

37. No. 06OA001 – Ordinance Amendment

A request by City of Rapid City to consider an application for an **Ordinance Amendment to Section 17.50.185 to provide a specific distance between residential areas and on-sale liquor establishments with and without video lottery.**

Bulman reviewed the Ordinance Amendment and summarized the current statistics of established on-sale liquor establishments, including video lottery businesses and restaurants without video lottery. Bulman further commented on the differences between use variances and area variances.

Brewer expressed his concerns with regard to the language that pertains to the definition of a sit-down restaurant and serving prepared meals. Discussion followed.

Landeem advised that the adoption of the Ordinance would be the City Council's decision. Landeem advised that a recommendation from the Planning Commission would be appropriate and necessary. Landeem reviewed the differences between area and use variances. Discussion followed.

In response to Brewer's questions, Landeem stated that the "to serve prepared meals" language may need to be reviewed. Landeem advised that staff would like some direction on the restrictions for sit-down restaurants.

**Schmidt moved, Landguth seconded to approve the Ordinance Amendment to Section 17.50.185 to provide a specific distance between residential areas and on-sale liquor establishments with and without video lottery with the language changes from "must" to "may", adding "500 feet or more to be sufficiently buffered with respect to residential districts so as not adversely affect such areas" and to delete the phrase to "serve prepared meals".**

Steve Wynia, expressed his support for maintaining the current language in the Ordinance. Discussion followed.

Schmidt expressed his support for the proposed changes in the Ordinance.

**Brenneise moved, Landguth seconded to amend the motion to leave in the sentence regarding serving prepared meals and to approve the Ordinance Amendment to Section 17.50.185 to provide a specific distance between residential areas and on-sale liquor establishments with and without video lottery with the language changes from "must" to "may", adding "500 feet or more to be sufficiently buffered with respect to residential districts so as not adversely affect such areas." (6 to 0 with Andrews, Brenneise, Brewer, Landguth, Schmidt and Waltman voting yes and none voting no)**

Waltman expressed her opinion in support of adding the restaurant provision, maintaining the 500 foot minimum buffer requirement.

Bob Fisher expressed his opinion in limiting the number of video lottery establishments within a residential neighborhood.

**Schmidt moved, Landguth seconded that the Ordinance Amendment to Section 17.50.185 that provides a specific distance between residential areas and on-sale liquor establishments with and without video lottery, excluding restaurants without video lottery with the language changes from “must” to “may”, adding “500 feet or more to sufficiently buffered with respect to residential districts so as not adversely affect such areas and to revise the language describing restaurants to read “full service restaurant.” (6 to 0 with Andrews, Brenneise, Brewer, Landguth, Schmidt and Waltman voting yes and none voting no)**

LEGAL AND FINANCE COMMITTEE MARCH 29, 2006

No. 06OA001 – Marcia Elkins said the Planning Commission made a recommendation to approve Ordinance No. 5146 Establishing a Minimum Distance Between On Sale Liquor Establishments and Residential Zoning Districts with some changes. The ordinance would prohibit on-sale liquor establishments to be approved within 500 feet of a residential zoning district. The attached map shows those locations. There are a number of facilities that would be created as non-conforming uses. There is an exception made for any on-sale liquor establishment operating in conjunction with a full service restaurant with a fixed kitchen and one that does not contain video lottery. The other provisions would remain in place. If a facility was more than 500 feet from a residential district, it would still have to demonstrate that it was not adversely affecting any place used for religious worship, school, park, playground, or other similar use within 500 feet and that it was sufficiently buffered from residential areas, did not create an undue concentration, and that it met all of the other requirements of the specific sections related to on-sale liquor establishments. She said this comes forward from the Planning Commission at the direction of the Council. She said there are numerous facilities that would not comply under this ordinance and that could not be expanded in the future. Once this is adopted, a variance to these provisions will not be allowed. Hadcock moved to take Introduction and First Reading of Ordinance No. 5146 Establishing a Minimum Distance Between On Sale Liquor Establishments and Residential Zoning Districts by Amending Section 17.50.185 of the Rapid City Municipal Code to the April 3, 2006, City Council meeting without recommendation. Second by Schumacher. Hadcock said this ordinance will protect the citizens in the area. Steve Brenden came before the Committee and said he has a concern for the businessman who might want to start a business on a street that is a major commercial area. He fails to see how a business like this would adversely affect the neighborhood in a situation like that. The City Attorney's office has reviewed the issue of variances. In their opinion, variances could not be allowed because this would be a use variance and that is not permitted under South Dakota statutes. Elkins said something could be written into the ordinance to potentially allow expansion of existing on-sale liquor establishments and exceptions could be allowed. The Planning Commission's understanding of the request coming forward from Council was to adopt a hard and fast rule. Assistant City Attorney Joel Landeen told the Committee that when the variance issue was looked at, he came down on the side of it being a use regulation and therefore, no variance would be allowed. However, there is case law to the contrary so it is possible this could get challenged. He does, however, feel comfortable with the recommendation that there would be no variance allowed. After further discussion, a vote was taken and the motion carried.

## **CITY COUNCIL APRIL 3, 2006**

**Ordinance No. 5146** (No. 06OA001), Establishing a Minimum Distance Between On Sale Liquor Establishments and Residential Zoning Districts by Amending Section 17.50.185 of the Rapid City Municipal Code was introduced. Upon a motion made by Chapman, second by Olson, Ordinance No. 5146 was placed upon its first reading and the title was fully and distinctly read, and second reading set for Monday, April 17 2006 at 7:00 P.M. Alderman Johnson indicated his opposition to the ordinance explaining that over half the alcohol establishments would be a non-conforming use. He indicated that the ordinance gives protection to the few people that are in the video lottery business; keeps competition out and closes businesses down in certain circumstances. Alderman Hurlbut also indicted his opposition to the ordinance explaining that there are existing license that will be affected and restricted at their current state of business and location where they cannot make improvements or expand. He pointed out that there is the anti-competition element that says that everything stays the same; and finding available space that meets the requirement of 500 feet from a residential area may not exist. He suggested limiting new licenses, but the existing businesses should be allowed to continue with their licenses, and the licenses should be transferable and portable. Alderman Chapman reminded the members that this issue came forward because of the situation on Indiana Street; and it was the direction of the Council to have an ordinance drafted. Chapman suggested changes could be made to the ordinance and recommended granting exceptions to existing alcohol businesses. Elizabeth Frederick, owner of Joe's Place pointed out that there are establishments that have been in business many years in the same location and residential areas have developed around those establishments. She explained that the ordinance would not allow a business owner to make improvements or make structural repairs because of damages that may occur. The ordinance will take away the livelihood of the business owner. She suggested that what is working now is a case by case review; and it has not been a problem for the Council. Frederick pointed out that the requirement of 500 feet from a residential area excludes highways, sidewalks, and right-of-ways. She asked the Council to reject this ordinance. Steven Brenden, Rapid City expressed his dissatisfaction with the ordinance, indicating he understands the intent of the ordinance is to protect residential areas from encroachment of video lottery and alcohol establishments. He pointed out that there are commercial districts that border residential areas, suggested Council consider exclusion zones, and indicated that the 500 feet requirement may be excessive. Brenden also suggested the Council designate districts where video lottery and alcohol establishments would be allowed. Alderman Olson indicated that the City needs to provide an easier way for citizens to make their views known, without having to attend countless meetings. Alderman Hadcock reminded the members that the Planning Commission was directed to identify options and this is the recommendation from the Commission. Alderman Hurlbut pointed out that the case by case review currently being used by the Council works, and that the ordinance is flawed. He suggested that the City needs to be flexible to small

businesses who are trying to recoup the economic benefit of their businesses. Alderman Johnson indicated that currently the City has issued no new video lottery, but only allowed the transfer of licenses. He suggested that the conditional use permit works appropriately.

Substitute motion was made by Johnson, second by Hurlbut to refer First Reading of Ordinance No. 5146 to the April 12, 2006 Legal & Finance Committee meeting. Responding to a question from Alderman Hadley, City Attorney Green indicated that generally non-conforming uses that are ceased or destroyed can not be continued. If the business is damaged, but the damage is such that the building can be salvaged, then the use can continue. It is a case by case analysis. It would not be appropriate to write a grandfather clause into the ordinance; and the Council can not authorize that which an ordinance prohibits. Alderman Chapman indicated that the intent, that was created by the Council, and directed to the Planning Commission, was to define a buffer to address video lottery / alcohol and residential property. Alderman Kooiker explained that the original idea was to define "sufficient" buffer in order to give staff some guidance. Upon a vote being taken on the substitute motion to continue, motion carried.

Kooiker moved, second by Schumacher and carried to ask the Mayor's Office to appoint a Task Force of interested citizens and business owners to review Ordinance No. 5146.

LEGAL AND FINANCE COMMITTEE APRIL 12, 2006

**GROWTH MANAGEMENT**

No. 06OA001 – Johnson moved to table Introduction and First Reading of Ordinance No. 5146 Establishing a Minimum Distance Between On Sale Liquor Establishments and Residential Zoning Districts by Amending Section 17.50.185 of the Rapid City Municipal Code. Second by Okrepkie. Motion carried with Hadcock voting “no.”

Hadcock moved to table appointment of a Task Force to Review On-Sale Liquor Ordinance. Second by Johnson. Motion carried.