

**AGENDA FOR  
CITY COUNCIL MEMBERS' "NOON" MEETING  
MONDAY, JANUARY 12, 2004  
Immediately Following Director's Meeting  
CONFERENCE ROOM 113**

**I. MINUTES**

1. Minutes from Council Members' "Noon" Meeting of January 5, 2004.

**II. COUNCIL REPORTS ON BOARDS, COMMITTEES, COMMISSIONS AND CONFERENCES**

- \*1. Lincoln Partnership for Economic Development Investors' Meeting (Camp)
- \*2. Public Building Commission (Camp/Cook)
- \*3. ISPC Meeting (Camp)
- \*4. Joint Budget Committee Meeting (McRoy/Werner) - NO MEETING IN JANUARY

**OTHER MEETINGS REPORTS:**

**III. APPOINTMENTS/REAPPOINTMENTS - NONE**

**IV. REQUESTS OF COUNCIL FROM MAYOR - NONE**

**V. MEETINGS/INVITATIONS**

1. You are invited to The World Premiere of 'Learning For A Lifetime' - Now playing at the new Southeast Community College Continuing Education Center - On Tuesday, January 20, 2004 at 4:00 p.m. - at 301 S. 68<sup>th</sup> Street - (See Invitation)
2. You Are Invited .... National Abstinence speaker and trainer, Mike Worley - Mike's presentations will include topics of interest for professionals involved with health and abstinence education, religious, health and civic leaders in our community and a special program for high school youth during the day - On Thursday, April 22, 2004 from 7:00 p.m. to 9:00 p.m. - A FREE program will be provided at the Champion's Club - Special planning sessions for Mike's presentations will be held on Thursday, Jan. 8<sup>th</sup>; Thursday, Feb. 12<sup>th</sup> and Thursday, March 11<sup>th</sup> from 6:30 p.m. to 8:30 p.m. at DaVinci's at 120 North 66<sup>th</sup> - RSVP, If you can attend any of these planning sessions, please call Saint Elizabeth Telephone Line to Care at 219-7000. - (See Invitation)

3. Updowntowners Membership Luncheon on Wednesday, January 14, 2004 from 11:45 a.m. to 1:00 p.m. at Lazlo's-Hickory Room, 710 "P" Street - Cost is \$10.00 - RSVP to Heather Stewart at 434-6507 - (No Shows will be charged \$10.00) - (See Invitation)
4. The Lincoln Chamber of Commerce invites you to attend the following Ribbon Cuttings: - Please RSVP to Jaime Henning at 436-2354 or E-Mail:
  - A.) Optical Delights, 5600 S. 56<sup>th</sup> Street, Suite 7 on Thursday, January 15, 2004 at 10:00 a.m.
  - B.) Bank First Mortgage Lending, 6800 S. 32<sup>nd</sup> Street on Thursday, January 15, 2004 at 3:00 p.m.
  - C.) Downtown Physicians Group, 1800 "O" Street, Suite 220 on Wednesday, February 11, 2004 at 4:30 p.m.
5. Invitation from Kathy Campbell - Ribbon Cutting/Dedication for Cedars Northbridge Community Center on Friday, January 16, 2004 at 11:00 a.m. at 1533 N. 27<sup>th</sup> Street (just north of Police Station) - Tours and refreshments from 10:00 a.m. to 11:00 a.m. - Remarks by Mayor Coleen Seng and Congressman Doug Bereuter. (See Invitation)

#### **VI. MISCELLANEOUS**

1. Discussion on "Common Agenda Items". (See Attached E-Mail)
2. Discussion on Special Liquor Permits - (100 ft. Rule/Mitigation)(45 min).
3. Discussion on Televising all Council proceedings. (Requested by Terry Werner) (See Attached E-Mail)

#### **VII. CITY COUNCIL MEMBERS**

#### **VIII. ADJOURNMENT**

**\*HELD OVER UNTIL FEBRUARY 2, 2004.**

MINUTES  
CITY COUNCIL MEMBERS' "NOON" MEETING  
MONDAY, JANUARY 12, 2004  
CONFERENCE ROOM 113

*Council Members Present:* Jon Camp, Chair; Terry Werner, Vice-Chair; Jonathan Cook, Glenn Friendt, Patte Newman, Ken Svoboda; *ABSENT:* Annette McRoy

*Others Present:* Mayor Coleen Seng; Mark Bowen, Ann Harrell, Cori Kielty, Mayor's Office; Dana Roper, City Attorney, Joel Pedersen, Law Department; Police Chief Tom Casady; Marvin Krout, Planning Director; Jon Carlson, Planning Commission Member; Eddy Powers, Student from McCallister College in St. Paul Minnesota, *shadowing Council Member Werner*; Joan Ray, Council Secretary; Nate Jenkins, Lincoln *Journal Star* representative.

**I MINUTES**

1. Minutes from Council Members' "Noon" Meeting of January 5, 2004.

Chair Camp requested a motion to approve the above-listed minutes. Ken Svoboda moved approval of the minutes, as presented. The motion was seconded by Terry Werner and carried by the following vote: AYES: Camp, Cook, Friendt, Newman, Svoboda, Werner; NAYS: None; ABSENT: McRoy

**II. COUNCIL REPORTS ON BOARDS, COMMITTEES, COMMISSIONS AND CONFERENCES -**

- \*1. LINCOLN PARTNERSHIP FOR ECONOMIC DEVELOPMENT INVESTORS' MEETING (Camp) - Mr. Camp, stating that the reports could be brief, decided not to hold them over until the next "Noon" Meeting, as was originally intended to accommodate a lengthy discussion on the Special Liquor Permits scheduled for today's meeting.

Mr. Camp reported that the Mayor had made comments. There will be some work done with the Manufacturing Council. There was some discussion on the importance of LB775 so they will be watching that. There was a presentation from a MBA Student from the University on studies which she had done on warehousing and international logistics industries. Jim Fram made some brief remarks. KPMG Accounting firm was studying various incentive programs from around the nation with the idea being to make a proposal stating what might be done - that could include modifications of LB775 for ways to create a tax structure in Nebraska that would help localities in the State. The next economic recruiter will start at LPED on February 4, 2004. LES will be doing a presentation on economic recruitment at the next meeting, which will be January 27<sup>th</sup> at 1:00 p.m. at the Chamber Offices.

\*2. PUBLIC BUILDING COMMISSION (Camp/Cook) Mr. Cook reported that the Health Department expansion update had been discussed. He noted that they're going forward with request for proposals for someone to do the design work. We heard that Dana is working on a Resolution for both the County Board and the City Council for that resolution. Mr. Roper noted that that was correct. Mr. Cook asked when that might be coming forward for public hearing. Mr. Roper answered that it would be ready whenever anybody wanted to put it on an agenda. Council thought it should go on an agenda soon. Mr. Cook asked if Mr. Roper could get copies of the resolution for them. Mr. Roper answered that he could. Further discussion determined that perhaps it should be on the Agenda for the next night meeting.

Mr. Camp noted that the PBC also requested that a Council Member be appointed to the Search Committee for the project architect. Mr. Friendt volunteered to represent the Council on that Committee, as a Council Member other than one of those who is on the PBC. [Mr. Kileen was so notified on 01-12-04].

Mr. Cook continued, reporting on garage status: A gate is being put in now. The late charges for non-completion by deadline has not been determined, because of the contractor's non-responsibility for the initial delay on the construction start-time. Mr. Werner asked if those late fees would be waived? Mr. Camp answered that they're just waiting until the job is completed so they can ascertain what the fees might be. Mr. Cook stated that he doubted they would be waived, but they would be adjusted because of some conditions for which the contractor was not responsible.

Mr. Cook reported that the validation for parking tickets would have an expiration date so they couldn't be hoarded or stolen for future use. There will be a \$5.00 fee to get out of the parking facility if you don't have a ticket, so people won't be using it unless they really have business here. Mr. Camp noted that a concern was that everybody that comes to a Council Meeting would be eligible to ask for a receipt, so if we look at the budget now, we'll have to factor some of that in because the Council would be responsible for those validations. The logistics of these ticket validations might be something to be discussed further. There will be no charge for Night Parking, as we begin. That will be looked at further as the system is worked out.

Employees will have payroll deduction opportunities for the parking permit fees. This would permit them, as the State does, to not pay taxes on that money. Mr. Roper noted that the City will be trying to implement that on March 1<sup>st</sup>.

Mr. Cook reported that they had approved the expenditure for an air conditioning system for 5-City TV so that during the winter, strangely enough, they can have cool enough air. It's a self-contained unit that will cool the air and blow the hot air into the ceiling where it will go into the return, so it will add hot air back into our regular system for heating the rest of the building. Mr. Camp noted that that was a cost of \$2890.00 which is tremendously low compared to what we had been talking about before.

Mr. Cook stated that Council would have to make a decision on the chairs and suggested further discussion might be held at a later "Noon" Meeting.

\*3. ISPC (Camp) - No Report

\*4. JOINT BUDGET COMMITTEE (McRoy/Werner) - NO MEETING IN JANUARY (No Report)

OTHER MEETINGS - None

III. APPOINTMENTS/REAPPOINTMENTS - LES Reappointment noted without Significant Comment, though Mayor Seng offered a brief history of one of the LES appointees.

IV. REQUESTS OF COUNCIL FROM MAYOR - None

V. MEETINGS/INVITATIONS - Noted Without Significant Comment.

VI. MISCELLANEOUS -

1. Discussion on "Common Agenda Items" - Mr. Camp directed Council Members to forward their Common Agenda Item requests to Ms. Cori Beattie in the County Commissioners Office who is the Common Secretary for the year of 2004.

2. Open Discussion on Special Liquor Permits - (100 ft. Rule/Mitigation)(45 min). Mr. Cook commented that the Council has two Special Permits (2763 680 and 685 - On-Sale and Off-Sale) before them for consideration. They include the mitigation language. Mr. Cook stated that he agreed with the Mayor's proposal to strike the mitigation language, which is a fairly simple procedure. This would read as "...such an activity can be located no closer than 100 feet from a day-care, residential district or a residential use".

He noted other criteria presented did not offer mitigation options. He thought eliminating the mitigation option would simplify the procedure. If this is done, there would be a question, since it does simplify the process, if the City Council would even need to hear these items. He reviewed the options of going to a Conditional Use Permit on these specific Permit requests, but he noted some elements that might prohibit Conditional Use Permit in this instance. He felt it should be left as a Special Permit process wherein Council could amend this to say that it is final action of Planning Commission unless appealed to the City Council. Any applications that come to the Planning Commission that meet the current requirements of 100 feet end up on the Commission's Consent Agenda. These are generally not controversial; they meet the requirements of the Code. If we change this to 100', they will probably all end up on Consent at Planning Commission. In most cases, then, we would never see them at Council.

Mr. Camp asked the Mayor if she wanted to make any comments. Mayor Seng responded that she has told them where she stands. Mr. Camp asked, then, if she was just at black/white 100 feet. Ms. Seng added, 'take the mitigation out'.

Mr. Werner asked if this was still going to the Internal Liquor Committee? Mayor Seng answered that that would be up to Council since that is the Council's Committee.

Mr. Svoboda stated that he has never been comfortable with the mitigation component of the ordinance, because it does have a number of loopholes to it. He noted that it was originally put in as a compromise piece that offered, from the historical standpoint of

those who helped draft the ordinance, was a piece that would allow for a compromise and grandfathering of those existing locations that had alcohol sales. So, he did recognize why mitigation was put in there. But, if we are routinely questioning mitigation and not recognizing mitigation as a component of the law as the 100 foot stipulation is a component of the law, then something has to be done.

Mr. Svoboda stated that he had hoped that Council would look at some type of compromise, because quite frankly, he did not know what the 100 foot means. Everybody that was involved in the drafting of the original ordinance has stated that "100 foot" was a number. It could have very easily been 150, 250, or it could have been 25 feet. 100 feet was simply chosen after some discussion.

In looking at that, Mr. Svoboda questioned the economic development purposes. He noted that the 48<sup>th</sup> & Randolph location will be referenced as the one Council has most recently heard. He commented that, had there not been a possibility of alcohol to be sold at that particular corner, that corner would not have been developed into what it is today. All of the residents and neighbors in that area recognize that what is there is considerably better than what was there a year ago.

In recognizing that, and noting that he did not want to put alcohol on every corner in Lincoln, he felt there had to be some type of concern. He thought the economy might drive whether or not there would be alcohol on every corner - that would not be possible. But, in some cases, such as the 48<sup>th</sup> and Randolph location, where there had not been any major objections from the neighbors surrounding the area [a permit is acceptable]. As a matter fact, individuals that lived in the neighborhood that lived within a mile of the area all indicated that they wanted alcohol sales there.

Mr. Svoboda noted that he had never been comfortable with the view that alcohol, especially off-sale alcohol, is bad in an arterial intersection like that. Having alcohol sales in a residential area is certainly one thing, but on an arterial intersection, he did not see the problem. He commented on the Committee that he had formed last year. It had been made up of Industry Representatives, Attorneys, Staff from the Law Department, Building & Safety, Planning (for zoning issues), and Neighborhoods and the issue that kept coming back was - what does the 100 foot mean and what does alcohol sales mean. Mr. Svoboda did not see that alcohol sales in an area is a [detriment] to the neighborhood - if it's off-sale. He noted that when he was growing up, a local liquor store was as much a part of his neighborhood as the local school, church, grocery store, and park.

Mr. Svoboda noted that the anomaly to that is the 13<sup>th</sup> and "E" Street Convenience Store that routinely has police calls there. However, he thought that was more of geographical or societal problem in that particular area than it is an alcohol related issue. He was hoping there could be a little compromise to the legislation.

Mr. Friendt stated that they have a compromise now. His concern is that the compromise allows Council to make choices which puts them back in the position of selecting one and not selecting another. Mr. Friendt asked the purpose for revising the Special Permit process? Is it basically just to streamline things, to make it simpler, easier to clear. Or, is it an attempt to control, reduce, or limit locations? Or is it both? Are we trying to limit the number of convenience places that can sell alcohol? Is that the purpose of this legislation?

Mayor Seng commented that she felt the way it is now is very judgmental. One person at one place can get a 100 foot ruling to their satisfaction, and the next time, for the next person, it is denied. She felt that was unequal and unfair. Her thought was that we should be dealing with equity in the process. If we have it written 100 foot - that is it. Then there is not compromise.

Mr. Friendt asked, then, we're not thinking if it is 100 or 150 or 75 feet that, in its own way, limits the number of these locations that will comply? Ms. Seng answered that that was not her intent. Mr. Friendt asked Mr. Krout for a follow-up comment to his statement that Lincoln is the only City he knows that tries to regulate the off-sale of liquor.

Mr. Krout answered that since he had made that statement, he did recall that the City of Dallas had a Special Permit process for Liquor Stores...but didn't for convenience stores that sold alcohol as an accessory; but for designated liquor stores they did have a Special Permit process if it was within a certain distance of a residential district. They may or may not still have that provision. But, liquor stores, at least in Nebraska, seem to be on their way out because of the drug and grocery stores taking over the market...which is what we saw a 48<sup>th</sup> and Van Dorn. Mr. Friendt stated that he just wanted to know why Lincoln decided why we should regulate off-sale locations.

Mr. Werner commented that he felt it was a quality of life issue. The decision that Councils and Planning Commissions have made is that we prefer to regulate that. Mr. Werner asked Chief Casady if there were higher police call incidents at convenience stores that have alcohol versus those that don't? Chief Casady answered that they do, but the caveat there is that those stores also tend to be higher volume businesses. So, it's hard to say that there is a cause and effect there. Mr. Werner asked if the incidents were more violent at those locations selling liquor? Chief Casady answered, again, that it was a matter of more volume overall. He added that the locations that have liquor licenses tend to be the higher volume convenience stores. About 80% of them have liquor licenses.

Mr. Cook stated, regarding Mr. Krout's comments, that perhaps Dallas had something, but this issue about Special Permit ignores the many other ways that states control liquor sales. He thought the situation in Nebraska was different because of court rulings that have basically taken away our ability to control alcohol through the mechanisms people use in most states. Those rulings are what we have to live with, so that is part of the reason, as he understood it, that this Special Permit process came about - because of Council's inability to have any kind of local control. This was something that Cindy Johnson worked on and others who felt it was important to put some kind of restriction in place. This recognized the land use issues that were related to alcohol sales. We weren't sure even this would be upheld in court...so for years the waivers were routinely granted because we figured the Liquor Commission would over-ride us anyway. But, the Nebraska Supreme Court has ruled that land use was a valid regulation of alcohol sales and the Liquor Commission couldn't issue a liquor permit if it violated our zoning laws. So, that is the one tool that the courts have upheld for us. Other states have lots of other tools, but this is what we have...and that is why we've done something that is, perhaps, unusual, because we've had to.

Mr. Cook felt this should be used to protect those nearby properties. He thought 100 feet is a minimal space between an establishment and somebody's house. He did not think there was a need for alcohol sales that close to residential. If the rule is applied fairly, he thought that would be a much better situation as far as fairness to businesses - when people know up front what is and what isn't allowed - such as is done in many of our other zoning guidelines and laws.

Ms. Newman commented that she would rather have an objective standard than a subjective standard. She noted that she would go so far as to say that she did not think the legislation was strict enough. She would like to add parks and schools to the 100 foot rule.

Mr. Camp stated that he questioned the 100 foot rule when there were other ways to comply, especially with the new urbanism concept to have more density. He thought this works just contrary to that in that these facilities are being sprawled out. He noted that what Mr. Svoboda and Chief Casady said, that it was not [conclusive] that the off-sale component of convenience stores is causing these problems. He thought the contrary. He felt if a convenience store, with the sale of alcohol, could get a little extra business, that margin might make the difference in their profits. He felt that he did not want to discourage the small business owner to improve an area. He would like to see an ordinance that would allow businesses to grow. He felt with a "black/white" standard, we would be telling businesses, which equates to job creation, not to come to Lincoln. When he sees local businesses that are trying to do something who may not have the resources of a WalMart to come in and buy a whole neighborhood, he believes we should encourage these local people who are going to be responsible, to take the risk. He did not believe and had not seen conclusive evidence, that it is the off-sale component that makes for problems. He felt market constraints would help control the number of licenses that would be requested.

Mayor Seng commented that sometimes, we have to take a long look back to see what has happened in a community. Lincoln used to have a fair amount of control over liquor sales in this community. The power of the City has decreased through the years. She noted that when she first went on the Council, the City controlled who got licenses. That has changed. Most of it has changed at the State level by a vote by the people. Some of it has been settled at the court level, but Lincoln has lost its power as a regulator of alcohol sales in the community. We are at the point now where the zoning regulation is the one piece that we still have power to utilize. She stated that she was surprised to hear Mr. Camp comment about some of the business owners views because those who had contacted her had expressed the view that they would prefer a policy written in "black and white" with no mitigation. They then know exactly what they can do and do not have to go through a "beg and plead" process to get a permit passed. Those business owners thought this legislation was more equitable. They were concerned about the attorneys that make it possible for certain groups to get alcohol in their locations. Our job from the City side is to make sure that the process is equitable. There are two sides to this effort.

Discussion continued briefly with notation of specific instances of the process. Mr. Cook felt the uncertainty of the current process should be eliminated and did not believe that the economic development of the City of Lincoln would be hinging on liquor sales. He noted that there is not a shortage of locations. We just need a consistent standard stating that they can't be within 100 feet of some one's house. He didn't think that would be unreasonable, nor a roadblock to economic development.

Mr. Werner commented on the inequity of standards between wealthy and moderate income neighborhoods. He felt the written 100' foot standard would eliminate the disparity that currently exists on the socio-economic level.

Mr. Camp noted that the Angelou Economics Report commented on the length of time that permit processes take in Lincoln and he thought from a conceptual standpoint, we shouldn't have so many road-blocks, but should be using common sense in these Liquor Permit cases. He noted that he still hadn't heard the purpose of the proposed legislation. What are we trying to achieve? Mayor Seng answered "equity".

Mr. Camp thought equity could be defined in several ways. He mentioned the new urbanism and wondered if there was a deterrent to the sales - or is it the geographical and geo-political dynamics of the neighborhood that is being legislated? Ms. Seng commented that one would not need that if there were a clear, black and white statement of the rules. It would be equal for everyone that applies for a permit. There would be no mitigating circumstances - it would all be equal.

Mr. Friendt asked about the locations that are currently mitigated or don't meet the requirements, are they grandfathered under this legislation when they renew? Mr. Cook noted that there is no renewal on a Special Permit. That goes with the land.

Ms. Newman commented that once they achieve the 100 foot distance, if that is submitted to the Planning Commission, we don't see them unless they're appealed, it actually would stream-line the process. It could move things through faster.

Mr. Werner thought this would define the standards and make everything clear to everyone. Mr. Camp thought there were sometimes special circumstances when Council uses discretion on the issuing of permits. If Council has a problem with redefining that discretion, that is fine. But he thought making the ordinance pure black and white would be inappropriate. He commented that we could just make all the laws black and white and we won't need to meet every week. He noted that he was sorry, but the world doesn't operate in black and white.

Mr. Werner noted that it could in this case. Mr. Camp disagreed. Mr. Svoboda thought mitigation might turn into a political issue during election years and felt that the ordinance followed some very arbitrary rules. He personally did not have a problem with getting rid of the mitigation clause in the ordinance because there is an arbitrariness to that issue.

He noted that one issue that hasn't been discussed is one that has come up in the last few appeals that have come before the Council. That is the hours of operation. He thought that would be where he would look for some type of compromise issue that would state that if alcohol sales were eliminated or shut off at a certain hour, alcohol sales would be permitted at that area.

He does have an issue with that, concerning the distance, but he has asked the question of several of the neighborhood association presidents over the last couple of years and have not received a firm answer from them. However, his perception is that a lot of neighborhood associations are not necessarily opposed to the sale of alcohol, but to the development on the corner. He does not know if there is reality to that perception, but the perception is there. He felt they were more opposed to the lights and the traffic and the noise and everything else that occurs around a convenience store on a corner than they are about the alcohol sales. Alcohol sales is the one piece that allows them to say we don't want a convenience store at this corner. He noted that some development has circumvented that issue by not applying for the liquor permit until after construction has begun. Mr. Svoboda saw both sides of the issue, and did not have a problem with getting rid of mitigation, but he wouldn't mind having something written into the ordinance. He noted that he also agreed with Patte, stating that he thought schools and parks should also be included. He would amend it to that.

Mr. Werner commented that golf courses were park areas that were exempted. Mr. Camp agreed with Mr. Svoboda's comments that the concerns may be about the nature of what we're allowing in....we're not trying to create problems. He commented that the Mayor had mentioned that during her 16 years on the Council there have been changes and he

doesn't know if the changes have been bad. He thought that the bigger picture on the quality of life would include how we would encourage good development in the neighborhoods. He thought development should be encouraged and did not believe the 100 foot rule would guarantee quality of life.

Mayor Seng stated that the Law Department was ready to bring legislation forward if Council is ready to act. She noted that the specific number on footage could be discussed. She didn't think there was anything too arbitrary in the 100 foot designation. Ms. Newman asked that parks and schools be included. Mr. Camp added that day-care centers should be included as well. It was noted that day-care is already included in the ordinance.

Council directed Mr. Joel Pedersen to draft an ordinance with the above-mentioned concerns included. Mr. Pedersen noted that the issue of schools, especially, is covered in the existing State Law regarding liquor sales distance requirements. There is a 300 foot requirement for schools and 150 foot requirement from campuses, if it's beer. Day-care centers are in the existing ordinance. He noted that the parks issue is complicated due to the golf course club houses.

Mr. Cook commented that we should check into that. He noted that 2763-130 is a recreation facility special permit. It does say that as part of a special permit for recreational facility for a golf course or country club, the Council may permit the sale of alcoholic beverages for consumption on the premises as an accessory use for the golf course or country club, provided the applicable location requirements have been met or waived by the Council. It does say, specifically 100 feet from a day-care facility, residential district, except where such use is an accessory to a golf course or country club. That language is already in there.

Mr. Pedersen stated that the only other comment he would make from the Law Department was that part of the rationale for treating on-sale and off-sale the same is that initially, we were being progressive. He thought Lincoln has traditionally done that. They've tried to anticipate what was going to happen and be pro-active rather than reactive.

As a matter of liquor policy and police power, Lincoln tried to determine that a "mom & pop" liquor store was the salient example of how we wanted liquor to be sold in the City. That has been defeated. Our efforts under the police power to do that were deemed, essentially, anti-competitive by the courts. Following that, we took a land use approach and instead of asking the lawyers, legally, how to create a police power category that would inhibit or restrict something, the determination was made to use the planners and talk about it in terms of the neighborhood impacts. That process did happen. John Bradley did a lot of that along with Cindy Johnson and some of the other Council Members at the time.

Historically, what that meant was that there wasn't a 'one size fits all'. There was going to be the occasion for compromise. How does a lawyer respond to that? The answer is it is on a case by case basis. The law in Nebraska has upheld that in zoning situations. The way the market developed for alcoholic beverages over the years has changed. Thirty years ago we weren't dealing with convenience stores, grocery stores and gas stations selling alcohol, but we are now. So this was an attempt to at least look at the problem and say if you are going to have outlets in areas that traditionally didn't have them, what would we be most concerned about? The first step was protecting residences. We viewed this as a process that was going forward to help the City make better decisions about where to locate alcohol sales. It was not particularly aimed at restricting the number of available outlets, but letting those concerns come forward and evaluating on an individual basis. There was a give and take involved....for better or worse. It was a learning process. We didn't have another jurisdiction to compare to. We understood that we were going forward and learning as we went.

Part of what the Mayor is recognizing is that instead of being able to be a tool to refine the process, it has created more confusion. For better or worse, we're at another decision point. Mr. Pedersen stated that he would put it in the category of what the City does land-use wise....similar to how we're reacting to the cell towers.

Mr. Friendt commented that when you mention land use, he would ask the question might we be facing some unintended consequences with this. He stated that he looked at many of these locations as being recycled service stations. Maybe they're all used up, but are we going to find ourselves in the situation where this kind of operation is the highest and best use for the land. And, if it's not going to happen and then you have a corner like 48<sup>th</sup> and Randolph which was an absolute junk heap. He noted that he couldn't believe that the neighborhood isn't better off with the oil company there than it was before.

Also, if you take a corner and put a fast food place in which operates 24-hours, what does that do to the property values? Mr. Pedersen commented that in all earnestness, that is the concern that they heard at the Liquor Commission when they originally didn't want to listen to us. They said that was not a zoning issue. The reality of it is in the State Law, there is no prohibition against opening a bar or an off-sale location in your neighbors house. They look to the zoning ordinances for that protection.

Everyone agrees that should be prohibited - you can't just open up a bar in your garage without the City saying anything about it. Ultimately, we're trying to draw those lines, but when you're talking about developers and removing blight, we do have rules to address that. To Mr. Pedersen's knowledge, they've never addressed the sale of alcohol as being part of remedying blight. [Laughter] Mr. Pedersen noted that some of the City's tools do lie in zoning and land use, but a lot of them are addressed through redevelopment areas, identified blighted areas, and coming up with incentives for developers so we don't get to the last resort development.

Discussion continued with the question of what the legislation is trying to accomplish. Mr. Camp noted that the margin of profit for businesses is really thin. The small business owners are looking for ways to diversify and how they can spread their sales to get that margin. Mr. Pedersen noted that the competition for profit goes beyond just the product line, but hours of operation also must be considered. The primary concern for Lincoln's permit process was protecting residences. In zoning that is where you start to protect residences.

Mr. Camp thought that operating hours could be used as a compromise on a black-white no mitigation ordinance. We could limit hours to protect the neighborhood. Mr. Cook stated that there are hours of operation issues that apply to a number of types of businesses. He noted there were also issues of lighting and a number of other things that need to be addressed, but those are all separate from this. This is what is before us now and what we're working on. He thought it would be wise to look at some of those other things, such as the hours of operation limits that we can put on certain types of land use. But we need to act on what we have before us here, the language that is in place and modification to it. Some of those other issues that we need to address will take a lot more study. We're going to have more permits coming before us and he felt it was important for Council to act on this fairly quickly and set up a clear guideline so we don't get into another situation like the one we were in just a few weeks ago.

Mr. Cook requested Law Department to bring the ordinance forward much as the Mayor has suggested which is deleting the mitigation and adding the concerns for parks and other locations mentioned earlier not covered in other existing legislation. It would be set

up so that if a permit meets the requirements of this act, it would be a Final Action at Planning Commission and only come to the Council by appeal. That would simplify the process.

Council discussed details of such a proposed ordinance including the question of day-care coming in after a special permit holder has complied with the distance requirement. Can the day-care come in then? Mr. Pedersen stated that they probably could. As it is written right now, it goes from the licenses premise to an existing day care.

Mr. Svoboda asked if a day-care should move within that distance to an off-sale liquor license and the manager changes at that location or the business is sold to another entity that wanted to continue the alcohol sales, does that come before us and then follow the new law or once it's granted, it's there for ever? Mr. Pedersen stated that it goes with the land. Mr Roper noted that the problem might be if the liquor establishment wanted to expand.

Mr. Camp noted that there had been talk about having a focus school in the Haymarket and one of the reasons it ultimately failed is because it would have voided all the liquor licenses in the Haymarket on their next application. Mr. Cook commented that that is not land use and that is not our jurisdiction. That would be under the Liquor Commission. Mr. Pedersen stated that they did get that taken care of with an exception to the rule. Mr. Camp noted that there had been a great difficulty in the process. Mr. Pedersen stated that that is one of the reasons for the separate treatment of both on- and off-sale . There is a Special Permit for both. In the event that an off-sale wants to become an on-sale, they need a different permit. There is an existing State Law about the distinction in the liquor law between on- and off-sale.

Mr. Camp polled the Council Members on the proposed "black/white 100 feet with no mitigation" ordinance. Ms. Newman, Mr. Cook and Mr. Werner favored it outright. Mr. Svoboda stated that he had no issue with the elimination of mitigation, but would like to address the 100 foot issue. He also had a concern about "residential use" vs. "residential district" and how that applies to the new urbanism issue.

Mr. Werner felt that it was inappropriate to ask Council Members how they would vote. He noted that this is one of the reasons he had requested discussion on the televising our "Noon" Meetings. This is great discussion, but it should be a public hearing....or at least televised at the very minimum.

The final draft form of the ordinance was discussed briefly with a final decision to have the Mayor's draft ordinance brought forward.

3. Discussion on Televising all Council proceedings. (Requested by Terry Werner) Mr. Werner stated that he believes all Council proceedings, including working sessions such as this one being held today, should be televised. He noted that the perception of secrecy is not a perception he believes Council should encourage. Discussion ensued with concerns of perceived secrecy in a democratic process, as well as the cost of televising, being expressed. It was noted that the meetings are open to the public and the minutes are posted on the City's website. Mr. Roper indicated that the City Council was in compliance with the Public Meeting Rules. Council made a final decision to have 5-CityTV simply run the camera for a taping for video on demand airing. It was noted that a simple dub of the audio tape might be obtained from 5-CityTV. Staff was asked to check with 5-CityTV's Bill Luxford to find the cost of such a process. Mr. Luxford was contacted on 01-14-04 and indicated that he would respond after reviewing the request.

## VII. COUNCIL MEMBERS -

JON CAMP - None

JONATHAN COOK - Mr. Cook noted the 2004 Meeting Calendars (Monday Meetings and Formal Council Meetings including Common and Joint LPS Meetings). He noted that Alternative Night Meetings were also attached for discussion at a future "Noon" Meeting. Mr. Werner agreed that there should be more Night Meetings, stating that the evening meetings gave the public greater opportunity for input on City issues.. Mr. Cook, upon questioning from Mr. Bowen, pointed out that April 12<sup>th</sup> had been designated as a Holiday - much to the surprise of all the other Council Members - none of whom could remember having that date included in the "Designated 2004 Holidays" motion they had voted upon. Mr. Cook explained that it had been a part of the resolution that they had voted on at the Budget Retreat. It was suggested that this could possibly be reviewed at a future "Noon" Meeting, but no date was set for that review.

GLENN FRIENDT - No Further Comments

ANNETTE McROY - Absent

PATTE NEWMAN - No Further Comments

KEN SVOBODA - No Further Comments

TERRY WERNER - Mr. Werner asked Mr. Roper, regarding Charter Amendments, how much flexibility the Council has in making changes when they come before us? He indicated that he was thinking of the one issue that has been on the Pending List concerning Council pay. For example, rather than "the Council, by ordinance, setting their own wage", could we amend that to say "the Council's wage shall be equivalent to the County Commissioners" - or is that too much of a change? Mr. Roper stated that Council would have to have a hearing on that. Mr. Werner responded that he realized that, but could the change be made without going back to the Charter Committee? Mr. Roper stated that it could. Mr. Werner noted, then, that if Council took this legislative item off Pending, we could make that change after Public Hearing. Mr. Roper noted that the Charter Committee is an advisory committee. If you want to by-pass them, you can.

MARK BOWEN - No Further Comments

ANN HARRELL - No Further Comments

CORI KIELTY - No Further Comments

DANA ROPER - No Further Comments

## VIII. MEETING ADJOURNED - Approximately 1:05 p.m.

cm011204/jvr