

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 09010**, requested by Randy Bartelt to amend Title 27 of the Lincoln Municipal Code to allow churches to hold temporary or seasonal sales of goods at retail.

STAFF RECOMMENDATION: Approval, as revised.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/06/09
Administrative Action: 05/06/09

RECOMMENDATION: Approval, as revised by staff (8-0: Gaylor Baird, Cornelius, Esseks, Larson, Partington, Francis, Sunderman and Taylor voting 'yes'; Carroll abstained).

FINDINGS OF FACT:

1. This is a request by Randy Bartelt, Chaplain of the Lancaster County Jail, to amend Chapter 27.70 of the Lincoln Municipal Code relating to Zoning Code, Additional Use Regulations, by adding a new section numbered 27.70.060 to allow churches to hold temporary or seasonal sales of goods at retail.
2. The staff recommendation of approval, as revised, is based upon the "Analysis" as set forth on p.2, concluding that this amendment allowing churches to have temporary sales, with conditions, should not have a negative impact on surrounding neighborhoods. The staff presentation is found on p.4, where the text was revised to specify the districts in which this would be allowed, i.e. any AG, AGR, Residential or Office zoning district. The staff also added the term "outdoor sales" and such sales would be limited to 45 days in a calendar year. (See p.7).
3. The applicant's testimony is found on p.5.
4. There was no testimony in opposition.
5. On May 6, 2009, the Planning Commission agreed with the staff recommended language, as revised, and voted 8-0 to recommend approval (Gaylor Baird, Cornelius, Esseks, Francis, Sunderman, Larson, Partington and Taylor voting 'yes'; Carroll abstained).
6. **Note:** The applicant has requested second and third reading on June 1, 2009.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: May 11, 2009

REVIEWED BY: _____

DATE: May 11, 2009

REFERENCE NUMBER: FS\CC\2009\CZ.09010 text

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for MAY 6, 2009 PLANNING COMMISSION MEETING

- PROJECT #:** Change of Zone No. 09010
- PROPOSAL:** Allow churches to have temporary or seasonal sales of goods at retail with conditions as a permitted use.
- CONCLUSION:** With the conditions, allowing churches to have temporary sales should not have a negative impact on surrounding neighborhoods.

<u>RECOMMENDATION:</u>	Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Section 27.70.060 of the Lincoln Municipal Code.
See ordinance attached.

ANALYSIS:

1. The proposed text change will allow churches to have temporary or seasonal sales of goods at retail as a permitted use. The applicant is requesting this text change on behalf of First Evangelical Free Church. Several other churches have recently inquired about selling fireworks as a fund raiser. This text change would allow churches to not only sell fireworks, but other temporary goods such as Christmas trees or Easter lilies.
2. Currently, a church in any residential or office district would have to request a special permit for outdoor seasonal sales. The special permit seems excessive since the sales are fund raisers and are accessory to the church.
3. The sale would be allowed anywhere on the church premise, whether this is inside the church building or under a tent.
4. The area of the sale may not cover required parking, a tent or other temporary structure for the sale shall not remain on the premise for more than 45 days within any one calendar year and the tent or other temporary structure shall comply with all applicable building and life safety codes.

Prepared by:

Tom Cajka
Planner

DATE: April 23, 2009

APPLICANT: Randy Bartelt
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Lincoln, NE 68508
(402) 441-6918

CONTACT: Tom Cajka, Planner
Lincoln-Lancaster County Planning Department

CHANGE OF ZONE NO. 09010

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 6, 2009

Members present: Francis, Sunderman, Taylor, Larson, Partington, Gaylor Baird, Esseks, Cornelius and Carroll.

Ex Parte Communications: None.

Staff recommendation: Approval, as revised on May 6, 2009.

Staff presentation: **Tom Cajka of Planning staff** indicated that the specific purpose of this text amendment application began as a temporary permit for sale of fireworks. Several churches have been asking about selling fireworks as a fund-raiser. Staff had discussions as to whether this could be considered an accessory use to a church as a fund-raising project and whether or not a special permit would be necessary. Upon further discussions with the City Law Department, it was determined that a special permit was probably excessive for this use; however, the Law Department did not want to call it an accessory use and proposed providing some conditions for tent sales and temporary seasonal sales. This will apply only to churches or religious institutions and it allows for temporary or seasonal sales, either under a tent or temporary structure, or anywhere on the church premise.

Cajka submitted a proposed amendment to specify the districts in which this would be allowed, i.e. any AG, AGR, R or O Districts. These are the same districts that appear for temporary seasonal sales in the special permit section of the ordinance.

Paragraph (b) is also proposed to be amended to state: "Any outdoor sales, tent or other temporary structure used...". This would cover sale of Christmas trees, for example. Any outdoor sales would be limited to 45 days in a calendar year. The 45 days do not need to be consecutive. This does not limit sales inside the building, such as bake sales, etc.

Esseks was interested in rewording the language to include "churches, synagogues, mosques, and other institutions of religious worship". Cajka suggested that the term "church" is a generic term that has been interpreted to include all places of worship. **Steven Henrichsen of Planning Staff** added that "church" is the term used throughout the zoning ordinance in numerous places and it has been interpreted to mean any place of worship. "Church" has never been meant to be an exclusive term.

Esseks inquired whether the zoning ordinance makes that explicit interpretation. Henrichsen responded, "no". Since the word "church" is used in numerous places, he believes it might be detrimental to have the additional definition suggested just in this one place in the ordinance. Staff has had this discussion before and has never felt the need to go forward with more clarification. Perhaps the more generic term "place of worship" could be used at the time when the entire zoning ordinance is updated.

Esseks asked how he would go about requesting that the definition clauses of the zoning ordinance reflect this interpretation. Henrichsen suggested that staff could include it in the long list of amendments for the zoning ordinance rewrite. There are lots of definitions that have been interpreted over time.

Proponents

1. Randy Bartelt, 5534 NW Tudor Lane, appeared as the applicant and clarified that he is Chaplain in the Lancaster County Jail working for the Good News Jail and Prison Ministry, a non-funded county position. As an employee of Good News, he needs to raise his own funds just as any missionary would. He believes that fireworks is a way for him to raise funds. He also clarified that he is not working on behalf of any church or any place of worship specifically. He is doing this because he needs to raise funds for the position that he has.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

May 6, 2009

Larson moved approval, as revised by staff, seconded by Francis and carried 8-0: Francis, Sunderman, Taylor, Larson, Partington, Gaylor Baird, Esseks and Cornelius voting 'yes'; Carroll abstained. This is a recommendation to the City Council.



April 7th, 2009

To whom it may concern,

This is a request for a zoning text change to allow the sale of seasonal goods as a conditional use on church property.

Sincerely,

Rev. Randy Bartelt, Chaplain
Lancaster County Jail

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MOTION TO AMEND

Add the underline text to the proposed text change for Change of Zone #09010

27.70.060 Seasonal Sales for Churches.

The premises of a church in any AG AGR, R or O district may be used for the temporary or seasonal sales of goods at retail under the following conditions:

- (a) The use of the church premises for such sales shall not reduce the amount of on-site parking to less than the minimum required;
- (b) Any outdoor sales, tent or other temporary structure used in association with such sales shall not remain on the premises for more than 45 days within any one calendar year;
- (c) The tent or other temporary structure shall comply with all applicable building and life safety codes.