

<b>C</b>	<b>Community Development Committee</b>	<b>SW Item 2007-19</b>
	Meeting date: January 16, 2007	
	Metropolitan Council meeting date: January 17, 2007	

**ADVISORY INFORMATION**

<b>Date</b>	January 9, 2007
<b>Subject</b>	Proposed Resolution Granting Lake Elmo's Request to Extend the Time for Amending Conflicting Official Controls and Fiscal Devices
<b>Districts, Members</b>	All
<b>Prepared by</b>	Guy Peterson, Acting Director, Community Development (651-602-1418) Dave Theisen, Associate General Counsel (651) 602-1706
<b>Division/Department</b>	Community Development / Local Planning Assistance

**REQUEST SUMMARY**

Staff recommends that the Council grant Lake Elmo's request for a six-month extension of the time period within which the City must amend official controls and fiscal devices that conflict with the *City of Lake Elmo Comprehensive Plan-2030*, subject to certain requirements and conditions.

**BACKGROUND, PREVIOUS COUNCIL ACTIONS**

**City of Lake Elmo Comprehensive Plan-2030**

In February 2002, the City of Lake Elmo's comprehensive plan update for the December 1998 decennial review was deemed complete for Council review purposes. The Council determined the City's plan update may have a substantial impact on or contain a substantial departure from metropolitan system plans and required the City to modify its plan update. The City appealed the Council's plan modification decision. In August 2004, the Minnesota Supreme Court concluded the Council has the statutory authority to require the plan modifications.

In a January 27, 2005 Memorandum of Understanding, the City and the Council agreed to certain criteria that would guide the City and the Council as the City modified its comprehensive plan update to ensure conformity with metropolitan system plans. According to the Memorandum of Understanding and the Metropolitan Land Planning Act, the City was required to complete and submit its modified plan update within nine months after the Supreme Court's decision. In June 2005, the City asked the Council to extend the nine-month period and permit the City to submit its updated plan to the Council by September 30, 2005. The Council granted the extension request, but the City's plan submission was not complete for Council review purposes until February 1, 2006. On April 12, 2006 the Council acted on the City's comprehensive plan update.

**Conflicting Official Controls and Fiscal Devices**

The Metropolitan Land Planning Act prohibits local units from adopting official controls or fiscal devices that conflict with their comprehensive plans or that permit activities in conflict with metropolitan system plans. Section 473.865 of the Act states: "If an official control conflicts with a comprehensive plan as the result of an amendment to the plan, the official control shall be amended by the unit within nine months following the amendment to the plan so as to not conflict with the amended comprehensive plan." The City's nine-month period expired on or about January 11, 2007.

On December 18, 2006, City and Council representatives met to review the City's planning efforts and discuss a possible extension request from the City. On December 19, 2006, the Lake Elmo City Council approved Resolution No. 2006-147 (copy attached) which requests the Council to extend by six months the time within which the City must amend conflicting official controls and fiscal devices. The resolution outlines the City's planning efforts undertaken since April 2006, describes zoning regulation work the City proposes to take, and notes the City Administra-

tor's sudden death on October 7 and the recent resignation of the City Planner.

### **Time Extension and Reasonable Requirements and Conditions**

Section 473.869 of the Metropolitan Land Planning Act authorizes local units to request from the Council and extension of the time for fulfilling the requirements of the Act. Section 473.869 states:

Upon a finding of exceptional circumstances or undue hardship, the Council may, in its discretion, grant by resolution a request for extension and may attach reasonable requirements or conditions to the extension.

Although reviewing and amending local official controls and fiscal devices can be a difficult and time-consuming process, the City's ordinance review and amendment efforts could have been more focused and productive since April 2006. Nevertheless, the City's need to deal with ground-water contamination issues in the Fall of 2005 and the Spring of 2006, the sudden death of the City Administrator and the recent resignation of the City Planner may provide the basis for a Council finding of exceptional circumstances or undue hardship.

### **Proposed Metropolitan Council Resolution Granting Extension Request**

The proposed resolution granting the City's six-month extension request includes some suggested reasonable requirements and conditions that staff believes will help ensure the City amends its conflicting zoning regulations by July 12, 2007 and meets its comprehensive planning obligations under the Metropolitan Land Planning Act.

## **PROPOSED ACTION**

That the Community Development Committee recommend that the Metropolitan Council adopt the attached resolution with its reasonable requirements and conditions.

## **ATTACHMENTS**

[City of Lake Elmo Resolution No. 2006-147](#) (with its attachments)

Proposed Metropolitan Council Resolution Granting the City's Extension Request

PROPOSED METROPOLITAN COUNCIL RESOLUTION

**METROPOLITAN COUNCIL**

390 Robert Street North, Saint Paul, Minnesota 55101

**RESOLUTION NO. 2007-\_\_**

**GRANTING THE CITY OF LAKE ELMO'S REQUEST TO EXTEND THE TIME WITHIN WHICH THE CITY MUST AMEND OFFICIAL CONTROLS THAT CONFLICT WITH THE CITY'S ADOPTED LOCAL COMPREHENSIVE PLAN AND ATTACHING REASONABLE REQUIREMENTS AND CONDITIONS TO THE EXTENSION**

**WHEREAS**, Minnesota Statutes section 473.864, subdivision 2 states that at least once every ten years local governmental units must review and, if necessary, amend their entire comprehensive plan and amend their fiscal devices and official controls to ensure there are no conflicts with comprehensive plan; and

**WHEREAS**, Minnesota Statutes section 473.865, subdivision 2 prohibits local governmental units from adopting any official controls or fiscal devices that conflict with their local comprehensive plans or permit activities that conflict with metropolitan system plans; and

**WHEREAS**, if official controls or fiscal devices conflict with local comprehensive plans as the result of plan amendments, Minnesota Statutes section 473.865, subdivision 3 requires local governmental units to amend those official controls within nine months following the plan amendments; and

**WHEREAS**, at its April 12, 2006 meeting the Metropolitan Council considered and acted on the *City of Lake Elmo Comprehensive Plan-2030* that was submitted in fulfillment of the City's December 31, 1998 decennial review obligations under section 473.864 of the Metropolitan Land Planning Act; and

**WHEREAS**, the nine-month period within which the City was required to amend conflicting official controls and fiscal devices expired on or about January 11, 2007, but the City has not yet amended the official controls and fiscal devices that conflict with the City's 2030 comprehensive plan; and

**WHEREAS**, pursuant to Minnesota Statutes section 473.869, local governmental units may request the Metropolitan Council to extend the time for fulfilling the requirements of Minnesota Statutes sections 462.355, subdivision 4, 473.175, and 473.851 to 473.871; and

**WHEREAS**, a local governmental unit requesting an extension under Minnesota Statutes section 473.869 must describe the activities previously undertaken by the local unit in fulfillment of the relevant planning statutes and explain the reasons necessitating and justifying an extension request; and

**WHEREAS**, on December 19, 2006 the Lake Elmo City Council approved, and on December 20, 2006 the Mayor signed, Resolution No. 2006-147 which requests the Metropolitan Council to extend the January 11, 2007 deadline by which the City must review and amend its conflicting official controls to July 12, 2007; and

PROPOSED METROPOLITAN COUNCIL RESOLUTION

**WHEREAS**, Lake Elmo City Council Resolution No. 2006-147 describes planning procedures the City has undertaken to review its official controls and fiscal devices; and

**WHEREAS**, the City states in Resolution No. 2006-147 states that it has not completed the review and amendment of its conflicting official controls and fiscal devices in part because: (1) in the Fall of 2005 and the Spring of 2006, considerable staff time and resources were necessary to address groundwater contamination issues affecting west central portions of the City; (2) the City Administrator died suddenly on October 7, 2007; and (3) the City Planner resigned December 5, 2006; and

**WHEREAS**, pursuant to Minnesota Statutes section 473.869 the Metropolitan Council may “in its discretion” grant by resolution a request for extension upon a finding of “exceptional circumstances or undue hardship” and “may attach reasonable requirements or conditions to the extension”; and

**WHEREAS**, it is appropriate and necessary to attach reasonable requirements and conditions to this time extension to ensure the City amends its official controls and fiscal devices in a timely manner, eliminate conflicts with the City’s recently completed plan update and avoid land uses and development that conflict with metropolitan system plans; and

**WHEREAS**, additional delay in amending its conflicting official controls and fiscal devices will further delay local and regional planning processes that should have been completed eight years ago; and

**WHEREAS**, it will cost the Metropolitan Council additional time, resources and money if the City does not amend in a timely manner its conflicting official controls and fiscal devices to prohibit activities that conflict with metropolitan system plans.

**NOW THEREFORE, BE IT RESOLVED:**

1. Pursuant to Minnesota Statutes section 473.869, the Metropolitan Council finds there are exceptional circumstances and undue hardship in this case for the following reasons:
  - (a) In the Fall of 2005 and the Spring of 2006, the City of Lake Elmo diverted staff time and other resources to groundwater contamination issues affecting west central portions of the City.
  - (b) The Lake Elmo City Administrator who was actively involved in the City’s comprehensive plan update efforts after the Minnesota Supreme Court’s August 2004 decision in the *Lake Elmo* matter died suddenly on October 7, 2006.
  - (c) The City Planner who was involved in the update of the City’s comprehensive plan and the review of its official controls and fiscal devices resigned December 5, 2006.
2. Pursuant to Minnesota Statutes section 473.869, the Metropolitan Council determines it is appropriate to extend the time within which the City must amend all official controls and fiscal devices that conflict with its local comprehensive plan or that permit activities in conflict with metropolitan system plans. Subject to the following reasonable requirements and conditions, the deadline by which the City must amend conflicting official controls and fiscal devices is extended from January 11, 2007 to July 12, 2007.

PROPOSED METROPOLITAN COUNCIL RESOLUTION

3. Pursuant to Minnesota Statutes section 473.869, the Metropolitan Council attaches the following reasonable requirements and conditions to the extension:

- (a) The City must prepare and submit written reports that describe in narrative form and in reasonable detail the activities undertaken by the City to fulfill its statutory obligation to review its official controls and amend the official controls and fiscal devices that conflict with the City’s comprehensive plan or that permit activities in conflict with metropolitan system plans. The written reports are due as follows:

<u>Covered Period</u>	<u>Due Date</u>
January 1 to January 31, 2007	February 7, 2007
February 1 to February 28, 2007	March 7, 2007
March 1 to March 31, 2007	April 9, 2007
April 1 to April 30, 2007	May 7, 2007
May 1 to May 31, 2007	June 7, 2007
June 1 to July 12, 2007	July 19, 2007

- (b) As required by Minnesota Statutes section 473.865, subdivision 1, the City must submit to the Metropolitan Council copies of the City’s amended official controls and fiscal devices within thirty (30) days after adoption by the City.
- (c) As appropriate and as required by Minnesota Statutes section 473.513, the City must promptly prepare (or amend) and submit to the Metropolitan Council for review and approval, the City’s policy plan(s) for the collection, treatment and disposal of sewage for which the City is responsible.
- (d) If the City does not prepare, amend and submit official controls and fiscal devices consistent with this time extension and Metropolitan Land Planning Act requirements and if the Metropolitan Council commences an enforcement action pursuant to Minnesota Statutes section 473.175, subdivision 3 or other law, the City will pay the Metropolitan Council’s costs and expenses, including reasonable attorney fees, and will not contest a judicial action by the Metropolitan Council to compel compliance.
- (e) By granting this time extension, the Metropolitan Council does not waive its right to commence civil proceedings under Minnesota Statutes section 473.175 or other applicable law; nor does it waive its right to enforce any requirement or condition stated in Metropolitan Council Resolution No. 2005-020 (adopted July 27, 2005).
- (f) The City must comply with the decennial review provisions of Minnesota Statutes section 473.864, subdivision 2. The review and amendment of official controls and fiscal devices that are the subject of this extension are separate from and in addition to the review of official controls and fiscal devices and, if necessary, amendments the City must complete by December 31, 2008 pursuant to the decennial review provisions of Minnesota Statutes section 473.864.

4. This time extension is subject to the City’s acceptance and compliance with all the requirements and conditions stated in Paragraph 3.

PROPOSED METROPOLITAN COUNCIL RESOLUTION

5. Metropolitan Council staff will provide to the City appropriate and reasonable technical and advisory assistance to help the City identify and amend conflicting official controls and fiscal devices on or before July 12, 2007.
6. The Metropolitan Council will work with the City in an effort to resolve these important planning and metropolitan system issues in a cooperative and collaborative manner.

Adopted this \_\_\_<sup>th</sup> day of January, 2007.

---

Peter Bell, Chair

---

Pat Curtiss, Recording Secretary

LAKEELMOEXTENSIONRESOLUTION2