



MAYOR & COUNCIL COMMUNICATION

DATE: 09/17/2013
CONSENT
ITEM #: 5

AGENDA ITEM: Ratification of the MNDNR Approval of City of Lake Elmo Ordinance Amending Chapter 97 – Water Surface Use Ordinance 08-074; Resolution No. 2013-75

SUBMITTED BY: Dean Zuleger, Administrator

THROUGH: MNDNR Commissioner

REVIEWED BY: Dean Zuleger, City Administrator, Washington County Sheriff's Department and MNDNR

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation.....City Administrator
- Questions from Council to Staff..... Mayor Facilitates
- Public Comment (20 Minutes) Mayor Facilitates
- Call for Motion..... Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates

SUMMARY AND ACTION REQUESTED:

To ratify the MNDNR minor amendments to the Council approved Water Surface Use Ordinance passed by the Council in the Spring of 2013. If removed from the consent agenda, the recommended motions for this action is as follows:

“Move to approve Ordinance 08-074, which amends the previously adopted changes to Chapter 97 – Water Surface Use as proposed by the Minnesota Department of Natural Resources.”

In addition, Staff recommends that the City Council approve Resolution No. 2013-75, authorizing summary publication of Ordinance 08-074, through the following motion:

“Move to approve Resolution No. 2013-75, authorizing summary publication of Ordinance 08-074”

BACKGROUND INFORMATION:

In the Spring of 2013, the City Council of Lake Elmo passed a set of amendments to Chapter 97 of the Water Surface Use that expanded use times and placed protections for riparian landowners when

lake levels exceeded certain ordinary high water marks. Per State Law, these amendments had to be reviewed by the MN Department of Natural Resources for compatibility to state law. In addition, a number of riparian landowners petitioned the MNDNR to have an environmental assessment completed on the proposed amendments. MNDNR staff ruled that an environmental assessment was not necessary and began their review of the ordinance which included a comprehensive investigation on the effects of the ordinance on the lakes in the area of congestion, enforcement, environmental impact and compatibility with state laws. During this same time the Tri-Lakes area experienced a high water event that allowed the City staff to practically apply the ordinance and protect shorelines. This event, supplemented by a lake use study, was submitted to the MNDNR staff for their consideration.

MNDNR RECOMMENDATION:

After a very thorough review (4 months), the MNDNR staff, in conjunction with the City, made two minor changes to the ordinances both affecting the high water mark. MNDNR, with Lake Elmo affirmation, changed the language of the ordinance to read that once ordinary high water marks are exceeded a no wake rule can be applied immediately, as opposed to a five day waiting period under current law. Similarly, the MNDNR reduced the waiting period to lift the no wake rule from 5 days after the lake level was below the ordinary high water mark to 3 days – a reasonable period to mitigate any weather event that may occur.

The MNDNR concurred with Lake Elmo that the expansion of use time was not at odds with state law and should pose no problem for the lakes. Staff / Council surveillance of the lakes this summer seem to prove this point definitively.

MNDNR remained silent on the remainder of the ordinance (see memo) on items of emphasis that either duplicate state law or were not under their jurisdiction for review.

STAFF RECOMMENDATION:

If removed from the consent agenda, the recommended motions for this action is as follows:

“Move to approve Ordinance 08-074, which amends the previously adopted changes to Chapter 97 – Water Surface Use as proposed by the Minnesota Department of Natural Resources.”

In addition, Staff recommends that the City Council approve Resolution No. 2013-75, authorizing summary publication of Ordinance 08-074, through the following motion:

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ATTACHMENTS:

1. Ordinance 08-074
2. Resolution No. 2013-75
3. Memo from MNDNR