parts”? What does that mean? Are there sounds or smells that could be detrimental to the lifestyles next door? Cajka explained that to be how it is listed in the H-3 district and that text was basically copied to the H-2 for this text amendment.

**Steve Henrichsen of Planning staff** offered that in this case it is not referring to “finished” as a lacquer, but as a reference to complete and make a single part to go along with the rest of it. You may have 100 parts to make one thing. You may get 95 shipped in in boxes and put them together, but because of the nature you may need to create five parts yourself to finish the whole thing off to make the 100 parts. We did not mean it to be so restrictive such that you could not make even one part fo finish your product. In other words, it allows you to make, to a limited degree, some parts for the whole.

Cornelius wondered whether there are any examples of H-3 adjacent to residential in Lincoln. Cajka did not look at that issue, but assumes there are.

### Proponents

1. **Jennifer Strand** with Woods and Aitken Law Firm, 301 So. 13<sup>th</sup>, Suite 500, appeared on behalf of **A.G. Realty Limited Partnership**, the owner of the building requesting this text amendment. A.G. Realty has a letter of intent with a local business that has outgrown its facility. They have not finalized the lease and thus are not releasing the name of the business at this time. Strand

suggested that the use would be characterized more as a corporate headquarters with the incidental use of light assembly. The Gordmans building is 100,000 sq. ft. and it is anticipated that one-third will be used for light assembly and two-thirds for office. Light assembly does not include manufacturing. There may be some welding at most. It is a very clean use and is in no way characterized as an industrial use. It is compatible with the neighborhood. It will employ 150 individuals who will utilize the retail and restaurant services in the neighborhood. It is very difficult to find a creative use for the big box space that is vacated. Retailers have very specific requirements, so this is a creative adaptation of what is currently a vacant building. There will be significant improvements made to the building – installing windows for natural light in the office portion, as well as repair and restriping of the parking lot and updating the landscaping as a corporate headquarters of a local business.

Gaylor Baird observed that the Planning Commission has been giving thought to how to use retail sites of this scale for redevelopment. There is a reason to get excited about this project. But when you change the zone it is changed for good. Would your client be open to entering into a zoning agreement to limit some of the heavier uses described in H-2 in case they vacate in the future? Strand does not believe the client, tenant, or owner would have a problem with that. There are similar use restrictions in the lease that is currently being negotiated. It will look like a corporate headquarters. The light assembly is not an intensive use. It is not manufacturing and it is not industrial.

### Opposition

**1. Ann Bleed**, who lives in the East Campus Community Organization neighborhood (ECCO) testified, not necessarily in opposition, but with concerns about the change in the H-2 description as it applies to “assembly facilities.” This text amendment applies to all H-2 properties city-wide. It is not just this piece of property. ECCO would love to see this building be reused. But, as pointed out in staff report, there is a lot of H-2 zoning along 48<sup>th</sup> Street on the edge of this ECCO neighborhood. If you make the change and add assembly facility to H-2, then at what point would we be able to stop somebody from really doing what we would consider as not being simply assembly but some kind of manufacturing that has noise or fumes? What kind of legal redress would there be to go back in on that H-2 zone to say no, this is not simply assembly but manufacturing. She wonders if it might be a good idea to do a little more thinking about the definition of an “assembly facility”. How would you prevent someone from slipping over the line in the H-2 area which is very prevalent on the edge of our neighborhood?

**Rick Peo, City Law Department**, explained that the issue with text amendments is, do you submit only the applicant’s requested changes, or does the staff make changes to make the amendments better? Peo explained that the staff tends to take a limited approach and that is why the language “not otherwise permitted in this chapter” was left in. This makes it explicit that we are talking about a permitted use in this chapter as opposed to being implied. Sometimes the other concern is that we have permissive zoning which means that unless you are listed, you are prohibited. The Planning staff has been looking at trying to go to some type of use-type concept to simplify this type of concern. Assembly facilities are allowed in other districts so we would need to amend all districts if we change the definition.

Esseks suggested that the concept of “assembly” is different from manufacturing. So can we be confident and ease the concerns of Ms. Bleed that this would not be a license to have noisy, smelly manufacturing? Peo confirmed that “assembly” is putting pieces together and not manufacturing, with minor exceptions. Those minor exceptions would be reviewed by Building & Safety or the Planning Department on a case-by-case basis.

Sunderman asked what protections the neighborhoods have from any negative results of things happening in this building or any building in H-2. Peo suggested that there are potential civil remedies for injunction if it becomes a nuisance. They will be required to comply with the health codes and noise ordinances. And, if 2/3 of the building is office, there should not be a problem because any nuisance would be detrimental to themselves as well as the neighborhood. If a new use were to come in, there would be Planning Commission review with a specific application and testimony. If it appears that the use is being abused, someone could petition to have the zone changed back to B-1.

#### Response by the Applicant

Strand does not believe this text amendment allows manufacturing in any H-2 zoning district and the neighborhood could use the recourse suggested. They are very close to finalizing the lease between Gordmans and the company and that announcement will be made before the City Council hearing so that the user can be present and articulate their views.

#### **CHANGE OF ZONE NO. 11018** **ACTION BY PLANNING COMMISSION**

June 1, 2011

Taylor moved approval, seconded by Esseks.

Taylor believes this is a very good text change. It doesn't cause any problems and solves a lot of potential situations. There will not be any manufacturing done.

Cornelius agreed. The removal of the 20,000 sq. ft. restriction is valuable considering how we have poked holes in H-2. He shares the concerns raised by Ms. Bleed with regard to the impact that the language regarding “assembly” will have, but he trusts that we can use the condition process to avoid easily imagined scenarios where computers are being assembled out of 99 pre-manufactured parts versus a circuit board that is manufactured on-site which has an extremely negative impact on the area. It is a messy process and one part. That is something that is going to have to be considered every time one of these comes forward.

Motion for approval carried 9-0: Partington, Esseks, Francis, Gaylor Baird, Cornelius, Taylor, Larson, Lust and Sunderman voting ‘yes’. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 11017**

**ACTION BY PLANNING COMMISSION:**

June 1, 2011

Taylor moved approval, seconded by Gaylor Baird.

Gaylor Baird was hoping to add a friendly amendment to require a separate zoning agreement that limits the more intensive uses of H-2 listed in staff report, i.e. recycling center, vehicle body repair shop and vehicle sales in the front yard, etc.

Marvin Krout, Director of Planning, approached indicating that he understands the intent and the applicant's agenda and a zoning agreement could be drafted that would be acceptable, but there are some questions about some of the uses on the list, such as parking lot. He agreed to work something out before this is scheduled on the City Council agenda. He suggested that the Planning Commission could make a recommendation of approval, contingent upon a zoning agreement.

Henrichsen suggested that the motion could be approval, subject to a zoning agreement that limits the more intensive uses to the satisfaction of the Planning Department.

Taylor withdraw the main motion and the seconder agreed.

Taylor moved approval, subject to a zoning agreement that limits the more intensive uses of the H-2 zoning district, to the satisfaction of the Planning Department, seconded by Esseks.

Sunderman is confident that the applicant and City Council will come through with an appropriate zoning agreement to take care of any of the Planning Commission's concerns.

Cornelius believes the motion will both protect and be a benefit to the residential neighbors to the west.

Motion for approval, subject to a zoning agreement that limits the more intensive uses of the H-2 zoning agreement, to the satisfaction of the Planning Department carried 9-0: Partington, Esseks, Francis, Gaylor Baird, Cornelius, Taylor, Larson, Lust and Sunderman voting 'yes'. This is a recommendation to the City Council.

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PLEASE RESPOND TO LINCOLN ADDRESS

May 4, 2011

## BY HAND

Marvin Krout  
Director of Planning  
City of Lincoln  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

Re: Change of Zone Application

Dear Mr. Krout:

Enclosed please find the Zoning Application for a text amendment to Chapter 27.41. Also enclosed is the application fee in the amount of \$300.00. The text amendments requested are to revise the permitted use with respect to retail sales and add a permitted conditional use for assembly facilities in the H-2 Highway Business District as set forth below.

### 27.41.020 Permitted Uses.

(a)(a) Stores or shops for the sale of goods at retail, not otherwise permitted in this chapter, ~~of no more than 20,000 square feet of floor area.~~

### 27.41.030 Permitted Conditional Uses.

(k) Assembly facilities, including but not limited to the assembly of equipment, instruments and appliances such as computers and musical instruments.

(1) Assembly facilities may include limited fabrication of finished parts to be used in such assembly.

(2) Assembly facilities shall not be converted to a permitted use unless all parking requirements of Section 27.67.020 for such use are met.

(3) All storage and display of merchandise shall be screened from public view by a fence, walls, shrubs, material obstruction, or all such storage and display shall be within the enclosure walls of a building.

Marvin Krout  
Director of Planning  
City of Lincoln  
May 4, 2011  
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The H-2 zoning district is generally located on the east and west sides of 48<sup>th</sup> Street from O Street to Holdrege Street and on the north and south sides of O Street from 40<sup>th</sup> Street to Cotner Boulevard, as shown on the enclosed map. Several retail stores in excess of 20,000 square feet have been permitted in the area, such as Target, Super Saver, Best Buy, and Hy-Vee, by rezoning the property to B-1, B-2 or B-3. Given the development that has occurred in the area, the limitation on retail use in H-2, presumably intended to restrict "big box" retailers in this area, is no longer necessary or appropriate.

Assembly facilities are a permitted conditional use in the H-3 Highway Commercial District. At such facilities, manufactured parts are assembled into a finished product. The parts or components are pre-made and are not manufactured on site. The H-2 and H-3 zoning districts are intended for redeveloping areas, with H-3 intended for uses also requiring high visibility and/or access from major highways. Assembly facilities do not have visibility or access requirements and are an appropriate conditional use in both the H-2 and H-3 zoning districts.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions or would like to discuss this matter further.

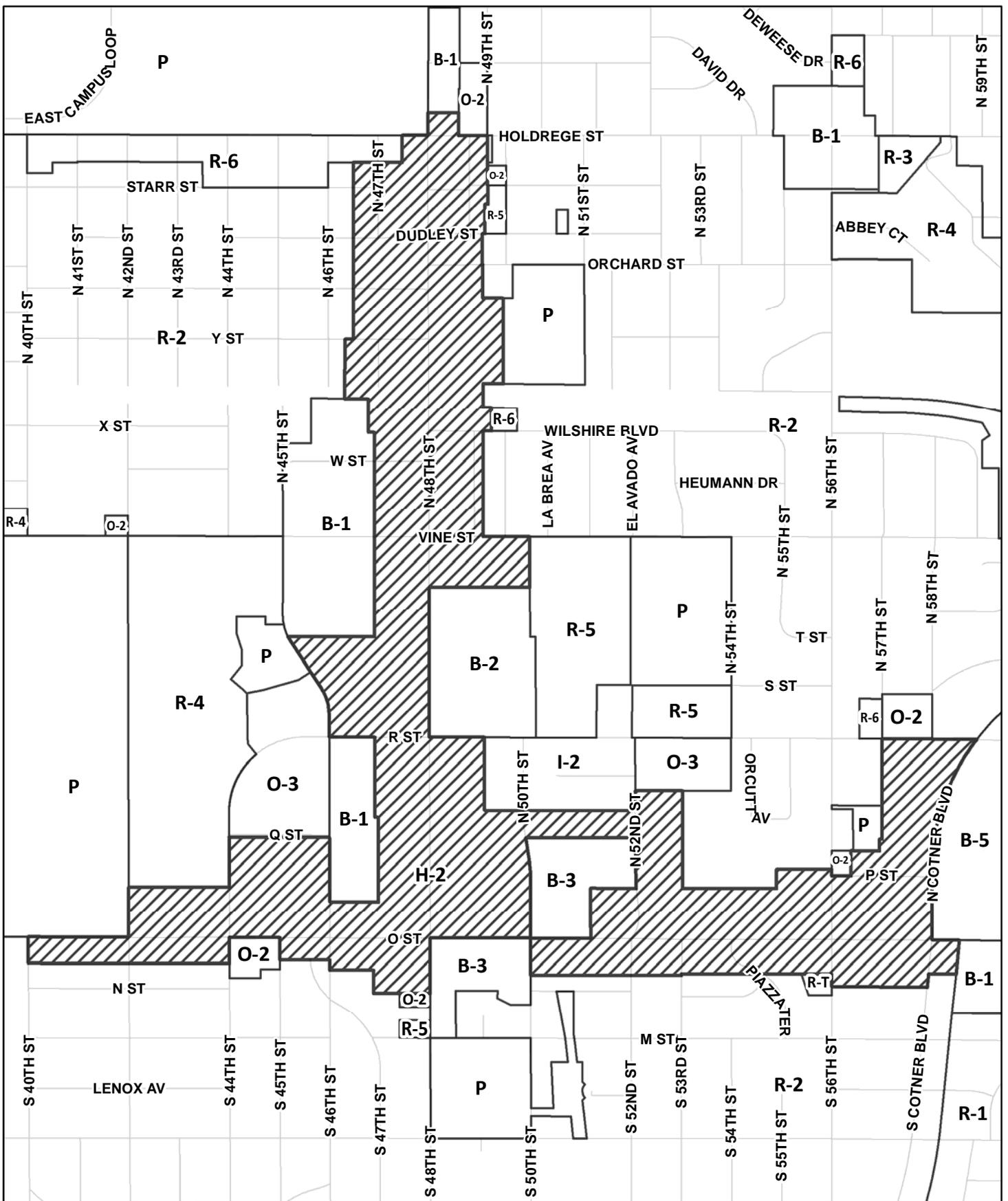
Sincerely,



Jennifer J. Strand

JJS:js  
Enclosures

cc: Tom Cajka, Planner (via electronic mail, with enclosures)



# Change of Zone #11018 Text Amendment to H-2 Zoning District

 H-2 Zoning District

