

**AGENDA FOR  
CITY COUNCIL MEMBERS' "NOON" MEETING  
MONDAY, NOVEMBER 15, 2004  
CONFERENCE ROOM 113**

**I. MINUTES**

1. Minutes from Directors' Meeting of November 8, 2004.
2. Minutes from Council Members' "Noon" Meeting of November 8, 2004.

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

1. Public Building Commission Meeting (Camp/Cook)
2. ISPC Meeting (Camp)
3. Multicultural Advisory Committee Meeting (McRoy)
4. Board of Health Meeting (Svoboda)
5. Motor Sports Task Force Meeting (McRoy)

**OTHER MEETINGS REPORTS:**

**III. APPOINTMENTS/REAPPOINTMENTS - To Be Announced**

**IV. REQUESTS OF COUNCIL FROM MAYOR - To Be Announced**

**V. MISCELLANEOUS - NONE**

**VI. CITY COUNCIL MEMBERS**

**VII. MEETINGS/INVITATIONS -**

1. Fall 2004 Lincoln Police Department Academy Graduation and Awards Ceremony on Wednesday, December 1, 2004 at 7:00 p.m. at The Cornhusker Hotel, Grand Ballroom - Reception Following - (See Invitation)
2. Would like to invite you, as a City Councilperson, to attend the Lincoln Partnership for Economic Development's Manufacturers Council Meeting on Tuesday, November 30, 2004 - At the Chamber of Commerce from 9:00 a.m. to 10:00 a.m. - Please RSVP by Nov. 26<sup>th</sup> to Lana Zumbrunn at 436-2374 or by E-Mail- (See E-Mail Invitation)

3. North Hills Neighborhood Meeting - Wednesday, November 17<sup>th</sup> at 7:00 p.m. at Eiseley Branch Library. Southview Inc and Northern Lights, LLC are the meeting planners, hoping to discuss Proposed North Hills Retail Center. (See e-mail Invitation)

## **VIII. ADJOURNMENT**

MINUTES  
CITY COUNCIL MEMBERS' "NOON" MEETING  
MONDAY, NOVEMBER 15, 2004  
CONFERENCE ROOM 113

*Council Members Present:* Terry Werner, Chair; Ken Svoboda, Vice-Chair; Jon Camp, Jonathan Cook, Glenn Friendt, Annette McRoy, Patte Newman; ABSENT: None

*Others Present:* Mark Bowen (arrived late), Ann Harrell, Corrie KIELTY, Mayor's Office; Dana Roper, City Attorney; Jason Albers, interested citizen; Joan Ray, Council Secretary; Darrell Podany, Aide to Council Members Camp, Friendt and Svoboda

## I MINUTES

1. Minutes from Directors' Meeting of November 8, 2004.
2. Minutes from Council Members' "Noon" Meeting of November 8, 2004.

Mr. Werner requested a motion to approve the above-listed minutes. The motion was made and seconded to approve the minutes as presented. That motion carried by unanimous consent of the Council Members.

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

1. PUBLIC BUILDING COMMISSION (Camp/Cook) Mr. Camp reported that they had reviewed the status of the Health Department Expansion. It turns out, on the brick issue, they can't do it. They're looking at other options on getting architectural significance. They don't have a figure on the screens - Mr. Camp asked Mr. Cook if it wasn't a \$10-15,000 dollar expense. Mr. Cook checked his notes and stated that the sunshade patterning is \$10-15,000 extra over a flat panel w/holes. Mr. Camp explained that they wanted these shades to help protect energy efficiency. Those shades are alternatives. They're also doing a well field, just as the public schools have done, to use ground temperatures to help on energy economizing.

Mr. Camp reported that there had been a hand-out to be given to the private sector on the costs of the expansion. Mr. Camp explained that he had asked that they revise that, because they were citing the building costs for new construction of the new space versus rebuilding. At one point they had quoted \$130.00 per square foot. Then when they gave sums for existing building remodeling it came at \$86.00 per square foot. Mr. Camp just wanted a true accounting of the costs. He noted that they are building an additional 10,000 square feet of unfinished shell space for future growth, but will still go forward with 26,000 square feet of useable space and they're remodeling 25,500 square feet. They've included everything, including parking lots, and they're still under their nine million dollar cost estimate.

Mr. Cook reported that the payback on the well field is going to be done right away because they want to get an LES rebate of \$35-40,000 which would expire at the end of this year if not utilized. It's a ten year payback period on a \$435,000 total cost. But it will save at least half on the utilities over the long-term.

Mr. Camp reported that they were also considering the left turn lane with a stacking capability at 31<sup>st</sup> Street. Mr. Cook indicated that there had been discussion as to whether or not it should be lengthened. They will set aside money, but they may or may not have to do it. Mr. Camp noted that they're planning on letting the bids on the Expansion Project on December 1<sup>st</sup> and then the bid opening would be about January 15<sup>th</sup> of next year. This had concluded the Health Department Expansion portion of the PBC meeting.

Mr. Camp continued the report, noting that the PBC had also approved vouchers. There had been information on the sprinkler system; there will be a box placed in the building where used cell-phones can be donated. Mr. Cook stated that you could donate cell-phones. There had been discussion of putting the donation box up next to the other recycle boxes on the 2<sup>nd</sup> Floor, but, then Dana was concerned about liability. So, it's going to appear in the City Council/County Commissioners reception office - next to the Defibrillator. This will go to the Child Advocacy Center and they can get 50 cents to 75 dollars per phone - depending on the phone. Mr. Camp noted that most of the phones are in the five dollar range.

Mr. Camp reported that they're still watching the transmitter for the garage. Mr. Cook asked if anybody was having any trouble? Mr. Werner noted that he felt sooooo much safer.

Mr. Camp reported that in reference to the Star City Parade, it was determined that they could use the garage this year, but next year they'll have to go to the north lot for the assembly of floats.

Mr. Camp noted that they had also discussed chairs. He informed Council Members that All Makes had upbraided everybody. They feel that....Mr. Camp felt that they were trying to dodge it....that we had ordered the chairs they delivered. Mr. Werner noted that he was always glad to get an update on this two year project.

Mr. Cook reported that the dais monitors someday -maybe during our terms on the Council- may appear. It's been two-three months since we approved them. Supposedly they'll be put in this week, but he stated that he would believe that when he sees it. Mr. Werner asked how many monitors would be installed? Mr. Cook answered that it would be just what we approved, which is one center monitor, and two just like it, one each on the sides so that everybody, hopefully, can see.

2. ISPC (Camp) Mr. Camp reported that there had been no meeting due to the Veterans' Day Holiday.

3. MULTICULTURAL ADVISORY COMMITTEE (McRoy) Ms. McRoy reported that she had attended. There had been an election of officers. She reported that they are working on their big fall newsletter.

4. BOARD OF HEALTH (Svoboda) Mr. Svoboda stated that there had been a report on the Summer Food Program. That went extremely well as always. There had been a report on and update on the Capitol Humane Society Contract. There had been a flu update. And, we talked in quite a bit of detail about the procedure that would go forward on the implementation of the Smoking Ordinance.

Mr. Werner asked what that implementation would be. Mr. Svoboda stated that it was out of the Board of Health or the Department of Health's lead. The lead comes from the Mayor's Office. Mr. Werner asked who enforces it? Mr. Svoboda answered that

the Health and Police Departments would be the enforcing agencies. Mr. Svoboda stated that he felt there was a great mis-understanding there as to exactly what the Mayor is [inaudible] ... The ban will go into effect when the County Canvassing Board certifies the election at the end of the month. The ban is already on the books [In an aside, Mr. Svoboda asked Dana Roper if that was correct - Mr. Roper responded that he was listening]. Mr. Svoboda continued, again noting that the ban is on the books, so when the Canvassing Board certifies the election, the ban comes forward for enforcement...plain and simple. Is that accurate? Mr. Roper answered that it becomes effective at that time; however, enforcement, as Mr. Roper understands it, would start January 1<sup>st</sup>. Mr. Svoboda stated that some of the problem is the recognition of what 'enforcement' means. He thinks what the Health Department is trying to say, or at least it was his understanding when he discussed it with the Mayor, is that we would not be heavy-handed in going out and writing tickets immediately. Mr. Roper stated that there would be an educating process and then after January 1<sup>st</sup>, we would be taking names. Mr. Svoboda stated that complaints would be....every business in Lincoln would have to become smoke-free as of the date of the Canvassing Board certifying the election. Whether a ticket is issued is at the discretion of the Police and Health Departments - just as we do warning tickets on a traffic citation now.

Mr. Svoboda noted that it has just been the Mayor's suggestion, that we will not issue citations unless it's an extremely flagrant violation, prior to January 1<sup>st</sup>. So, a lot of bars at this time are thinking that they've got a 35-40 day reprieve until January 1<sup>st</sup>, to enforce the ordinance. But, they do not. Mr. Werner commented that technically they don't, but nobody is going to care.

Mr. Svoboda laughed and said that the 60,000 some people who voted for the smoking ban on the ballot are going to care. A lot of them, Mr. Svoboda noted, have called him..

Ms. McRoy asked a question for clarification. When the Canvassing Board certifies the election on, perhaps the 22<sup>nd</sup>, then all bars need to be smoke free on November 23<sup>rd</sup>. Mr. Roper indicated that that was correct. He added that what we're, technically, talking about is the local County Canvassing Board which does not have an exact date for completion of the certification other than they must be done no later than the 22<sup>nd</sup> of November. So, the effective date would be somewhere in-between....shortly.

Ms. McRoy asked if someone were smoking in a bar, then could another patron file a complaint, but there would be no ticket issued? Mr. Svoboda stated that that is correct. The way he understood it is that the way the Health Department is going to react to it is that they will follow every complaint, as they normally would...the only difference is that a complaint letter, or a warning letter, might be sent as opposed to a citation.

Ms. Newman asked, at 10:00 p.m. on a Friday or Saturday night, is someone going to be at the Health Department when a citizen calls with a complaint? Mr. Svoboda stated that he had no idea. He asked Mr. Roper who would have to be called? Ms. Kielty explained that they could call and leave a message at the Health Department and then the Health Department would follow-up the next work-day. Mr. Svoboda stated that they could also call the Police Department.

Mr. Werner asked Mr. Cook if he had a comment. Mr. Cook answered that he just had a question. Ms. McRoy stated that she would like to figure the situation out. Mr. Werner said not to worry about it. He thought the Mayor has made it clear that it's not going to be enforced until January 1<sup>st</sup> and that's the end of it as far as he was concerned. Mr. Svoboda answered that is not the way it will be.

Ms. Kielty commented that this is like other laws that have been enacted, which the Health Department enforces, in that they take the law and give what we might call a grace period to businesses or whomever (cat owners - whoever it is that is effected by that law). There is a period of time during which there is an education effort for the public, before ticketing is started and before the sending of those tickets over to City Hall. Mr. Svoboda stated that that doesn't mean that they don't have to follow the law during that educational process. Ms. Kielty noted that that was correct.

Mr. Cook asked his question, which concerned the Canvassing Board. He commented that Mr. Roper had mentioned November 29<sup>th</sup> for the State Canvassing Board. But this ordinance is covered by the local County Canvassing Board, which is supposed to be done before November 22<sup>nd</sup>. Mr. Cook asked then if the County's decision is official - and we don't have to wait for the State Board in the case of something that is enforced at the local level? Mr. Roper stated that that was his understanding.

Mr. Friendt asked if we could get the issue clarified and send out a letter or a card? Ms. Kielty answered that the Health Department is sending a letter to all of the businesses and a meeting is being scheduled with any downtown businesses that are interested. We understand that several businesses might be interested in side-walk café permits. So, we will clarify with Building and Safety Department, with the Committee, and with the Health Department, any questions that they might have. There will be a letter and a meeting where interested people can come for discussion.

Mr. Werner asked if the Sidewalk Café Committee had met? Ms. Harrell answered that the Outdoor Dining Committee met before the election to talk about what we were going to do in anticipation of a rush of applications that would follow the election from establishments that want to have some sort of outdoor area so people can go outside and smoke. She noted that the concern was that we'll get a rush of applications from establishments that really don't meet the guidelines of Outdoor Dining. So, we don't want there to be a lot of frustration and confusion and "upset-ness", so we're having this meeting in the Downtown. We're inviting Downtown establishments and (before they even come in on an application, while the ground is still neutral), we're going to cover what the Outdoor Dining Ordinance is, what the expectations are, what the concerns will be and what they'll need to do before making application. Ms. Harrell stated that they were hoping that the meeting might add some clarity to the situation.

Mr. Werner asked if there was some consideration about amending the ordinance. Ms. Harrell stated, unequivocally, no. Ms. Newman asked if there had been a "rash" of applications yet? Ms. Harrell stated that they expect there will be, but their practical expectation would be that between the election and those coming in, there would be a number of weeks, because if you decide you want to apply for a sidewalk café permit, probably an architect would need to be hired, plans would have to be drawn up. We were basing our expectation on a flurry of phone calls that went to Building and Safety before the election verifying that, if the ban passed, establishments would plan on doing the sidewalk café.

Ms. McRoy asked if Ms. Kielty could send to the Council Members copies of the letter and when this informational meeting will be held - just keep us apprized of the situation. Ms. McRoy inquired if there would be a press release going out from the Health Department, or Mayor's Office, explaining what Ken just went through with us....that it goes into effect, technically, on November 22<sup>nd</sup>. But the enforcement will take place after January 1, 2005.

Ms. Kielty stated that the Mayor had sent out one news release which Council Members should have received in their packets. [Council Members indicated that they had]. And then, we'll make sure that you get a copy of the letter. Ms. McRoy asked if that press release was the one in which the Mayor had January 1<sup>st</sup> noted as the enforcement date? Ms. Kielty stated that it was. Ms. McRoy explained that she would like something which would offer to the public what the Council had just discussed - with the details of effective dates, and enforcement dates.

Ms. Kielty asked then, if Ms. McRoy wanted a news release similar to the letter to go out? Ms. McRoy answered that a lot of bar owners believe that they have until January 1<sup>st</sup> to comply with the law and put the ash trays away. She would like to make sure that everyone knows that the effective date is November 22<sup>nd</sup> and that everyone should be attempting to abide by the law. She noted that, from calls she has received, there is a huge amount of information missing from the public awareness. Ms. McRoy stated that even she had thought the date was January 1<sup>st</sup>.

Mr. Werner stated that the reality is - it really is January 1<sup>st</sup>. Ms. McRoy answered that the reality is that people are upset at the ordinance not being effective on November 3<sup>rd</sup>. Now the Mayor has said that the date of enforcement wouldn't be until January 1<sup>st</sup>. From what we've discussed, the effective date is November 22<sup>nd</sup>. Ms. McRoy thought we should be clarifying this to a point so that people know that we *are* doing what the majority of voters approved.

Mr. Svoboda asked if the City had any options at all in delaying the implementation of an ordinance? Since we had passed an ordinance that had a grace period that is now, in essence, gone because of the fact that it was taken up through the referendum process - with a total ban being approved - are there options for delay? Mr. Roper answered that it will become effective when it is certified. He noted that the issue was when will it be enforced. Mr. Svoboda asked if any City entity -the Mayor or the Council- have the ability to change that effective date. Mr. Roper stated that the Council could by legislation. Mr. Werner observed, however, that the Mayor can do it by Executive Order - as far as the enforcement of the ordinance is concerned. Mr. Roper stated that the Mayor can, as the Administrative Head of the City. Mr. Roper reiterated that a lot of times when we pass a new ordinance, we don't enforce it the first day. We try to let everybody get adjusted to, and we educate them on the issue, and we go from there.

Mr. Friendt commented that to the bar and grille owners, the January 1<sup>st</sup> date is the key date. If that is when you start enforcing and ticketing....he noted he would prefer not to confuse them with this other stuff about when it goes into effect. He noted that maybe the proponents of the ban need to understand that - that it does go into effect the 22<sup>nd</sup>, but by Administrative Order, we're not going to enforce it until January 1<sup>st</sup>. Ms. McRoy stated, with concern, that people will get upset. If they go into a place and there are people smoking, what should be done? There is a huge disconnect here. People will complain and the bar owners say they won't get in trouble 'til January 1<sup>st</sup>. And the non-smokers will say that the law states that the ordinance is in effect now.

Mr. Friendt offered the comment that if we keep the explanation just as clear as we've got it now - and we're all saying that....that's just the way it works. Mr. Werner commented that he agrees with Mr. Friendt. Mr. Camp noted that people could be getting upset when the law says you may not smoke and people are being allowed to do so, there may

be upset and perhaps violence. He felt we need to say clearly when it is to be effective. Mr. Friendt asked Mr. Camp to use the proper terminology - when it's going to be enforced. Mr. Camp commented that people will be upset on this divisive issue, and there is no reason to continue controversy. So, it could be simplified by just saying this is the date - period. Mr. Friendt commented that the non-smokers just need to be good winners. [Laughter]

Ms. Harrell made comments regarding the outdoor dining experience. Those establishments that are seeking to create an outdoor smoking area - there is a distinction to be made between those that are going to need to use the public right-of-way and those on private property. For those that are on private property, the City will not bring to bear the same set of expectations that Outdoor Dining does, because they'd not be using the public right-of-way. If they want to talk to their landlord about creating a beer garden - basically, for a bar - that's between the property owner and the tenant. However, the place where some of them are not thinking ahead is that if you add a beer garden in a private area, then that increases your capacity. Then you would be expected to add parking area, or maybe a restroom....or any of the other things that have to do with the Building and Safety Code. On private property, there is a different set of ordinances that come to bear...people would need to work with Building and Safety for zoning. If you want to use public right-of-way, that's where the outdoor dining comes in.

Discussion continued for a time, with Council noting that bars cannot have sidewalk cafes on the right-of-way, so now the restaurants have a definite advantage over the bars. Ms. Newman observed that now the 100% fairness was lost. There were other concerns with reference to private property owners (that means on private property), and the fact that they can have a beer garden on the area. Mr. Roper agreed - that was true.

Mr. Svoboda stated that Brian Kitten of Brewsky's had asked him to bring before the Council for inquiry as to whether or not anyone had an interest in delaying the implementation of this ordinance for a time period of anywhere from three to six months. Council agreed that if Mr. Svoboda brought it forward, it would be okay. Mr. Svoboda stated that he did not want to bring the issue forward.

5. MOTOR SPORTS TASK FORCE (McRoy) Ms. McRoy reported that she had attended the meeting. She noted that it was basically an organizational meeting. As we know, the Planning Commission denied the application over on South Street. We started off with a really broad view - looking at motor sports, which includes drag racing and motor cross. She explained that there were two people interested. One who owns a private motor cross facility in the County and the other gentleman is an instructor at Southeast Community College in Motor Sports. Ms. McRoy asked them to narrow the view so we know exactly what we're talking about and what is feasible in Lincoln. Some people on this Committee have an agenda, which she wasn't happy about. Ms. McRoy suggested that a staff person be present to take notes and minutes. Ms. Kielty responded that it is not a City, but a County Committee. Ms. McRoy stated that she would talk to the County then, because there is no one but Darl taking notes. They had been discussing huge developments operating in surrounding states - which, Ms. McRoy avowed, will not happen here in Lincoln. We need to decide what we want and what land is available.

OTHER MEETINGS - Mr. Friendt reported that the District Energy Corporation Board met and the major item of business was to approve this coming years budget. The DEC is an entity to provide low-cost energy to the City/County Building, and the State Buildings. He felt they did a great job of it.

Mr. Friendt stated that, regarding the DEC as well as the Community Development Task Force, as he serves on those two committees and they're starting new years, he wondered if it wouldn't be advisable to appoint somebody new so they could get up to speed on the program for this coming year versus waiting to mid-term in May or June. Council agreed that this would be advisable. Mr. Svoboda volunteered to take over the DEC assignment and Mr. Werner noted that he would be interested in taking over the CDTF. Council Members agreed with these appointments. Staff prepared Resolution Requests for these appointments and forwarded them to the City Clerk's Office for processing.

Mr. Friendt noted that he would be happy to serve out this year on these two committees in order to finish up the current committee business. Council agreed that this would be appropriate.

Mr. Camp reported that he had gone to the DLA Haymarket Parking Committee meeting. He just wanted to report that they introduced all the Republic Parking management team. They are going through all of the City Garages and doing efficiency studies. Mr. Camp noted that he was really impressed with what they came up with. It was quite thorough. They really seem to be off and running.

**III. APPOINTMENTS/REAPPOINTMENTS** - Ms. Kiely announced that there was a new list for Council, which she passed out to everyone [Attachment]. She added that they are actively looking for a new member for the Air Pollution Advisory Board and for the Work Force Investment Board. She noted that the Work Force Investment Board has pre-qualifications for applicants who wish to serve on that Board. They must be the owner, or CEO, or a Human Resources Director for a business. They are looking for one additional person to serve on the WFI Board.

**IV. REQUESTS OF COUNCIL FROM MAYOR** - Mr. Bowen reported, regarding the Council Members meeting on Thursday (Council Retreat on Council Office Organization) that Don Taute has a Personnel Board Meeting which begins at 1:30 p.m., so he will arrive late at the meeting. Mr. Bowen noted that discussion involving Mr. Taute would best be held for later in the meeting. Mr. Werner felt that would be workable.

Mr. Bowen reported on the State Fair and the Local Match Contribution. He stated that it has been the Administration's position from the beginning that contributions would include some of the current contribution for which we would receive credit....both public and private. He said that they had talked to the Chamber of Commerce, and that is their belief. We talked to the County and that's what they believe. We've never actually identified it, but now we're starting to organize meetings to formalize how that contribution match is documented and certified -whatever the State wants- before they actually send lottery money to the State Fair. The meeting, which hasn't been set up yet, will be between the County, the City and the Chamber of Commerce.

Mr. Svoboda asked if that would include in-kind contributions? Mr. Bowen answered that it would. He stated that they had never denied that it may be some combination of cash and in-kind. We clearly believe that the contributions for the improvements to the entrances to State Fair Park and the areas surrounding it, are a benefit to the Park, and we should get some credit for that somehow. Just as the sponsorship money that has been paid, historically, by the businesses in the Lincoln area should also be accounted for as a contribution. The actual language which the Legislature passed does not say "new", it says "provide a match".

V. MEETINGS/INVITATIONS - Noted Without Significant Comment.

VI. MISCELLANEOUS - None

VII. COUNCIL MEMBERS -

JON CAMP - No Further Comments

JONATHAN COOK - No Further Comments

GLENN FRIENDT - No Further Comments

ANNETTE McROY - Ms. McRoy asked if they had any food for the Thursday meeting. Mr. Werner noted that they probably should. Someone noted that they *could* get some hot tea. Ms. McRoy asked where they should park. Mr. Werner noted that Jon would be providing that amenity.. Mr. Camp stated that they should go to the City Garage at the Haymarket.

PATTE NEWMAN - No Further Comments

KEN SVOBODA - No Further Comments

TERRY WERNER - No Further Comments

MARK BOWEN - No Further Comments

ANN HARRELL - No Further Comments

CORRIE KIELTY - No Further Comments

DANA ROPER - No Further Comments

VIII. MEETING ADJOURNED - Approximately 12:20 p.m.

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