



City of Lake Elmo

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NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
WEDNESDAY, May 28, 2008, at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes
 - a. March 24, 2008 (with corrections)
 - b. May 12, 2008
4. Public Hearings
 - a. Zoning Text Amendments:
 - i. General Administrative Sign Regulations
 - ii. Agricultural Businesses
 - iii. Sign Ordinance Provisions – Temporary Signs
5. Old Business
6. New Business
7. City Council Updates
 - a. May 20 – Acceptance of Hidden Meadows (Rockpoint Church) Phase 1 Improvements
8. Adjourn

**City of Lake Elmo
Planning Commission Meeting
Minutes of March 24, 2008**

Chairman Ptacek called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Hall, Fliflet, Helwig, McGinnis, Pelletier, Ptacek, and Van Zandt. STAFF PRESENT: Planning Director Klatt and Senior Planner Gozola.

Agenda

A motion was made a seconded to approve the agenda with the addition of an agenda item under new business to appoint a secretary. Motion carried. Vote: 7:0.

Minutes – March 28, 2008

There was a motion and a second to approve the minutes of the March 28, 2008 meeting. The motion carried with a vote of 5:0 with 2 abstentions.

Public Hearing: 7934 Hill Trail North Septic System Variance

Klatt presented a summary of the Staff report and related information concerning a request by Phil and Michelle Eason for a variance to allow the replacement of an existing septic system and drain field with a new one that does not meet the minimum setback requirements to a principal structure and property lines. He recommended approval of the request with conditions.

Ptacek questioned why the septic system could not be moved to an alternative portion of the site. Phil Eason responded that there is a driveway located on the only portion of the site that would meet all setback requirements and that even if it could be moved, the soil in this area would be very compacted.

THE CHAIRMAN OPENED THE PUBLIC HEARING AT 7:19 P.M.

No public comments were presented to the Commission.

THE CHAIRMAN CLOSED THE PUBLIC HEARING AT 7:20 P.M.

M/S/P, Fliflet/Hall move to recommend approval of the variance with the conditions presented by Staff and with all as outlined in the review letter from the City Engineer. Vote: 7:0.

Sign Code Update

Gozola presented information concerning proposed amendments to the sign regulations in the Zoning Ordinance. He noted that at this time, a draft ordinance had been assembled for discussion purposes and that this would be a first step towards a complete overhaul of the Lake Elmo Sign Ordinance. He reminded Commissioners of the sign issues brought forward by the Planning Department in the recent past. After reviewing these concerns with the City Council,

the Council directed the Commission to consider certain portions of the code as a priority, including the sections related to off-premise signs for seasonal sales, off-premise signs related to real estate developments, and seasonal sales in rural residential areas.

Gozola explained that the ordinance was drafted with a larger rewrite in mind. The City Attorney had also provided an opinion on specific issues associated with sign regulations.

Fliflet asked if the current ordinance defined floriculture. Gozola responded that this use does show up in other parts of the code and would not be changed as part of the draft ordinance.

The Commission generally discussed the time limits for signs, and suggested that a longer time period was needed for agricultural uses.

Pelletier questioned who decides the classification of roadways in Lake Elmo. She suggested that too much signage can distract drivers and is a safety concern for transportation engineers. She asked if the needs of the school and city would be taken into account with the proposed ordinance. Gozola indicated that the current ordinance does not allow signs within any right-of-way and that the Commission could allow signs only along certain corridors.

Fliflet did not agree with limiting seasonal sales to one sign, and expressed her preference for regulating development signs based on the size of the development. She suggested allowing more signage on large agricultural operations based on the size of the farm.

Hall asked for clarification concerning the viewer reaction times included in the Staff presentation. Gozola replied that these times are calculated by determining how much time it would take drivers to comprehend a certain size message based on a set travel speed.

Helwig commented that he did not see why a developer would need to leave a site for signage and recommended leaving the code as presently written.

Deleted: Hall
Deleted: his
Deleted: these signs on site

Fliflet questioned how a development sign would be processed under the proposed ordinance. Gozola replied that this type of signage would fall under the category of permanent signs in the Ordinance.

Ptacek requested an legal opinion concern the content neutral aspects of the sign code.

The Commission debated the merits and drawbacks to allowing off-site advertising for development projects, noting that the benefits include helping get projects built in a timely manner by increasing their visibility and that it would allow all temporary signs to be regulated in a consistent manner. The drawbacks identified included the following: other forms of advertising are available to developers that are just as effective and all business would want equal treatment. The Commission was generally split on this aspect of the proposed ordinance and noted that consistency throughout the code was an important consideration.

Ptacek recommended that all on-site temporary signs be allowed on a scale based on the size of the parcel. Gozola suggested including language for spacing based on comments from other Commissioners.

The Commission generally expressed agreement with the provisions allowing one off-site and one on-site sign for seasonal sales and also agreed that seasonal sales should be permitted in rural residential districts.

Chairman Ptacek stated that he had received requests for public comments and asked that those citizens address the Commission at this time.

Joan Ziertman, 5761 Keats Avenue North, discussed the definitions for wayside stand and seasonal sales lot and that she would like to see both uses allowed in the rural residential district. She also requested that each seasonal business be allowed a total of three signs, whether on-site or off-site regardless of size and further explained that these types of signs are not up for a long period of time and that most farms have been using them for while.

Ziertman suggested that signs be permitted based on products and growing seasons, noting that some seasonal businesses have three or more growing seasons to manage. Needing permission from property owners should also help limit the number of signs that will be installed.

Gary Johnson of Bittersweet Farms addressed the Commission and stated that if cute, rural wayside stands are desired in the community, than the City needs to allow signage for these businesses. He explained that the most effective signs for agricultural businesses are along the roadside, and that it is necessary to direct customers to sales sites. He supported regulating the size of signs but not the number allowed. Johnson noted that new businesses in particular need a lot of signage to attract attention to their site.

Gozola indicated that the next steps will be to update the City Council regarding the proposed ordinance revisions and then to come back to the Planning Commission with the formal ordinance changes.

Appointment of Secretary

Ptacek asked for nominations for secretary since the current position was vacant.

M/S/P. Pelletier/McGinnis, move to nominate Julie FliFlet for Planning Commission Secretary.
Vote: 6:0.

Informational Items

Klatt explained that the Conditional Use Permit request by the Oakdale Gun Club had been withdrawn and that the City Council had reviewed and approved the Park Plan.

Adornment

The meeting was adjourned by Chairman Ptacek.

Respectfully submitted,

Kyle Klatt
Planning Director

**City of Lake Elmo
Planning Commission Meeting
Minutes of May 12, 2008**

Chairman Ptacek called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m. COMMISSIONERS PRESENT: Anderson, Deziel, Fliflet, Hall, Helwig, McGinnis, Ptacek, Roth, and Van Zandt. STAFF PRESENT: Planning Director Klatt.

Agenda

There was a motion and a second to approve the agenda as presented. Motion carried. Vote: 9:0.

Minutes – March 24, 2008

Hall noted that he did not make a comment attributed to him on page two of the minutes. Klatt stated that he would review the meeting notes and make any appropriate corrections.

Minutes – April 14, 2008

M/S/P, Hall/Anderson move to approve the minutes as presented. Vote 6:0 with three abstentions.

Accessory Building Setbacks

Planning Director Klatt reviewed the staff memorandum to the Planning Commission concerning recommended updates to the Accessory Building provisions in the Zoning Ordinance. The changes proposed included: general district setbacks, the calculation of building height, language concerning the parking of passenger automobiles, and the calculation for attached and detached accessory structures.

Hall questioned why averaging of the roof line and building elevation line was used for determining building height. Klatt responded that hipped-type roofs were generally allowed to extend higher than flat roofs since the overall massing for this type of roof is much less the same elevation compared to a flat roof. Averaging is also used to help recognize that there is typically not usable space above the roof line of these structures. The Commission generally discussed how roof height is calculated.

Klatt noted that the change proposed would not make a significant difference in the height of buildings that are built, but it would allow a consistent methodology be used for determining the maximum height of accessory buildings.

Ptacek commented that the City should not be concerned with what is going on inside of accessory buildings as long as the use is permitted in the underlying zoning district. Van Zandt responded that this statement was especially pertinent given the large numbers of recreation vehicles, boats, and other equipment found throughout Lake Elmo.

There was a general discussion concerning existing limits on the size of accessory buildings, and the specific restriction on the size of buildings used for automobile parking. The Commission reached a consensus to strike the existing Ordinance language specific to the parking of passenger automobiles.

After reviewing the maximum size requirements for detached and attached structures, Ptacek expressed concern about treating all properties the same. Deziel indicated that he did not view the current size limits in the R-1 zone in particular as being too restrictive. The general consensus of the Commission was to leave the existing language concerning attached garage sizes alone, and to specifically not limit the size of attached garages in most zones, and to also keep the requirements that limit detached garage sizes on smaller residential parcels. The reasons for this decision included the following: allowing storage inside buildings was preferable to exterior storage and members of the Commission indicated that larger attached buildings would be better than larger detached structures.

Ptacek stated that there should be some credit given for the vertical stacking of garage spaces in order to minimize the overall impact on a site. The Commission recommended measuring the size of a detached accessory building by footprint instead of gross floor area, and further suggested that no accessory building in residential districts be allowed to exceed the size of a principal structure.

Klatt suggested that the accessory building standards either be incorporated into a master table or clearly identified as part of each zoning district's standards.

After further discussion concerning the measurement of accessory building sizes, Klatt noted that he could provide the Commission with additional examples regarding the size and placement of detached buildings on lots.

Other direction provided by the Commission included the following: to make the RE District accessory building setbacks the same as principal buildings in this district, to keep the Open Space district setbacks the same as well, to research the zoning for community centers within Open Space developments, and to set a height limit in agricultural zones for residential accessory buildings.

The Commission asked to have a draft Ordinance brought back for review in draft form.

Informational Items

Klatt stated that the City Council had authorized an application for a Community Growth Options Grant. He noted that this grant opportunity could help provide funding for the Village Area planning work.

Klatt informed the Commission that the meeting schedule had been adjusted to one meeting per month on the second Tuesday of each month. The fourth Tuesday will be available for meetings if needed.

Adornment

The meeting was adjourned at 8:19 p.m.

Respectfully submitted,

Kyle Klatt
Planning Director

ITEM: Consideration of three separate ordinances to address all sign related issues currently before the City

REQUESTED BY: City Council

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator
Kyle Klatt, Planning Director
Jerry Filla, City Attorney

SUMMARY AND ACTION REQUESTED:

At the 4-14-08 Planning Commission meeting, staff introduced a revised set of ordinances to address a number of immediate concerns regarding the existing sign code and seasonal sales businesses. The main issues Council wants immediately addressed include:

- 1) Amending the sign code to allow off-premises signs for seasonal sales businesses;
- 2) Amending the sign code to allow off-premises advertising signs for land developments;
- 3) Amending code to ensure seasonal sales are a permitted use in the RR district.

Once all three issues have been successfully addressed, Council then authorizes staff to complete further work on revising the entire sign code.

Timeline / Issues to Keep in Mind: To assist the commission in its review, the following is a summary of the major questions that were asked which resulted in the three ordinances now being considered.

- **What is the status of the current Lake Elmo sign code?**

The current Lake Elmo sign code follows a classic format for municipal sign regulation that can be found in many communities today. Different types of signs are identified (i.e. real estate signs, advertising signs, nameplate signs, etc) and various specific regulations are established for each type of permitted sign. Unfortunately, this ordinance structure has been declared unconstitutional by the courts in numerous instances when challenged by an applicant. Regulating signs based on content (i.e. having different requirements for real estate signs than you do for nameplate signs) is unacceptable under the first amendment as municipalities cannot favor one form of speech over another. In other words, *what* the sign says cannot not be relevant to whether the sign is allowed. Because it was believed that the current code is vulnerable to a First Amendment challenge, staff initially recommended addressing the city's three main concerns within the context of overall changes to the entire ordinance.

- **Can the existing ordinance be amended as desired without undergoing a complete overhaul?**

Minor amendments to address the City's off-premises advertising desires will not lessen the existing concerns about potential First Amendment challenges to code. However, that is not to say the City cannot proceed with the desired amendments now and return to address other

issues at a later point in time. Rather, the City just needs to understand how to protect itself in as much as possible if it chooses to allow certain types of off-premises advertising within the current code framework.

According to the City Attorney, he would not recommend that off-premises advertising signs be allowed unless all businesses were given the ability to have such signage. However, to address the City Council's immediate concerns, he believes a carefully crafted "purpose" statement could potentially be used as a vehicle to allow the desired off-premises advertising for agricultural sales businesses on the basis that such businesses are essential to the "preservation of rural character," and that such business cannot thrive without advertising allowances. The attorney did not come to the same conclusion regarding off-premises advertising for developments.

- **Is using a purpose statement to allow certain types of signs legally defensible?**

According to the City Attorney, the City could be open for a legal challenge to the ordinance, but there was no case law to indicate this couldn't be done in an effort to protect a significant government interest (in this case protecting rural character). While "protecting rural character" can arguably be used to support the allowance of off-premises advertising for the City's agricultural businesses, it is harder to make such a connection for off-site real estate advertising signs. Given that the current best practices on signs would not recommend using a purpose statement to allow off-premises advertising signs for specific business types, it is important for the Planning Commission to continue its assessment of concerns that arise due to this approach including:

- Is the commission comfortable that allowing off-site advertising for agricultural businesses is important to preserving the community's rural character?
- Why are developments being allowed off-site advertising? What important public interest is being served, and/or how does such signage allow the city to protect its rural character?
- If off-premises development signs can be supported as serving a vital public interest, how do we differentiate which rural developments can have signs? For example, can standard 10 and 40 acre subdivisions have signs? OP subdivisions? Cluster developments? Only developments creating a certain number of lots?
- Can the city clearly find that the right to have off-site real estate development signs is not linked strictly to providing an economic benefit for developers or landowners?

In assessing these questions, staff came to the conclusion that off-premises advertising for developments is difficult to support, so we are recommending that such provisions no longer be considered. Off-premises signs for agricultural sales businesses can be supported provided the City understands the associated risks.

- **Why the three proposed ordinances instead of an entirely new sign code?**

In January, the City Council directed staff to address their immediate concerns before undertaking a complete overhaul of the City's sign ordinance. This approach required staff to utilize the City Attorney's recommended option of amending the sign purpose section to support the desired changes. Two working discussions have resulted in the proposed ordinances currently before the Commission.

- **What are the current best practices for signs codes?**

The accepted best practices for sign ordinances is to focus regulation on content neutral factors such as number, location, size, illumination and other physical characteristics that need to be regulated to protect public health, safety, and welfare. The ordinance must clearly

indicate that it is not the intent to regulate the message displayed on any sign, and should provide a clear methodology for reviewing and approving signs. Inclusion of a "substitution clause" is also recommended to reinforce that signs are not being regulated based on content. Essentially the substitution clause allows any noncommercial message to be substituted for any other message type on a sign allowed by the ordinance.

Staff has done everything possible to ensure changes currently being proposed can be integrated into a complete sign code overhaul in the future using current best practices. For example, the ordinance focusing on sign administration includes the recommended "substitution clause" as well as a "severability clause." The severability clause would ensure that if a portion of the sign ordinance were declared unconstitutional, that the remainder of the ordinance would maintain its legal standing. The second ordinance proposes many clarifications to existing definitions and terms that are badly needed independent of the work currently being done on the sign ordinance. The only work that may not transfer to the future ordinance will be the changes proposed by the third ordinance which deals with off-premises advertising. Future work on the new sign code will determine how and if such signs can continue to be allowed.

Current Status: Staff has considered comments from the public and the commission gathered as a result of the previous two working meetings, has prepared a revised set of three ordinances for consideration. The three ordinances separate the main issues being considered into the following categories:

1. An ordinance to amend general sign regulations;
2. An ordinance to amend agricultural sales uses;
3. An ordinance regulating off-site advertising signs

The three proposed ordinances do not address all of the issues that would be examined with a complete sign code overhaul. For example, we did not analyze proper size restrictions for signs, impact on administrative and enforcement staff time, new lighting requirements or design standards for signs in general. However, the ordinances propose specific restrictions relating to the issues we are addressing.

RECOMMENDATION:

Planning Commission is asked to review the three attached executive summaries and ordinances, hold public hearings for each ordinance, and make recommendations for approval or denial for City Council consideration.

ORDER OF BUSINESS:

- Introduction Ben Gozola, Senior Planner
- Report by staff Ben Gozola, Senior Planner
- Questions from the Commission Chair & Commission Members
- Open the Public Hearing for ordinance #1 (4a)..... Chair Facilitates
- Close the Public Hearing Chair
- Open the Public Hearing for ordinance #2 (4b)..... Chair Facilitates
- Close the Public Hearing Chair
- Open the Public Hearing for ordinance #3 (4c)..... Chair Facilitates

- Close the Public HearingChair
- Call for motions..... Chair Facilitates
- Discussion by the Commission on the motions..... Chair Facilitates
- Action by the Planning Commission..... Chair & Commission Members

ATTACHMENTS (9):

1. Updated legal opinion from Jerry Filla on off-premises advertising signs
2. Initial legal opinion from Jerry Filla on sign questions posed by staff
3. (4a): Executive Summary explaining the ordinance to amend **general sign administration**;
4. Ordinance # 1 An ordinance to amend general sign administration;
5. (4b): Executive Summary explaining the ordinance to amend **agricultural sales uses**;
6. Ordinance # 2 An ordinance to amend agricultural sales uses;
7. (4c): Executive Summary explaining the draft ordinance to **regulate off-site advertising signs**;
8. Ordinance # 3 (option A) An ordinance to regulate off-site advertising signs (does not allow for off-premises real estate development signs)
9. Ordinance # 3 (option B) An ordinance to regulate off-site advertising signs (maintains the previously considered language to allow for off-premises real estate development signs)

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Jerome P. Filla
Daniel Witt Fram
Glenn A. Bergman
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May 21, 2008

Susan Hoyt
City Administrator
City of Lake Elmo
3800 Laverne Ave. North
Lake Elmo, MN 55042

Re: Lake Elmo Sign Regulations
Our File No.: 11135.08-1

Susan:

You have inquired regarding the ability of the City to regulate and possibly differentiate between off premises temporary seasonal sales signs and other types of off premises advertising signs. Advertising signs contains messages about products or services that are offered for sale at locations other than the premises on which the sign is located. Advertising signs are a form of commercial speech.

Commercial speech is protected by the First Amendment from unwarranted governmental regulation. The U.S. Supreme Court has developed a four point test to determine if a governmental regulation of commercial speech is constitutional:

1. Does the speech concern a lawful activity and is it not misleading?
2. Is the regulation justified by a substantial government interest?
3. Does the regulation advance the government interest?
4. Is the regulation more extensive than necessary to serve the government interest?

Clearly the City has the authority to regulate off premises advertising signs. The protection of public safety and the elimination of unnecessary visual clutter are recognized as substantial government interests. The main question becomes: Can the City define a substantial government interest in a way that allows it to permit temporary off premises seasonal sales signs, but prohibit other types of off premises advertising signs?

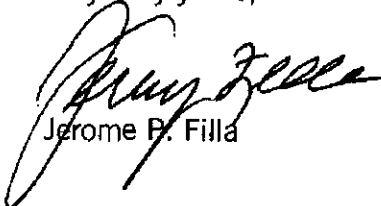
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In order to support different treatment of these types of off premises advertising signs, the City might rely on its goal of maintaining a rural character in the face of pending development, and argue that it allows off premises seasonal sales signs in order to further this goal. Unfortunately I can find no existing case law which identifies the goal of maintaining a rural character as a substantial government interest. However, the argument could be made if the City is challenged on this type of regulation.

Based upon current case law, my specific recommendation is not to differentiate between types of off premises advertising signs, but to prohibit all of them. If the City chooses to allow temporary off site seasonal sales signs, the regulation should be specific as to time, placement and sign dimensions, and should be supported by a statement in the purpose section of the sign code.

If you have any questions, please contact me.

Very truly yours,



Jerome P. Filla

JPF/jmt

Direct Dial #(651) 290-6907
jfilla@pfb-pa.com

March 24, 2008

Susan Hoyt
Lake Elmo City Administrator
3800 Luverne Avenue North
Lake Elmo, MN 55042

VIA EMAIL

RE: Sign Regulations

Dear Susan:

This correspondence should be read in conjunction with Mr. Gozola's email dated March 18, 2008:

1. Content Neutral. A Content neutral generally means that a regulation seeks to exact a control that is completely separate from the actual message that is conveyed. The focus of the regulation is on the time (when a message may be displayed), place (where a message may be displayed) and manner (how a message may be displayed, or the type of display structure) of the message. When a court reviews a content neutral sign regulation for constitutionality it applies an intermediate scrutiny standard, which looks at whether the regulation is substantially related to a significant government interest.

Conversely, if a sign regulation is not content neutral, a reviewing court would apply a strict scrutiny standard. Under this test, to survive a constitutional challenge, a sign regulation must be justified by a compelling government interest; be narrowly tailored to achieve that interest; and be the least restrictive means of achieving that interest.

Mr. Gozola illustrates three signs and asks whether they can be legally distinguished. At the present time, I don't think they are legally distinguishable. A regulation that applies to one will probably have to be applied to all of the illustrated sign types.

2. Temporary Sign Interpretation. The following provisions of the Lake Elmo City Code need to be reconciled when considering where temporary signs can be located:

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- Advertising Sign. A sign that directs attention to a business or a profession or to a commodity, service or entertainment not sold or offered upon the premises, where the sign is located or to which it is attached (Lake Elmo Code Section 11.01).
- Off Premises Advertising Signs. Off premises advertising signs except as regulated in Sections 151.115 et. seq. (these types of signs are prohibited in all zoning districts of the City-Lake Elmo Code 151.120(B)(3)).
- Temporary Signs. Temporary signs may be allowed for special business events, such as business openings and closings, change in management, district-wide shopping events or other special occasions for fifteen (15) days maximum, by permit from the City Planner. The City may grant a permit to locate signs or decorations on, over or within the right-of-way for a specified period of time. (Lake Elmo Code Section 151.118(B)(5)).

A reviewing court would attempt to interpret the above City Code Sections in a manner that makes sense of all of the provisions. When I attempt to reconcile the above City Code Sections, I conclude:

- A. A temporary sign located off the premises of the entity identified on the face of the sign is an off premises advertising sign and is prohibited.
- B. Since the City clearly did not intend to prohibit temporary signs, it must have intended that the temporary sign would be located only on the premises of the business identified on the face of the sign.
- C. A person can obtain a temporary permit for a maximum of fifteen (15) days. Unfortunately, the City Code does not indicate whether it's fifteen (15) consecutive days; or fifteen (15) days per month; or fifteen (15) days per year. Obviously, this part of the code needs to be clarified.

- D. I have no idea as to what was intended by the phrase "district wide shopping event".
- E. The last sentence of Section 151.118 (B)(5) could be construed to apply to city, county, and state roads. However, I would interpret it to mean city roads because the city does not have the authority to regulate the use of county or state roads.

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- 3. Impact of changing code to allow off-site advertising signs for seasonal sales or real estate developments. If the City allows temporary off-site advertising signs for seasonal sales and real estate development but, does not allow other businesses to use off-site temporary advertising signs, its regulation could be challenged by other businesses as being unconstitutional because they would be denied equal protection of the law. In regard to seasonal sales signs, the City might try to expand the purpose section of the Sign Code to illustrate why seasonal sales of agricultural and horticultural products help the City maintain its image of rural character and to indicate why the use of temporary seasonal sale signs is important to support this concept but it would still be subject to some risk of litigation. However, I could find no case law to support the view that maintaining the rural character of a city is a significant government interest but, the argument could be made if the purpose sections are carefully tailored.

If you have any questions, please contact me.

Very truly yours,

Jerome P. Filla

JPF:as

c: Ben Gozola
Kyle Klatt



ITEM: **Consideration of an ordinance to amend the administrative language governing signs in Lake Elmo**

REQUESTED BY: City Council

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator
Kyle Klatt, Planning Director
Jerry Filla, City Attorney

SUMMARY AND ACTION REQUESTED:

The Planning Commission is asked to review an ordinance to update the administrative language governing signs in Lake Elmo. The main issues addressed by this ordinance include:

1. **The application process for permanent signs vs. temporary signs.** During a prior discussion on signs, the planning commission recognized a need to create a less intensive application process for temporary signs given their nature and to make the application/review process for temporary signs less formidable. As proposed, applications for permanent signs will require detailed engineering plans showing location and structural integrity. Applications for temporary signs primarily require general site plans to show location and sign dimensions.
2. **Determination of sign "area" measurement.** Current city code does not define how the size of a sign is to be calculated. This new section ensures all signs will be measured in a uniform manner.
3. **Determination of sign "height" measurement.** Like sign area, the current city code is silent on how to calculate sign height. This new section ensures the height of all signs will be measured in a uniform manner.
4. **Severability clause.** The proposed "severability clause" will ensure that if a portion of the sign ordinance was ever struck down, that the remainder of the ordinance would still remain legally in place.
5. **Substitution clause.** The proposed "substitution clause" gives any property owner the right to substitute non-commercial speech in lieu of permitted commercial signage if desired. The substitution clause is an important component in modern sign codes to ensure the ordinance is constitutional, and to reinforce that the city is not regulating signs based on content.

What changes resulted from the 4-14-08 meeting? As requested, staff has made the following changes to the latest ordinance draft:

1. **Definitions for "Permanent Sign" and "Temporary Sign" have been added.**

2. **“Applicant Certification” was removed from required application materials.** Staff borrowed this provision from another ordinance used as a template for application materials. After the 4-14-08 discussion, we would agree that this language is unnecessary given that staff will ultimately determine if an application is complete or incomplete.
3. **Temporary sign permit application now requires specific timeframes.** The main reason for requiring a temporary sign permit is to allow the City to track when such signs are allowed to be erected. This minor change simply requires that the four 45-day periods for such signs be denoted on the permit application.
4. **Application requirements for temporary sign permit renewals has been added.** Given that the city will have the information it needs on permitted temporary signs in its files, the application requirements for a renewal can be relaxed. This separate process would also provide a distinction in code that can be linked to the fee schedule differentiation between a new temporary sign permit and a renewal.

Why are these changes being made? All of the changes proposed by this ordinance will be integrated into the major sign code overhaul being completed in the coming months. Incorporating these changes into the existing ordinance at this time adds needed clarification to the interim code, and adds additional defensibility against legal challenges at this time.

RECOMMENDATION:

Planning Commission is asked to review the proposed ordinance, conduct a public hearing, and make a recommendation on any needed changes for consideration by the City Council. If consensus cannot be reached on a proposed ordinance, the item can be tabled for further consideration at a future meeting.

ORDER OF BUSINESS:

- Introduction Ben Gozola, Senior Planner
- Report by staff Ben Gozola, Senior Planner
- Questions from the Commission Chair & Commission Members
- Open the Public Hearing Chair
- Close the Public Hearing Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission Chair & Commission Members

ATTACHMENTS (1):

1. Draft ordinance to amend the administrative language governing signs in Lake Elmo.

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-___

AN ORDINANCE TO AMEND GENERAL SIGN REGULATIONS

Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby amended to *add* the following definitions:

“Permanent Sign” – A sign constructed of durable materials designed to exist for the duration of time that the use or occupant is located on the premises.

“Temporary Sign” – Any sign intended for display over a short period of time.

Section 2. The City Council of the City of Lake Elmo hereby ordains that Section 151.116 is hereby amended to read as follows:

Section 151.116 PERMIT REQUIRED

- (A) All signs require a sign permit as set forth in §§ 151.115 *et seq.* No sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a permit from the city. The content of the message or speech displayed on the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.
- (B) **Permanent Signs.** A sign permit application containing the following information shall be filed with the City Planner: To apply for a permanent sign permit, a complete application shall be submitted to the City containing the following:
 - 1. A drawing of the proposed sign, or signs, showing dimensions and describing materials, lettering, colors, illumination, and support systems;
 - 2. Photographs of the building face and the building faces of both adjacent buildings;
 - 3. A drawing of the building face and site plan showing the location of the proposed sign(s) if necessary;
 - 4. A cross-section of the building face showing how the sign will be attached and how far it will extend from the building;

~~5. Any pictorial proof or other information that the sign is of historical significance or is a reproduction of an historic sign as appropriate; and~~

~~6. A building sign plan for a building with more than 1 use or business, showing all signs.~~

1. Names and addresses of the applicant, owners of the sign, and lot;
2. The address at which the sign(s) are to be erected;
3. The legal description of the property on which the sign(s) are to be erected and the street on which they are to front;
4. A complete set of scaled plans showing the sign dimensions, area, height, ground elevations, applicable setbacks, and other details to fully and clearly represent the safe construction and placement of the proposed sign(s);
5. Type of sign(s) being requested (i.e. wall sign, monument sign, etc.);
6. The permit fee; and
7. The following if applicable:
 - a. Written authorization from the property owner upon who's land the sign is to be erected.
 - b. A permit from either MnDOT or Washington County if the proposed sign is along a state highway or county road.
 - c. A sign plan showing signs for all businesses if the sign is located on a building with more than one business.
 - d. Photographs of the building face and the building faces of both adjacent buildings if the sign is being placed on an existing structure.
 - e. If replacing a historical sign, pictorial proof or other information that the sign is of historical significance or is a reproduction of a historic sign.

(C) **Temporary Signs.** To apply for a permit to allow a temporary sign, a complete application shall be submitted to the City containing the following:

1. Names and addresses of the applicant, owners of the sign, and lot;
2. The address at which the sign(s) are to be erected;
3. A generalized plan set showing the sign dimensions and height, and a notation of the materials to be used.

4. A scaled site plan which clearly represents the placement of the proposed sign(s) on the applicable property;
5. The proposed timeframe(s) over which the sign(s) will be posted;
6. The permit fee; and
7. The following if applicable:
 - a. Written authorization from the property owner upon who's land the sign is to be erected.
 - b. A permit from either MnDOT or Washington County if the proposed sign is along a state highway or county road.

(D) **Temporary Sign Renewal.** A temporary sign permit issued by the City may be renewed provided the sign design, size, location, or other previously approved details are not proposed to change. A sign renewal application shall include the following:

1. Names and addresses of the applicant, owners of the sign, and lot;
2. The address at which the sign(s) are to be erected;
3. The date of issuance of the permit being renewed;
4. The proposed timeframe(s) over which the sign(s) will be posted;
5. Written authorization from the property owner upon who's land the sign is to be erected (if applicable); and
6. The permit renewal fee.

(E) **Review.** The planning department shall approve or deny complete sign permit applications upon receipt of a complete application. If the permit is denied, the planning department will send a written notice of denial to the applicant. The written notice will indicate the reason(s) for denial and a description of the applicant's appeal rights.

Section 3. The City Council of the City of Lake Elmo hereby ordains that Section 151.118 is hereby amended to read as follows:

Section 151.118 SIGNS; GENERALLY.

(A) The following provisions apply to signs located in all zoning districts.

Current Section 151.118, subdivision (B)(1) through (12) and its subdivisions are restated and incorporated herein without change.

(13) Computations. Dimensions of signs shall be calculated in the following manner:

a. Sign Area Measurement.

The area of a sign shall be computed by means of the smallest rectangle within which a single sign face can be enclosed. When a sign has two back-to-back sign faces containing sign copy, the sign area for just one face is counted toward the allowed sign area. Poles, bases, and other supports shall not be included in the sign area calculation.

b. Sign Height Measurement

The height of the sign shall be computed as the vertical distance measured from the average grade at the base of the sign to the top of the highest attached component of the sign.

Figure 1: Sign Area Measurement

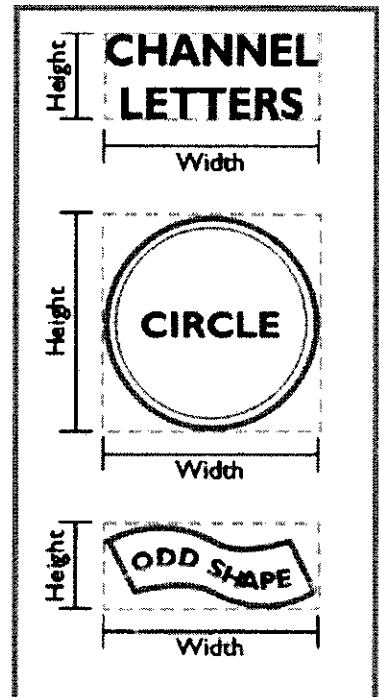
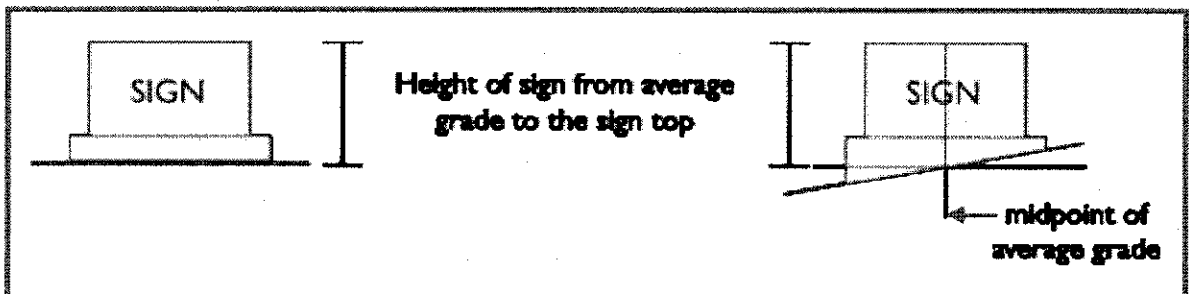


Figure 2: Sign Height Measurement



Section 4. The City Council of the City of Lake Elmo hereby ordains that Section 151.125 is hereby added to read as follows:

Section 151.125 SUBSTITUTION CLAUSE.

The owner of any sign which is otherwise allowed by this sign ordinance may substitute non-commercial speech signs in lieu of any other commercial speech sign or other non-commercial speech sign. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial speech over any other non-commercial speech. This provision prevails over any more specific provision to the contrary.

Section 5. The City Council of the City of Lake Elmo hereby ordains that Section 151.126 is hereby added to read as follows

Section 151.126 SEVERABILITY.

If any section, subsection, sentence, clause, or phrase in sections 151.115 through 151.125 are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Sign Ordinance. The City Council hereby declares that it would have adopted the Sign Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 6. Adoption Date

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. ____ was adopted on this ____ day of _____, 20____, by a vote of __ Ayes and __ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
City Administrator

This Ordinance No. _____ was published on the ____ day of _____, 2008.

ITEM: **Consideration of an ordinance to amend agricultural business definitions and regulations**

REQUESTED BY: City Council

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator
Kyle Klatt, Planning Director
Jerry Filla, City Attorney

SUMMARY AND ACTION REQUESTED:

The Planning Commission is asked to review an ordinance to clarify allowed agricultural sales uses in the City of Lake Elmo. Current city code contains references to numerous land uses that allow sales of agricultural goods. Unfortunately, some of these uses are defined while others are not, and each use is typically only allowed in one zoning district (even though the operations can typically be found throughout the City). This effort is intended to simplify the existing agricultural sales uses into three categories, and to ensure those uses are allowed or conditionally permitted in the proper zoning districts. These clarifications, in turn, will then be used to complete the requested interim changes to the sign ordinance.

What are the current land uses that allow for the sale of agricultural goods? The terms in code that staff identified as allowing the sale of agricultural goods (or having an impact on such sales) include:

- "Agriculture" – The production **or sale** of livestock, dairy animals, dairy products, fur-bearing animals, horticultural and nursery stock, fruits of all kinds, vegetables, forage, grains, bees, and apiary products.
- "Common Gardens" – Land used by residents of a development **for the production of** trees, vegetables, fruits, and flowers.
- "Community Service Agriculture" – Horticulture and floriculture that serves the local area.
- "Farm, Rural" – The portion of a 10 or more acre parcel of land in the Rural Residential Zoning District **which is devoted to agriculture** by the property owner or by a lessee of the property owner.
- "Farm, Suburban" – A suburban farm is a **non-commercial**, food-producing use primarily intended for the use of the residents, and usually on less than 10 contiguous acres. Suburban agricultural uses may include production of crops such as fruit trees, shrubs, plants, flowers, vegetables, and domestic pets.
- "Floriculture" – The cultivation and management of ornamental and flowering plants **for sale on site from a wayside stand.**
- "Horticulture" – The cultivation and management of trees, plants, grasses, vegetables, and fruits **for sale on site from a wayside stand.**

- "Open Sales Lots" – Lands devoted to the display of goods **for sale**, rent, lease, or trade, where the goods are not enclosed within a building.
- "Seasonal Open Sales Lot" – currently has no definition in code. Under permitted uses in the "A" district, seasonal open sales lots are described as being for "sales [of] agricultural and horticultural products produced on the premises." When read with the definition of "open sales lots," one concludes that agricultural and horticultural products must be sold from an open lot and not within a structure.
- "Wayside Stand" – A structure used for the seasonal **retail sale of agricultural goods**, floriculture, and horticulture **produced** by the operator of the wayside stand **on site or on other property in Lake Elmo**.

How are these terms currently used in city code? The following table illustrates the zoning district in which each of the uses can be established, restates what the use allows, and indicates if the use is permitted or conditionally permitted.

	Where Can This Use Be?	What Can You Do?	Type of Use:
Commercial Agriculture or Horticulture:	A, RR, OP	The use of land or buildings for the sale, lease, rental, or trade of products, goods, and services	Permitted ¹
Common Gardens	Unlisted	Common use of land for the production of trees, vegetables, fruits, and flowers.	Unlisted
Community Service Agriculture	Unlisted	Defined as horticulture and floriculture that serves the local area.	Unlisted
Rural Farm	A, RR	Produce or sell livestock, dairy animals, dairy products, fur-bearing animals, horticultural and nursery stock, fruits of all kinds, vegetables, forage, grains, bees, and apiary products	Permitted
Suburban Farm	A, RR, OP	Non commercial production of crops such as fruit trees, shrubs, plants, flowers, vegetables, and domestic pets.	Permitted
Floriculture²	OP	Cultivation and management of ornamental and flowering plants	Conditionally Permitted
Horticulture²	A, RR, OP	Cultivation and management of trees, plants, grasses, vegetables, and fruits	Permitted ¹

¹ Agriculture is currently permitted in the A, RR, and OP zoning districts. However, in OP, horticultural services (which by current definitions are part of Agriculture) is a conditionally permitted use. This ordinance will propose a fix to this conflict.

² Horticulture is currently allowed in the "RR" zoning district via the terms "agriculture" and/or "rural farm." "Floriculture" is only allowed in OP as the term does not appear in the definitions for "agriculture" or "rural farm," and it is only listed as a permitted use in the OP district. This will also be addressed with this ordinance.

	Where Can This Use Be?	What Can You Do?	Type of Use:
Open Sales Lots	GB	Sell, rent, lease or trade goods from an open lot. No goods may be enclosed within a building.	
Seasonal Open Sales Lot	A	Sell agricultural and horticultural products produced on the premises in an open field (no goods within a building).	Permitted
Wayside Stand	OP	Sell goods produced by the operator of the stand on-site or on other property in LE. Goods must be sold from a structure.	Conditionally Permitted

What types of operations currently exist (or have historically been used) in Lake Elmo? Given discussions to date and staff's research on the history of these uses, we suggest the following are the main uses pertinent to Lake Elmo:

- 1. Commercial agricultural operations** – farms operated for the growing and selling of agricultural products.
- 2. Non-commercial agriculture** – the non-commercial production of crops such as fruit trees, shrubs, plants, flowers, and vegetables (essentially the definition of "suburban farm" less the provision for breeding domestic pets).
- 3. Seasonal Sales Businesses** – a permanent operation for the on-site sale of agricultural products produced on the site. Such businesses can be focused primarily on the sale of products produced on-site, while others tend to branch out to include commercial entertainment ventures (hay rides, corn mazes, haunted barns, etc).
- 4. Wayside Stands** – temporary sales of agricultural products on private property typically from the back of a truck (i.e. sweet corn sales).

Given the above information and the discussion on 4-14-08, what changes are recommended? Staff is recommending code be clarified in the following ways:

- 1. Unused definitions should be eliminated.** "Common Gardens" and "Community Service Agriculture" define uses that are not listed anywhere within the current city code. Additionally, both uses are arguably already defined under other terms. Removing unneeded definitions will increase clarity of the current code.
- 2. Definitions for agriculture, horticulture, and floriculture should simply describe the practice and not whether sales can occur.** All three terms should refer to the production of certain goods and nothing more. Separate terms can define how agriculture, horticulture, and floriculture products can be sold; and those terms can be defined as permitted or conditionally permitted to determine where sales can and cannot occur.
- 3. A new "Agricultural Sales" definition should be added.** This new definition can define the permanent yearly businesses that sell agricultural, horticultural, or floricultural goods from the same location year in and year out during the various seasons of the year depending upon the products being produced on the site (typical seasons are summer flowers, fall pumpkins, and winter Christmas trees).

4. **A new “Agricultural Entertainment Business” definition should be added.** This new definition is needed to define those agricultural sales businesses that—due to the nature of their activities—are more akin to a large commercial/entertainment operation than a traditional roadside stand for the selling of fruits, vegetables, and flowers. Examples of activities typically associated with an “agricultural entertainment business” include active farm tours, hay rides, petting farms, haunted barns, pick-your-own operations, etc.
5. **“Agricultural Sales” should be classified as a permitted use, while “Agricultural Entertainment” should be conditionally permitted.** In the “A” and “RR” zoning districts, agricultural sales are now proposed to be permitted while agricultural entertainment is conditionally permitted. Performance standards for agricultural sales businesses have been added to section 154.110 to give the city a level of assurance that such businesses will not impact surrounding properties. Likewise, a number of conditions must also be met in order to gain approval for new agricultural entertainment businesses.
6. **The definition for Wayside Stand should be adjusted, and no time-frame should be established for such uses.** Our background research on this subject indicates a “wayside stand” is envisioned to be the small stand or truck which offers the sale of a small number of fruits or vegetables for no more that a few days at a time. If we are correct in our understanding, the definition should reflect that intent and the use should be allowed in all proper zoning districts (not just OP which is scattered throughout the City). Additionally, the commission was against placing any time limitations per week on these types of facilities, so all such requirements have been eliminated.
7. **The term “Seasonal Open Sales Lot” should be eliminated.** This term would instead be replaced by the new terms “agricultural sales” and “agricultural entertainment business.”

RECOMMENDATION:

Planning Commission is asked to review the proposed ordinance, conduct a public hearing, and make a recommendation on any needed changes for consideration by the City Council. If consensus cannot be reached on a proposed ordinance, the item can be tabled for further consideration at a future meeting.

ORDER OF BUSINESS:

- Introduction Ben Gozola, Senior Planner
- Report by staff Ben Gozola, Senior Planner
- Questions from the Commission Chair & Commission Members
- Open the Public Hearing Chair
- Close the Public Hearing Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission Chair & Commission Members

ATTACHMENTS (1):

1. Draft ordinance to amend agricultural business definitions and regulations.

**CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

ORDINANCE NO. 08-____

**AN ORDINANCE TO AMEND AGRICULTURAL BUSINESS DEFINITIONS
AND REGULATIONS**

Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby amended to *add* the following definition:

“Agricultural Entertainment Business[BGI]” – An agricultural sales business that combines the elements and characteristics of agriculture and tourism, which is not necessarily located in an existing building and may have more than one (1) full-time equivalent employee. Examples of agricultural entertainment include: corn mazes, hay rides, sleigh rides, petting farms, on farm tours, agricultural related museums, demonstrations of farming practices, techniques and methods, pick-your-own operations, fee based fishing and hunting, horseback riding, nature trails, haunted barns and similar activities which are related to agriculture.

“Agricultural Sales Business” – The retail sale of fresh fruits, vegetables, flowers, herbs, trees, or other agricultural, floricultural, or horticultural products produced on the premises. The operation may be indoors or outdoors, and may involve accessory sales of unprocessed foodstuffs; home processed food products such as jams, jellies, pickles, sauces; or baked goods and home-made handicrafts. The floor area devoted to the sale of accessory items shall not exceed 25 percent of the total floor area. No commercially packaged handicrafts or commercially processed or packaged foodstuffs shall be sold as accessory items. No activities other than the sale of goods as outlined above shall be allowed as part of the agricultural sales business.

Section 2. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 (Definitions) is hereby changed to *amend or eliminate* the following definitions as shown:

“Agriculture” – The production ~~or sale~~ of livestock, dairy animals, dairy products, fur-bearing animals, horticultural and floricultural nursery stock, fruits of all kinds, vegetables, forage, grains, bees, and apiary products.

“Common Gardens” – Land used by residents of a development for the production of trees, vegetables, fruits, and flowers.

“Community Service Agriculture” – Horticulture and floriculture that serves the local area.

“Farm, Rural” – The portion of a 10 or more acre parcel of land ~~in the Rural Residential Zoning District~~ which is devoted to agriculture by the property owner or by a lessee of the property owner.

“Floriculture” – The cultivation and management of ornamental and flowering plants ~~for sale on site from a wayside stand.~~

“Horticulture” – The cultivation and management of trees, plants, grasses, vegetables, and fruits ~~for sale on site from a wayside stand.~~

“Wayside Stand” – A temporary structure or vehicle used for the seasonal retail sale of agricultural goods produced by the operator of the wayside stand on-site or on other property in Lake Elmo.

Section 3. The City Council of the City of Lake Elmo hereby ordains that Section 154.033 (Agricultural Use Regulations) subsections (A) and (B) are hereby amended as follows:

(A) *Permitted uses and structures.*

- (1) Farm, suburban or rural; ~~Commercial agriculture and horticulture~~;
- (2) Poultry facilities meeting state and federal regulations;
- (3) Farm buildings;
- (4) Farm drainage and irrigation systems;
- (5) Forestry meeting state and federal regulations;
- (6) One farm dwelling per farm (also see §§ 154.091 and 154.105);
- (7) One non-farm dwelling per each 40 acres, or part of a dwelling on a prorated basis, not already containing a farm or non-farm dwelling, provided:
 - (a) The dwelling unit is located on a separate parcel of record in the office of the County Recorder and/or County Auditor, which shall be at least 1-1/2 acres in size;
 - (b) The parcel on which the dwelling unit is located must have at least 125 feet of frontage along a public street, be rectangular in shape and no dimension to be greater than 3 times the other; and
 - (c) The dwelling is separated by at least 300 feet from the nearest farm building.

(8) ~~Wayside stands Seasonal open sales lots for agricultural and horticultural products produced on the premises;~~

(9) ~~Agricultural sales businesses subject to performance standards outlined in section 154.110; and Pick-your-own or cut-your-own type sales operations for products grown on the premises; and~~

(10) Joint ownership of property or ownership by association or rental for the purpose of providing private gardens or forest plots to its members or lessees.

(B) *Uses permitted by conditional use permit.*

(1) Greenhouses;

(2) Kennels;

(3) Stables;

(4) Commercial recreation of a rural nature, including outdoor target ranges;

(5) Agricultural service establishments primarily engaged in performing agricultural animal husbandry or horticultural services on a fee or contract basis, including sorting, grading, and packing fruits and vegetables for the owner, lessee, or sublessee; agricultural produce milling and processing for the owner, lessee, or sublessee; horticultural services; fruit picking; grain cleaning; veterinary services; boarding and training of horses;

(6) Open space development projects, as regulated by §§ 150.175 *et seq.*;

(7) Non-agricultural low impact uses pursuant to the standards described in division (F) of this section; and

(8) Agricultural Entertainment businesses subject to the following requirements:

a. The property proposed to be used for agricultural entertainment must be located with direct access to a collector or arterial street as identified in the comprehensive plan;

b. The property owner may be required to improve the traffic intersection located nearest to the property with additional turning lanes, street lights, traffic controls, traffic signs and such other measures as the city deems necessary to safely control traffic traveling to and from the property;

c. The property must have at least two points of unobstructed emergency vehicle access to each building or permanent or temporary structure;

- d. Minimum lot size and building setbacks for "other uses" in the A-agriculture zoning district must be met;
- e. All parking must occur on-site, be on a primary surface such as class five gravel or pavement; and must be set back at least 30 feet from all property lines;
- f. No more than 25 percent of the site may be covered with impervious surface and the remainder shall be suitably landscaped;
- g. All signs shall be in conformance with applicable code provisions;
- h. Exterior lighting must be designed and installed so that the light source is recessed and enclosed on all sides except the bottom so that no light is cast directly or indirectly on any other property and so that the light source cannot be seen from adjacent property;
- i. Roof top or outside mechanical equipment and any exterior storage must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s);
- j. Trash containers must be located inside or screened in an acceptable manner;
- k. No outdoor speakers may be used.
- l. All requirements of the fire code and fire marshal must be met;
- m. Discharge of firearms, including blanks, shall not be allowed on the property;
- n. The hours of operation and the number of permitted employees will be determined by the city council after consideration of the impact on adjacent properties;
- o. The city may require inspections of the property in order to investigate complaints;
- p. Food consumed on site must be prepared in accordance with all applicable state and county codes and regulations;
- q. The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons;
- r. There must be identified and acceptable primary and alternate well and septic sites on the property which are sized for the maximum anticipated usage of the property;
- s. All animal feed and bedding must be stored within an enclosed building;

- t. Manure must be properly stored while on site. Manure must be disposed of at an off-site location at least every six months by means of a method approved by the city and the Minnesota Pollution Control Agency, and
- u. The city council may require compliance with any other conditions, restrictions, or limitations it deems to be reasonably necessary to protect the health, safety or welfare of the surrounding properties and the community and may require the applicant to enter into an agreement to ensure compliance with the conditions.

Section 4. The City Council of the City of Lake Elmo hereby ordains that Section 154.036 (Rural Residential Use Regulations) subsections (A), (B) and (C) are hereby amended as follows:

- (A) *Permitted uses and structures.*
 - (a1) One-family residential dwellings (also see §§ 154.091 and 154.105); and
 - (b2) Farm, suburban or rural within the limits defined in the performance standards for livestock.
 - (3) Wayside stands; and
 - (4) Agricultural sales businesses subject to performance standards outlined in section 154.110
- (B) *Accessory uses and structures* (also see §§ 154.092 and 154.093). Uses and structures which are customarily accessory and clearly incidental and subordinate to allowed uses and structures; accessory structures cannot exceed the size of the principal building.
- (C) *Conditionally permitted uses.*
 - (1) Kennels;
 - (2) Open space development as regulated by §§ 150.175 et seq.; and
 - (3) Home occupations.
 - (4) Agricultural Entertainment businesses subject to the requirements outlined in section 154.033 (B)(8).

Section 5. The City Council of the City of Lake Elmo hereby ordains that Section 150.178 (OP Use Regulations) subsections (A), (B) and (C) are hereby amended as follows:

(A) *Permitted uses.*

- (1) Single-family, detached;
- (2) Preserved open space;
- (3) Conservation easements;
- (4) ~~Agriculture~~Agricultural;
- (5) ~~Suburban Farms~~Cooperative gardening;
- ~~(6) Horticultural and floriculture services;~~
- ~~(7) Private stables;~~
- ~~(8) Single-family, attached;~~
- (98) Townhouses (no more than 25% in any development); and
- ~~(10) Wayside stands~~

(B) *Accessory uses.* Uses that are typically found accessory to a permitted use.

(C) *Prohibited uses.* All other uses are hereby prohibited.

Section 6. The City Council of the City of Lake Elmo hereby ordains that the City's Design and Performance Standards are hereby amended to incorporate the following additions and changes:

Current Sections 154.090 through 154.109 and their subdivisions are restated and incorporated herein without change.

Current Section 154.110 and its subdivisions are restated and incorporated herein as section 154.111

154.110 Agricultural Sales Businesses

Agricultural Sales Businesses shall be subject to the following performance standards:

1. Agricultural Sales Business can only operate if listed as a permitted use in the underlying zoning district.

2. Activities shall be limited to the sale of fresh fruits, vegetables, flowers, herbs, trees, or other agricultural, floricultural, or horticultural products produced on the premises.
3. The Agricultural Sales Business shall be located on land owned or leased by the producer or the operator of the business, and not within or on any public right-of-ways or easements.
4. The operator must be able to demonstrate at all times to the City that there is sufficient access, parking and maneuvering space, that the location and adequacy of approaches are sufficient, that there is suitable and safe access for pedestrians, and that customer parking is away from the travel way and in close proximity to the Agricultural Sales Business.
5. Front, rear and side setbacks for structures and parking areas shall conform to those of the underlying zoning district.
6. Agricultural Sales Business Signs: Signs for such businesses must conform to the City of Lake Elmo sign ordinance.
7. Noise Level: No loud speakers or any unnecessary noise will be allowed on the site.
8. All waste materials shall be enclosed in containers provided at the site immediately adjacent to the Agricultural Sales Business.
9. All sidewalks, roadways, and other public and private spaces adjacent to the site shall be kept free from dust which may be generated by the operation of the business.

Section 7. Adoption Date

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. _____ was adopted on this _____ day of _____, 20____, by a vote of __ Ayes and __ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
City Administrator

This Ordinance No. _____ was published on the _____ day of _____, 2008.

ITEM: Consideration of an ordinance to amend sign regulations

REQUESTED BY: City Council

SUBMITTED BY: Ben Gozola, Senior Planner

REVIEWED BY: Susan Hoyt, City Administrator
Kyle Klatt, Planning Director
Jerry Filla, City Attorney

SUMMARY AND ACTION REQUESTED:

The Planning Commission is asked to review an ordinance to amend sign regulations to achieve the following goals established at the 3-24-08 & 4-14-08 Planning Commission meetings:

- 1) Sign definitions must be updated to accurately reflect the revised agricultural sales uses;
- 2) Development signs should be defined as a permanent sign subject to removal requirements;
- 3) The purpose section of the sign code must be updated by the City Attorney to substantiate the allowance of off-site advertising signs for certain real estate developments and Agricultural Sales businesses;
- 4) Current regulations governing temporary signs should be updated to add restrictions on the location, size and number of such signs, in addition to defining how many permits may be issued per calendar year;
- 5) Regulations governing on-premises real estate development signs should incorporate the definition requirement that eligible developments are those which create 10 or more new buildable lots;
- 6) New off-premises regulations need to be created for real estate developments of 10 or more units;
- 7) The number of off premises signs on any given parcel should be determined by a separation factor rather than a set number of signs per property;
- 8) Permission must be explicitly required for all off site advertising signs;
- 9) Removal of off-premises signs for real estate developments should be required once 90% of the development is complete;
- 10) The number of allowable on-premises signs for seasonal agricultural sales businesses should be regulated based on the amount of land used for production of the agricultural goods;
- 11) Seasonal agricultural sales businesses should be limited to two off-site advertising signs;
- 12) Off-site signage for seasonal agricultural sales businesses should be considered temporary, and limited to four periods of 45-days in any calendar year.

- **Can the existing ordinance be amended as desired without undergoing a complete overhaul?**

Minor amendments to address the City's off-premises advertising desires will not lessen the existing concerns about potential First Amendment challenges to code. However, that is not to say the City cannot proceed with the desired amendments now and return to address other issues at a later point in time. Rather, the City just needs to understand how to protect itself in as much as possible if it chooses to allow certain types of off-premises advertising within the current code framework.

- **Is using a purpose statement to allow certain types of signs legally defensible?**

According to the City Attorney, the City could be open for a legal challenge to the ordinance, but there was no case law to indicate this couldn't be done in an effort to protect a significant government interest (in this case protecting rural character). While "protecting rural character" can arguably be used to support the allowance of off-premises advertising for the City's agricultural businesses, it is harder to make such a connection for off-site real estate advertising signs. Given that the current best practices on signs would not recommend using a purpose statement to allow off-premises advertising signs for specific business types, it is important for the Planning Commission to continue its assessment of concerns that arise due to this approach including:

- Is the commission comfortable that allowing off-site advertising for agricultural businesses is important to preserving the community's rural character?
- Why are developments being allowed off-site advertising? What important public interest is being served, and/or how does such signage allow the city to protect its rural character?
- If off-premises development signs can be supported as serving a vital public interest, how do we differentiate which rural developments can have signs? For example, can standard 10 and 40 acre subdivisions have signs? OP subdivisions? Cluster developments? Only developments creating a certain number of lots?
- Can the city clearly find that the right to have off-site real estate development signs is not linked strictly to providing an economic benefit for developers or landowners?

In assessing these questions, staff came to the conclusion that off-premises advertising for developments is difficult to support, so we are recommending that such provisions no longer be considered. Off-premises signs for agricultural sales businesses can be supported provided the City understands the associated risks.

How will the new purpose statement protect the City from a claim that its regulating signs based on content? According to the City Attorney, if the City allows temporary off-site advertising signs for some businesses but not others, its regulation could be challenged for being unconstitutional for potentially denying equal protection of the law. To address this issue in the context of the existing code, it was recommended that the City expand the purpose section of the sign code to illustrate why certain types of off-premises advertising signs are critical to ensuring the community can "maintain its rural character." Both staff and the attorney find that such a link can arguably be made for agricultural sales businesses; however, we also find that such a distinction cannot be made for real estate off-premises advertising. As such, we have provided two drafts of ordinance #3 for consideration. The first draft (preferred by staff) does NOT contain provisions for real estate off-premises advertising. The second draft maintains the previously considered language (amended as requested) for real estate off-premises advertising. The second draft should only be used if the commission feels the purpose statement can be amended in a way that explains how off-premises real estate advertising "maintains rural character" or serves some other essential public good.

How does this ordinance change regulations governing signs for Agricultural Sales? First and foremost, such businesses would now be allowed to have signs under the proposed ordinance (current code does not contain a provision for ANY signs). Second, these types of businesses would be allowed to have one, two, or even three on-premises signs depending upon the amount of acreage devoted to the production of the agricultural good being sold by the business. A maximum gross square footage for all signs would limit the overall size of allowed signage. And finally, each business would be allowed to have up to two off-premises advertising signs provided certain conditions could be met (permission from the other property owner, must meet size and height requirements, could only be up for a specified period of time, etc).

How does this ordinance change regulations governing signs for developments of ten or more lots? Again, staff has provided two draft ordinances for consideration. Draft #1 (supported by staff) no longer provides an avenue for off premises real estate advertising. Draft #2 maintains the language for real estate off-premises advertising that was considered by the commission during past meetings. Either option maintains the existing language allowing for on-site advertising.

Does this ordinance now allow wayside stands to have signs? Yes. Wayside stands, under the proposed ordinance, could have one sign up to 32 square feet in size without a permit.

Does this ordinance require off-site advertising be erected only along certain corridors? No. Staff has not proposed any restrictions on where off-site advertising can be. However, the limit of two signs per business essentially ensures that such signs will only be located along major traffic corridors. Staff sees this as a reasonable approach to avoid having to change code if/when a request comes forward for an off-site advertising sign in a reasonable location that is not identified in code.

How did staff arrive at the proposed sign size restrictions, and what is VRT? The proposed sign size limits for on and off premises signs proposed by this ordinance were intended to be reasonable based on the current code and best available data regarding sign sizes. For example, many signs in residential areas were capped at 32 square feet (political, construction, property sale, etc), so 32 square feet was a logical maximum for an on-premises seasonal sales business sign (which would be located in residential areas). For off-premises signs, staff consulted the latest research on Viewer Reaction Time (VRT) knowing that such signs will be located along the major transportation corridors. A VRT study determines the number of seconds a person can view and comprehend a sign given the sign size and speed limit of a road. For example, a 50 square foot sign can be seen and comprehended by a motorist for five seconds on a 40 mile per hour road. If the sign were increased to 128 square feet in size on that same road, the sign could be viewed and comprehended for 8 seconds (see the following table for a breakdown of viewer reaction times based on speed limits and the size of a sign).

MPH	VRT (seconds)	Sign Size (ft²)
25	4	12.5
	5	20
	8	50
	10	78
40	4	32
	5	50
	8	128
	10	200
55	4	60.5
	5	95
	8	242
	10	378

Given that most of the major roads in or adjacent to Lake Elmo have speed limits of 55 m.p.h. or greater, staff felt that 32 square feet would be too small for off-site advertising signs. Instead, staff felt that a maximum of 50 square feet was reasonable to provide roughly three seconds of viewing and comprehension time along major corridors.

Other than addressing the various issues that arose at the commission meeting on 4-14-08, does this revised ordinance contain any other major changes? No. A summary of changes since the last draft is as follows:

1. The attorney's proposed definition for "sign" and the new purpose section have both been added to this latest draft ordinance.
2. Development advertising signs are now required to be removed at 90% build out. As proposed, issuance of a building permit for lots within a development will be the determining factor for "developed" vs. "non-developed" when enforcing this requirement.
3. "Seasonal Agricultural Sales" was simplified to "Agricultural Sales." In revising the ordinance, it was determined the word "seasonal" was unnecessary and made the ordinance harder to read.
4. Off-premises advertising signs for agricultural sales businesses were capped at two instead of one.

RECOMMENDATION:

Planning Commission is asked to review the proposed ordinance options, conduct a public hearing, and make a recommendation on any needed changes for consideration by the City Council. Staff is recommending the Planning Commission base their recommendations on the draft that does NOT allow off-premises real estate advertising signs.

ORDER OF BUSINESS:

- Introduction Ben Gozola, Senior Planner
- Report by staff Ben Gozola, Senior Planner
- Questions from the Commission Chair & Commission Members
- Open the Public Hearing Chair
- Close the Public Hearing Chair
- Call for a motion Chair Facilitates
- Discussion of Commission on the motion Chair Facilitates
- Action by the Planning Commission Chair & Commission Members

ATTACHMENTS (2):

1. Option 1: Draft ordinance to amend sign regulations (does NOT allow for off-premises real estate advertising signs).
2. Option 2: Draft ordinance to amend sign regulations (allows off-premises real estate advertising signs).

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-___

AN ORDINANCE TO AMEND GENERAL SIGN REGULATIONS

Section 1. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 is hereby amended to add the following definitions:

“Off-premise sign” – a commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same lot where such sign is located. A sign located within an easement or other appurtenance to a lot on which a business is located shall be deemed an off-premises sign.

“On-premise sign” – a sign which identifies or advertises an establishment, person, activity, goods, products or services located on the premises where the sign is installed.

Section 2. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 is hereby changed to amend the following definitions:

“Sign” – Any letter, word or symbol, device, poster, picture, statue, reading matter or representation in the nature of an advertisement, announcement, message, or visual communication, whether painted, posted, printed, affixed or constructed, which is displayed for informational or communicative purposes and is visible to the general public. ~~A display, illustration with lettering, structure, or device which directs attention to an object, product, place, activity, person, institution, organization, or business. The term shall not include the United States flag or any governmental flag properly displayed in an approved manner.~~

“Sign, Real Estate Development” – A sign offering for sale, lease, or rent a single-family or multiple-family residential project of 10 or more dwelling units or lots. ~~Real estate development signs shall be administered as permanent signs subject to all removal requirements outlined in code.~~

“Sign, Agricultural Sales” – A sign placed on a lot or parcel of land ~~advertising an operating and permissible agricultural sales business. for a period not to exceed 30 days out of any 12-month period. No sign permit fee is required. Off-premises agricultural sales signs shall be administered as temporary signs subject to all removal requirements outlined in code.~~

“Sign, Wayside Stand” – A sign located on a temporary structure or vehicle being used to ~~sell agricultural, floricultural, or horticultural products.~~

Section 3. The City Council of the City of Lake Elmo hereby ordains that Section 151.115 outlining the purpose of the municipal sign code is hereby amended to read as follows:

- (A) The Lake Elmo Sign Regulations are intended to establish a comprehensive and balanced system of sign control that accommodates the need for a well-maintained, safe, and attractive community, and the business community's need for effective communication and identification. It is not the purpose or intent of these regulations to favor commercial messages or speech over non-commercial messages or speech or to discriminate between types of non-commercial speech or the viewpoints represented therein. It is the intent of these regulations to promote the health, safety, general welfare, and desirable rural community image through the regulation of signs with the following objectives in mind:
- (1) Signs shall demonstrate a high standard of aesthetic character and encourage the use of monument and individual letter-style signs;
 - (2) Permit large enough copy/graphic area to effectively convey the intended message but not so large as to unduly distract the reader and insist on lettering large enough to be easily read to encourage simple, uncluttered messages;
 - (3) Signs shall be proportioned to the size of, and architecturally compatible with, the structures and other signs on the premises;
 - (4) Permanent signs shall only advertise on-premise businesses, services, facilities, etc;
 - (5) Allow temporary business signs for grand openings and occasional sales events; allow temporary signs to advise the public of the seasonal sale of agricultural and horticultural products in keeping with the City's rural image; and to allow temporary directional signs permitting the public to more easily locate land conservation developments which enhances the City's rural image, without creating continuous visual clutter or traffic hazards along streets or at intersections; and
 - (6) Signs shall be properly maintained.
 - (7) Signs that distract drivers, cyclists and pedestrians shall not be permitted. Studies conducted by public and private agencies have identified that dynamic signs, including multi-vision signs, electronic signs and video displays can be highly distracting to drivers, pedestrians, and cyclists and that distraction is a significant underlying cause of traffic accidents. With respect to electronic signs, including video display signs, the City finds that they are highly visible from long distances and at very wide viewing angles both day and night and are designed to catch the eye of persons in their vicinity and hold it for extended periods of time. If left uncontrolled,

electronic signs, including video display signs, constitute a serious traffic safety threat. Studies conducted by the Federal Highway Administration (FHWA), Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction, Sept. 11, 2001, and The Role of Driver Inattention in Crashes: New Statistics from 1995; the University of North Carolina Highway Safety Research Center, Distractions in Everyday Driving, May 2003 and The Role of Driver Distraction in Traffic Crashes, May 2001; the Wisconsin Department of Transportation, Synthesis Report of Electronic Billboards and Highway Safety, June 10, 2003; the Municipal Research and Services Center of Washington, Sign Control Provisions, Jan. 2006; the Veridan Group, Video Signs in Seattle, Gerald Wachtel, May 2001, reveal that electronic signs are highly distracting to drivers and that driver distraction continues to be a significant underlying cause of traffic accidents.

(B) Findings. The City of Lake Elmo hereby finds that regulation of the construction type, location, size, and maintenance of signs is necessary to accomplish the above referenced objectives, because:

- (1) The presence of permanent and temporary signage affects the rural image of the City of Lake Elmo;
- (2) Properly regulated signage can create an atmosphere of prosperity, stimulate commercial activity, and consequently, lead to increased employment and a healthier tax base;
- (3) The safety of motorists, cyclists, and pedestrians can be threatened by signage that interferes with necessary sight-distances and/or unduly diverts the attention of such persons.
- (4) Signs that are too bright, overly illuminated, flash, blink, scroll, twirl, change messages or color, or imitate movement, including video displays, can distract drivers, cyclists and pedestrians and impact traffic safety.

~~Signs have an impact on the rural character and quality of the environment in Lake Elmo. They may attract or repel the viewing public and affect the safety of vehicular traffic. As a rural community, Lake Elmo is unique. The proper control of signs is of particular importance because of this rural quality and uniqueness. Signs should be kept within reasonable boundaries consistent with the objectives and goals of the community to retain its special character and economic advantages which rest in part on the quality of its appearance. The following standards in the section are adopted to regulate signs.~~

Section 4. The City Council of the City of Lake Elmo hereby ordains that Section 151.118 subsection (B)(5) regarding temporary signs is hereby amended to read as follows:

(B) (5) *Temporary signs.* Temporary signs may be allowed upon issuance of a permit for on-site advertising of special business events such as business openings and closings, change in management, district-wide shopping events, sales events, or other special occasions, ~~for 15 days maximum.~~ No more than four temporary sign permits may be issued in any calendar year for a given destination, and each temporary sign permit shall run for 15 days, by permit from the City Planner. ~~The city may grant a permit to locate signs or decorations on, over, or within the right-of-way for a specified period of time.~~ Temporary signs shall be subject to the following regulations:

- a. Only one on-premises temporary sign shall be allowed per business or event.
- b. Temporary signs shall not exceed 32 square feet in area and shall not be taller than 10 feet in height.

Section 5. The City Council of the City of Lake Elmo hereby ordains that Section 151.119 subdivision (B) is hereby amended to read as follows:

Current Section 151.119, subdivision (B)(1) through (8) and its subdivisions are restated and incorporated herein without change.

(9) *Real estate development project advertising signs.*

~~(a) For the purpose of selling or promoting a development project, the following signs are permitted:~~

On premises real estate development project advertising signs may be used if the following requirements are met:

1. Minimum Development Size:

- ~~1.i.~~ Projects of 3 to less than 25 acres which create ten or more dwelling units are allowed 1 on-premises sign not to exceed 100 square feet of advertising surface on the project site;
- ~~2.ii.~~ Projects of 26 through 50 acres which create ten or more dwelling units are allowed 1 or 2 on-premises signs not to exceed 200 aggregate square feet of advertising surface on the project site; and
- ~~3.iii.~~ Projects over 50 acres which create ten or more dwelling units are allowed 1, 2, or 3 on-premises signs not to exceed

200 aggregate square feet of advertising surface on the project site.

2. On-premises sign requirements:

- b.i. No dimension shall exceed 25 feet exclusive of supporting structures.
- e.ii. The sign shall not remain after ~~once~~ once 90% of the lots in the development have been issued building permits. 95% of the project is developed.
- d.iii. The permit for the sign must be renewed annually by the Council.
- e.iv. All signs shall be bordered with a decorative material compatible with the surrounding area.
- f.v. Any illuminated sign shall be illuminated only during those hours when business is in operation or when the model homes or other development are open for conducting business.

(10) Agricultural sales advertising signs.

a. On-Premises. On-premises agricultural sales advertising signs may be used subject to the following requirements:

1. Acreage dedicated to agricultural production:

- i. Agricultural sales businesses utilizing less than 10 acres of land specifically for the growing of agricultural crops for the business are allowed 1 on-premises sign not to exceed 32 gross square feet of advertising surface;
- ii. Agricultural sales businesses utilizing more than 10 acres of land but less than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1 or 2 on-premises signs not to exceed 48 gross square feet of advertising surface (with neither sign exceeding 32 square feet in size);
- iii. Agricultural sales businesses utilizing more than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1, 2 or 3 on-premises signs not to exceed 64 gross square feet of advertising surface (with no sign exceeding 32 square feet in size);

2. On-premises sign requirements:

- i. No dimension of any sign shall exceed 15 feet exclusive of supporting structures.
- ii. The permit for the sign must be renewed annually by the Council.
- iii. All signs shall be bordered with a decorative material compatible with the surrounding area.
- iv. Any illuminated sign shall be illuminated only during those hours when business is open to the public for conducting business.

b. Off-premises. An off-premises agricultural sales advertising sign may be used if the following requirements are met:

1. Maximum Number. Every agricultural sales business shall have no more than two off-premises signs at any given time to direct the public to the location of the business.

2. Off-premises sign requirements:

- i. An off-site agricultural sales advertising sign shall not exceed 50 square feet in area and shall not be taller than 10 feet in height;
- ii. Off-premises signs shall be a minimum of 25' from all side property lines, and a minimum of 50' from other off-premises advertising signs;
- iii. Applicants for off-premises signs shall acquire permission from the property owner upon who's land the sign is to be erected.

3. Timeframe of use. ~~An~~ Either one or two off-premises agricultural sales advertising sign(s) may be erected for a 45-day time period no more than four times in any given calendar year. The required yearly permit shall stipulate the range of dates for each of the four allowable time periods.

(11) Wayside Stand sign. Temporary wayside stands permitted by code may have one non-illuminated sign (exempt from permitting requirements) not to exceed 32 gross square feet of advertising surface.

(120) *Window signs.* No sign permit is required for window signage that does not cover more than 1/3 of the total area of the window in which the sign is displayed; and

(134) *No trespassing/no hunting signs.* No trespassing and no hunting signs shall be no larger than 2 square feet.

Section 6. Adoption Date

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. ____ was adopted on this ____ day of _____, 20____, by a vote of __ Ayes and __ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
City Administrator

This Ordinance No. _____ was published on the ____ day of _____, 2008.

OPTION 2

(with off-premises advertising for developments)

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-____

AN ORDINANCE TO AMEND GENERAL SIGN REGULATIONS

Section 1^[BG1]. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 is hereby amended to add the following definitions:

“Off-premise sign” – a commercial speech sign which directs the attention of the public to a business, activity conducted, or product sold or offered at a location not on the same lot where such sign is located. A sign located within an easement or other appurtenance to a lot on which a business is located shall be deemed an off-premises sign.

“On-premise sign” – a sign which identifies or advertises an establishment, person, activity, goods, products or services located on the premises where the sign is installed.

Section 2. The City Council of the City of Lake Elmo hereby ordains that Section 11.01 is hereby changed to amend the following definitions:

“Sign”^[BG2] – Any letter, word or symbol, device, poster, picture, statue, reading matter or representation in the nature of an advertisement, announcement, message, or visual communication, whether painted, posted, printed, affixed or constructed, which is displayed for informational or communicative purposes and is visible to the general public. ~~A display, illustration with lettering, structure, or device which directs attention to an object, product, place, activity, person, institution, organization, or business. The term shall not include the United States flag or any governmental flag properly displayed in an approved manner.~~

“Sign, Real Estate Development^[BG3]” – A sign offering for sale, lease, or rent a single-family or multiple-family residential project of 10 or more dwelling units or lots. Real estate development signs shall be administered as permanent signs subject to all removal requirements outlined in code.

“Sign, Agricultural Sales” – A sign placed on a lot or parcel of land advertising an operating and permissible agricultural sales business. ~~for a period not to exceed 30 days out of any 12-month period. No sign permit fee is required.~~ Off-premises agricultural sales signs shall be administered as temporary signs subject to all removal requirements outlined in code.

“Sign, Wayside Stand” – A sign located on a temporary structure or vehicle being used to sell agricultural, floricultural, or horticultural products.

Section 3^[BG4]. The City Council of the City of Lake Elmo hereby ordains that Section 151.115 outlining the purpose of the municipal sign code is hereby amended to read as follows:

- (A) The Lake Elmo Sign Regulations are intended to establish a comprehensive and balanced system of sign control that accommodates the need for a well-maintained, safe, and attractive community, and the business community's need for effective communication and identification. It is not the purpose or intent of these regulations to favor commercial messages or speech over non-commercial messages or speech or to discriminate between types of non-commercial speech or the viewpoints represented therein. It is the intent of these regulations to promote the health, safety, general welfare, and desirable rural community image through the regulation of signs with the following objectives in mind:
- (1) Signs shall demonstrate a high standard of aesthetic character and encourage the use of monument and individual letter-style signs;
 - (2) Permit large enough copy/graphic area to effectively convey the intended message but not so large as to unduly distract the reader and insist on lettering large enough to be easily read to encourage simple, uncluttered messages;
 - (3) Signs shall be proportioned to the size of, and architecturally compatible with, the structures and other signs on the premises;
 - (4) Permanent signs shall only advertise on-premise businesses, services, facilities, etc;
 - (5) Allow temporary business signs for grand openings and occasional sales events; allow temporary signs to advise the public of the seasonal sale of agricultural and horticultural products in keeping with the City's rural image; and to allow temporary directional signs permitting the public to more easily locate land conservation developments which enhances the City's rural image, without creating continuous visual clutter or traffic hazards along streets or at intersections; and
 - (6) Signs shall be properly maintained.
 - (7) Signs that distract drivers, cyclists and pedestrians shall not be permitted. Studies conducted by public and private agencies have identified that dynamic signs, including multi-vision signs, electronic signs and video displays can be highly distracting to drivers, pedestrians, and cyclists and that distraction is a significant underlying cause of traffic accidents. With respect to electronic signs, including video display signs, the City finds that they are highly visible from long distances and at very wide viewing angles both day and night and are designed to catch the eye of persons in their vicinity and hold it for extended periods of time. If left uncontrolled,

electronic signs, including video display signs, constitute a serious traffic safety threat. Studies conducted by the Federal Highway Administration (FHWA), Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction, Sept. 11, 2001, and The Role of Driver Inattention in Crashes: New Statistics from 1995; the University of North Carolina Highway Safety Research Center, Distractions in Everyday Driving, May 2003 and The Role of Driver Distraction in Traffic Crashes, May 2001; the Wisconsin Department of Transportation, Synthesis Report of Electronic Billboards and Highway Safety, June 10, 2003; the Municipal Research and Services Center of Washington, Sign Control Provisions, Jan. 2006; the Veridan Group, Video Signs in Seattle, Gerald Wachtel, May 2001, reveal that electronic signs are highly distracting to drivers and that driver distraction continues to be a significant underlying cause of traffic accidents.

(B) Findings. The City of Lake Elmo hereby finds that regulation of the construction type, location, size, and maintenance of signs is necessary to accomplish the above referenced objectives, because:

- (1) The presence of permanent and temporary signage affects the rural image of the City of Lake Elmo;
- (2) Properly regulated signage can create an atmosphere of prosperity, stimulate commercial activity, and consequently, lead to increased employment and a healthier tax base;
- (3) The safety of motorists, cyclists, and pedestrians can be threatened by signage that interferes with necessary sight-distances and/or unduly diverts the attention of such persons.
- (4) Signs that are too bright, overly illuminated, flash, blink, scroll, twirl, change messages or color, or imitate movement, including video displays, can distract drivers, cyclists and pedestrians and impact traffic safety.

~~Signs have an impact on the rural character and quality of the environment in Lake Elmo. They may attract or repel the viewing public and affect the safety of vehicular traffic. As a rural community, Lake Elmo is unique. The proper control of signs is of particular importance because of this rural quality and uniqueness. Signs should be kept within reasonable boundaries consistent with the objectives and goals of the community to retain its special character and economic advantages which rest in part on the quality of its appearance. The following standards in the section are adopted to regulate signs.~~

Section 4^[BG5]. **The City Council of the City of Lake Elmo hereby ordains that Section 151.118 subsection (B)(5) regarding temporary signs is hereby amended to read as follows:**

- (B) (5) *Temporary signs.* Temporary signs may be allowed upon issuance of a permit for on-site advertising of special business events such as business openings and closings, change in management, district-wide shopping events, sales events, or other special occasions, for 15 days maximum. No more than four temporary sign permits may be issued in any calendar year for a given destination, and each temporary sign permit shall run for 15 days, by permit from the City Planner. The city may grant a permit to locate signs or decorations on, over, or within the right-of-way for a specified period of time. Temporary signs shall be subject to the following regulations:
- a. Only one on-premises temporary sign shall be allowed per business or event.
 - b. Temporary signs shall not exceed 32 square feet in area and shall not be taller than 10 feet in height.

Section 5^[BG6]. **The City Council of the City of Lake Elmo hereby ordains that Section 151.119 subdivision (B) is hereby amended to read as follows:**

Current Section 151.119, subdivision (B)(1) through (8) and its subdivisions are restated and incorporated herein without change.

- (9) *Real estate development project advertising signs.*
- a. **On-Premises**^[BG7]. On premises real estate development project advertising signs may be used if the following requirements are met:
 1. Minimum Development Size:
 - 1.i. Projects of ~~3 to~~ less than 25 acres which create ten or more dwelling units are allowed 1 on-premises sign not to exceed 100 square feet of advertising surface on the project site;
 - 2.ii. Projects of 26 through 50 acres which create ten or more dwelling units are allowed 1 or 2 on-premises signs not to exceed 200 aggregate square feet of advertising surface on the project site; and
 - 3.iii. Projects over 50 acres which create ten or more dwelling units are allowed 1, 2, or 3 on-premises signs not to exceed 200 aggregate square feet of advertising surface on the project site.

2. On-premises sign requirements^[BG8]:

- b.i. No dimension shall exceed 25 feet exclusive of supporting structures.
- e.ii. The sign shall not remain after once 90% of the lots in the development have been issued building permits. ~~95% of the project is developed.~~
- d.iii. The permit for the sign must be renewed annually by the Council.
- e.iv. All signs shall be bordered with a decorative material compatible with the surrounding area.
- f.v. Any illuminated sign shall be illuminated only during those hours when business is in operation or when the model homes or other development are open for conducting business.

b. Off-premises^[BG9]. Open space preservation developments may be allowed one off-premises real estate development advertising sign if the following requirements are met:

1. Minimum Development Size. Open space preservation development projects creating ten or more dwelling units are allowed to have one off-premises sign to identify the location of the development.
2. Off-premises sign requirements:
 - i. An off-site real estate development project advertising sign shall not exceed 50 square feet in area and shall not be taller than 10 feet in height;
 - ii. Off-premises signs shall be a minimum of 25' from all side property lines, and a minimum of 50' from other off-premises advertising signs;
 - iii. Applicants for off-premises signs shall acquire permission from the property owner upon who's land the sign is to be erected.
3. Timing of Required Removal. An off-premises real estate development advertising sign shall be removed once 90% of the lots in the development have been issued building permits.

(10) Agricultural sales advertising signs.

a. On-Premises^[BG10]. On-premises agricultural sales advertising signs may be used subject to the following requirements:

1. Acreage dedicated to agricultural production:

i. Agricultural sales businesses utilizing less than 10 acres of land specifically for the growing of agricultural crops for the business are allowed 1 on-premises sign not to exceed 32 gross square feet of advertising surface;

ii. Agricultural sales businesses utilizing more than 10 acres of land but less than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1 or 2 on-premises signs not to exceed 48 gross square feet of advertising surface (with neither sign exceeding 32 square feet in size);

iii. Agricultural sales businesses utilizing more than 40 acres of land specifically for the growing of agricultural crops for the business are allowed 1, 2 or 3 on-premises signs not to exceed 64 gross square feet of advertising surface (with no sign exceeding 32 square feet in size);

2. On-premises sign requirements:

i. No dimension of any sign shall exceed 15 feet exclusive of supporting structures.

ii. The permit for the sign must be renewed annually by the Council.

iii. All signs shall be bordered with a decorative material compatible with the surrounding area.

iv. Any illuminated sign shall be illuminated only during those hours when business is open to the public for conducting business.

b. Off-premises^[BG11]. An off-premises agricultural sales advertising sign may be used if the following requirements are met:

1. Maximum Number. Every agricultural sales business shall have no more than two off-premises signs at any given time to direct the public to the location of the business.

2. Off-premises sign requirements:

- i. An off-site agricultural sales advertising sign shall not exceed 50 square feet in area and shall not be taller than 10 feet in height;
- ii. Off-premises signs shall be a minimum of 25' from all side property lines, and a minimum of 50' from other off-premises advertising signs;
- iii. Applicants for off-premises signs shall acquire permission from the property owner upon who's land the sign is to be erected.

3. Timeframe of use. ~~An~~Either one or two off-premises agricultural sales advertising sign(s) may be erected for a 45-day time period no more than four times in any given calendar year. The required yearly permit shall stipulate the range of dates for each of the four allowable time periods.

(11) ~~Wayside Stand sign~~ [BG12]. Temporary wayside stands permitted by code may have one non-illuminated sign (exempt from permitting requirements) not to exceed 32 gross square feet of advertising surface.

(12~~0~~) Window signs. No sign permit is required for window signage that does not cover more than 1/3 of the total area of the window in which the sign is displayed; and

(13~~+~~) No trespassing/no hunting signs. No trespassing and no hunting signs shall be no larger than 2 square feet.

Section 6. Adoption Date

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

This Ordinance No. ____ was adopted on this ____ day of _____, 20 ____, by a vote of __ Ayes and __ Nays.

Mayor Dean Johnston

ATTEST:

Susan Hoyt
City Administrator

This Ordinance No. ____ was published on the ____ day of _____, 2008.