

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for January 18, 2005 PLANNING COMMISSION MEETING

**PROJECT #:** Change of Zone #05078

**PROPOSAL:** Amend Lincoln Municipal Code (LMC) Chapter 27.37 B-5 Planned Regional Business District, and Section 27.63.630 Special Permit for Theaters in the B-5 zoning district.

**CONCLUSION:** This amendment establishes a sunset clause regarding special permits for movie theaters in the B-5 district. It provides that on January 1, 2013, movie theaters become a permitted use in the B-5 district and that all pre-existing movie theaters approved by special permit are automatically converted to permitted uses. Staff does not support this amendment for the same reasons the previous applications seeking to amend the Comprehensive Plan and Zoning Ordinance to allow an 18-screen movie theater complex were opposed. The limitation upon the number of both theater complexes and movie screens as part of the special permit is a key component of the City's Theater Policy. In place for 21 years, the policy has helped implement the Comprehensive Plan goal of maintaining the downtown as the heart of the community and the focus for community entertainment and other activity. The policy has also resulted in a pattern of theaters in each of the larger shopping areas, providing close-by entertainment convenience for residents in all parts of the city.

**RECOMMENDATION:**

Denial

### **GENERAL INFORMATION:**

#### **ASSOCIATED HISTORY:**

**CPA#05014** - A request denied by City Council on September 26, 2005 to amend the Comprehensive Plan by deleting several statements that refer to the Theater Policy and entertainment in the downtown, and by deleting one statement requiring market studies for proposed new movie theaters outside the downtown.

**CZ#05035** - A request denied by City Council on September 26, 2005 to amend Section 27.63.630(c) of the Zoning Ordinance for theaters in the B-5 district to allow movie theater complexes consisting of more than six screens provided they are located outside a 6.5 mile radius measured from the center of the intersection of 13<sup>th</sup> and O Streets.

**CZ#05036** - A request denied by City Council on September 26, 2005 from AG Agriculture to B-5 Planned Regional Business for 14.11 acres to accommodate an 18-screen movie theater complex at Prairie Lakes Shopping Center (South 84<sup>th</sup> and Highway 2).

**SP#05023** - A request denied by City Council on September 26, 2005 for a special permit to allow an 18-screen movie theater at Prairie Lakes Shopping Center.

**UP#140B** - A request denied by City Council on September 26, 2005 to amend the Appian Way (now known as Prairie Lakes) Shopping Center use permit to include the area of CZ#05036 and the 18-screen movie theater complex of SP#05023.

**OTHER ASSOCIATED HISTORY:**

**2004** - The Grand Theater with 14 movie screens opened downtown.

**2002** - A six-screen movie theater was approved for North 27<sup>th</sup> & Folkways Blvd. This theater has not been built to date.

**2002** - The former three-screen movie theater at Edgewood Shopping Center was expanded to six.

**1996** - The three-screen movie theater at Eastpark was expanded to six.

**1996** - The special permit for movie theaters in the B-5 district was amended to raise the maximum number of screens in a movie theater complex from 3 to 6 (it was accompanied by a request from SouthPointe Pavilions for a 6-screen megaplex, which has since been constructed).

**1994** - The current reference to Theater Policy was included in Comprehensive Plan.

**1992** - The Zoning Ordinance was amended with CZ#2663 to make movie theaters in the B-5 a use approved by special permit, and subject to conditions that the B-5 District must have 400,000 square feet of other floor area with at least 3/4 occupied, and that the District may have no more than one movie theater complex per district with no more than 3 screens in the complex.

**1984** - The Zoning Ordinance was amended with CZ#2075 to remove movie theaters from the B-1, B-2, B-3, I-1, I-2, I-4 and H-2 districts, but was remained a permitted use in the B-4 (downtown) and B-5 districts.

**ANALYSIS:**

1. City Councilperson Jon Camp requested staff to draft an amendment to the Zoning Ordinance to “sunset” the requirement for a special permit for theaters in the B-5 district. The special permit provisions currently contain limitations on both the number of theater complexes and movie theater screens in the B-5 district. The draft amendment is attached to this report.
2. Movie theaters are allowed in only two zoning districts: as a permitted use in the B-4 (Lincoln Center Business); and as a special permitted use in the B-5 (Planned Regional Business).
3. The provisions of LMC 27.63.630 (special permit for theaters in B-5) are as follows:

Theaters may be allowed in the B-5 District by special permit under the following conditions:

(a) A use permit for 400,000 square feet or more of commercial floor area has been issued;

(b) A Certificate of Occupancy has been issued for 300,000 square feet or more of commercial floor area; provided, however, that the City Council may decrease or waive this requirement upon a finding that the proposed theaters will have no significant adverse impact upon the property values and existing uses in the B-4 Lincoln Center Business District, with particular emphasis upon the effect of such proposed theaters on the entertainment and cultural uses in the B-4 Lincoln Center Business District; and

(c) Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than six movie screens.

4. The proposed amendment modifies LMC 27.63.630(c) to read as follows:

Not more than one theater complex shall be allowed for each B-5 District, consisting of not more than six movie screens. On or after January 1, 2012, pre-existing indoor movie theaters approved by special permit shall be automatically converted to indoor movie theaters as a permitted use in the B-5

district and thereafter there shall be no restriction on the maximum number of theater complexes in each B-5 district and no restriction on the maximum number of movie screens in each theater complex.

5. The proposed amendment also modifies the term 'theater' to 'indoor motion picture theater' throughout the Zoning Ordinance to clearly state the use intended for regulation. This distinguishes movie theaters from performing arts theaters which principally feature live dramatic and musical performances.
6. If this amendment is approved, a movie theater becomes a permitted use in the B-5 zoning district and all pre-existing movie screens in B-5 are converted to permitted uses beginning January 1, 2013, or seven years after approval. Eliminated along with the requirement for a special permit are the limitations regarding the number of complexes and movie screens in the B-5. The ordinance was drafted in 2005, and incorrectly indicates an effective date of 2012. It will be revised accordingly and distributed.
7. The theater policy is responsible for the recent investment in the 14-screen Grand Theater downtown, which reinforces the image of downtown as the heart of the community. The policy also has encouraged the pattern of existing theaters anchoring large shopping areas in the south, southeast, and east sectors of the city, with another theater planned for the north sector. The policy has been amended in the past, and can be amended in the future as new circumstances warrant. "Sunset" provisions in zoning ordinances are generally used to tryout a new idea for a limited period and then evaluate if it has been effective and deserves to be enacted. The theater policy has served Lincoln well for over 20 years, and was evaluated and left in place by the Council just four months ago.

Prepared by:

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Planner  
December 30, 2005

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

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code relating to  
2 Zoning by amending Section 27.37.020 to add indoor movie theaters as a permitted use in the B-5  
3 Planned Regional Business District on or after January 1, 2012; by amending Section 27.37.030 to  
4 add indoor movie theaters as a special permitted use in the B-5 district through December 31, 2011;  
5 by amending Section 27.63.630 to clarify that on or after January 1, 2012, pre-existing indoor movie  
6 theaters approved by special permit in the B-5 district shall automatically be converted to indoor  
7 movie theaters as a permitted use in the B-5 district and that thereafter there shall be no restriction  
8 on the maximum number of theater complexes in each B-5 district and no restriction on the  
9 maximum number of movie screens in each theater complex; and repealing Sections 27.37.020,  
10 27.37.030, and 27.63.630 of the Lincoln Municipal Code as hitherto existing.

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

12 Section 1. That Section 27.37.020 of the Lincoln Municipal Code be amended to  
13 read as follows:

14 **27.37.020 Use Regulations.**

15 (a) General regulations. Any development, including building and open land uses,  
16 except farming and the sale of farm produce, shall be prohibited in the B-5 Planned Regional  
17 Business District prior to the approval of a use permit in conformance with the requirements of this  
18 chapter. B-5 Planned Regional Business District zoning shall not be permitted or granted upon any  
19 property having a total area of less than thirty acres.

1 (b) Permitted uses. A building or premises may be used only for the following purposes  
2 in the B-5 Planned Regional Business District:

3 (1) Stores or shops for the sale of goods at retail, and shops providing service for  
4 such goods;

5 (2) Business offices;

6 (3) Personal and professional services;

7 (4) Places of public assembly, entertainment, or recreation, except theaters;

8 (5) Hotels or motels;

9 (6) Banks and savings and loan associations, credit unions, and finance  
10 companies;

11 (7) Private schools, including but not limited to business or commercial schools,  
12 dance or music academies, and nursery schools;

13 (8) Restaurants;

14 (9) Service stations, and automobile washing services;

15 (10) Automobile sales establishments;

16 (11) Residential uses;

17 (12) Public or nonprofit community services;

18 (13) Dry cleaning or laundry establishment; provided, the floor area does not ex-  
19 ceed 2,000 square feet, exclusive of office and "pickup space";

20 (14) Enclosed commercial recreational facilities;

21 (15) Tailor shops, shoe repair shops, upholstery shops, printing and photocopying  
22 shops, or other, similar business establishments;

*(Does this include "live theater"?)*  
*indoor movie (?)*

1                   **(16) Indoor movie theaters (on or after January 1, 2012).**

2                   Section 2. That Section 27.37.030 of the Lincoln Municipal Code be amended to  
3 read as follows:

4                   **27.37.030 Permitted Special Uses.**

5                   A building or premises may be used for the following purposes in the B-5 Planned Regional  
6 Business District if a special permit for such use has been obtained in conformance with the  
7 requirements of this chapter and Chapter 27.63:

- 8                   (a) Historic preservation;
- 9                   (b) Public utility purposes;
- 10                  (c) Wind energy conversion systems;
- 11                  (d) **Indoor movie theaters (through December 31, 2011);**
- 12                  (e) Broadcast towers.

13                  Section 3. That Section 27.63.630 of the Lincoln Municipal Code be amended to  
14 read as follows:

15                  **27.63.630 Permitted Special Use: Indoor Movie Theaters.**

16                  Indoor movie theaters may be allowed in the B-5 District by special permit under the  
17 following conditions:

- 18                  (a) A use permit for 400,000 square feet or more of commercial floor area has been  
19 issued;
- 20                  (b) A Certificate of Occupancy has been issued for 300,000 square feet or more of  
21 commercial floor area; provided, however, that the City Council may decrease or waive this  
22 requirement upon a finding that the proposed theaters will have no significant adverse impact upon

1 the property values and existing uses in the B-4 Lincoln Center Business District, with particular  
2 emphasis upon the effect of such proposed theaters on the entertainment and cultural uses in the B-4  
3 Lincoln Center Business District; and

4 (c) Not more than one theater complex shall be allowed for each B-5 District, consisting  
5 of not more than six movie screens. On or after January 1, 2012, pre-existing indoor movie theaters  
6 approved by special permit shall be automatically converted to indoor movie theaters as a permitted  
7 use in the B-5 district and thereafter there shall be no restriction on the maximum number of theater  
8 complexes in each B-5 district and no restriction on the maximum number of movie screens in each  
9 theater complex.

10 Section 4. That Sections 27.37.020, 27.37.030, and 27.63.630 of the Lincoln  
11 Municipal Code as hitherto existing be and the same are hereby repealed.

12 Section 5. That this ordinance shall take effect and be in force from and after its  
13 passage and publication according to law.

Introduced by:

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Approved as to Form & Legality:

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

Approved this \_\_\_ day of \_\_\_\_\_, 2005:

\_\_\_\_\_  
Mayor