



## MAYOR AND COUNCIL COMMUNICATION

DATE: 7/5/2016

**CONSENT**

ITEM #: <sup>5</sup>\_\_\_\_\_

**AGENDA ITEM:** Fence Easement Encroachment Agreement  
**SUBMITTED BY:** Emily Becker, City Planner  
**THROUGH:** Kristina Handt, City Administrator  
**REVIEWED BY:** Stephen Wensman, Planning Director

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### **BACKGROUND:**

Section 205, Subd. (D) (6) of the Zoning Code Fencing Regulations mandates that an easement encroachment agreement be approved by the City Council, along with a fence permit, for any fence that will be installed within a City easement. This was first added to the Zoning Code in 2011.

This process takes up a significant amount of Staff time as Staff must prepare a report, have it reviewed and added to the City Council agenda as a Consent Agenda Item, and discuss the item if it is taken off the Consent Agenda. This is in addition to preparing the Easement Encroachment Agreement, having the owners sign and notarize the document, collect the document after it has been signed by the Mayor and City Clerk, and have it recorded by the County. Not only does this process take a significant amount of Staff time, but it also delays the approval process.

The current fee for an easement encroachment is \$150.00. This is in addition to the \$75.00 for a fence permit, bringing the cost of a permit for a fence to be erected in an easement to be \$225.00.

### **ISSUE BEFORE COUNCIL:**

It is respectfully requested of the Council to determine if it is necessary that it approve encroachments in to City easements, or if approval from the Planning Director or his/her designee after approval from the City Engineer or his/her designee is sufficient.

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

The Planning Commission recommends that fence easement encroachments be approved administratively. The approval process will be as follows:

- Applicant completes fence permit application, which will include a survey that delineates easements.
- Application will include the Easement Encroachment Agreement that the applicant will fill out and have notarized if the proposed fence is in a City easement.

- Planning and Engineering Staff will review the application and approve or deny based on compliance.
- If application is approved, Staff will issue the fence permit and file the Easement Encroachment Agreement with the County.

Because the amount of Staff time allocated to this proposed approval process would be reduced, the Planning Commission proposes that Council consider a fee reduction for the processing of fence easement encroachment agreements. The following added costs should still be considered while approving this fee, however: the City Engineer needs to approve these easement encroachments, which most times requires a site visit; and a \$50.00 fee is paid to Washington County to record the Easement Encroachment Agreement.

It should also be noted that it is only being proposed that fence easement encroachments be approved administratively. Driveway and other easement encroachments would still require Council approval. Fence easement encroachments are quite common, especially in urban residential lots that are smaller parcels, as the applicant generally wants a larger fenced-in space that can only be attained when encroaching on City easements outlining the lot.

#### **FISCAL IMPACT:**

Allowing the Fence Easement Encroachment Agreements to be approved administratively will reduce time Staff spends on processing fence permit applications that require Easement Encroachment Agreements. Additionally, because less time will be spent, and because review of the fence permit application in and of itself requires minimal staff time, it is being proposed that Council consider reducing the Easement Encroachment Agreement fee when the fee schedule is determined for 2017.

#### **OPTIONS:**

The Council may approve allowing Fence Easement Encroachment Agreements to be approved administratively or deny the request. If the Council approves the request, it may also consider a fee reduction for this agreement when the fee schedule is determined for next year, keep it the same, or increase the fee if it so chooses.

#### **RECOMMENDATION:**

Staff respectfully requests that the City Council approve, as part of tonight's consent agenda and as recommended by the Planning Commission, allowing Fence Easement Encroachment Agreements to be approved administratively by the Planning Director or designee after review and approval by the City Engineer or designee. If the Council wishes to remove this item from the Consent Agenda, the recommended action may be approved by the following motion:

***“Move to approve an ordinance amendment to Chapter 154: Zoning Code; Section 205: Fencing Regulations; Subd. (D) (6), to allow approval of a fence easement encroachment agreement by the Planning Director or his/her designee after review and approval by the City Engineer or his/her designee.”***

In addition, Staff is recommending that the City Council authorize summary publication of the approved ordinance through the following motion:

*“Move to adopt Resolution 2016-<sup>57</sup>, authorizing summary publication of Ordinance 08-<sup>140</sup>”*

**ATTACHMENTS:**

1. Draft Ordinance 08-<sup>140</sup>
2. Resolution 2016-<sup>57</sup> Summary Publication of Fence Easement Encroachment Ordinance Amendment.
3. Draft Planning Commission Meeting Minutes from discussion on Fence Easement Encroachment Ordinance Amendment.

CITY OF LAKE ELMO  
COUNTY OF WASHINGTON  
STATE OF MINNESOTA

ORDINANCE NO. 08-<sup>140</sup>\_\_\_\_

**SECTION 1.** The City Council of the City of Lake Elmo hereby amends Article XV: Land Usage; Chapter 154: Zoning Code; Section 205: Fencing Regulations; Subd. 6: Easement Encroachment of the Lake Elmo Code of Ordinances to read the following:

6. *Easement Encroachment.* An easement encroachment agreement ~~must be approved by the City Council~~ must be approved by the Planning Director or his/her designee after review and approval from the City Engineer or his/her designee along with a fence permit, for any fence that will be installed within a City easement.

**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-<sup>140</sup>\_\_\_\_ was adopted on this \_\_\_\_ day of \_\_\_\_, 2016, by a vote of \_\_ Ayes and \_\_ Nays.

LAKE ELMO CITY COUNCIL

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

ATTEST:

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

This Ordinance 08-<sup>140</sup>\_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_, 2016.

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

**RESOLUTION NO. 2016-~~57~~**

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-<sup>140</sup> BY TITLE  
AND SUMMARY**

**WHEREAS**, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-<sup>140</sup>, an ordinance to amend the City's Fencing Regulations of its Zoning Code; and

**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-<sup>140</sup> 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-<sup>140</sup>, which amends Chapter 154: Zoning Code; Section 205: Fencing Regulations; Subd. 6: Easement Encroachment of the Lake Elmo Code of Ordinances to allow fence easement encroachment agreements to be approved by the Planning Director or Designee after approval by the City Engineer or Designee.

The full text of Ordinance No. 08-<sup>140</sup> is available for inspection at Lake Elmo City Hall 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: July 5, 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.

**Public Hearing – Zoning Text Amendment – To amend the fencing regulations to allow administrative approval of encroachment agreements.**

Becker stated that the current code the way it is written requires any easement encroachment agreement be approved by the City Council. This change would allow for those agreements to be approved administratively by staff. The current process is time consuming for staff as well as the resident and delays the issuing of the permit. The fee for this agreement is \$150.00, making a fence permit \$225.00. In the future, we might be able to reduce the fee with the reduced staff time.

Dunn is wondering why this was added in 2011 and how often this happens. Becker stated that it has happened quite a bit since she has been here. The new developments all have the utility easements located on the properties.

Larson asked what happens if there is conflicting rules between the City and the HOA. Becker stated that this change doesn't in effect change any of the rules other than who is allowed to make the approval. Wensman stated that the City does not regulate HOA covenants between property owners.

Public hearing opened at 7:20 pm

No one spoke and there was no written comments received.

Public hearing closed at 7:21 pm

M/S/: Fields/Dunn, would like to add a sentence at the end of the suggested motion to read that the fee be reduced to \$50 when the city Council considers the fee schedule.

M/S/P: Williams/Dunn, would like to make an amendment to the motion that the fee not be specified, but only that it be reduced. **Vote: 6-0, motion carried unanimously.**

Original motion as amended to add "that the fee be reduced when the City Council considers the fee schedule", **Vote: 6-0, motion carried unanimously.**

M/S/P: Dodson/Griffin, move to recommend approval of an ordinance to amend Chapter 154: Zoning Code; Section 205: Fencing Regulation; Subp. (D) (6) to allow approval of a fence easement encroachment agreement by the Planning Director or his/her designee after review and approval and furthermore recommends that the fee be reduced when the City Council considers the fee schedule, **Vote: 6-0, motion carried unanimously.**