

# CITY of NOVI CITY COUNCIL

Agenda Item 4  
February 22, 2010

**SUBJECT:** Approval of Zoning Ordinance Text Amendment 18.239, to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance at Article 2, "Construction of Language and Definitions, Zoning Districts Map, Section 201, "Definitions," to amend the definition of gasoline service stations to specify permitted accessory uses with a limited prohibition on the sale of alcohol and Article 25, "General Provisions," Section 2505, "Off-Street Parking Requirements" to revise the parking requirements for self-service gas stations. **SECOND READING**

**SUBMITTING DEPARTMENT:** Community Development Department – Planning

**CITY MANAGER APPROVAL:** 

## **BACKGROUND INFORMATION:**

Late last year, staff identified a possible zoning ordinance concern regarding accessory uses associated with gasoline service stations, and in particular, the sales of packaged beer, wine and liquor that is now permitted (as regulated) by the State's Liquor Control Commission (see below). In the past, most gasoline service stations in Michigan had not been permitted liquor licenses, except for certain cities, villages and townships with smaller populations (3,000-3,500 people), or if the gas station met standards that were not typically met (i.e., were in a neighborhood center of 50,000 square feet or had \$250,000 in merchandise available). Very few properties historically qualified under these standards, but recently, many more properties have qualified. At least one gas station in Novi has gotten a license from the State (Sunshine Market at Novi Road and 13 Mile Road).

Staff notes that the ordinance currently does not provide clear standards as to whether alcohol sales at gas stations would be permitted as an accessory use. In fact, the definition of the "gasoline service station" in the ordinance does not provide for the typical incidentals that we have come to expect at gasoline service station mini-marts or C-stores, such as bread, milk and gum:

*"A place for the retail dispensing, sale, or offering for sale of motor fuels directly to the users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair."*

The past interpretation of Novi's Zoning Ordinance is that the sale of bread, milk, gum, etc., has been considered "typically incidental" or "accessory" to the gas station use. Staff is proposing an updated definition at this time to include these incidental uses. However, staff thought the question of alcohol sales at gasoline service stations pushes the limits on what would normally be incidental to a gasoline service station. The ordinance amendments presented provide options on whether alcohol sales should be considered incidental to the gasoline service stations, and if so, whether any conditions should be added.

### **State of Michigan – Liquor Control Commission Licensing Standards for Gas Stations**

The Liquor Control Commission can issue a liquor license permitting the sale of alcohol at gas stations when the following standards are met (in addition to other minor regulations):

- a) One or both of the following conditions exists:
  1. The gasoline service station is located in a neighborhood shopping center composed of one or more commercial establishments organized and operated as a unit, which provides not less than 50,000 square feet of gross leasable retail space, and which provides 5 private off-street parking spaces for each 1,000 square feet of gross leasable retail space; or
  2. The gasoline service station maintains a minimum inventory on the premises, excluding alcohol and gasoline, of not less than \$250,000.

- b) The site of payment and selection of alcoholic liquor is not less than 50 feet from that point where gasoline is dispensed.

An excerpt from the State statute related to the sale of alcohol at gasoline stations is attached.

**Novi’s Current Ordinances for Gas Stations**

Novi’s Zoning Ordinance currently allows gasoline service stations as a Special Land Use in the B-2, Community Business District and in the B-3, General Business District. Additionally, gasoline service stations are a permitted use in the FS, Freeway Service District. The standards for a gasoline service station in the B-2 or B-3 districts are as follows:

1. Entrances to the gas station shall be no less than one hundred feet from a street intersection or from adjacent residential districts;
2. The minimum lot area shall be one acre;
3. A service station shall be located on a site so as to minimize its impact on any adjacent residential district, OS-1, OSC or B-1 district;
4. Attached canopies shall comply with the minimum setback standards of the district and detached canopies shall comply with the setback standards for accessory structures;
5. The storage of vehicles overnight is prohibited except for working vehicles (wreckers, etc.) and vehicles or trailers for general rental and those awaiting mechanical repair. Wrecked vehicles may be stored for a period not to exceed twenty-four hours;
6. A noise impact statement is required.

There are no special standards for gasoline service stations in the Freeway Service district. There are a total of 12 gas stations currently located in Novi, with one of those located in the Freeway Service District, one located in the RA district as a part of a PUD/Consent Judgment and the remaining 10 located in the B-2 or B-3 districts.

**Novi’s Existing Gasoline Service Stations**

The LCC requires gas stations wishing to sell alcohol to be located in neighborhood shopping center of a minimum of 50,000 square feet and/or carry merchandise totaling a minimum of \$250,000 excluding alcohol and gasoline. In addition, the point of sale must be a minimum of 50 feet from the nearest gas pump. The chart below includes the size of all existing gas stations within the City and an approximation of whether they would meet the required 50 feet distance between the point of sale and the nearest gas pump based on a review of aerial photos. The \$250,000 inventory requirement was not evaluated as the City does not keep records of retail inventories. Based on the information below, only the existing Sam’s Club store, which has an accessory gas station, would meet the minimum size requirement. The existing Sunshine Market currently has a liquor license. One gas station was recently proposed at a pre-application meeting showing an area dedicated to sales of beer, wine and liquor.

<b>Existing Gas Station</b>	<b>Address</b>	<b>Approx. Size</b>	<b>Point of Sale to Gas Pump Distance ≥ 50 feet</b>
Speedway	47395 W. Pontiac Trail	4,081 sq. ft.	No
Speedway	31275 Haggerty Road	2,409 sq. ft.	Dependent upon location of register
Sunshine Market	42355 W. 13 Mile Road	5,500 sq. ft.	Yes
BP	43420 12 Mile Road	1,275 sq. ft.	No
Amoco	39471 12 Mile Road	1,093 sq. ft.	Dependent upon location of register
Sam’s Club	27300 Wixom Road	138,715 sq. ft.	Yes
Sunoco	43601 Grand River Ave.	1,409 sq. ft.	No
Mobil	43407 Grand River Ave.	1,802 sq. ft.	No
Speedway	24210 Novi Road	2,409 sq. ft.	Dependent upon location of register
Total	24141 Novi Road	2,248 sq. ft.	No
Sunoco	41425 10 Mile Road	2,688 sq. ft.	No
Marathon	21070 Haggerty Road	2,338 sq. ft.	No

### **Other Community Ordinances**

The zoning ordinances of West Bloomfield and Southfield prohibit the sale of any alcohol at gas stations. The City of Troy requires all gas stations wishing to sell alcohol to appear before their Liquor Advisory Committee which reviews the request to determine whether or not it meets the State standards for a liquor license to sell alcohol at a gas station. The Troy Liquor Advisory Committee then either recommends the City has "no additional comment" for the State or passes along a negative recommendation stating the applicant does not meet the required State standards. No specific regulations were found in staff's review of other community ordinances.

### **Recommendation from the Police Department**

The Novi Police Department prepared the attached November 13, 2009 memo containing a recommendation to prohibit gas stations from obtaining liquor licenses. This memo was considered by the Planning Commission in its recommendation to the City Council. Deputy Chief Lindberg attended two Commission meetings to answer questions.

### **Proposed Amendment – Planning Commission's Recommendation**

The public hearing was held at the Planning Commission meeting on January 27, 2010. The **Planning Commission's recommended ordinance language** would amend the definition of a gasoline service station in the ordinance to include, as accessory uses, the retail sale of minor automotive-related convenience products as well as the sale of non-automotive related products, such as sundries, basic convenience grocery items, pre-prepared food items and non-alcoholic beverages. Sales of alcoholic beverages would be permitted if the following conditions were demonstrated on a site plan:

- (a) *One or both of the following conditions exist:*
  - (i) *The applicant or licensee is located in a neighborhood shopping center composed of one or more commercial establishments organized or operated as a unit which is related in location, size and type of shop to the trade area that the unit serves, which provides not less than 50,000 square feet of gross leasable retail space and which provides five private off-street parking spaces for each 1,000 square feet of gross leasable retail space.*
  - (ii) *The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$250,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.*
- (b) *The site of payment and selection of alcoholic liquor is not less than fifty feet from that point where motor vehicle fuel is dispensed.*
- (c) *The building from which alcoholic liquor is sold provides not less than 15,000 square feet of gross leasable floor area.*

The proposed ordinance, as recommended by the Planning Commission, is essentially the same as the State statute, but with one very significant addition – sales must be within a building of at least 15,000 square feet in area. There is no building size limit in the State statute.

The amendment also proposes revisions to the parking standards for self-service gas stations to reflect their retail nature. The parking requirements would be adjusted to require one parking space for each 200 square feet of usable floor area. The parking standards currently require one parking space for each 50 square feet of usable floor area in the cashier's and office areas only. Relevant meeting minutes from the aforementioned Planning Commission meeting and other meetings where this ordinance was discussed are attached.

### **Correspondence**

One additional piece of correspondence from was received after the City Council's first reading of this ordinance amendment. It is attached for reference at this time.

**Proposed Amendment as Approved for a First Reading By City Council**

This matter was before the City Council for a first reading of the proposed amendment at the meeting held on February 8, 2010. At that meeting, the City Council considered the four options prepared by staff, the comments from the public and the recommendations from the Planning Commission.

The City Council approved the first reading of the proposed text amendment as presented in Option 4: to allow alcohol sales at gasoline service stations that provide not less than 5,000 square feet of gross leasable floor area and meet the requirements listed in the State statute. That is the only option presented in this packet prepared for the Second Reading. Please see the attachment for details of the ordinance language approved for a first reading. Relevant meeting minutes from the February 8, 2010 City Council meeting are attached.

**RECOMMENDED ACTION:** Approval of Zoning Ordinance Text Amendment 18.239 to amend the definition of gasoline service stations to specify permitted accessory uses with a limited prohibition on the sale of alcohol and to revise the parking requirements for self-service gas stations.

**SECOND READING**

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

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

**PROPOSED ORDINANCE AMENDMENT  
STRIKE VERSION**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 18.239  
(Gas Station Liquor Licenses)

AN ORDINANCE TO AMEND ORDINANCE NO. 97-18, AS AMENDED, THE CITY OF NOVI ZONING ORDINANCE, ARTICLE 2, "CONSTRUCTION OF LANGUAGE AND DEFINITIONS, ZONING DISTRICTS AND MAP," SECTION 201, "DEFINITIONS," TO AMEND THE DEFINITION OF GASOLINE SERVICE STATION TO SPECIFY PERMITTED ACCESSORY USES WITH CONDITIONAL ALLOWANCE OF THE SALE OF ALCOHOL AND ARTICLE 25, "GENERAL PROVISIONS," SECTION 2505, "OFF-STREET PARKING REQUIREMENTS" TO REVISE THE PARKING REQUIREMENTS FOR SELF-SERVICE GAS STATIONS.

THE CITY OF NOVI ORDAINS:

**Part I.** That Ordinance No. 97-18, the City of Novi Zoning Ordinance, as amended, Article 2, Construction of Language and Definitions, Zoning districts and Map, Section 201, Definitions, is hereby amended to amend the definitions of "Gasoline Service Station" to read as follows:

*Gasoline service station* means a place for the retail dispensing, sale, or offering for sale of motor fuels ~~directly to users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair,~~ with the only permitted accessory uses being the servicing and minor repair of motor vehicles; retail sales of minor automotive related convenience products and accessories such as windshield washer fluid, motor oil, wipers and window scrapers; and retail sales of non-automotive related products, including (i) sundries such as gum, candy, cigarettes, newspapers, magazines, and other individually packaged convenience items; (ii) basic convenience grocery items, such as milk and bread; (iii) pre-prepared food items that are not subject to licensing by the Michigan Department of Agriculture or the Oakland County Health Department; and (iv) non-alcoholic beverages. The sale of alcoholic beverages shall be permitted as an accessory use subject to the issuance of an appropriate license by the Liquor Control Commission and subject to the standards imposed by the Commission and state law if all three of the following conditions are met and are reflected on the site plan:

(a) One or both of the following conditions exist:

(i) The applicant or licensee is located in a neighborhood shopping center composed of one or more commercial establishments organized or operated as a unit which is related in location, size and type of shop to the trade area that the unit serves, which provides not less than 50,000 square feet of gross leasable

retail space and which provides five private off-street parking spaces for each 1,000 square feet of gross leasable retail space.

(ii) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$250,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(b) The site of payment and selection of alcoholic liquor is not less than fifty feet from that point where motor vehicle fuel is dispensed.

(c) The building from which alcoholic liquor is sold provides not less than 5,000 square feet of gross leasable floor area.

**Part II.** That Article 25, General Provisions, Section 2505, Off-Street Parking Requirements is hereby amended to read as follows:

**Article 25, General Provisions**

**Sec. 2505. Off-Street Parking Requirements.**

1. – 13. [unchanged]

11. The minimum number of off-street parking spaces by type of use shall be determined in accordance with the following schedule:

- a. [unchanged]
- b. [unchanged]
- c. Business and Commercial

(1) – (10) [unchanged]

(11)	Gasoline filling stations (self-service)	One (1) fueling space for each fuel nozzle. In addition, <u>one (1) space per 200 square feet usable floor area (not to include vehicle fueling spaces located at the pump) plus parking for accessory vehicle service uses.</u> <del>one (1) parking space shall be provided for each fifty (50) square feet of usable floor area in the cashier's and office areas and spaces shall be provided for all accessory uses.</del> In no instance shall such a facility provide less than three (3) parking
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		spaces. In no instance shall a required parking space or its maneuvering area conflict with vehicles being fueled or awaiting fuel.
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**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.**

**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 V.**

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

**PART VI.**

**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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

1320796

**PROPOSED ORDINANCE AMENDMENT  
CLEAN VERSION**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

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(ii) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$250,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

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**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.**

**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.

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**PART VI.**

**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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 \_\_\_\_\_, 2010.

\_\_\_\_\_  
MARYANNE CORNELIUS – CITY CLERK

1320796

**CITY COUNCIL MINUTES EXCERPT  
FEBRUARY 8, 2010**

**DRAFT EXCERPT FROM**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI  
MONDAY, FEBRUARY 8, 2010 AT 7:00 P.M.  
COUNCIL CHAMBERS - NOVI CIVIC CENTER - 45175 W. TEN MILE ROAD**

**ROLL CALL:** Mayor Landry, Mayor Pro Tem Gatt, Council Members Crawford, Fischer, Margolis, Mutch, Staudt

**ALSO PRESENT:** Clay Pearson, City Manager  
Tom Schultz, City Attorney

- 7. Consideration of Zoning Ordinance Text Amendment 18.239, to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance at Article 2, "Construction of Language and Definitions, Zoning Districts Map, Section 201, "Definitions," to amend the definition of gasoline service stations to specify permitted accessory uses with a limited prohibition on the sale of alcohol; and Article 25, "General Provisions," Section 2505, "Off-Street Parking Requirements" to revise the parking requirements for self-service gas stations. First Reading**

Mr. Pearson said this grew out of a specific project that had the addition of liquor sales as part of a gas station. He said they had not seen that in the past, so they started looking at what the State regulated and what they did or didn't do, what was on the books and what they actually followed through and regulated. He said they started off with the Planning Commission with a text amendment as a starter, in terms of prohibition that evolved, and came up with some restrictions that it could be sold under conditions. He said they looked at some of the actual places in town and tried to be cognizant of that as to not create too many non-conforming land uses. Mr. Pearson thought they had a modified compromised alternate for the actual language that they felt provided some guidance without everywhere and anywhere sales at gas stations but recognized it might fit in under certain circumstances.

Member Crawford said she liked the Option 4 proposal, which went along with what the State recommended. She said rather than the Planning Commission's recommended 15,000 sq. ft., she wanted to be consistent with what already existed in the City, which was 5,000 sq. ft.

Mayor Pro Tem Gatt asked how big the Sunshine Market gas station was at Novi and Thirteen Mile Roads. Mr. Pearson responded it was 5,500 sq. ft. He asked if there had been any problems with people buying alcohol and drinking it, because it was sold at that location. Mr. Pearson said, to be fair, it opened a few months ago so they didn't have a track record there yet. He didn't think there had been anything yet but it hadn't been very long. Mayor Pro Tem Gatt said, in the packet, there had been concerns that alcohol sold at a gas station would create more of a propensity to purchase alcohol, open it and drive. He said he didn't agree with that and believed that anyone who wanted to buy alcohol and open it and drive could purchase it anywhere it was sold. He stated he was not concerned with that and agreed with Member Crawford. He thought



that if they had already established a location in Novi that sold gasoline and alcohol, and it was over 5,000 sq. ft. and it had a large inventory of supplies other than gasoline and alcohol and if it was working there, that was the standard that Council should set.

**CM-10-02-021      Moved by Gatt, seconded by Crawford; MOTION CARRIED:  
To approve the First Reading of Zoning Ordinance Text  
Amendment 18.239 with Option 4 that would allow a business that  
sold gasoline to sell alcohol as long as the building was 5,000 sq. ft.  
or larger.**

## **DISCUSSION**

Member Margolis agreed that alcohol was not the issue as it was just as convenient to pull into a party store as it was a gas station. She thought what they were adopting was a business large enough to have the staff, training and control of who they were selling alcohol to. She thought that had more to do with size and was probably what the State was trying to get to with their prohibition that there had to be \$250,000 of inventory other than gas and liquor. Member Margolis thought what Council was doing was trying to find an operational way to say they wanted to follow those same kinds of standards. She agreed that the 5,000 sq. ft. made a lot of sense, especially since there was one market, just over that size, that had already been granted a liquor license. She stated she would support the first reading and the motion.

Member Staudt said he would not support it because he didn't see any point in having to do this now. He said there were just too many prohibitions and regulations put on businesses, and this wasn't something that was necessary to impose, at this time. He said there were plenty of enforcement measures in place to deal with this, so he would not be supporting any of the options.

Member Mutch stated he wouldn't support the motion. He understood there was an existing use that had secured a permit from the State for the sale of alcoholic beverages from a gas station but he thought it was a bad idea. Member Mutch said while there were other locations in the City that sold alcohol in a convenience style location, most of those closed at midnight. He said gas stations were, presumably 24 hour operations where there would be alcohol sales past that hour, which from the enforcement viewpoint of the Police Department opened up a number of new locations where there was the potential for liquor sales. Member Mutch said these were different from restaurants and bars that sold alcohol, as those businesses were highly dependent upon their licenses. They have occasional problems and realize the penalties involved in violating those license requirements. He said with these locations, he thought there was really a potential for problems with sales of alcohol beyond midnight up until 2 AM when they were required to stop selling. Member Mutch said it didn't make sense to have a potential proliferation of these uses and if this was the direction that these kinds of uses were going, then it would be likely that while they started with a couple the trend would be more of these locations throughout the City. He didn't think it was good for the public or helpful for the Police Department; so he would not support an ordinance change that facilitated that.

Member Fischer stated he would be in favor of Option 4 not only from a consistency standpoint but also because 5,000 sq. ft. was a good line to draw as far as someone making a significant investment within the City. He thought 5,000 sq. ft. met kind of a threshold there. Member Fischer stated he didn't buy the argument that purchasing alcohol at a gas station influenced people to open it there.

Mayor Landry said gas stations were really different than they were years ago. He said they were commercial establishments where food, coffee etc. was sold and they were changing. He said he would support the motion and thought it was a good compromise. He agreed with Member Margolis that when it came to alcohol the key was could they always responsibly sell alcohol. Mayor Landry said if talking about a large enough establishment that did enough business, they would be able to hire consistent employees and would be able to make sure they dispensed alcohol properly. He thought that was where the size came from. He said in Novi they were encouraging quality development and a development of this size was really not a gas station; it was a commercial development. He said he would support the motion.

**Roll call vote on CM-10-02-021**

**Yeas: Crawford Fischer, Margolis, Landry,  
Gatt**

**Nays: Mutch, Staudt,**

**STATE REGULATIONS**

(h) Dining cars or other railroad or Pullman cars, watercraft, or aircraft, where alcoholic liquor may be sold for consumption on the premises only, subject to rules promulgated by the commission.

(i) Brewpubs where beer manufactured on the premises by the licensee may be sold for consumption on or off the premises by any of the following licensees:

(i) Class C.

(ii) Tavern.

(iii) Class A hotel.

(iv) Class B hotel.

(j) Micro brewers where beer produced by the micro brewer may be sold to a consumer for consumption on or off the brewery premises.

(k) Class G-1 license where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only to members required to pay an annual membership fee and consumption is limited to these members and their bona fide guests.

(l) Class G-2 license where beer and wine may be sold for consumption on the premises only to members required to pay an annual membership fee and consumption is limited to these members and their bona fide guests.

(2) A wine maker may sell wine made by that wine maker in a restaurant for consumption on or off the premises if the restaurant is owned by the wine maker or operated by another person under an agreement approved by the commission and located on the premises where the wine maker is licensed.

(3) A wine maker, with the prior written approval of the commission, may conduct wine tastings of wines made by that wine maker and may sell the wine made by that wine maker for consumption off the premises at a location other than the premises where the wine maker is licensed to manufacture wine, under the following conditions:

(a) The premises upon which the wine tasting occurs conforms to local and state sanitation requirements.

(b) Payment of a \$100.00 fee per location is made to the commission.

(c) The wine tasting locations shall be considered licensed premises.

(d) Wine tasting does not take place between the hours of 2 a.m. and 7 a.m. Monday through Saturday, or between 2 a.m. and 12 noon on Sunday.

(e) The premises and the licensee comply with and are subject to all applicable rules promulgated by the commission.

History: 1998, Act 69, Imd. Eff. Apr. 11, 1998; Am. 2001, Act 223, Eff. March 22, 2002.

#### 436.1539 Marina as specially designated merchant or distributor; license; conditions.

Sec. 539. A marina that is situated on 1 of the Great Lakes, on that part of an inland waterway or tributary connected to and navigable to 1 of the Great Lakes, or on a Great Lakes connecting waterway may be issued a license as a specially designated merchant or specially designated distributor, notwithstanding the fact that the marina maintains motor vehicle fuel pumps on or adjacent to the licensed premises, or maintains a financial interest in any motor vehicle fuel pumps if both of the following conditions are met:

(a) The marina's primary business is the sale of boats or the provision of services and supplies to recreational power cruisers and sailboats of the type that typically travel on the Great Lakes.

(b) The fuel pumps are used for dispensing fuel only to boats described in subdivision (a).

History: 1988, Act 60, Imd. Eff. Apr. 11, 1988.

#### 436.1541 Motor vehicle fuel pumps.

Sec. 541. (1) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license or specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises, if both of the following conditions are met:

(a) One or both of the following conditions exist:

(i) The applicant or licensee is located in a neighborhood shopping center composed of 1 or more commercial establishments organized or operated as a unit which is related in location, size, and type of shop to the trade area that the unit serves, which provides not less than 50,000 square feet of gross leasable retail space, and which provides 5 private off-street parking spaces for each 1,000 square feet of gross leasable retail space.

(1) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$250,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(b) The site of payment and selection of alcoholic liquor is not less than 50 feet from that point where motor vehicle fuel is dispensed.

(2) The commission shall not prohibit an applicant for or the holder of a specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:

(a) The applicant or licensee is located in either of the following:

(i) A city, incorporated village, or township with a population of 3,000 or less and a county with a population of 31,000 or more.

(ii) A city, incorporated village, or township with a population of 3,500 or less and a county with a population of less than 31,000.

(b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$10,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(3) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:

(a) The applicant or licensee is located in either of the following:

(i) A city, incorporated village, or township with a population of 3,000 or less and a county with a population of 31,000 or more.

(ii) A city, incorporated village, or township with a population of 3,500 or less and a county with a population of less than 31,000.

(b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$12,500.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(4) A person who was issued a specially designated merchant license or specially designated distributor license at a location at which another person owned, operated or maintained motor vehicle fuel pumps at the same location may have or acquire an interest in the ownership, operation or maintenance of those motor vehicle fuel pumps.

(5) The commission may transfer ownership of a specially designated merchant license or specially designated distributor license to a person who owns or is acquiring an interest in motor vehicle fuel pumps already in operation at the same location at which the license is issued.

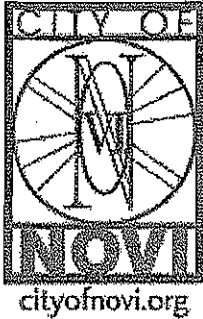
(History: 1988, Act 60, Imd. Eff. Apr. 14, 1988.)

**438.1543 Disposition and use of retailers' license and license renewal fees; special fund; "license fee enhancement" defined.**

Sec. 543. (1) Quarterly, upon recommendation of the commission, the state shall pay pursuant to appropriation in the manner prescribed by law to the city, village, or township in which a full-time police department or full-time ordinance enforcement department is maintained or, if a police department or full-time ordinance enforcement department is not maintained, to the county, to be credited to the sheriff's department of the county in which the licensed premises are located, 55% of the amount of the proceeds of the retailers' license fees and license renewal fees collected in that jurisdiction, for the specific purpose of enforcing this act and the rules promulgated under this act. Forty-one and one-half percent of the amount of the proceeds of retailers' license and license renewal fees collected shall be deposited in a special fund to be annually appropriated to the commission for carrying out the licensing and enforcement provisions of this act. Any unencumbered or uncommitted money in the special fund shall revert to the general fund of the state 12 months after the end of each fiscal year in which the funds were collected. The legislature shall appropriate 3-1/2% of the amount of the proceeds of retailers' license and license renewal fees collected to be credited to a special fund in the state treasury for the purposes of promoting and sustaining programs for the prevention, rehabilitation, care, and treatment of alcoholics. This subsection does not apply to retail license fees collected for railroad or Pullman cars, watercraft, or aircraft, or to the transfer fees provided in section 529.

**PREVIOUS COMMUNICATIONS FROM PLANNING STAFF,  
COMMISSIONER BARATTA AND POLICE CHIEF MOLLOY**

# MEMORANDUM



TO: Members of the Planning Commission

FROM: Barbara McBeth, AICP, Community Development

SUBJECT: Text Amendment 18.239 Gas Station Liquor Licenses

DATE: January 22, 2010

The Planning Commission has discussed a possible text amendment to regulate liquor, beer and wine sales at gas stations. In discussing the matter last week with Chair Pehrson and to facilitate further discussion by the Planning Commission, Chair Pehrson suggested summarizing the matter to provide clear black and white questions. Taking further inspiration from Member Baratta's investigation and expertise in this area (see attached correspondence), staff presents the following, as refreshed and restated questions for the Planning Commission to consider.

## **Question 1**

One question staff is posing is whether "gasoline service station" is adequately defined in the ordinance:

*"A place for the retail dispensing, sale, or offering for sale of motor fuels directly to the users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair."*

As discussed at last week's meeting, the proposed definition of a gasoline service station now would add sundries such as gum, candy cigarettes, etc.; basic convenience grocery items, such as milk and bread; prepared food items; and possibly alcoholic beverages. With the first part of the new definition, we are really catching up with the mini-mart or C-Store model that gas stations have used for a number of years. The past interpretation of Novi's Zoning Ordinance is that the sale of bread, milk gum, etc., has been considered "typically incidental" or "accessory to" the gas station use. However, staff thought the question of alcohol sales at gas stations pushes the limits on what would normally be incidental to a gasoline service station – hence the ordinance amendment and all of the discussion.

## **Question 2**

Another question being posed is whether the Planning Commission and the City Council would like to see sales of alcoholic beverages as another permitted use at gasoline service stations. The first draft language offered for consideration provided reasons why it would not be appropriate to allow alcohol sales at service stations:

- (a) Alcohol is not a product that should be conveniently available to the motoring public at a location where they purchase fuel for their vehicle. Such availability has a strong potential to encourage or facilitate alcohol related driving offenses and accidents that might not otherwise occur if a motorist in need of fuel had to make a separate stop to purchase alcohol.
- (b) The nature of modern day automobile service stations and the multiple transactions employees must handle at the same time is inconsistent with the proper administration and enforcement of the State's liquor control laws and prohibitions on sales to minors and visibly intoxicated persons and the Michigan Liquor Control Code of 1998, MCL 436.1906, does not require server training programs for off-premises licensees and their employees.

(c) Many gasoline service stations are open later than other stores where alcohol is sold, creating the ability for persons who had been consuming alcohol in an on-premises establishment to conveniently purchase alcohol after leaving that establishment, increasing the chances of alcohol related driving offenses and accidents and potentially undermining the liability of on-premises licensees for serving alcohol to minors or visibly intoxicated persons under the rebuttable presumption in MCL 436.1801(8), that licensees other than the one who made the last sale are not liable for damages caused by a minor or visibly intoxicated person they served.

(d) Allowing the sale of alcohol at automobile service stations would increase the volume of motor vehicle traffic and parking demands on properties that were not planned or designed to accommodate the increased demand, resulting in increased vehicle conflicts and accidents.

(e) Locations that sell alcohol are a separate retail use under this chapter, which the City pursuant to its zoning authority to ensure that use of land is situated in appropriate locations and relationships, reduce hazards to life and property, and to promote and protect the public health, safety and welfare, has determined should not be allowed at automobile service station locations.

Of course, the Planning Commission may not agree that any of these reasons provided in the draft ordinance language would be sufficient to prepare an ordinance that would prohibit alcohol sales at gas stations. That's why staff offered the other alternatives.

### **Additional Questions**

Staff agrees with Member Baratta's statement that one question for the Commission to consider is the relative convenience of purchasing the product from a gas station or a retail store. But staff thinks there's more than just a question of convenience involved in this zoning issue, and offers the following additional questions for the Commission to consider:

- Is there a land use or traffic conflict for most gasoline service stations to add another product (just being introduced in Novi at this time) to the variety of services currently offered at gas stations – gasoline sales, tire filling, minor service and repair, car washes, retail convenience items, a quick sandwich?
- Are the hours of operation an issue, as gas stations tend to be open later than other retail stores?
- Is there an added concern about proper training of employees for sales to minors or to intoxicated people, given the other duties service station employees are responsible for?
- Is it perceived that there are already enough places to purchase alcohol that don't have the extra "challenges" noted above?

### **Alternative 1**

Staff suggests that if the Commission finds that the answers to any or all of the questions above would cause a concern about including this additional use to the definition of gasoline service stations, then it would be appropriate to recommend the Alternative 1 to the City Council:

Gasoline service station means a place for the retail dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair, with the only permitted accessory uses being the servicing and minor repair of motor vehicles; retail sales of minor automotive related convenience products and accessories such as windshield washer fluid, motor oil, wipers and window scrapers; and retail sales of non-automotive related products, including (i) sundries such as gum, candy, cigarettes, newspapers, magazines, and other



individually packaged convenience items; (ii) basic convenience grocery items, such as milk and bread; (iii) pre-prepared food items that are not subject to licensing by the Michigan Department of Agriculture or the Oakland County Health Department; and (iv) non-alcoholic beverages only. It being the finding and public policy determination of the City that the sale of beer, wine, liquor, or other beverages containing alcohol should never be found or determined to be customarily incidental to an automobile service station for the following reasons:

(a) Alcohol is not a product that should be conveniently available to the motoring public at a location where they purchase fuel for their vehicle. Such availability has a strong potential to encourage or facilitate alcohol related driving offenses and accidents that might not otherwise occur if a motorist in need of fuel had to make a separate stop to purchase alcohol.

(b) The nature of modern day automobile service stations and the multiple transactions employees must handle at the same time is inconsistent with the proper administration and enforcement of the State's liquor control laws and prohibitions on sales to minors and visibly intoxicated persons and the Michigan Liquor Control Code of 1998, MCL 436.1906, does not require server training programs for off-premises licensees and their employees.

(c) Many gasoline service stations are open later than other stores where alcohol is sold, creating the ability for persons who had been consuming alcohol in an on-premises establishment to conveniently purchase alcohol after leaving that establishment, increasing the chances of alcohol related driving offenses and accidents and potentially undermining the liability of on-premises licensees for serving alcohol to minors or visibly intoxicated persons under the rebuttable presumption in MCL 436.1801(8), that licensees other than the one who made the last sale are not liable for damages caused by a minor or visibly intoxicated person they served.

(d) Allowing the sale of alcohol at automobile service stations would increase the volume of motor vehicle traffic and parking demands on properties that were not planned or designed to accommodate the increased demand, resulting in increased vehicle conflicts and accidents.

(e) Locations that sell alcohol are a separate retail use under this chapter, which the City pursuant to its zoning authority to ensure that use of land is situated in appropriate locations and relationships, reduce hazards to life and property, and to promote and protect the public health, safety and welfare, has determined should not be allowed at automobile service station locations.

## **Alternative 2**

Staff suggests that if the Commission finds that the answers to any or all of the questions provided above would **not be a concern**, the Commission could recommend the second alternative to the City Council to clearly indicate that liquor, beer and wine would be permitted to be sold at Novi gasoline service stations, subject to approval by the Michigan Liquor Control Commission:

*Gasoline service station* means a place for the retail dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair, with the only permitted accessory uses being the servicing and minor repair of motor vehicles; retail sales of minor automotive related convenience products and accessories such as windshield washer fluid, motor oil, wipers and window scrapers; and retail sales of non-automotive related products, including (i) sundries such as gum, candy, cigarettes, newspapers, magazines, and other individually packaged convenience items; (ii) basic convenience grocery items, such as milk and

bread; (iii) pre-prepared food items that are not subject to licensing by the Michigan Department of Agriculture or the Oakland County Health Department; and (iv) non-alcoholic beverages as well as liquor, beer and wine as permitted by the Michigan Liquor Control Commission for off-premises consumption.

### **Alternative 3**

Staff suggests that if the Commission finds that the sales of alcoholic beverages at gasoline service stations could be mitigated through certain provisions, such as larger store size, and consistent with one of the current standards of the Liquor Control Commission, the third alternative may be appropriate for the Planning Commission to recommend to the City Council:

Gasoline service station means a place for the retail dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair, with the only permitted accessory uses being the servicing and minor repair of motor vehicles; retail sales of minor automotive related convenience products and accessories such as windshield washer fluid, motor oil, wipers and window scrapers; and retail sales of non-automotive related products, including (i) sundries such as gum, candy, cigarettes, newspapers, magazines, and other individually packaged convenience items; (ii) basic convenience grocery items, such as milk and bread; (iii) pre-prepared food items that are not subject to licensing by the Michigan Department of Agriculture or the Oakland County Health Department; and (iv) non-alcoholic beverages. The sale of alcoholic beverages shall be permitted subject to all of the Liquor Control Commission's standards and the following shall be demonstrated on the site plan:

- (a) The sale of alcoholic beverages shall be permitted as an accessory use, subject to the approval of the Liquor Control Commission and the standards imposed by the Commission and state law, only where the gasoline service station is located in a neighborhood shopping center composed of one or more commercial establishments organized and operated as a unit, which provides not less than 50,000 square feet of gross leasable retail space.

### **Additional follow-up to Planning Commission's previous questions**

Kristen Kapelanski prepared the following additional information for consideration by the Planning Commission in reaching a recommendation on this matter.

### **Studies linking alcohol sales at gas stations and instances of impaired driving**

At previous meetings, the Commission expressed an interest in reviewing any studies demonstrating the relationship between alcohol sales at gas stations and instances of impaired driving. The Community Development Department staff and members of the Police Department have done extensive research in an attempt to locate such a study but have **not** found anything specifically addressing gas stations and impaired driving arrests. The City's Traffic Engineering Consultant has also indicated that he is not aware of any such studies.

### **Existing Gas Stations in Novi – size and location considerations**

At the January 13<sup>th</sup> Planning Commission meeting, the Commission inquired whether or not any existing gas stations, in addition to the Sunshine Market, would meet the requirements of the Liquor Control Commission for the sale of alcohol at gas stations. The Liquor Control Commission requires gas stations wishing to sell alcohol to be a minimum of 50,000 square feet and/or carry merchandise totaling \$250,000 or greater excluding alcohol and gasoline. In addition, the point of sale must be a minimum of 50 feet from the nearest gas pump. The chart below includes the size of all existing gas stations within the City and an approximation of whether they would meet the required 50 feet distance between the point of sale and the nearest gas pump based on a review of

aerial photos. The \$250,000 inventory requirement was not evaluated as the City does not keep records of retail inventories. Based on the information below, only the existing Sam's Club store, which has an accessory gas station, would meet the minimum size requirement. The existing Sunshine Market currently has a liquor license.

<b>Existing Gas Station</b>	<b>Address</b>	<b>Approx. Size</b>	<b>Point of Sale to Gas Pump Distance <math>\geq</math> 50 feet</b>
Speedway	47395 W. Pontiac Trail	4,081 sq. ft.	No
Speedway	31275 Haggerty Road	2,409 sq. ft.	Dependent upon location of register
Sunshine Market	42355 W. 13 Mile Road	5,500 sq. ft.	Yes
BP	43420 12 Mile Road	1,275 sq. ft.	No
Amoco	39471 12 Mile Road	1,093 sq. ft.	Dependent upon location of register
Sam's Club	27300 Wixom Road	138,715 sq. ft.	Yes
Sunoco	43601 Grand River Avenue	1,409 sq. ft.	No
Mobil	43407 Grand River Avenue	1,802 sq. ft.	No
Speedway	24210 Novi Road	2,409 sq. ft.	Dependent upon location of register
Total	24141 Novi Road	2,248 sq. ft.	No
Sunoco	41425 10 Mile Road	2,688 sq. ft.	No
Marathon	21070 Haggerty Road	2,338 sq. ft.	No

### **Conclusion**

All three text amendment alternatives modify the Zoning Ordinance definition of gasoline service stations to include "mini-mart" or C-store types of uses, and also adjust the parking requirements for gasoline service stations. The three alternatives provide differing regulations regarding the sale of alcohol as a permitted use at gasoline service stations - prohibiting those sales; allowing those sales subject to LCC licensing; or allowing those sales in certain circumstances. Please refer to the attachments for the actual ordinance language being proposed.

Thank you again for all of the time spent considering these amendments.

January 15, 2010

RE: Zoning ordinance text amendment-to amend gas stations to sell alcohol

Kristen

I believe that our objectives in this matter are as follows:

1. Provide an atmosphere in Novi to be pro development.
2. To maintain Novi as a safe environment.
3. To allow fuel stations to develop the evolution of their business model to remain profitable.
4. To avoid unintended consequences with respects to modifying this designation for fuel stations so as not to adversely affect other business models in Novi such as food stores.

The City of Novi is pro development as evidenced through our hard work over the years including this issue. Our goal is to promote development that is safe and in a cost efficient manner. This results in a successful development.

The data with respects to the propensity of driving while intoxicated and the sale of alcohol at service stations was lacking but there is a probably of a positive correlation. I think that the correlation is more concerned with increased availability, the limited number of employees and limited retail training at a service station. The limited number and training of employees at a typical service station to cover critical tasks could lead to greater incidents of underage drivers acquiring alcohol. This is a result of the typical business model of a service station. You allocate personnel costs based on need, gross sales and profit. The human resource component is an expense line in a business model. Therefore retailers have been evolving to increase sales and profits to offset an increasing cost structure. This leads to additional departments being added to the model. The example is the traditional grocery store model that was 20,000 in the 1970's and expanded to the 50,000 plus size in the 1990 and 2000's. They typically added florists, prescription drugs, etc to their model in order to generate added sales and profits.

In the fuel station model they are adding greater amounts of food items and now they are seeking to add alcohol to their merchandise mix. It is interesting to investigate why they propose to add this category and I draw the conclusion that there is limited competition and a better margin than other categories. I am sure that the department would not be added unless there was a profitable demand for the product. Therefore assuming that there will be incremental sales for the product and this could lead to a greater incidence of alcohol related problems the business model must generate enough profit to support the necessary training and number of employees to ensure that the product is being dispensed as safe as possible. I would hold the service stations to the same level of care as the food stores. In fact it is arguable that these service station are no longer service stations but a new category of smaller food stores that sell fuel ie. (MINI MARKET).

I use the food store as my example because they seem to dispense the product as safely as possible and they are now installing fuel stations. They have the business model that can provide the necessary gross profit to have the number and the training programs for their employees. They also provide a critical service to the community with the distribution of food items. The fuel stations are developing a merchandise mix to compete with the food stores in a number of food categories. While their margins maybe higher due to their convenience nature, there is no reason they can't increase their competitive nature.

Therefore to create a level playing field for the food stores and Mini market I think that a new category should be created that provides for a 20,000 square foot store with a 1 per 200 parking ratio and meeting those other requirements of a food store with respects to a retail store. The 20,000 square foot building should require a cost of approximately \$3-4 million dollars to develop and would be a nice anchor to a future shopping center if they seek to create additional retail shops. The fuel pumps should be located at least 50 foot away from the store to reduce the incidents of alcohol being too convenient to drivers. I also think that they can probably generate approximately \$4-4.5 million in sales using a normal retail number of \$200 per square foot to provide the necessary number and training of their personnel.

Sincerely,

Dave Baratta

## MEMORANDUM



TO: BARBARA MCBETH, COMMUNITY DEVELOPMENT  
FROM: DAVID E. MOLLOY, CHIEF OF POLICE <sup>DEM</sup>  
KEITH A. WUOTINEN, LIEUTENANT <sup>KAW</sup>  
SUBJECT: GAS STATION LIQUOR LICENCES  
DATE: NOVEMBER 13, 2009

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### Background:

The Planning Commission is having a public hearing on November 18, 2009, regarding the issue of liquor licenses at gas stations. Currently, under State law, gas stations can apply for and receive a liquor license for pre-packaged beer, wine and/or liquor, under Michigan Compiled Law 436.1541 of the Michigan Liquor Control Code. The code also specifies that the gas station must have at least \$250,000.00 (at cost) of non-alcohol inventory (excluding gasoline), of those goods and services customarily marketed by approved types of businesses.

Some communities allow their gas stations to have liquor licenses, some prohibit this and others regulate the matter as far as business size, location and other factors. There are several reasons why a governmental body may choose to regulate or prohibit these types of sales.

### Reasons to prohibit gas stations from having liquor licenses:

- 1) Alcohol is a product that should not conveniently be available to the motoring public while purchasing fuel. This ease of access to alcohol while driving could increase the instances where a driver may choose to purchase alcohol and then consume it (illegally) while driving.
- 2) Gas station employees may have a difficult time detecting intoxicated persons in the same way as other licensed establishments before making the alcohol safe. Also there is no required server training for persons selling alcohol for off-premises consumption.
- 3) Many gas stations are open later hours than other traditional off-site stores, thereby increasing late night sales of alcohol to persons who may be leaving on-premises establishments, and could cause increased consumption by those persons driving.
- 4) The additional sales of alcohol could increase the amount of vehicular traffic at these gas stations beyond the point they were designed to handle.
- 5) If prohibited, this may decrease the number of drunk drivers on the roadways.

- 6) Having more licensed establishments in Novi will increase the number of businesses that the police department will have to inspect on a quarterly basis, thereby taking up more police time and resources.

Other Jurisdictions response on this topic:

The issue of whether to allow these licenses at gas stations in any given community has generated some discussion and debate in other communities as well, with some of those communities choosing to regulate or ban alcohol sales at gas stations. For example, in July 2009, the West Bloomfield Township Board of Trustees unanimously approved a zoning ordinance that operates as a complete ban on alcohol sales at gas stations. The rationale that was given in West Bloomfield is that such a ban "will reduce the amount of drinking and driving in West Bloomfield", according to Trustee Steve Kaptan, as quoted in a Spinal Column article on July 8, 2009.

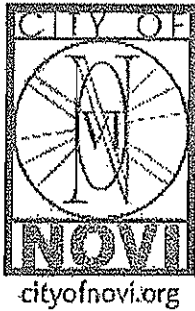
The Michigan Liquor Control Commission allows such a license, but they also do not like the licenses. Ken Wozniak, a spokesperson for the Michigan Liquor Control Commission, was quoted as saying "[t]he commission still, philosophically, doesn't like the idea. They think it's not a good public policy." (July 1, 2008, "The Fresh Story").

Recommendation and Conclusion:

The police department recommends that gas stations not be allowed to have these liquor licenses. However, if the licenses are allowed, it would be preferable to have them allowed in a way that permits reasonable regulation and restriction such that any unintended or undesirable consequences do not occur. This could be accomplished through Special Land Use Approval with some minimum requirements set forth, including a duplication of the requirements set forth in the liquor control code that requires a certain level of inventory (above and beyond inventory related to gasoline and alcohol). By making the inventory requirements part of the Novi Code, we can then also enforce those provisions. Currently the MLCC does not conduct any type of inspections to ensure that gas stations maintain the level of inventory that they claim to have. If Novi is going to allow these licenses then perhaps an inspection provision for local authorities can be included to verify stated inventory and other requirements.

cc: Clay J. Pearson, City Manager  
Thomas Schultz, Esq., City Attorney

## MEMORANDUM



TO: MEMBERS OF THE PLANNING COMMISSION  
FROM: KRISTEN KAPELANSKI, AICP, PLANNER *Kapelanski*  
THRU: BARBARA MCBETH, AICP, DEPUTY DIRECTOR  
SUBJECT: TEXT AMENDMENT 18.239 - GAS STATION LIQUOR SALES  
DATE: NOVEMBER 6, 2009

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At the October 28<sup>th</sup> Planning Commission meeting, the Commission discussed a possible text amendment to regulate liquor, beer and wine sales at gas stations. The Commission asked staff to provide additional information regarding the issue at an upcoming meeting, before "setting" a public hearing date. Among the additional information requested by the Commission were the location of existing and potential gas stations in the City of Novi, an understanding of what the State Law allows, information regarding surrounding community's regulations on this matter, and recommendations from staff.

### Liquor Control Commission

The Liquor Control Commission of the State of Michigan regulates and approves all liquor licenses within the State. Presently, gas stations are permitted to apply for and receive a liquor license for the sale of packaged alcohol to be consumed off the premises. In order to receive a license, gas stations must meet one of the two following requirements: 1) The station must be at least 55,000 square feet; or 2) The station must carry a minimum of \$250,000 worth of merchandise (excluding alcohol sales). An application would then be filed and reviewed by the Liquor Control Commission.

### Novi's Current Ordinances for Gas Stations

Novi's Zoning Ordinance currently allows gas stations as a Special Land Use in the B-2, Community Business District, and in the B-3, General Business District. Additionally, gas stations are a Permitted Use in the FS, Freeway Service District.

The standards for a gas station in the B-2 or B-3 districts are as follows:

- 1) Entrances to the gas station shall be no less than one hundred feet from a street intersection or from adjacent residential districts;
- 2) The minimum lot area shall be one acre;



- 3) A service station shall be located on a site so as to minimize its impact on any adjacent residential district, OS-1, OSC or B-1 District;
- 4) Attached canopies shall comply with the minimum setback standards of the district and detached canopies shall comply with the setback standards for accessory structures;
- 5) The storage of vehicles overnight is prohibited except for working vehicles (wreckers, etc.) and vehicles or trailers for general rental and those awaiting mechanical repair. Wrecked vehicles may be stored for a period not to exceed twenty-four hours;
- 6) A noise impact statement is required.

There are no additional special standards for gas stations in the Freeway Service district. There are a total of 12 gas stations currently located in Novi, with one of those located in the Freeway Service District, one located in the RA District as part of a PUD/Consent Judgment and the remaining 10 located in the B-2 or B-3 districts. Additional land is zoned or planned for land uses that would allow gas stations. Please see the attached maps for additional information.

#### Other Local Ordinances

I have done a review of ordinances in the area and found three Metro-Detroit communities that currently regulate the sale of liquor, beer and wine at gas stations. The zoning ordinances of West Bloomfield and Southfield prohibit the sale of any alcohol at gas stations. The City of Troy requires all gas stations wishing to sell alcohol to appear before their Liquor Advisory Committee which reviews the request to determine whether or not it meets the State standards for a liquor license to sell alcohol at a gas station. Generally these standards require the gas station to be either a minimum of 55,000 sq. ft. or carry a minimum of \$250,000 worth of merchandise mirroring the current State legislation. The Troy Liquor Advisory Committee then either recommends the City has no additional comment for the State or passes along a negative recommendation stating the applicant does not meet the required State standards.

#### Liquor License Already Granted

Staff is aware of only one gas station in Novi with a license from the Liquor Control Commission to sell liquor, beer and wine: the Sunshine Market at the southeast corner of Novi Road and Thirteen Mile Road. This license was reviewed by City Departments, including the Police Department, at the request of the Liquor Control Commission. Since there are currently no local ordinances regulating the sale of alcohol at gas stations, approval was recommended. Additionally, the State

Law appears to allow grocery stores and warehouse club stores (such as Meijer, Kroger, Costco and Sam's Club) to provide fuel pumps along with alcohol sales in the store. The Sam's Club on Wixom Road, south of Grand River has fuel pumps and alcohol for sale as part of their larger warehouse store operation.

#### Ordinance Options

It seems Novi would have several options when considering the policy issues related to the question and Zoning Ordinance provisions to address the sale of beer, wine and liquor at gas stations:

(1) The Planning Commission could recommend leaving the ordinance as it is, effectively allowing gas stations to sell alcohol provided the gas station operator obtain the proper approval from the State (which also leaves us to follow future changes at the state level without any local rules);

(2) A text amendment prohibiting the sale of any alcoholic beverages at gas stations could be recommended to the City Council (an example, modified from West Bloomfield's ordinance, was provided in the previous packet); or

(3) A text amendment listing the sale of alcoholic beverages at gas stations as a Special Land Use, subject to one or more of the minimum requirements for a liquor license from the State could be proposed for the B-2, B-3 and FS zoning districts. Gas stations are already a Special Land Use in the B-2 and B-3 districts.

Attached you will find a map indicating existing gas stations throughout the city and a map showing the districts that currently permit gas stations as either a Principal Permitted Use or Special Land Use as well as a pertinent newspaper article.

**PLANNING COMMISSION MINUTES EXCERPT  
JANUARY 27, 2010**



# PLANNING COMMISSION MINUTES

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CITY OF NOVI

Regular Meeting

Wednesday, January 13, 2010 | 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:** Member Baratta, Member Cassis, Member Gutman, Member Larson, Member Meyer, Member Prince

**Absent:** Member Greco (excused), Member Lynch (excused), Chair Pehrson (excused)

**Also Present:** Barbara McBeth, Deputy Director of Community Development; Kristen Kapelanski, Planner; Mark Spencer, Planner; Lindon Ivezaj, City Engineer; Deputy Chief Lindberg, Police Department; Kristin Koib, City Attorney

## MATTERS FOR CONSIDERATION

### 2. ZONING ORDINANCE TEXT AMENDMENT 18.239

Consideration for a recommendation to City Council for an ordinance to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance at Article 2, "Construction of Language and Definitions, Zoning Districts Map," Section 201, "Definitions," to amend the definition of gasoline service stations to specify permitted accessory uses with a prohibition on the sale of alcohol, which has been found to be contrary to the public health, safety and welfare and Article 25, "General Provisions," Section 2505, "Off-Street Parking Requirements" to revise the parking requirements for self-service gas stations.

Planner Kapelanski stated that this ordinance amendment had been discussed at previous Planning Commission meetings. At those meetings, the staff was asked for additional information which was then presented at subsequent meetings. We also had Deputy Chief Lindberg at two previous meetings to answer questions on the Police Department's professional recommendation on the proposed amendment.

This evening the Commission is asked to make a recommendation to the City Council in regard to the sale of liquor at gas stations. Three options of possible amendments have been included in the packet. These are the same options that were presented at the previous Planning Commission meeting. The first would be for the total prohibition of alcohol at gas stations, would amend the definition, and include revisions to the parking requirements. The second would amend the definition of gas stations, but would not prohibit the sale of alcoholic beverages at gas stations and also include the revisions to the parking requirements. The third amendment would allow for a limited prohibition allowing only those stores of 50,000 square feet or larger to sell alcohol, which is consistent with the State of Michigan standards. The third option also includes revisions to the parking standards for gas stations.

Also included in the revised packet are a memo summarizing the action thus far and some correspondence from Member Baratta detailing his thoughts on the proposed amendment.

Chair Pehrson asked if there was any correspondence.

Member Meyer read the correspondence into the record.

- Christine Roznowski, 28342 Carlton Way Dr., Novi, MI 48377

Commission Members: Baratta, Cassis, Greco, Gutman, Larson, Lynch, Meyer, Pehrson, Prince;

I am writing in regards to the Planning Commission Agenda meeting on 1/13/2010, Wednesday at 7:00PM. I attended the meeting with the Carlton Forest II group. While I was there, I sat through the discussion and debate for the Zoning Ordinance Text Amendment 18.239.

I would like to voice my opinion on this matter and the way it was handled. First, I do not approve the sale of alcohol in any gas station. A gas station is for gas mainly and maybe some snacks or soda pop, but no alcohol. Alcohol can be purchased at party stores or grocery stores. But not gas station. I oppose it!

I am sure many other people that live in Novi would feel the same if they were at this meeting and heard this Amendment 18.239. I hope this is not approved and that it is not only left to the Commission Members to decide for all of us.

One more comment and that is that you have microphones on your desk in front of all of you and why don't you speak into them so audiences can hear you more clearly.

Chair Pehrson stated that there was no other Correspondence, so he will turn it over to the Planning Commission for consideration.

Member Baratta asked for a clarification for Option 3 with respect to the 50,000 square foot minimum size. As Member Baratta reads subsection A, it basically says that the sale of alcoholic beverages shall be permitted as an accessory use subject to approval of the appropriate licensees by the Liquor Control Commission and subject to the standards imposed by the Commission and State Law only where the gas station is located in neighborhood shopping center, composed of one or more commercial establishments organized and operated as a unit, which provides not less than 50,000 square foot of gross leasable area. Member Baratta stated that his understanding of this is basically a gas station could be any size as long as it is within a 50,000 square foot shopping center or more.

Member Baratta addressed City Attorney Schultz and asked if that was a fair interpretation of that standard.

City Attorney Schultz answered that the language was out of the State Statute and the administrative regulations. The standard measures the center, not the gas station, so Member Baratta is correct. There are some other technical details like parking spaces and things like that, but in terms of the gas station building, the only thing that would be required is the pumps must be at least 50 feet away from the point of purchase.

Member Baratta stated that the concern may be a misunderstanding about the write-up. Member Baratta didn't understand the proposed standard correctly versus the Statute and maybe that is where Member Cassis heard the 50,000 square foot number. Member Baratta also believes that if this were 1 unit at 50,000 square foot that would also fit within that definition. Items that came up in tonight's discussion when Commission Cassis addressed Mr. Bowman was that first, Mr. Bowman's building was 6,000 square foot and second, Mr. Bowman would absolutely no objections to a quantitative limitation on building size. Quantitative, in Member Baratta's definition, includes size, square footage, and not land mass, but building square footage. Member Baratta thinks that what Mr. Bowman is trying to say is that the proposed gas station is really a mini-market, party-store, and convenience store - however you define it - that sells gas. Number two, Mr. Bowman talked about a qualitative limitation. Member Baratta's definition of a qualitative limitation is training, personnel and things of that nature.

Member Baratta stated that the staff did an outstanding job in putting together the packets this week, with all the details he was looking for. Reading through the packets, and recalling all the comments that the Commission has had over the last several meetings on this, a few things stand out. Starting with Deputy Chief Lindberg, he was concerned basically having a one man gas station doing various tasks where the worker may not properly focus on the sale of the products. Looking at a quantitative limitation on square footage where you had a larger building that is a C- store, convenience store, or party store that sells gas, it would generate sufficient sales volume to probably require more than one person to operate that store. With a larger building size, maybe you would not have that same issue that Deputy Chief Lindberg brought up.

Member Baratta continued by stating, one could do a little business modeling on the type of plan that Mr. Bowman's client is considering, although he did not present a site plan today it was displayed and visible to the Commission. The plan showed basically a 6,000 square foot building. Assuming it's a standard retail building and it does between \$200 and \$250 dollars a square foot, this would result in decent margins. This type of business model is something that is going to do upwards of a million or million and a half dollars or maybe a little larger. C Stores have a very good margin; fifty percent is not unheard of. So, if you have a business model that going to generate significant profit, then you can invest in human resources and train the human resources. To properly operate under this business model, that requires more than one person working in the store. Member Baratta thought that was quite interesting.

Member Baratta further stated, that Chair Pehrson spoke in one of the prior meetings how in his experience a gas station in Texas had a limitation of selling alcohol up to 11:59PM. There was a significant fine if the gas station attendants were caught selling alcohol after that time. Also, in Chair Pehrson's example, there was significant training for the human resources on how to sell this product. Member Baratta thought this would satisfy Deputy Chief Lindberg's second concern, and that is, not only not having the limited number of personnel, but trained personnel to properly dispense the product.

Looking at our three options: (1) Don't sell alcohol at a gas station. Member Baratta stated that this type of facility he is describing is not a gas station, it's a convenience store that sells gas or a mini-market that sells gas. Member Baratta thinks these models are combining into one larger model. (2) Let the State's Statute control the matter in Novi. Member Baratta is not comfortable with having the State control liquor sales at gas stations. Member Baratta thinks we have a responsibility in Novi to where we need to have Ordinances and control of what is permitted, and where it is permitted in Novi. Member Baratta is also concerned about one of the letters in the packet that talks about the State's process of just contacting the applicants telephonically to ask if they have \$250,000 of inventory and not conducting physical inspections. (3) The third alternative basically says that if the ordinance is approved, alcohol may be sold if you are in a shopping center of 50,000 square foot or greater. The ordinance doesn't control how big that gas station business is that sells alcohol, or that C store that sells alcohol.

Looking at all three of the alternatives, Member Baratta suggests that the Commission consider option 3 with a limitation in the following manner: The size of the building should be at least 15,000 square feet. Member Baratta stated that he sent out a note that talked about grocery stores that were normally 20,000 square foot selling both fresh product and with refrigeration. Member Baratta now thinks that about 15,000 square foot of selling square footage is what you will find in those grocery stores. Proposing a limitation of about 15,000 square feet, and at \$200 a square foot, there could be a three million dollar business.

Member Baratta stated, that at that point, the business could be in a shopping center or it could be a free-standing. A shopping center would be anchoring and attracting traffic and that would further promote development for Novi. A free-standing 15,000 square foot store would be a business that can generate significant profit and would have significant human resources with sufficient training. At 15,000 square foot, this business would generate about a three or four million dollar investment in Novi. Member Baratta thinks that's pretty significant. This business model he describes could potentially work, and also bring a business to Novi.

Member Baratta suggested that the Commission can put in a limitation where the store cannot sell beer, wine and liquor past midnight. The store would be required to meet the parking ratios of general retail, because this is truly general retail, and the ratio of five spaces per thousand square feet is absolutely applicable. Member Baratta stated that this model he describes would be developed only in limited places and would not be considered a traditional gas station that sells alcohol.

Member Meyer stated that he appreciated Member Baratta's comment on the limitation on the hour of sales of alcohol, because in the actual Ordinance, under Part I, C, it says many gasoline service stations are open later than other stores where alcohol is sold, creating the ability for persons who have been consuming alcohol in an on-premises establishment to conveniently purchase alcohol after leaving the establishment. If limitation on the hours of sales were to be included in any recommendation that the Commission is going to make, Member Meyer would support the statement that no alcohol would be sold after midnight.

Member Meyer also stated that when he was at the State of the City Address, he was being pulled in both directions by people talking with him about this ordinance amendment. Some people would say don't vote for this because there is a Kroger right across the street where beer, wine and alcohol can be purchased. Member Meyer thought, if there is a Kroger across the street, why do I want to oppose someone who is doing what's American, namely competing with the Kroger across the street. Member Meyer said that he then had someone else telling him to vote favorably on this and this person was really hoping Member Meyer will be at the meeting and voting in favor of this. Member Meyer stated that there are a variety of reasons that we could all take a stand on this. Member Meyer doesn't know if he agrees with the 15,000 square feet limitation proposed by Member Baratta. Member Meyer suggested that he thinks the Planning Commission is sometimes micro-managing too much from this table. The Ordinance is about alcohol sales at gas stations and Member Meyer is not sure about these different ideas of 50,000 square feet and \$250,000 worth of merchandise, not including the alcohol.

Member Cassis had a question for City Attorney Schultz. Member Cassis said he should know this, but wasn't there an Act passed that prohibits people from taking the rest of a bottle of wine with them, if not finished at a bar. Member Cassis stated that we are talking about some recklessness from selling beer and wine from gas stations.

Chair Pehrson answered yes, that most likely that is the case. Anything that we do relative to this Ordinance or

something else, there will be people that will abuse the situation. Deputy Chief Lindberg is right, we hope we never see these things happen in Novi. The business circumstances are the kinds of things we look at these days. For example, when we looked at a Kroger that wanted to go in at Ten Mile and Novi Road, the conversation at that time was the patterns in which people buy their groceries and food items these days are changed from the patterns they used to follow. You may go by a Mini-Mart and purchase X, Y, and Z and Nancy gets A, B, and C from that Mini-Mart. You very rarely go back now to a Kroger or Busch's and do your full scale of \$300 dollar a week grocery shopping. Chair Pehrson said that our patterns have changed and we cannot protect everybody from every consideration. Chair Pehrson thinks it's best compromise in this situation is in agreement with Alternate 3 where the ordinance puts some limitations on the size or the scope of the building or the sale amount. We then trust that the operator does not want to lose their liquor license if this is part of the requirements of the Michigan State Liquor Control Commission. We trust that the store owners are going to be responsible citizens and if they see someone walk in to a convenience store that is staggering, or if it's after hours, or if the patron looks younger, the patron will be carded and identified so that the sale does not take place. Chair Pehrson stated, this is not done to micro-manage, not to make judgments and not to try to see into the future, because we cannot do any of those. Chair Pehrson prefers Option 3 right now.

Member Cassis noted he did offer a few more things at the previous Planning Commission meeting in addition to the minimum building size requirement suggested by Member Baratta this evening. The Police Department would be under a greater burden since in addition to keeping track of the existing liquor licenses they would, should sales at gas stations be permitted, also be required to perform inspections on gas stations selling alcohol. This would mean increasing their patrolling of the area. Member Cassis suggested adding a fee to cover costs for these additional inspections and reports from the operator of the gas station on how many personnel, hours and inventory they have in stock to alleviate some of the work for the Police Department. There are concerns about the State supervising the situation and we are not sure they will adequately pursue it and some of those previous suggestions should be taken into consideration if a motion is made.

City Attorney Schultz stated he certainly could understand the sentiment and the idea that there would be an extra level of comfort if people selling alcohol at 1:30AM at a gas station were trained like a bar staff and not like a gas station attendant who has a refrigerator with alcohol in it. However, those sorts of regulations and concerns start to get away from what is essentially a land use question.

City Attorney Schultz explained that the Planning Staff examined the State statute regarding when alcohol sales at a gas station are permitted. A gas station could be in a neighborhood shopping center of 50,000 square feet or greater and alcohol sales would be permitted. Alternately, a store of any size with \$250,000 worth of merchandise excluding alcohol and gasoline is permitted to sell alcohol. That is how alcohol sales are permitted in the Sunshine Market at Thirteen Mile Road and Novi Road. Member Baratta's suggestion would work if the Commission supports it. We would just add on a 15,000 square foot minimum building size to whatever the language of the State statute is. The question before the Commission is what sorts of things should happen at a gas station? Gas should be sold; chips should be sold, and the Commission does, or does not think beer or wine should be sold. City Attorney Schultz thinks it is as much a land use question as should the buildings on Main Street be six stories or eight stories. The Planning Commission needs to say, we sort of expect when we drive around Novi that we can pull into gas station and buy beer and wine or we don't. That is a land use question and there may be good reasons that relate to training or amount of income or revenue, but the Planning Commission essentially needs to determine whether those sorts of sales fall within the uses permitted at a gas station.

Member Cassis asked City Attorney Schultz if Member Baratta's suggestion of a 15,000 square foot minimum building size shouldn't be included in a motion.

City Attorney Schultz clarified he was not commenting on a minimum building size requirement but wanted to ensure the Planning Commission was focusing on the land use question and not specific reporting requirements.

Member Cassis accepts that and thinks City Council at any time could do those things because they are the legislative body.

City Attorney Schultz agreed that City Council is the legislative body of the City. However, the Liquor Control Commission could give a liquor license to a gas station even if they don't meet the requirements in the city's ordinance. The Liquor Control Commission is not required to abide by city ordinances. The Liquor Control

Commission would more likely to do that if the ordinance is concerned with technical reporting requirements, because that is what they regulate.

Member Baratta addressed City Attorney Schultz asking if he would have a legal objection or legal concern with re-licensing each year.

City Attorney Schultz stated that the Planning Commission should stay away from the license itself and instead should describe the land use leaving the license part to the Liquor Control Commission or Police Department because they have means of recourse. A business selling alcohol will have a current license or they won't be selling alcohol at all and our Police Department can investigate that and deal with that.

Member Baratta asked if City Attorney Schultz would have an objection or some legal issue with regard to the time in which a business could sell alcohol.

City Attorney Schultz replied he would have an objection to such a condition.

Member Baratta noted he suggested 15,000 square feet as a conditional size limitation based on his understanding of running a business with regards to construction cost, operating cost, expected profits and related items. Member Baratta asked if his fellow Planning Commissioners had any alternate recommendations or if a 15,000 square foot store seemed reasonable.

Member Lynch said he would support a 15,000 square foot building size requirement.

Motion made by Member Baratta, seconded by Member Lynch:

**Motion to recommend approval of Zoning Text Amendment 18.239 to the City Council of Alternative 3 as amended to add that a building where gas is sold shall be a minimum of 15,000 square feet.**

City Attorney Schultz stated that he was fine with the concept of the motion but did have some recommendations on the exact wording of the amendment. City Attorney Schultz recommended the Planning Commission include all of the requirements of the state regulations in addition to their own requirement that the building must be 15,000 square feet.

Member Baratta accepted the suggested amendments, seconded by Member Lynch.

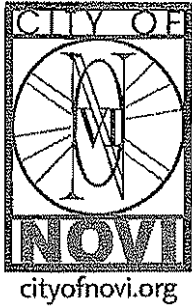
Motion made by Member Baratta, seconded by Member Lynch:

**ROLL CALL VOTE ON APPROVAL OF ZONING TEXT AMENDMENT 18.239 AND RECOMMENDATION TO CITY COUNCIL, MOVED BY MEMBER BARATTA, SECONDED BY MEMBER LYNCH.**

**Motion to recommend approval of Zoning Text Amendment 18.239 to the City Council of Alternative 3 as amended to add that a building where gas is sold shall be a minimum of 15,000 square feet and the point of sale of the alcohol shall not be less than 50 feet from where the fuel is dispensed and an establishment shall carry at least \$250,000 worth of merchandise at cost, excluding alcohol and gasoline. Motion carried 5-2. (Nay – Member Gutman, Member Meyer)**



**PLANNING COMMISSION MINUTES EXCERPT  
JANUARY 13, 2010**



# PLANNING COMMISSION MINUTES

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CITY OF NOVI

Regular Meeting

Wednesday, January 13, 2010 | 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:** Member Baratta, Member Cassis, Member Gutman, Member Larson, Member Meyer, Member Prince

**Absent:** Member Greco (excused), Member Lynch (excused), Chair Pehrson (excused)

**Also Present:** Barbara McBeth, Deputy Director of Community Development; Kristen Kapelanski, Planner; Mark Spencer, Planner; Lindon Ivezaj, City Engineer; Deputy Chief Lindberg, Police Department; Kristin Kolb, City Attorney

## PLEDGE OF ALLEGIANCE

Member Prince led the meeting attendees in the recitation of the Pledge of Allegiance.

## APPROVAL OF AGENDA

Moved by Member Prince, seconded by Member Cassis.

**VOICE VOTE ON THE AGENDA APPROVAL MOTION:**

**Motion to approve the January 13, 2010 Planning Commission Agenda. Motion carried 6-0.**

## PUBLIC HEARINGS

### 1. ZONING ORDINANCE TEXT AMENDMENT 18.239

Public Hearing for a recommendation to City Council for an ordinance to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance at Article 2, "Construction of Language and Definitions, Zoning Districts Map," Section 201, "Definitions," to amend the definition of gasoline service stations to specify permitted accessory uses with a prohibition on the sale of alcohol, which has been found to be contrary to the public health, safety and welfare and Article 25, "General Provisions," Section 2505, "Off-Street Parking Requirements" to revise the parking requirements for self-service gas stations.

Planner Kapelanski stated that, at previous meetings the Planning Commission was presented with an amendment to prohibit the sale of alcoholic beverages at gas stations. The Commission considered the amendment and asked the staff for additional information which was then presented as a subsequent meeting. As previously mentioned, this is an issue that is coming up more often as of late as evidenced by the supplementary public hearing letter distributed at the beginning of the meeting which Member Meyer will reference later.

Planner Kapelanski went on to note this evening the Commission is asked to hold a public hearing on the issue and make a recommendation to the City Council regarding the sale of liquor at gas stations. Three options of possible amendments have been included in your packets: 1) Total prohibition of alcohol sales at gas stations and it also included revisions to the parking requirements for gas stations; 2) The second option amends the definition of gas stations, but does not prohibit the sale of alcoholic beverages there and again, it includes the parking revisions. 3) The third option allows for a limited prohibition, allowing only those stores of 50,000 square feet or larger to sell alcohol, which is consistent with the State of Michigan standards and this option also includes revisions to the parking standards. Deputy Chief Lindberg is here to answer questions.

Chair Gutman opened the public hearing to the public and asked if there was anyone who wished to speak.

Mike Koza, 6253 Runnymede Court, West Bloomfield Michigan came forward and asked if he could hear the options again.

Planner Kapelanski stated that the Commission was presented with three different text amendments. The first alternative amends the definition for gas stations and also includes a total prohibition of the sale of alcohol at any gas station. The second alternative amends the definition for gas stations but allows alcohol sales at any gas station

provided the gas station gets the required liquor license from the State. The third alternative amends the definition for gas stations and allows alcohol sales at gas stations 50,000 square feet or larger. Planner Kapelanski stated in reference to the third alternative, the 50,000 square feet refers to the size of the building and not the land.

Kevin Banham, City of Orchard Lake came forward and indicated he was the owner of the USA 2 Go and managing partner of USA 2 Go gas station and convenience stores, the company that is intending to purchase land on Beck Road between Grand River Avenue and I-96 for the purpose of building a gas station. Mr. Banham would like to illustrate the company's perspective as gas station operators in regards to the issue that at hand, which is the selling of alcoholic beverages.

Mr. Banham stated that the sale of alcoholic beverages in gas stations in Michigan is a fairly new concept, unlike the rest of the country. However, for the past 4 to 5 years, it has proven to be a critical component that convenience stores need. It is critical and irreplaceable, not in the sense that extra dollars are generated, but it is needed to replace a lost portion of the income that the convenience stores used to make in the old days.

The gas station/convenience stores industry has changed tremendously. The days of the small stations and repair shops are gone due to the demand of communities like Novi. Repair shops, small kiosks that sell cigarettes and candy are gone and gas stations now-a-days are a one-stop shop. It is all about convenience and what it offers. It is everything a supermarket would offer, but on a smaller scale. Liquor and alcoholic beverages represent more than twenty percent of the sales of these stores.

For investors, it would be impossible to build something like the USA 2 Go that has been proposed to the City without having the ability to sell alcoholic beverages because it is not financially feasible anymore. As far as restrictions, I think the State of Michigan, unlike other states has put in enough restrictions to make sure that no one will be able to abuse the system. Such as things like the distance from the pump to the building, this implies a large property, and the minimum amount of inventory, which implies a large store. This way alcohol would not be available at every corner of the City and it would be limited to certain projects at a caliber similar to the proposed USA 2 Go.

Mr. Banham concluded noting the one thing the Commission should think about is that the proposed USA 2 Go is really not a gas station that happens to sell alcoholic beverages, but is more like a high-end gourmet, mini supermarket that happens to offer gas out of convenience to the residents of the City of Novi.

Blair Bowman, 41600 Grand River Avenue, Novi Michigan stated that he had been before some of the members at the committee level working on the Master Plan and zoning efforts and he wanted to briefly give his comments on the issue. The applicant for this proposed gas station is one of the highest quality operators, one of the finest stations in the business and this is going to have to be a very high quality project. Blair Bowman completely understands the community's interest in having standards and enforcing those and feels that it is important that to look at text amendments to make sure that those standards are upheld and enforced. The concerns are that the State may or may not continue to regulate as they have and may be more lax on the standards that are currently in place. It is understandable and only makes sense that the City would want to have some enforcement in place.

Blair Bowman is certainly in favor of efforts enforce current regulations that are in place at the State level. Even if the State were to change their regulations later, the City could keep regulations similar to the State's in place for the future.

Blair Bowman encouraged the Commission to think in terms of the City's own zoning efforts and the likelihood of other additional stations. This is not going to be a proliferation issue and even with the existing restrictions in place, it is not likely that a lot of existing stations would be able to qualify. However, a 50,000 square foot facility is just not reasonable. That is completely out of scale with the purpose of the freeway service style gas convenience centers that are currently being developed in other communities. The proposed USA 2 Go gives the City an opportunity in these difficult times to take a positive step forward and start to initiate some of the development the hopefully will spark some positive economic development programs in that corridor.

Blair Bowman requested the Planning Commission talk about the three options and how each of them changes the definition of a gas station and inquired about the specific changes to the definition.

Planner Kapelanski stated to Mr. Bowman that the proposed amended definitions are quite lengthy and that she could supply him with a copy. In summary, the definition clarifies that a gas station also has convenience store type sales and includes the sale of sundry type goods.

Mr. Bowman thought this was consistent with their proposal and Kevin Banham did a nice job of outlining that it is just not a gas station with a cooler with beer and wine and alcohol for sale. The proposed USA 2 Go is truly a convenience center in nature with multiple tenants and so forth. This is a sizeable building with a sizeable investment. So, even with some requirements in regards to that investment level and the type of facility being proposed, it would be totally appropriate in that location and the applicant would welcome the opportunity to work with the Commission on that.

Mike Koza stated that he had a couple of more things to say about the proposed business. At this time, USA 2 Go has three existing stations that have beer and wine sales. Two of the stations have beer and wine, and the other one has beer, wine and liquor. Unfortunately there are no recommendation letters here this evening, but letters are available from the cities and townships that of our current locations. USA 2 Go is a first class operation that hires and trains quality people/employees that does not want to do anything wrong like selling to minors. From a security standpoint, USA 2 Go stations are well lit and secure, and we can supply addresses for any commissioners that would want to go there. The USA 2 Go organizations does not condone that gas station on every corner have beer and wine. For instance, the older stations are 800 to 1000 square feet and could never hold \$250,000 worth of inventory and could not meet the 50 feet from the pump to the door of the building requirement. The old style station pumps do not qualify and the pumps are typically 20 feet from the point of sale and do not meet the \$250,000 minimum inventory for beer and wine. There will not be corner stations coming in and asking to have beer and wine.

Member Meyer noted Mr. Koza also sent a letter to the Planning Commission. Member Meyer read the letter into the record.

Dear Chairman and Planning Commission Members:

It is my understand that the City of Novi is considering an ordinance restricting beer, wine and liquor sales from gas stations and convenience stores. As owners and operators of high-end gas stations and gourmet convenience stores throughout southeastern Michigan, we respectfully request that the Planning Commission evaluate (i) the necessity and finality of this proposed ordinance and (ii) that implementation of the ordinance will lead to lower quality development of gas station and gas/convenience stores in the City.

In our opinion such an ordinance is not necessary as the State of Michigan already has regulations that limit gas/convenience centers that are allowed to sell beer, wine and liquor. These regulations require that (a) the convenience store be at least 50 feet from the pump; (b) the store have an inventory value in excess of \$250,000, and (c) the store must have a minimum amount of gross floor area. The regulations that are currently imposed by the State of Michigan and the Department of Transportation are strict and should adequately protect the City from a mass proliferation of gas stations/convenience stores looking to sell liquor as does limited availability of liquor licenses.

Next week we will be presenting to the Planning Commission a concept to rezone a parcel of property at Beck Road and Grand River for the development of a gas station and gourmet convenience store. In order to financially afford this development, however, it is imperative to sell beer, wine and liquor. This would be done in strict compliance with the State's requirements.

Rather than enacting an ordinance that completely prohibits the sale of beer, wine and liquor at gas stations, we believe a prudent and rational approach is to consider a City ordinance that mirrors the State regulations and would allow the City to enforce those regulations. We're not aware of any empirical information to suggest that motorists are more inclined to drink and drive because of the availability of beer, wine and liquor at a gas station versus at the local Kroger. The motorists who choose to violate the law will do so whether buying the alcohol from a gas station or from the Kroger store across the street. Treating gas stations with a convenience store differently from other retailers doesn't seem fair because gas is the loss leader instead of the weekly food special.

Accordingly, we respectfully request the ordinance in its current form not be recommended for passage by City Council. We look forward to working with the community to advance this quality development in Novi.

If you have any questions or concerns, do not hesitate to contact me.

Sincerely, Mike Koza, Novi Mile, LLC

Chair Gutman closed the public hearing and asked if anyone from the Planning Commission wished to speak.

Member Baratta requested staff explain the three alternatives that were presented so they were clearly understood. For example, does the first alternative that prohibits all sale of alcohol at gas stations also clarify the definition of a gas station?

Planner Kapelanski answer that is correct and the first alternative also changes the parking requirements.

Member Baratta asked what the parking requirements would be.

Planner Kapelanski stated that the parking requirements change from one parking space required for each fifty square feet of useable floor area in the cashier's area and office area to one parking space per two-hundred square feet of useable floor area.

Member Baratta stated that then this makes it more consistent with the general retail parking ratio.

Planner Kapelanski answered correct.

Member Baratta stated that the second alternative is the allowance of alcohol sales at gas stations and this alternative clarifies the definition of gas stations and revises parking requirements for gas stations, but does not address the sale of alcohol at gas stations, which effectively allows the Liquor Commission to regulate those sales with no prohibition or regulation by the City. So, the only difference is that we don't prohibit that product category and that the parking ratio is all the same.

Planner Kapelanski answered correct and the parking ratio is all the same.

Member Baratta stated that the third alternative includes a regulation requiring a minimum of fifty-thousand square feet of gross leasable area in order for a gas station to be permitted to sell alcohol. Essentially, a store that large is not a gas station, but a store that happens to sell gas.

Planner Kapelanski answered that is what the fifty-thousand square foot requirement would imply.

Member Baratta confirmed that the all alternatives would have the same one to two-hundred parking ratio. Member Baratta questioned that if Commission recommends the City allow the sale of alcohol at gas stations and if City Council approves the sale of alcohol in gas stations, how many gas stations with this classification could be built in Novi.

Planner Kapelanski answered staff would have to look at the existing gas stations and to determine if they would meet the fifty foot requirement from pump to the door and the fifty-thousand square foot minimum size requirement. Planner Kapelanski did not believe that many stations would meet the fifty-thousand square foot threshold.

Member Baratta stated that he had concerns with that size requirement. Member Baratta understands the business model of the fuel station and issues with respect to the propensity to have drunken driving issue since he previously lived in Texas and gas stations sold alcohol for years. Member Baratta had concerns with this correlation and looking at the provided data, did not see any studies that linked both. Member Baratta said he believes there is a correlation, but has not seen a study that demonstrates that. Member Baratta does not think that Novi should, or couldn't in good conscious recommend Novi significantly expand the number of establishments that sell alcohol within the City limits. Another issue is the propensity to drink and drive and as demonstrated in the various articles provided by staff. Even though it is important for gas stations to survive and this business model to prosper, Member Baratta has concerns

with the outstanding issues. Member Baratta's recommendation to the group, and vote in this matter, is that the City prohibit the sale of alcohol in gas stations until additional data regarding liquor sales at gas stations and drunk driving is available.

Member Meyer stated that the text for alternative two is misstated. It reads, the allowance of alcohol sales at gas stations, and yet the description does not address the sale of alcohol at gas stations.

Planner Kapelanski answered that was correct and it was mis-stated in the memo.

Member Meyer can't help but believe there would still be some regulation by the City through the Police Department. Member Meyer was not sure he understood the alternative two correctly, because it seems like it is inviting people to say no to alternate number two as whom in their right mind would say I do not want any prohibition, or regulation by the City.

Planner Kapelanski stated that she cannot speak to what the Police Department would do. At the previous meeting, Deputy Chief Lindberg spoke about inspections that were done and he is available for questions again this evening. Planner Kapelanski stated that from a Community Development Department perspective, the Zoning Ordinance would not be regulating the sale and the City would leave that strictly to the Liquor Control Commission as presented in alternative two.

Member Meyer asked if Deputy Chief Lindberg could come forward.

Deputy Director McBeth stated that she would refer the Commission to the actual language that is in the packets for a little more clarity. Alternative two describes the accessory uses one might expect at gas stations including the sale of sundries like candy, cigarettes, milk, bread, and prepared food items as well as non-alcoholic beverages, and alcoholic beverages such as liquor, beer and wine as permitted by the State.

Member Meyer asked Deputy Chief Lindberg to address the language in alternative two. Member Meyer cannot help but believe that our Police Department has some regulation related to the sale of alcohol.

Deputy Chief Lindberg answered Member Meyer was absolutely right and that one of the reasons the Police Department does not support alcohol sales at gas stations is that it would require some additional resources to be expended by the Police Department, not necessarily regulating additional liquor establishments, but additional time that would have to be put in. The Police Department does open liquor inspections once a quarter, and there are currently 95 Liquor Licenses in the City of Novi. Once a quarter, an officer goes out and does what's called an open liquor inspection. The officers are in uniform and they inspect the licenses to see that they are properly posted and in order in relation to the license itself. Letters are sent to establishments saying police officers will be coming in and checking to see if they sell to anyone under age. Additionally, twice a year, the Police Department has been doing decoy operations and going into all establishments that sell alcohol with someone who is underage and checking to see if that establishment will sell to that underage person. The Police Department does not check inventories and will not be able to teach an officer how to count to make sure there is \$250,000 dollars worth of inventory, and an officer will not be measuring the square footage or a building or doing any of the additional things that would be outlined in the Ordinance and/or the State Statute. As far as regulations, that is what the Police Department does for quarterly open liquor inspections as well as decoy operations.

Member Meyer asked Deputy Chief Lindberg if the Police Department had any data or studies as Member Baratta mentioned, about the propensity of alcohol sales at gas stations and more drinking and driving.

Deputy Chief Lindberg stated that Member Baratta is absolutely right in what he stated. Deputy Chief Lindberg said that the Police Department does not have any studies that come out of other states or anywhere else that tally the amount of drunk drivers or fatalities based on whether alcohol was purchased from a gas station or if an impaired driver consumed it on-premises. There are ways the police can usually back-track and find out if a drunk driver has been in an establishment drinking. But to find where a driver purchased alcohol and then went off-premises to drink it, that information is not available.

Member Cassis had questions for Deputy Chief Lindberg related to his complete opposition to the sale of alcohol at

gas stations. Member Cassis noted in thinking about this ordinance and things that are of concern to the Police Department, for example the number of reports that are being made by going to the establishments along with required personnel and the number of visits those personnel make, could the establishments do anything to alleviate some of those concerns? Member Cassis suggested posting of a sign indicating the sale of liquor, beer and wine to a minor is prohibited. Perhaps that would address some of the Police Department's concerns and educate the public about the prudence of purchasing liquor, beer and wine from that establishment.

Deputy Chief Lindberg stated that he is not here to speak about a specific business but to address the business of the Police Department, which is enforcement. Deputy Chief Lindberg liked all the ideas Member Cassis offered and the more signs there were outlining the laws, the better. But additional signage will not to change the amount of resources that Chief Molloy and I and the rest of the Police Department will have to expel to conduct enforcement.

Member Cassis suggested regular reports by the owners of this gas station to the Police Department every month, or every two months, listing the number of employees, the ages of employees as well as any other specification the Police Department might want to include.

Deputy Chief Lindberg stated that certainly would be possible, but did not think it could be necessarily written into the Ordinance. Also, in any establishment in the City where the Police Department recognizes a problem, officers run and keep reports on how many instances have occurred at each liquor establishment on a monthly basis. If the officers see some establishments that are having a bit of an issue with compliance, the officers are going there and speaking and meeting with the management as well as volunteering ideas and suggestions about how to address those problems. The Police Department cannot tell store owners and management how to operate their facilities, and the Department will not take the responsibility of doing training, but will direct owners and management to the proper training.

Member Cassis asked Deputy Chief Lindberg if reports and inventories, came from the establishment to the Police Department on a monthly basis, along with the number of employees, ages, and so forth, would that help with certain requirements and certain standards.

Deputy Chief Lindberg stated that it would help as well as create a nice working relationship between the Police Department and the establishment, providing the business is willing to do that. Whenever can be done to open up dialogue with any of these establishments, is great. However, none of this additional cooperation is going to change the Department's view of whether or not alcohol sales at gas stations should be permitted.

Member Cassis refrained from making any kind of motion at this time and would wait to hear from his colleagues. Member Cassis said he respects Member Baratta and Member Meyer as far as talking about the propensity of people that go into a gas station and buy liquor and the likelihood that they would drink and drive. Member Cassis would like to get a report as far as that is concerned.

Member Cassis said he was interested in the third alternative, which included the fifty-thousand square foot or greater requirement. Recalling the USA 2 Go comments at the Master Plan and Zoning Committee the USA 2 Go development may be willing to dedicate a larger parcel of property for this gas station. The proposed USA 2 Go would be a quality, larger store and more of a food establishment that on the side is selling gas instead of the other way around. Member Cassis also wanted to know if the applicants will have cameras in place that show who is purchasing liquor, beer and wine. Perhaps the applicant could post a larger sign with writing on it showing beer and wine section here and advise the purchaser of these items to take note of the sign and requirements of the law. The City could compose some appropriate language and ask the City attorney to write or compose something that would go along with that idea. Member Cassis would suggest the gas station make regular reports of inventories, supervisors on staff, the number of employees, ages, working schedules, responsibilities etc. and all employees should be sent to training on how to dispense liquor, beer and wine.

Member Prince stated that listening to members of the public that spoke this evening, Mr. Koza and Mr. Bowman, it appears what they are proposing is something other than a gas station, as I understand the traditional gas station. The proposed USA 2 Go seems more on the line of a market / convenience store. Member Prince questioned staff, does the mere fact that a business sells gas make that a business establishment a gas station?

Planner Kapelanski stated that in a general answer that would be yes. Staff is proposing an amendment to the definition of a gas station to include a small market. The gray area comes in when you have a Kroger that happens to sell gas, but I think staff would classify that as a supermarket, even though it sells gas. So, there is a little bit of a gray area in there and staff would envision small convenience type markets that sell gas as gas stations.

Member Prince asked Planner Kapelanski why that was.

Planner Kapelanski stated because the gas is a primary use of the property. When you have a supermarket, you really have a place where people are going to grocery shop. Planner Kapelanski stated that generally patrons are not going to do their grocery shopping at the gas station, even though it does carry a number of convenience items.

Member Prince stated that from what he is hearing there is an emerging trend at gas stations that the gas is an incidental item that is being offered, instead of being the main item for sale because of the reduction in the profit margin for selling gasoline. The trend seems to be going towards where gas stations offer gas to the customer as a convenience and their primary purpose is to sell the customer the items in the store. Member Prince did not know if this definition of gas stations would be appropriate, and after reading all the alternatives, each of the alternatives defines gas station in the same manner. The alternatives only offer different options related to the dispensing of liquor. What the public participants are saying today is that they intend to make a substantial investment to create a high class operation and also to offer gas. Member Prince does not understand why this proposal should be treated differently than a supermarket that sells gas as an incidental.

Member Prince stated that he has looked at all the materials that Deputy Chief Lindberg has presented and is somewhat concerned. The most persuasive piece of information the Deputy Chief has presented is that those communities that are more regulatory of their enforcement of alcohol laws tend to have a lower fatality rate. It would seem to suggest that the more we regulate alcohol sales, the fewer fatalities there will be. However, there is nothing directly that says that people who go into these stores/gas stations and buy alcohol are going to have more accidents or have more drinking or driving issues than people who purchase alcohol at a grocery store or liquor store. Deputy Chief Lindberg has indicated Novi is one of the communities that have a very low fatality rate, one of the lowest in the world. So in terms of fairness, in terms of defining a store that has \$250,000 worth of inventory and/or meets the size of restrictions that are already in place as part of the LCC standards, it would seem to me that a store meeting those standards would not be considered a gas station. The gas pumps seem more incidental.

Deputy Director McBeth stated that traditionally gas stations have been treated differently than just general retail stores and there are numerous characteristics that are unique to gas stations, not just the amount of traffic and the quick come and go nature. The various types of traffic that come and go out of gas stations has made planners, planning commissioners and attorneys think over the years that certain additional standards should be in place for gas stations. For example, in Novi's Ordinance, there are some additional special provisions for gas stations limiting the location of the curb-cuts to at least 100 feet from any street intersections. In some of the older communities that the curb-cuts that are really close to the intersection corner, it makes it a bit more hazardous for traveling in and out. Also, in Novi, there is a minimum site size of one acre for a gas station. Older communities have small, tight sights being developed as gas stations and it is more difficult for those gas stations to operate.

Deputy Director McBeth continued noting staff also has concerns related to canopies. When canopies over the gas pumps came in a number of years ago, regulations were put in place in the Ordinance to help regulate the setback and height and even the lighting underneath the canopies. There are also the typical accessory uses associated with a gas station, such as the minor repair of vehicles. Over the years, planners and planning commissioners have been trying to make sure dismantled, wrecked vehicles aren't stored on gas station properties. In that sense, gas stations have traditionally been quite a bit different from other types of retail stores. The Ordinance that staff is proposing now broadens the uses that would be permitted in the store to include the sale of gum, cigarettes, milk, and bread and all the things one would expect to see in a convenience store. Staff is acknowledging that there is a broadening or an expansion of the types of uses that go along with a gas station. Staff is not completely at the point where we would say, it is a store that just happens to sell gasoline. The larger stores, like Sam's Club, that do sell gasoline, that is an instance where staff would recognize the store as the primary use that happens to have an accessory gas station. The USA 2 Go proposal seems similar to other gas station developments. Even though they may be proposing a wonderful market that carries all of these items, some people would still stop for the purpose of purchasing fuel.



City Attorney Kolb stated that the Planning Commission is only considering a general text amendment this evening, the amendment is not about any one specific proposal. Even though the proposed USA 2 Go likely would be a very quality project if the rezoning were approved and the applicant is able to move ahead, the Commission doesn't know what the next applicant is going to propose five years from now. Despite the presentation from these gentlemen, their specific proposal should be put aside, and the Commission should focus on their comments as they relate to the text amendment itself because, again, the amendment is not about any one project. This is an ordinance that would apply City-wide to the proposed USA 2 Go property and any other property in the City that would qualify.

Member Larson asked about the \$250,000 inventory. Who would check or maintain that inventory to make sure that once the place opened, the \$250,000 was actually invested in materials other than beer and wine? What is to stop someone from opening up a store with \$250,000 worth of merchandise and then suddenly shifting all the resources to alcohol, beer and wine and cutting back on the sundries? Who would monitor that?

Deputy Chief Lindberg answered the State would be responsible for ensuring a gas station maintained \$250,000 in inventory not including alcohol and gas.

City Attorney Kolb reiterated that would be an issue for the Liquor Control Commission. Representatives from the City would have the opportunity to maybe raise an issue with the LCC if the City felt any gas station with alcohol sales was falling below that threshold. But, as Deputy Chief Lindberg stated, the officers are not going to be trained to do inventory on merchandise in these stores. So, ultimately that would rest back with the State to verify and monitor that.

Chair Gutman asked if there were any more questions from the Planning Commission or Staff.

Deputy Chief Lindberg stated that at this point, there is nothing in the ordinance that allows for cost recovery for officer time that must be spent on liquor license related inspections, etc. The Police Department does receive at certain points in time; funds back from the LCC because the Police Department is responsible for policing every liquor license in the City. But, there is nothing in the ordinance that allows for a cost recovery for Police Department's time investment and enforcement.

Chair Gutman stated that this brings him back to the overall question which is, is there anything stopping the City from implementing some kind of fee that would defray that cost associated with liquor inspections done by the Police Department and give the Police Department some comfort that a license is being properly adhered to. Maybe that is not a question for today, but it is something to think about and worth considering because, some of that cost would then be defrayed by the business owners who are fighting hard to have this remain allowable under the City's ordinances. The ability to defray those costs would give us a reason to consider allowing additional alcohol sales, not that we want to dig into more of the profits of the City's business owners who are all struggling in today's economy. But, just something that the City should consider long term, if the Police Department has the ability to charge for such inspections and would find it helpful. And obviously, anytime our law enforcement officers come out to a Planning Commission meeting and give us their opinion on an issue, they are protecting the community. It's tough not to be supportive of the Police Department's stance, even without data that empirically supports their argument and that can be a problem. The City wants to be cognizant of that, but also make sure that when the City is prohibiting something, it is being prohibited because there is no other alternative and that we're not driving business away from our great City. Secondly, the average gas station is not a 50,000 square foot gas station. If there were lobbyist involved with this amendment, maybe someone from Sam's Club or Costco might be thinking it would be great to have that 50,000 square foot minimum size in the ordinance so we can sell alcohol and get a competitive advantage and smaller gas stations cannot. Not that those stores are doing that. But when the 50,000 square foot requirement is included, those are the types of stores that would qualify.

Deputy Director McBeth stated that if Chair Gutman is referring to the language on in the third option, staff did lift the language from the State's language and the third option mirrors it pretty closely. The third option states the sale of alcoholic beverages should be considered to be an accessory use subject to approval of the Liquor Control Commission and the standards imposed by the Commission and State Law only where the gasoline service station is located in a neighborhood shopping center composed of one more commercial establishments organized or operated as a unit which provides not less than 50,000 square feet in gross leasable retail area.

Chair Gutman responded that was a very good point and the question to counter that is do gas stations usually align

themselves in a 50,000 square foot strip mall or something to that effect. Usually a gas station is stand alone, or perhaps if it is in the developer's footprint, maybe that counts within the 50,000 square feet.

Deputy Director McBeth stated staff would have to look at each situation individually, but wanted to try and mirror the State's language as closely as possible.

Chair Gutman stated that in general he is all for maintaining the safety of the community and looking out for the citizens and making sure the City is not overtaxing the law enforcement officers who have a great duty these days, now more than ever. But there is a struggle without some kind of factual documentation supporting any kind of prohibition and maybe this needs to be studied this further. Typically, issues shouldn't be dragged out, but prohibition without any support is something I would not be in favor of.

Member Meyer pointed out that in each one of the writings of the three different recommendations to City Council that the word general is misspelled.

**Moved by Member Meyer, seconded by Member Baratta:**

**In the matter of text amendment 18.239, motion to recommend approval of an ordinance to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance, Article 2, "Construction of Language and Definitions, Zoning Districts and Map," Section 201, "Definitions" to amend the definition of gasoline service station to specify permitted accessory uses with prohibition on the sale of alcohol, which has been found to be contrary to the public health, safety and welfare and Article 25, "General Provisions," Section 2505, "Off-Street Parking Requirements" to revise the parking requirements for self-service gas stations. *Motion fails 3-3. (Nays – Cassis, Gutman, Larson).***

Member Baratta indicated that there was not sufficient data available on the correlation between gas station liquor sales and the propensity for impaired driving and additional information on the number of existing gas stations that would meet the requirements for a liquor license.

Chair Gutman confirmed that Member Baratta would want to revisit this amendment if additional data would become available.

Member Meyer indicated that the Commission has postponed a vote on this multiple times and this matter has appeared before the Master Plan and Zoning Committee and there comes a time when a decision has to be made. Member Meyer would welcome comments from his colleagues regarding when a decision should be made. Member Meyer reiterated that neighboring communities have banned the sale of alcohol at gas stations. Not that Novi should be trying to keep up with the neighbors, but there might be something to all that. However, it is also important to recognize Mr. Koza's efforts in wanting to bring a business into Novi and I am not opposed to that business. The ultimate concern here is the public health, safety and welfare of the citizens of Novi.

Member Baratta expressed his concern again about the lack of data. He also noted concerns with the third alternative and the fact that a 50,000 square foot store is equivalent to a large super-market. The ultimate question is whether this should be prohibited. The information to make this decision today is not available, that there is a propensity for gas stations selling alcohol and drunk driving. Member Barrata's personal opinion is that there may be a slight increase and he does not want to see a large number of liquor stores in the community.

Member Larson responded that the data that Member Baratta is looking for is not available.

Deputy Chief Lindberg agreed with Member Larson's statement and did not think he would ever be able to supply the Commission with the data that would confirm Member Baratta's statements and referred the Commission to the article supplied in the packets.

Member Cassis confirmed the motion was to prohibit the sale of alcohol at gas stations and expressed the importance of the Commission's role in making a recommendation to the City Council.

Member Prince questioned Commissioners Baratta's reasoning that the second alternative is essentially a prohibition.

Chair Gutman confirmed the second alternative would allow the sale of alcohol in limited circumstances.

City Attorney Kolb stated that was correct provided the gas station meets the standards of the Liquor Control

Commission.

Chair Gutman stated he agreed with Member Cassis's comments and his personal feeling is that prohibition is not the best option and would give the impression that Novi is not open for business.

**ROLL CALL VOTE ON THE RECOMMEDATION OF APPROVAL MOTION MOVED BY MEMBER MEYER AND SECONDED BY MEMBER BARATTA:**

**In the matter of text amendment 18.239, motion to recommend approval of an ordinance to amend Ordinance No. 97-18, as amended, the City of Novi Zoning Ordinance, Article 2, "Construction of Language and Definitions, Zoning Districts and Map," Section 201, "Definitions" to amend the definition of gasoline service station to specify permitted accessory uses with prohibition on the sale of alcohol, which has been found to be contrary to the public health, safety and welfare and Article 25, "General Provisions," Section 2505, "Off-Street Parking Requirements" to revise the parking requirements for self-service gas stations. *Motion fails 3-3. (Nays – Cassis, Gutman, Larson).***

Member Cassis stated that it may be appropriate to wait for a full Commission because additional data and public comments could be available as well as comments from the absent Commissioners.

Chair Gutman inquired on whether another Public Hearing was required.

City Attorney Kolb stated that the Commission could hold an additional Public Hearing if they chose, however, she is not sure additional comments would be received as this was timely and properly noticed.

Member Cassis clarified he was most interested in the comments from his fellow Commissioner's.

City Attorney Kolb stated the Commission is authorized to conduct business this evening since a quorum is present.

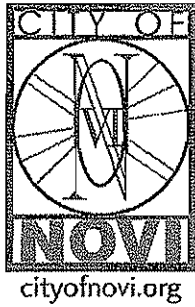
Member Meyer agreed with Member Cassis's statements regarding having a more complete Commission prior a vote being taken.

**Moved by Member Cassis, seconded by Baratta:**

**ROLL CALL VOTE ON MOTION TO ADJOURN TEXT AMENDMENT 18.239 MOVED BY MEMBER CASSIS AND SECONDED BY MEMBER BARATTA:**

**Motion to adjourn the matter of Zoning Ordinance Text Amendment 18.239 until a full Planning Commission is present to hear the matter. *Motion carried 6-0.***

**PLANNING COMMISSION MINUTES EXCERPT  
DECEMBER 9, 2009**



# PLANNING COMMISSION MINUTES

Draft Copy

CITY OF NOVI

Regular Meeting

Wednesday, December 9, 2009 | 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:** Member Baratta, Member Cassis, Member Greco, Member Gutman, Chair Pehrson, Member Prince, Member Lynch, Member Meyer

**Absent:** Member Larson (excused)

**Also Present:** Barbara McBeth, Deputy Director of Community Development; Kristen Kapelanski, Planner; Mark Spencer, Planner; Lindon Ivezaj, City Engineer; Tom Schultz, City Attorney; Tom Lindberg, Deputy Police Chief; Rod Arroyo, City Traffic Consultant

## PLEDGE OF ALLEGIANCE

Member Cassis led the meeting attendees in the recitation of the Pledge of Allegiance.

## APPROVAL OF AGENDA

Moved by Member Lynch, seconded by Member Baratta.

## VOICE VOTE ON THE AGENDA APPROVAL MOTION:

Motion to approve the December 9, 2009 Planning Commission Agenda with the addition of the Landings Land Use Study under Matters for Consideration. *Motion carried 8-0.*

## MATTERS FOR CONSIDERATION

### 1. SET A PUBLIC HEARING FOR JANUARY 13, 2010 FOR ZONING ORDINANCE TEXT AMENDMENT 18.239 RELATED TO SALES OF LIQUOR AT GAS STATIONS

Planner Kapelanski stated that at previous meetings, the Planning Commission was presented with an amendment to prohibit the sale of alcoholic beverages at gas stations. The Planning Commission considered the amendment and asked staff for additional information which was presented at a subsequent meeting. Additional information has also been included in the packets this evening.

As of late, this issue is coming up more often, and even today staff had a gas station call and ask if the City had any regulations related to alcohol sales. The Community Development Department has also had one pre-application plan submitted that showed a substantial amount of area within the proposed gas station, devoted to the sale of beer, wine and liquor.

Staff believes that this would be a good time, if the Commission wishes, to consider whether it would be appropriate to have an ordinance in place when a formal submittal is made, and to provide guidance if staff receives any additional questions about this use.

This evening the Planning Commission is asked to set a Public Hearing for the upcoming Planning Commission meeting and make a recommendation to staff regarding possible ordinance language for the sale of liquor at gas stations. The Planning Commission would have several options: 1. Total prohibition of sales as previously presented; 2. Leave the Ordinance as it is, allowing gas stations to obtain liquor licenses from the State; or 3. To develop standards that would fall somewhere in between the two, for example, allowing liquor sales at stores of a minimum size.

The Staff would like a recommendation on this land use question so that we have an answer to applicants when they come forward and ask whether these sales can be permitted.

Also, at a previous Planning Commission meeting, the Commission indicated a desire to hear from the Police Department on this issue and Deputy Chief Lindberg is here to answer any questions you may have as well as the staff.

Member Cassis asked Deputy Chief Lindberg if he was in a position to have an opinion or does the Department have an opinion about whether we should have liquor in gas stations.

Deputy Chief Lindberg answered that in previous communications from our Department we do not recommend that gas stations be allowed to sell liquor.

Member Cassis asked what the reasons for this were, so we can educate the public on what the position is.

Deputy Chief Lindberg stated that, starting more globally, Oakland County, Michigan has the lowest fatality rate in not only the country, but the world at .37 fatalities per hundred million miles driven. That does not happen by accident, but through a collaborative effort from Law Enforcement, Engineering, Traffic Improvement Associations and a whole multitude of things that have gotten us to that number. One of the those things that has been done, and is noted in an article that was provided for the Commission and written by Louisiana State University, and one of the reasons jurisdictions or states have a lower traffic fatality rate is because they do monitor the liquor establishments within their jurisdictions. Having more liquor establishments or places that sell alcohol in our City creates more opportunities for people to purchase alcohol and the Police Department does have some resources that we have to expend on that. We do quarterly liquor inspections where an officer goes in and makes sure the license is in order and looks and makes sure everything is in order. We do the decoy operation where we expend resources where we take people who are under 21 into the establishments to see if they are complying, etc.

We are not advocating that we reduce the number of liquor licenses because we know the economic impact that those have. However, we also want to make sure our voices are heard and that we are being responsible. The Commission can read in the communications that have been provided for them, there are certain concerns associated with the sale of alcohol at gas stations. If an individual is there to purchase gas, we know what marketing strategies are and how many times have we gone into a store and bought something that we hadn't anticipated. All of those things come into play and the police department does not think it is a good idea for alcohol sales to occur at gas stations.

Member Cassis stated that he was intrigued with the idea that if we allow so many gas stations in the community, you would probably have to have more man resources in the police department to monitor and exercise all of those preventive actions that the Police Department does by inspections and so on. So that multiplies the amount of time the Police Department goes out there and provide personnel to do that job.

Deputy Chief Lindberg answered absolutely and we do quarterly open liquor inspections and an officer or officer's go in and they are in uniform and they have a checklist and make sure everything is in order. Last quarter we checked 92 establishments in our City. So that is an officer that could be out in the community or in the subdivisions doing patrol and that is a resource we are expending to do the inspections. If there is a violation, there is a subsequent hearing that could go at the LCC where the officer is there and not on patrol. The decoy operation is where people are out and our officer's are out for an entire night. Fortunately we have some grant monies for the decoy operation right now. That is not always the case and we will spend our dollars to do the decoy operations and if there is violation it could be 30 minutes to an hour for processing and then again another hearing at the Liquor Control Commission. We are expending a lot more resources if the City has more establishments that sell alcohol. The more licenses, the more resources we expend to watch those.

Member Prince asked Chief Deputy Lindberg how many gas stations would he anticipate would make applications to obtain these licenses were we to approve an ordinance that would allow it.

Deputy Chief Lindberg said he could not answer that but because of the regulations that are currently with the Liquor Control Commission, they have to have \$250,000.00 worth of inventory outside of gasoline and alcohol and there are certain proximities that are required related to the distance between the point of sale and gas pumps. I think there are a number of gas stations that would apply. I think we found in some surrounding communities that have permitted the

sale of alcohol at gas stations that a fair amount of stations do apply and the truth of the matter is that the LCC doesn't necessarily have all the resources to police it on their end. The police officer doesn't necessarily have the knowledge to go in and do an inventory of a gas station to make sure there is a quarter of a million dollars worth of inventory out there. We would not want that resource being expelled to check that. Does the LCC have the ability to do that consistently? From what I am hearing, probably not. I think you would have some additional people in our City currently operating gas stations that would go before the LCC trying to get a liquor license due to the economic times. In the package that Deputy Director McBeth supplied you there is a map showing where the gas stations are and there is a possibility that there could be a dramatic increase in the number of gas stations selling alcohol.

Member Meyer asked what your thoughts were on a matter that was before Master Plan and Zoning Committee. It was brought to our attention that one of the developers felt that the establishment of the gas pumps was simply an ancillary piece to the building that would be selling the liquor. What are your thoughts about that and that selling gasoline would actually be secondary to the actual selling of liquor.

Deputy Chief Lindberg thought there was some validity to that in doing research to come here tonight as well as the going over the information that was supplied to me from Planning. The overhead profit from gasoline right now is relatively low which is why this has become a topic not only in our community of Novi but surrounding communities as well. You might find a business owner that has found the profit margin is much greater selling the alcohol than it is selling gasoline. But the sale of gasoline is the business that the owners are familiar with and know. That might raise the question in all of your heads that if the owners know how to operate a gas station and train employees for gasoline sales, how much training is there going to be for an employee that is selling alcohol? I think there is some real validity to the statement that there is a higher profit margin in our community for the sale of alcohol than the sale of gasoline.

Member Meyer thanked Deputy Chief Lindberg for attending this evening and representing the police force here and for your service to our community.

Member Lynch thanked Deputy Chief Lindberg for attending and it answered a lot of questions and concerns. Member Lynch asked if people have a problem buying liquor right now in Novi. Member Lynch stated that we want all of our businesses to be profitable and there is not a problem selling coffee, donuts and things like that. One of the developers was Tim Horton's which is the nicest gas station in America and is suppose to be coming to Novi. Member Lynch stated that he still thinks that this decision is a policy decision that certainly is above us and should be made by City Council and I am still uncomfortable with the Planning Commission making what I feel is a policy decision. We then have Deputy Chief Lindberg come in and say it is a bad thing and I am not going to go against that. I still think this is a policy decision and I am uncomfortable with rendering any other judgment. I still do not understand why this is being brought to Planning Commission.

Member Baratta asked Deputy Chief Lindberg let's assume there is not a lot of profit in gas and that if I had a gas station and ceased selling gas and opened up a liquor store, the availability of alcohol would seem to expand and you would have more establishments to sell that product. My question is and I agree with Member Lynch is you have a gas station and just because they sell gas, what is the problem with selling the alcohol and I do not see how it increases the sale of that product just because it is a gas station versus a restaurant or some other facility.

Deputy Chief Lindberg stated that you are asking me for my personal opinion and that may be tainted by some personal bias and I appreciate that, but please take it for what it is worth. I would have some concerns in that there is some real expertise in training to sell alcohol. If you were to go into a gas station, there is certain expertise to having that customer service. When you cross them over is where personally I have some concerns and I think you also find there is turnover in gas stations with employment. Whereas, a lot of the convenience stores have more consistent employment because many of them are family owned outside of the franchise. Your next question might be that Busch's or another grocery store sells alcohol and those cashiers are trained to scan the food products and are they really trained in the sale of alcohol and that is an absolute concern. But, this is a new area, a new venue for us to consider and that is something I feel relatively strong about and we need to make sure that the people that are selling the product are trained to sell that product. If the focus of that is to be a gas station, that is their area of expertise, just like Member Lynch said a minute ago with me and that is a very significant concern that I have. Every argument you have about alcohol I can't get into here, but I can just drive down the street. But again, how often do you walk into a place because you are there with the intent on buying something and you see whatever they are displaying and you end up buying it and that is another thing you might think about when you walk into a gas station that sells alcohol.

Member Baratta said let's assume I have lived in Texas for many years and own a market and the gas stations down there have more than just markets. They all sell gas and have restaurants adjacent to them. I am looking at it as you have a gas station and traditionally all you sold there is gas and today you have the mini-market that has a gas pump and in some instances they don't even own the gas, they get a fee from the oil company to sell the gas and they get a commission. So truly what they are is a market that happens to sell gas. So, I am trying to get to, to basically find out because I have a gas pump if I own this market, would this increase the sale or availability of alcohol to a driver.

Deputy Chief Lindberg said that he wished he could come to you with data to support that and be able to tell you that. But, the truth of the matter is with hours of research that I have done, some of the people on Chief Malloy's staff and through our direction have done including research that planning has done, there is not a lot of data that separates what you have described from a gas station and the alcohol sales. It more is almost a common sense approach we take, just like you have to do here. This is really a land use issue and you are asking for some statistical justification or some input from me. To answer your question, I can't answer that because they sell gas that would increase the sales of alcohol, but I believe that is the truth. I believe there is going to be the instance where an individual is driving by and needs gas and ends up buying alcohol and has an issue as a result of it. I refer you back to the Louisiana State University Study that was supplied to me and In the states that have the lowest traffic fatality rate related to drinking and driving do a much better job at regulating liquor sales within their communities. One of the things that they site in that study is the drive-thru sale of alcohol and the states that allow that have a higher traffic fatality rate relating to alcohol. States that have less regulations on their establishments have a higher rate, though it doesn't specifically say it in this study. I think common sense and the next step is those that sell it in gas stations and allow those vehicles to get on the road, would probably fall into the same category. And again sir, I apologize, but the data just isn't there where they separate it out and indicate where the alcohol was bought at. We do a good job when there is an alcohol related traffic fatality of tracing back and looking to see if it is a bar or somewhere somebody has been drinking at, under the Dramshop Rules, that is something our traffic investigators do. But typically, it is very difficult if they have not been at a bar or restaurant to trace back where they bought their package liquor, their beer etc. This is standard across the country, we've tried, we've looked at that research and its just not something that is there and I hope that answers your question.

Member Baratta asked if there is a fee charged for this inspection for an officer to go into a liquor store.

Deputy Chief Lindberg said that there was no fee and without being an expert in that area, there are regulations and financial consequences and incentives where we are required to police the liquor licenses in our city and there are some financial returns as result of that. If we do not police those establishments and then there is a problem, we can suffer some financial losses from the Liquor Control Commission and kickback from their license fees etc. We are not compensated at all for going in and doing that, it is part of our process.

Member Greco stated that we have had this issue before us for two meetings and I think the issue of a gas station selling alcohol seems like something that should not go together. When you look at it from a quick look, something to turn away and say we don't want that. But I think at the last two meetings where this was discussed, I've been hearing comments from the Planning Commission that we want more data before we make this decision, especially since it is not a decision that every community is making. My understanding is that Farmington Hills has chosen not to regulate alcohol sales at gas stations. West Bloomfield did pass an ordinance. I do appreciate both the staff and the officer coming here, because I think the information that was provided in the packet this week is something I think we were looking for. I am not sure and I am not going to make a decision tonight on whether I support or don't support it, but there probably is something there worth having a public hearing on and I appreciate you coming to the meeting. One of the things I am concerned about is saying blanket statements, and one of the things the deputy keeps bringing up is data and lack of data. I think everyone's experience both outside and inside of Novi is that we have a outstanding police force that does a great job of enforcing the laws, particularly the drunk driving laws. I think that is everyone's impression inside and outside of the city. I am sure that the department has particular hotspots or areas where they are more likely to find a drunk driver. The middle of a subdivision of might be an area where you would not catch a lot of drunk drivers whereas maybe by the Town Center area or the Main Street area would be more where they could be caught. I believe the police have an idea where the problems may occur. My question is, do we have any data regarding this Sunshine gas station. I would imagine that if it is a problem whether it is drunk driving or not, that there would be open container pullovers or arrests and is there anything you are getting back from your officers about this particular area being a problem.



Deputy Chief Lindberg answered no to Member Greco. But, the market is very new and the owners were very accommodating when they were opening up and adhered to the entire ordinance. I will take you back a few minutes when I made a statement that it is very difficult to track where packaged liquor, beer, and wine are purchased when there is an accident or driving issue. I am not aware of any runs or police complaints that have come in the parking lot there where we're getting teen's hanging out and none of that is happening. Our officer's in the district are aware of what is there and have established a relationship with the ownership. But, there are no concerns at this point with the land use of Sunshine Market and activities that are going on there that I am aware of.

Member Greco asked whether increased tickets along Novi Road have been issued for open containers or anything like that.

Deputy Chief Lindberg answered no to Member Greco.

Member Greco said that his only comments would be for the Commissioner's. The information provided does satisfy me as at least something we should consider and I am not sure where I fall on that consideration. But, I still do want to be careful on what we are doing with respect to this situation. I recall when I recently just moved to the community and there was a big uproar with a Hooters coming into Novi and how awful that would be and the outfits that they wear and it is a place where people would not want to go and it would bring the wrong element. And, as far as my understanding goes, they seem to be a good business corporate citizen for the city. I don't know if we are looking for a problem that doesn't exist; but I think given the data and given the presentation tonight, I am probably going to support moving for a public hearing.

Member Cassis stated that being in the restaurant business, the health department does have a program to educate and certify the handler's of food. Do you have or do you need to have something like that to educate people on the sale of alcohol?

Deputy Chief Lindberg stated that the Police Department does not in itself, but we facilitate a lot of that training with the Liquor Control Commission. In years past, we have had Town Hall meetings where we have gotten management from a number of different liquor establishments together and one of our officers has been the facilitator of that. If a certain establishment has an issue where we have issued a violation, the first thing we recommend to them is get the tips training from the LCC. Not only is it available for them in person, but it is also online and it helps build the training that they are trying to get their personnel, so they do not have the same problem again. The Novi Police Department does not have their own program; but as good partners, we will make everything available and tell the different establishments that this is available and we are there to help. If this gets approval, we will do the same thing with every establishment that comes into town. Having our own program, no; but facilitating and helping people find the programs out there yes, absolutely.

Chair Pehrson said that he was going to add his thoughts to the discussion. I don't think we are rationally aiming to make Novi or Oakland County a dry county. But, as a point of reference relative to training, I do have a relative who is employed by one of the larger petroleum based outlets based down in Texas and they actually have to go through a corporate mandate where their employees go through a week's worth of training to try to spot, identify, and make public anyone that comes on the premises that might have been drinking, that might be drunk or that might have the appearance of drinking, to the point where they suspend sales at 11:59PM on any given night. If the tape register shows that any liquor was sold at 11:59:01, they are subject to a \$100,000 fine and 3 years in jail. So they put the onus on the store operators to self police their own. That said, I think what we are looking to do is take away the possibility. What the petroleum based outlets in Texas have found in research that the this individual was able to provide me is that for every trip that is now being made at these stores in Texas, just as a point of reference, for every 1 trip for gasoline, there are 3 other trips made to the facility just for alcohol and it has become a mini-mart. Whether that turns into something where Deputy Chief has to have his guys find drivers on Novi Rd. with an open container or that leads to something, I think that will be very hard for them as the Deputy Chief has indicated to find out about. But, there is a trend in at least that little bit of demographic data that says this is becoming more of a real convenience for those that want that. How far do we want to go relative to legislating or allowing areas alcohol sales at gas stations to take place. I think it is good that we are having the debate and good that we are setting this as a public hearing. I thank the Deputy Chief for coming in and for your letter as well; it was quite good.

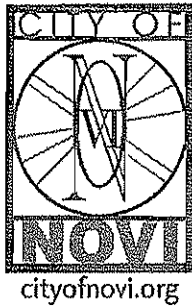
City Attorney Schultz stated that the question before the Planning Commission is really kind of narrow. Right now the principle use for all of these for a gas station is for the dispensing of fuel, a market and all the things that go along with it are considered accessory uses. The question that you are really going to be deciding if you continue on with this is, is the sale of alcohol along with all those other sundry things customarily incidental to the fuel dispensing or should it be. It is not just a policy question of the sale of alcohol at gas stations; it is a land use question. Is this sale of alcohol at gas stations incidental to the dispensing of fuel, should it be? As your going through, that is really the question you are after.

Moved by Member Meyer, seconded by Member Prince:

**ROLL CALL VOTE ON THE MOTION TO SET A PUBLIC HEARING FOR ZONING ORDINANCE TEXT AMENDMENT 18.239 RELATED TO THE SALES OF LIQUOR AT GAS STATIONS FOR THE PLANNING COMMISSION MEETING TO BE HELD ON JANUARY 13, 2010, MOVED BY MEMBER MEYER AND SECONDED BY MEMBER PRINCE.**

**In the matter of Text Amendment 18.239, a motion to set a public hearing for January 13<sup>th</sup>, 2010.  
*Motion carried 8-0.***

**PLANNING COMMISSION MINUTES EXCERPT  
NOVEMBER 18, 2009**



# PLANNING COMMISSION MINUTES

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CITY OF NOVI

Regular Meeting

Wednesday, November 18, 2009 | 7 PM

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

(248) 347-0475

## CALL TO ORDER

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

## ROLL CALL

**Present:** Members David Baratta, David Greco, Brian Larson, Michael Lynch, Michael Meyer

**Absent:** Members Victor Cassis (excused), Andy Gutman (excused), Mark Pehrson (excused), Leland Prince (excused)

**Also Present:** Barbara McBeth, Deputy Director of Community Development; Kristen Kapelanski, Planner; Jana Pritchard, Planner; Lindon Ivezaj, City Engineer; David Beschke, City Landscape Architect; Doug Necci, Façade Consultant; Kristin Kolb, City Attorney

## PLEDGE OF ALLEGIANCE

Member Meyer led the meeting attendees in the recitation of the Pledge of Allegiance.

## APPROVAL OF AGENDA

Moved by Member Lynch, seconded by Member Baratta.

## VOICE VOTE ON THE AGENDA APPROVAL MOTION:

**Motion to approve the November 18, 2009 Planning Commission Agenda. Motion carried 5-0.**

## MATTERS FOR CONSIDERATION

### 1. ZONING ORDINANCE TEXT AMENDMENT 18.239

Discussion of possible ordinance amendment related to sales of liquor, beer and wine at gas stations.

Planner Kapelanski stated that at the previous meeting, the Planning Commission was presented with an amendment to prohibit the sale of alcoholic beverages at gas stations. At that meeting, the Planning Commission asked the staff to prepare additional information concerning the sale of beer, wine and liquor at area gas stations. In the packets are a number of maps highlighting the locations of existing gas stations, and the districts that permit gas stations.

You will also find a memo from the staff describing the ordinances enacted by other communities to regulate alcohol sales at gas stations and options for the Planning Commission to consider. Three options are presented in that memo: 1) Complete prohibition of the sale of alcoholic beverages at gas stations, which would be similar to the amendment that was previously presented at the Planning Commission meeting; 2) To choose to make no changes to the ordinance allowing gas stations to sell beer, wine, and liquor if they meet the state requirements, which are a minimum building size of 50,000 square feet, or \$250,000 worth of merchandise (excluding gas and alcohol sales). This would leave the review and enforcement of these provisions up to the State; 3) To permit limited sales of alcohol based on certain standards. For example, the State standards related to the minimum size of the building or the minimum amount of merchandise. This third option could be complicated as it would require a more specific definition of intent than what was previously laid out in this adjusted amendment. This evening, the Planning Commission is asked to provide their comments on a possible amendment and make a motion on how they would like to proceed at this time.

Chair Greco turned this over to the Planning Commission for any comments or discussion regarding this issue.

Member Lynch felt that this was a policy issue that Council should make the decision on.

Deputy Director McBeth responded by saying that the Planning Commission is an advisory body to the City Council on many types of land use issues. Staff looked at this as a land use issue and possible zoning ordinance amendment. The Planning Commission is responsible for using the Zoning Ordinance to review and approve various plans that come forward. It seemed to make sense to bring it to the Planning Commission for discussion since public

hearings take place at the Planning Commission as well. The Planning Commission is asked to gather the public comments and uses and give consideration to those comments as part of their deliberation.

Member Baratta questioned if the purpose of prohibiting gas stations from selling alcohol is to limit the availability or is it to limit the convenience to get alcohol, and if so, that is something different. Member Baratta does not think we are limiting the convenience by allowing a gas station with \$250,000 worth of merchandise, particularly since most drug stores are convenient and they have liquor, alcohol, and beer and wine licenses. Member Baratta does not think we are stopping the convenience issue by preventing gas stations from getting this particular type of product. Again, if it is restricting the availability and wanting a more exclusive policy and it's to be applied throughout the city, which is a different story. Member Baratta stated that with the information that was provided, he did not have an issue if gas stations had this particular product as part of their sales.

Member Meyer questioned why this is before us, and could it be further clarified. Based on the information we have, if we do recommend this to City Council, could we ask that any gas stations wishing to sell alcohol appear before a Liquor Advisory Committee to determine if it meets the state standards for a liquor license. Also, is the Liquor Advisory Committee at the State level or a committee that would be part of our local government?

Deputy Director McBeth stated that she and her staff did look at a number of area ordinances. Some area ordinances have an outright prohibition of the sale of alcohol, while others had no ordinance that prohibits it, so therefore allowing alcohol sales at gas stations with no further restrictions. Troy took a unique approach and set up a Liquor Advisory Committee to review the requests, creating another level of review, similar to a Planning Commission Sub-Committee.

Member Meyer stated that he was not sure the Planning Commission was ready to give a recommendation to the City Council this evening. If we would give this recommendation to City Council, we could do it with the possibility of creating a Liquor Advisory Committee of the Planning Commission.

Member Larson questioned how many gas stations in Novi met the criteria of being 50,000 square feet, or \$250,000 of merchandise.

Planner Kapelanski stated that we have 12 gas stations. The only one that has received this type of license in the city is the Sunshine Market. There is an existing gas station at Sam's Club that could meet that standard. But, beyond that, Planner Kapelanski is not aware of any other gas station that has applied for this license, so it is unknown whether or not any others would meet the \$250,000 merchandise standard. Staff could do additional research to see how many would meet the size requirement, but, beyond the Sam's Club and the Sunshine Market, staff is not aware of any.

Member Baratta questioned if Sam's Club met the requirement and is it because of what is inside of Sam's Club itself.

City Attorney Kolb stated that the communities that have put outright bans on the sale of alcohol at gas stations, or are in the process of doing that, are doing so because the Liquor Control Commission that oversees us at the State level has indicated that they just do not have adequate staff to oversee the requests. The State is doing the review on an honor system and if someone calls and says they have \$250,000 worth of merchandise, the State is approving it. The communities that are pursuing this are concerned that liquor licenses are not being regulated in the way they should be. The Liquor Control Commission is taking people at their word, rather than investigating to see that they meet the statutory criteria.

Chair Greco said his concern was that he still hasn't seen a compelling reason why we should get involved in this. It is being regulated at the State level, even though it might not be adequately regulated. This is government regulation and would be prohibiting something that is currently allowed. Before we start impacting Sam's Club, and the Sunshine Market or impacting any future businesses coming into the city, Chair Greco wants to know why we would consider this. The questions that were asked by Member Baratta are right on point; is there a reason why we should be doing this. If you have more than one or two gas stations that sell alcohol in the city, are crashes up or drunk driving incidents up. Is it more dangerous for the community? Those are the answers we are looking for. At our last meeting that is what Member Pehrson and I were questioning. Do we have data to support this, and will it be helpful to the community? Any state agency, as well as any other government agency that is understaffed might not be doing everything they should be doing. At this point in time, Chair Greco does not see a compelling reason why the City should get involved in regulating this, whether it is straight out prohibition or creating a local liquor commission to review gas station requests. Chair Greco thinks we are trying to address a perceived problem - drinking and driving. Chair Greco is not recommending going forward with this at this time until we receive additional information that would make sense and benefit the community.

Deputy Director McBeth stated that there is a letter from our Police Department in the packets. The Police Department has listed a number of reasons for its recommendations. However, they did not have specific statistics or other things Chair Greco mentioned.

Chair Greco stated that the main reason is drinking and driving and that he did not see any compelling data as to why we would get involved in this.

Member Lynch stated that in his opinion, it might be foolish to pursue this and agreed with Chair Greco and thinks this is something above us. It seems more of a policy, and Member Lynch cannot speak for what the citizens want. City Council would have a better idea on what the need is and what benefit it is to the city. At this point, we just have speculation and a letter from Police Chief Malloy which is saying that it would not be a very good idea. Member Lynch thinks we need to step back and understand why we are even doing this and if there is an overwhelming benefit to the city.

Deputy Director McBeth stated that it sounds like the Planning Commission may not be ready to set a Public Hearing, but if Planning Commission chose to set the hearing, it might be an opportunity to get some additional input on the topic. We could let the issue stand, and forward the Commission's thoughts on this to the City Council in an alternate method. Or, the Planning Commission could ask to set the Public Hearing at the next available date, collect public input, and the Planning Commission could vote on their recommendation to City Council.

Chair Greco asked if anyone had any ideas on what they want to propose.

**Moved by Member Meyer, seconded by Member Larson:**

**In the matter of text amendment 18.239, motion to set a public hearing for an upcoming Planning Commission meeting.**

Member Baratta stated that before they set a public hearing, he would like the data from the Police Chief to see what the incidents are. If you read the Police Chief's letter, article one says that alcohol is a product that should not be conveniently available, and he does not say it is, or it isn't with this type of facility. The Police Chief does say that the ease of access to alcohol could increase, and he is not specifically saying that it will. The Police Chief goes on to say that if alcohol sales at gas stations are prohibited, this may decrease the ease of access to alcohol, so he is not being definitive with whether this is a good or bad idea statistically. Member Baratta stated that he would like to see what the numbers are on the statistics with other communities that allow the sale of alcohol at gas stations, and then the Planning Commission can properly consider this proposal.

Chair Greco thanked Member Baratta, but noted that a motion and a second have been made that the Planning Commission needs to consider.

City Attorney Kolb asked for a clarification. Obviously the Planning Commission does not have a specific text amendment to consider at the public hearing. So is the point of the public hearing just to gain input from the public as to whether or not to move ahead and possibly get some direction on what the citizens would want? If that is the intent, City Attorney Kolb would like to make sure that is clear so that staff can properly notice.

Chair Greco suggested we should ask the motion maker to clarify what he is requesting.

Member Meyer stated that it appears that the public hearing would be a discussion of a possible ordinance amendment related to the sales of liquor, beer, and wine at gas stations. That would be the essence of the public hearing, discussion of a possible ordinance amendment.

Member Lynch asked if Police Chief Malloy could attend the public hearing.

Chair Greco stated that they could probably request Police Chief Malloy to be present.

Member Lynch asked if he could give comments.

Deputy Director McBeth stated that staff could request someone from the Police Department, either the Chief or the Deputy Chief if they are available to attend that evening. If the Planning Commission would prefer, planning staff could ask for additional information from the Police Department prior to the public hearing.

Member Lynch stated that he would prefer to ask questions of the experts rather than get a letter. With respect to the motion, Member Lynch cannot support a public hearing until we at least have some comment from the experts and he is going to vote against the motion because he would like to have a discussion with the experts prior to the public

hearing.

Member Larson asked if there is a member from the Police Department that could bring data to support their letter and talk about it so it could be discussed at the meeting.

Member Meyer also said he would specifically like to ask that Police Chief Malloy attend.

Chair Greco asked if there were any other comments before they took a vote and there were none.

**VOICE VOTE ON THE MOTION MOVED BY MEMBER MEYER AND SECONDED BY MEMBER LARSON:**

**In the matter of text amendment 18.239, motion to set a public hearing for an upcoming Planning Commission meeting. *Motion fails 3-2***

Member Meyer asked if he could make a new motion and could Police Chief Malloy attend a meeting of the Planning Commission so that we can discuss the text amendment with an expert.

Member Baratta stated his position would be not to deal with this any longer unless it gets brought back properly with a proper zoning text amendment and the proper data for a presentation if that wants to be done. The Planning Commission does not have to set a hearing tonight and Member Baratta does not think they should do so. Member Baratta thinks the feelings of the Planning Commission have been heard at the last two meetings and if there is data to back up such an ordinance, it can be presented to the Planning Commission and we can consider it again and he does not think any of his fellow Commissioners would have a problem with that.

**Moved by Member Lynch, seconded by Member Baratta:**

**In the matter of text amendment 18.239, motion to request that the Chief of Police attend an upcoming Planning Commission meeting to discuss the sale of beer, wine and liquor at gas stations. *Motion was withdrawn.***

Member Lynch stated he would like to withdraw his previous motion and Member Baratta agreed.

**PLANNING COMMISSION MINUTES EXCERPT  
OCTOBER 28, 2009**





## PLANNING COMMISSION MINUTES

Approved

CITY OF NOVI

Regular Meeting

**Wednesday, October 28, 2009 | 7 PM**

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

(248) 347-0475

### CALL TO ORDER

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

### ROLL CALL

**Present:** Member Greco, Member Gutman (arrived at 7:03 PM.), Member Larson, Member Lynch, Member Meyer, Chair Pehrson, Member Prince

**Absent:** Member Baratta (excused), Member Cassis (excused)

**Also Present:** Barbara McBeth, Deputy Director of Community Development; Kristen Kapelanski, Planner; Jana Pritchard, Planner; Kristin Kolb, City Attorney

### PLEDGE OF ALLEGIANCE

Member Greco led the meeting attendees in the recitation of the Pledge of Allegiance.

### APPROVAL OF AGENDA

Moved by Member Lynch, seconded by Member Larson

**VOICE VOTE ON THE AGENDA APPROVAL MOTION:**

**Motion to approve the September 30, 2009 Planning Commission Agenda. Motion carried 6-0.**

### MATTERS FOR CONSIDERATION

1. **SET A PUBLIC HEARING FOR NOVEMBER 18, 2009 FOR ZONING ORDINANCE TEXT AMENDMENT 18.239 RELATED TO SALES OF LIQUOR AT GAS STATIONS**

Deputy Director McBeth stated that this item involves an important policy decision that the Planning Commission should consider carefully. It involves whether there should be any zoning ordinance standards that would regulate the sale of beer, wine and liquor at gas stations. Perhaps, rather than setting a Public Hearing tonight for a date three weeks from now, staff could gather some of the Commission's preliminary thoughts on the topic as to whether the Commission thinks the city should set local standards that would regulate the sale of liquor at gas stations or whether the Commission would suggest it doesn't need any further regulation.

Staff identified one gas station in the City of Novi that currently sells beer, wine and liquor, the Sunshine Market Station located at Thirteen Mile and Novi Road. This station received a license from the Liquor Control Commission to sell alcohol products. In the Commission's packets this evening, staff did provide some language that was suggesting just the outright prohibition of sales of those packaged alcoholic beverages at gas stations. Staff would like the Commission's thoughts on whether it's appropriate to allow the sale of alcohol at gas stations similar to other kinds of stores that allow that or if there should be certain regulations that would allow the sale at certain gas stations with certain conditions. Staff could also prepare some additional information regarding the state standards, ordinances in other local communities and opinions from the Police Chief if the Commission would like.

Chair Pehrson stated that he was surprised that this wasn't regulated by State Law.

Deputy Director McBeth stated that City Attorney Kolb could comment on this.

City Attorney Kolb stated that the sale of alcoholic beverages at gas stations is regulated by the LCC, The Liquor

Control Commission. They have in place under State Law standards that would apply. There are very strict conditions, mainly related to the size of the building. In the past, it has typically only applied to larger stores like Meijer's who have a few gas pumps out front. The standards require stores to have \$250,000.00 worth of merchandise excluding alcohol or the fuel itself. So per the state standards, the license would really only be available for larger stores, of which there haven't been very many. Because of this requirement you did not see liquor licenses or liquor, beer or wine being sold at gas stations in the past.

However, these types of sales are becoming an issue because of a combination of larger stores and gas stations being constructed, along with the Meijer's-type stores getting gas stations and the limited staff at the Liquor Control Commission to monitor these sales. Now is the opportunity to step in at the city level and say, we want to regulate this even more through the use of zoning ordinance tools, as stated in the amendment before you tonight. This proposed ordinance is one that was prepared for another client community that had a policy that they did not want to allow the sale of alcohol at gas stations. So, the proposed ordinance is a complete prohibition. As Deputy Director McBeth stated, this is a policy decision for the city.

Deputy Director McBeth asked the Planning Commission what their thoughts were on how to handle this, whether they wanted an outright prohibition of such sales or if they would rather such sales be handled at the state level.

Chair Pehrson stated that he would like to see more data come back from the Planning Division relative to what other communities are doing, where, given the zoning, these super stores might be located and to have an understanding of where the stores would be relative to residences and things of that nature.

Member Lynch stated that it sounded like the Liquor Control Commission did not have the staff to monitor violations. Member Lynch also questioned if we were basically creating an ordinance that would allow us to do what the Liquor Control Commission is supposed to do and would we be burdening the city with additional work.

Deputy Director McBeth stated that she did not think the city would necessarily be burdened with it and the question essentially was would the city want to regulate this sort of sale at gas stations. Also, would the city want to apply any conditions or different standards, for example a proximity to residential districts, than the ones that are provided by the Liquor Control Commission.

Member Lynch stated that these were all good points, and he did understand that the Meijer, Sam's Club and Costco are all huge businesses. Member Lynch was as surprised as Chair Pehrson that gas stations were never allowed to sell liquor, beer or wine.

City Attorney Kolb stated that in the past this was not an issue because the Liquor Control's Commissions regulations previously prohibited such sales. Ten years ago, a statute was put in place that creates this 50,000 square feet or \$250,000.00 worth of merchandise exception. It has been rarely used, however with the Sunshine Market in, and possibly more of these to come, it might be something the would want to consider regulating. City Attorney Schultz and Kolb identified about half-a-dozen gas stations in the area around us where such a standard might apply.

Member Lynch stated that you have to look at the intent and that his understanding was that you did not want people behind a motor vehicle going to a gas station and running in and picking up a six-pack and leaving. With the super stores, that is not going to happen.

Member Greco stated that he was also surprised by the amendment. He had not been to the Sunshine Market as of yet, but was going to go there and check it out. It seems awfully convenient, not to drink and drive, but Member Greco can also imagine going out to a party and stopping to get gas and instead of making 2 stops, you make only one. Member Greco stated that he would like more information and had no objection to the Public Hearing, but did have concerns. Member Greco then questioned if there was a problem with the Sunshine Market, or if this was something that has just come up.

Deputy Director McBeth stated that there was not a problem and that it was a nice market and gas station. It was a question that came up because we identified there is only one station currently selling alcohol, and it has been contrary to what we have seen in the past in Novi. Deputy Director McBeth stated that after talking with the city attorney's office, we found that some of the other communities are considering regulations that would prohibit this kind

of venture. However, this is a broad policy question for discussion.

Member Greco stated that he thinks he knows where we are heading with this along with Chair Pehrson. Member Greco asked for more data on this before we set this for a Public Hearing.

Chair Pehrson agreed with Member Greco and asked if anyone else on the Planning Commission had comments.

Member Meyer wanted to comment on item A, and felt that that alcohol is not a product that should be conveniently available to the motoring public where they purchase fuel for their vehicle, and would like more information before we have a Public Hearing.

Chair Pehrson asked Deputy Director McBeth if that was enough direction.

Deputy Director McBeth answered the Chair and stated that the staff would put more information together and bring this back to the Planning Commission as a whole.