



STAFF REPORT

DATE: March 2, 2021

Regular

TO: Mayor and City Council
FROM: Ken Roberts, Planning Director
AGENDA ITEM: **Lake Elmo Subdivision and Zoning Code Amendments**
REVIEWED BY: Ben Prchal, City Planner
Sarah Sonsalla, City Attorney

BACKGROUND:

City staff has been directed to prepare amendments to the City's Subdivision Ordinance (Chapter 153). The requested changes are to clarify and add language to the Subdivision code about premature subdivisions and development in the City. In addition, there are some aspects of the subdivision and zoning ordinances the City could amend to clarify processes and to meet current City standards including those about variances. As such, staff has included other changes to the Subdivision and Zoning Ordinances as part of this review.

The Planning Commission held a public hearing and reviewed the proposed ordinance amendments on February 22, 2021. After some discussion and consideration, the Planning Commission voted to recommend approval of the proposed Code Amendments with a 4-1 vote (Aldinger voted nay).

ISSUE BEFORE THE CITY COUNCIL:

The City Council is being asked to review and consider the proposed amendments to the City's subdivision and zoning ordinances.

REVIEW AND ANALYSIS:

Zoning and subdivision regulations allow cities to ensure that a new development or redevelopment meets the standards of the city for a safe, functional and enjoyable community.

Background Information and Proposed Changes

Premature Subdivision

The City's Subdivision ordinance establishes the process for the review of subdivisions (preliminary and final plat) applications. What is not clear in the current ordinance is what if any standards the City has to determine and possibly deny a subdivision if it is premature because of a lack of public facilities or other issues. The proposed code amendment clarifies existing language in the Subdivision Code (Section 153.02 (F) and adds language (Section 153.025) about the premature subdivision of property in Lake Elmo. This proposed language notes that any proposed subdivision deemed premature by the City may not be approved by the City Council. The proposed code language also includes a list of conditions or criteria the City may use to determine if a subdivision is premature.

Variance to the Subdivision Ordinance Standards

The Subdivision Ordinance has language and standards (Sections 153.11 and 153.12) for variance requests that specifically apply to Subdivisions. The City should update this language to clarify the standards for approving a variance to the Subdivision Code.

The subdivision code currently uses the phrase “unusual hardship” as a standard finding for approving a variance. This language is still used in the subdivision statute (Minnesota Statutes Section 462.358, subdivision 6). However, it is different from the “undue hardship” standard that was in and used in the zoning statute (Minnesota Statutes Section 462.358). The term “undue hardship” for zoning variances was amended by the Legislature to “practical difficulties.” Because the statute for subdivision variances uses the phrasing “unusual hardship”, it should stay in the City Code. However, the state statute does not define what an unusual hardship is. Therefore, the City can and should define this standard/expectation so the City can apply it appropriately for variance requests to the subdivision ordinance. Staff is recommending the City use the standards for “practical difficulties” as the standard for defining an unusual hardship. These are listed in Section 153.11(C) Findings in the proposed ordinance amendment.

Staff also is proposing some changes to the ordinance to reflect the requirements that are set forth in the 60 day statute. The City Attorney is recommending additional changes to the existing code language in Sections 153.11 and 153.12 to update the Subdivision Code about the City application and review process that staff has included in the proposed Ordinance.

Zoning Ordinance Change

If the City wants to proceed with the proposed amendments to the Subdivision Ordinance about premature subdivisions, the City also should amend the Zoning Ordinance. The proposed change to the Zoning Ordinance would add language about premature development being prohibited (new Section 154.0045) and includes a reference to the Subdivision Ordinance. Adding this language to the Zoning Ordinance will help ensure the City would have the authority to determine almost any type of development or redevelopment as premature.

City Attorney Review

The City Attorney has reviewed and approved all the proposed ordinance revisions included with this request.

FISCAL IMPACT:

Staff does not foresee a negative fiscal impact with the proposed changes to the subdivision ordinance or to the zoning ordinance.

OPTIONS:

The City Council may:

- Approve the proposed changes to the subdivision and zoning ordinances.
- Approve the proposed changes to the ordinances with changes to the proposed language.
- Deny the proposed changes to the subdivision and zoning ordinances.

RECOMMENDATION:

Staff and the Planning Commission are recommending approval of the proposed changes to the Lake Elmo Subdivision and Zoning ordinances.

“Motion to adopt Ordinance 08- 247 an Ordinance amending the Subdivision and Zoning Ordinances as proposed by City staff.”

Because of the length of the ordinance amendments, staff also is recommending Council approval to publish a summary ordinance.

“Motion to approve summary publication of Ordinance 08-247 (the Subdivision and Zoning code amendments) with approval of Resolution 2021-026”

ATTACHMENTS

- Ordinance 08 – 247 (with amendments to the Subdivision and Zoning Ordinances)
- Resolution 2021 – 026 (for Summary Publication)

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-247

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY
AMENDING VARIOUS SECTIONS OF THE SUBDIVISION AND ZONING
REGULATIONS TO INCLUDE PROVISIONS RELATING TO PREMATURE
SUBDIVISIONS AND VARIANCES

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 153: Subdivision Regulations by amending Section 153.02 by adding the underlined language and deleting the ~~strikethrough~~ language as follows:

§ 153.02 GENERALLY.

- (A) *Purpose.* ~~The City adopts this chapter in~~ order to provide for orderly, economic, and safe development of land, ~~to provide the~~ necessary urban services and facilities, and to promote the public health and safety of the City ~~through the establishment of minimum regulations governing the subdivision of land~~. It is the intent of the City to protect the right of landowners to put their land to its highest and best use and protect each owner's right to full beneficial use of their land to accomplish enjoyment without detriment to the public interest.
- (B) *Intent.* ~~The City establishes these regulations with the intent to:~~
- ~~(1) implement the Comprehensive Plan;~~
 - ~~(2) ensure that subdivisions are consistent with all applicable plans, laws, and regulations;~~
 - ~~(3) provide for the orderly subdivision of land and to ensure proper legal descriptions and monumentation of subdivided land;~~
 - ~~(4) ensure that adequate public infrastructure, facilities, and services are available concurrent with development;~~
 - ~~(5) Conserve and protect the natural resources and scenic beauty of the City;~~
 - ~~(6) Require subdividers to furnish land, install infrastructure, and provide appropriate mitigation measures to ensure that development provides for all required improvements;~~
 - ~~(7) Promote a safe and effective transportation system including roadways, pedestrian pathways, and transit opportunities;~~
 - ~~(8) Prevent inappropriate subdivisions including premature subdivision; excess subdivision resulting in overcrowding of land and undue concentration of structures; partial or incomplete subdivision; or scattered or piecemeal subdivisions; and~~

(9) Establish standard requirements, conditions, and procedures for the design and review of subdivisions.

~~(B)(C)~~ *Scope.* The provisions of this chapter apply to any division of a tract of land into 2 or more parcels for the purpose of transfer of ownership, building development, or tax assessment purposes by platting, re-platting, registered land survey, conveyance, sale, contract for sale or any other means by which a beneficial interest in land is transferred except those divisions listed below:

- (1) where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;
- (2) creating cemetery lots; or
- (3) resulting from court orders.

~~(C)(D)~~ *Approval necessary for acceptance of subdivision plats.* Before any plat or subdivision shall be recorded or be of any validity, it shall be referred to the Planning Commission and approved by the City Council as having fulfilled the requirements of this chapter.

~~(D)(E)~~ *Building permits.* No building permits shall be issued for the construction of any building, structure, or improvement to any land or lot in a subdivision, as defined in this chapter, until all requirements of this chapter have been satisfied, with the following exceptions.

(1) Building permits may be issued for model homes after approval of the final plat by the City Council upon receipt of a signed development agreement. The issuance of building permits for model homes shall be in accordance with the signed development agreement.

(2) The developer shall agree in writing to indemnify and hold harmless the City for damages that may occur as a result of the model home construction prior to the required improvements being completed.

(3) No certificate of occupancy shall be issued by the City until all applicable requirements set forth by the development agreement have been met.

(4) Traffic and parking arrangements relating to model homes shall be subject to the City's review and approval.

~~(E)(F)~~ *Conflicts.* Whenever there is a difference between minimum standards or dimensions required by this chapter or other ordinances of the City, the most restrictive standards of dimensions shall apply.

~~(F)(G)~~ *Flood plain management.*

(1) No land shall be subdivided which is held unsuitable by the City Council for reason of flooding, inadequate storm water drainage, steep slopes, inadequate water supply, or inadequate sewage waste water treatment facilities. All lots within the flood plain shall contain a building site with a lowest floor elevation that is at least two feet or above the regulatory flood protection elevation. All subdivisions shall have water and sewage (waste water) disposal facilities that comply with the provisions of this chapter, and shall have road access both to the subdivision and to the individual building sites no lower than 2 feet below the regulatory flood protection elevation. (Also refer to Section 153.025, Premature Subdivisions, below).

(2) In the general flood plain district, applicants shall provide the information required in § 152.140. The City Council shall evaluate the subdivision in accordance with procedures established in this chapter and standards contained in § 152.08.

~~(G)~~(H) *Consistency with Comprehensive Plan and Zoning District.* Subdivision of property shall be in compliance with the City's Comprehensive Plan and zoning district in which the property is located.

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 153: Subdivision Regulations by adding a new Section 153.025 which shall read as follows:

§ 153.025 PREMATURE SUBDIVISION PROHIBITED.

Any plat or other subdivision of property may be denied by the City Council if it is deemed by the City Council to be premature for development pursuant to the criteria listed below.

(A) Any proposed plat or subdivision of property may be denied by the City Council if it is deemed by the City Council to be premature for development. The burden of proof shall be on the subdivider to demonstrate to the City Council that the proposed subdivision is not premature for development. The City may deem a subdivision premature if any of the following conditions exist:

- (1) *Inconsistent with the Comprehensive Plan.* A proposed plat or subdivision may be deemed premature if the subdivision is inconsistent with the goals, purposes, policies, phasing, or other requirements of the Comprehensive Plan. An application for a Comprehensive Plan amendment may be made concurrently with an application for a plat or subdivision approval; however, a plat or subdivision application will not be considered for approval by the City Council until and unless any necessary Comprehensive Plan amendment is approved by the City Council.
- (2) *Inconsistent with the City Capital Improvement Program.* A proposed plat or subdivision may be deemed premature if it is inconsistent with the City's Capital Improvement Program. A proposed plat or subdivision is inconsistent with the City's Capital Improvement Program if public improvements, facilities, or services such as recreational facilities or police and fire protection that must be provided at public's expense that are necessary to accommodate the proposed plat or subdivision will not be able to be reasonably provided within two years of the date of the plat or subdivision application.
- (3) *Lack of Adequate Water Supply.* Unless the City has guided the site of the proposed plat or subdivision as rural by the Comprehensive Plan, a proposed plat or subdivision may be deemed premature if municipal water is not available to serve the proposed subdivision if it is developed to its maximum permissible density without causing and unreasonable depreciation of existing municipal water supplies. "Available" shall mean existing or readily extended and funded consistent with the phasing in the Comprehensive Plan, the Capital Improvement Program, and any relevant City ordinances, plans, and policies. If the site of the proposed plat or subdivision is guided as rural by the Comprehensive Plan, a proposed subdivision shall be deemed premature with respect to a lack of adequate water supply if a private well or wells cannot adequately or safely serve the proposed subdivision.

- (4) *Lack of Adequate Waste Disposal Systems.* Unless the City has guided the site of the proposed plat or subdivision as rural by the Comprehensive Plan, a proposed plat or subdivision may be deemed premature if municipal sanitary sewer is not available or is not adequate in size to serve the proposed subdivision if developed to its maximum permissible density as indicated in the Comprehensive Plan. “Available” shall mean existing or readily extended and funded consistent with the phasing in the Comprehensive Plan, the Capital Improvement Program, and any relevant City ordinances, plans, and policies. If the site of the proposed plat or subdivision is guided as rural by the Comprehensive Plan, a proposed subdivision may be deemed premature if a private subsurface sewage treatment system or systems cannot adequately serve the proposed subdivision.
- (5) *Lack of Adequate Streets.* A proposed plat or subdivision may be deemed premature if public streets to serve the proposed plat or subdivision are not available. “Available” shall mean existing or readily extended and funded consistent with the phasing in the Comprehensive Plan, the Capital Improvement Program, and any relevant City ordinances, plans, and policies. In addition, a proposed plat or subdivision may be deemed premature if the traffic volume generated by the proposed plat or subdivision would create a hazard to public safety and the general public welfare or the streets are inadequate for the intended uses such that the subdivision would create unacceptable levels of traffic congestion on existing or proposed streets as determined by the City Engineer.
- (6) *Lack of Adequate Drainage.* A proposed plat or subdivision may be deemed premature if municipal or private surface water management facilities are not available to meet minimum local, watershed, and state treatment requirements including downstream infrastructure to manage stormwater. “Available” shall mean existing or readily constructed and funded consistent with the phasing in the Comprehensive Plan, the Capital Improvement Program, and any relevant City ordinances, plans, and policies. In addition, a proposed plat or subdivision may be deemed premature in cases where flood plains, poor soils, or steep slopes exist in such a manner as to preclude adequate site drainage or treatment of surface water runoff, cause pollution of water sources, or damage from erosion would occur on downhill or downstream land.
- (7) *Inconsistent or Not Compliant with State Environmental Statutes and Rules.* A proposed plat or subdivision may be deemed premature if it is not in compliance or is not consistent with the State’s environmental statutes and rules, set forth in Minnesota Statutes Chapter 116D and Minnesota Rules Part 4410.

SECTION 3. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 153: Subdivision Regulations by amending Section 153.07 by adding the underlined language and deleting the ~~strikethrough~~ language as follows:

§ 153.07 MINOR SUBDIVISIONS.

- (A) *Purpose and Intent.* The purpose of a minor subdivision process is to allow the City to waive certain procedures and requirements of a major subdivision. The purpose is to reduce the time and cost to the property owner for dividing land in locations and situations that are well defined and where no new public infrastructure is required. The minor subdivision process allows for concurrent review and approval of a preliminary and final-plat.

(B) *Criteria for Minor ~~s~~Subdivision.* A minor subdivision is a division of land which results in no more than 4 parcels shown on the plat/survey:

- (1) Each resultant parcel meets all applicable requirements of the Zoning Code, including but not limited to density, lot size, lot width, and minimum frontage on a public road, unless a variance has been approved according to the procedures set forth in Section 153.11 of the City Code.
- (2) No new public rights-of-way or streets shall be necessary for or created by the subdivision.
- (3) Streets, utility easements, drainage easements or public park land or cash in lieu of land shall be dedicated as required by the City.
- (4) All wetland areas and Minnesota Department of Natural Resources protected waters shall be protected with a conservation easement up to the 100-year flood level.
- (5) The minor subdivision complies with all applicable requirements of the road authority, including access spacing and location criteria for sight distances if located adjacent to a state or county highway, and/or of the watershed district(s) in which it is located.

(C) *Submittal Requirements.* Requests for minor subdivision shall be filed with the City on an official application form. The applicant's signatures shall be provided on the application form. If the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner. Such application shall be accompanied by the following information. The applicant shall submit a minimum of 4 large scale copies and 10 reduced scale (11" X 17") copies and electronic versions of all graphics. The application shall be considered as being officially submitted and complete when the applicant has complied with all the specified requirements. The applicant will be responsible for all expenses incurred in obtaining the required information.

- (1) An an application fee as set forth by the City's adopted fee schedule
- (2) Detailed written and graphic materials fully explaining the proposed minor subdivision.
- (3) List of property owners located within 350 feet of the subject property in a format prescribed by the City.
- (4) A preliminary plat prepared by a registered land surveyor in the form required by M.S. Ch. 505, as it may be amended from time to time, and the name, address, and registration number of the surveyor, which includes:
 - a. Graphical scale not more than 1 inch equals 100 feet.
 - b. North point indication.
 - c. Original and proposed lot boundaries.
 - d. Topographic data at 2 foot contours.
 - e. Existing and resulting parcel legal descriptions.
 - f. Buildable area on each lot and proposed building pad.
 - g. The location of existing structures on the site.
 - h. Existing and proposed driveway locations.
 - i. Existing easement locations.

- j. Existing parks, streets and utility easements.
- k. Delineated wetlands and water bodies including ordinary high water elevations and floodplain boundaries as applicable.
- l. Sewage treatment systems and/or well locations.
- m. Location and size of existing sewers, water mains, wells, culverts, or other underground utilities within the tract and to a distance of 150-feet beyond the tract, the data as grades, invert elevations, and locations of catch basins, and manholes shall also be shown;
- (5) Drainage, grading and erosion control plans, if applicable.
- (6) Existing and proposed lowest floor elevations for each lot.
- (7) Soil testing for the installation of subsurface sewage treatment system, if applicable.
- (8) If driveways to a state or county highway are required, driveway permits or a letter of intent to approve said driveways from the applicable road authority.
- (9) Any additional information if deemed necessary and required by the City. The City may waive for good cause certain information requirements not pertinent to the particular minor subdivision request.

(D) Review of Minor Subdivision.

- (1) *Review by staff and other commissions or jurisdictions.* The City shall refer copies of the preliminary plat to the City Engineer, Planner, Attorney, the Watershed District and the appropriate county, state, or other public agencies for their review and comment. The City shall instruct the appropriate staff persons to prepare technical reports where appropriate, and to provide general assistance in preparing a recommendation on the action to the Planning Commission and Council.
- (2) *Public Hearing Set.* Upon receipt of a complete application, the City shall set a public hearing following proper hearing notification. The Planning Commission shall conduct the hearing, and report its findings and make a recommendation to Council. Notice of said hearing shall consist of a legal property description and a description of the request, which shall be published in the official newspaper at least 10 days prior to the hearing and written notification of said hearing shall be mailed at least 10 days prior to the hearing to all owners of land within 350 feet of the boundary of the property in question. Public hearings shall follow the hearing procedures outlined in Section 154.102. Failure of a property owner to receive said notice shall not invalidate any such proceedings as set forth within this Chapter.
- (3) The Planning Commission shall make a finding of fact and recommend such actions or conditions relating to the request as it deems necessary to carry out the intent and purpose of this Chapter.
- (4) The City Council shall not approve a minor subdivision until it has received a report and recommendation from the Planning Commission and ~~the~~ City staff, or until 60 days after the first regular Planning Commission meeting at which the request was considered.

- (5) Approval of a minor subdivision shall require passage of a resolution by a majority vote of a quorum of the City Council.
 - (6) Prior to certification by the City of the approval of the minor subdivision, the applicant shall submit the final plat for signature, supply the easement documents granting the City any easements required by the City using the City's standard form of easement and pay any required recording or other fees.
 - (7) Whenever an application for a minor subdivision has been considered and denied by the City Council, a similar application for a minor subdivision affecting substantially the same property shall not be considered again by the Planning Commission or the City Council for at least 6 months from the date of its denial unless a decision to reconsider such matter is made by a majority vote of the entire City Council.
- (E) *Recording of the Minor Subdivision.* If the minor subdivision is approved by the Council, the subdivider shall record it with the County Recorder or Registrar of Titles within 180 days after the approval. If not recorded within 180 days, approval of the minor subdivision shall be considered void, unless a request for a time extension is submitted in writing and approved by the City Council. The subdivider shall, immediately upon recording, furnish the City with copies of the recorded documents which effectuate the minor subdivision. No building permits shall be issued for construction of any structure on any lot within the approved minor subdivision until the City has received evidence of the plat being recorded by the County.
- (F) *Financial Guarantee.* Following the approval of a minor subdivision as required by this Section and prior to the issuing of any building permits or the commencing of any work, the applicant may be required to submit a financial guarantee to the City to ensure the completion of any improvements as shown on the approved plans and as required as a condition of minor subdivision approval.
- (G) *Certification of Taxes Paid.* Prior to approval of an application for a minor subdivision, the applicant shall provide certification to the City that there are no delinquent property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the minor subdivision application relates.

SECTION 4. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 153: Subdivision Regulations by amending Section 153.08 by adding the underlined language and deleting the ~~strikethrough~~ language as follows:

§ 153.08 MAJOR SUBDIVISIONS – PRE-APPLICATION CONFERENCE.

- (A) *Purpose and Intent.* In order to ensure that all applicants are informed of the procedural requirements and minimum standards of this chapter and the requirements or limitations imposed by other City ordinances or plans, prior to the development of a preliminary plat, applicants are required to attend a pre-application conference with City staff (including, but not limited to, the Planning Director and the City Engineer) to review and discuss the proposed subdivision.

1. **Prerequisite. Pre-Application Conference.** Before filing of an application for a major subdivision with the City, the applicant of the proposed major subdivision shall arrange for and attend a pre-application conference with the Planning Director, City Engineer and other City staff. The primary purpose of the pre-application conference shall be to provide the applicant with an opportunity to gather information and obtain guidance as to the general suitability of his or her proposal for the area for which it is proposed and its conformity to the provisions of this section before incurring substantial expense in the preparation of plans, surveys and other data.
2. No application for a major subdivision will be accepted by the City unless an applicant's proposal is distinctly similar to one reviewed by City staff in the required pre application conference.

(B) *Submittal requirements.* Requests for pre-application conference and staff review of a major subdivision shall be filed with the City on an official application form. The applicant's signatures shall be provided on the application form. If the applicant is not the fee owner of the property, the fee owner's signature shall also be provided on the application form, or the applicant shall provide separate written and signed authorization for the application from the fee owner. Such application shall be accompanied by the following information. The applicant shall submit a minimum of 4 large scale copies and 10 reduced scale (11" X 17") copies and electronic versions of all graphics. The application shall be considered as being officially submitted and complete when the applicant has complied with all the specified requirements. The applicant will be responsible for all expenses incurred in obtaining the required information.

- (1) An **application** fee as set forth by the City's adopted fee schedule.
- (2) Detailed written and graphic materials fully explaining the proposed major subdivision.
- (3) List of property owners located within 350 feet of the subject property in a format prescribed by the City.
- (4) A scaled drawing which includes:
 - a. Locations of boundary lines in relation to a known section, quarter section, or quarter section line comprising a legal description of the property;
 - b. Graphical scale not less than 1 inch equals 100 feet.
 - c. Data and north point.
 - d. Existing conditions.
 - i. Boundary line of proposed subdivision, clearly indicated;
 - ii. Existing zoning classification for land within and abutting the subdivision;
 - iii. A statement on the acreage and dimensions of the lots;
 - iv. Location widths and names of existing or previously platted streets or other public ways, showing type, width, and conditions of improvements, if any, railroad and utility rights-of-way, parks and other open spaces, permanent

- buildings and structures, easements in section and corporate lines within the tract and to a distance of 150 feet beyond the tract;
- v. Location and size of existing sewers, water mains, wells, culverts, or other underground utilities within the tract and to a distance of 150 feet beyond the tract, the data as grades, invert elevations, and locations of catch basins, and manholes shall also be shown;
 - vi. Boundary lines of adjoining unsubdivided or subdivided land, within 150 feet, identified by name and ownership, including all contiguous land owned or controlled by the subdivider;
 - vii. Topographic data, including contours at vertical intervals of not more than 5 feet; water courses, marshes, rock outcrops, power transmission poles and lines and other significant features shall also be shown; National Geodetic Vertical Datum (N.G.V.D.) shall be used for all topographic mapping; ~~and~~
 - viii. The subdivider may be required to file a report prepared by a registered civil engineer or soil scientist on the feasibility of on-site sewer and water systems on each lot; the report shall include a soil borings analysis and a percolation test to verify conclusions~~;~~
 - ix. Buildable area on each lot and proposed building pad~~;~~
 - x. Existing and proposed driveway locations~~;~~
 - xi. Existing parks, streets and easement locations~~;~~ and
 - xii. Delineated wetlands and water bodies including ordinary high water elevations and floodplain boundaries as applicable.
- e. Proposed design features.
- i. Layout of proposed streets showing right-of-way widths, center line grade, typical cross-sections, and proposed names of streets in conformance with all applicable City ordinances and policies; the name of any street used in the City or its environs shall not be used unless the proposed street is the logical extension of an already named street, in which event the same name shall be used. The names and number shall comply with the County Uniform Street Numbering System.
 - ii. Areas other than streets, pedestrian ways, utility easement, intended to be dedicated or reserved for public use, including the size of the areas in acres.
 - iii. Provision for surface water disposal, drainage, and flood control within the boundaries of the proposed property division consistent with ~~s~~Section 150.273 of the City Code, storm water management and erosion and sediment control
- f. *Supplementary information.* ~~+~~ The supplementary information as shall reasonably be deemed necessary by City staff; including, but not limited to:
- ~~ii.~~ i. Proposed protective covenants;
 - ~~iii.~~ ii. Statement of the proposed use of lots stating type of residential buildings with number of proposed dwellings and type of business or

industry, so as to review the effect of the development on traffic, fire hazards, and congestion of population;

- ~~iv.~~ iii. If any zoning changes are contemplated, the proposed zoning plan for the areas, including dimensions, shall be shown. The proposed zoning plans shall be for information only and not vest any rights in the application for use other than residential;
- ~~v.~~ iv. A statement showing the proposed density with the method of calculating said density also shown.
- ~~vi.~~ v. Where the subdivider owns property adjacent to that which is being proposed for division, the City may require that the subdivider submit a sketch plan or ghost plat of the remainder of the property so as to show the possible relationship between the proposed division and a future subdivision. All subdivisions shall be reasonably consistent with the existing or potential adjacent subdivisions; and
- ~~vii.~~ vi. Where structures are to be placed on large or excessively deep lots, which are subject to replat, the development subdivision plans shall indicate placement of structures so that lots may be further subdivided, in addition to a sketch plan that illustrates a way in which the lots can possibly be resubdivided.

(C) *Pre-application Plan Review.* The pre-application plan for the proposed subdivision shall be reviewed by City staff. The City staff review of the proposed subdivision plan is to provide the applicant with an opportunity to gather information and obtain guidance as to the general suitability of his or her proposal for the area for which it is proposed and its conformity to the provisions of this subchapter. The applicant shall not construe any of the information provided by City at this point in the review process as an approval or denial of the proposed subdivision but rather as information to guide the applicant through the next steps in the City review process for the applicant's proposal.

SECTION 5. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 153: Subdivision Regulations by amending Section 153.11 by adding the underlined language and removing the ~~strikethrough~~ language as follows:

§ 153.11 VARIANCES; STANDARDS; PLATTING.

(A) *Purpose.* The City may grant a variance ~~A variance may be granted~~ from the minimum standards required by this chapter as they apply to a specific property where unusual hardship on the land exists, ~~but~~ Vvariances may be granted only upon the specific grounds set forth in this section. In granting any variance, the Planning Commission may recommend, and the Council shall prescribe, the conditions as it deems necessary and desirable to protect the public interests.

In no case shall any of the procedural requirements of this chapter be waived nor shall a variance be deemed to permit any waiver or avoidance of the procedural requirements.

(B) *Planning Commission review.* No variance shall be granted until the matter has been considered by the Planning Commission. In making its recommendations and making the findings set forth in paragraph (C) below, the Planning Commission shall take into account the nature of the proposed use of land and the existing use of land in the vicinity, the number of persons to reside or work in the proposed subdivision, and the probable effect of the proposed subdivision ~~upon~~ would have on traffic conditions in the vicinity of the proposed subdivision.

(C) *Findings.* A variance shall be granted only where the City Council finds the variance is in harmony with the general purposes and intent of this chapter and when the variance is consistent with the Comprehensive Plan. The applicant also must establish that there is an unusual hardship in complying with this chapter. "Unusual hardship" as used in connection with the granting of a variance means as follows:

(1) that the property owner proposes to use the property in a reasonable manner not permitted by this chapter;

(2) the plight of the property owner is due to circumstances unique to the property not created by the property owner; and

(3) the variance, if granted, will not alter the essential character of the locality.

~~(1) — That there are special circumstances or conditions affecting the applicant's land that the strict application of the minimum standards of this chapter would deprive the applicant of the reasonable use of that land;~~

~~(2) — That the granting of the variance will not be detrimental to the public welfare or injurious to other property; and~~

~~(3) — That the variance required by reason of unusual hardship relating to the physical characteristics of the land.~~

SECTION 6. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 153: Subdivision Regulations by amending Section 153.12 by adding the underlined language and removing the ~~strikethrough~~ language as follows:

§ 153.12 VARIANCE PROCEDURES.

(A) *Application.* Requests for a variance ~~to~~ from the City's subdivision regulations set forth in this chapter ~~standards or an appeal~~ shall be filed with the City on an official application form. The application shall be accompanied by a fee as established from time to time by resolution of the City Council. The application shall also be accompanied by detailed written and graphic materials necessary for the explanation of the request. The application also shall include all information required for variances set forth in Sections 154.109 (C) of the Zoning Code. ~~The applicant shall~~

~~submit a minimum of 4 large scale copies and 10 reduced scale (11" X 17") copies and electronic versions of all graphics.~~

(B) *Hearing.* The Planning Commission shall hold a public hearing on the variance request ~~in accordance with the standards set forth in the zoning code.~~

(C) *Appearance of the applicant before the Planning Commission.* The applicant or a representative of the applicant shall appear before the Planning Commission in order to answer questions concerning the proposed variance request.

(D) *Findings.* The Planning Commission shall make ~~its~~ the findings set forth in Section 154.11 (C) and make the considerations set forth in Section 154.11 (B) and make its recommendation to the City Council ~~the actions or conditions relating to the request as they deem necessary to carry out the intent.~~

(E) *Approval/denial.* Upon receiving the report and recommendation of the Planning Commission, the City Council shall ~~decide whether to~~ approve or deny the request for a variance. The City Council shall not ~~grant~~ approve or deny a variance until it has received the report and recommendation from the Planning Commission ~~or, unless no report and recommendation is received from the Planning Commission until and~~ 30 days have passed since ~~after~~ the application was ~~accepted~~ deemed complete by the City. The City Council shall ~~decide whether to~~ approve or deny the request for a variance ~~or an appeal~~ no later than 60 days after the ~~filing of~~ the application was deemed complete by the City unless a time extension is permitted ~~granted in accordance with~~ by Minnesota Statutes Section 15.99 State Law.

(F) *Written findings ~~and order~~.* The City Council shall make written findings of fact ~~and order~~ in granting or denying any application for a variance ~~or appeal~~. In granting any variance ~~or making any order related to a variance or appeal~~, the City Council shall impose any condition on its approval of the variance that it considers necessary in order to protect the public health, safety, or welfare.

(G) *Notification of decision.* The Planning Director or the City Clerk shall notify the applicant of the Council's decision in writing. If the City Council denies the variance, the notification must include a statement of the reasons for denial.

SECTION 7. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Regulations by adding a new Section 154.0045 to read as follows:

§ 154.0045 PREMATURE DEVELOPMENT AND SUBDIVISION PROHIBITED.

Any development, redevelopment, plat, or other subdivision of property may be denied by the City Council if it is deemed by the City Council to be premature for development pursuant to the criteria listed in Section 153.025 of the Subdivision Ordinance. The burden of proof shall be on the applicant, property owner, or subdivider to demonstrate to the City Council that the proposed development, redevelopment, plat, or subdivision is not premature for development or redevelopment.

SECTION 8. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 9. Adoption Date. This Ordinance 08-247 was adopted on this _____ day of ____ 2021, by a vote of ____ Ayes and ____ Nays.

LAKE ELMO CITY COUNCIL

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-_____ was published on the _____ day of _____, 2021

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

RESOLUTION NO. 2021 - 026

**RESOLUTION AUTHORIZING PUBLICATION OF A SUMMARY OF ORDINANCE
08-247**

WHEREAS, the Lake Elmo City Council has adopted Ordinance No. 08-247, an ordinance that amends the City's Subdivision Ordinance in Section 153.02 , Section 153.11 and Section 153.12 and the City Zoning Code with the addition of new Section 154.0045.

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. 08-247 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. 08-247, an ordinance that amends the City Code language in multiple sections of the Subdivision Ordinance and the Zoning Ordinance. This ordinance adds language to the City Code about premature subdivisions and to correct outdated code language about variances to the Subdivision Ordinance. The following is a summary of the adopted ordinance language:

Ordinance 08-XXX includes the following elements:

1. Revisions to City Code Section 153.02 and Section 153.025 that adds language to the Subdivision ordinance about premature subdivisions.
2. Clarifies the references for approving variances to the Subdivision Ordinance in Section 153.11 with the term unusual hardship and clarifies the filing and approval process for variances in Section 153.12 with inserts of the appropriate references.
3. Adds new language to the Zoning Ordinance (Section 154.0045) about premature development and subdivisions in Lake Elmo.

The full text of Ordinance 08-247, is available for inspection at Lake Elmo City Offices during regular business hours.

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: March 2, 2021

Charles Cadenhead, Mayor

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.