

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

ORDINANCE NO. 08-031-A

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

FINDINGS:

1. Under the Municipal Planning Act and the Metropolitan Land Use Planning Act, a central and required purpose of a zoning ordinance is to give effect to a city's comprehensive plan.
2. According to the City's Comprehensive Plan, the RAD land use designation ""represents low density semi-rural residential development. Working farms, Alternative Ag uses, single family detached residences, and limited life cycle housing." Most of the City's outer areas are guided in this fashion. This includes areas that are zoned Agriculture, Rural Residential, and Open Space.
3. By contrast, around the City's "village center" is an area with a "Commercial" land use designation.
4. Commercially-zoned areas within the City include areas that are zoned General Business, General Business Park Holding, General Business Commercial Holding, General Business Sewered Residential Holding, Village Residential General Business Holding, Convenience Business, and Limited Business.
5. The Land Use Plan chapter of the City's Comprehensive Plan places special emphasis on three precepts, among them "the City's desire to preserve its rural character, open space, and green corridors," and "the City's desire to retain its identity and sense of community by preserving the historic village center." It further states that the Plan "supports a community focused from its village core out, rather than a lock step continuation of urbanization from the community borders."
6. These aspects of the City's Comprehensive Plan are more likely to be achieved if the zoning ordinance regulates commercially-related land uses in Agriculture, Rural Residential, and Open Space districts so as to further the following objectives:
 - a. controlling or mitigating the impact on other properties or the environment,

- b. ensuring that the scale of the business does not exceed what is compatible with a rural or semi-rural setting,
 - c. ensuring that adequate space is available, on site, for such operations,
 - d. ensuring that customers attracted to such business, including their children, are not unreasonably subjected to risks;
 - e. ensuring that such uses do not present an added risk of disease;
 - f. insuring that the acreage of the site is sufficiently large for a traditional agricultural use; and
 - g. otherwise preserving the rural character of Agriculture, Rural Residential, and Open Space districts.
7. The current definitions of Agricultural Sales Business (“ASB”) (and, indirectly, of Agricultural Entertainment Business) (“AEB”) restrict produce sales by those who hold conditional use permits for such uses to sales of produce that is produced on the premises. When the City was first setting the performance standards in 2008 when those categories of conditional uses were created, such language served to limit the scale of commercial activity by those property owners who complied with that limitation. If the City removes that limitation, but leaves the remaining performance standards unchanged, the City’s ability to achieve the objectives described above will be threatened.
8. If land with a rural zoning designation cannot be used in an economically-beneficial fashion, that will increase the likelihood that the property owner will press the City to rezone the property for rezoning to a non-rural designation. For this reason, the City finds that the goal of preserving the rural character of areas guided and zoned for rural uses is best accomplished if the City’s regulation of commercially-related land uses in Agriculture, Rural Residential, and Open Space districts is not overly restrictive.
9. The City is changing, and will continue to change, as expected and unexpected opportunities and challenges emerge. In particular, the City expects that certain areas with rural zoning designations, or areas adjacent to them, will eventually be converted to more intensive uses. Because of those changes, restrictions on commercially-related land uses in a rural residential that are appropriate today may be less reasonable in the future. The authority provided by the Minnesota Legislature for cities to issue interim use permits (IUPs) is a sound planning tool to address this dynamic, and is generally more effective than classification of such uses as permitted or conditional uses.

10. The objective of controlling or mitigating the impact on other properties or the environment is served by requiring performance standards that limit the floor area that can be devoted to sales activities, require compliance with the City Code's parking requirements for retail sales activities, require planned and designed on-site wastewater handling systems that are approved by the City or its designated responsible authority, limit trip generation related to the underlying zoning (both on an average basis and as a reasonable multiple of that figure for peak periods), set a maximum impervious coverage limit that keeps such land uses from unreasonably adding to the runoff appropriate for rural areas and rural stormwater systems, and require a buffer area beside any adjacent residential property lines.
11. The objective of ensuring that the scale of the business does not exceed what is compatible with a rural or semi-rural setting is served through such floor area requirements, trip generation limitations, and limitations on impervious coverage.
12. The objective of ensuring that adequate space is available, on site, for such operations, is served by requiring a minimum lot size for any agricultural sales business.
13. The objective of ensuring that customers attracted to such business, including their children, are not unreasonably subjected to risks is served by requiring compliance with parking requirements for retail sales activities, requiring planned and designed on-site wastewater handling systems that are approved by the City or its designated responsible authority, and limiting unscreened or inadequately screened exterior storage of equipment and materials.
14. The objective of insuring that the acreage of the site is sufficiently large for a traditional agricultural use is served through a minimum lot size for any agricultural sales business.
15. The objective of otherwise preserving the rural character of Agriculture, Rural Residential, and Open Space districts is served by the same restrictions, and by requiring that structures constructed for the agricultural sales business be consistent on design and appearance with other agricultural buildings in the area, and requiring screening mechanical equipment in certain settings.
16. As the text of the City's zoning ordinance has been revised over time, certain definitions have become obsolete or unnecessary, yet remain. Removing such definitions reduces the likelihood of confusion or misunderstanding.
17. Because a business that is not an ASB cannot satisfy the definition of an AEB, it is important that the ordinance clarify that an AEB must satisfy performance standards applicable to ASBs and AEBs. For the same reason, it is important that

the performance standards for ASBs and AEBs complement each other, and not contradict each other.

18. The added kinds of activities allowed for ASBs that are also AEBs pose additional challenges because of the size and the nature of the crowds that could be attracted to AEBs. Those challenges are best addressed by imposing additional requirements on AEBs related to direct access to a collector or arterial street, prohibition of the discharge of firearms, and requiring reasonable steps to prevent trespassing on adjacent properties.

Based upon the above Findings of Fact, which the City Council of the City of Lake Elmo hereby adopt, The City Council of the City of Lake Elmo does ordain:

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:

GREENHOUSES. A building used for the growing of plants, all or part of which are sold at retail or wholesale.

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:

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, include pick-your-own or cut-your-own opportunities ~~include pick your own opportunities,~~ and may involve the ancillary sale of items considered accessory to the agricultural products being sold or accessory sales of unprocessed foodstuffs; home processed food products such as jams, jellies, pickles, sauces; or baked goods and homemade handicrafts. The floor area devoted to the sale of accessory items shall not exceed 25% 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.

~~COMMERCIAL FOOD PRODUCING FARM OPERATIONS. See FARM/RURAL.~~

FARMER. Person permanently residing on a tract of land of not less than ~~75~~ 10 acres in the city and who farms the land for a livelihood.

~~NATURE FARMS. The keeping of animals and/or the growing and keeping of agricultural products for the purpose of display to the public, not including the breeding and keeping of animals for boarding or sale. Examples of this use would include "petting~~

farms," or the display of unique horticulture. Retail or wholesale sales of any product are specifically excluded.

~~NURSERY, LANDSCAPE. A business growing and selling trees, flowering and decorative plants, and shrubs and which may be conducted within a building or without.~~

~~ROADSIDE SALES STAND. A structure used only for the display and sale of products, with no space for customers within the structure, on a seasonal basis.~~

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, which is clearly a secondary use of the premises and does not change the character thereof.

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) Agriculture

(2) Farm, suburban or rural;

(32) Poultry facilities meeting state and federal regulations;

(43) Farm buildings;

(54) Farm drainage and irrigation systems;

(65) Forestry meeting state and federal regulations;

(76) One farm dwelling per farm (also see §§ 154.091 and 154.105);

(87) 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.

(98) Wayside stands;

~~(9) Agricultural sales businesses subject to performance standards outlined in § 154.110; and~~

(10) Joint ownership of property or ownership by association or rental for the purpose of providing private gardens, ~~or forest plots,~~ or subplots 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 performance standards:~~

~~(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) 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;~~

~~_____ (e) No more than 25% of the site may be covered with impervious surface and the remainder shall be suitably landscaped;~~

~~_____ (d) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s);~~

~~_____ (e) Trash containers must be located inside or screened in an acceptable manner;~~

~~_____ (f) Discharge of firearms, including blanks, shall not be allowed on the property;~~

~~_____ (g) The property owner shall give the city permission to conduct inspections of the property in order to investigate complaints;~~

~~_____ (h) The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons;~~

~~_____ (i) Usable primary and alternate well and septic sites sized for the maximum anticipated usage of the property shall be identified on the property. Alternate sites shall be protected in the site plan design, and will only need to be used upon failure of a primary site; and~~

~~_____ (j) Adherence to the general review criteria applicable to all CUP applications.~~

(Am. Ord. 97-57, passed 7-18-2000; Am. Ord. 97-191, passed 4-3-2007)

_____ (C) Uses permitted by Interim Use Permit:

_____ (1) Agricultural Sales Businesses subject to performance standards outlined in § 154.110; and

_____ (2) Agricultural Entertainment Businesses subject to the performance standards outlined in § 154.111

(D) Accessory uses and structures (see §§ 154.092 and 154.093).

(1) Uses and structures which are customarily accessory and clearly incidental and subordinate to permitted uses and structures as defined in § 11.01;

(2) Private garages, carports, screen houses, conservatories, playhouses, swimming pools and storage buildings, as defined in § 11.01, for use by occupants of the principal structures; and

(Am. Ord. 97-38, passed 11-17-1998)

(3) Home occupations.

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

(A) Permitted uses and structures.

(1) Agriculture

(2) One-family residential dwellings (also see §§ 154.091 and 154.105);

(3) Farm, suburban or rural within the limits defined in the performance standards for livestock;

(4) Wayside stands; and

~~(5) Agricultural sales businesses subject to performance standards outlined in § 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.;

(3) Home occupations; and

~~(4) Agricultural entertainment businesses subject to the requirements outlined in § 154.033(B)(8).~~

(D) Uses permitted by Interim Use Permit:

(1) Agricultural Sales businesses subject to performance standards outlined in § 154.110; and

(2) Agricultural Entertainment Businesses subject to the performance standards outlined in § 154.111

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;
- (5) Suburban farms;
- (6) Private stables;
- (7) Single-family, attached;
- (8) Townhouses (no more than 25% in any development); and
- (9) Wayside stand.

(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 154.111 and its subdivisions are restated and incorporated herein as section 154.112

154.110 Agricultural Sales Businesses

Agricultural Sales Businesses shall be permitted as allowed upon the issuance of an interim use permit in agricultural and rural areas that are guided for Rural Agricultural

Density or future sewer development in accordance with the Comprehensive Plan.
Agricultural Sales Businesses shall be subject to the following performance standards:

(A) Activities shall be limited to those listed within the definition for Agricultural Sales Business.

(B) 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.

(C) 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.

(D) All waste materials shall be enclosed in containers provided on the site, and shall not generate any nuisance impacts on adjacent properties.

(E) All sidewalks, roadways, and parking areas shall be treated as necessary to eliminate dust nuisance impacts on adjacent properties.

(F) The maximum gross floor area that can be devoted to sales activities is limited to 20,000 square feet.

(G) Parking shall be provided in accordance with the parking requirements for other commercial uses, as per City Code § 154.051 (C). 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.

(H) The minimum lot size shall be 40 acres for any agricultural sales business.

(I) On-site wastewater handling system shall be planned and designed by a licensed professional and approved by the City or its designated responsible authority. Usable primary and alternate well and septic sites sized for the maximum anticipated usage of the property shall be identified on the property. Alternate sites shall be protected in the site plan design, and will only need to be used upon failure of a primary site.

(J) Any structures constructed for the agricultural sales business shall be consistent on design and appearance with other agricultural buildings in the area.

(K) Trip generation shall be limited to the yearly average daily trips calculated for the underlying zoning, with no daily trip generation to exceed twice the daily calculation rate for the underlying zoning. The base daily trip generation is established at 180 vehicle trips per day for every 40 acres.

(L) The maximum impervious coverage for the buildings, parking areas and other uses devoted to the agricultural sales business shall not exceed 40,000 square feet and the remainder shall be suitably landscaped.

(M) Any activities that are defined as an Agricultural Entertainment Business shall require a separate Interim Use Permit.

(N) Any exterior storage of equipment and materials other than the display of products being sold or agricultural equipment currently in use on the property shall be prohibited, unless otherwise exempted in accordance with §150.001 through §150.003 of the City Code .

(O) There shall be a minimum buffer of 100 feet between any sales areas or sales buildings and any adjacent residential property lines.

(P) Roof top or outside building mechanical equipment must be screened from view from adjacent properties and rights-of-way with an opaque material architecturally compatible with the building(s).

(Q) Trash containers must be located inside or screened in an acceptable manner.

(R) The operator shall adhere to the general review criteria applicable to all Interim Use Permit applications.

(S) No activities or structures beyond those specified in the Interim Use Permit shall be added before review by the city to determine compliance with this ordinance.

154.111 Agricultural Entertainment Businesses

Agricultural Entertainment Businesses shall be allowed upon the issuance of an interim use permit in agricultural and rural areas that are guided for Rural Agricultural Density or future sewer development in accordance with the Comprehensive Plan. Agricultural Entertainment Businesses shall be subject to the following performance standards:

(A) An Agricultural Entertainment Business shall adhere to all performance standards as outlined in Section 154.110 for an Agricultural Sales Business

(B) 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;

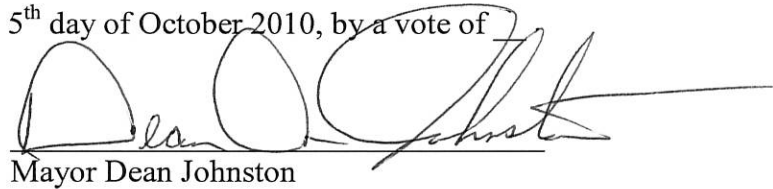
(C) Discharge of firearms, including blanks, shall not be allowed on the property;

(D) The property owner must take reasonable steps to prevent trespassing on adjacent properties by employees, contractors or patrons;

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. 08-031 was adopted on this 5th day of October 2010, by a vote of
Ayes and __ Nays.



Mayor Dean Johnston

ATTEST:



Bruce Messelt
City Administrator

This Ordinance No. 08-031 was published on the 3rd day of Feb 2010.