

AGENDA
SPECIAL HARMONY CITY COUNCIL
HARMONY ECONOMIC DEVELOPMENT AUTHORITY
Some members may participate by telephone or other electronic means
Regular Meeting

March 1st, 2022
7:00 P.M.

Council Room
Community Center

1. Call to Order
2. Roll Call
3. Charitable Gambling – The Bite
4. Public Hearing – Retail Variety Store Ordinance
 - a. Discussion Retail Variety Store Ordinance
5. Adjourn



ORDINANCE NO. _____
AN ORDINANCE AMENDING ORDINANCE NO. 86 ADOPTED ON 11/04/76, AS
AMENDED, AND TITLED ZONING ORDINANCE

The City Council of Harmony, Minnesota ordains: TITLE XIII: ZONING, of the City of Harmony municipal code, is hereby amended as follows:

1. The term special exception shall be replaced by the term conditional use as it is used throughout the zoning code.
2. Section 603.1 shall be amended to include Retail Variety Store as a conditional use in Commercial Districts.
3. Article XIX, Section 1900 shall be amended to include new Sections
 - a. 1900.071 Retail Variety Store, which shall be defined as: A retail store between 3,000 and 15,000 square feet that sells at retail an assortment of physical goods, products, or merchandise directly to the consumer, including but not limited to food or beverages for off-premises consumption, household products, personal grooming and health products, and other consumer goods. Retail variety stores do not include stores that (1) contain a prescription pharmacy; (2) sell gasoline or diesel fuel; (3) Specialty Food Stores; (4) dedicate at least 75% of shelf space to food or beverage items of any type; (5) dedicate less than 1% of shelf space to food or beverage items.
 - b. 1900.072 Specialty Food Stores: Retail food stores that sell primarily a single category of food item, such as a meat retail store or dairy retail store.
4. Article VII shall be amended to include new Section 701.7: Conditional Use; Use-Specific Standards for Retail Variety Stores.
 - a. **Findings and Purpose.** The City Council of the City of Harmony makes the following findings:
 - i. Finding #1—Full-Service Community: Harmony is commonly described as a full-service community, where residents and visitors alike can meet all of their essential needs within the City through offerings at the grocery store, pharmacy, greenhouse, hardware store, veterinary clinic, car dealerships, farm implement, numerous independent restaurants, various gift shops, and numerous trade and service businesses. Residents and business owners take pride in the wide offerings of the community, and that community pride tends to inspire additional investment in the community by residents, business owners, the Economic Development Authority, and the City of Harmony. Harmony is not a “bedroom” community where many people live and travel to distant employment centers for work, shopping, and recreation. Instead, Harmony is far enough away from most regional employment and shopping centers that the community has traditionally relied on the local offerings to meet most basic needs. The City of Harmony finds that the community of Harmony remains a thriving small town for those who live here, work here, and visit here, and desires to utilize its zoning power to further promote the general health, safety, and welfare of those within the community by promoting positive and sustainable community development and economic growth.

- ii. Finding #2—Growth in Retail Variety Stores: Since the late 2000s, Retail Variety Stores have experienced vigorous growth, with the estimated total number of Retail Variety Stores increasing from approximately 20,000 stores nationwide to a number now exceeding 30,000, with many leading Retail Variety Stores planning for additional growth. Retail Variety Stores are quickly increasing in density in Southeastern Minnesota, including Fillmore County.
- iii. Finding #3—Fresh Food Availability: Retail Variety Stores tend to sell a variety of household goods, apparel, hardware, home furnishings, and non-perishable food items, but traditionally do not sell any significant volume of fresh fruit, fresh vegetables, fresh dairy, fresh baked goods, and fresh meat. In contrast, local grocery stores traditionally serve communities by selling a wide assortment of fresh fruits, vegetables, dairy, baked goods, and meat in addition to non-perishable food items and other consumer goods. The City of Harmony desires to exercise its zoning power and authority to promote the health and general welfare of the community by allowing future development to occur in the manner least likely to jeopardize the ability of community members to have local access to fresh fruits, vegetables, dairy, baked goods, and meat like that traditionally provided by a full-service grocery store. The City of Harmony strongly believes the availability of these basic food items within the community is critical to its long-term viability as an attractive place for residents to live, work, and visit. City officials have observed neighboring communities struggle to grow or remain an attractive place to live after the loss of their local grocery store. City officials have also observed that once a small town loses its grocery store, it is unlikely to get one back of equal quality. The City of Harmony finds that requiring any Retail Variety Store selling food or beverages to have diverse offerings of fresh fruit, fresh vegetables, fresh dairy, fresh baked goods, and fresh meat, is necessary to support the overall public health and welfare through sustained access to nutritious foods in the event a Retail Variety Store would outcompete an existing independent grocery store or serve as a barrier to entry for a new grocery store.
- iv. Finding #4—Pharmacy: The City of Harmony finds that maintaining a full-service pharmacy in the City of Harmony is a priority for the health, safety, and general well-being of the community. Many residents are elderly and rely on the local pharmacy for routine access to medications and expert guidance provided by the pharmacist. The City of Harmony was a champion of promoting the legislative law changes that were necessary to permit the approval and implementation of tele-health options, which helped preserve the presence of the pharmacy in Harmony at a time when it may otherwise closed. The City of Harmony strongly believes the availability of these basic pharmaceuticals and the expertise of a pharmacist within the community is critical to its long-term viability as an attractive place for residents to live, work, and visit. The City of Harmony recognizes that the sale of various over-the-counter medications at a Retail Variety Store is likely to undercut the viability of a full-service pharmacy in the community and such competition increases the chances of closure of the pharmacy. Loss of a pharmacy would eliminate the availability of prescription pharmaceuticals available within the

- community and eliminate the professional expertise offered by the pharmacist. The City of Harmony desires to exercise its zoning authority and power to promote economic development in the community that is most likely to preserve the opportunity for the community to host a full-service pharmacy providing prescription pharmaceuticals and the expertise of a pharmacist.
- v. Finding #5—Harmony Charm: The City of Harmony has a small-town charm that makes the community an attractive place for residents to live, vacationers to visit, for businesses to operate, and for an overall sense of community pride to flourish. Harmony has a refreshing absence of national chain restaurants or retail stores, instead being populated by numerous independent restaurants, independent small businesses, most professional services, and an active presence among all trades. The City of Harmony finds that it is highly desirable that all future development be in character with the small-town charm that presently typifies the community and sets it apart from other communities in the region that have vacant commercial districts or a presence of national chains diluting their unique character. Other examples of the existing characteristics that make the Harmony commercial districts charming and unique include: (1) unique and non-standard construction among its commercial, retail, and industrial businesses, (2) construction with higher quality construction materials (i.e. stone, masonry brick), (3) unobtrusive citing of businesses and absence of obtrusive lighting, (4) signage with unique character, generally not illuminated but when illuminated, usually done with external illumination, and (5) the majority of vehicle parking cited to the side or rear of businesses. The City of Harmony finds that it is the interest of the community general well-being to regulate how such development occurs so that it enhances the community charm rather than detracting from it.
- vi. Finding #6—Livability: The citing of Retail Variety Stores near residential housing may have a negative impact on residential use and enjoyment of those adjacent residential units. Any such stores shall adhere to some basic zoning limitations to minimize land use conflicts between commercial retail and residential living. The City of Harmony finds that it is in the best interest of the community to regulate how such development occurs so that it does not unnecessarily infringe on the health, safety, and general well-being of residents living in the community, especially the nearest neighbors.
- b. **Application & Review.** Application for a Conditional Use Permit for a Retail Variety Store shall be made to the City Administrator, who shall then refer such matter to the Planning and Zoning Commission for review. Each application shall include a site plan including such detailed information as necessary to demonstrate compliance with the City Ordinances and standards required under the conditional use permit. The Planning and Zoning Commission shall hold a public hearing according to the procedures required by state law, as may be amended from time to time. Written notice of such public hearing shall be given to all property owners of record within five hundred feet of the affected property by depositing written notice in U.S. Mail, mailed at least ten days in advance of the public hearing. The Planning and Zoning Commission shall report to the City Council findings and recommendations, including the stipulation of additional conditions and

guarantees that such conditions will be complied with when they are deemed necessary for the protection of the public interest. Upon receipt of the report of the Planning Commission, the City Council shall hold whatever public hearings it deems advisable and shall make a decision upon the Conditional Use Permit application.

- c. **Fee.** Each application for a conditional use permit shall be accompanied by the fee specified in the City Fee Schedule Ordinance.
- d. **Standards.** The City shall not approve a conditional use permit for a Retail Variety Store in a commercial district unless the following standards are met:
 - i. **Essential Product Offerings:**
 1. **Food:** If a Retail Variety Store sells food or beverages for human consumption, at least 25% of display space devoted to food items shall be dedicated to fresh fruit, fresh vegetables, fresh dairy, fresh baked goods, and fresh meat collectively.
 2. **Pharmaceuticals:** If the Retail Variety Store sells any type of over-the-counter pharmaceuticals, it shall also be required to offer prescription pharmaceuticals and shall provide customers access to a pharmacist, if not in person, using telehealth technology.
 - ii. **Building Siting & Design:**
 1. **Setback:** The building shall be set back a minimum of 150 feet from the nearest residential dwelling.
 2. **Screening:** The store and any parking lot shall be screened from view by a wooden privacy fence a minimum of eight feet tall on any side in which a residential home is adjacent.
 3. **Façade:** The front façade of any Retail Variety Store shall be comprised of traditional building materials of masonry brick or natural stone. Concrete block walls and steel siding shall not be permitted on the front façade, though they may be used on the sides and rear.
 - iii. **Lighting:**
 1. **Lighting:** Any exterior lighting on the Retail Variety Store property shall be 90-degree cut-off with a flat lens design. Additionally, all lighting must be arranged so as not to shine directly on any adjoining property.
 2. **Sign Illumination:** Any exterior signage shall not be internally illuminated but may have targeted exterior lighting for nighttime illumination, subject to the same lighting standards described in this Section.
 - iv. **Parking:** At least 80% of the available parking spaces shall be located on the side or rear of the building to avoid the appearance of a large parking lot at the front of the building and keeping in character with present business development.
 - v. **Storm Water Runoff:** The property shall have a catchment basin for all stormwater from the roof of the structure and any paved parking lot, to maximize soil infiltration and minimize the burden on the City stormwater infrastructure. The basin shall be sized and designed to the specifications recommended by the City Engineer based on the project design proposal. Any applicant for a conditional use permit under these provisions shall be responsible for the City's costs associated with any City Engineering review and recommendation and may

- be required by the City to deposit with the City the engineer's estimated review and design costs and expenses in advance of any review.
- vi. **Garbage:** The Retail Variety Store shall have at least one garbage can at each entrance, which shall be emptied daily. Additionally, a daily inspection of the parking lot and surrounding property shall be performed by an employee or representative of the Retail Variety Store for litter clean up and control.
 - vii. **Harmony & Spirit:** The application shall be approved only if the City finds that the proposed use is in harmony with, and in the spirit of, the economic development goals set forth in this ordinance and any comprehensive city plan, if one is then in existence.
 - viii. **Site Specific Conditions:** The City shall require such other site-specific conditions as required for the protection the public's health, safety, morals, and general welfare. The Planning Commission or the City Council shall have the authority to impose any other reasonable conditions to achieve the standards and goals set forth.
- e. **Recording.** The City Administrator shall file a certified copy of the Conditional Use Permit with the land records department of record.
 - f. **Expiration.** An approved Conditional Use Permit shall expire if the use approved has not commenced within 9 months.
 - g. **Time Limit on Reapplication.** No application for a conditional use permit shall be resubmitted for a period of one year from the date the request is denied, except that the Planning and Zoning Commission may allow a new application if in the opinion of the Commission, new evidence or a change in circumstances warrant it.
 - h. **Violation.** Violation of any of the standards of the conditional use permit shall result in revocation of the conditional use permit, if such violation is not cured within 30 days' written notice from the City to the permit holder at the property address on record.
 - i. **Effective Date.** This ordinance becomes effective from and after its passage and publication.

Passed by the City Council of Harmony, Minnesota this ____ day of _____, 2022.

Steve Donney, Mayor

Attested:

Devin Swanberg, City Clerk

Harmony EDA Minutes

January 20, 2022
7:30 AM

Community Center
Council Room

Present: Kerry Kingsley, Steve Donney, Steve Sagen, and Greg Schieber

Also Present: Chris Giesen. Andy Batstone joined via virtual meeting for discussion purposes only.

The special meeting was called to order at 7:34 AM by Kerry Kingsley.

Discuss Recommendations for Changes to Zoning Code: Conditional Use Permits for Certain Retail Facilities

The board had a lengthy discussion as a follow up to the matters brought up by Schieber at during the member open forum at the previous meeting and preliminarily in the fall of 2021. At the regular January 2022 meeting the board agreed to have Kingsley and Schieber review a potential draft zoning ordinance change that would apply a conditional use permit process to certain commercial uses. Kingsley and Schieber reported that they met the week prior and discussed several items related to a proposed draft ordinance. In particular, the definition of a retail variety store and specific performance standards that would apply to the new conditional use permit, if approved.

It was noted that the EDA only has oversight of development matters and that zoning changes would need to be reviewed by the planning and zoning commission and city council. Any action on this matter would be recommendation only.

As a second layer to the discussion, it was noted that a prospective project likely falling into the definition of a retail variety store (as defined in the proposed zoning amendment) was potentially considering the development of a privately held parcel in the community. This project may be moving forward in the near future and that this discussion could run into conflict with that project's timeline. It was noted, if of concern to the board, that while the board's discussion is timely the public review process for a zoning ordinance amendment might not finish before the prospective project moves forward.

Schieber reviewed a draft of the committee's recommendations, giving an overview of the proposed zoning ordinance amendment. Kingsley thanked Schieber for his work. Schieber noted that while he feels this matter is of importance, if he is in the minority opinion, he understands.

After reviewing the draft proposal, the board discussed at length. Donney noted he was of a similar opinion as the last meeting; that he's not sure he wants to draw a line on requirements for certain businesses over others. He noted that he may have a conflict of interest on the matter and didn't want to overstep any of his roles. Donney wondered if the chamber of commerce might have advice for the city? He noted that he would like to see this proposed ordinance be discussed by the planning and zoning commission. The board discussed conducting some kind of community survey but determined the effort

might not be quick enough and valuable enough relative to other avenues to learn the sentiment of Harmony residents.

Kingsley asked if the process could be slowed down to get proper input from all of the boards and public. He didn't want to rush anything through.

Schieber noted that a moratorium could be established by the city council, which would be an "emergency stop button" if the council felt they did not have enough time to review and react to the question at hand.

Batstone proposed that a 3-4 month moratorium could give the council and public a chance to talk about the project and learn more about the public's sentiments.

Sagen inquired if the performance standards would apply to other buildings. Giesen replied that the performance standards in the proposed ordinance would only apply in situations where the property use falls under the definition of a retail variety store given in the ordinance.

Donney expressed concern that a moratorium might kill a project unnecessarily as even if the council approved such a measure, the council might not ultimately take any action on a zoning change.

After hearing discussion from all members, Kingsley suggested perhaps the fairest way forward would be for the council to issue a moratorium for 3 months to allow the process and public to move forward. Noting that even if a prospective prospect is concerned about a moratorium, a short 3 month timeline shouldn't delay construction if this conversation is all for nothing.

Motion by Kingsley, second by Schieber to recommend that the city council meet within three days to institute an emergency moratorium on the issuance of zoning permits to applicants that would fall under the definition of a retail variety store as defined in Schieber's draft zoning amendment proposal. Discussion followed.

Schieber noted that he seconded the motion to allow for the motion to proceed to discussion and that a moratorium is not his first option. Kingsley noted that his motion isn't trying to stop business from coming to town, but to provide the public a chance to provide input. Donney asked if the motion could be amended to provide that the council meet as soon as possible as opposed to within three days, noting he is less favorable of a moratorium. Kingsley and Schieber were agreeable to the friendly amendment and amended the motion to accommodate Donney's suggestion that the board request the council meet as soon as possible instead of within three days. Batstone concurred that a 3 month deadline for a moratorium makes sense. Schieber concurred with Donney that he is less favorable to a moratorium but could support one with a timeframe. Sagen noted that he would like additional public input. Kingsley called the question. The board asked Giesen to read aloud the motion as amended. Motion carried 3-0-1 as amended; Donney abstained.

Discussion continued. Consensus of the board was that since a moratorium is being requested from council, the board should also recommend that planning and zoning consider the draft zoning ordinance proposal; starting that review process. Motion by Donney second by Sagen to recommend that the planning and zoning commission consider the draft zoning ordinance proposal created by Schieber, as recommended by the committee. Motion carried unanimously.

There was no other business.

Hearing no objections, Kingsley adjourned the meeting. The meeting adjourned at 8:50 AM.