

CITY of NOVI CITY COUNCIL

Agenda Item E
January 26, 2009

SUBJECT: Approval of Zoning Ordinance Text Amendment 18.234, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 14, B-2 Community Business District, Article 15, General Business District and Article 17, Regional Center District in order to modify the standards for outdoor sales of produce and seasonal plants. **Second Reading**

SUBMITTING DEPARTMENT: Community Development Department - Planning *Burb*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Attached you will find a proposed ordinance amendment that the Community Development Department has proposed regarding outdoor sales of produce and plant material in the B-2, Community Business District, B-3, General Business District and the RC, Regional Center District. This amendment is in response to recent requests from existing and proposed businesses to include outdoor produce and plant sales as an accessory to their permitted business.

The amendment would allow outdoor sales of produce and plant material as a Special Land Use in the B-2 District, B-3 District and the RC District. These sales would be subject to special conditions. The outdoor sales would have to be adjacent to the principal use, meet all applicable building and fire codes and a six foot path would need to be maintained for pedestrian traffic.

Section 3004 currently allows Temporary Special Exceptions for sidewalk sales. Sidewalk sales are permitted in the B-3 District for a period not to exceed 15 days (3 sales per year) with approval by the Building Official. Several retail establishments have taken advantage of this ordinance for temporary sidewalk sales and temporary special land uses, which are limited to two one-year administrative approvals. We have had interest from two grocery stores/markets to allow the outside sale of produce and plant materials throughout the year. This text amendment would address those interests.

On December 10, 2008, the Planning Commission held a public hearing on the proposed amendment and took action to recommend approval of the text amendment. The draft minutes to that meeting are attached. On January 5, 2009, the City Council approved the first reading of the text amendment. The City Council is asked to approve the second reading on January 26, 2009.

RECOMMENDED ACTION: Approval of Zoning Ordinance Text Amendment 18.234, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 14, B-2 Community Business District Article 15, General Business District and Article 17, Regional Center District in order to modify the standards for outdoor sales of produce and seasonal plants. **Second Reading**

	1	2	Y	N
Mayor Landry				
Mayor Pro-Tem Gatt				
Council Member Burke				
Council Member Crawford				

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

LETTERS OF INTEREST



October 17, 2008

Barbara McBeth
CDD Deputy Director
City of Novi
45175 W Ten Mile Rd
Novi, MI 48375

Dear Barbara,

Outlined below is our proposed use of the area in front of our store for seasonal merchandising. The time frames are approximate due to the sometimes uncertain availability of the type of product we are dealing with.

- January through March we will not be merchandising product outside.
- Late April through August we will be merchandising hanging baskets, bags of soil and other outdoor flowers. We will also be merchandising summer produce such as melons during this timeframe. We will be using small half tables for the soil, flowers and produce. We will use a metal arb to hang flowering baskets on.
- September through October we will be selling hardy mums and other outdoor flowers. We will also have produce at this time.
- During the month of October we will be selling pumpkins outside.
- Late November through December we will be selling wreaths.

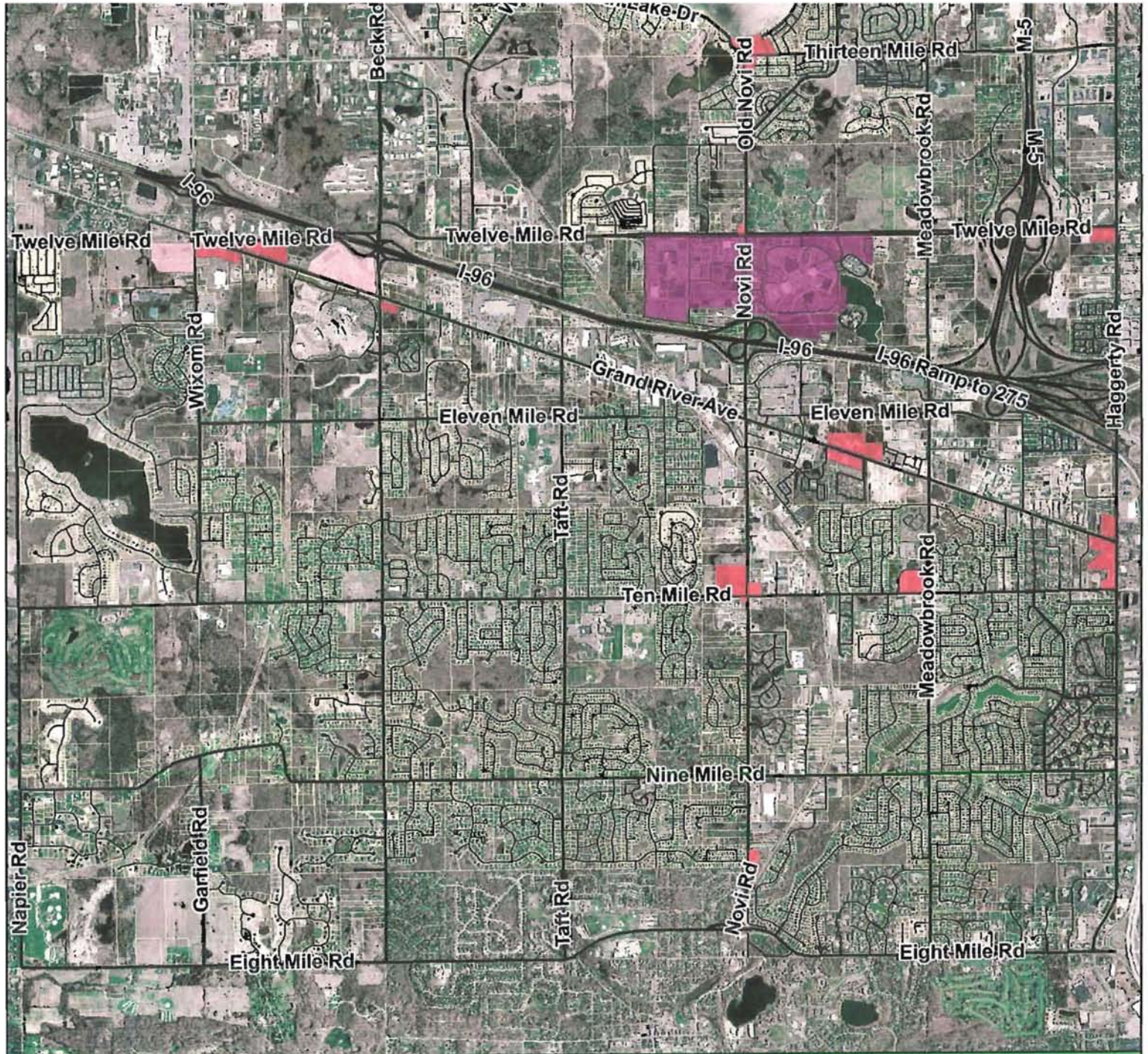
We plan on using half tables, half tables with umbrellas and metal arbs to display the product on. We will display very similar to this year.

I look forward to hearing back from you. Please let me know if you need any additional information and what the next step in the process is.

Thanks,

Jonathan Messer
Store Manager
248 348 0708
Jonathan_messer@buschs.com

**PROPERTIES AFFECTED BY
PROPOSED AMENDMENT**



CITY OF NOVI

DEPARTMENT OF COMMUNITY DEVELOPMENT

45175 W. TEN MILE ROAD
NOVI, MI 48375-3024
(248) 347-0415

MAP AUTHOR: Krysten Kapelanski, Planner



0 1,625 3,250 6,500 9,750

FEET

1 INCH = 4,160 FEET

MAP PRINT DATE: date

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

**CITY COUNCIL MINUTES
EXCERPT JANUARY 5, 2009**

REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
Monday, JANUARY 5, 2009 AT 7:00 P.M.
COUNCIL CHAMBERS - NOVI CIVIC CENTER - 45175 W. TEN MILE RD

Mayor Landry called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Landry, Council Members Crawford, Gatt, Margolis, Mutch, Staudt

ALSO PRESENT: Clay Pearson, City Manager
Pamela Antil, Assistant City Manager
Tom Schultz, City Attorney
Ara Topouzian, Economic Development Manager
Cindy Uglow, Neighborhood and Small Business Manager

MATTERS FOR COUNCIL ACTION – Part I

4. **Consideration of Zoning Ordinance Text Amendment 18.234, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 14, B-2 Community Business District, Article 15, General Business District and Article 17, Regional Center District in order to modify the standards for outdoor sales of produce and seasonal plants. First Reading**

CM-09-01-05 Moved by Margolis, seconded by Crawford; **CARRIED UNANIMOUSLY:** To approve Zoning Ordinance Text Amendment 18.234, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 14, B-2 Community Business District, Article 15, General Business District and Article 17, Regional Center District in order to modify the standards for outdoor sales of produce and seasonal plants. First Reading

DISCUSSION

Member Mutch said one of his concerns was that he knew in a number of communities these kinds of uses, where there were outdoor sales, they would see things like gas stations selling landscape materials like cedar chips, etc. He said this language seemed to restrict the sales to items that were similar to what was being sold within the business that sales were being conducted at. Member Mutch said he wanted to be clear on how strict that limitation was and would they have gas stations selling landscape materials versus gas stations selling windshield washer fluid.

Mr. Schultz thought Member Mutch was right and didn't think that would be incidental to gas station use but could be window washing materials and things like that. Member Mutch said if it was directly related to the use that took place, he wouldn't have a problem with it but was concerned that it would become a loophole for people to sell everything and anything. Mr. Schultz stated the intent was that it be limited to what the actual underlying use was.

Mayor Pro Tem Gatt asked if it would prohibit someone from bringing a load of lilies around Easter and selling them on a vacant lot next to a gas station. Mr. Schultz replied this language

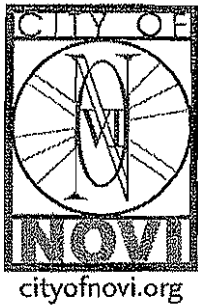
was just sales incidental to an actual ongoing use that was approved and site planned. He said it would not apply to the vacant lot situation.

Roll call vote on CM-09-01-05

**Yeas: Landry, Gatt, Crawford, Margolis, Mutch,
Staudt**

Nays: None

**PLANNING COMMISSION MINUTES
EXCERPT DECEMBER 10, 2008**



PLANNING COMMISSION

DRAFT COPY

CITY OF NOVI

Regular Meeting

Zoning Ordinance Text Amendment 18.234 Relating to Outdoor Sales

Wednesday, December 10, 2008 | 7 PM

Council Chambers | Novi Civic Center | 45175 W. Ten Mile

(248) 347-0475

CALL TO ORDER

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

ROLL CALL

Present: Members, Victor Cassis David Greco, Andrew Gutman, Brian Larson, Michael Meyer, Mark Pehrson, Wayne Wrobel

Absent: Members Brian Burke (excused), Michael Lynch (excused)

Also Present: Steve Rumple, Community Development Director; Barbara McBeth, Deputy Director of Community Development; Mark Spencer, Planner; Kristen Kapelanski, Planner; David Beschke, Landscape Architect; Ben Croy, Civil Engineer; John Freeland, Woodland Consultant; Doug Necci, Façade Consultant; Kristin Kolb, City Attorney

PUBLIC HEARINGS

ZONING ORDINANCE TEXT AMENDMENT 18.234

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 Article 14, B-2, Community Business District, Article 15, B-3, General Business and Article 17, RC, Regional Center District, in order to modify the standards for outdoor sales of produce and seasonal plants.

Planner Kristen Kapelanski explained that the proposed changes before the Planning Commission, for recommendation to City Council, deal with Article 14, Article 15 and Article 17 of the Zoning Ordinance. The properties affected were highlighted in pink, red and purple on a map provided to the Planning Commission members and shown at the meeting.

Staff is suggesting modifications related to the outdoor sale of produce and seasonal plant materials. Recently, existing and proposed businesses have approached the Community Development Department to obtain an approval and permit to allow outdoor sales of produce and plants. This amendment addresses the need for a provision within the Ordinance to regulate and permit such sales. Outdoor sales of produce and plant material only would be permitted in the B-2, B-3 and RC Districts as a Special Land Use, subject to special conditions regulating the hours of operation of outside sales, establishing a minimum pathway width, ensuring the sales area conforms with all building and fire codes, and the sales area does not occupy required parking spaces, drive aisles or landscape beds.

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

Member Cassis asked whether this amendment pertained to the shopping center owner or the major tenant, such as Busch's. What if Busch's brought in a subcontractor to sell trees on their site? Would Busch's be responsible for this, and would this Ordinance apply to such a situation? Ms. Kapelanski said the Ordinance would apply, but there is a provision that the sale of the produce and seasonal plant material has to be ancillary to the principal use. There couldn't be mostly outdoor sales with minimal indoor sales. If Busch's want to bring a contractor in to sell produce outside, she did not think the City would allow a register or anything to be placed outside, because that would require different conditions. If someone wanted to contract in such a manner, Busch's would be responsible for meeting the conditions. Member Cassis confirmed with City Attorney Kristin Kolb that Ms. Kapelanski's explanation accurately described how the Ordinance would work.

Member Meyer asked whether this amendment would provide for or exclude an Eastern Market or Farmers' Market in Novi. Ms. Kapelanski said this amendment would not cover anything like a Farmers' Market. The covered use would have to be accessory to the larger principal use. There is an Ordinance provision for temporary sales that would cover Farmers' market temporary sales – they can be three times per year. She said the Temporary Use Ordinance is the section that explains things like Christmas tree sales, and this Ordinance also lists acceptable times of the year and length of use provisions.

Member Meyer wished to confirm that the landowner's permission to use the land would be required. Ms. Kapelanski responded that she didn't know the specific provisions of that Ordinance. Deputy Director of Community

Development Barbara McBeth added that Ms. Kapelanski was correct – there is section of the Ordinance that administratively approves things like Christmas tree sales in the Business Zoning District. The Building Official reviews and verifies that the proposal meets the standards of that Ordinance. This Ordinance is intended to provide just limited outdoor sales for existing businesses in B-2, B-3 and RC Districts, and only on the sidewalk areas adjacent to the building. Member Meyer confirmed that the use has to be ancillary and connected to a business that is already there – someone can't pull up with their truck on a Saturday afternoon and begin selling goods.

Chair Pehrson confirmed that the proprietor is responsible for clearing and removal of snow in the area where people may wish to walk in order to view and purchase goods. Ms. Kapelanski agreed, stating that all the usual provisions of the Code would apply and the owner would have to maintain a six-foot clear pathway.

Moved by Member Gutman, seconded by Member Wrobel:

**ROLL CALL VOTE ON ZONING ORDINANCE TEXT AMENDMENT 18.234 RECOMMENDATION FOR APPROVAL
MOTION MADE BY MEMBER GUTMAN AND SECONDED BY MEMBER WROBEL:**

In the matter of Zoning Ordinance Text Amendment 18.234, motion to recommend approval to City Council to amend Ordinance 97-18 as amended, the City of Novi Ordinance Article 14 B-2 Community Business District, Article 15 B-3 General Business District and Article 17 RC Regional Center District, in order to modify the standards for outdoor sales of produce and seasonal plants. *Motion carried 7-0.*

PROPOSED ORDINANCE AMENDMENTS – STRIKE VERSION

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 07- 18 -234

AN ORDINANCE TO AMEND APPENDIX A OF THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 97-18, AS AMENDED, KNOWN AS THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 14, B-2, COMMUNITY BUSINESS, ARTICLE 15, GENERAL BUSINESS AND ARTICLE 17, REGIONAL CENTER IN ORDER TO MODIFY THE STANDARDS FOR OUTDOOR SALES OF PRODUCE AND SEASONAL PLANTS.

THE CITY OF NOVI ORDAINS:

PART I: That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 14, B-2, Community Business, Article 15, General Business, and Article 17, Regional Center, are hereby amended to read as follows:

ARTICLE 14. B-2 COMMUNITY BUSINESS DISTRICTS

Section 1400 – Section 1401. [Unchanged.]

Section 1402. Principal Uses Permitted Subject to Special Conditions

[Unchanged.]

1. [Unchanged.]

2. Sale of produce and seasonal plant materials outdoors, provided such use is incidental to a similar principal use indoors and adjacent to and adjoining the building of the principal use, subject to the following conditions:

- a. Outdoor sales areas shall comply with all applicable building and fire codes and shall be reviewed and approved by the Building Division.
- b. Outdoor sales areas shall be located in a manner to maintain a minimum pathway width of 6 feet (clear of structures such as light poles, trees and hydrants) along the sidewalk so as not to interfere with pedestrian traffic.
- c. The hours of operation for an outside sales area shall be consistent with the hours of operation of the principal use.
- d. Outdoor sales areas shall not occupy required parking spaces or drive aisles and/or required landscaping areas and shall be located on a paved surface.

Section 1403. Required Conditions

1. [Unchanged.]
2. All business, servicing or processing, except for off-street parking, and loading/unloading and those outdoor sales uses permitted and regulated in Section 1402 above, shall be conducted within completely enclosed buildings.

ARTICLE 15. B-3 GENERAL BUSINESS DISTRICTS

Section 1500 – Section 1501. [Unchanged.]

Section 1502. Principal Uses Permitted Subject to Special Conditions

[Unchanged.]

1 - 7. [Unchanged.]

8. Sale of produce and seasonal plant materials outdoors, provided such use is incidental to a similar principal use indoors and adjacent to and adjoining the building of the principal use, subject to the following conditions:
 - a. Outdoor sales areas shall comply with all applicable building and fire codes and shall be reviewed and approved by the Building Division.
 - b. Outdoor sales areas shall be located in a manner to maintain a minimum pathway width of 6 feet (clear of structures such as light poles, trees and hydrants) along the sidewalk so as not to interfere with pedestrian traffic.
 - c. The hours of operation for an outside sales area shall be consistent with the hours of operation of the principal use.
 - d. Outdoor sales areas shall not occupy required parking spaces or drive aisles and/or required landscaping areas and shall be located on a paved surface.

Section 1503. [Unchanged]

ARTICLE 17. RC REGIONAL CENTER DISTRICT

Section 1700 – Section 1701. [Unchanged.]

Section 1702. Principal Uses Permitted Subject to Special Conditions

[Unchanged.]

1 - 3. [Unchanged.]

4. Sale of produce and seasonal plant materials outdoors, provided such use is incidental to a similar principal use indoors and adjacent to and adjoining the building of the principal use, subject to the following conditions:

- a. Outdoor sales areas shall comply with all applicable building and fire codes and shall be reviewed and approved by the Building Division.
- b. Outdoor sales areas shall be located in a manner to maintain a minimum pathway width of 6 feet (clear of structures such as light poles, trees and hydrants) along the sidewalk so as not to interfere with pedestrian traffic.
- c. The hours of operation for an outside sales area shall be consistent with the hours of operation of the principal use.
- d. Outdoor sales areas shall not occupy required parking spaces or drive aisles and/or required landscaping areas and shall be located on a paved surface.

Section 1703. [Unchanged]

PART II.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance 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 of the Novi Code of Ordinances set forth in this Ordinance.

PART III.

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 IV.

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 CITY COUNCIL OF THE CITY OF NOVI,
OAKLAND COUNTY, MICHIGAN, ON THE ____ DAY OF _____, 2009.

DAVID LANDRY, MAYOR

MARYANNE CORNELIUS, CITY CLERK

Ayes:
Nays:
Abstentions:
Absent:

PROPOSED ORDINANCE AMENDMENTS – CLEAN VERSION

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 07- 18 -234

AN ORDINANCE TO AMEND APPENDIX A OF THE CITY OF NOVI CODE OF ORDINANCES, ORDINANCE 97-18, AS AMENDED, KNOWN AS THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 14, B-2, COMMUNITY BUSINESS, ARTICLE 15, GENERAL BUSINESS AND ARTICLE 17, REGIONAL CENTER IN ORDER TO MODIFY THE STANDARDS FOR OUTDOOR SALES OF PRODUCE AND SEASONAL PLANTS.

THE CITY OF NOVI ORDAINS:

PART I: That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 14, B-2, Community Business, Article 15, General Business, and Article 17, Regional Center, are hereby amended to read as follows:

ARTICLE 14. B-2 COMMUNITY BUSINESS DISTRICTS

Section 1400 – Section 1401. [Unchanged.]

Section 1402. Principal Uses Permitted Subject to Special Conditions

[Unchanged.]

1. [Unchanged.]
2. Sale of produce and seasonal plant materials outdoors, provided such use is incidental to a similar principal use indoors and adjacent to and adjoining the building of the principal use, subject to the following conditions:
 - a. Outdoor sales areas shall comply with all applicable building and fire codes and shall be reviewed and approved by the Building Division.
 - b. Outdoor sales areas shall be located in a manner to maintain a minimum pathway width of 6 feet (clear of structures such as light poles, trees and hydrants) along the sidewalk so as not to interfere with pedestrian traffic.
 - c. The hours of operation for an outside sales area shall be consistent with the hours of operation of the principal use.
 - d. Outdoor sales areas shall not occupy required parking spaces or drive aisles and/or required landscaping areas and shall be located on a paved surface.

Section 1403. Required Conditions

1. [Unchanged.]
2. All business, servicing or processing, except for off-street parking, loading/unloading and those outdoor sales uses permitted and regulated in Section 1402 above, shall be conducted within completely enclosed buildings.

ARTICLE 15. B-3 GENERAL BUSINESS DISTRICTS

Section 1500 – Section 1501. [Unchanged.]

Section 1502. Principal Uses Permitted Subject to Special Conditions

[Unchanged.]

1 - 7. [Unchanged.]

8. Sale of produce and seasonal plant materials outdoors, provided such use is incidental to a similar principal use indoors and adjacent to and adjoining the building of the principal use, subject to the following conditions:
 - a. Outdoor sales areas shall comply with all applicable building and fire codes and shall be reviewed and approved by the Building Division.
 - b. Outdoor sales areas shall be located in a manner to maintain a minimum pathway width of 6 feet (clear of structures such as light poles, trees and hydrants) along the sidewalk so as not to interfere with pedestrian traffic.
 - c. The hours of operation for an outside sales area shall be consistent with the hours of operation of the principal use.
 - d. Outdoor sales areas shall not occupy required parking spaces or drive aisles and/or required landscaping areas and shall be located on a paved surface.

Section 1503. [Unchanged]

ARTICLE 17. RC REGIONAL CENTER DISTRICT

Section 1700 – Section 1701. [Unchanged.]

Section 1702. Principal Uses Permitted Subject to Special Conditions

[Unchanged.]

1 - 3. [Unchanged.]

4. Sale of produce and seasonal plant materials outdoors, provided such use is incidental to a similar principal use indoors and adjacent to and adjoining the building of the principal use, subject to the following conditions:
 - a. Outdoor sales areas shall comply with all applicable building and fire codes and shall be reviewed and approved by the Building Division.

- b. Outdoor sales areas shall be located in a manner to maintain a minimum pathway width of 6 feet (clear of structures such as light poles, trees and hydrants) along the sidewalk so as not to interfere with pedestrian traffic.
- c. The hours of operation for an outside sales area shall be consistent with the hours of operation of the principal use.
- d. Outdoor sales areas shall not occupy required parking spaces or drive aisles and/or required landscaping areas and shall be located on a paved surface.

Section 1703. [Unchanged]

PART II.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance 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 of the Novi Code of Ordinances set forth in this Ordinance.

PART III.

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 IV.

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 CITY COUNCIL OF THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, ON THE ___ DAY OF _____, 2009.

DAVID LANDRY, MAYOR

MARYANNE CORNELIUS, CITY CLERK

Ayes:
Nays:
Abstentions:
Absent: