



LINCOLN
Planning Department



MEMO

Date: July 8, 2024
To: The Mayor's Neighborhood Roundtable
From: Brian Will, Planner
Subject: Change Alcohol Special Permitted Uses to Conditional Uses

Proposal

This memo outlines a proposal to change the alcohol special permitted uses to conditional uses. There recently have been several instances where the process needed to apply for and receive approval for a special permit for alcohol sales is out of step with the State liquor licensing process and the City Council's process for approving liquor licenses and manager applications. The State is unwilling to sync their approval process with the City's, which has caused confusion and delay with applications. Alcohol special permits are nearly always approved because applications that cannot meet the zoning requirements are not allowed to proceed, and the zoning conditions, which would remain the same, are adequate to protect the interests of the community. This change to conditional uses will aid the City Council's reviews of liquor licenses and manager applications by having the zoning review completed at the time of the liquor license hearing, and City resources could be put to more productive use by not needing to bring alcohol special permits to a public hearing. This change would also save time and money for applicants.

Background

The special permits in the Zoning Ordinance regulating the sale of alcohol for consumption both on and off the premises were adopted in 1994. Since then, the regulations have been amended several times, but most significantly in 2004. Prior to 2004 both on and off the premises special permits required City Council approval and included a provision that allowed the siting criteria to be adjusted and approved by the City Council. It read as follows:

Pre-2004 Amendment Text - "The licensed premises of any building approved for such activity must be located no closer than 100 feet from a day care facility, a residential district or residential use, or, if a lesser distance, must mitigate any adverse effects of the reduction in distance through landscaping, screening, or other methods approved by the Planning Director."

The 2004 change required that the licensed premises be 100', without any option for reduction, from a first-floor residential use, park, church, state mental health institution, or residential

zoning district. This amendment also granted the Planning Commission the authority to approve the permits and City Council consideration was no longer required. It reads as follows:

Post-2004 and Current Text - *“The designated area specified in a license issued under the Nebraska Liquor Control Act of any building approved for such activity must be located no closer than (i) 100 feet from the property line of a premises used in whole or in part for a first-floor residential use, day care facility which is not the residence of the childcare provider, park, place of religious assembly, or state mental health institution, or (ii) 100 feet from a residential district (except where such use is accessory to a golf course, country club, farm winery, or market garden).”*

With the ability to vary the 100' separation gone, there is no variability to the special permits. That is, if a proposed premise meets all the requirements the owner can apply for a special permit. Those that do not meet all the criteria cannot apply. Given the number and specificity of the criteria, the City Attorney's Office at the time of this amendment noted that an application that complied with all the criteria would be difficult to deny.

The result of the 2004 amendment is that the alcohol special permits function like conditional uses. Conditional uses exist in all zoning districts and require no formal approval by the City, only compliance with the stated conditions. Conversely, any use that doesn't comply with all of the conditions is not allowed. Like conditional uses, there is little room for any subjectivity to be applied to the review process of the alcohol special permits. A premise must meet all the criteria to even apply, and for those that do, there is a presumption of approval given the number of conditions being met.

The sale of alcohol has always been a permitted use in the B-4 Lincoln Center Business zoning district, and a conditional use in the B-2 Planned Neighborhood Business and B-5 Planned Regional Business districts since 2004. As a conditional use in those two districts no special permit is required. Those premises which meet the conditions are allowed without further review on the part of the City or delay caused to the applicant. Therefore the City is already approving alcohol sales as a conditional use in these zoning districts.

Recent Experience

Since the 2004 amendment not a single special permit for on- or off-sale has been denied by the City. There have been a total of 120 special permit applications since then, and 118 have been approved. The remaining two were withdrawn by the applicant. No applications have ever been denied.

Over the 30 years that have passed since their inclusion in the code in 1994, the vast majority of the alcohol special permit applications submitted have little real impact relative to the siting of the sale of alcohol in areas of concern. Most are in intensive zoning districts where such uses are anticipated and encouraged to locate.

The confusion caused for applicants is worth noting. Most are aware that a liquor license is required by the State and proceed directly to the State Liquor Commission to make an application. However, most are not aware that a special permit is required by Lincoln's Zoning Ordinance. The State does not inform prospective licensees in Lincoln of the zoning requirement despite having been asked several times by City staff to do so.

In practice the first notice of a new alcohol sales location the City receives is typically when the license application is forwarded from the State to the City Clerk to schedule for the City Council's review and recommendation. City staff reviews each application and among other things notes whether it is compliant with the Zoning Ordinance. For many that means a special permit is required and the applicant is made aware of this fact.

Timing becomes an issue as the State has an internal processing window of 45 days from the date of application to decision. Given the time involved to process the application at the State, have that application forwarded to the City Clerk, perform an internal review and then notify the applicant of the disposition of the application, there is not enough time for the applicant to submit an application for a special permit and gain Planning Commission approval in a parallel timeframe.

To make application to the City for a special permit, the following items must be submitted:

- A completed zoning application form;
- a brief narrative explaining the application;
- a site plan;
- and the application fee of up to \$1,109.
- applications must be submitted approximately 30 days in advance of a Planning Commission meeting to be considered.

Due to these time constraints the City is often placed in the position to either recommend denial of the liquor license (due to the lack of a special permit) or approval subject to the applicant following up with the City to acquire a special permit. The added time to apply for the special permit and take it to a public hearing at Planning Commission also causes delays in the issuance of building permit for those that need one.

Of those conditional approvals of the liquor license that are required to apply for the special permit, many do apply for the special permit, but not all. These cases then create an enforcement issue for the City by having to track those needing a special permit to ensure they follow up and apply.

Solution

Since no special permit for the sale of alcohol has been denied since the 2004 amendment was adopted, and with the significant list of requirements needed for approval, there is a presumption of approval with alcohol sales special permits. This approval process therefore already acts like a conditional use.

Conditional approval provides the same protections afforded by the special permit because all the requirements will remain intact. A conditional use relieves the City of the burden of processing applications to go to a hearing at Planning Commission. This would save applicants money and the resources necessary to make an application, it would save time for all parties involved, and the related licensing process with the State and City would be better aligned with the required zoning review.

In contrast to special permits, there is no separate application for a conditional use. Conditional uses are simply reviewed at the time of building permits, or in this case during the review of liquor licenses. No application or fee is required to be submitted by the applicant.

With the number of years of experience the City has with these permits, it is with a high degree of confidence that Planning staff recommends making both special permits for on and off-sale alcohol conditional uses while still preserving the original intent to ensure land use compatibility.

For reference, the following are the existing conditions that Planning recommends be transferred to the conditional use chapter.

LMC Section 27.63.680

The list of criteria for the sale of alcohol for consumption on the premises per the special permit 27.63.680 are as follows:

- a. The sale of alcoholic beverages for consumption on the premises may be allowed in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2, and I-3 zoning districts and on the premises of a restaurant in the O-3 district upon the approval of a special permit subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:
 1. Parking shall be in conformance with Chapter 27.67.
 2. The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a separate special permit under Section 27.63.685 of this code.
 3. The designated area specified in a license issued under the Nebraska Liquor Control Act of any building approved for such activity must be located no closer than (i) 100 feet from the property line of a premises used in whole or in part for a first-floor residential use, day care facility, park, place of religious assembly, or state mental health institution, or (ii) 100 feet from a residential district (except where such use is accessory to a golf course, country club, farm winery, or market garden).
 4. Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.
 5. Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.
 6. The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.
 7. No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or

safety codes. No door facing a residential district shall be kept open during the operation of the establishment.

8. Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.
 9. All other regulatory requirements for liquor sale shall apply, including licensing by the state.
- b. In addition, a special permit may be granted to allow alcoholic beverages to be sold for consumption on the premises of a restaurant in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2, I-3, and O-3 districts subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:
1. The Permittee as the holder of any liquor license issued on the premises pursuant to a special permit for the sale of alcoholic beverages for consumption on the premises of a restaurant shall agree in writing to voluntarily surrender and consent to the cancelling of the liquor license in the event the special permit is revoked by the City. If the Permittee is not the holder of the liquor license, the Permittee shall require such holder to agree in writing to voluntarily surrender and consent to the cancelling of the liquor license in the event the special permit is revoked by the City. In addition, the City shall request that the Nebraska Liquor Control Commission issue the liquor license contingent upon the premises having such special permit.
 2. The restaurant shall be located at least 25 feet away from a residential zoning district.
 3. Gross sales from the sale of alcoholic beverages shall not exceed forty percent (40%) of the gross sales of food and beverages. Upon request of the City, the license holder/ operator shall provide sales receipts for the past six (6) months for the purpose of demonstrating that no more than 40% of the restaurant's gross sales are derived from the sale of alcohol
 4. The restaurant shall serve full-course meals as defined by *Neb. Rev. Stat. § 53-123.04(c)(3)* during the hours of operation.
 5. Hours of operation must not commence prior to 8:00 a.m. and shall end no later than 11:00 p.m.
 6. Hours of outdoor operation must not commence prior to 8:00 a.m. and shall end no later than 10:00 p.m.
 7. The restaurant shall not have any gaming devices or self-serve vending. Gaming devices include pool tables, dart boards, or keno. Self-serve vending includes candy machines and drink machines that use electricity.
 8. No drive-through windows shall be allowed.

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

*Without re-stating them all, the provisions for the sale of alcohol for consumption off the premises are essentially the same as on-sale except: Required parking is per the underlying zoning district; there is no restaurant exception; and off-sale is not allowed in the O-3 nor the I-2.

Indian Village Walk Audit

Thursday, Aug. 29, 2024

Route 1

Beattie Elementary–Boosalis Trail

2–4 p.m.

Route 2

Arapahoe Garden–Van Dorn Park

4–6 p.m.

The Indian Village Neighborhood Association is committed to fostering a safe and connected neighborhood. As part of our ongoing efforts, we will conduct a walk audit (two routes) to enhance the safety of our community.

A walk audit is a group activity that assesses the safety, comfort, and accessibility of a walking environment for pedestrians. The goal is to identify issues that may impact people of all ages and abilities, and to propose recommendations for improvement. We hope you'll join us Aug. 29 to walk one or both routes to help make Indian Village a safer neighborhood.

Sign up to participate at
www.indianvillagena.com



**Indian
Village**
NEIGHBORHOOD
ASSOCIATION



Mayor's Neighborhood Roundtable Meeting Notes

July 8, 2024

Chairperson Tracy Corr called the meeting to order at 5:32 p.m.

Attendees introduced themselves and what neighborhood they were representing.

Mayor Gaylor Baird was attending another meeting and therefore could not be present. Jon Carlson provided an update in her absence. He reminded the group that City Council would be hearing testimony on the Mayor's proposed biennial budget on Monday, August 5, 2024, starting at 3 p.m. He encouraged attendees to write a letter in support or testify so City Councilmembers heard from both sides. City Council will vote on the budget August 26, 2024.

Brian Will from the Planning Department presented a zoning text amendment to convert the special permit for the sale of alcohol to a conditional use. He began the presentation by stating this is a change in process. No rules will be modified as a result of this change.

In the City of Lincoln, alcohol sales are not allowed everywhere and anywhere. For example, alcohol sales are not allowed in residential districts. In comparison, both on-sale and off-sale alcohol sales are allowed by right in the B4 district, which is the downtown area of the City. In some zoning districts, such as B2 and B5, alcohol sales are a conditional use already. B2 and B5 zoning districts are newer regional shopping centers. Brian gave examples of 70th & Pioneers, Edgewood, and Appalachian Way. A special permit is needed for the remaining zoning districts. It was also noted that a separate special permit is needed for on-sale and off-sale.

Currently there is a minimum spacing requirement from residential uses, daycares, churches, parks, mental health institutions and an establishment selling alcohol. This requirement will not be changing with this text amendment.

Brian gave a brief history of alcohol sales and zoning. Originally, City Council could adjust the aforementioned spacing requirements. This practice created a lot of controversy and raised concerns that not all businesses were being treated equitably. In 2004, the regulations were updated so that the spacing could not be varied and made the Planning Commission, instead of the City Council, the final authority. If all conditions are met to sell alcohol, the permit cannot really be denied. If the requirements (lighting, noise, spacing, etc.) cannot be met, a business should not even apply. A business can pay up to \$1,100 for a City of Lincoln permit to sell alcohol.

Since 2001, there have been 120 applications. 118 of those have been approved and two were withdrawn.

Brian stated that the special permit process for alcohol sales is already functioning as a conditional use. This is primarily because if the applicant meets the requirements, they will more than likely be granted approval. If they do not meet the expectations, they do not apply.

Therefore, the proposed text amendment should make it easier for business owners as well as save them time and money.

Lincoln is the only city in the state that requires a special permit to sell alcohol in addition to a state liquor license. This proposal would remove the extra requirement.

The State Liquor Commission has 45 days from the date of application to approve or deny a liquor license. Changing the sale of alcohol from a special permit to a conditional use will result in a quicker response time from the City of Lincoln in order to meet the 45-day requirement. Applications will still be reviewed internally by City of Lincoln staff before going to City Council. If an application does not meet all of the criteria, the business can ask for conditional approval.

Approval of this text amendment will mean the City of Lincoln will lose its ability to revoke a special permit for the sale of alcohol. Brian noted that since 2001 (when he started with the City), the City has never pursued this course of action. However, the State can still revoke a permit to sell alcohol and the City could initiate that process.

In summary, the proposed text amendment to change the sale of alcohol from a special permit to a conditional use streamlines the bureaucratic process, eliminates ambiguity and increases efficiency for both the City and the business owner.

Dick Piersol from the Country Club Neighborhood asked if there would still be a distinction between on and off sale designations. Brian Will confirmed.

Kyle from the Bethany Neighborhood asked how the code would be updated to reflect this change. Brian indicated that there would be no changes to the code except eliminating the words special permit and inputting conditional use in its place.

Kyle also inquired if the number of establishments would increase due to this change. Brian did not expect any increase.

Brian reiterated that the Planning Department will still review all applications for businesses intending to sell alcohol to ensure they meet the minimum criteria.

The proposed text amendment is scheduled to go before the Planning Commission on July 24, 2024. After that, it will go to City Council for final approval in August.

Announcements

- Eastridge Neighborhood will have a coffee truck at the corner of Randolph and Mulder Drive from 8 – 10:30 a.m. on July 13, 2024.
- The Prescott Neighborhood will have Kona Ice at the Bishop Heights Park on July 17, 2024, between 6 and 7:30 p.m.
- Indian Village and Irvingdale Neighborhood Associations are having a joint pool party at Irvingdale Pool on July 23, 2024, from 6:30 – 8 p.m.
- Nebraska Disability Pride will be celebrating 34 years since the signing of the Americans with Disability Act with an event at the Antelope Park Band Shelter on July 27, 2024, between 10 a.m. and 2 p.m.

Peter Hind, Urban Development Director, thanked Wynn Hjermsstad for her 32 years of service to the City of Lincoln. She has worked under six different mayors and attended 380 Mayor's Neighborhood Roundtable meetings. Thanks, Wynn! We will miss you.

Peter then introduced Stephanie Rouse as the new Community Development Director. Stephanie has been working in the City of Lincoln Planning Department for several years. She and Wynn have sat on a lot of the same committees which should make the transition easier.

Stephanie stated that the updated Design Standards were going to City Council for approval on Monday, July 15, 2024.

A question was asked about Complete Streets and how the work will move forward. David Cary, Planning Director, stated the work will continue and he will decide who it is assigned to.

Chairperson Tracy Corr adjourned the meeting at 6:24 p.m.