

City of Lake Elmo Planning Department  
**Commercial Outdoor Social Events Review**

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*To:* **City Council**

*From:* **Ben Gozola, City Planner**

*Meeting Date:* **3-6-07**

***Introductory Information***

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On May 16, 2006; the City of Lake Elmo adopted ordinance 97-167 which approved an amendment to City Code to allow commercial outdoor social events as a conditionally permitted use in the Agricultural (AG) zoning district (**see attached**). On February 20<sup>th</sup>, Council requested that staff place the issue of “commercial outdoor social events” on the March 6<sup>th</sup> agenda for an overall review of the original ordinance approval and Council options at this time if changes to the ordinance are desired.

***Review***

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***Main  
Questions:***

In bringing this matter forward, staff identified four main questions being asked by the City Council:

**1) If the City Council maintains the current ordinance, can additional conditions be added to future approvals for commercial outdoor social events?**

**YES.** Under City Code section 300.06 Subd 4, the City Council as the “governing body” has the authority to approve or deny conditional use permit applications. In doing so, Council is to consider the recommendation of the Planning Commission and the following factors:

- The effect of the proposed use upon the health, safety, morals, convenience, and general welfare of occupants of surrounding lands;
- The existing and anticipated traffic conditions;
- The effect on utility and school capacities;
- The effect on property values in the surrounding area; and
- The effect of the proposed use on the Comprehensive Plan.

In addition to these general requirements, individual conditional uses may also have their own requirements outlined in code; this is the case for commercial outdoor social events. Specifically, ordinance 97-167 also established the following thresholds for these types of events:

- The subject parcel must be a least 10 acres in size;

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- No existing permanent or newly constructed structures may be used – tents are allowed;
  - Only two events may be held per week at the site, and only during the months of May through October;
  - Attendance at events can be no more than 250;
  - The use must comply with City Code Ambient Noise standards;
  - All parking must be off-street, and shall be set back and/or adequately screened from adjoining properties;
  - Hours for events are limited to 10:00 a.m. to 10:00 p.m. which is inclusive of set up and take down activities;
  - Portable sanitation facilities adequately sized for the event(s) must be located on the site;
  - No admission fees may be charged for the commercial outdoor social event; and
  - All lighting must meet City Code standards and be shut off by 10:00 p.m.

**Keep in mind that all of the specific requirements outlined above are minimum standards, and that further conditions may be necessary to ensure compliance with the general standards outlined in code.**

For example, a property owner of 15 acres in the Agricultural zoning district may be planning an event for 220 people and has adequate on-site parking to do so, but the property may be located at a very dangerous location along a busy County Road. In such a case, Council may elect to find that no conditions can adequately ensure the safety of the public driving on the County Road during the social event and therefore the application could be denied. Or, using that same scenario with a less dangerous access, Council may require *as a condition of approval* that a certain number of police officers be available and be hired to direct traffic during the proposed event.

It is also important to remember that with any CUP, your approval runs with the land and not with the property owner. The City must be very confident that the conditions imposed with any approval are all that is necessary to ensure compliance with code requirements.

In any event, if Council finds that a proposed conditional use does NOT meet even one of the review criteria, the application may be denied based on such grounds.

***Issues Specific  
to Commercial  
Outdoor  
Social Events:***

- Currently “commercial outdoor social events” is not defined in City Code, which allows the City to use reasonable interpretation when reviewing any such requests. If Council believes further clarification is necessary to ensure the ordinance operates as intended, a definition could certainly be added in the future.
- The question was raised as to whether an applicant could request a variance from one of the specific conditions outlined for commercial outdoor social events (i.e. requesting that the hours of operation on a given site extend to midnight). The

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answer to that question is yes. However, given that the City has already determined that these minimum thresholds are necessary for the approval of such a CUP, it will likely be very difficult to impossible for an applicant to describe a hardship acceptable to the City to justify the variance.

The confusion with regards to variances generally relates to the question of “use.” In this case, the proposed “use” is conditionally permitted – not prohibited. Therefore requesting a variance from the minimum criteria outlined in code is allowed. Compare this situation to someone requesting to locate a gas station in the AG zoning district. In such a case, the use itself is neither permitted nor conditionally permitted – it’s prohibited. Therefore, a variance cannot be requested to allow for the use.

**Current Applications:**

At the time of this review, the City currently has received one application for a commercial outdoor social event which is in the beginning stages of review. **Attached you will find a memo from the City Attorney** outlining how the new application will or will not be effected by any action you may take with regards to commercial outdoor social events. The memo also addresses legal aspects of other items previously covered in this report.

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**Conclusion**

The information contained in this report was assembled at the request of City Council. Staff will be available on March 6<sup>th</sup> to answer any questions.

**Council Options:**

The City Council has the following options:

- A) Do nothing. Council may find that the ordinance approved in May 2006 is sufficient and addresses all city concerns regarding commercial outdoor social events;
- B) (Explain process for changing the ordinance, and clarify they can add additional conditions). Council may find problems with the ordinance in its current form, and propose changes to be incorporated into the City Code. Such an amendment would need to go through the full City review process before appearing before Council for possible approval;
- C) Council may find problems with the ordinance in its current form, and direct staff to take action to repeal ordinance 97-167. Such action would also need to go through the full City review process before Council could take action;
- D) (Pending applications caught in moratorium) Council may adopt a moratorium on reviewing and accepting applications for commercial outdoor social events, and direct staff to study the matter to address any concerns surrounding the health, safety, and welfare of the community with regards to these potential uses.

cc: Carol Palmquist, *Current CUP Applicant*

