

City of Lake Elmo Planning Department
Commercial Outdoor Social Events Review

To: **City Council**

From: **Ben Gozola, City Planner**

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

Introductory Information

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 20th, Council requested that staff place the issue of “commercial outdoor social events” on the March 6th agenda for an overall review of the original ordinance approval and Council options at this time if changes to the ordinance are desired.

Review

***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;

- (cont.)
- 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.

2) Can the City Council amend the current ordinance to create additional conditions for commercial outdoor social events?

YES. The City Council has the authority and responsibility to ensure that local regulations are crafted in a manner that upholds the goals of the comprehensive plan. If Council believes that codes allowing for commercial outdoor social events need amending, staff should be directed to begin work to craft an ordinance to address such concerns.

(cont.)

Keep in mind that changes to any city code require the city to go through a full ordinance review using the following general steps:

- a. First, council must direct staff on what issues need to be addressed and/or what changes you would like to see to the ordinance;
- b. Next, staff must research the matter and prepare proposed language to address the issue along with a report for Planning Commission consideration.
- c. The Planning Commission must hold a public hearing on the proposed ordinance, discuss the proposed changes, and make a recommendation to the City Council on what (if any) action should be taken.
- d. The recommended ordinance would then be forwarded to the City Council for final consideration and possible adoption.
- e. Any approved ordinance would then become law once published in the official newspaper.

3) Can Council repeal the city code language which makes commercial outdoor social events a conditionally permitted use?

YES. Again, the City Council has the authority and responsibility to ensure that local regulations are crafted in a manner that upholds the goals of the comprehensive plan. If you do not believe that commercial outdoor social events are appropriate under any circumstances in the AG zoning district, you can certainly take action to eliminate the use. Doing so would require the City to follow the same process noted above for amending the ordinance (see steps “a” through “e”).

4) Can Council adopt a moratorium on commercial outdoor social events applications to study the issue?

YES. Moratoriums are a tool available to City Councils which allow you to put the breaks on current and future applications dealing with a specific issue the City has identified as needing study. If changes are deemed necessary with regards to commercial outdoor social events, then consideration of a moratorium on current and future applications should be strongly considered. This would provide the City with time to study the issue, and proceed through the required ordinance review process (steps “a” through “e”) if necessary.

Please note that the City recently received an application requesting a conditional use permit for reoccurring commercial outdoor social events. Staff is currently in the process of determining whether the application is complete. However, according to the City Attorney, the receipt of a completed application by the City does not create vested rights. The City is free to review and/or changes or repeal its regulations after it receives an application and before it gives preliminary approval.

Other general questions:

- 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. Further comments are provided by the City Attorney in the memo attached to this report.
- 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 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 be 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.

Conclusion

The information contained in this report was assembled at the request of City Council. Staff will be available on March 6th 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) **Propose Changes.** 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) **Propose Repeal.** 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) **Propose Moratorium.** Council may direct staff to prepare a moratorium on reviewing and accepting applications for commercial outdoor social events. Staff would then 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