

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

PC Staff Report
11/16/15

ITEM NO. 7 **IG TO IL; .972 ACRES; 1021 E 31st (KES)**

Z-15-00471: Consider a request to rezone approximately .972 acres from IG (General Industrial) District to IL (Limited Industrial) District, located at 1021 E. 31st St. Submitted by Richard G. Sells, for Spirit Industries, Inc., property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning request from IG (General Industrial) District to IL (Limited Industrial) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

REASON FOR REQUEST

Applicant's Response:

"A business man would like to provide an indoor shooting range and a gun sales and repair shop. The present zoning, General Industrial, does not allow this use group."

KEY POINTS

- The property is located at the southwest corner of Haskell Avenue and E. 31st Street and is currently zoned IG (General Industrial) District.
- IG zoning does not permit *Participant Sports & Recreation, Indoor* use.
- IL zoning would permit the use and allow the shooting range/gun shop (*Ancillary Retail Sales, General*) within the district.
- As currently zoned, the property has been developed since 1991.
- The proposed rezoning will allow development consistent with the industrial nature of the area and fit within the goals of the comprehensive plan as well as allow the proposed use to better fit within the City Code.

ASSOCIATED CASES

SP-10-59-90 Site Plan; Balfour Manufacturing/Silkscreening; approved on November 6, 1990.

OTHER ACTION REQUIRED

- City Commission approval of rezoning request and adoption/publication of ordinance.
- Submission and administrative approval of a site plan.
- Application and release of building permits prior to development.

PUBLIC COMMENT

A question was posed to staff inquiring about any issues the proposed use for this property might pose in regards to the proximity to school property. The property where The Lawrence

College Career Center, Unified School District #497, property owner of record, is located approximately 760 ft. from the subject property.

There are no local codes that would prohibit the location of a gun range or shop within 1000 ft. of a school.

There are two federal acts that relate to guns and schools.

The Gun-Free Schools Act of 1995 (within schools) and the Gun-Free Schools Zone Act (reenacted in 1996 and creating a zone 1,000 ft. around a school).

The Gun-Free School Zones Act (GFSZA) prohibits any person from knowingly possessing a firearm that has moved in or otherwise affects interstate or foreign commerce at a place the individual knows, or has reasonable cause to believe, is a school zone. The GFSZA also prohibits any person from knowingly, or with reckless disregard for the safety of another, discharging or attempting to discharge a firearm that has moved in or otherwise affects interstate or foreign commerce at a place the person knows is a school zone. The GFSZA defines "school zone" as: 1) in, or on the grounds of, a public, parochial or private school; or 2) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

Exceptions to the possession prohibition include:

- Firearm possessors licensed by the state or locality to possess the gun, whose law requires that before the person obtains a license, state or local law enforcement verify that the person is qualified to receive the license; or
- Where the firearm is:
 - Unloaded and in a locked container or locked firearms rack on a motor vehicle; or
 - Unloaded and possessed while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities

Exceptions to both the possession and discharge bans include:

- On private property no part of school grounds.
- Where the firearm is possessed for use in a program approved by a school held in the school zone, or in accordance with a contract entered into between a school and the individual or an employer of the individual; or
- Where the firearm is possessed or used by a law enforcement officer acting in his or her official capacity.

The Act seems to except possession and firing on private property within 1,000 ft, which is the key to the act not directly prohibiting a gun range near the school. So while neither act prohibits a gun range within 1,000 feet of a school, it appears that the consumers may have certain responsibilities to comply with the federal law.

Project Summary

The property is currently zoned IG (General Industrial) District. A rezoning request to the IL (Limited Industrial) District is requested to better accommodate the proposed indoor recreation use (indoor gun range). Adjacent zoning in the area is IG and IL and the requested rezoning would be in harmony with this industrial area. The request complies with the Comprehensive Plan land use projections in the area. The area remains industrial. The IL zoning district accommodates the proposed use while maintaining the suitability within an industrial zoned area.

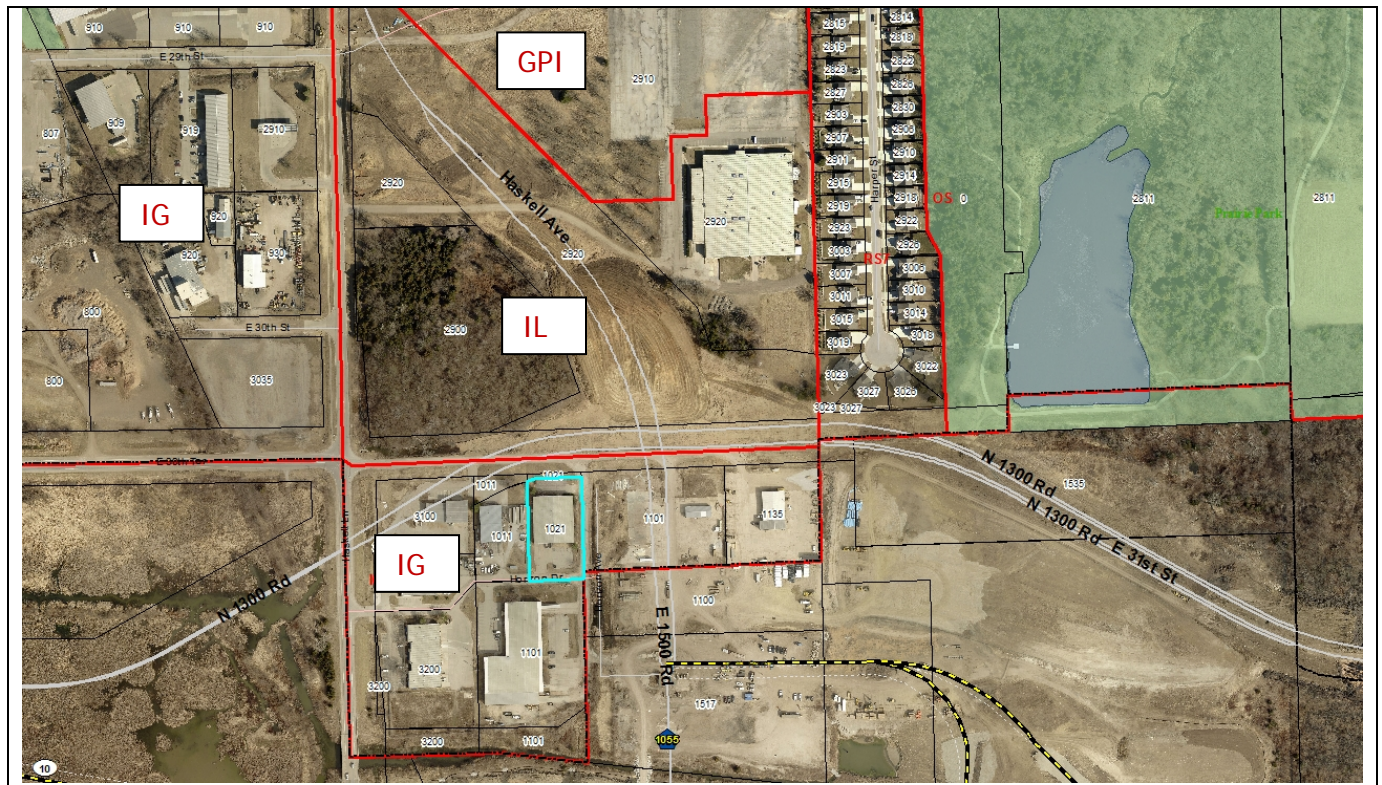


Figure 1. Zoning and land use in the area. Subject property is outlined.

Properties in the surrounding area of the property are zoned IG (General Industrial) and IL (Limited Industrial) and are developed with industrial and commercial structures. The USD 497 property to the north is zoned GPI (General Public and Institutional Use) District. A zoning map in Figure 1 illustrates the zoning and land uses of the area.

REVIEW & DECISION-MAKING CRITERIA

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's response:

"The property is within the Lawrence city limits. The property is located in an existing industrial zoned area. Rezoning the property does not effect the comprehensive plan, Horizon 2020."

This property is currently zoned IG and is in compliance with the current goals of *Horizon 2020* and the urban growth projections for the subject area. No change in density or character of development is proposed.

Staff Finding – The proposed rezoning does not change the overall character of development in the area and the request is in conformance with the industrial land use recommendations in the Comprehensive Plan.

2. ZONING AND USE OF NEARBY PROPERTY, INCLUDING ANY OVERLAY ZONING

Current Zoning and Land Use: IG (General Industrial) District; *Developed*.

Surrounding Zoning and Land To the west and south: IG (Industrial General) District;

Use: *Industrial businesses.*

To the north and east: IL (Limited Industrial) District;
*Undeveloped property to the north and Peaslee Center
 to the northeast.*

Staff Finding – The subject property is adjacent to properties zoned for industrial land uses. The industrially zoned properties are currently developed. The proposed rezoning is compatible with the zoning and land uses, existing and approved, in the area.

3. CHARACTER OF THE NEIGHBORHOOD

Applicant's Response:

"This is an industrial site located at 31st Street and Haskell Avenue. The site consists of six industrial lots. All lots have been developed."

This area is currently developed as an industrial area. The properties south of E 31st Street were platted and developed in the 1980's and 1990's. The recent extension of E. 31st Street and realignment of Haskell Avenue/E1500 Road as part of the K-10 highway project has modified traffic patterns and parcel sizes in the area.

Staff Finding – This is a low intensity industrial area with developed pad sites for industrial use. The proposed rezoning would result in the reuse of an existing building with a use that is compatible with the character of the area.

4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

The rezoning request is not changing overall development plans for the area, the character of the area or impacting adjoining property.

Staff Finding – The rezoning request is compliant with the area. The request is a change from an IG (General Industrial) District. The IL (Limited Industrial) District permits similar uses with the additional use group that would accommodate a *Participation Sports & Recreation, Indoor* venue that would include a gun range.

5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant's response:

"An indoor gun range and shop would be very suitable. There are no residential homes or public activities near the site."

Staff Finding – The property is well suited to the uses to which it is restricted under the existing zoning regulations. The proposed rezoning permits additional commercial and recreational uses which will accommodate *Participant Sports & Recreation, Indoor*.

6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's Response:

"Twenty-five years."

Staff Finding – The property is not currently being used as a business and the 14,000 sq. ft. structure is currently vacant. The zoning would enable to property to be utilized as a business with a use compatible with the area.

7. EXTENT TO WHICH APPROVING THE REZONING WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

As noted earlier, the property is surrounded with industrial zoned property which is developed. The rezoning of this property would allow for business development similar to, and compatible with the adjacent land uses.

Staff Finding – The IL zoning is in keeping with surrounding zoning. The rezoning would allow for a proposed use that would be compatible with the nearby uses and should have no detrimental effect. Future development is subject to site plan approval.

8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

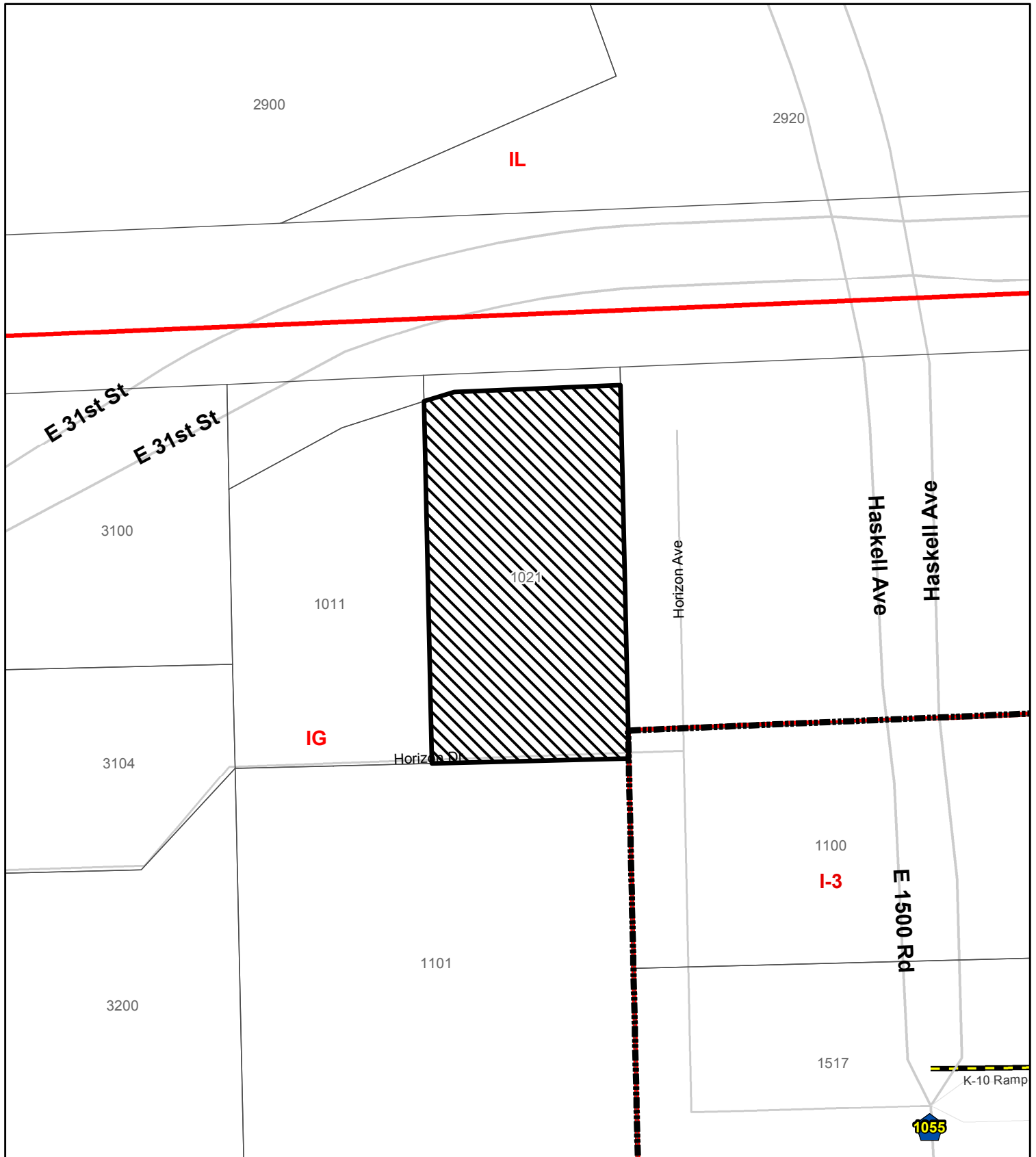
Evaluation of these criteria includes weighing the benefits to the public versus the benefits of the owner of the subject property. Benefits are measured based on the anticipated impacts of the rezoning request on the public health, safety and welfare.

The proposed rezoning is not changing the allowed use of the property in a manner that would be detrimental to public health, safety and welfare. The proposed rezoning allows the applicant to develop a business that is compatible with the area.

Staff Finding - Approval of the rezoning request will allow reuse of a currently vacant building with a use similar in intensity and compatible with the uses already in the area. Site plan approval is required prior to the change of use. This review provides an opportunity to specifically address site improvements and potential impacts to nearby properties. There would be no gain to the public health, safety, and welfare through the denial of the rezoning request.

PROFESSIONAL STAFF RECOMMENDATION

This staff report reviews the proposed rezoning request for its compliance with the Comprehensive Plan and the Golden Factors, and for compatibility with surrounding development. The rezoning request is compliant with the Comprehensive Plan and the Golden Factors and would be compatible with surrounding development. Staff recommends approval of the rezoning request.



**Z-15-00471: Rezone 0.973 acres from IG District to IL District
Located at 1021 East 31st Street**



-----Original Message-----

From: Shannon Kimball

Sent: Monday, November 09, 2015 6:48 PM

To: Patrick Kelly <PKelly@usd497.org>; Rick Doll <RDoll@usd497.org>

Subject: Federal gun free school zones act of 1996 information

I found this information pamphlet while doing a little bit of digging on the federal statutory issues noted by the city. My reading of the attached is that while the gun shop/shooting range would be allowed because it's on private property, any customer entering or leaving the gun shop would have to ensure that the firearm is unloaded and in a locked container except while on the private premises. I am highly skeptical that customers of a gun shop would be willing to lock their guns in a container before putting them in their cars and driving off in order to comply with the federal statute. I think the enforcement issues here are insurmountable and therefore it would not be reasonable to allow the rezoning to occur for the purpose of locating a gun shop less than 1000 feet from our school facility.

Thanks, Shannon

<https://www.atf.gov/file/58691/download>

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

- (i) on private property not part of school grounds;
 - (ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;
 - (iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or
 - (iv) by a law enforcement officer acting in his or her official capacity.
- (4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

If you have any questions, contact:

Bureau of Alcohol, Tobacco, Firearms
and Explosives
650 Massachusetts Ave., NW
Washington, DC 20226
(202) 927-7770

or

Visit our web site at www.atf.gov



U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
Office of Enforcement Programs and Services
Firearms Programs Division

Gun Free School Zone Notice

ATF

General Information

Generally, it is unlawful for any individual to knowingly possess a firearm within a school zone. A school zone is defined as being within a distance of 1,000 feet from the grounds of a public, parochial, or private school. This prohibition does not apply to the possession of a firearm on private property not part of school grounds such as an FFL's business premise (e.g., commercial storefront, residence, or driveway)

Once a customer leaves private property located within 1,000 feet of a school with a firearm, they may be in violation of Federal Law. However, in the following situations an individual would not be possessing a firearm in violation of 922(q)(A):

1. The individual is licensed by the State or political subdivision to possess the firearm, and the license was issued after law enforcement officials verified that the individual is qualified to receive the license;
2. The firearm is unloaded and is contained within a locked container or a locked firearms rack that is on a motor vehicle;
3. The firearm is possessed by an individual for use in a school-approved program;
4. The individual or his/her employer is doing so in accordance with a contract between the individual and the school;
5. The individual is a law enforcement officer acting in their official capacity; or
6. The individual is crossing school grounds to reach a public or private way. Their firearm is unloaded, and they have permission from the school.

ATF realizes that not all persons who enter or exit an FFL's premises in such case may fall under one of the above-described statutory exemptions. Therefore, ATF advises that in those States where a permit is not needed, the FFL should ensure that prior to a purchaser leaving the business premise with a firearm that it is unloaded and placed in a locked container.

Federal Law

The Gun Control Act of 1968, 18 U.S.C. Chapter 44, provides in pertinent parts as follows:

18 U.S.C. 922(q)(1)

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

Lawrence Public Schools USD 497
110 McDonald Drive
Lawrence, Kansas 66044-1063
Telephone: (785) 832-5000
Fax: (785) 832-5020
www.usd497.org



November 13, 2015

Lawrence-Douglas County Metropolitan Planning Commission
Scott McCullough, Director, Planning and Development Services
City Hall, 6 East 6th Street, PO Box 708
Lawrence, KS 66044

Dear Mr. McCullough and Planning Commissioners,

I write today on behalf of the Lawrence Board of Education, which opposes the staff recommendation to approve the rezoning request (Z-15-00471) from IG (General Industrial) District to IL (Limited Industrial) District in order to allow an applicant to provide an indoor shooting range and gun sales and repair shop at 1021 E. 31st Street. This property is within a school zone; specifically, it's located 760 ft. from a public school, the Lawrence College and Career Center at 2910 Haskell Avenue. In addition, the College and Career Center campus will be home to the Lawrence Boys and Girls Club's future Teen Center, which will serve students as young as the sixth grade.

While the Board understands that the Gun-Free School Zones Act does not prohibit gun sales or a shooting range from locating on private property in a school zone, the federal law does require that consumers entering or leaving the private premises ensure that all firearms are unloaded and stored in locked containers. The Board is highly skeptical that customers will take these lawful precautions prior to entering or exiting the premises. The challenges with enforcement of the federal law relating to Gun-Free School Zones seem insurmountable, and the Board thinks, therefore, that it would be unreasonable to allow the rezoning to occur for the purpose of locating a gun shop/shooting range in a school zone.

The Board discussed this issue at its November 9, 2015, meeting. Due to board members' safety concerns for students and school staff, the Board strongly opposes the staff recommendation to approve the rezoning request related to 1021 E. 31st Street for the purpose of allowing an indoor shooting range and gun sales and repair shop in a school zone. The Board urges Lawrence-Douglas County Metropolitan Planning Commissioners to deny this rezoning request.

Sincerely,

Vanessa Sanburn, President

Cc: Lawrence Board of Education

Marcel Harmon	Jill Fincher
Kristie Adair	Rick Ingram
Jessica Beeson	Shannon Kimball