

## FACTSHEET

**TITLE:** Text Amendment No. 18002 -

**BOARD/COMMITTEE:** Planning Commission

**APPLICANT:** Pius X Catholic High School

**RECOMMENDATION:** Approval (8-0: Beckius, Edgerton, Harris, Hove, Joy, Finnegan, Washington, and Corr voting 'yes'; Scheer absent).

**STAFF RECOMMENDATION:** Approval.

**OTHER DEPARTMENTS AFFECTED:**

**SPONSOR:** Planning Department

**OPPONENTS:** None present at hearing.

### **REASON FOR LEGISLATION:**

A text amendment is proposed to amend the Lincoln Municipal Code Section 27.72.110 Exceptions to the Height Requirements, in all zoning districts where private schools are allowed, private school buildings may exceed the district height limit of 35 feet as follows:

- 1) Exceed the district height by up to 10 feet where that part of the building exceeding the district height is at least 50 feet from any boundary of the premises;
- 2) Exceed the district height by up to 25 feet where that part of the building exceeding the district height is at least 100 feet from any boundary of the premises.

### **DISCUSSION / FINDINGS OF FACT:**

1. The proposed text amendment was heard before the Planning Commission on February 14, 2018.
2. The staff recommendation of approval of this text amendment is based upon the "Analysis" as set forth on p.2. This text amendment will allow for a greater building height specifically for private school buildings. Private schools are permitted as a Conditional Use in all residential, all office and most business and highway commercial districts. In Lincoln, private schools are typically kindergarten through 12<sup>th</sup> grade parochial schools and may want to build gyms, auditoriums or theaters in residential areas that may exceed the 35' height. This text amendment allows for a greater height for buildings already permitted in a district. The staff presentation is found on pp. 8-9.
3. Testimony on behalf of the applicant is found on p.9. There was no testimony in support or in opposition to this proposed request.
4. On February 14, 2018, the Planning Commission voted 8-0 to recommend approval of this text amendment.

**FACTSHEET PREPARED BY:** Geri Rorabaugh, Administrative Officer

**DATE:** February 20, 2018

**REVIEWED BY:** David R. Cary, Director of Planning

**DATE:** February 20, 2018



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

FROM THE LINCOLN/LANCASTER COUNTY PLANNING DEPARTMENT, 555 S. 10TH STREET, SUITE 213, LINCOLN, NE 68508

APPLICATION NUMER Text Amendment #18002	FINAL ACTION? No
PLANNING COMMISSION HEARING DATE February 14, 2018	RELATED APPLICATIONS None

**RECOMMENDATION: APPROVAL**

**BRIEF SUMMARY OF REQUEST**

A text amendment is proposed to amend the Lincoln Municipal Code Section 27.72.110 Exceptions to the Height Requirements, in all zoning districts where private schools are allowed, private school buildings may exceed the district height limit of 35 feet as follows:

1. Exceed the district height by up to 10 feet where that part of the building exceeding the district height is at least 50 feet from any boundary of the premises;
2. Exceed the district height by up to 25 feet where that part of the building exceeding the district height is at least 100 feet from any boundary of the premises

**JUSTIFICATION FOR RECOMMENDATION**

This text amendment will allow for a greater building height specifically for private school buildings. Private schools are permitted as a Conditional Use in all residential, all office and most business and highway commercial districts. In Lincoln, private schools are typically kindergarten through 12<sup>th</sup> grade parochial schools and may want to build gyms, auditoriums or theaters in residential areas that may exceed the 35' height. This text amendment does not propose to change regulations but only to allow for a greater height for buildings already permitted in a determined district.

**APPLICATION CONTACT**

Tim Gergen, (402) 477-9291 or  
tim.gergen@clarkenersen.com

**STAFF CONTACT**

Dessie Redmond, (402) 441-6373 or  
dredmond@lincoln.ne.gov

**COMPATIBILITY WITH THE COMPREHENSIVE PLAN**

The 2040 Comprehensive Plan encourages greater utilization of existing facilities in the urban area in addition to cooperative planning and site development between the City and private educational institutions. This request is compatible with the Comprehensive Plan because it allows for a reasonable increase in height with an increase in setback only for private school buildings permitted in zoning districts where private schools are allowed.

## KEY QUOTES FROM THE 2040 COMPREHENSIVE PLAN

### P. 8.1 - Overall Guiding Principles

- Promote a functional balance between community facilities and growth.
- Encourage adequate facilities and services which provide diverse educational, cultural, environmental, and social opportunities.
- Encourage cooperative planning and site development between the City and public and private educational institutions.

### P 8.9 - Education

- Promote the development, design, and use of public and private facilities to assure cooperative planning and maximum utilization, when appropriate. Schools are vital to the preservation of existing neighborhoods and every effort should be made to enhance and retain 'neighborhood schools.'
- Support the necessary expansion of education facilities while remaining sensitive to surrounding neighborhoods.

## ANALYSIS

1. This request is for a text amendment to the Lincoln Municipal Code Section 27.72.110 Exceptions to the Height Requirements to allow for private school buildings to exceed the district height limit of 35 feet.
2. Currently, 27.72.110 allows exceptions to the 35' height limit for Wind Energy Conversion Systems, Necessary Mechanical Appurtenances, Chimneys, Antenna Towers, Grain Elevators, and steeples, ornamental spires and towers for Places of Assembly. Also, for scenery lofts, stage towers and amateur radio towers but not for private school buildings.

For example, a scenery loft is permitted to be higher so a stage crew can quickly and safely hoist components such as curtains, lights or stage scenery but the auditorium building itself, which is next to the stage, is not permitted to exceed 35'.

3. Proposed modification to the text are as follows:

#### 27.72.110 Exceptions to the Height Requirements

(e) Private Schools, Heights of. In all zoning districts where private schools are allowed, private school buildings may exceed the district high limit as follows:

- (1) Exceed the district height by up to 10 feet where that part of the building exceeding the district height is at least 50 feet from any boundary of the premises;
- (2) Exceed the district height by up to 25 feet where that part of the building exceeding the district height is at least 100 feet from any boundary of the premises;

4. There are currently 27 private and parochial elementary schools in Lincoln, serving almost 7,000 students. In addition there are four private and parochial high schools including: Lincoln Christian, Lincoln Lutheran, Parkview Christian, and Pius X.

Since the provisions of 27.72.110 pertaining to the proposed Heights of Private Schools text amendment require the portion of the building that exceeds the district height to have a substantial setback off the exterior premises boundary, there should be no negative impacts to surrounding properties.

5. This request is compatible with the Compressive Plan because it allows for a reasonable increase in height with an increased setback for private school buildings permitted in zoning districts where private schools are allowed.
6. There are other examples of greater height of building permitted with an increased setback in our zoning code including Section 27.72.040 Height of Lot Regulations in Highway Commercial Zoning Districts: In all H zoning districts, if the height of the building is over 45' but not more than 35', that portion of the building in excess of 45' shall be required to have one additional foot of setback to any required side and/or rear yard abutting an R-1 through R-4 residential zoning district for each one foot of building height in excess of 45'.

Prepared by:

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Dessie E. Redmond, Planner  
(402) 441-6373

Date: February 6, 2018

Applicant/Contact: The Clark Enersen Partners  
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Lincoln, NE 68508  
(402) 447-9291 or [tim.gergen@clarkenersen.com](mailto:tim.gergen@clarkenersen.com)

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ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Section 27.72.110 of the Lincoln Municipal Code relating  
2 to Exceptions to the Height Requirements by including an exception for Private Schools; and  
3 repealing Section 27.72.110 of the Lincoln Municipal Code as hitherto existing.

4 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

5 Section 1. That Section 27.72.110 of the Lincoln Municipal Code be amended to read as  
6 follows:

7 **27.72.110 Exceptions to the Height Requirements.**

8 (a) **Wind Energy Conversion Systems Over the District Height.** Wind energy conversion  
9 systems over the district height are a permitted use in the AG and AGR zoning district,  
10 provided they meet the following conditions:

11 (1) The distance from all lot lines to any tower support base of the WECS shall be  
12 equal to the height of the tower plus the radius of the rotor. The City Council may  
13 grant a reduction in the specific setback table distance when it finds that such  
14 reduction shall not adversely affect surrounding property and is consistent with  
15 the intent of this title to promote the public health, safety, and general welfare.

16 (2) The distance from any tower support base of a WECS to any tower support base  
17 of another WECS under other ownership shall be a minimum of five rotor  
18 distances figured by the size of the largest rotor. The City Council may grant a  
19 reduction in this requirement if it finds that such reduction does not adversely  
20 affect the operation of either WECS.

- 1 (3) The WECS operation shall not cause interference to the radio and television  
2 reception on adjoining property.
- 3 (4) In the AGR district, in order restrict climbing access in or to the WECS tower, a  
4 fence six feet high with a locking portal shall be placed around the WECS tower  
5 base, or the tower climbing apparatus shall be limited to no lower than twelve feet  
6 from the ground, or the WECS tower may be mounted on a roof top.
- 7 (5) The WECS, if interconnected to a utility system, shall meet the requirements for  
8 interconnection and operation as set forth in the electric utility's then current  
9 service regulations applicable to WECS.
- 10 (b) **Necessary Mechanical Appurtenances.** All necessary mechanical appurtenances  
11 located on top of a building are exempt from the height regulations contained in this title  
12 as follows:
- 13 (1) No such appurtenances may exceed twenty feet in height above the maximum  
14 permitted in the district in which they are located;
- 15 (2) All of said appurtenances must be set back a minimum of fifteen feet from all  
16 faces of a building when said faces are adjacent to a street.
- 17 (c) **Chimneys, Antenna Towers, and Grain Elevators.** Chimneys, cooling towers, elev-  
18 ator bulkheads, grain elevators, fire towers, stage towers or scenery lofts, amateur radio  
19 antenna installations not exceeding sixty-five feet in height (which includes a tower not  
20 exceeding fifty feet in height), noncommercial radio towers not exceeding fifty feet in  
21 height, wind energy conversion systems over the height of the district authorized by  
22 conditional use or special permit, or water towers are exempt from the height regulations  
23 as contained herein.

1 (d) **Buildings, Places of Religious Assembly, Height of.** In all zoning districts where places  
2 of religious assembly are allowed, the main place of religious assembly building  
3 including place of religious assembly steeples, towers, and ornamental spires, used for  
4 the conduct of worship or religious services, may exceed the district height limit by the  
5 addition of one foot for each foot that such building is set back from all required yards.

6 (e) **Private Schools, Height of.**

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7 In all zoning districts where private schools are allowed, private school buildings may  
8 exceed the district height limit as follows:

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9 (1) Exceed the district height by up to 10 feet where that part of the building  
10 exceeding the district height is at least 50 feet from any boundary line of the  
11 premises:

12 (2) Exceed the district height by up to 25 feet where that part of the building  
13 exceeding the district height is at least 100 feet from any boundary line of the  
14 premises:

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15 **NOTE:** Additional provisions regarding waivers of height restrictions may be found under  
16 Chapter 27.63 for the following uses:

- 17 (1) Amateur radio antennas exceeding 65 feet; see §27.63.670
- 18 (2) Wind Energy Conversion Systems over the district height; see §27.63.420
- 19 (3) Place of religious assembly steeples, towers, and ornamental spires; see  
20 §27.63.220
- 21 (4) Permitted Use Exceeding the Maximum Height Permitted in the District; see  
22 §27.63.250
- 23 (5) Expansion of Nonconforming and Nonstandard Uses; see §27.63.280

1 (6) Community Unit Plans; see §27.63.320

2 Section 2. That Section 27.72.110 of the Lincoln Municipal Code as hitherto existing be  
3 and the same is hereby repealed.

4 Section 3. This ordinance shall be published, within fifteen days after the passage hereof,  
5 in one issue of a daily or weekly newspaper of general circulation in the City, or posted on the  
6 official bulletin board of the City, located on the wall across from the City Clerk's office at 555  
7 S. 10<sup>th</sup> Street, in lieu and in place of the foregoing newspaper publication with notice of passage  
8 and such posting to be given by publication one time in the official newspaper by the City Clerk.  
9 This ordinance shall take effect and be in force from and after its passage and publication or after  
10 its posting and notice of such posting given by publication as herein and in the City Charter  
11 provided.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this ___ day of _____, 2018:  _____ Mayor
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# TEXT AMENDMENT NO. 18002

TEXT AMENDMENT NO. 18002, TO AMEND THE LMC, SECTION 27.72.110, RELATED TO EXCEPTIONS TO HEIGHT REQUIREMENTS FOR PRIVATE SCHOOLS, AND TO REPEAL SECTION 27.72.110 AS HIGHERTO EXISTING:

February 14, 2018

Members present: Beckius, Corr, Edgerton, Finnegan, Harris, Hove, Joy, and Washington; Scheer absent.

Staff recommendation: Approval.

Corr disclosed that she attended the Mayor's Neighborhood Roundtable meeting on February 12, 2018, where the applicant provided a brief description of the proposed text changes.

Although Commissioner Scheer is absent, he declared a Conflict of Interest on this item.

Staff Presentation: Dessie Redmond of the Planning Department stated this amendment would change Section 27.72.110 related to exceptions to height requirements for private schools. The text would be applicable in all zoning districts where private schools are allowed. The amendment does not change the regulations, but proposes to allow a greater height, along with greater setbacks, in any district where this use is permitted. With a setback of 100 feet, a building could go up to 60 feet. The Comprehensive Plan talks about encouraging the utilization of existing facilities. With the increase in setback, this is an appropriate increase and it eliminates impacts to surrounding properties.

Washington asked how these rules for private schools differ from rules for public schools. Redmond replied that public schools are considered government entities, so they are exempted from the regulation. Washington asked if there is any foreseeable conflict created by allowing private schools to go up to 60 feet, particularly in the area around the airport. Redmond explained that proposals would be reviewed at the time of building permit issuance and the Airport Authority is notified any time an application falls within their area of jurisdiction.

Harris asked if this is related to any specific project. Redmond said the proposed changes were spurred by an application for Pius X. Staff saw an opportunity to make adjustments that would apply to other private schools as well. Harris asked for a brief explanation of the project. Redmond responded that she would defer the specifics to the applicant, but noted that places where the additional height might be expected in schools would be gymnasiums and auditoriums.

Hove asked why the original rule was for 35-feet. Beckius commented it may just be the building height in the residential districts. Steve Henrichsen, Planning Department, stated Beckius is correct; that is the height allowed in residential districts. He also noted the heights required by the airport supersede the height rules. Even a height lower than 35 feet might interfere with their flight requirements and would thus be required to be lowered.

Corr noted that a private school might be seen to be a business. She wondered how this might affect businesses located within the same districts or if it will make the playing field uneven if another use wanted the extra height. Redmond said the definition of private schools does not

classify it as a business, but distinguishes it as its own use, more relatable to a public school.

**Proponents:**

1. Tim Gergen and Heather Keele, Clark Enersen Partners, 1010 Lincoln Mall, stated the project is for Pius High School. It is projected that by 2040, Lincoln will grow by about 120,000 people. LPS has already done a bond issue and are probably planning for another new high school. Gergen noted that private schools are also growing. Pius is in an urban area and is landlocked. The Planning Department was approached about doing a height waiver, but they suggested it would be prudent for all private schools to be allowed this height waiver.

LPS is moving in the direction of taller schools. Lincoln currently has four private high schools. Most likely the height would come into play at the high school level rather than elementary or middle school. LPS trends show that students have a difficult time traversing from one side of the school to another during the allotted 4-minute break between classes. One solution is to build vertically.

Keele said the goal of this is to create some equivalency between public and private schools. In multi-story schools, floor-to-floor heights have increased from around 10-12 feet in height to deeper structures which integrate power, light and mechanical systems. Floors are now generally planned to be 15 feet. There are also roof systems and parapets to consider. These trends are happening in all schools. Gergen added that LPS respects the neighborhoods they go into. They keep significant setbacks from the roadway. That can also be seen in the proposal today.

Keele said an addition is planned for the west side of Pius. The building is closest to the property line along A Street. The setback line shifts as height is added. The addition is currently being planned as 2-story addition including a center core classroom with a pop-up to allow for natural light. That would normally not fit within that 35-foot setback.

Corr asked how much space is between the north boundary and the Pius Building. Gergen said it is probably a distance of around 300 feet.

There was no testimony in opposition.

**TEXT AMENDMENT NO. 18002**  
**ACTION BY PLANNING COMMISSION:**

February 14, 2018

Have moved for Approval, seconded by Washington.

Harris said the applicant has demonstrated a clear need and the waiver would likely have been approved. Based on the current trends in the construction of schools, it makes sense to address this with a text amendment. The setbacks will offset the height increases and should cause minimum negative impact.

Edgerton commended Planning Department for looking more broadly at the ordinances and addressing the long-term needs of the City.

Corr said that as a teacher with no windows, she appreciates the natural lighting in the Pius proposal. It is often a balancing act to raise height limits in neighborhoods, but this will create a better use of land and it is an important step for decreasing the urban sprawl effect.

Motion carried, 8-0: Beckius, Edgerton, Finnegan, Harris, Hove, Joy, Washington, and Corr voting 'yes'; Scheer absent.