



## MAYOR AND COUNCIL COMMUNICATION

DATE: 11/15/2016

**CONSENT**

ITEM #: 16

**AGENDA ITEM:** Zoning Text Amendment – Non-conforming Use Ordinance  
**SUBMITTED BY:** Stephen Wensman, Planning Director  
**THROUGH:** Kristina Handt, City Administrator  
**REVIEWED BY:** Sarah Sonsalla, City Attorney  
Emily Becker, City Planner

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### **BACKGROUND:**

The Council is being asked to consider a zoning text amendment to amend City Code as it pertains to nonconforming uses, buildings and structures. A City Attorney review of a recent land use issue resulted in a determination that the current City Code, Section 154.150-154.151 as it pertains to nonconformities was not compliant with Minnesota State Statutes, Section 462.357, Subd. 1e.

### **ISSUE BEFORE COUNCIL:**

The council, as part of the consent agenda, is respectfully being asked to consider the zoning text amendment as it pertains to nonconforming uses, buildings and structures.

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

The nonconforming use, building and structures ordinance has been determined to be non-compliant with MN State Statutes. As a result, the City Attorney has drafted a zoning text amendment for Council approval.

### **FISCAL IMPACT:**

None

### **OPTIONS:**

The City Council may approve the zoning text amendment as part of tonight's consent agenda, or remove the item from the consent agenda to discuss then approve the ordinance amendment unchanged, approve the ordinance amendment with changes, or deny the ordinance amendment.

### **PUBLIC HEARING:**

The Planning Commission held a public hearing on 10/24/16 to consider the zoning text amendment. There were no comments from the public. The Planning Commission approved the amendment 7-0.

**RECOMMENDATION:**

Staff and the Planning Commission respectfully recommend the City Council approve the zoning text amendment as it pertains to as it pertains to nonconforming uses, buildings and structures as part of tonight's consent agenda by approving Ordinance 08-\_\_.

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

***“Move to adopt Ordinance 08-157 approving a zoning text amendment as it pertains to nonconforming uses, buildings and structures, City Code of Ordinances, Section 154.150-154.151.***

*Also,*

***“Move to adopt Resolution 2016-97 approving the summary publication of the zoning text amendment as it pertains to nonconforming uses, buildings and structures, City Code of Ordinances, Section 154.151. 154.150-***

**ATTACHMENTS:**

- Ordinance 08-157 as it pertains to nonconforming uses, buildings and structures, City Code of Ordinances, Section 154.150-154.151.
- Resolution 2016-97, Summary Publication of Ordinance.
- Planning Commission Report

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

**ORDINANCE NO. 08-157**

**AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES  
REGARDING NON-CONFORMING USES, BUILDINGS AND STRUCTURES**

**SECTION 1.** The City Council of the City of Lake Elmo hereby amends Section 154.150 of the City Code by deleting the ~~stricken~~ language and inserting the double-underlined language as follows:

**ARTICLE IV. NON-CONFORMING USES, BUILDINGS AND STRUCTURES**

**§ 154.150 APPLICATION.**

- A. *Application, Generally.* Except as provided in this chapter, no building or structure shall be erected, moved, altered, or extended and no land, building, or structure or part of the building, shall be occupied or used unless in conformity with regulations specified in this chapter for the district in which it is located.
- B. *Application to Existing Structures.* This chapter shall not apply to existing buildings and structures, nor to the existing use of any structure, or land to the extent of the use on the effective date of this chapter. This chapter shall apply to any change in use, to any intensification of the non-conforming use, to any movement of a building or structure, or to any expansion of a structure which may result in the generation of additional sewage for on-site disposal.
- C. *Use Defined.* For the purpose of this chapter, the word USE shall mean:
  - 1. Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; or
  - 2. Any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure, or on a tract of land.

**SECTION 2.** The City Council of the City of Lake Elmo hereby amends Section 154.151 of the City Code by deleting the ~~stricken~~ language and inserting the double-underlined language as follows:

**§ 154.151 NON-CONFORMING USES, BUILDINGS AND STRUCTURES.**

- A. *Definitions.* For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
  - 1. *NON-CONFORMING USE.* Any lawful use of land or any lawful use of a building or structure existing on the effective date of this chapter, or any amendment to this

chapter which use does not conform with the regulations for the district in which it is located after the effective date of this chapter or the amendment.

2. ~~SUBSTANDARD NON-CONFORMING BUILDING~~ or ~~SUBSTANDARD NON-CONFORMING STRUCTURE~~. Any building or structure lawfully existing on the effective date of this chapter or any ~~intendment~~ amendment to this chapter, which building or structure does not conform with the regulations, including dimensional standards, for the district in which it is located after the effective date of this chapter or the amendment.
- B. *Preservation of Non-Conforming Uses.* Except as provided in this chapter, the lawful use of land or the lawful use of a building or structure existing on the effective date of this chapter or on the effective date of any amendment to this chapter may be continued through repair, replacement, restoration, maintenance, or improvement although the use does not conform to the provisions of this chapter, except as otherwise provided in this section. The continuation of the non-conforming use does not include expansion, except as otherwise permitted by this section.
- C. *Preservation of Dimensionally Substandard Buildings or Structures.* Except as provided in this chapter, buildings or structures lawfully existing on the effective date of this chapter or on the effective date of any amendment to this chapter may be maintained although the building or structure does not conform to the dimensional standards of this chapter. However, any such building or structure shall not be altered or improved beyond normal maintenance, except that any lawful dimensional substandard residential building, accessory building, or structure may be altered or improved if the existing substandard dimension relates only to setback requirements and does not exceed the 10% of the minimum setback requirements. Additionally, the alteration or improvement shall conform to all of the provisions of this chapter and shall not increase the existing substandard dimensions.
- D. *Unlawful Uses, Buildings, and Structures.* No unlawful use of property existing on the effective date of this chapter or any amendment to this chapter, nor any building or structure which is unlawfully existing on the effective date shall be deemed a non-conforming use or a non-conforming building or structure.
- E. *Permit Holders and Permit Applicants.* Any non-conforming structure that is ready for or under construction on the effective date of this chapter or any amendment to this chapter may be completed and occupied in accordance with the requirements of any valid building permit issued for the construction prior to the effective date.
- F. *Change from One Non-Conforming Use to Another.* A non-conforming use may be changed only to a use permitted in the district in which it is located; except that if no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or a more restrictive classification, and provided the change is approved by the Board of Adjustment and Appeals as provided in this chapter.

Once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use.

- G. *Change of Use with Approval of the Board of Adjustment.* A non-conforming use all or partially conducted in a building or buildings, may be changed to another non-conforming use only upon determination by the Board of Adjustment, after a public hearing, that the proposed new use will be no more detrimental to its neighborhood and surroundings than is the use it is to replace. In determining relative detriment, the Board of Adjustment shall take into consideration, among other things: traffic generated; nuisance characteristics, such as emission of noise, dust, and smoke; fire hazards; and hours and manner of operation.
- H. *Restoration of Non-Conforming Building or Structure.* A non-conforming ~~building or use,~~ building or structure which is ~~damaged or~~ destroyed by fire, flood, wind, earthquake, or other calamity peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged may be restored and the occupancy or use of the building, structure, or part of the structures which existed at the time of the partial destruction, may be continued or resumed, ~~provided that the restoration is started within a period of 1 year and is diligently prosecuted to completion, unless the damage to the building or structure is equal to 50% or more of the replacement cost of the structure (as determined by the Building Official), in which case, the reconstruction shall conform to the provisions of this chapter.~~ In this case, the city may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property or water body. When a non-conforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a building permit to mitigate created impacts on the adjacent property or water body.
- I. *Abandonment of Use.* When any non-conforming use of land or of a building or structure is ~~abandoned~~ discontinued for a period in excess of 1 year, the land, building, or structure shall, ~~subsequently be used only as provided by this chapter~~ not be allowed to continue as a non-conforming use and any subsequent use or occupancy of the land, building or structure shall be a conforming use or occupancy.

SECTION 3. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 4. Adoption Date. This Ordinance 08-157 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 \_\_\_\_ was published on the \_\_\_\_ day of \_\_\_\_\_, 2016.

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

**RESOLUTION NO. 2016-97**

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-157 BY TITLE  
AND SUMMARY**

**WHEREAS**, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-157, an ordinance to amend Article IV., Section 154.150-154.151: Non-Conforming Uses, Buildings and Structures of the City 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. 08-157 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. 08-157, which amends the Chapter 154: Zoning Code:

- To update the Non-Conforming Use regulations to be in conformance with MN State Statutes as they pertain to Non-Conforming Uses, Buildings and Structures.

The full text of Ordinance No. 08-157 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: November 15, 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.





PLANNING COMMISSION  
DATE: 10/10/2016  
AGENDA ITEM: 4C  
PUBLIC HEARING CASE # 2016-42

ITEM: Zoning Text Amendment: Non-conforming use ordinance

SUBMITTED BY: Stephen Wensman, Planning Director

REVIEWED BY: Sarah Sonsalla, City Attorney  
Emily Becker, City Planner

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#### **SUMMARY AND ACTION REQUESTED:**

The Planning Commission is being asked to consider an amendment to City Code Section 154.150-154.151 as it pertains to nonconforming uses, buildings and structures.

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#### **REVIEW:**

The City Attorney's review of land use issues related to a nonconforming lot resulted in a determination that the City Code Section 154.150-154.151 as it pertains to nonconformities was not compliant with changes in state statute (Minnesota Statutes, Section 462.357, Subd. 1e). The City Attorney prepared an amendment addressing the changes. In the City Attorney's review, the nonconforming section of the City's Shoreland Ordinance, 154.800, and the existing buildable lot provisions, Section 154.080, were also reviewed and were found to be acceptable as written.

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#### **FINDINGS:**

Staff is recommending approval of the zoning text amendment with the following finding:

- The amendment has been reviewed by the City Attorney and is in conformance with Minnesota Statutes, Section 462.357, Subd. 1e as it pertains to nonconformities.
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#### **RECOMENDATION:**

Staff recommends that the Planning Commission recommend approval of the zoning text amendment amending City Code Section 154.150-154.151 as it pertains to nonconforming uses, buildings and structures with the following motion:

***“Move to recommend approval of ordinance \_\_ - \_\_ amending the lake Elmo Code of Ordinances regarding non-conforming uses, buildings and structures.”***

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**ATTACHMENTS:**

- MN State Statute Section 462.357
- Ordinance \_\_\_-\_\_\_ amending the lake Elmo Code of Ordinances regarding non-conforming uses, buildings and structures.

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**ORDER OF BUSINESS:**

- Introduction .....Planning Staff
- Report by Staff .....Planning Staff
- Questions from the Commission ..... Chair & Commission Members
- Open the Public Hearing .....Chair
- Close the Public Hearing.....Chair
- Discussion by the Commission ..... Chair & Commission Members