

**SALT LAKE CITY PLANNING COMMISSION MEETING
In Room 326 of the City & County Building
451 South State Street, Salt Lake City, Utah
Wednesday, January 27, 2010**

Present for the Planning Commission meeting was Chair Babs De Lay and Vice Chair Frank Algarin, and Commissioners Tim Chambless, Angela Dean, Michael Fife, Michael Gallegos, Kathleen Hill, Susie McHugh, Prescott Muir, Matthew Wirthlin, and Mary Woodhead.

There was no field trip prior to the meeting. A roll is being kept of all who attended the Planning Commission Meeting. The meeting was called to order at 5:57 p.m. Audio recordings of the Planning Commission meetings are retained in the Planning Office for an indefinite period of time. Planning staff members present at the meeting were: Frank Gray, CED Director, Wilford Sommerkorn, Planning Director, Joel Paterson, Programs Manager; Lex Traughber, Principal Planner; Paul Nielson, City Attorney; and Tami Hansen, Senior Secretary.

Work Session

Dr. Christian Nelson, Presidential Professor and Director of the Metropolitan Research Center at the University of Utah, gave a presentation regarding the future of Salt Lake City.

Approval of Minutes from Wednesday, January 13, 2010

Commissioner Woodhead made a motion to approve the January 13, 2010 minutes with noted changes. Commissioner Gallegos seconded the motion. All in favor voted, "Aye". Commissioner McHugh abstained.

Report of the Chair and Vice Chair

Chair De Lay stated she and Vice Chair Algarin met with Mayor Becker and discussed projects the Commission would be reviewing in the near future. She stated she met with the City Council Chair and Vice Chair and they discussed future projects the Commission had forwarded to the City Council to act on.

Report of the Director

Mr. Sommerkorn stated there were two openings for a Senior Preservation Planner in the Planning Office, and an offer was extended to Principal Planner Janice Lew, and she accepted. He stated an offer was also made to another individual out of state and were waiting for a response.

Chair De Lay reminded Mr. Sommerkorn there were still two positions open for the Planning Commission, and noted the Mayor was currently accepting applications.

Unfinished Business

Petition PLNPCM2009-00495; Zoning Text Amendment Relating to Salt Lake City Alcohol Regulations—The Planning Division is reviewing a petition initiated by Mayor Becker to amend the Salt Lake City Zoning Ordinance in matters related to City alcohol regulations. The amendments are proposed to ensure consistency with State law, provide clarity in the Zoning Ordinance and process, and to allow alcohol related establishments throughout the City in areas where they are appropriate.

Chair De Lay stated this petition was originally heard by the Commission on December 9, 2009. She stated public attendance was low; some community council representatives were there to speak. She stated there were some complaints that she was unfair in giving enough time to people to speak, and she apologized for that.

According to staff there are nine community councils, seven of which are active and recognized by the City Council to represent the original planning areas. She stated the City ordinance also mentioned registered organizations which may get notification of items on the agenda, and are often a level down from the community council and referred to as neighborhood councils. She stated recognized organizations are encouraged to make recommendations concerning matters of which they were given notice. In making such recommendations the spokesperson for the organization shall specify the following: the nature of the meeting of which they got together, the recommendation obtained, the notice procedure of which such recommendation was made, the vote on such recommendation, and any dissenting reports.

She stated it was a policy of the Planning Commission and not the direction of the ordinance as to whether the Commission called on the community council to speak on an issue, or to hear from neighborhood groups, and whether each group was given five minutes or two minutes.

Chair De Lay recognized Lex Traughber as staff representative.

Mr. Traughber stated at the December 9, 2009 meeting the Commission was presented with the initial proposal, a staff report was provided which included text changes to tables and definitions for the Commission's review; various City departmental and division comments were also included. He stated the Commission requested more time to be given for the purpose of additional input from community councils, as well as the public. Mr. Traughber stated that was done, so the purpose of this meeting was to follow up.

Chair De Lay asked Mr. Traughber to report on the results of the second outreach to the community councils and public.

Mr. Traughber stated much of the discussion focused on alcohol related uses in the low-intensity mixed-use and commercial zones. He reminded the Commission this proposal encompassed several other code revisions such as effectively eliminating the remainder of the "Alcohol Map", which was an overlay which designated where in the City alcohol related uses could currently be located, revise the table of permitted and conditional uses to allow for reasonable citations of alcohol establishments in various zones across the City including the lower intensity mixed-use and commercial zones. And ensure all conditional use establishments meet and/or are compatible with the criteria already adopted by the City Council for the RMU and MU Zones.

He stated State regulations would be referred to regarding regulation locations of liquor stores, that new alcohol establishments incorporate walkability and alternative means of transit when possible, and to

clarify regulations to ensure that all alcohol related uses including: social clubs, tavern, dining clubs, brewpubs, and microbreweries are defined in the City code. Alcohol production facilities including: breweries, distilleries, and wineries are identified and it was included where those types of facilities would be located in the city.

Mr. Traughber stated on January 7, 2010, Planning staff and the Community and Economic Development Department attending the Mayor/Community Council chair meeting. On January 14, 2010 a second open house regarding this issue was held, and approximately twenty people attended that event. He stated more information was required regarding potential impacts that could result in these types of establishments in various locations of the City, including: buffering noise, parking, as well as an entire matrix of other potential impacts in the staff report. He noted he went back and fleshed those issues out a little bit to give direction to the Commission, as well as to the public.

Two revisions were made to the proposal; first, the residential office zone (RO) was eliminated from the proposal as a zone where alcohol related establishments would be allowed. Second, provision E in the text regarding the minimum area in the CN and RB zones was revised to be clearer.

Mr. Traughber stated the Commission received a lot of public comments in the meeting packet that included emails and letters from community councils. He stated a host of additional comments were emailed after the packets were mailed and those comments were provided tonight.

Chair De Lay inquired about what the collective response from the public was.

Mr. Traughber stated to summarize in general the comments were negative, mostly relating to the issue of alcohol related uses as they are proposed in the lower intensity mixed use and commercial zones.

Commissioner McHugh stated she read through the public comments and got the feeling the public was under the idea bars would be located anywhere in the neighborhood plying alcohol. She stated a lot of people seemed to be against it because of what they thought this text amendment implied, which was not the case at all.

Chair De Lay stated it was possible the public received limited information and did not have the opportunity to read the massive staff report.

Mr. Gray stated the Mayor was dealing with the format of what should precede from this point forward. He stated the Mayor could not be here tonight, but he did write a letter regarding several of the comments he had received. He stated in summary the Mayor expressed the comments received were well reasoned, and he had no objection to spending more time reviewing the specifics of the alcohol ordinance changes. The Planning Commission should proceed as they see fit, and additional time for review could be taken before the City Council decided upon this petition.

Mr. Gray stated he felt there were good comments, but there also seemed to be a lot of confusion and misunderstanding regarding what the ordinance did and did not include.

Commissioner Muir stated it would be helpful for Mr. Gray to synopsise what was included and what was not included in this ordinance.

Mr. Gray stated in the last year there were significant changes to state law regarding alcohol permits. He stated there were a number of years where the City had evolved in alcohol policy, but over the years the ordinances were patched up in a way to address separate issues. He stated staff looked at zones in which

alcohol establishments could be developed. It was important to understand that one single rule or regulation for all kinds of establishments was not the goal of this amendment; the concept that bars were coming into neighborhoods was a completely false concept.

Mr. Gray stated the real issues were about the State definitions of brewpub and tavern. Those two terms meant a lot of different things to a lot of different people, but in both cases these establishments were required to have at least fifty percent of their sales in food. He stated in the past the business license process and the planning process sometimes produced different answers for applicants wanting to put an alcohol establishment in a certain area. He stated these changes would help an applicant investing in a alcohol serving restaurant establishment to know the process.

Commissioner Wirthlin stated the definitions of all the alcohol related establishments were extremely confusing, and it would be helpful to look at those definitions so everyone understood.

Commissioner Chambless stated the terminology could be confusing and he inquired if staff could use examples of neighborhoods to help the Commission visualize businesses that were enveloped by neighborhoods.

Mr. Gray stated there were two kinds of commercial areas the City was concerned with. He stated if you looked at the old 140 mile streetcar track, at some of the major stops, small commercial areas developed. There was a renaissance in some of those areas like the 9th & 9th and 13th and 13th areas without a street car there. He stated those areas would fall into neighborhood commercial zones, or the integrated commercial zones. The second kind of commercial area was small scattered sites, which had developed along most of the streetcar development, but were not clustered together at all.

Mr. Traugher stated the definition of alcohol serving establishments included: taverns, social clubs, dining clubs, brewpubs, or microbreweries, and the definitions were as follows: Tavern: A business establishment engaged primarily in the retail sale of beer, as defined by Utah State Code for consumption on premise, and included the following: if the sale of beer exceeds the revenue of the sale of food, although need not be sold in the establishment.

Commissioner McHugh inquired if the beer sold at a tavern was 3.2 percent alcohol, or if it was stronger.

Mr. Traugher stated it was the 3.2 percent beer.

Social Club: A business establishment that did not meet the State definition or requirements for a dining, equity, fraternal club license that served alcoholic beverages that includes, but is not limited to beer, heavy beer, wine, or liquor as defined by Utah State Code for on premise consumption.

Mr. Traugher stated a social club can sell all forms of alcohol without selling food.

Dining Club: A business establishment that maintains at least 50 percent of its total sales were from food, but also serves alcoholic beverages including, but not limited to: beer, heavy beer, wine, or liquor as defined by code for on premise consumption. The consumption of food is not required for the purchase or consumption of alcohol.

Mr. Traugher stated some examples of this are Legend's Sports bar, Market Street Oyster Bar, and Fiddler's Elbow.

Brew Pub: (Not a State definition) A restaurant type establishment that has a beer brewery, producing beer in batch sizes of not less than seven (7) U.S. barrels (31 gallons) on the same property, which produces only enough beer for sale and consumption onsite, or for retail carryout sale in containers.

Mr. Traugher stated the definition included in the text amendment was quite long, but essentially the difference between a brewpub and a microbrewery was a microbrewery could brew a lot more beer and it could be distributed. He stated microbreweries were only proposed for areas in the City that were either a manufacturing or manufacturing like zone/area of the City.

Commissioner De Lay stated the public hearing portion of this petition was closed at the meeting on December 9, 2009. She inquired of the Commissioners if they were in favor of moving this forward, based on all of the information they had received.

Commissioner Hill stated the expressed will by an overwhelming majority of residences suggested a negative response to introducing commercial distribution of alcohol in residential neighborhoods. She stated she did not see how the Commission could go forward and suggested tabling this for further study regarding the impact on neighborhoods. She stated she did not think allowing alcohol related a business on a half acre site in a neighborhood was a good idea.

Commissioner Fife stated he felt the public hearing should be reopened, and he would be willing to forward this petition with a positive recommendation to the City Council if the CB and the CN zones were removed. He stated those two zones seemed to be the areas where there was controversy.

Commissioner Dean stated there seemed to be a wide negative response, but she agreed that was largely due to the misunderstanding that bars would be allowed in residential neighborhoods, which was not the case. She stated there were several threads of response from the community council, which had commented on parking, smoking, and buffers, and which Mr. Traugher addressed in the staff report. She stated she would feel more comfortable knowing some of the end results of further studies on these types of issues.

Commissioner McHugh stated a lot of the negative comments were based on misconception, she did not see how a perfect statement of all the mitigating factors relating to buffers and noise could totally ever satisfy everybody. She stated she was in favor of not opening the public hearing, the hundred plus comments that were included in the staff report were plenty, and she would be in favor of forwarding this to the City Council.

Commissioner Chambless stated he was ambivalent, at some point the Commission needed to make a decision. He stated if he had to choose he would be in favor of forwarding this to the Council with a recommendation. He stated he wanted to make sure the public debate had been sufficient, that everyone felt they had a fair hearing. He stated eventually this City would become more and more diverse, he agreed there were some confusions regarding the definitions of these establishments, which he would like to see elaborated on.

Commissioner Muir stated there was an incredible amount of misinformation and he would hope that some of Mr. Gray and Mr. Traugher's input clarified some of that. He stated he would advocate opening the public hearing to see if those that were now accurately informed had new comments or new information the Commission had not otherwise heard. He stated he was not convinced that tabling or continuing this petition would accomplish anything; staff was working diligently from various different formulas of focus groups and meeting individually with community councils to get the information out. He

stated if anything in the past six weeks there was a promulgation of more misinformation as a product of some people's agendas that existed to undo the work that was put into this, rather than try to understand it and find some common ground.

Commissioner Muir stated he would be in favor of hearing additional public comment, given the changes that were made to the original proposal, and the misinformation that exists. He stated more time might be helpful to look at potential impacts, and he would agree with Commissioner Fife that much of the concern had to do with the less intensive commercial zones, which abut or are right in the middle of residential zones.

Commissioner Woodhead stated she would like to respectfully disagree with Commissioner Hill, the recent comments from the public were overwhelmingly negative, but she had gone back and read the December 9, staff report, which was not a statistical compilation, but did include a lot of individual comments, specifically directed to the issue of neighborhood bars and a number of those were positive. She stated there was what felt like some organized responses that were very negative, which was not to say that was not legitimate or the reasons were not legitimate. She stated she would be inclined to move this forward with some possible changes to the proposal, but presuming the public comment was not simply a repetition of what the Commission had already received.

Commissioner Algarin stated he was of the opinion that Mr. Traughber really put a lot of work into this and really reached out to the community. He stated although overwhelmingly those in attendance might be of a single opinion he knew that was not the case. He stated the Commission might as well vote on this tonight and either approve or deny it, because tabling it would serve the exact purpose that tabling it last time did, there were no new ways of describing tavern versus bar, etc.

Commissioner Gallegos thanked Mr. Gray and Mr. Traughber for their clarifications, and tabling this petition would not be beneficial.

Commissioner Woodhead summarized the topics covered in the public comments the Commission had received regarding the neighborhood alcohol establishments, which seemed to be the biggest concern. She stated those in favor liked positive changes including: improved dining, walkability, decrease in pollution, build neighborhood friendships, increase business opportunities, give business owner's options as to their format, create neighborhood gathering places like those in Europe and other cities, the lack of licenses will result in slow implementation with time for tweaking, provide support for local businesses, provide jobs, provide options, decrease drunk driving, and will allow the free market to work.

Commissioner Woodhead stated some of the issues of those opposed were: pedestrian safety, a decrease in property values, increase in crime, drunk driving, parking, traffic, smoking, drunk pedestrians, garbage, noise both inside and outside, noisy lines, pests including raccoons, encouraging alcoholism, noisy music, proximity to homes, alcohol establishments will cause the breakup of families, interferes with the right of families to raise children with strong moral values, a damage to Salt Lake City's tax base, a threat to bicycle safety, paints diverse neighborhoods with a broad brush, lack of sufficient buffering between alcohol establishments and homes, lack of a mechanism for community councils to exert control, failure to limit size and scale, failure to protect daycares from impact, need for greater limits on hours of operation, degrades the neighborhood, will interfere with sleep, the inability for the City and the Police Department to enforce already existing limits, unfair impacts to the Westside and Liberty Park neighborhoods, there is a need for more details, ordinance is too vague, need for added enforcement, creates slums, and contrary to Utah's uniqueness.

Commissioner McHugh stated she felt opening the public hearing again would set a bad precedent; the public hearing has been closed.

Commissioners Hill, Fife, Muir, Wirthlin, Woodhead stated they would be in favor of opening the public hearing.

Commissioners Dean, McHugh, Chambless, Algarin, and Gallegos stated they were against opening the public hearing again.

Chair De Lay stated she agreed with Commissioner McHugh that opening the public hearing again would create a huge precedent.

Mr. Sommerkorn stated that a public hearing and a public meeting were two different things, at a public hearing the public had the right to speak and anyone who came forward had two minutes to say whatever they wanted. He stated at a public meeting there was no right to speak it was at the discretion of the Chair and because of that the Chair had the ability to say to someone we have heard it and do not need to hear it again.

Chair De Lay stated the public hearing would not be reopened.

Commissioner Gallegos stated he was in favor of moving this forward. There were some changes made after the December 9, meeting which he supported.

Commissioner Woodhead stated she was prepared to favorably move this forward, but with three critical changes: That brewpubs should be removed as a permitted use in the CN and RB zones, because brewpubs are involved with actually brewing beer. She stated when she thinks of Squatter's or Redrock, they had huge brewing rooms and in the smaller residential districts that seems less appropriate, whereas the dining clubs were more consistent with a small neighborhood bar, her sense was the consumption was not inconsistent, only the beer brewing part.

Mr. Gray inquired if Commissioner Woodhead meant she wanted to remove them as a conditional use from those zones.

Commissioner Woodhead stated that was correct. Second, she wondered if there could be a provision where the Commission could deny a conditional use if it was physically impossible to have a smoking area away from abutting residences, based on the site.

Mr. Gray stated there were two ways to do that, where a person could or could not smoke was actually controlled by State Law. He stated in the maintenance and operation plan, the City could require the applicant to designate a specific area and only permit smoking within that area of an establishment. He stated an element that could not be controlled was somebody walking down the street smoking; people were allowed to do that in Utah. He stated the enforcement of that would be through the Business and Licensing provision, since a maintenance and operation plan would need to be submitted annually. He stated if there were violations the business license would be in jeopardy.

Commissioner Woodhead inquired if State law required for an establishment to have a smoking area.

Mr. Gray stated State law only required that smoking be done 25 feet from the doorway.

Commissioner Woodhead inquired if there should be provision in regards to the size of the conditional or permitted use, to be calculated based on the size of the particular zone. She stated if the site was a half

acre, the size that could be there would be smaller than if it were in an area that was a one or two acres. She stated a lot of the problems the public raised in terms of traffic and people outside, would be tied to some extent to the size of the establishment, so when there were very small commercial zones that sit in the middle of residential areas those uses should be smaller, so it was more proportionate to what was around it.

Commissioner Wirthlin stated in the staff report it referred to liquor stores, along with permitted additional uses. He inquired if Mr. Traugher could clarify that.

Mr. Traugher stated the location of a liquor store was controlled by the State, currently the City code through the conditional use process, identified zones where liquor uses could be located.

Commissioner Wirthlin inquired if the State could put a liquor store wherever it wanted, regardless of what the City wanted.

Mr. Traugher stated he understood the State had the final say on where a liquor store could be located, it may be done in conjunction with a municipality, but the final decision did rest with the State.

Commissioner Wirthlin stated the references to a liquor store in the table of uses were simply a hope that the State would use as a guide.

Mr. Gray stated yes, and to date the State had done that.

Commissioner Wirthlin stated he would agree with Commissioner Fife to remove brewpubs, dining clubs, and liquor stores from the RB and CN zones.

Commissioner Muir stated he supported the ordinance as written. He state it was a benign and nuance adjustment to the uses that were already allowed, and the proposed adjustments to the ordinance were logical and quite frankly overdue.

Commissioner Chambless stated he concurred with Commissioner Woodhead. He stated he was concerned with outdoor dining decibel levels and downward lighting in residential areas.

Mr. Gray stated an establishment would be required to submit a security and operations plan, which had to be approved by the City Police Department, Building Official, and filed with the City Recorder's Office. He stated this plan would include how an establishment was going to keep their place clean and where they would permit certain activities to occur or not occur. He stated that plan also had to have a complaint/response community relations program, which would include a telephone number that was clearly indicated, and representative for the establishment to attempt to resolve any issues which may come up.

Chair De Lay stated there were places currently around town that had outdoor speakers.

Mr. Gray stated this would be for lower intensity uses, not downtown. He stated there would also be provisions regarding smoking and trash clean up. Portable trash receptacles should be emptied daily and automated receptacles emptied weekly. He stated the parking management plan for the site itself, screening, and impact would all require review regarding the surrounding neighborhood.

Commissioner McHugh concurred with Commission Muir, a lot of work had gone into this and she felt comfortable forwarding it onto the City Council.

Commissioner Dean stated some common themes the community councils were worried about were smoking, parking, noise, buffer zones, and enforcement. She stated she would be comfortable with the changes Commissioner Woodhead proposed. Buffer zones in the lower density areas should be more than just landscaping and walls, but a distance buffer might be necessary. She stated that might preclude some small pockets from being developed, but it might alleviate some fears. She stated 200 feet from the setback of a residence to the building itself, plus a landscape buffer would be great for distance. She inquired what the City's process was regarding the complaint hotlines, and what penalties were applied to violators.

Mr. Gray stated conditional uses have conditions that must be enforced; if those conditions were not met a revocation of the conditional use process could begin. He stated since the maintenance and operation plan was tied to the business license, which was reviewed annually, 99 percent of the complaints the City got were resolved by simply approaching the owner and telling them a complaint had been filed and it got worked out.

Mr. Traugher stated the distances required referred to the buffering chapter that had already been adopted into the code.

Commissioner Fife stated there was plenty of higher density zones scattered throughout the City where people could still walk to. He stated the State legislature is not going to start passing out liquor licenses like candy so the City needed to concentrate liquor establishments in places where they could be a benefit to the commercial development that was downtown and in mixed-use zones and some of the larger commercial areas. He stated he was more worried when people left the establishments there was going to be noise as they walked through the residential neighborhoods to access cars or walk home.

Commissioner Hill concurred with Commissioners Wirthlin and Fife. She stated citizens were asking to be empowered to shape their communities, she agreed that RB and CN zones should be taken out of this proposal.

Commissioner Chambless inquired if it would be appropriate in the recommendation to site certain hours these establishments could operate between.

Mr. Nielson stated as part of the conditions of a conditional use that could be done.

Commissioner Woodhead stated she wanted the public to feel the Commissioner had heard everything they said, there were legitimate concerns about drunk driving and what happened in the neighborhoods. She stated there may have not been a public hearing tonight, but each Commissioner read the information and the comments given to them and thought about these issues.

Chair De Lay reminded the public this was being forwarded to the City Council and everyone would have the opportunity to express themselves there.

Motion

Commissioner Woodhead made a motion regarding the Zoning Text Amendment Alcohol Regulations, Petition PLNPCM2009-00495 that the Planning Commission forwards a positive recommendation to the City Council, with the proposed following changes:

- 1. That brewpubs be removed as a conditional use in the RB and CN zones.**

- 2. That staff consider creating a provision, whereby the size of the use would be calculated by the size of the particular RB or CN zone.**
- 3. That the ordinance include a provision where if it is impossible to have a smoking area away from abutting residences that would constitute grounds for denying the conditional use.**
- 4. Removing liquor stores from the RB and CN zones.**
- 5. That the City has the authority to impose hours of operation shorter than State law, if it is appropriate to protect the best interest of the neighborhood**

Discussion of the Motion

Commissioner Chambless inquired if Commissioner Woodhead would accept an amendment regarding closing hours on weekdays or weekends.

Mr. Gray stated the best place to add that would be the maintenance and operation plan or directly as a condition for a conditional use permit.

Commissioner Woodhead added condition 5 to the motion.

Commissioner Hill proposed an amendment to include removing dining clubs from the RB and CN zones.

Commissioner Woodhead did not accept the amendment.

Commissioner Gallegos seconded the motion.

Commissioners Hill, Fife, Muir, Wirthlin voted, “No”. Commissioners Dean, McHugh, Chambless, Woodhead, Algarin, and Gallegos voted, “Yes”. The motion carried.

The meeting adjourned at 7:29 p.m.

This document, along with the digital recording, constitute the official minutes of the Salt Lake City Planning Commission held on January 27, 2010.

Tami Hansen