



STAFF REPORT

DATE: February 2, 2021

REGULAR

TO: Mayor and Members of the City Council

FROM: Sgt. Tim Harris

AGENDA ITEM: Targeted Residential Picketing Ordinance Proposal

REVIEWED BY: Kristina Handt, City Administrator

BACKGROUND: Due to civil unrest and targeted picketing that has taken place in communities surrounding the City of Lake Elmo involving various issues this year it was found relevant to propose an ordinance that would safeguard the right of Lake Elmo Residents to enjoy their home and dwelling free from harassment and also balance the freedom of speech and expression. On 11/09/2020 this Ordinance proposal was presented to the City of Lake Elmo-Public Safety Committee for review and was voted on unanimously to bring forward to the city council for further action.

ISSUE BEFORE COUNCIL: Should the council adopt the Targeted Residential Picketing Ordinance?

PROPOSAL DETAILS/ANALYSIS: A copy of the proposed ordinance has been drafted by the city attorney and is included in your packet. The purpose of this ordinance is to safeguard the right of Lake Elmo residents to enjoy, in their home and dwelling, a feeling of well-being, tranquility and privacy. Targeted picketing in front of or about a residential dwelling causes emotional distress to the dwelling occupant(s); obstructs and interferes with the free use of public rights of way; and has as its object the harassment of the dwelling occupant(s). Not resorting to "targeted residential picketing", ample opportunities exist for those to exercise constitutionally protected freedom of speech and expression. In looking for similar ordinances it was found that the City of Mahtomedi had an ordinance in place restricting Targeted Residential Picketing. Additionally the City of Hugo has recently adopted a similar ordinance.

The Lake Elmo City Attorney, Sara Sonsalla, did some research on the targeted protest ordinance that was sent over from Mahtomedi. The U.S. Supreme Court found constitutional a Brookfield, Wisconsin ordinance that stated: "It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the town of Brookfield." *Frisby v. Schultz*, 487 U.S. 474, 486 (1988). The Court reasoned that this was a reasonable restriction on otherwise protected speech, because the type of protests banned by the Brookfield ordinance "generally do not seek to send a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way." A Minnesota Court relied on the *Frisby* decision to find constitutional a temporary restraining order prohibiting a protestor from protesting within two blocks of the residence of an Executive Director of a women's health organization. *Welsh v. Johnson*, 508 N.W. 2d 212 (Minn. Ct. App. 1993). Therefore, we believe that a well-crafted prohibition on targeted residential picketing would be found constitutional.

The Mahtomedi ordinance contains similar language to the Brookfield ordinance that the *Frisby* decision found constitutional. Protesting is obviously a heavily-protected form of speech. First Amendment restrictions on speech are typically only be constitutionally-permissible if they are "content-neutral." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155 (2015). The Mahtomedi ordinance does not prohibit a specific

type of protestor or protest but applies equally to all protestors and protest. It is therefore a content-neutral restriction on protesting.

Even if a restriction is content-neutral, it is still subject to intermediate scrutiny. A restriction on speech under intermediate scrutiny will only be upheld if it is: (1) limited to the time, place, and manner of the protected speech, (2) narrowly tailored to serve a significant governmental interest, and (3) leave open alternative channels for communication of the information. *Clark v. Cmty. for Creative Non-violence*, 468 U.S. 288, 293 (1984). The Mahtomedi ordinance clearly limits speech in a specific area (i.e., a targeted resident's home). It also is narrowly tailored, because it is limited to protesting "in front of or about a particular residential dwelling without the consent of the dwelling's occupant(s)." Finally, it explicitly references alternative channels for communication of the information. The Mahtomedi ordinance is therefore a good example of a well-crafted — and likely constitutional — prohibition on targeted residential picketing.

The proposed City of Lake Elmo Ordinance mirrors the City of Mahtomedi Ordinance as outlined by Ms. Sonsalla as it has been determined to be legally sound.

FISCAL IMPACT: NA

OPTIONS:

- 1) Approve Ordinance No 08-242
- 2) Amend and then approve Ordinance No 08-242
- 3) Do not pass Ordinance No-08-242

RECOMMENDATION:

Motion to adopt Ordinance No 08-242

ATTACHMENTS:

- **Proposed City of Lake Elmo Targeted Residential Picketing Ordinance No 08-242**

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

ORDINANCE NO. 08-242

**AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES
BY ADDING A CHAPTER PROHIBITING TARGETED RESIDENTIAL PICKETING**

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title IX General Regulations by adding a new Chapter 98 Targeted Residential Picketing and adding the following underlined language as follows:

TARGETED RESIDENTIAL PICKETING

§ 98.01 Purpose.

The City of Lake Elmo has an interest in safeguarding the right of Lake Elmo residents to enjoy, in their home and dwelling, a feeling of well-being, tranquility, and privacy. The Lake Elmo City Council finds that targeted residential picketing in front of or about a residential dwelling causes emotional distress to the dwelling occupants, obstructs and interferes with the free use of public rights-of-way, and has as its object the harassment of the dwelling occupants. The City Council further finds that, without resorting to targeted residential picketing, ample opportunities exist for those otherwise engaged in targeted residential picketing to exercise constitutionally-protected freedom of speech and expression.

§ 98.02 Definitions.

Targeted Residential Picketing” means standing, marching, patrolling, or other similar activities by one or more persons focused on, in front of or about a particular residential dwelling without the consent of the dwelling’s occupant(s).

§ 98.03 Targeted Residential Picketing Prohibited.

No person shall engage in targeted residential picketing within the City of Lake Elmo.

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 08-242 was adopted on this _____ day of _____ 2020, by a vote of ____ Ayes and ____ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance ____ - ____ was published on the ____ day of _____, 2020.