

FACTSHEET

TITLE: TEXT AMENDMENT NO. 15022
(Amend Section 27.62.100 of the Lincoln Municipal Code relating to Conditional Uses in Retail Sales and Services Use Group to correct an error made to subsection (h)(2).

BOARD/COMMITTEE: Planning Commission

APPLICANT: U.S. Property

RECOMMENDATION: Approval (7-0: Hove, Lust, Cornelius, Corr, Beecham, Harris, and Sunderman; Weber and Scheer absent).

STAFF RECOMMENDATION: Approval

OTHER DEPARTMENTS AFFECTED: N/A

SPONSOR: Planning Department

OPPONENTS: None present at hearing.

REASON FOR LEGISLATION: Amending Section 27.62.100 of the Lincoln Municipal Code relating to Conditional Uses in Retail Sales and Services Use Group to correct an error made to subsection (h)(2) in a previous text amendment to clarify that the floor area restriction for personal services applies to the size of the use and not to the size of the building the use is located in, and repealing Section 27.62.100 of the Lincoln Municipal Code as hitherto existing.

DISCUSSION/FINDINGS OF FACT:

1. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-4, concluding that the proposed change is in conformance with the Zoning Ordinance and the 2040 Comprehensive Plan and should not have a significant negative impact on surrounding properties.
2. On November 18, 2015, the Planning Commission agreed with the staff recommendation and voted 7-0 to recommend approval of this text amendment, which was on the consent agenda. See p. 5.

FACTSHEET PREPARED BY: Geri Rorabaugh, Administrative Officer

DATE: November 23, 2015

REVIEWED BY: David R. Cary, Acting Planning Director

DATE: November 23, 2015

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LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for November 18, 2015 PLANNING COMMISSION MEETING

PROJECT #: Text Amendment No. 15022

PROPOSAL: Amend Section 27.62.100 of the Lincoln Municipal Code, Retail Sales and Services Use Group, to correct an error made to subsection (h) (2) to clarify that the floor area restriction for personal services applies to the size of the use and not to the building in which the use is located.

CONCLUSION: The proposed change is in conformance with the Zoning Ordinance and the 2040 Comprehensive Plan, and should not have a significant negative impact on surrounding properties.

RECOMMENDATION:	Approval
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GENERAL INFORMATION:

HISTORY:

June 2012 City Council approved Ordinance No. 19733, a text amendment to Title 27 of the Lincoln Municipal Code generally to reformat and streamline the Zoning Code. Chapter 27.62, Conditional Uses was added to the Zoning Code under that ordinance.

COMPREHENSIVE PLAN SPECIFICATIONS:

P. 5.2 - Business & Economy Guiding Principles:

- Promote and foster appropriate, balanced, and focused future economic growth that maintains the quality of life of the community.
- Seek to efficiently utilize investments in existing and future public infrastructure to advance economic development opportunities.
- Provide flexibility in the marketplace in siting future commercial and industrial locations.

ANALYSIS:

1. This text amendment will change one section of the Zoning Ordinance, Section 27.62.100, Retail Sales and Services Use Group.
2. The language to be changed involves replacement of the word “building” with “use” in Section 27.62.100 (h) as follows: *Personal Services are allowed uses in the O-1, O-2, O-3, and R-T zoning district under the following conditions: (2) In the O-2, and R-T zoning districts, the floor area of said building use shall not exceed 5,000 square feet.*
3. Ordinance No. 19733 was passed in June 2012 and amended Title 27 of the Lincoln Municipal Code. That ordinance approved a number of changes to the Zoning Code. One

of the changes involved adding a new Chapter 27.62, Conditional Uses, to relocate and consolidate all zoning district use types which are allowed as permitted conditional uses in designated zoning districts into a single chapter. A new Chapter 27.06, Use Groups, was also added as part of Ordinance No. 19733. The last version of the Zoning Code prior to the amendments passed with Ordinance No. 19733 is referred to in this report as “the Zoning Code Pre-Use Groups” for ease of reference.

4. Conditions on retail sales and services uses are currently contained in Section 27.62.100, Retail Sales and Services Use Group. Section 27.62.100 (h) (2) describes the conditions under which Personal Services are allowed in the O-2 and R-T zoning districts. Section 27.62.100 (h) (2) reads: *In the O-2, and R-T zoning districts, the floor area of said building shall not exceed 5,000 square feet.*

The text that described conditions on personal service uses in Chapter 27.26, O-2 Suburban Office District and Chapter 27.28, R-T Residential Transition District of the Zoning Code Pre-Use Groups from which Section 27.62.100 (h) (2) was formed did not limit the floor area of the building in which the use was located. Where there was a floor area limitation, the floor area of the use itself (i.e., the premises) was restricted. The word "building" was therefore used in error, as it was in not in accordance with the original intent of the Zoning Code Pre-Use Groups.

5. There are no other instances in Section 27.62.100 where the maximum floor area of the building in which the retail sales or service use is regulated. However, there are several instances where the floor area of the retail sales and service use is regulated. In particular, Section 27.62.100 (h) (1) (ii) regulates the floor area of Personal Service uses within the O-1 and O-3 zoning districts as a percentage of the total square feet of floor area in the building. These precedents support replacement of the word "use" with "building" in this instance.
6. The proposed text change conforms with the intent of the current Zoning Code as well as the intent of the Zoning Code Pre-Use Groups. The change is also in conformance with the 2040 Comprehensive Plan.
7. A text change to Section 27.62.100 was previously passed in September 2012 under Ordinance No. 19773, which corrected unintentional drafting errors and omissions resulting from the reformatting and streamlining changes to the Zoning Code as amended by Ordinance No. 19733. Section 27.62.100 was amended to include the omitted provisions that in the I-1 zoning district, retail sales and services are a permitted conditional use and shall not occupy more than 20,000 square feet of floor area per business.
8. The impact of this change will be minimal on neighborhoods, as it does not alter building size regulations or the districts in which personal services can locate. This text change only regulates the square footage of personal services uses in the O-2 and R-T districts.
9. This text amendment was initiated in association with an inquiry about a commercial property in the O-2 district at 5521 Shady Creek Court in Lincoln. The owner wishes to lease one of the building's suites to a hair salon, but under the code as written, the building is too large to allow for the use of a salon.

10. The proposed change will replace the word "building" with "use" in Section 27.62.100 (h) (2) as follows:
- (h) Personal Services are allowed uses in the O-1, O-2, O-3, and R-T zoning district under the following conditions:
 - (1) In the O-1 and O-3 zoning districts:
 - (i) The services shall be located entirely within a building containing office or residential uses.
 - (ii) The services shall not exceed twenty percent of the total square feet of floor area in such building.
 - (2) In the O-2, and R-T zoning districts, the floor area of said building use shall not exceed 5,000 square feet. [emphasis added]
11. The proposed change will increase flexibility for locating personal services within buildings in the O-2 and R-T districts while restricting the square footage of the personal service use to an appropriate maximum of 5,000 square feet, as was originally intended.

Prepared by:
Rachel Jones, Planner
402-441-7603 or rjones@lincoln.ne.gov

DATE: November 4, 2015

APPLICANT: U.S. Property
129 N. 10th Street, Capitol Hall
Lincoln, NE 68508

OWNER: Shady Creek LLC, c/o Monte Froelich
129 N. 10th Street, Capitol Hall
Lincoln, NE 68508

CONTACT: Joy Urquhart
129 N. 10th Street, Capitol Hall
Lincoln, NE 68508

TEXT AMENDMENT NO. 15022

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

November 18, 2015

Members present: Beecham, Cornelius, Corr, Harris, Hove, Lust, Scheer, and Sunderman; Weber absent.

The Consent Agenda consisted of the following items: **COMPREHENSIVE PLAN CONFORMANCE NO. 15031, ANNEXATION NO. 15010 and related CHANGE OF ZONE NO. 15029 and SPECIAL PERMIT NO. 06014A, ANNEXATION NO. 15012 and related CHANGE OF ZONE NO. 15032, TEXT AMENDMENT NO. 15022, AND TEXT AMENDMENT NO. 15023.**

There were no ex parte communications disclosed.

Lust moved to approve the Consent Agenda, seconded by Harris and carried 7-0: Beecham, Cornelius, Corr, Harris, Hove, Lust, and Sunderman, voting 'yes'; Scheer declared a Conflict of Interest; Weber absent.

Note: This is final action on Special Permit No. 06014A, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days.

ORDINANCE NO. _____

1 AN ORDINANCE amending Section 27.62.100 of the Lincoln Municipal Code
2 relating to Conditional Uses in Retail Sales and Services Use Group to correct an error made to
3 subsection (h)(2) in a previous text amendment to clarify that the floor area restriction for personal
4 services applies to the size of the use and not to the size of the building the use is located in; and
5 repealing Section 27.62.100 of the Lincoln Municipal Code as hitherto existing.

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

7 Section 1. That Section 27.62.100 of the Lincoln Municipal Code be amended to read
8 as follows:

9 **27.62.100 Retail Sales and Services Use Group.**

10 A building or premises may be used for the following use types as a permitted conditional
11 use in the designated zoning districts and in compliance with the conditions of approval applicable
12 for that use type.

13 (a) Hotels and motels are allowed in the I-3 zoning district under the following conditions:

14 (1) The total square footage of such use shall not exceed ten percent (10%) of the
15 buildable square footage of the tract of land included within the boundaries of the use
16 permit assuming a floor-to-area ratio of one to four.

17 (2) Accessory uses operated by a concessionaire or lessee of an employer may occupy
18 no more than five percent (5%) of the total floor area of the hotel or motel.

19 (b) Kennels and/or Veterinary Facilities may be allowed in those zoning districts where such use
20 is designated as a permitted conditional use under a Use Group Table in Chapter 27.06, under
21 the following conditions:

22 (1) Any associated outdoor area must be located no closer than 200 feet from any R-1
23 through R-8 residential district.

24 (2) No more than 3 animals are permitted in the outdoor area at any one time.

1 (NOTE: If the above conditions cannot be met, the use may be allowed upon approval of a
2 special permit pursuant to Chapter 27.63).

3 (c) Motorized vehicle sales and/or repair/services facilities are permitted in the B-3, B-4, H-2
4 and H-3 zoning districts and Motorized vehicle services is permitted in the B-1 under the
5 following conditions:

6 (1) In the B-1 and B-3 zoning districts:

7 (i) No facility shall be permitted to locate within 100 feet of any residential use
8 or district;

9 (ii) Any facility located within 100 feet of any residential use or district which
10 was lawfully established in the B-1 or B-3 zoning district on the effective
11 date of this ordinance, shall screen the facility from such residential use or
12 district by the use of an opaque fence six feet in height, constructed of wood,
13 or of a substitute material found acceptable to the Director of Building and
14 Safety;

15 (iii) The locational or screening requirements of (i) and (ii) above shall not apply
16 when said residential use or district is across a public street from the
17 motorized vehicle sales and/or repair facility, but shall apply if said
18 residential use or district is across an alley or private drive from said facility;

19 (2) In the H-2 and H-3 zoning districts, the storage of vehicles for sale and resale is
20 permitted in the front yard except for the front twelve feet under the following
21 conditions:

22 (i) Parking barriers in accordance with parking lot design standards must be
23 provided around the storage/display area to prevent the vehicles
24 stored/displayed for sale or resale from overhanging the front twelve feet of
25 the front yard.

26 (ii) No vehicle shall be stored/displayed for sale or resale in the front yard upon
27 a raised concrete island or on a raised display structure.

28 (iii) The hood or trunk or both of vehicles stored/displayed for sale or resale in the
29 front yard shall not be open except when being inspected by a customer or for
30 servicing.

- 1 (iv) The front twelve feet of the front yard shall be devoted to shrubs and grasses.
- 2 (v) The front twelve feet of the front yard not permitted to be used for the storage
- 3 of vehicles for sale and resale shall be screened at least sixty percent from
- 4 zero feet to two feet above the surface of the lot. The design and construction
- 5 of the landscaping shall be in conformance with the Design Standards for
- 6 Screening and Landscaping except that fences may not be used to meet the
- 7 above screening requirements. If plant material is used, the density
- 8 percentage is calculated using the design size found in the City of Lincoln's
- 9 plant material list approved by the Planning Director. The landscape screen
- 10 shall be located throughout the area but far enough from the barrier so as to
- 11 be protected from the bumpers of overhanging vehicles. Entrance driveways
- 12 shall be excluded from the required screen.
- 13 (vi) No fence shall be erected in the front yard.
- 14 (vii) Lighting in the front yard shall be in conformance with the Design Standards
- 15 for Outdoor Lighting.
- 16 (viii) Any existing motorized vehicle sales facility lawfully established on the
- 17 effective date of this ordinance which does not comply with conditions (i)
- 18 through (vii) above may be continued in accordance with the provisions of
- 19 Chapter 27.61 for nonconforming uses.
- 20 (3) In the area of the B-4 zoning district from 150 feet east of 17th Street to the eastern
- 21 edge of the B-4 zoning district, motorized vehicle sales and/or repair/service facilities
- 22 are prohibited;
- 23 (d) Motor fuel sales facilities are allowed in the B-4 zoning district under the following
- 24 condition: In the area of the B-4 zoning district from 150 feet east of 17th Street to the
- 25 eastern edge of the B-4 zoning district, fuel sales facilities are prohibited;
- 26 (e) Motorized vehicle wash facilities are allowed in the B-1, B-2, B-3, B-4, H-2, and H-3 zoning
- 27 districts under the following conditions:
- 28 (1) In the B-1, B-2 and B-3 zoning districts, a self-service, coin-operated wash facility
- 29 shall not exceed four wash bays.

- 1 (2) In the H-2 and H-3 zoning districts, a self-service, coin-operated wash facility shall
2 not exceed six wash bays.
- 3 (3) In the B-2 and B-3 zoning districts, the stacking space shall not be located within the
4 required front yard.
- 5 (4) In the area of the B-4 zoning district from 150 feet east of 17th Street to the eastern
6 edge of the B-4 zoning district and in the area bounded by 10th Street, 150 feet north
7 of "P" Street, 14th Street and "N" Street, motorized vehicle wash facilities are
8 prohibited;
- 9 (f) Outdoor seasonal sales, tents and other temporary structures are allowed in the AG and AGR
10 zoning districts under the following conditions:
- 11 (1) In the AG and AGR zoning districts, roadside stands for the temporary or seasonal sale of
12 produce shall:
- 13 (i) Be located outside the city limits;
- 14 (ii) Be allowed in addition to any other main use, regardless of lot size;
- 15 (iii) Be allowed in a required yard, provided that such roadside stand shall be located no
16 closer than thirty feet to the edge of a traveled roadway;
- 17 (iv) Not be operated for more than 180 days in any one calendar year.
- 18 (g) Parking as a primary use is allowed in the O-2 and B-4 zoning districts under the following
19 conditions:
- 20 (1) In the O-2 zoning district provided that no part of the street frontage within the block
21 face on which a parking lot is proposed to be located may be zoned residential.
- 22 (2) In the area of the B-4 zoning district bounded by 10th Street, 150 feet north of "P"
23 Street, 14th Street, and "N" Street, parking as a primary use is prohibited;
- 24 (NOTE: If the above conditions cannot be met, the use may be allowed upon approval of a
25 special permit pursuant to Chapter 27.63).
- 26 (h) Personal Services are allowed uses in the O-1, O-2, O-3, and R-T zoning district under the
27 following conditions:
- 28 (1) In the O-1 and O-3 zoning districts:

- 1 (i) The services shall be located entirely within a building containing office or
2 residential uses.
- 3 (ii) The services shall not exceed twenty percent of the total square feet of floor
4 area in such building.
- 5 (2) In the O-2, and R-T zoning districts, the floor area of said ~~building~~ use shall not
6 exceed 5,000 square feet.
- 7 (i) Retail sales including mail order catalog sales are allowed in the O-1, O-3, H-3, H-4 and I-1
8 zoning districts under the following conditions:
- 9 (1) In the O-1 and O-3 zoning districts:
- 10 (i) The retail sales shall be located entirely within a building containing office
11 or residential uses.
- 12 (ii) Retail sales shall not exceed twenty percent of the total square feet of floor
13 area in such building.
- 14 (iii) Retail sales shall occupy no more than 10,000 square feet of floor area per
15 business.
- 16 (2) In the H-3 zoning district, retail sales shall occupy no more than 20,000 square feet
17 of floor area per business.
- 18 (3) In the H-4 zoning district, retail sales shall occupy no more than 30,000 square feet
19 of floor area per business.
- 20 (4) In the I-1 zoning district, retail sales and service shall occupy no more than 20,000
21 square feet of floor area per business.
- 22 (NOTE: If conditions (2), (3) and (4) above cannot be met, the use may be allowed if a
23 special permit is approved pursuant to Chapter 27.63).
- 24 (j) Sale of alcoholic beverages for consumption off the premises is allowed in the B-2 and B-5
25 zoning districts under the following conditions:
- 26 (1) Parking shall be in conformance with the provisions of Chapter 27.67; provided that
27 in the B-5 zoning district no parking spaces shall be located in that portion of any

1 required side yard or rear yard of the building containing the licensed premises that
2 abuts a residential district.

3 (2) Any exterior door opening must meet the following conditions:

4 (i) Be located at least 100 feet (as measured by the shortest, most direct distance)
5 from a day care facility, church, state mental health institution, park
6 (excluding golf courses and hiker/biker trails), or a residential district;
7 provided that, if there is an intervening exterior wall of the building
8 containing the licensed premises between the exterior door opening and such
9 day care facility, church, state mental health institution, park (excluding golf
10 courses and hiker/biker trails), or residential district, then the 100 feet shall
11 be measured from the exterior door opening, along the exterior base of the
12 building wall(s) to the point where there is no intervening exterior building
13 wall, and from that point the shortest, most direct distance to the day care
14 facility, church, state mental health institution, park (excluding golf courses
15 and hiker/biker trails), or residential district.

16 (ii) If the exterior door opening faces a residential district, then such opening
17 shall be at least 150 feet from a residential district as measured by the
18 shortest, most direct perpendicular distance. The exterior door shall not be
19 kept or propped open during the hours of operation. For purposes of this
20 section, "exterior door opening" shall mean (A) that portion of the exterior
21 wall face of the building containing the licensed premises that contains a
22 break to accommodate the exterior building door, door frame, door vestibule,
23 or door entryway area; and (B) provides public or membership access to the
24 licenses premises. "Exterior door opening" shall not apply to openings for
25 emergency exit doors required by building or safety codes, loading doors or
26 unloading doors that are not available for public or membership access in the
27 ordinary course of business.

28 (3) Vehicle stacking for a drive-through window used as any part of the permitted
29 business operation shall not be located in any required building setback from a
30 residential district.

- 1 (4) The use shall not have any amplified outside sound or noise source, including bells,
2 buzzers, pagers, microphones, or speakers within 150 feet of any residential district.
3 This shall not apply to sound sources audible only to the individual to whom they are
4 directed, such as personal pagers, beepers, or telephones.
- 5 (5) Notwithstanding any contrary provision contained in Section 27.64.010(h), the yard
6 requirements, the parking location requirements, and the exterior door opening
7 location requirements in this section shall not be adjusted by the City Council.
- 8 (6) In addition, in the B-2 zoning district, all exterior door openings of the licensed
9 premises shall be located more than 100 feet away from any parking spaces located
10 in a side or rear yard adjacent to a residential district. For the purpose of this
11 measurement, the side yard shall be 50 feet. In addition, if there is an intervening
12 exterior wall of the building containing the licensed premises between the exterior
13 door opening and such residential district, then the 100 feet shall be measured from
14 the exterior door opening, along the exterior base of the building wall(s) to the point
15 where there is no intervening exterior building wall, and from that point the shortest,
16 most direct distance to any parking spaces located in a side or rear yard adjacent to
17 the residential district.
- 18 (7) In addition, in the B-5 zoning district when the building containing the licensed
19 premises abuts a residential district, the required yards shall be met.
- 20 (k) Service and repair facilities are allowed in the R-T, B-1, B-3, and H-2 zoning districts under
21 the following conditions:
- 22 (1) The floor area of said premises not devoted to sales or office space shall not exceed
23 5,000 square feet; and
- 24 (2) All displays and merchandise shall be within the enclosure walls of the buildings.
- 25 (3) In addition, in the B-3 zoning district, appliance service and repair shall comply with
26 the following additional conditions:
- 27 (i) No appliance sales and repair facility shall be permitted to locate within 100
28 feet of any residential use or district;
- 29 (ii) Any appliance service and repair facility located within 100 feet of any
30 residential use or district which was lawfully established in this district on the

1 effective date of this ordinance, shall screen the facility from such residential
2 use or district by the use of an opaque fence six feet in height, constructed of
3 wood, or of a substitute material found acceptable to the Director of Building
4 and Safety;

5 (iii) The locational or screening requirements of (i) and (ii) above shall not apply
6 when said residential use or district is across a public street from the
7 appliance sales and repair facility, but shall apply if said residential use or
8 district is across an alley or private drive from the appliance sales and repair
9 facility.

10 Section 2. That Section 27.62.100 of the Lincoln Municipal Code as hitherto existing
11 be and the same is hereby repealed.⁴

12 Section 3. Pursuant to Article VII, Section 7 of the City Charter, this ordinance shall
13 be posted on the official bulletin board of the City, located on the wall across from the City Clerk's
14 office at 555 S. 10th Street, in lieu of and in place of newspaper publication with notice of passage
15 and such posting to be given by publication one time in the official newspaper by the City Clerk.
16 This ordinance shall take effect and be in force from and after its passage and publication as herein
17 and in the City Charter provided.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2015:

Mayor