

BRIEFING NOTES

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 21, 2017, Bill Luxford Studio, Room 113, County-City Building, 555 South 10th Street, Lincoln, Nebraska.

MEMBERS IN ATTENDANCE: Tracy Edgerton, Deane Finnegan, Maja Harris, Chris Hove, and Dennis Scheer; (Tom Beckius, Tracy Corr, Sandra Washington, and Ken Weber absent).

OTHERS IN ATTENDANCE: David Cary, Steve Henrichsen, Brian Will and Amy Huffman of the Planning Department; Jon Carlson of the Mayor's Office.

STATED PURPOSE: Briefing on “**Alcohol Policy Review and Public Input**” by Planning staff.

Chair Chris Hove called the meeting to order and acknowledged the posting of the Open Meetings Act in the back of the room.

Will said this is the second briefing in a series of informational meetings related to the regulation of alcohol sales. A third briefing is planned. These sessions came about in response to two recent proposals to amend the alcohol zoning regulations. The first came from an application associated with the Walgreens at 48th and O Streets. The applicant requested to reduce the required separation to 50 feet and requested an added provision that the distance be measured to the main retail entrance rather than to the building. Currently, the premises must be 100 feet away from residential areas. That amendment was denied by the City Council. Another amendment was submitted on behalf of Open Harvest at 16th and South Streets. It is similar in that it seeks to modify the way the separation distance is measured to the premises. It can be likened to a provision in the on-sale special permit process where there is a restaurant exception to allow alcohol sales within 25 feet of residential when the use is deemed appropriate. The Open Harvest is similar except it is for off-sale. They seek to reduce the separation to 25 feet, measured from the property line to the front door. Those requested changes were not chosen out of the blue, but coincide with regulations for alcohol sales in the B-2 and B-5 Districts. In light of these proposals, it was determined that it was time to step back and allow an opportunity to become better informed and to get a better perspective on the background of these issues.

The purpose of today's hearing is to hear from those in the community who are interested. There are many stakeholders and some disagreement is involved. Prior to today, parties that showed interest were contacted and informed of this process, in order to communicate the intent of these briefings. It was also to assure them that, at this time, Staff is making no recommendations, nor did we enter this process with the notion that some provision will be proposed. The purpose is for the benefit of the Planning Commission to provide better perspective on the entire topic.

Will asked that in the interest of time, testimony be limited to five minutes per person. He noted that today is not intended to be a question and answer session; the goal is to hear comments. If there are questions, it is suggested those be brought to Staff, who will attempt to answer and bring the information forward at the next briefing, tentatively scheduled for August 2, 2017.

Will concluded by noting that previously received comments from Alene Swineheart, past member of the Open Harvest Board and current Irvingdale Neighborhood Association member, and from Shawn Ryba, Executive Director of the South Downtown Organization, have been provided to Commissioners and are part of the public record. All information will be available on the Planning Department website later this

month. There are simultaneous reviews occurring at the staff, City Council, and Internal Liquor Commission levels.

Public Comment Session:

Conan Schafer, Liquor Investigator for Lincoln Police Department, said that as Sargent at Arms, he is always present at City Council meetings for liquor license hearings. When the State receives an application for a liquor license, they do not evaluate for liability, but only make sure all documentation is correct. The liability aspects are completed by State Patrol and local City or County Clerks and law enforcement, as appropriate. When necessary, Planning Department also reviews the application in case there is need for a special permit. The State Patrol evaluates whether or not State statutes are met, including whether an applicant has a criminal background. Schafer reviews applications at the City level to make sure the applicant has ownership or leasing rights. The majority of applicants meet the qualifications. All information is communicated to the State Patrol. If an application is flagged for any reason, it goes to a hearing at the Liquor Commission. By the time it gets to City Council, the review is done and a letter is issued on behalf of the Chief. Police do not make any recommendation for approval or denial; we just provide the facts. City Council recommends approval or denial to the State. If they recommend denial, that is grounds for a hearing at the Liquor Commission. Local Building and Safety, Health, and Fire Departments are also involved in various inspections.

Will noted that only a portion come before Planning Commission under the special permit process. There are many licenses approved in areas where alcohol sales are a permitted use.

Russ Irwin, 3274 Merrill, Clinton Neighborhood Association, stood to be recognized in favor of keeping the 100-foot separation rule as-is.

Pat Anderson-Sifuentez, 1500 S. 11th Street, appeared as and Everett Neighborhood resident and an employee of Neighborworks Lincoln. Neighborworks has invested much time and effort in the N. 27th Street corridor, including the Clinton, Hartley, and Malone neighborhoods, among others. That area was chaotic when there were more liquor stores in the area. There is a reason a police station is located there. It has since been changed and been cleaned up. One business at 27th and P Streets wanted to do an expansion but chose not to add liquor sales, believing that it brings more problems. Some areas are just not appropriate for off-sale. In these older neighborhoods, there are no covenants or planned community developments. Weakening the alcohol regulations could destabilize neighborhoods and are contrary to the goals of promoting home ownership, rehabilitation and community building. The City should maintain and strengthen alcohol spacing regulations. We rely on these zoning rules to help control the proliferation of alcohol sales into inappropriate areas and feel that the rules are not unduly restrictive to businesses. In the 11th and Washington area, there are 8 places that sell alcohol within 8 blocks. There is a correlation between alcohol sales and number of police calls. She implores Commissioners to consider the big picture instead of a single business. It has been proven that waivers are not an effective way to deal with these issues.

Marti Lee, 6435 Lexington, Neighborworks Lincoln, noted there are a number of markets up and down 27th Street that do not sell alcohol. There are plenty of locations that are grandfathered in. Making a broad change will negatively impact all of the areas that organizations like Neighborworks have worked years to stabilize.

Dan Marvin, 5918 Rolling Hills, stated he is a past member of Planning Commission, a former City Council member, and of the Country Club Neighborhood Association. Alcohol can be purchased almost anywhere these day. Relaxing the standards would open this up to hundreds more locations. In the 1990s, many locations, such as gas stations, were considered. As a retail operation, they may ask why they are different from any other retail. The answer is that the buyers are not the same. Alcohol can now be sold until 2:00 a.m. People often purchase alcohol right after visiting bars. This is disruptive in neighborhoods.

It would be very difficult to undo this action. Just look at the community of Whiteclay as an example. Zoning controls are the City of Lincoln's means of exercising control. That is a big deal. 100 feet was determined, after much thought and discussion, to be enough to keep late night traffic away from residential neighborhoods. If a place like a pharmacy could say they sell milk, bread, and other groceries, you can see how people could keep cutting holes in the laws and weakening them even further. This could ultimately lead to an elimination of local control. He advised that Commissioner be very cautious about making this change and does advocates against it.

James Friedman, 1505 A Street, President of Near South Neighborhood Association, came forward to express that his Neighborhood Association Board is in opposition to weakening the spacing requirements. Allowing waivers would also have negative impact. Places with alcohol sales often stay open later, have more lights, noise, litter and complaints. Property values suffer. The current 100-foot separation is effective and has protected neighborhoods for many years. Near South was part of the process to eliminate waivers in 2004. We value our neighborhood businesses and actively support them. It is true that Open Harvest and Walgreens would both have sales, but the larger impact must be the deciding factor. Open Harvest has been asking for nearly 10 years, without success, yet they continue to operate and neighbors continue to shop there. It is puzzling that they would ask for any kind of exemption that could hurt the community as a whole when that goes against their mission. He wonders what the dividing line is between them and any other kind of business that might try for a liquor license, like a dollar store or pharmacy.

Brandee Payne, 1618 South Street, Open Harvest Grocery, acknowledged that it is important to care for the whole city. At this point, there is no waiver option, so the only course of action left is to go through the text amendment process. There are also taprooms that may want to locate in and revitalize older, existing neighborhoods, and they would not be allowed for the same reason. Competition with natural groceries in Lincoln has blown up in the last five years, with places like Trader Joe's, Natural Grocers, Fresh Thyme, Whole Foods, and now Costco entering the market. Open Harvest has been trying to find a way to get a liquor license for 10 years and must now ask if the co-op will still be around in the next 10 years without being able to be competitive. Sales have dropped 17% and the customer count is down by 21,000 just since Whole Foods opened. People may stop at another business to pick up their local wine or beer for dinner, intending to come to Open Harvest for groceries, but end up buying from the same store where they picked up the alcohol.

Payne went on to say that Open Harvest knows it is of utmost importance to protect neighborhoods and it is their mission to help them be healthy and vibrant. We tabled our proposed text amendment so this public informational process could happen. Groceries are very clearly defined in our proposal and no pharmacy would meet the definition. Our proposed waiver would be enforced the same way the restaurant exemption is. 40% of sales at Open Harvest come from within a mile and 70% within three miles of the store, so it is clear that it serves an underserved area, particularly in walkability. Craft breweries have grown by 150% and we seek a symbiotic relationship with that growth. The City emphasizes local foods and community gardens. Open Harvest is the only co-op in the state. Local goods make up 30% of sales which is easy for others during the summer months, but not year-round. In our proposed amendment, percentage of sales that must come from food products is clearly defined. That bumps out many other types of businesses, for example, convenience stores, though it should be noted that convenience stores are allowed to sell liquor. This would not negatively impact neighborhoods any more than allowing alcohol sales at neighborhood restaurants did.

Harris asked if questions should be saved for the August 2nd briefing. She wondered if a proposal for change would be coming forward at that time. Will said it will just be a briefing based on comments and questions that arise today.

Jeremey Memming, 1418 Cheyenne Street, Indian Village Neighborhood Association and Neighborworks, came forward representing his neighborhood board. While they see the benefit that this could bring to some local business, it is important to consider the change, City-wide. Their needs to be assurance that the change will not create a negative ripple effect.

Cary said the purpose of today's hearing was to allow time for stakeholders and representatives to state their points of view and to be part of the process. We are glad to see those present today. Brian Will has had numerous meetings with stakeholders. We plan to meet August 2nd to continue this discussion. Please submit unanswered questions or suggestions for any topic that you would like more information on; then we can be as prepared as possible to answer questions. When it comes to the pending application from Open Harvest, they have agreed to not move forward in order to allow for these discussions; it may come forward formally after. The point is to make sure Commissioners are as prepared as possible to make an informed decision for any type of proposal that comes forward. The history is quite lengthy, so hopefully this information will make the implications of certain proposals clearer.

Will noted that all of these meetings are public and anyone can submit written comments at any time; however, today was the day for this format of public testimony.

There being no further business, the meeting was adjourned at 12:35 p.m.

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