



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item D
November 13, 2007

SUBJECT: Consideration of Zoning Ordinance Text Amendment 18.219, to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance, at Article 30, Administration and Enforcement, Section 3004, Temporary Special Exception and Temporary Special Land Use Permits. **Second Reading**

SUBMITTING DEPARTMENT: Community Development - Planning *Brub*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Attached you will find a proposed ordinance amendment that the City Council requested from the City Attorney's office. The amendment would clarify provisions of Section 3004, Temporary Special Exception Permits and Temporary Special Land Use Permits, of the Zoning Ordinance. Essentially, the proposed amendments would further separate the different types of temporary uses, sidewalk and "weekend" flower sales from longer term sales such as Christmas tree sales and outdoor produce markets. The proposed amendments would require tent, sidewalk-type, and flower/plant sales to be accessory to the principal permitted use of the property. This issue was recently brought to light by business owners within the City who are concerned that these temporary merchants unfairly compete with permanent businesses in the City who have invested in their businesses and properties in order to conduct permanent sales. As a result the ordinance language was developed and referred by the City Council to the Planning Commission for public hearing and comment.

The Planning Division of the Community Development Department has not identified any concerns with the language at this time. The Planning Commission reviewed the proposed language at a public hearing on June 27th and issued a positive recommendation to the City Council for the proposed text amendment.

Please find attached the proposed ordinance amendment, supplementary material from the City's attorney and excerpts of relevant Planning Commission minutes.

The City Council approved the proposed text amendment for a first reading on October 22, 2007. An excerpt of the draft meeting minutes from the October 22, 2007 City Council meeting are attached.

RECOMMENDED ACTION: Approval of Zoning Ordinance Text Amendment 18.219, to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance, at Article 30, Administration and Enforcement, Section 3004, Temporary Special Exception and Temporary Land Use Permits. **Second Reading**

	1	2	Y	N
Mayor Landry				
Council Member Capello				
Council Member Crawford				
Council Member Gatt				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

COMMUNITY DEVELOPMENT DEPARTMENT MEMO



MEMORANDUM

TO: Members of the Planning Commission

FROM: Kristen Kapelanski, Planner

THRU: ^{Burb} Barbara McBeth, AICP, Deputy Director of Community Development

DATE: June 14, 2007

SUBJECT: **Zoning Ordinance Text Amendment 18.219 -
Temporary Outdoor Sales Provisions**

Attached you will find a proposed ordinance amendment that the City Council requested from the City Attorney's office. The amendment would clarify provisions of Section 3004, Temporary Special Exception and Temporary Special Land Use Permits, of the Zoning Ordinance. Essentially, the proposed amendments would further separate the different types of temporary uses, sidewalk and "weekend" flower sales from longer term sales such as Christmas tree sales and outdoor produce markets. The proposed amendments would require tent, sidewalk-type, and flower/plant sales to be accessory to the principal permitted use of the property. This issue was recently brought to light by business owners within the City who are concerned that these temporary merchants unfairly compete with permanent businesses in the City who have invested in their businesses and properties in order to conduct permanent sales. As a result the ordinance language was developed and referred by the City Council to the Planning Commission for public hearing and comment.

The Planning Division of the Community Development Department has not identified any concerns with the language at this time. The Planning Commission set the public hearing for the June 27, 2007 meeting at which time the Planning Commission will be asked to make a recommendation to the City Council.

Please find attached a letter from the City Attorney's office and proposed language reviewed at the June 4, 2007 City Council Meeting along with the relevant Planning Commission minutes. If any Commissioner has any questions related to this request, do

INTRODUCTION LETTER FROM CITY ATTORNEY

SECRET
SW
WARDLE

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Thomas R. Schultz
Direct: 248-539-2847
tschultz@secretwardle.com

May 24, 2007

5-24-07

To: Mayor and City
Council Members

For future City Council
consideration and referral
to the Planning Commission
for study, hearing, and
recommendation.



Ms. Cindy Uglow, Neighborhood Services
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

RE: Temporary Sales—Possible Amendment to Zoning Ordinance
Our File No. 55142 NOV

Dear Ms. Uglow:

The City Manager asked us to work with your office to propose some amendments to the City's temporary use ordinance to address some of the concerns raised by Novi businesses regarding temporary sales by essentially "transient" merchants within the City. The concern is that perhaps these merchants compete on an unfair basis with Novi business owners who have invested greater capital in their businesses and properties in order to conduct them on a full time or year round basis.

After reviewing a number of ordinances of other communities and discussing the issues with you and others at the City, we have prepared the attached amendments to start the discussion of whether the ordinance should be changed to limit such uses.

The first change is to the City's business registration ordinance, part of the City Code. It simply adds a requirement that any merchant, transient or otherwise, is obligated to comply with the City's business registration requirements, including the payment of application fees.

The other changes come in the temporary use provisions of the zoning ordinance. The intent is to separate the different kinds of temporary uses a little bit more—tent and sidewalk sales and temporary "weekend" flower sales from longer term sales that don't necessarily compete with specific Novi businesses, like outdoor produce markets or Christmas tree sales. With regard to the former, the time limitation is shorter and there is a requirement that the sales be accessory to a principal permitted retail use on the property. That would prevent the situation that recently occurred at O'Toole's from being permitted as a temporary use, since O'Toole's is not a retail-type establishment.

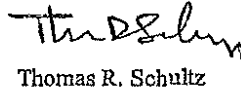
COUNSELORS AT LAW

Ms. Cindy Uglow
May 24, 2007
Page 2

Again, the attached is intended to start the discussion. The temporary use ordinance changes would need to go to the Planning Commission before any X action by City Council. If you have any comments, suggestions, or changes regarding the attached, please let me know.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,


Thomas R. Schultz

TRS/jes
Enclosure

cc: Clay J. Pearson, City Manager
Pam Antil, Assistant City Manager
Barb McBeth, Planning Director
Maryanne Cornelius, City Clerk

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PROPOSED ORDINANCE AMENDMENTS

STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF NOVI

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ORDINANCE NO. 97-18, AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, TO AMEND THE PROVISIONS RELATING TO APPLICATION FEES FOR TEMPORARY USES.

THE CITY OF NOVI ORDAINS:

Part I. That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 30, Administration and Enforcement, Section 3004, Temporary Special Exception and Temporary Special Land Use Permits, is hereby amended to read as follows:

Sec. 3004. Temporary Special Exception and Temporary Special Land Use Permits.

1. The Building Official, or his designee, shall have the power to grant permits authorizing temporary special exceptions for:

a. Tent sales, ~~sidewalk sales~~ or flower/plant sales, ~~or and~~ seasonal sales of produce, firewood, or Christmas trees, under the following conditions:

(1) *Zoning Districts Where Permitted.* Temporary special exceptions for tent sales, ~~sidewalk sales,~~ or flower/plant sales that are accessory to a permitted principal retail use of a property, ~~or and~~ seasonal sales of produce (i.e., fruits and vegetables), firewood, or Christmas trees, shall be permitted in OSC Office-Service-Commercial Districts, B-1 Local Business Districts, B-2 Community Business Districts, B-3 General Business Districts, I-1 Light Industrial Districts, I-2 General Industrial Districts and P-1 Vehicular Parking Districts. In addition, temporary special exceptions for seasonal sales of produce or of Christmas trees shall be permitted on parcels of three (3) acres or more in any residential district and temporary special exceptions for tent sales, sidewalk sales and seasonal sales of Christmas trees shall be permitted in the RC Regional Center District.

(2) *Application; Fee; Submission of Plot Plan.* Every person, firm, or corporation desiring to obtain a temporary special exception permit as required by this Ordinance shall file a written application with the Department of Building and Safety on a form approved by the

Department, together with an application fee as is hereafter provided by resolution of City Council. An application, together with the required fee, shall be filed by the owner of the land. The individual or entity who will conduct the use, if different from the owner, shall also comply with the provisions of Chapter 8, Business Registration, of the City Code of the City of Novi.

The application for a temporary special exception permit shall be accompanied by plans and specifications including a plot plan, in triplicate, drawn to scale, showing the following:

- (i) The shape, location and dimensions of the lot, including the shape size and location of all buildings or other structures already on the lot, off-street parking layout, and the location of any designated fire lanes.
- (ii) The materials to be utilized in and the shape, size, and location of all buildings and structures to be erected or moved onto the lot, including all tents, tables, stands, or display racks.
- (iii) The anticipated automobile traffic flow to and from the lot and any adjacent thoroughfares, loss of off-street parking spaces, if any, as well as the anticipated flow of pedestrian traffic upon lot sidewalks.
- (iv) For temporary tent, sidewalk, or flower/plant sales, an acknowledgement that outdoor sales shall be operated by and maintained under the same ownership as, or subject to the control of, the property owner and on the parcel as the principal use.

(3) *Time Limitations.*

- (i) A temporary special exception permit for a tent-~~or~~, sidewalk, or flower/plant sale shall be effective for no longer than fifteen (15) days. No more than three (3) such sales shall be permitted in any calendar year. No more than fifteen (15) total days of such sales shall be permitted in any calendar year. A separate permit is required for each separate sale.
- (ii) A temporary special exception permit for the sale of Christmas trees shall by its terms be effective for no longer than thirty (30) days. No more than one (1) temporary special exception permit for the sale of Christmas trees shall be issued for any given location within a single calendar year.
- (iii) A temporary special exception permit for a vegetable, fruit or produce stand (other than flowers/plants) or for the sale of firewood, shall, by its terms, be effective for no longer than three (3) months. No more than one (1) temporary special exception permit for a vegetable, fruit or produce stand, or for the sale of

firewood, shall be issued for any given location within a single calendar year.

(4) *Regulations.*

- (i) A temporary special exception permit shall only be granted if the Building Official or his designee determines that the proposed use, including the erection of any temporary building or structure, will:
 - (a) Provide adequate automobile and pedestrian traffic flow.
 - (b) Provide adequate off-street parking.
 - (c) Provide adequate lot access for fire protection purposes.
 - (d) Not adversely affect the stability and integrity of the zoning plan prescribed by this Ordinance or otherwise interfere with the protection of public health, safety and general welfare.
 - (e) Not be incompatible with or otherwise adversely affect the physical character of the community and, in particular, the surrounding area within a distance of one thousand (1,000) feet.
- (ii) The proposed temporary special exception shall comply with all applicable zoning regulations for the district in which the temporary special exception is to be located, including all requirements pertaining to lot size, height, setback, open space ratio, maximum percentage of covered lot area, and off-street parking.
- (iii) No temporary special exception shall be permitted if it reduces the parking by greater than twenty-five (25) percent.
- (iv) All temporary buildings and structures shall be constructed, used, occupied and maintained so as to be in compliance with the provisions of the State Construction Code and all applicable ordinances of the City of Novi.

- (5) *Deposit Required for Temporary Sale of Christmas Trees.* The Building Official or his designee shall require any person, firm, or corporation granted a temporary special exception permit for the sale of Christmas trees or firewood to deposit a sum of money in an amount as set by resolution of City Council with the Department of Building and Safety to guarantee the cleaning of the lot and any abutting private or public property and the disposal of any remaining trees or firewood by an approved method within one (1) week after the permit expiration date.

- b. The temporary location of a temporary or premanufactured building in connection with the development of a property or construction of buildings thereon, including in residential developments irrespective of the requirements of Section 302 of this Ordinance, provided:

- (1) The use shall be limited to construction offices or trailers and offices for the specific purpose of selling lots or new homes to be erected in a residential development or in connection with the construction of nonresidential building improvements if such separate offices are reasonably necessary.
- (2) All applicable building height, bulk and area requirements of the district are met.
- (3) If the structure is used for the purpose of selling lots or new homes it shall be removed from the subdivision upon completion of the first permanently built model home intended for display. If the structure is used for construction offices then it shall be removed within the time period provided for in the permit.
- (4) The building official shall impose such conditions on the manner and extent of the proposed use as are necessary to protect the health, safety and general welfare of the people.

2. - 5. [Unchanged]

Part II. Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Part III. Savings. This amendment does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture, or punishment, pending or incurred prior to the amendment.

Part IV. Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Part V. Effective Date: Publication. Public hearing having been held hereon pursuant to the provisions of Section 103 of Act 110 of the Public Acts of 2006, as amended, the provisions of this Ordinance shall be published within fifteen (15) days of its adoption by publication of a brief notice in a newspaper circulated in the City of Novi stating the date of enactment and effective date, a brief statement as to its regulatory effect and that a complete copy of the Ordinance is available for public purchase, use and inspection at the office of the City Clerk during the hours of 8:00 A.M. to 5:00 P.M., Local Time. The provisions of this Ordinance shall become effective seven (7) days after its publication.

MADE, PASSED AND ADOPTED BY THE NOVI CITY COUNCIL THIS ____ DAY OF _____, 2007.

DAVID LANDRY - MAYOR

MARYANNE CORNELIUS - CITY CLERK

1. Date of Public Hearing _____
2. Date of Adoption _____
3. Date of Publication of
Notice of Adoption _____

CERTIFICATE OF ADOPTION

I hereby certify that the foregoing is true and complete copy of the Ordinance passed at the _____ meeting of the Novi City Council held on the ____ day of _____, 2007.

MARYANNE CORNELIUS - CITY CLERK

**COMPARISON CHART SUMMARIZING TEMPORARY USE PERMIT PROCEDURES
IN SURROUNDING COMMUNITIES**

TEMPORARY SPECIAL EXCEPTION USE PERMITS (T.U.P.)

City	Permit/License	Permit Requirements	Permit Fees	Vendor Type
Novi	Temporary Special Exception and Temporary Special Land Use Permit	Application, zoning approval, site plan approval	\$100.00 Application Fee	Tent Sales Produce Sidewalk Sales Christmas Trees
Royal Oak	Transient Merchant General License	letter from owner giving approval, zoning board approval, site plan approval, code enforcement to inspect before set-up, takes 2 to 3 weeks for approval	\$100.00 Application Fee \$5.00 Additional Sites \$300.00 Cash Bond	Fireworks Championship T-Shirts Flowers, etc.
Waterford	Transient Merchant General License	Need Sales Tax License, Oakland County Transient License (Oakland County charges \$500.00 Surety Bond), Police check, clearance, C-3 zoning or greater, no site plan required, letter from owner giving approval	\$250.00 Application Fee (30 days)	Fireworks Championship T-Shirts Flowers, etc.
Ferndale	Transient Merchant General License	Private property with letter from owner giving approval, approval from Police Dept., Building Dept., site plan	\$50.00 Application Fee \$50.00 License Fee \$1000.00 Bond	Championship T-Shirts Fireworks
Southfield	Yes and No	Tent sales must go through Building Dept., permission from Police Dept., Fire Dept. and Building Dept.	\$50.00 (Week) \$200.00 (6 Months) \$300.00 (Year)	Championship T-Shirts Fireworks
Ann Arbor	Zoning Compliance Permit	Application with a letter from private owner giving permission (must be notarized)	\$29.00 Application Fee	
Madison Heights	No Truck Sales Only Temporary Seasonal (Licensed Business Only)	Council approval, departmental approval, site plan, letter from landowner (if different than business owner)	\$50.00 Application Fee \$50.00 License Fee \$1000.00 Bond	Sidewalk Sale Tent Sale
Farmington Hills	No (No Special Permits)	Public Special Events Need approval of Zoning Board, must be related to business (merchandise must be something sold inside of store) Trying to change this to Administrative approval		No Sidewalk Sales Allowed
Livonia	No (No Transient Vendor Sales)			
West Bloomfield Twp.	No (No Transient Vendor Sales)	Tent Sales - Special Use Permit Current Owners Only		
Troy	No (No Transient Vendor Sales)			

PLANNING COMMISSION MINUTES EXCERPT – JUNE 13, 2007



PLANNING COMMISSION
REGULAR MEETING
WEDNESDAY, JUNE 13, 2007 7:00 PM
COUNCIL CHAMBERS - NOVI CIVIC CENTER
45175 W. TEN MILE, NOVI, MI 48375
(248) 347-0475

CALL TO ORDER

The meeting was called to order at or about 7:00 PM.

ROLL CALL

Present: Members John Avdoulos, Brian Burke, Victor Cassis, Andrew Gutman, Michael Lynch, Michael Meyer, Wayne Wrobel

Absent: Members David Lipski (excused), Mark Pehrson (excused)

Also Present: Barbara McBeth, Deputy Director of Community Development; Tim Schmitt, Planner; Mark Spencer, Planner; David Beschke, Landscape Architect; Ben Croy, Civil Engineer; Kristen Kolb, City Attorney

MATTERS FOR CONSIDERATION

3. **SET A PUBLIC HEARING FOR JUNE 27, 2007 FOR TEXT AMENDMENT 18.219 RELATING TO TEMPORARY OUTDOOR SALES PROVISIONS.**

Moved by Member Avdoulos, seconded by Member Burke:

ROLL CALL VOTE ON 18.219 PUBLIC HEARING DATE SETTING MOTION MADE BY MEMBER AVDOULOS AND SECONDED BY MEMBER BURKE:

Motion to set a Public Hearing for June 27, 2007 for Zoning Ordinance Text Amendment 18.219 relating to temporary outdoor sales. *Motion carried 7-0.*

PLANNING COMMISSION MINUTES EXCERPT - JUNE 27, 2007



PLANNING COMMISSION
REGULAR MEETING
WEDNESDAY, JUNE 27, 2007 7:00 PM
COUNCIL CHAMBERS - NOVI CIVIC CENTER
45175 W. TEN MILE, NOVI, MI 48375
(248) 347-0475

CALL TO ORDER

The meeting was called to order at or about 7:00 PM.

ROLL CALL

Present: Members John Avdoulos, Brian Burke, Victor Cassis, Andrew Gutman (7:06 PM), Michael Lynch, Michael Meyer, Mark Pehrson, Wayne Wrobel

Absent: Member David Lipski (excused)

Also Present: Steve Rumple, Director of Community Development Barbara McBeth, Deputy Director of Community Development; Kristen Kapelanski, Planner; David Beschke, Landscape Architect; Ben Croy, Civil Engineer; Kristin Kolb, City Attorney

PUBLIC HEARINGS

2. ZONING ORDINANCE TEXT AMENDMENT 18.219

The Public Hearing was opened for Planning Commission's recommendation to City Council for an ordinance to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance, for modifications to Article 30, Administration and Enforcement, Section 3004, Temporary Special Land Use Permits.

Planner Kristen Kapelanski explained that the City has been receiving calls for temporary sales from transient merchants. The City's concern is that the more permanent businesses have invested greater capital in an effort to improve their facilities and attract customers on a year-round basis as opposed to the temporary merchants that pop up around the City. As such, City Council asked the City Attorney to work with Code Enforcement to propose amendments to the Ordinance.

The proposed changes deal with Section 3004 of the Zoning Ordinance. The first proposed change delineates the different kinds of temporary uses – separating tent and sidewalk sales and temporary weekend flower sales from longer term sales that don't necessarily compete with local businesses, such as produce markets and Christmas tree sales. As a part of the proposed changes, sidewalk and weekend flower sales must now be accessory to a principal permitted use on the property and have shorter time limits than other temporary uses.

No one from the audience wished to speak and no correspondence was received so Chair Cassis closed the Public Hearing.

Member Pehrson applauded these efforts. It establishes rules for the temporary uses.

Moved by Member Pehrson, seconded by Member Wrobel:

Motion to recommend approval to City Council of the Zoning Ordinance Text Amendment 18.219.

DISCUSSION

Member Meyer hoped that the language wouldn't discourage people from selling flowers in the City, but he understood the need for the language.

ROLL CALL VOTE ON MOTION MADE BY MEMBER PEHRSON AND SECONDED BY MEMBER WROBEL:

Motion to recommend approval to City Council of the Zoning Ordinance Text Amendment 18.219. *Motion carried 8-0.*

DRAFT CITY COUNCIL MINUTES EXCERPT – OCTOBER 22, 2007

DRAFT
REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, OCTOBER 22, 2007 AT 7:00 P.M.
COUNCIL CHAMBERS - NOVI CIVIC CENTER - 45175 W. TEN MILE ROAD

ROLL CALL: Mayor Landry, Mayor Pro Tem Capello, Council Members Gatt, Margolis, Mutch, Nagy, Paul-absent/excused.

6. **Consideration of Zoning Ordinance Text Amendment 18.219, to amend Ordinance No. 97-18. as amended, the City of Novi Zoning Ordinance, at Article 30, Administration and Enforcement, Section 3004, Temporary Special Exception and Temporary Special Land Use Permits. First Reading**

CM-07-10-314 Moved by Nagy, seconded by Gatt; CARRIED UNANIMOUSLY:

To approve Zoning Ordinance Text Amendment 18.219, to amend Ordinance No. 97-18. as amended, the City of Novi Zoning Ordinance, at Article 30, Administration and Enforcement, Section 3004, Temporary Special Exception and Temporary Special Land Use Permits. First Reading

Roll call vote on CM-07-10-314

**Yeas: Capello, Gatt, Margolis, Mutch,
Nagy, Landry
Nays: None
Absent: Paul**