

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

ORDINANCE NO. 08-026

**AN ORDINANCE AMENDING THE DEFINITION OF “WAYSIDE
STAND”**

FINDINGS

1. At its Staff report to the City Council in advance of its December 1, 2009 City Council meeting, City staff recommended that the Planning Commission and City Council add to the 2010 Planning Commission Work Plan the evaluation of certain types of commercial/agricultural uses or practices. As that staff report explained, this would allow the Commission and Council to accomplish several things, including studying options for regulating these uses as a commercial activity and reviewing the differences between wayside stands and seasonal sales; specifically whether or not the sale of produce grown off-site should be allowed.

2. At the December 1 Council meeting, the Council unanimously directed the inclusion of Staff’s recommendations in the Planning Department’s 2010 Workplan.

3. As a result, in the intervening period, City staff has been researching these issues, reviewing other community ordinances, seeking input from potentially affected stakeholders and other interested parties, and considering alternatives, with the expectation that concrete recommendations would be made by mid-2010.

4. As the next step of City staff’s performance of the responsibilities that the Council directed it to perform at the December 1 meeting, City staff and the Planning Commission have recommended that City Council begin by amending the definition of “Wayside Stand.”

5. Most of the words in the current definition of Wayside Stand (as a “temporary structure or vehicle 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“) have been in place for over ten years, during which the definition has been changed only by adding the word “temporary” and the phrase “or vehicle” to this sentence.

6. In the interim, the City has modified its Zoning Code to increase the types of zoning districts in which a Wayside Stand is a permitted use or structure. Most recently (in 2008) the City added “Wayside Stands” to the list of permitted uses and structures in the Rural Residential (RR) category of zoning districts.

7. Research has shown that a “produced on the premises” limitation on retail sales in an agricultural or rural district is quite common. Such a limitation reflects that commercial districts (such as the Lake Elmo’s General Business district) are a more compatible place for

grocery stores and other retail-oriented businesses, but that the sale of a particular piece of produce is often an incidental part of its production.

8. Courts and communities have used “produced on the premises” distinctions to differentiate between agricultural and commercial uses in a way that helps to ensure that, if this type of retail sales occurs outside of a commercial district, it remains just an incidental part of the core agricultural purpose of the district.

9. The City’s current definition of “Wayside Stand” differentiates between agricultural goods, floriculture, and horticulture produced “on site *or on other property in Lake Elmo.*” That language is more generous to the operator of a wayside stand than a “produced on the premises” distinction. However, it is a less-common way of distinguishing between agricultural and commercial uses. Wayside or roadside stand definitions are more often limited to produce grown on the premises.

10. The presence of the “or on other property in Lake Elmo” distinction in the definition reflects the City’s understanding that there are often better locations for wayside stands than on the very property where the produce is grown. Although it was not intended to allow a Wayside Stand to sell produce that the operator has purchased from someone else, the language is sufficiently ambiguous to lead someone to read it that way.

11. A removal of the “on other property in Lake Elmo” will help clarify the overall structure of the City’s agricultural sales regulations.

12. The City’s willingness to be more permissive in allowing sales from Wayside Stands of produce grown elsewhere in Lake Elmo has been misunderstood by one set of local growers and several actual or potential suppliers, as reflecting an intention to protect local economic interests and to discriminate against out-of-state economic interests. That was not, and is not, the City’s intent. Paradoxically, Country Sun Farms, the Lake Elmo business that has used that phrase to claim that the City has created of an unconstitutional “Lake Elmo Only Sales Policy,” has opposed the deletion of “or on other property in Lake Elmo” from the “Wayside Stand” definition, because (in the words of one of its owners) “this does not help our city’s farmers.”

13. In response to an inquiry from a member of the Planning Commission, the Assistant City Attorney has opined that, with or without this change, the “Wayside Stand” definition does not depend on whether the operator of the stand is owning or renting the stand or the property where the produce for sale is grown.

14. The Council is cognizant of the desire of the community to continue to allow reasonable local access to fresh produce through such wayside stands. It also recognizes past efforts by the City Council, its Community Improvement Commission, and other community entities to facilitate a farmers’ market or similar temporary seasonal sales area.

15. For that reason, in conjunction with this change in the City’s zoning regulations, the City Council is endorsing the establishment of at least one farmers market in one of Lake

Elmo's commercial or institutional zoning districts. Such a farmers market would allow interested individuals or parties to set up wayside stands and offer fresh produce and related goods to the local community, without regard to where they are grown.

16. This amendment does not conclude the process for considering revisions to the City's agricultural sales business and agricultural entertainment business regulations. City staff, and then the Planning Commission, will be evaluating how the commercial (and off-site) sale of agricultural products might be incorporated into the City's Zoning Ordinance. Information that has been received at the June 28 Planning Commission regarding agricultural sales in settings other than Wayside Stands will be considered as part of that stage of the process.

BASED ON THESE FINDINGS, THE CITY COUNCIL HEREBY ADOPTS THE FOLLOWING ORDINANCE:

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title I: General Provisions; Chapter 11: General Code Provisions, by amending section 11.01 Definitions to read as follows:

WAYSIDE STAND. A temporary structure or vehicle 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.~~

SECTION 2. Effective Date

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

SECTION 3. Adoption Date

This Ordinance No. 08-025 was adopted on this 6th day of July 2010, by a vote of ___ Ayes and ___ Nays.

Mayor Dean Johnston

ATTEST:

Bruce Messelt
City Administrator

This Ordinance No 08-____ was published on the ____ day of _____, 2010.