

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-085

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY
ADOPTING NEW ADMINISTRATIVE AND ENFORCEMENT PROVISIONS IN THE LAKE
ELMO ZONING CODE.

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code, by repealing City Code Sections 154.015 through 154.021 in their entirety.

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code, by adding the following language:

ARTICLE 3 ZONING ADMINISTRATION AND ENFORCEMENT

§154.100	Director of Planning
§154.101	Applications Review Process
§154.102	Public Hearing Requirements
§154.103	Permits, Certificates and Licenses
§154.104	Planning Commission
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§ 154.100 Director of Planning

The City Council shall appoint a Director of Planning. The Director of Planning, or his/her designated agent, shall enforce this chapter and shall perform the following duties:

- A. *Permits.* Issue zoning permits pertaining to the zoning ordinance and make and maintain records thereof;
- B. *Inspections.* Conduct inspections of buildings and use of land to determine compliance with the terms of this chapter;
- C. *Records.* Coordinate with the City Clerk to maintain permanent and current records of this chapter, including but not limited to: all maps, amendments and conditional uses, variances, appeals and applications therefore;
- D. *Applications.* Receive, file and forward all applications for appeals, variances, conditional uses or other matters to the designated official bodies;
- E. *Interpretation.* Interpret the provisions of this chapter and related provisions of the City Code, including determinations of Zoning Use Types and Classifications as specified in §154.012.
- F. *Enforcement.* Institute in the name of the City any appropriate actions or proceedings to enforce this chapter;

- G. *Work Program.* Recommend a program of work pursuant to Section §32.032 of the City Code to the Planning Commission prior to the beginning of each calendar year and at such other times as the Planning Commission may request.
- H. *Reporting.* Submit a yearly report to the Planning Commission in January of each year summarizing the activities of the Planning Department during the previous year, including information related to housing, public infrastructure, City facilities, industrial and commercial development, enforcement actions, and other such information as the Director of Planning deems relevant. This report should also include any recommended changes to the Comprehensive Plan or various land use ordinances.
- I. *Planning Commission.* Serve as an ex-officio, non-voting member of the Planning Commission.

§ 154.101 Applications and Review Process.

- A. *Application Form and Fee.* The following general provisions apply to all applications required under this chapter.
 - 1. *Application Form.* All applications for any site plan, conditional use permit, zoning verification, variance, or for any other City approval required by this chapter, or to amend this chapter, shall be made in writing on a form provided by the city, to the Director of Planning.
 - a. *Information Required.* Every application shall contain the legal description of the property and a statement of the specific permit or action being sought. In addition, every application shall include the submission requirements listed in §154.101.B.1. Nothing in this section shall be deemed to prevent the city from requesting additional information from the applicant upon which to base a decision.
 - 2. *Fee.* The application shall be accompanied by the required fee as established by resolution of the City Council. If a dispute arises over a specific fee imposed by the city, the amount of the fee must be deposited and held in escrow, and the person aggrieved by the fee may appeal to district court, as provided by M. S. 462.361 (judicial review), as it may be amended from time to time. The application shall proceed as if the fee had been paid, pending a decision of the court.
- B. *Application Requirements.*
 - 1. *Submission Materials.* Submission materials for applications required under this chapter shall include the following specific information:
 - a. Site plan drawn to scale showing parcel and building dimensions.
 - b. Location of all buildings and their size, including square footage.
 - c. Curb cuts, driveways, access roads, parking spaces, off-street loading areas, and sidewalks.
 - d. Landscape plans meeting the requirements of Section 155.89 of Article 6 of this Zoning Ordinance.
 - e. If grading or storm water management is proposed, grading and storm water, erosion, and sediment control plans meeting the requirements of §150.270 through §150.284, §151.017, and §151.027 of the City Code.
 - f. Type or types of business or activity and proposed number of employees.
 - g. Proposed floor plan of any building with use indicated.
 - h. Building elevation drawings of any new construction or building renovation proposed.
 - i. Sanitary sewer and water plans with estimated flow rates.
 - j. Soil type and soil limitations for the intended use. If severe soil limitations for the intended use are noted, a plan or statement indicating the soil conservation practice or practices to be used to overcome the limitation shall be made part of the application; and

- k. For applications that require a public hearing, a certified list of property owners located within 350 feet of the subject property obtained from and certified by a licensed abstractor.
 - l. The Director of Planning may require that the applicant supply proof of ownership of the property for which a permit is requested.
 - m. The Director of Planning may require traffic generation information to determine the adequacy of existing transportation infrastructure.
 - n. Such other information as may be required by the Director of Planning, Planning Commission or City Council.
2. *Waiver of Submission Materials.* The Director of Planning may waive certain submission requirements for projects that will have a minimal impact on surrounding properties or in instances when said submission requirements are impractical given the nature of the proposed development.
- C. *Amended Applications.* An amendment to any permit issued under this Chapter shall be processed in the same manner as a new application.
- D. *State Established Time Limit for Final Action.* The City shall comply with the time limits as established by Minnesota Statute 15.99 (time deadline for agency action), as it may be amended from time to time, with regards to taking action on any applications subject to said Statute.

§ 154.102 Public Hearing Requirements

This section contains requirements for public hearings held by the Planning Commission, Board of Adjustment or City Council under this Ordinance.

- A. *Notification of General Public.* The Director of Planning shall set the date for a public hearing and shall have notices of such hearing published in the legal newspaper at least once, and not less than ten days prior to the hearing.
- B. *Notification of Surrounding Property Owners.* For any application for which a public hearing is required, the Director of Planning shall notify all property owners within the affected zone and within three hundred and fifty feet (350') of the outer boundaries of the property in question.
 - 1. Failure of any property owner to receive such notification shall not invalidate the proceedings.
 - 2. The City Council may waive the mailed notice requirements for a city-wide amendment to the zoning ordinance initiated by the Planning Commission or City Council.
- C. *Hearing Procedures*
 - 1. Public Hearings conducted by the Planning Commission, City Council, and Board of Adjustment.
 - a. The Director of Planning or his/her representative shall summarize the application and any associated information.
 - b. The applicant shall be allowed to summarize the request and call any witnesses to support his/her request.
 - c. The public shall be allowed to make statements concerning the request subject to reasonable limits that may be set by the body conducting the hearing.
 - d. The Planning Commission, City Council and Board of Adjustment may establish other procedures as needed to ensure due process for those parties involved with the hearing.
 - 2. *Appeal Hearings.* The Board of Adjustment shall hold a hearing and make a decision on any appeal submitted in accordance with §154.108 of this Article. The Board of Adjustment shall establish rules for due process during appeal hearings and any party to the appeal

may appear at the hearing in person or by agent or attorney. At a minimum, the following hearing procedure will be followed:

- a. Appellant shall present a case and may call any witnesses necessary in support thereof;
- b. Respondent may ask questions of appellant's witnesses;
- c. Respondent may call witnesses;
- d. Appellant may ask questions of respondent's witnesses;
- e. Respondent may summarize his or her position;
- f. Appellant may summarize his or her position;
- g. Generally, the Minnesota District Court Rules of Civil Procedure shall apply for the conduct of the hearing.

§ 154.103 Permits, Certificates and Licenses

A. Building Permits

1. *Compliance.* A building permit is required for the construction or structural alteration of a building or any part thereof. Other construction activity may require a permit in accordance with the Minnesota State Building Code. Demolition, wrecking or removal of any structure shall require a demolition or moving permit. No building permit shall be issued for any construction, enlargement, alteration or repair, demolition or moving of any building or structure on any lot or parcel until all requirements of the Minnesota State Building Code as adopted by the City of Lake Elmo pursuant to Chapter 151, Title XV of the City Code have been fully met.
2. *Concurrent Applications.* If the proposed development requires a zoning amendment, variance or conditional use permit, or other permit required under this Article, the applicant shall secure all required permits prior to the issuance of a building permit for said development.
3. *Administrative Review of Permits for Existing Platted Lots.* If the proposed development does not involve a zoning amendment, variance or conditional use permit, and proposes a use, structure or expansion of an existing structure on an existing platted lot, the Director of Planning may review the application and authorize the Building Official to approve or to deny the permit.
4. *Expiration.* Any building permit issued by the city shall expire and by limitation be null and void if a certificate of occupancy and final completion has not been issued within the following applicable period of time after the date of permit issuance:
 - a. Single-family residential dwellings, including new construction, remodeling or additions: 12 months;
 - b. Multi-family and nonresidential construction: 12 months unless a longer time is specified by the City Council at the time the original permit is issued;
 - c. *Extension.* The Building Official may grant an extension prior to the expiration of any building permits in accordance with the Minnesota State Building Code. An expired building permit may be reissued once, by the Building Official, for one-half the original permit fee. Thereafter, if the permitted work is not completed within the applicable time period, a new permit may be issued only upon such conditions as the City Council by resolution may prescribe, including financial guarantees to guarantee completion by a specified date.
- d. *Time Limitations for Exterior Work.* All exterior work shall be completed as follows:
 - i. All disturbed and exposed ground shall be covered with landscaping in accordance with §150.070 through §150.078 of the City Code.
 - ii. All exterior construction, including siding, roofing, doors, windows and finish shall be completed and present a finished appearance within six (6) months of the start

of construction. Tar paper, unfinished plywood, fiberboard insulation, foam insulation, brown coat or scratch coat of stucco, plastic sheeting and other similar materials not designed to be an exterior finish shall not be considered an acceptable exterior finish. Extensions for weather sensitive work may be granted by the Building Official.

- iii. Failure to complete exterior work as required herein shall result in suspension of the existing permit until a reinstatement fee equal to 100% of the original building permit has been made. Reinstatement of a building permit does not extend the original term of the permit. The reinstatement fee shall also be paid prior to re-issuance of any subsequent permit for exterior work that was not completed under a prior permit that expired.

B. *Certificate of Zoning Compliance.* A certificate of zoning compliance is a zoning permit that is intended as a means of administratively reviewing a new use, change in use, or structural change that does not require a building permit.

1. *When Required.* A certificate of zoning compliance is required for the following activities:

- a. A new use classification within an existing building or structure;
- b. A change of use classification within an existing building or structure;
- c. Addition, removal or change in parking or other on-site improvements;
- d. Small accessory structures that do not require a building permit;
- e. Home occupations;
- f. Swimming pools;
- g. Antennas, including amateur radio antennas and wireless communications facilities that meet the criteria for administrative review in §150.111(C);
- h. Fences six feet and less in height;
- i. Driveways that are not authorized as part of an approved building permit;
- j. Storm water management activities and structures not otherwise permitted as part of a development application;
- k. Other situations requiring additional review or interpretation, as specified elsewhere in this Ordinance.

2. *Expiration of a Certificate of Zoning Compliance.* Where a certificate of zoning compliance use has been established and is discontinued for any reason for a period of one (1) year or longer, the certificate of zoning compliance shall become null and void.

C. *Certificate of Occupancy.* No vacant land shall be occupied or used and no buildings hereafter erected, altered or moved shall be occupied until a certificate of occupancy has been issued by the Building Official. Such certificate shall show that the building or premises or part thereof and the use thereof are in conformity with the Minnesota State Building Code and the provisions of this chapter. Such certificate shall be issued only when the building or premises and the use thereof conform to all the requirements of the City Code.

D. *Sign Permit.* A sign permit shall be authorized for a sign that conforms to the sign regulations in §154.212. An application, on a form provided by the Director of Planning, shall be submitted with the required fee by the owner of the proposed sign. The Director of Planning shall issue a sign permit if all of the regulations in §154.212 are met.

E. *Special Event Permit.* A special event permit may be issued for certain events for activities or events not otherwise permitted under the Zoning Ordinance in accordance with §110.070 of the City Code.

F. *Grading Permit.* A permit shall be required for all non-agricultural project(s) or activities that will result in the movement of more than fifty (50) cubic yards of earth or the disturbance of more than one-half acre of land, and for construction of a building or structure on steep

slopes, as specified in Article 6, Section 155.84. The Director of Planning may issue a grading permit only if the grading plan meets the requirements of the Lake Elmo Storm Water Management and Erosion and Sediment Control Ordinance.

1. *Public Hearing.* All grading and excavating applications, for the purpose of creating wetlands, berming, landscape amenities, and other natural features that result in the moving of more than 400 cubic yards of material per acre of site area shall require a public hearing.

§ 154.104 Planning Commission

The Planning Commission shall provide assistance to the City Council in the administration of this chapter. The recommendations of the Planning Commission shall be advisory in nature. Specifically, the Planning Commission shall review, hold public hearings and make recommendations to the City Council on all applications for zoning amendments, variances, and conditional use permits using the criteria of this Article. The Planning Commission shall be formed and operate in conformance with Chapter 32 of the City Code and specifically with Sections 32.025 through 30.042.

§ 154.105 Zoning Amendments

- A. *Criteria for Granting Zoning Amendments.* The City Council may adopt amendments to the zoning ordinance and zoning map in relation to land uses within a particular district or to the location of a district line. Such amendments shall be used as a means to reflect changes in the goals and policies of the city as reflected in the Comprehensive Plan.
- B. *Types of Amendments.*
 1. *Rezoning.* A change in the boundary of a zoning district or a change from one district to another on the Official Zoning Map, referred to as a rezoning.
 2. *Text Amendment.* A change in the text for specific zoning district regulations or any other provision of this Chapter.
- C. *Initiation of Proceedings.* Proceedings for a text amendment or a rezoning may be initiated by one of the following three methods:
 1. By petition of an owner or owners of property that is proposed to be rezoned or for which a text amendment for a change in a district regulation is proposed;
 2. By recommendation of the Planning Commission;
 3. By action of the City Council.
- D. *Application Requirements for Zoning Amendments Initiated by Petition.* A petition for a Zoning Amendment shall be submitted to the Director of Planning on such form as required by §154.101 of this Article and accompanied by the following information:
 1. Conceptual site plan drawn to scale showing all affected parcels and a general concept for any proposed development of said parcels.
 2. General location of all buildings and their approximate dimensions and square footage.
 3. Approximate location of all curb cuts, driveways, access roads, parking areas, off-street loading areas, and sidewalks.
 4. Conceptual landscape plan indicating general planting areas for trees, shrubs, and lawns.
 5. Conceptual grading, erosion control, and storm water management plan.
 6. Conceptual sewer and water utility plan for the development.
 7. Narrative indicating the types of uses or businesses that are contemplated for the development, number of employees, parking and traffic impacts, and other pertinent information about the proposed development.
 8. The Director of Planning may require the applicant to supply proof of ownership of the property for which the amendment is requested that illustrates legal or equitable interest in the property.

- E. *Hearing Requirements.* The Planning Commission shall hold a public hearing on each complete application for a Zoning Amendment as provided in §154.102 of this Article. After the close of such hearing, the Planning Commission shall consider findings and shall submit the same together with its recommendation to the City Council.
- F. *Effect of Denial of Application.* No application of a property owner for an amendment to the text of this chapter or the zoning map shall be considered by the Planning Commission within the one year period following a denial of such request, except the Planning Commission may permit a new application, if in the opinion of the Planning Commission, new evidence or a change of circumstances warrant it.
- G. *Relationship to Comprehensive Plan.* Any rezoning shall be consistent with the current City of Lake Elmo Comprehensive Land Use Plan. If the rezoning is not consistent with the current Comprehensive Plan, an amendment to the Comprehensive Plan must be requested and approved prior to or concurrent with the rezoning request.
- H. *Coordination with Adjoining Communities.* Any zoning district change on land adjacent to or across a public right-of-way from an adjoining community shall be referred to the Planning Commission and the adjacent community or county for review and comment prior to action by the City Council granting or denying the zoning district classification change. A period of at least ten (10) days shall be provided for receipt of comments. Such comments shall be considered as advisory only.

§ 154.106 Conditional Use Permits

- A. *Required Findings.* Conditional use means a land use or development as defined by ordinance that would not be appropriate generally but may be allowed with appropriate restrictions as provided by official controls only upon a finding that all of the following provisions are met:
 1. The proposed use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the city.
 2. The use or development conforms to the City of Lake Elmo Comprehensive Plan.
 3. The use or development is compatible with the existing neighborhood.
 4. The proposed use meets all specific development standards for such use listed in Article 7 of this Chapter.
 5. If the proposed use is in a flood plain management or shoreland area, the proposed use meets all the specific standards for such use listed in Chapter 150, §150.250 through 150.257 (Shoreland Regulations) and Chapter 152 (Flood Plain Management).
 6. The proposed use will be designed, constructed, operated and maintained so as to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area.
 7. The proposed use will not be hazardous or create a nuisance as defined under this Chapter to existing or future neighboring uses.
 8. The proposed use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems and schools or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use.
 9. The proposed use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
 10. The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare or odors.
 11. Vehicular approaches to the property, where present, will not create traffic congestion or interfere with traffic on surrounding public thoroughfares.

12. The proposed use will not result in the destruction, loss or damage of a natural or scenic feature of major importance.
- B. *Application Requirements.* Conditional Use Permit applications shall be submitted to the Director of Planning on such form and accompanied by such information as required by §154.101.A of this Article and with the submission materials listed in §154.101.B of this Article.
- C. *Public Hearing Required.* The Planning Commission shall hold a public hearing on each complete application for a conditional use permit as provided in §154.102 of this Article. After the close of the hearing on a proposed conditional use permit, the City Planning Commission shall consider findings and shall submit the same together with its recommendation to the City Council.
- D. *Final Decision by City Council.* The City Council shall make the final decision on a conditional use permit after a public hearing by the Planning Commission. The City Council may approve, approve with conditions or deny the application.
- E. *Conditions.* In reviewing applications for conditional use permits, the Planning Commission and Council may attach whatever reasonable conditions they deem necessary to mitigate anticipated adverse impacts associated with these uses, to protect the value of property within the district and to achieve the goals and objectives of the Comprehensive Plan. In determining such conditions, special consideration shall be given to protecting immediately adjacent properties from objectionable views, noise, traffic and other negative characteristics associated with such uses.
1. The conditions shall include all specific development standards for such use listed in Article 7 of this Chapter.
 2. If the proposed use is in a flood plain management or shoreland area, the conditions shall include specific standards for such use listed in Chapter 151 (Floodplain Management) and Chapter 152 (Shoreland Management).
 3. In addition, conditions may include, but are not limited to, the following:
 - a. Controlling the number, area, bulk, height and location of such uses;
 - b. Regulating ingress and egress to the property and the proposed structures thereon with particular references to vehicle and pedestrian safety and convenience, traffic flow and control and access in case of fire or other catastrophe;
 - c. Regulating off-street parking and loading areas where required;
 - d. Controlling the location, availability and compatibility of utilities;
 - e. Requiring berming, fencing, screening, landscaping or other means to protect nearby property; and
 - f. Requiring other conditions to create compatibility of appearance with surrounding uses.
- F. *Findings for Denial.* If the Planning Commission recommends denial of a conditional use permit or the Council orders such denial, it shall include in its recommendation or determination findings as to the specific ways in which the proposed use does not comply with one or more specific findings required by this chapter.
- G. *Permittee.* A conditional use permit shall be issued for a particular use and not for a particular person, except in the case of a permit granted for the uses of land reclamation, mining or soil or mineral processing. In such cases, a permit shall be issued to the particular person making application for such permit and such permit shall not be transferred or assigned for use by another without the written consent of the city. However, such consent by the city shall not be unreasonably withheld.
- H. *Periodic Review.* A periodic review of the use may be attached as a condition of approval of a conditional use permit.
- I. *Term of Permit.* Unless otherwise stipulated, the term shall be the life of the use.

- J. *Revocation.* Failure to comply with any condition set forth in a conditional use permit, or any other violation of this chapter, shall be a misdemeanor and shall also constitute sufficient cause for the termination of the conditional use permit by the City Council following a public hearing conducted in accordance with §155.102 of this Article.
- K. *Expiration.* If substantial construction has not taken place within 12 months of the date on which the conditional use permit was granted, the permit is void except that, on application, the Council, after receiving recommendation from the Planning Commission, may extend the permit for such additional period as it deems appropriate. If the conditional use is discontinued for six months, the conditional use permit shall become void. This provision shall apply to conditional use permits issued prior to the effective date of this chapter, but the six-month period shall not be deemed to commence until the effective date of this chapter.

§ 154.107 Interim Use Permits

- A. *Purpose and Intent.* The purpose and intent of allowing interim uses are:
 - 1. To allow a use for a limited period of time that reasonably utilizes the property where such use is not consistent with the future land map in the Comprehensive Plan; and
 - 2. To allow a use that is presently acceptable, but that with anticipated development or redevelopment or other significant change, will not be acceptable in the future or will be replaced by a permitted or conditional use allowed within the respective district.
- B. *Required Findings.* An interim use permit may be granted only if the City Council finds as follows:
 - 1. The use is allowed as an interim use in the respective zoning district and conforms to standard zoning regulations.
 - 2. The use will not adversely impact nearby properties through nuisance, noise, traffic, dust, or unsightliness and will not otherwise adversely impact the health, safety, and welfare of the community.
 - 3. The use will not adversely impact implementation of the Comprehensive Plan.
 - 4. The user agrees to all conditions that the City Council deems appropriate to establish the interim use. This may include the requirement of appropriate financial surety such as a letter of credit or other security acceptable to the city to cover the cost of removing the interim use and any interim structures not currently existing on the site, upon the expiration of the interim use permit.
 - 5. There are no delinquent property taxes, special assessments, interest, or city utility fees due upon the subject parcel.
 - 6. The date or event terminating the interim use shall be set by the City Council at the time of approval.
- C. *Application Requirements.* Interim Use Permit applications shall be submitted to the Director of Planning on such form and accompanied by such information as required by §154.101.A of this Article and with the submission materials listed in §154.101.B of this Article.
 - 1. *Additional Application Requirements:* An application for an Interim Use Permit shall include the following additional information:
 - a. A letter from the applicant explaining the proposal and stating the date or event that will terminate the use;
 - b. A signed consent agreement, subject to review and approval by the City Council documenting:
 - i. That the applicant, owner, operator, tenant and/or user has no entitlement to future approval or reapproval of the interim use permit;
 - ii. That the interim use will not impose additional costs on the public if it is necessary for the public to fully or partially take the property in the future; and

- iii. That the applicant, owner, operator, tenant and/or user will abide by conditions of approval that the City Council attaches to the interim use permit.
- D. *Public Hearing Required.* The Planning Commission shall hold a public hearing on each complete application for a Interim Use Permit as provided in §154.102 of this Article. After the close of the hearing on a proposed Interim Use Permit, the City Planning Commission shall consider findings and shall submit the same together with its recommendation to the City Council.
- E. *Final Decision by City Council.* The City Council shall make the final decision on a Interim Use Permit after a public hearing by the Planning Commission. The City Council may approve, approve with conditions or deny the application.
- F. *Termination.* An interim use shall terminate on the happening of any of the following events, whichever occurs first:
 - 1. The date or event stated in the permit;
 - 2. Upon violation of conditions under which the permit was issued;
 - 3. Upon a change in the City's zoning regulations which renders the use nonconforming; or
 - 4. The redevelopment of the use and property upon which it is located to a permitted or conditional use as allowed within the respective zoning district.
- G. *Revocation.* Failure to comply with any condition set forth in a Interim Use Permit, or any other violation of this chapter, shall be a misdemeanor and shall also constitute sufficient cause for the termination of the conditional use permit by the City Council following a public hearing conducted in accordance with §155.102 of this Article.
- H. *Renewal.* The following process may be used to renew an active interim use permit that is set to expire. Terminated or suspended interim use permits cannot be renewed unless the Director of Planning has received an application for and approved a 1-time 30-day extension to continue processing the renewal application.
 - 1. *Application.* Application requirements for renewal of an existing Interim Use Permit shall be the same as for a new application.
 - 2. *Review.* Upon receiving a completed application for an interim use permit renewal, the Director of Planning shall send notice of the requested renewal to all property owners within 350 feet of the parcel(s) containing the interim use. If any objections are raised within 10 days of the mailed notice, the application shall be processed in the manner of a new application. If no objections are raised, the Director of Planning shall prepare a resolution of approval outlining the conditions and stipulations of the renewal for consideration by the City Council. The City Council, at its discretion, may approve or deny the request with findings. Denial of a renewal request does not constitute termination of the existing interim use permit.

§ 154.108 Appeals and the Board of Adjustment

The Board of Adjustment is hereby established pursuant to this chapter and Minnesota law. The Board of Adjustment (which is the City Council in accordance with §31.10 of the City Code) shall have those powers and authority as provided by Minnesota law and as hereinafter provided for. The Board of Adjustment shall be formed and operate in conformance with Chapter 31 of this Code and specifically with §31.10.

- A. *Powers of the Board of Adjustment.*
 - 1. *Review of Administrative Decisions.* The Board of Adjustment shall act upon all questions as they may arise in the administration of this chapter, including the interpretation of zoning maps, and it shall hear and decide appeals from and review any order, requirement, decision or determination made by such an administrative official charged with enforcing this chapter. Such appeal may be made by any person, firm or corporation aggrieved by an officer, department, board or bureau of the city.

2. *Variances.* The Board of Adjustment shall also have the power to grant variances to the provisions of this chapter under certain conditions. The conditions for the issuance of a variance are as indicated in §154.109 of this Article. No use variances (uses different than those allowed in the district) shall be issued by the Board of Adjustment.

B. *Procedures for Appeals.*

1. *Filing of Appeals.* All appeals to the Board of Adjustment shall be in writing and filed with the office of the City Clerk within 14 calendar days of the date of mailing of the notice of the order, requirement, decision or determination from which the appeal is made.
2. *Hearings.* The Board of Adjustment shall conduct a hearing regarding all appeals in accordance with §154.102.C.2 of this Article.
3. *Notice.* Written notice of the hearing shall be provided to the parties to the hearing and mailed not less than 14 days prior to the hearing.
4. *Orders.* The Board shall, within a reasonable time, make its order deciding the matter and shall serve a copy of such order upon the appellant or petitioner by mail. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as in its opinion ought to be made. The reasons for the decision of the Board of Adjustment shall be stated in the order. A majority vote of the Board of Adjustment shall be necessary to reverse any decisions of an administrative office of the city or to decide in favor of the applicant.

§ 154.109 **Variances**

- A. *In General.* The Board of Adjustment shall have the power to grant variances to the provisions of this chapter under the following procedures and standards.
 1. A request for a variance from the literal provisions of this chapter may be granted in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter. All requests for variances shall be reviewed in accordance with the required findings listed in §154.109.F.
- B. *Use Variances Prohibited.* A variance shall not be granted for any use that is not a listed permitted or conditional use under this chapter for property in the zone where the property is located.
- C. *Application Requirements.* Variance applications shall be submitted to the Director of Planning on such form and accompanied by such information as required by §154.101.A of this Article and with the submission materials listed in §154.101.B of this Article.
- D. *Hearing Requirements.* The Planning Commission shall hold a public hearing on each complete application for a variance as provided in §154.102 of this Article. After the close of the hearing on a proposed variance, the City Planning Commission shall consider findings and shall submit the same together with its recommendation to the Board of Adjustment.
- E. *Board of Adjustment Action.* The Board of Adjustment shall receive the recommendation of the Planning Commission and shall take final action on the variance request. All findings and decisions of the Board of Adjustments concerning variances shall be final.
- F. *Required Findings.* Any action taken by the Board of Adjustment to approve or deny a variance request shall include the following findings:
 1. *Practical Difficulties.* A variance to the provision of this chapter may be granted by the Board of Adjustment upon the application by the owner of the affected property where the strict enforcement of this chapter would cause practical difficulties because of circumstances unique to the individual property under consideration and then only when it is demonstrated that such actions will be in keeping with the spirit and intent of this chapter.

- a. *Definition of Practical Difficulties.* "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control.
2. *Unique Circumstances.* The problem for the landowner/applicant which the proposed variance is intended to correct must be due to circumstances that are unique to the property in question and that were not created by the land owner/applicant.
3. *Character of Locality.* The proposed variance will not alter the essential character of the locality in which the property in question is located.
 - a. *Definition of Locality.* For purposes of this subsection, "locality" shall be defined as all that property within 350 feet of the property proposed for the variance; however, in all events, it shall include all parcels abutting the affected parcel, including those immediately across a public street, alley or other public property.
4. *Adjacent Properties and Traffic.* The proposed variance will not impair an adequate supply of light and air to property adjacent to the property in question or substantially increase the congestion of the public streets or substantially diminish or impair property values within the neighborhood.
- G. *Conditions.* The Planning Commission may recommend and the Board of Adjustment may impose such restrictions and conditions upon the property that is the subject of the variance as may be necessary to comply with the standards established by this chapter or to reduce or minimize the effect of such variance upon other properties in the neighborhood and to better carry out the intent of the variance.
- H. *Effect of Denial.* No application by a property owner for a variance shall be submitted to the Board of Adjustment within a six (6) month period following a denial of such a request unless, in the opinion of the Board, new evidence of change in circumstances warrant it.
- I. *Expiration.* A variance shall be deemed to authorize only one particular use and shall expire if work does not commence within twelve (12) months of the date of granting such variance or if that use ceases for more than six (6) consecutive months.
- J. *Revocation.* The Board of Adjustment may revoke a variance if any conditions established by the Board as part of granting the variance request are violated.

§ 154.110 Violations and Enforcement

- A. *Enforcing Officer.* It shall be the duty of the Planning Director to cause the provisions of this chapter to be properly enforced.
- B. *Violations*
 1. *Violations.* Any person who shall violate or refuse to comply with any of the provisions of this Chapter shall be subject to the enforcement and penalty provisions of §10.99 of the City Code.
- C. *Investigation and Administrative Enforcement.*
 1. *Investigation of Violation.* The Director of Planning shall investigate alleged violations of this Chapter. Investigation of a violation may require accessing the property where the violation is alleged to have occurred. The Director of Planning shall notify the landowner of the need for investigation and make a reasonable attempt to gain permission from the landowner for access to the property and structures for investigative purposes. If the landowner is unresponsive or access to the property is specifically denied by the landowner, the Director of Planning shall obtain a judicial order prior to entering upon the property. Entering a structure for investigative purposes shall occur only upon permission of the landowner or issuance of a judicial order.
 2. *Administrative Enforcement*
 - a. *Notice of Violation.* Whenever in the judgment of the Director of Planning a determination is made upon investigation that a particular permit holder has not

complied with this Chapter, the Director of Planning shall issue written notice of violation to the owner of record and require him or her to complete the work.

- b. *Cease and Desist Order.* Upon investigation, if the Director of Planning has probable cause to believe a violation of this Chapter has occurred and that immediate stoppage of work is necessary to minimize harm caused by such violation, the Director of Planning may issue a cease and desist order to halt the progress of any property modification. When any work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied and the cease and desist order lifted.
- D. *Administrative Fee for Enforcement.* The Director of Planning shall charge an administrative fee, as set by resolution of the City Council, to compensate for time spent involving the investigation and prosecution of violations, and including any expenses incurred during the investigation.
- E. *After the Fact Applications and Fees.* Any person making application for a permit after the commencement of work requiring a permit, shall be charged an additional administrative fee. In the event the application for a permit is denied or the action permitted does not include all or part of the work commenced prior to approval of said permit, the Director of Planning shall require correction and/or restoration of the concerned property to its original state, including removal of structures or improvements.

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 08-085 was adopted on this 2nd day of July 2013, by a vote of 4 Ayes and 1 Nays.

LAKE ELMO CITY COUNCIL



Mike Pearson, Mayor

ATTEST:



Adam Bell, City Clerk

This Ordinance 08-085 was published on the 10th day of July, 2013.