



## MAYOR AND COUNCIL COMMUNICATION

DATE: 12/6/2016

**CONSENT**

ITEM #: 9

**AGENDA ITEM:** Subsurface Sewage Treatment Systems Ordinance Amendment

**SUBMITTED BY:** Kristina Handt, City Administrator

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### **BACKGROUND:**

During the October 11, 2016 Council Work Session, the Council and Washington County Public Health Department Staff discussed necessary changes to the Subsurface Sewage Treatment Systems Section of Chapter 51: Waste Water Treatment Systems, of the City Code in order to bring it in to compliance with state rules. A recommended ordinance amendment has been prepared for review.

### **ISSUE BEFORE COUNCIL:**

The Council is being asked to consider a text amendment to Chapter 51: Waste Water Treatment Systems, of City Code.

### **PROPOSAL DETAILS/ANALYSIS:**

The Staff Report from this work session is attached for reference, explaining the recommended changes. The City Attorney has also reviewed the ordinance and concurs that the City's provision that requires Subsurface Sewage Treatments Systems (SSTSs) that serve two or more properties to be designed by a registered professional engineer conflicts with Minnesota Rules Part 7082.0100, subpart 3, as this rule prohibits the City from requiring additional local licenses, registrations, certificates or other similar professional credentials to perform SSTS work. Additional revisions have been made to the ordinance's language for clarity.

### **FISCAL IMPACT:**

If the City chooses to adopt a current ordinance which meets current standards established in Minnesota Rules Chapter 7082, the City can contract with the county to administer the City ordinance. This includes reviewing all installation inspections as well as other associated functions. Specifically, variance requests would be considered by the City.

Alternatively, as outlined below, the City may choose to repeal Section 51.002 of the City Code, in which case the Washington County Subsurface Sewage Treatment System ordinance would take

effect within the City, and variance requests would be considered by the County, with the exception of variances for certain setbacks and zoning requirements, which would be considered by the City.

**OPTIONS:**

The City Council may:

- Approve the recommended ordinance amendment as part of tonight's consent agenda.
- Remove the item from the consent agenda to discuss then approve the ordinance amendment unchanged.
- Remove the item from the consent agenda to discuss then approve the ordinance amendment unchanged.
- Direct staff to choose to repeal Section 51.002 of the City Code.
- Deny the ordinance amendment.

**RECOMMENDATION:**

Staff respectfully recommends the City Council approve the recommended changes to Chapter 51: Waste Water Treatment Systems as it pertains to Subsurface Sewage Treatment Systems as part of tonight's consent agenda by approving Ordinance 08-159.

If the item is removed from the consent agenda, then the following motion is recommended:

***“Move to approve Ordinance 08-159 approving amendments to Chapter 51: Waste Water Treatment Systems as it pertains to Subsurface Sewage Treatment Systems.”***

If approved, the Council may adopt Resolution 2016-106, authorizing summary publication of Ord-159:

***“Move to adopt Resolution 2016-106, authorizing summary publication of Ordinance 08- .”***

**ATTACHMENTS:**

- Ord 08-159 Amending Subsurface Sewage Treatment Systems
- Resolution 2016-106 Summary Publication of Ord 08-159
- October 11, 2016 Council Work Session SSTS Ordinance and County Services Staff Report

CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. 08-159

AN ORDINANCE AMENDING TITLE V: CHAPTER 51 OF THE LAKE ELMO  
CITY CODE OF ORDINANCES REGARDING SUBSURFACE SEWAGE  
TREATMENT SYSTEMS

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title V: Public Works; Chapter 51: Waste Water Treatment Systems, by deleting the ~~stricken~~ language and inserting the underlined language as follows:

51.001 INTENT AND PURPOSE.

This subchapter is adopted for the purpose of protecting the health, safety and welfare of the residents of the city through regulating the location, design, installation, use and maintenance of individual sewage treatment systems so as to prevent contamination of surface waters and groundwaters.

51.002 REGULATIONS ADOPTED BY REFERENCE. ~~ADOPTION OF COUNTY SUBSURFACE SEWAGE TREATMENT SYSTEM ORDINANCE.~~

Chapter 4 Four of the Washington County Development Code entitled *Subsurface Sewage Treatment Systems Regulations, Ordinance #196 (the "County Regulations")*, as amended with the exception of Sections 3.1, 3.3, 3.4, 22.10, 23, 26.3, 28.1, and 29.1 is hereby adopted by reference and made part of this Chapter in its entirety as if herein printed in full. Whenever the term "Department" appears in the County Regulations, it shall mean the "Lake Elmo Planning Department." Whenever the term "County" appears in the County Regulations, it shall mean the "City of Lake Elmo" except as used in Section 3.14 of the County Regulations. Whenever the term "local unit of government appears in the County Regulations, it shall mean the "City of Lake Elmo."

51.003 EXCEPTIONS TO COUNTY ~~ORDINANCE~~ REGULATIONS.

(A) The following provisions are adopted in addition to ~~separately from the Chapter 4 adopted in § 51.002 the County Regulations~~ and are more restricting ~~restrictive~~ than Chapter 4 of the Washington County Development Code the County Regulations:

(1) ~~Washington County Development Code Chapter 4; Section 6—Permits:~~

- (a) "Mound systems are not allowed for new collector systems in the OP Open Space Preservation District except to replace existing non-compliant systems."

~~—(2) Washington County Development Code Chapter 4; Section 22—Maintenance:~~

~~—(b) "Sewage tanks shall be pumped or inspected by a licensed septic pumper, or inspected by a state-certified septic inspector every 2 years. A pumping and/or inspection report shall be submitted to the permitting authority by the pumper or inspector."~~

~~—(B) OP Waste Water Treatment Systems.~~

~~—(1) Collector systems in the OP zone shall be operated and maintained by a business licensed as a service provider in accordance with Minn. Rules 7083. An operation and maintenance plan shall be prepared by the developer prior to final plat approval. The homeowners association shall be responsible for implementing this plan. Included in this plan shall be both ground water monitoring, and visual inspections. Biannual reports shall be prepared by the service provider and submitted to the permitting authority.~~

~~(C) Systems Serving Multiple Properties.~~

~~—(1) Any SSTS system serving two or more properties shall be designed by a registered professional engineer in the State of Minnesota in addition to having all other necessary certifications and licenses required by Minn. Rules, Chapter 7083, including the collection component of the shared system, or any component of the system that is located within an asset of the city.~~

#### 51.004 GENERALLY.

*General requirements - community sewage treatment systems.*

(A) Lawful connections to community sewage treatment systems. ~~New connections will be allowed, with a city permit, according to the following conditions.~~

~~(A) Where~~ when an existing individual sewage treatment system is failing and ~~where~~ the property in question is near the community sewage treatment system, ~~a new connection may be permitted~~ provided that if capacity is available in all components of the community sewage treatment system.

~~(B)~~ A ~~New~~ connection to a community sewage treatment system will not be permitted for new construction, unless the previous structure on the property in which the new construction occurs was previously connected to the existing community sewage treatment system. In that event, a city permit is required.

~~(C)~~ (B) The fee for new connections ~~shall be evaluated on a case by case basis will be determined by the city.~~ In general ~~the~~ The new user ~~shall~~ will be responsible for paying all costs to connect to the system, plus a charge to pay for previously built drainfield areas.

~~(D)~~ (C) No person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any community sewage treatment system or appurtenance of the system without first obtaining a written permit from the city. This provision shall not apply to certified qualified employees performing tasks within their area of

certification for which a Permit is not required. The definition of a "certified qualified employee" shall be as set forth in the County Regulations.

(1997 Code, § 700.04) (Am. Ord. 08-029, passed 9-21-2010) Penalty, see § 10.99

#### 51.005 ADMINISTRATION.

(A) *Board of Adjustment and Appeals.*

(1) Administrative Appeals

(a) An aggrieved party may appeal a decision by the permitting authority regarding the interpretation or application of the provisions of §§ 51.001*et seq.*

(b) Appeals shall be reviewed and determined by the city's Board of Adjustment and Appeals.

(2) Variance Procedures

(a) Requests for variances to the provisions of §§ 51.001*et seq.* shall be reviewed pursuant to the procedures and standards contained in the zoning code.

(b) No variances with respect to Sections 4.1, 4.7, 4.8, 4.9, and Sections 16.2 (1) through Section 16.2 (4) of the County Regulations will be considered or granted by the City. The City may grant a variance with respect to Section 4.8 (4) (A) of the County Regulations for replacement MSTs serving existing dwellings or other establishments.

**SECTION 2.** Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

**SECTION 3.** Adoption Date. This Ordinance 08-\_\_\_ was adopted on this \_\_\_\_\_ day of \_\_\_ 2016, by a vote of \_\_\_ Ayes and \_\_\_ Nays.

LAKE ELMO CITY COUNCIL

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Mike Pearson, Mayor

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

This Ordinance \_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_, 2016.

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

**RESOLUTION NO. 2016-106**

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-159 BY TITLE  
AND SUMMARY**

**WHEREAS**, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-159, an ordinance to amend Title V: Chapter 51 of the Lake Elmo City Code of Ordinances Regarding Subsurface Sewage Treatment Systems.

**WHEREAS**, the ordinance is lengthy; and

**WHEREAS**, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

**WHEREAS**, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Lake Elmo, that the City Clerk shall cause the following summary of Ordinance No. 08-159 to be published in the official newspaper in lieu of the entire ordinance:

**Public Notice**

The City Council of the City of Lake Elmo has adopted Ordinance No. 08-159, which amends Title V: Chapter 51 of the Lake Elmo City Code of Ordinances regarding Subsurface Sewage Treatment Systems, adopting Washington County's bringing it in to compliance with County and State rules by amending the following:

- Specifies that mound systems are not allowed for new collector systems in the OP Open Space Preservation District except to replace existing non-compliant systems.
- Removes language that requires sewage tanks be pumped or inspected by a licensed septic pumper, or inspected by a state-certified septic inspector every 2 years and that a report be submitted to the permitting authority by the pumper or inspector, as this is preempted by State Statute 115.55 Subp. 5 (c).
- Removes language regulating operation and maintenance of OP Wastewater Treatment Systems, as this is redundant with a provision in the County Ordinance.
- Removes language requiring subsurface sewage treatment systems serving two or more properties be designed by a registered professional engineer in the State of Minnesota, as this is prohibited by MN Rules 7082.00100 Subp. 3 Item A.
- Further clarifies variance procedures.

**BE IT FURTHER RESOLVED** by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance at City Hall for public inspection and that a full copy of the ordinance be placed in a public location within the City.

Dated: December 6, 2016

\_\_\_\_\_  
Mayor Mike Pearson

ATTEST:

\_\_\_\_\_  
Julie Johnson, City Clerk

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member  
\_\_\_\_\_ and upon vote being taken thereon, the following voted in favor  
thereof: \_\_\_\_\_ and the following voted against  
same: \_\_\_\_\_

Whereupon said resolution was declared duly passed and adopted.





## **STAFF REPORT**

DATE: October 11, 2016

**WORK SESSION**

ITEM #:

**DISCUSSION**

**TO:** Mayor and City Council

**FROM:** Kristina Handt, City Administrator

**AGENDA ITEM:** SSTS Ordinance and County Services

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### **BACKGROUND:**

The City's ordinances relating to subsurface sewage treatment systems (SSTS) is in Chap 51 of the code. A copy is included in your packet. The city has been contracting with Washington County for SSTS permit and inspections. It has been determined by county staff that the current city ordinance is out of compliance with state rules.

### **ISSUE FOR DISCUSSION:**

What ordinance amendment should staff prepare?

### **PROPOSAL DETAILS/ANALYSIS:**

Included in your packet is a memo from county staff laying out the options and discussing the issues. County staff (Girard Goder or Jeff Tavis) will be in attendance at the work session to provide additional information and answer questions since this is a very technical issue.

In addition to the memo, I asked for more specific info from county staff about what aspects of the city's SSTS ordinance were out of compliance. Girard Goder provided the following comments:

The City Code includes the following provision (because it incorporates the County Ordinance word for word):

#### 3.1 Administrative scope.

This chapter shall apply and be in effect in all areas in Washington County other than cities and towns that have adopted ordinances that comply with Minnesota Statute Section 115.55, Minnesota Rules, Chapter 7082, and are as strict as this Chapter. [...]

Discussion: The City does not have the statutorily granted authority to enact an ordinance outside of its jurisdiction.

#### 3.3 Variance procedures.

[...] Modifications related to setbacks or zoning shall be heard by the Washington County Board of Adjustment and Appeals. [...]

Discussion: Here the establishes that the Washington County Board of Adjustment and Appeals consider variance requests, which is problematic because the Board does not have land use authority within the City. This also conflicts with Section 51.005 of the City Code which establishes that variances and appeals shall be heard by the City.

There are numerous other instances where the verbatim incorporation of the County Ordinance unintentionally grants/confers/requires County oversight/administration/control for a city ordinance. Should the City wish to continue to have the County administer the City ordinance, the better course of action would be for the City to establish itself as the regulatory authority (by still adopting the County Ordinance but also modifying all references to Washington County [and the various boards, departments, etc.] to instead read as their City equivalent counterparts) and subsequently contract with the County to deliver the City program.

In regards to the exceptions established in Section 53.003 of the City Code, I have the following comments:

(A) The following provisions are adopted separately from the Chapter 4 adopted in § 51.002 and are more restricting than Chapter 4 of the Washington County Development Code:

(1) Washington County Development Code Chapter 4; Section 6 - Permits:

(a) "Mound systems are not allowed for collector systems in the OP Open Space Preservation District."

In the hypothetical scenario\* that an existing community septic system needed to be replaced due to a separation to groundwater, and the soil conditions dictated that a replacement system would need to be a mound system, one of the two outcomes would result:

1. An individual mound would need to be constructed for every residence, or
2. The existing structures would become uninhabitable because a replacement, compliance community septic system would be prohibited.

\*Note: I do not know whether any existing community septic systems are located in OP Open Space Preservation Districts, so the above points may be moot and this provision only applies to new construction.

(2) Washington County Development Code Chapter 4; Section 22 - Maintenance:

(b) "Sewage tanks shall be pumped or inspected by a licensed septic pumper, or inspected by a state-certified septic inspector every 2 years. A pumping and/or inspection report shall be submitted to the permitting authority by the pumper or inspector."

As written, this requirement may be preempted by the restriction in MINN STAT 115.55 Subp. 5 (c), which states, in pertinent part:

A certificate of compliance for an existing system is valid for three years from the date of issuance unless the local unit of government finds evidence of an imminent threat to public health or safety requiring removal and abatement under section 145A.04, subdivision 8.

To fully address whether this provision is allowable, the term "inspected" as used here, would need to be defined. The type of inspection (a tank integrity assessment) that I believe is intended here is allowable under state and county rules to be performed by a licensed septic maintenance business (i.e. "septic pumper"). However the type of inspection (a compliance inspection) that is required under state and county rules to be performed by a "state-certified septic inspector", cannot be required every two years by the City.

(B) OP Waste Water Treatment Systems.

(1) Collector systems in the OP zone shall be operated and maintained by a business licensed as a service provider in accordance with Minn. Rules 7083. An operation and maintenance plan shall be prepared by the developer prior to final plat approval. The homeowners association shall be responsible for implementing this plan. Included in this plan shall be both ground water monitoring, and visual inspections. Biannual reports shall be prepared by the service provider and submitted to the permitting authority.

This provision is, for all intents and purposes, redundant with a provision in the County Ordinance.

(C) Systems Serving Multiple Properties.

(1) Any SSTS system serving two or more properties shall be designed by a registered professional engineer in the State of Minnesota in addition to having all other necessary certifications and licenses required by Minn. Rules, Chapter 7083, including the collection component of the shared system, or any component of the system that is located within an asset of the city.

This provision may be prohibited by MN Rules 7082.00100 Subp. 3 Item A (in pertinent part):

[...] A local unit of government is not authorized to require additional local licenses, local registrations, local certificates, or other similar professional credentials to perform SSTS work.

**FISCAL IMPACT:**

NA

**OPTIONS:**

- 1) Adopt a current ordinance
- 2) Repeal or amend sections of current ordinance