

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for February 4, 2004 PLANNING COMMISSION MEETING

P.A.S.: Change of Zone #04003

PROPOSAL: A text amendment to Sections 27.63.680 and 27.63.685 of the Lincoln Municipal Code relating to the sale of alcoholic beverages for consumption on and off the premises as follows:

1. Deletes the provision that allows City Council to waive any of the specifically listed conditions.
2. Deletes the provision that allows the applicant to mitigate the adverse effects when the premises is less than 100' from specific uses and residential zoning districts.
3. Deletes residential uses from the uses that must be at least 100' away from alcohol sales.
4. Deletes the provision that the City Council determines the proper vehicular access to the property.
5. Adds parks, churches, and state mental health institutions to the list of uses that must be 100' away from alcohol sales.
6. Gives the Planning Commission authority to approve the special permit.

CONCLUSION: The deletion of mitigation makes the special permit less subjective, and final action by the Planning Commission will reduce the amount of time involved in the special permit process while still providing for a public hearing.

RECOMMENDATION:

Approval

HISTORY:

May 18, 2001 - The Nebraska Supreme Court affirms the City's authority to regulate the sale of alcohol by special permit.

August 15, 1997 - CZ#3064 (Ordinance #17232) was passed amending Sections 27.63.680 (on-sale) and 27.63.685 (off-sale) to include the I-3 district.

November 20, 1995 - CZ#2940 (Ordinance #16899) was passed amending Sections 27.63.680 (on-sale) and 27.63.685 (off-sale) by adding the language "unless waived by City Council."

February 27, 1995 - CZ#2877 (Ordinance #16743) was passed amending Sections 27.63.680 (on-sale) and 27.63.685 (off-sale) adding "no special permit or amendment to be required for interior expansions of existing licensed liquor premises."

July 5, 1994 - CZ#2839 (Ordinance #16627) was passed amending Sections 27.63.680 (on-sale) and 27.63.685 (off-sale) adding "Vehicular ingress and egress to and from the property shall be designed to avoid disruption."

April 11, 1994 - CZ#2808 (Ordinance #16593) was approved creating Lincoln Municipal Code (LMC) Sections 27.63.680 (on-sale) and 27.63.685 (off-sale).

ANALYSIS:

1. There have been recent applications where the licensed premises was located less than 100' away from either a residence or a residential district. Two such applications approved by the City Council were subsequently vetoed by the Mayor. Upon reconsideration, the City Council voted 5-2 to override the veto in both cases.
2. Both applicants and the City's Administration have indicated dissatisfaction with the permit process, and as a result staff was directed to draft a proposed amendment based upon discussions among the Mayor, City Council and staff
3. Currently, the provisions for either on or off-sale permits are virtually identical. Both require a 100' separation between the licensed premises selling alcohol and a residence, a residential district or a day care facility, or a mitigation plan to offset the reduced separation must be approved by the Planning Director. The separation, as well as any other provisions of the special permit can be waived by City Council.
4. This amendment proposes six changes to the Ordinance as follows:
 - A. Deletes the provision that allows City Council to waive any of the specifically listed conditions.
 - B. Deletes the provision that allows the applicant to mitigate the adverse effects when the premises is less than 100' from specific uses and residential districts.
 - C. Deletes residential uses from the uses that must be at least 100' away from alcohol sales.
 - D. Deletes the provision that the City Council determines the proper vehicular access to the property.

- E. Adds parks, churches, and state mental health institutions to the list of uses that must be 100' away from alcohol sales.
- F. Gives the Planning Commission authority to approve the special permit.
- 5. If approved, the number of potential sites for alcohol sales will decrease.
- 6. The removal of the authority of the Planning Director to approve mitigation plans serves to make the process more objective. Currently, each plan is reviewed on a case-by-case basis and the individual site characteristics determine the mitigation. As no specific mitigation standards exist, it is difficult for applicants to determine what mitigation will be acceptable.
- 7. Allowing the Planning Commission to be the approving authority means the City Council will only be involved in those cases where the Planning Commission's decision is appealed. This would result in a reduction in the amount of time involved in the special permit process of approximately 3-4 weeks.
- 8. City Council members requested that two additional uses - parks and "state mental health institutions" - be added to the Mayor's inclusion of churches, as uses that would trigger a 100' separation requirement. Staff interprets "state mental health institution" to be the Regional Center located at South Folsom Street and West Prospector Place. Schools already trigger a longer separation requirement in the State Liquor Control provisions.
- 9. The Mayor informally discussed her intent to delete the mitigation provision at the January meeting of the Mayor's Neighborhood Roundtable. The proposed amendments will be provided to the roundtable for further consideration at their next regularly scheduled meeting, which is February 12, 2004.

Prepared by:

Brian Will, AICP
Planner
January 22, 2004

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ORDINANCE NO. _____

1 AN ORDINANCE amending Sections 27.63.680 and 27.63.685 of the Lincoln Municipal
 2 Code relating to the sale of alcoholic beverages for consumption on the premises and off the premises
 3 as a permitted special use, respectively, to delete City Council waivers of the special conditions for
 4 said uses, to delete the provision allowing for mitigation of adverse effects approved by the Planning
 5 Director when an licensed premises is located 100 feet or closer to certain listed uses, to also require
 6 a licensed premises to be located no closer than 100 feet from a park, church, or state mental health
 7 institution, to delete the requirement that a licensed premise be located no closer than 100 feet from
 8 residential uses, and to delete provisions prohibiting approval of the special permits by the Planning
 9 Commission; and repealing Sections 27.63.680 and 27.63.685 of the Lincoln Municipal Code as
 10 hitherto existing.

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

12 Section 1. That Section 27.63.680 of the Lincoln Municipal Code be amended to read
 13 as follows:

14 **27.63.680 Permitted Special Use: Sale of Alcoholic Beverages for Consumption**
 15 **On the Premises.**

16 Alcoholic beverages may be sold for consumption on the premises in the B-1, B-3, H-1, H-2,
 17 H-3, H-4, I-1, I-2, and I-3 zoning districts upon the approval of a special permit. Alcoholic beverages
 18 may also be sold for consumption on the premises as an accessory use to a golf course or country
 19 club as part of a separate special permit under Section 27.63.130 approving the golf course or country
 20 club in any district where recreational facilities are allowed as a permitted use, permitted conditional

1 use, or permitted special use. A special permit for such use may be granted subject to the
2 requirements of the respective districts, all applicable ordinances, and, ~~unless waived by the City~~
3 ~~Council~~, the following conditions:

4 (a) Parking shall be provided on-site at the ratio of one space per 100 square feet of gross
5 floor area.

6 (b) The sale of alcoholic beverages for consumption off the premises shall not be permitted
7 without issuance of a separate special permit under Section 27.63.685 of this code.

8 (c) The designated area specified in a license issued under the Nebraska Liquor Control
9 Act of any building approved for such activity must be located no closer than 100 feet from a day care
10 facility, park, church, state mental health institution, or a residential district (except where such use
11 is accessory to a golf course or country club) ~~or residential use, or, if a lesser distance, must mitigate~~
12 ~~any adverse effects of the reduction in distance through landscaping, screening, or other methods~~
13 ~~approved by the Planning Director.~~

14 (d) Any lighting on the property shall be designed and erected in accordance with all
15 applicable lighting regulations and requirements.

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

18 (f) The use shall not have any amplified outside sound or noise source, including bells,
19 buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not
20 apply to sound sources audible only to the individual to whom they are directed, such as personal
21 pagers, beepers, or telephones.

1 (g) No access door to the business, including loading or unloading doors, shall face any
2 residential district if such doors are within 150 feet of the residential district. This shall not apply to
3 emergency exit doors required by building or safety codes. No door facing a residential district shall
4 be kept open during the operation of the establishment.

5 (h) Vehicular ingress and egress to and from the property shall be designed to avoid, to
6 the fullest extent possible ~~as determined by the City Council~~, disruption of any residential district.
7 Particular attention shall be given to avoiding designs that encourage use of residential streets for
8 access to the site instead of major streets.

9 (i) All other regulatory requirements for liquor sale shall apply, including licensing by the
10 state.

11 (j) The City Council may consider any of the following as cause to revoke the special
12 permit approved under these regulations:

13 (1) Revocation or cancellation of the liquor license for the specially permitted
14 premises;

15 (2) Repeated violations related to the operation of the permittee's business; or

16 (3) Repeated or continuing failure to take reasonable steps to prevent unreason-
17 able disturbances and anti-social behavior on the premises related to the operation of the permittee's
18 business including, but not limited to, violence on site, drunkenness, vandalism, solicitation, or litter.

19 ~~Planning Commission review and City Council authorization is required for this use; provided,~~
20 ~~however, that Notwithstanding the above,~~ no special permit or amendment thereto shall be required
21 for interior expansions of existing licensed liquor premises.

1 Section 2. That Section 27.63.685 of the Lincoln Municipal Code be amended to read

2 as follows:

3 **27.63.685 Permitted Special Use: Sale of Alcoholic Beverages for Consumption**
4 **Off the Premises.**

5 Alcoholic beverages may be sold for consumption off the premises in the B-1, B-3, H-1, H-2,
6 H-3, H-4, I-1, and I-3 zoning districts upon the approval of a special permit. A special permit for such
7 use may be granted subject to the requirements of the respective districts, all applicable ordinances,
8 and, ~~unless waived by the City Council,~~ the following conditions:

9 (a) Parking shall be in accordance with Section 27.67.020 of the Lincoln Municipal Code.

10 (b) The sale of alcoholic beverages for consumption on the premises shall not be permitted
11 without issuance of a permit under Section 27.63.680 of this code.

12 (c) The licensed premises of any building approved for such activity must be located no
13 closer than 100 feet from a day care facility, park, church, state mental health institution or a
14 ~~residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the~~
15 ~~reduction in distance through landscaping, screening, or other methods approved by the Planning~~
16 ~~Director.~~

17 (d) Any lighting on the property shall be designed and erected in accordance with all
18 applicable lighting regulations and requirements.

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

21 (f) The use shall not have any amplified outside sound or noise source, including bells,
22 buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not

1 apply to sound sources audible only to the individual to whom they are directed, such as personal
2 pagers, beepers, or telephones.

3 (g) No access door to the business, including loading or unloading doors, shall face any
4 residential district if such doors are within 150 feet of the residential district. This shall not apply to
5 emergency exit doors required by building or safety codes. No door facing a residential district shall
6 be kept open during the operation of the establishment.

7 (h) Vehicular ingress and egress to and from the property shall be designed to avoid, to
8 the fullest extent possible ~~as determined by the City Council~~, disruption of any residential district.
9 Particular attention shall be given to avoiding designs that encourage use of residential streets for
10 access to the site instead of major streets.

11 (i) All other regulatory requirements for liquor sale shall apply, including licensing by the
12 state.

13 (j) The City Council may consider any of the following as cause to revoke the special
14 permit approved under these regulations:

15 (1) Revocation or cancellation of the liquor license for the specially permitted
16 premises; or

17 (2) Repeated violations related to the operation of the permittee's business.

18 ~~Planning Commission review and City Council approval is required for this use; provided,~~
19 ~~however, that~~ Notwithstanding the above, no special permit or amendment thereto shall be required
20 for interior expansions of existing licensed liquor premises.

21 Section 3. That Sections 27.63.680 and 27.63.685 of the Lincoln Municipal Code as
22 hitherto existing be and the same are hereby repealed.

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Section 4. That this ordinance shall take effect and be in force from and after its

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passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

<p>Approved this ___ day of _____, 2004:</p> <p>_____</p> <p>_____ Mayor</p>
