



City of Lake Elmo

651/777-5510

3800 Laverne Avenue North / Lake Elmo, MN 55042

City of Lake Elmo
City Council Meeting
3800 Laverne Avenue North
Lake Elmo, MN 55042
Tuesday, September 14, 2010

6:30 p.m. – 8:30 p.m. (?)

6:30 p.m. – 7:00 p.m. Special Meeting

1. Executive Session regarding discussion of legal issues and strategies relating to Bergmann, et al v. City of Lake Elmo, et a.
2. Adjourn closed meeting

7:00 p.m. – 8:30 p.m. City Council Workshop

1. Home Occupations Ordinance
2. Other
3. Adjourn

A social gathering may or may not be held at the Lake Elmo Inn following the meeting.



MAYOR & COUNCIL COMMUNICATION

DATE: 09/14/2010

REGULAR

ITEM #: 1

EXECUTIVE SESSION

AGENDA ITEM: Executive Session Regarding Discussion of Legal Issues and Strategies Relating to Bergmann, et al v. City of Lake Elmo, et al.

SUBMITTED BY: Dave Snyder, City Attorney

THROUGH: Bruce A. Messelt, City Administrator *BAW*

REVIEWED BY: Special Counsel

SUMMARY AND ACTION REQUESTED: This Executive Session has been scheduled at the request of the City Attorney and Special Counsel in order to allow the City Council to discuss with the Attorneys and staff legal issues and strategies relating to Bergmann, et al v. City of Lake Elmo, et al.

Pursuant to Minn. Stat. § 13D.05, subd 3(b) governing Attorney-Client Privilege, it is recommended that the City Council entertain the following motion to enter into Executive Session:

SUGGESTED MOTION: *"Move to Adjourn to a Closed Meeting Regarding: Legal Issues and Strategies relating to Bergmann, et al v. City of Lake Elmo, et al"*

BACKGROUND INFORMATION: At the recommendation of the City Attorney and Special Counsel, tonight's Closed Meeting will bring the City Council up to speed regarding legal issues and strategies related to this topic.

STAFF REPORT: City staff will provide its report in Closed Session. Once a Closed Session is called, City staff will secure the facility and ensure all recording devices are turned off.

RECOMMENDATION: It is recommended the City Council enter into Executive Session to discuss tonight's topic. The recommended motion on tonight's agenda is as follows:

***“Move to Adjourn to a Closed Meeting Regarding: Legal Issues and Strategies
relating to Bergmann, et al v. City of Lake Elmo, et al”***

Following completion of the Executive Session, the City Attorney will publically summarize the actions and deliberations of the Council. If appropriate, the City Council should then entertain the following motion:

***“Move to direct the City Attorney, Special Counsel and City staff to proceed as
directed in Executive Session.”***

Alternatively, the City Council does have the authority to table this item at its discretion for future consideration, thus taking no action tonight.

ATTACHMENTS: None

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item Mayor
- Description of Legal Basis for Executive Session City Attorney
- Call for Motion for Closed Meeting Mayor Facilitates
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates
- Closed Meeting Mayor Facilitates
- Reconvene in Open Meeting Mayor Facilitates
- Description of Executive Session City Attorney
- Call for Motion, if Appropriate Mayor & City Council
- Discussion, if Appropriate Mayor & City Council
- Action on Motion, if Appropriate Mayor Facilitates



MAYOR & COUNCIL MEMORANDUM

DATE: 9/14/2010
WORKSHOP
ITEM #: 1
DISCUSSION

AGENDA ITEM: Home Occupations Ordinance No. 08-027

SUBMITTED BY: Lake Elmo Planning Commission
Danielle Bailey, Planning Intern

THROUGH: Bruce Messelt, City Administrator

REVIEWED BY: Kelli Matzek, Planner

SUMMARY AND ACTION REQUESTED: The City Council is asked to review and provide Staff with feedback on a revised draft of Lake Elmo's Home Occupation regulations. This issue has been under review since 2004 with significant discussion (see Home Occupation Timeline) and was tabled by the City Council on July 18, 2006.

It was revisited by the City Council on July 6, 2010. At that meeting, the City Council tabled discussion so that all members could be present to discuss the Planning Commission's recommendation. The item was subsequently tabled again on July 20th, 2010, due to other pressing agenda items, and rescheduled for tonight's Workshop.

BACKGROUND INFORMATION: Staff is providing the Council with a Timeline of the Home Occupation Ordinance, 2006 proposed Home Occupation regulations from Council Members Smith and DeLapp, Ordinance No. 08-027, and Resolution No. 2010-024 (necessary for summary publication).

If it is desirous by the Council to further discuss this ordinance given its complexity and history, the City Council may schedule additional time for future discussion and consideration.

The main discrepancies between the Planning Commission's recommended Ordinance and the 2006 regulations proposed by Council Members Smith and DeLapp fall upon 9 principle items:

Item	Planning Commission Recommendations	2006 City Council Directions
Classifications	2 Classifications: Home offices and Home Based Businesses	1 Classification

Business Vehicles	3 (to cover employees) allowed on site at any onetime for Home Based Businesses. Must comply with city parking regulations	1 pickup truck or van allowed
Equipment	No limit	Limited by those normally found at a residence
On Premise Sales	Home Offices: not permitted. Home Based Businesses: not regulated but limited by customer visits (5 per day)	Not permitted
Employees	Home Office: no non-resident employees. Home Based Businesses: 2 non-resident employees	No non-resident employees
Customer Visits	Home Office: Not permitted. Home Based Businesses: 5 per day	Not permitted
Accessory Buildings	Office/Business allowed to operate within.	Not allowed to operate within
Storage	Within residential/garage/accessory building structures/	Enclosed and limited to 100sqft
Infrequent Sales	Twice a year no more than 3 days in length	Twice a year no more than 6 days in length

STAFF REPORT: The Home Occupation Ordinance is currently out of date. It is only referenced in the definition section of the City Code, does not address garage sales or merchandise sales, and provides no review process to evaluate how intrusive a Home Occupation is on surrounding property. Now that more and more individuals are beginning to use Home Occupations, it is becoming a necessity to update Lake Elmo's regulation in order to provide better guidance on the proper usage of Home Occupations.

RECOMMENDATION: Based upon the above background information and staff report, it is recommended that the City Council discuss the discrepancies between City Council recommended regulations and those recommended by the Planning Commission. Following discussion, if appropriate, it is recommended that City Council consider directing staff to schedule adoption of Ordinance No. 08-027 at an upcoming Regular meeting.

ATTACHMENTS:

1. Home Occupation Timeline
2. 2006 Proposed Regulations by Council Members Smith and DeLapp
3. Ordinance No. 08-027
4. Resolution No. 2010-024

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation.....Planning Staff
- Questions from Council to Staff Mayor Facilitates
- Public Input, if Appropriate Mayor Facilitates
- Discussion/Direction..... Mayor & City Council

Home Occupation Timeline

- July 6, 2010—City Council tabled decisions for all members to be present.
- June 28, 2010—Planning Commission recommended approval of the Home Occupation Ordinance to the City Council
- April 12, 2010—Planning Commission made the following decisions with regard to Home Occupations:
 - Home Occupations will be defined by two subtypes: Home Offices and Home Based Businesses.
 - Home Based Businesses should have a Home Based Business Permit that is monitored by the staff using an application procedure.
 - Home Offices should be regulated by performance standards.
 - Exceptions to the Home Occupation Ordinance should include garage sales, licensed facilities, and agricultural sales.
 - A Garage Sale provision should be added to the definition section.
- March 22, 2010—Planning Commission made the following decisions with regard to Home Occupations:
 - They wanted separate regulations and definitions for home offices and home based businesses and wanted to return to the old planning commission draft as a starting point.
 - Degree of storage should not be limited for any home occupation.
 - Home offices would not have a permit and home based businesses would require a Special Home Occupation Permit.
 - Signs would not be permitted for any home occupation
- March 8, 2010—Planning Commission reopened discussion on the Home Occupation Ordinance
- July 18, 2006—City Council
 - Tabled discussion
- June 12, 2006—Planning Commission made revisions to the recommended ordinance
 - Made the following changes:
 - Degree of storage should not be limited
 - Two non-resident employees are allowed in a home-based business
 - Annual license renewals is not needed
 - Three business related vehicles are allowed at any time (parked off street)
 - Limited visits from 10 to 5 per day
 - Deliveries limited to 6 trips daily
- June 6, 2006—City Council workshop
 - Made a draft ordinance
- March 27, 2006—Planning Commission Public hearing
 - Concern over stock and trade being limited because of invasion of privacy
 - Concern over how to address adverse impacts on adjacent property
- March 13, 2006—Planning Commission Public Hearing
 - Discussed Shoreview ordinance

- Discussed the definition currently in use and suggested splitting it into two categories: home based business, and home office
 - Discussed difference between seasonal and year long businesses
 - Discussed deliveries
- November 14, 2005—Planning Commission
 - Discussed Shoreview Ordinance and created a table
 - Discussed accessory structures
 - Discussed licensing
 - Discussed distinction between land uses
- October 24, 2005—Planning Commission
 - Discussed traffic concerns
 - Discussed exterior visibility of business
- March 14, 2005—Planning Commission
 - Home occupations discussed under a zoning text amendment
 - Was amended to include RR zoning
- February 28, 2005—Planning Commission
 - Set up schedule for March 14, 2005 text amendment, and suggest tabling rest of the issue
- February 7, 2005—City Council, Home Based Business Workshop

Home Occupations

1. **Purpose:** The purpose of this section is to maintain the character and integrity of residential areas and to provide a means through the establishment of specific standards and procedures by which home occupations can be conducted in residential neighborhoods without jeopardizing the health, safety and general welfare of the surrounding neighborhood.
2. **General Provisions:**

- A) No home occupation shall produce light, glare, noise, odor, vibration, smoke, dust, heat or hazardous or toxic material shall not be produced, stored or kept on the premises that will in any way have an objectionable effect upon adjacent or nearby property.
- B) No equipment shall be used in the home occupation which will create electrical interference to surrounding properties.
- C) Any home occupation shall be clearly incidental and secondary to the residential use of the premises, should not change the residential character thereof, and shall result in no incompatibility or disturbance to the surrounding residential uses.
- D) No home occupation shall require internal or external alterations or involve construction features not customarily found in dwellings except where required to comply with local and state fire and police recommendations.
- E) There shall be no exterior storage of equipment or materials used in the home occupation.
- F) Vehicles associated with a home occupation shall be limited to one automobile, pick-up truck or van on the premises.
- G) Using only equipment or machinery that is normally found at a residence.
- H) The home occupation shall meet all applicable fire and building codes.
- I) There shall be no exterior display or exterior signs which are visible from outside the dwelling.
- J) All home occupations shall comply with the provisions of the city code.
- K) No home occupation shall be conducted between the hours of 10:00pm and 7:00am, unless said occupation is contained entirely within the principal building, excluding attached garage space and will not require any off street parking facilities.
- L) No commodity shall be sold on the premises excluding party based sales.
- M) No persons other than those who customarily reside on the premises shall be employed.
- N) The general public shall not come to the premises in question for purposes pertaining to the conduct of the home occupation.
- O) All home occupations shall be conducted entirely within the principal dwelling excluding the attached garage space, and may not be conducted in an accessory building.
- P) The home occupation shall not require storage of over 100 square feet.

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-027

AN ORDINANCE ADDING HOME OCCUPATION REGULATIONS
TO THE CITY CODE

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 eliminate existing definitions as follows:

~~**HOME OCCUPATION.** Any gainful occupation or profession engaged in by the occupant, only, of a dwelling when carried on within a dwelling unit or in an accessory building, provided that no signs other than those normally utilized in a residential district are present, no stock in trade is stored on the premises, that no over the counter retail sales are involved, and entrance to the home occupation is or can be gained from within the structure. Uses include professional office, hairdressing, or teaching limited to 3 students at any time, and similar uses. A **HOME OCCUPATION** shall not be interpreted to include barber shops, beauty shops, tourist homes, restaurants, disorderly house as defined by M.S. § 609.33, Subd. 1, as it may be amended from time to time, or similar uses. No **HOME OCCUPATION** shall be permitted that creates the need for more than 3 parking spaces at any given time in addition to the parking spaces required by the occupants. **HOME OCCUPATIONS** shall not be carried on except between the hours of 7:00 a.m. and 10:00 p.m.~~

SECTION 2. 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 add the following definitions in alphabetical order with the already existing definitions:

Garage Sales. Any isolated or occasional display and sale of used personal property or home-crafted items conducted on residential premises by the occupant of the residential property. Garage sales shall include rummage sales, basement sales, yard sales, porch sales, craft sales, and seasonal boutiques. Garage sales are limited to no more than two (2) sales per calendar year at any one property. Such sale cannot exceed three (3) consecutive calendar days.

Home Based Business. A home occupation that does not meet the definition of home office either because it allows non-resident employees, additional parking, or customer visits.

Home Occupation. Any occupation, profession or trade engaged in by the occupant of a residential dwelling unit, which is clearly incidental and secondary to the residential use of

the premises and does not change the character of said premises. There are two types of home occupations: home offices and home based businesses.

Home Office. A home occupation which consists primarily of an office or home crafts. It includes, but is not limited to, receiving or initiating correspondence, such as phone calls, mail, fax, or e-mail; preparing or maintaining business records; word or data processing; and telephone, mail order, and off-premise sales.

Merchandise Parties. Private parties held for the purpose of soliciting sales. Merchandise parties shall include but not be limited to Tupperware, Mary Kay, and Avon parties. Merchandise parties shall be limited to no more than six (6) sales per year from a residential dwelling unit.

SECTION 3. The City Council of the City of Lake Elmo hereby adds 154.112: Land Usage; Chapter 154: Zoning Code, by adding the following language:

§ 154.112 Home Occupations.

(A) **Purpose and Intent.** The City of Lake Elmo recognizes the desire and/or the need of some citizens to use their residences for business activities. The City also recognizes that the use of residences for limited business purposes may result in a reduction of vehicle trips on City streets as well as economic benefit to City residents. It is therefore the purpose and intent of this Section to allow the use of residences for limited business purposes while regulating such business use in a manner that precludes such business use from becoming a nuisance to neighboring residential property owners, and while preserving the distinction between residential and commercial zoning districts.

(B) **Home Based Business and Home Office.** Permits responsive to this Section shall be applicable to Home Based Businesses, but not to Home Offices, as both are defined by Section 150 of this City Code.

(C) **Administrative Enforcement.**

(1) **Home Based Business Permit.** Any Home Based Business shall require a "Home Based Business Permit." Permits shall not run with the land and shall not be transferrable. A complete application, including the signature of the property owner, shall be submitted to the City. The planning department may impose such conditions on the granting of a Home Based Business Permit as may be necessary to carry out the purpose and provisions of this Section.

(2) **Review.** The planning department shall approve or deny Home Based Business 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 as indicated in section 31.10

(D) **Home Office Performance Standards.** Home Offices must meet the following Performance Standards:

(1) **Residency.** A full-time resident of the property must conduct the home office.

(2) **Impact on Adjacent Properties.** The Home Office shall have no adverse effect on adjacent properties which shall include but is not limited to traffic or offensive noise, light, odor, dust, electro-magnetic interference or other noxious substances, as may be defined elsewhere in the City Code.

(3) **Exterior Appearance.** There shall be no exterior evidence, including signs advertising the home occupation, that a building is being used for any purpose other than as a residential dwelling or permitted accessory structure.

(4) **Number of Businesses.** More than one Home Office is allowed, however the combined impact shall be considered when evaluating if it meets the requirements of a Home Office.

(5) **Non-resident Employees.** No non-residents may work on the site.

(6) **Customer Visits to Site.** The general public shall not come to the premises in question for purposes pertaining to the conduct of the Home Office.

(7) **Deliveries to Site.** No more than six (6) delivery/pickup trips per week. Delivery vehicles shall not be larger than a typical residential delivery truck.

(8) **Storage.** Any merchandise or stock in trade sold, repaired, or displayed shall be stored entirely within the residential structure, garage, or an accessory building.

(E) **Home Based Business Performance Standards.** Review of applications for Home Based Business Permit and subsequent determinations regarding revocation of a Home Based Business Permits shall be based on the initial and continued compliance of a Home Based Business on the following Performance Standards:

(1) **Residency.** A full-time resident of the property must conduct the business.

(2) **Impact on Adjacent Properties.** The Home Based Business shall have no adverse effect on adjacent properties which includes but is not limited to traffic or offensive noise, light, odor, dust, electro-magnetic interference or other noxious substances, as may be defined elsewhere in the City Code.

(3) **Exterior Appearance.** There shall be no exterior evidence, including signs advertising the home occupation, that a building is being used for any purpose other than as a residential dwelling or permitted accessory structure.

(4) **Number of Businesses.** More than one Home Based Business is allowed, however the combined impact shall be considered when evaluating the terms of the Home Based Business Permit.

(5) **Non-resident Employees.** Not more than two (2) non-residents may work on the site.

(6) **Business Vehicles.** A maximum of three (3) business vehicles may be on site at any time, and the vehicles must be parked off-street at all times. No parking shall replace the required parking of the residents. Said vehicles must be in compliance with section 154.095 in the City Code regarding the maximum size of vehicles permitted to be parked in residential zones.

(7) **Customer Visits to Site.** Permitted only where specified by the Home Based Business Permit, and shall be limited to a maximum of five (5) per day.

(8) **Deliveries to Site.** No more than six (6) delivery/pickup trips per week. Delivery vehicles shall not be larger than a typical residential delivery truck.

(9) **Storage.** Any merchandise or stock in trade sold, repaired, or displayed shall be stored entirely within the residential structure, garage, or an accessory building.

(10) **Off-Street Parking.** When customer site visits are specifically allowed by the Home Based Business Permit, adequate Off-Street Parking must be provided for customers and for those who reside on the premises. All required parking spaces shall be in compliance with section 154.095 in the City Code.

(11) **Hours of Operation.** Home Based Businesses can only have non-resident employees at the site, deliveries to the site, or customer visits to the site between the hours of 7:00 a.m. to 10:00 p.m. seven (7) days a week.

(F) **Exceptions.** Home Occupations do not pertain to Agricultural Sales, Garage Sales, Licensed Residential Facilities, or Merchandise Parties.

SECTION 4. Effective Date

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

SECTION 5. Adoption Date

This Ordinance No. 08-027 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 08-027 was published on the ____ day of _____,
2010.

CITY OF LAKE ELMO

RESOLUTION NO. 2010-032

**RESOLUTION AUTHORIZING PUBLICATION OF
ORDINANCE NO. 08-027 BY TITLE AND SUMMARY**

WHEREAS, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-027, an ordinance to update the existing city code to improve home occupation regulations; and

WHEREAS, the ordinance is lengthy; and

WHEREAS, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

WHEREAS, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Elmo, that the City Administrator shall cause the following summary of Ordinance No. 08-027 to be published in the official newspaper in lieu of the entire ordinance:

The City Council of the City of Lake Elmo has adopted Ordinance No. 08-027 which adds new regulations to the city code for the regulation of Home Occupations. This new regulation will apply to all Home Offices and Home Based Businesses, but does not pertain to Agricultural Sales, Garage Sales, Licensed Residential Facilities, or Merchandise Parties.

The full text of Ordinance No. 08-027 is available for inspection at Lake Elmo city hall during regular business hours.

Mayor Dean Johnston

BE IT FURTHER RESOLVED by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance in his office at city hall for public inspection and that she post a full copy of the ordinance in a public place within the city.

Dated: July 20, 2010.

Mayor Dean Johnston

ATTEST:

Bruce A. Messelt
City Administrator

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member

_____ and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against same:

Whereupon said resolution was declared duly passed and adopted.