City of Ramsey
Agenda
Special Joint Planning Commission and City Council
Thursday June 2, 2011
5:30 pm
Lake Itasca Room, 7550 Sunwood Drive NW

1. **Call to Order**
2. **Citizen Input**
3. **Approve Agenda**
4. **Approve Minutes**
5. **Note City Council Minutes**
6. **Public Hearing/Commission Business**
    1. Discuss Development Review Process, Regulations, Standards, and Development Fees
    2. Discuss Employment District Concepts for West of Armstrong Boulevard and South of Highway 10
    3. Review Outside Storage in Employment Districts
    4. Legislative Update
7. **Commission/Staff Input**
8. **Adjournment**

Special Planning Commission **6. 1.**

Meeting Date: 06/02/2011

By: Tim Gladhill, Community Development

Title:

Discuss Development Review Process, Regulations, Standards, and Development Fees

Background:

A 2011 Council Strategic Goal is to review current process, regulations, standards, and development fees. This discussion with the Planning Commission is focused on processes and development fees. A copy of the Planning Commission Meeting Schedule and 2011 Development Fee Schedule are attached for review.

Notification:

None required.

Observations:

Process

Minnesota Statute Section 15.99 provides that a municipality must approve or deny a written request related to zoning within 60 days or it is deemed approved. To work within that time frame, City Code states that all applications must be received no later than 30 days prior to the next available Planning Commission Meeting. This allows the City 15 days to determine if an application is complete for review (State Statute requirement) as well as complete a report for the Planning Commission and schedule appropriate hearings. For land use applications requiring a Public Hearing, the Public Hearing must be published at least ten (10) days prior to the Public Hearing. In order to meet publication deadlines, the Public Hearing must be posted at least fourteen (14) days prior to the hearing. Furthermore, City Code states that there shall be at least 10 days between the Planning Commission review and City Council review. The City has the ability for one (1) administrative extension of 60 days. A League of Minnesota Cities Memo is attached for your review.

The review time frame and requirements are slightly different for subdivision requests. For subdivisions of four (4) or more lots, a preliminary plat with Public Hearing are required by Minnesota Statute Section 462.358. This essentially creates a two-step review process (Preliminary Plat and Final Plat). Each step is a separate application, and thus each application technically carries its own 60-day review time frame. In addition, many cities require Sketch Plan Review, a more informal review of the concept of the subdivision by the Planning Commission.

Development Fees

Staff is in the process of conducting a Development Fee Study with adjacent communities. Results should be tabulated within the next several weeks.

Development Fees are adopted by ordinance on an annual basis based on the current construction index. Standard development fees include Sanitary Sewer and Water Trunk, Sanitary Sewer and Water Lateral (if already constructed), Stormwater Management, Park Dedication, and Trail Development Fees. Sewer Accessibility Charge (SAC) and Water Accessibility Charge (WAC) are collected with the Building Permit. The SAC Fee is determined by the Metropolitan Council. The WAC Fee is a City charged, with the number of units based on the SAC Unit Determination by the Metropolitan Council.

Development Fees are collected as a means to capture the impacts on the City's various utility systems as a result of development. State Statute states that there must be a nexus between the fee and the actual impacts of development. A League of Minnesota Cities Memo is attached for your review (Development Fees).

As part of the Comprehensive Planning process, the City completed three studies that assisted in setting various development fees:

- Comprehensive Sewer Plan
- Comprehensive Water Plan
- Surface Water Management Plan

In addition, the City has adopted a Master Park and Trail Plan that assists in setting Park Dedication and Trail Development Fees.

Funding Source:

Handled as part of regular staff duties.

Staff Recommendation:

Based on discussion.

Committee Action:

Based on discussion.

Attachments

2011 Meeting Schedule

Developer Fee Chart

Commercial Development Fees

Residential Development Fees

League of Minnesota Cities-60 Day Rule

League of Minnesota Cities-Plats

League of Minnesota Cities-Development Fees

League of Minnesota Cities-Zoning Guide

League of Minnesota Cities-Subdivision Guide

Form Review

Inbox	Reviewed By	Date
Heidi Nelson	Heidi Nelson	05/26/2011 11:28 AM
Kurt Ulrich	Kurt Ulrich	05/26/2011 01:35 PM
Tim Gladhill (Originator)	Tim Gladhill	05/26/2011 01:39 PM
Aaron Backman	Aaron Backman	05/26/2011 04:11 PM

Form Started By: Tim Gladhill   Started On: 05/09/2011 10:12 AM

Final Approval Date: 05/26/2011

2011
REGULAR MEETING/DEADLINE SCHEDULE
CITY OF RAMSEY
MINNESOTA

Planning Commission Meeting Date	Land Use Application Deadline	Board of Adjustment Meeting Date	Variance Application Deadline	City Council Meeting Date
1-6-11	12-6-10	1-6-11	12-6-10	1-11-11
				1-25-11
2-3-11	1-3-11	2-3-11	1-3-11	2-8-11
				2-22-11
3-3-11	2-3-11	3-3-11	2-3-11	3-8-11
				3-22-11
4-7-11	3-7-11	4-7-11	3-7-11	4-12-11
				4-26-11
5-5-11	4-5-11	5-5-11	4-5-11	5-10-11
				5-24-11
6-2-11	5-2-11	6-2-11	5-2-11	6-14-11
				6-28-11
7-7-11	6-7-11	7-7-11	6-7-11	7-12-11
				7-26-11
8-4-11	7-5-11	8-4-11	7-5-11	8-9-11
				8-23-11
9-1-11	8-1-11	9-1-11	8-1-11	9-13-11
				9-27-11
10-6-11	9-6-11	10-6-11	9-6-11	10-11-11
				10-25-11
11-3-11	10-3-11	11-3-11	10-3-11	11-8-11
				11-22-11
12-1-11	11-1-11	12-1-11	11-1-11	12-13-11
				Pending

The first City Council meeting of the month will focus on policies and administrative issues. The second City Council meeting of the month will focus on community development issues.

NOTE: Refer to the appropriate Land Use Procedural Pack (C.U.P., Rezoning, Variance, Subdivision, etc.) for specific information regarding the review process.

NOTICE TO ALL LAND USE APPLICANTS

Section 117-48 (Processing Costs) of the City Code governs the payment, processing, and expenditure of funds regarding land use applications.

§117-48. Processing Costs

(a) *Costs.* All costs incurred by the City in processing an application for zoning amendments, conditional use permits, variances, site plans, and all divisions of land shall be paid by the applicant. The processing costs shall include but not be limited to:

(1) Professional consulting services as directed by the Community Development Department, the Planning Commission and/or City Council,

(2) Copying charges,

(3) City Staff involvement,

(4) Public hearing publications,

(5) Written notice to adjacent property owners, or

(6) Any other cost necessary to process the applicant's request.

(b) *Fee and Escrow.* A set fee and a set minimum escrow established by Council resolution shall be paid to the City at the time the application is made.

(c) *Special Assessment of Processing Costs.* An applicant may request that processing costs exceeding $1,000.00 be specially assessed against the applicant's property provided that the property owner accepts the assessment to the subject property and waives any right of assessment appeal.

(d) *Additional Deposits before Submittal.* If the Community Development Department determines that costs in addition to the set escrow will likely be incurred by the City, then an additional sum as determined by the Community Development Department shall be deposited with the City before the application is considered officially submitted.

(e) *Additional Deposits after Submittal.* If at any point during the processing of a land use application, the actual or estimated processing costs exceed the amount on escrow, the applicant shall have ten (10) days to supply an additional escrow in an amount equal to or greater than the estimated processing costs.

(f) *Refund of Unused Deposits***.** Any portion of those funds deposited in escrow but not expended or encumbered shall be returned to the applicant after final action on the application. Under no circumstance shall an escrow be considered an interest bearing account.

(Code 1978, § 9.03.02; Ord. No. 73-05, 5-21-1973; Ord. No. 86-2, 8-25-1986, Ord. No. 03-20, 8-25-2003)
State law reference – Fees, Minn. Stats. § 462.353, subds. 4, 4a.

Application Type	Non-Refundable Fee	Minimum Escrow
Platting		
-Administrative	$200.00	$225.00
-Major Subdivision	$300.00	$1,500.00
-Minor Subdivision	$200.00	$900.00
-Registered Land Survey	$200.00	$300.00
Site Plan Review	$200.00	$800.00
Conditional Use Permit	$200.00	$800.00
Annual Land Use Inspection	$ 75.00	NA
Environmentally Sensitive CUP	$200.00	$2,000.00
Administrative Home Occupation	$200.00	N/A
Home Occupation Permit	$200.00	$600.00
Zoning Amendment	$200.00	$400.00
Variance	$200.00	$400.00
Vacation of Easement	$200.00	$300.00
Comprehensive Plan Amendment	$200.00	$700.00
Interim Use Permit	$200.00	$600.00
Dwelling Moving Permit	$200.00	$400.00
Special Planning Commission or City Council meeting	$350.00	N/A

The following are rates for processing costs in regards to land use applications:

Type	Cost
Professional Consulting Services	2.75 x Wage
Copying Charge	$.25/page
Community Development Staff Time	$100.00/hr
City Engineer	$115.00/hr
Engineering Tech IV – Inspection Fees	$88.00/hr
City Attorney	At City Cost
Public Hearing Publication	At City Cost
Anoka County Review (generally applies to all development adjacent to a County Road)	Based on Anoka County Fee Schedule (included in Anoka County Engineering Packet)

2011 COMMERCIAL/INDUSTRIAL DEVELOPMENT COSTS

SITE PLAN FEES

Application	$200
Escrow	$800 + costs incurred by the City exceeding $800
Financial Surety	150% of estimated cost of site improvements (pavement, curbing, landscaping)
Landscape Surety	30% of (# of trees x $300 + # of shrubs x $75)

PLATTING FEES

Minor Subd.	- $200 non-refundable application fee and $900 escrow + costs incurred by the City exceeding $900 (Minor is three (3) lots or less with no public improvements)
Major Subd.	- $300 non-refundable application fee and $1,500 escrow + costs incurred by the City exceeding $1,500 (Major is more than 3 lots with or without public improvements)
Financial Surety	- 125% of the estimated cost of any public improvements required (including, but not limited to sanitary sewer, water, curb and gutter, streets, storm-water sewer, etc.)
Inspection Fee	- 5% of the estimated cost of any public improvement required

VARIANCE FEES

Application	$200 (non-refundable)
Escrow	$400 + costs incurred by the City exceeding $400

REZONING FEES

Application	$200 (non-refundable)
Escrow	$400 + costs incurred by the City exceeding $400

COMPREHENSIVE PLAN AMENDMENT FEES

Application	$200 (non-refundable)
Escrow	$700 + costs incurred by the City exceeding $700

CONDITIONAL USE PERMIT FEES

Application	$200 (non-refundable)
Escrow	$800 + costs incurred by the City exceeding $800

INTERIM USE PERMIT FEES

Application	$200 (non-refundable)
Escrow	$600 + costs incurred by the City exceeding $600

PARK DEDICATION FEES (Collected on all subdivisions, or on site plans when no subdivision of land is required and park fees were not previously paid on the subject property)

Cash	$4,738 per acre commercial; $3,966/acre industrial
Land	5% of gross land area
Planned Unit Dev.	10% of gross land area + $2475 per unit.

TRAIL FEES

Cash $1,090 per acre

SEWER AND WATER TRUNK AND LATERAL FEES

Water Connection/Trunk	$8,645/acre
Water Lateral Benefit	Actual cost or $9,102/lot when water is already available
Sewer Connection/Trunk	$3,965/acre
Sewer Lateral Benefit	Actual cost or $3,989/lot when sewer is already available

STORMWATER MANAGEMENT FEE

Development Charge $4,630 per acre

STREET AND TRAFFIC CHARGES

Street or Traffic Signs	$225/sign
Future Sealcoating	$1.45/square yard

STREET LIGHTS

Cobra	$1,300/light
Traditionaire Subdivision	$1,700/light
The COR	$2,600/light
3 Year O & M	$294/light

FEES COLLECTED IN BUILDING PERMIT

Sewer Availability Charge (SAC)*	- $2,230/SAC Unit**
Water Availability Charge (WAC)*	- $1,701/WAC Unit**
SAC Handling Fee	- $200/Residential Equivalent**

ON-GOING UTILITY FEES

Sewer Utility	$66.79 + 2.89/1,000 gallons in excess of 20,000 gallons
Water Utility	$34.05 minimum ($2.27/1,000 gallons for 1st 15,000 gallons; $2.36/1,000 for 15,001-25,000; $2.44/1,000 for 25,001-40,000; $2.58/1,000 for 40,001-60,000; $2.78/1,000 for 60,001-99,000; $3.08/1,000 for 99,001-201,000; $3.68/1,000 for 200,001 and above.
Stormwater Utility	$37.08/REU/Quarter (based on impervious surface)

* Metropolitan Council charge

** # of units determined by Building Official

CITY OF RAMSEY
2011 RESIDENTIAL DEVELOPMENT COSTS

SITE PLAN FEES (Multiple Family Developments are required to go through site plan review)

Application - $200 (non-refundable)
Escrow - - $800 + costs incurred by the City exceeding $800
Financial Surety - 150% of estimated cost of site improvements (pavement, curbing, landscaping)
Landscape Surety - 30% of (# of trees x $300 + # of shrubs x $75)

PLATTING FEES

Minor Subd. - $200 non-refundable application fee and $900 escrow + costs incurred by the City exceeding $900 (Minor is 3 lots or less with no public improvements)
Major Subd. - $300 non-refundable application fee and $1,500 escrow + costs incurred by the City exceeding $1,500 (Major is more than 3 lots with or without public improvements)
Financial Surety - 125% of the estimated cost of any public improvements required (including, but not limited to sanitary sewer, water, curb and gutter, streets, storm-water sewer)
Inspection Fee - 5% of the estimated cost of any public improvement required

VARIANCE FEES

Application $200 (non-refundable)
Escrow $400 + costs incurred by the City exceeding $400

REZONING FEES

Application $200 (non-refundable)
Escrow $400 + costs incurred by the City exceeding $400

COMPREHENSIVE PLAN AMENDMENT FEES

Application $200 (Non-refundable)
Escrow $700 + costs incurred by the City exceeding $700

CONDITIONAL USE PERMIT FEES

Application $200 (Non-refundable)
Escrow $800 + costs incurred by the City exceeding $800

INTERIM USE PERMIT FEES

Application $200 (non-refundable)
Escrow $600 + costs incurred by the City exceeding $600

ADMINISTRATIVE HOME OCCUPATION PERMIT FEE

Application $200 (non-refundable)

HOME OCCUPATION PERMIT FEES

Application $200 (non-refundable)
Escrow $600 + costs incurred by the City exceeding $600

PARK DEDICATION FEES (Collected on all subdivisions, or on site plans when no subdivision of land is required and park fees were not previously paid on the subject property)

Cash $2,475 per unit (0-11 units/acre)
$2,289 per unit (12-19 units/acre [7.5% discount])
$2,104 per unit (20+ units/acre [15% discount])
$4,738 per acre (assisted living complexes)

Land 0 - 3.0 units per acre 10%
3.1 – 5.0 units per acre 15%
5.1+ units per acre add .5% for each over 5 units per acre
Assisted living complexes 5%

Planned Unit Dev. 10% gross land area + $2,475/unit

TRAIL DEVELOPMENT FEE

$600 per dwelling unit

SEWER AND WATER TRUNK AND LATERAL FEES

Water Connection/Trunk	- $2,308/unit
Water Lateral	- actual cost or if it is already there, $9,102/unit
Sewer Connection/Trunk	- $1,318/unit
Sewer Lateral	- actual cost or if it is already there, $3,989/unit

STORMWATER MANAGEMENT FEE

$465 per dwelling unit

STREET AND TRAFFIC CHARGES

Street or Traffic Signs	$225/sign
Future Sealcoating	$1.45/square yard

STREET LIGHTS

Cobra	$1,300/light
Traditionaire Subdivision	$1,700/light
The COR	$2,600/light
3 Year O & M	$294/light

FEES COLLECTED IN BUILDING PERMIT

Sewer Availability Charge (SAC)*	- $2,230/SAC Unit**
Water Availability Charge (WAC)*	- $1,701/WAC Unit**
SAC Handling Fee	- $200/Residential Equivalent**

ON-GOING UTILITY FEES

Sewer Utility	$66.79 + 2.89/1,000 gallons in excess of 20,000 gallons
Water Utility	$34.05 minimum ($2.27/1,000 gallons for 1st 15,000 gallons; $2.36/1,000 for 15,001-25,000; $2.44/1,000 for 25,001-40,000; $2.58/1,000 for 40,001-60,000; $2.78/1,000 for 60,001-99,000; $3.08/1,000 for 99,001-201,000; $3.68/1,000 for 200,001 and above.
Stormwater Utility	$9.27/quarter
Recycling	$8.85/quarter
Street Lights	$9.01/quarter (urban subdivision after 7/92)
	$14.85/quarter (rural subdivision)
	$1.37/quarter (priority-all residential lots)

* Metropolitan Council charge

** # of units determined by Building Official

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RISK MANAGEMENT INFORMATION

THE "60 DAY RULE" – MINN. STAT. SEC. 15.99
MINNESOTA'S AUTOMATIC APPROVAL STATUTE

Minnesota statutes require municipalities to approve or deny written requests related to zoning within 60 days. Failure to do so results in automatic approval of the request. This memo reviews the rules, exceptions, and elements of law.

During 1995, Minnesota joined about two dozen states in adopting an "automatic approval" statute, Minn. Stat. Sec. 15.99. That statute provides that a municipality must approve or deny a written request relating to zoning within 60 days or it is deemed approved.

> **Highlight**
>
> Minn. Stat. Sec. 15.99, subd. 2. provides that a municipality must approve or deny a written request relating to zoning within 60 days or it is deemed approved.

According to the Minnesota Court of Appeals, "the underlying purpose of Minn. Stat. Sec. 15.99 is to keep governmental agencies from taking too long in deciding land use issues . . ." *Manco of Fairmont, Inc. v. Town Board of Rock Dell Township*, 583 N.W.2d 293, 296 (Minn. Ct. App. 1998). Courts have generally demanded strict compliance with the requirements of the law. Accordingly, the law has resulted in numerous lawsuits against local governments. This memo reviews the basic requirement of the law and discusses some of the more common mistakes cities have made in applying it.

General Rule

The general rule states that the "Failure of [a municipality] to deny a request within 60 days is approval of the request." The statute also requires that "a [municipality's] response meets the 60-day time limit if the [municipality] can document that the response was sent within 60 days of receipt of the written request." Minn. Stat. Sec. 15.99, subd. 3(c).

Statutory Exceptions

- The 60-day time period does not begin to run if the city notifies the landowner in writing within 15 business days that the application is incomplete. The city must also state what information is missing. (The 2003 Legislature increased the period from 10 to 15 days.)

- The city may extend the initial 60-day period by another 60 days (up to a total of 120 days), if, before the end of the initial 60-day period, it notifies the landowner in writing of its intent to take additional time to consider the application, reasons for the extension, and anticipated length of the extension.

**This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.**

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- The 60-day time period is stopped, while other necessary state or federal approvals are being sought.

- The 60-day time period does not apply to applications for subdivision approval. (The subdivision statute Minn. Stat. Sec. 462.358, subd. 3b provides its own time periods of 120 days for preliminary plat approval and 60 days for final plat approval.)

Elements of the Law

What is a "written request" for purposes of starting the 60-day period?

What constitutes a "written request" has been the subject of several court decisions. For instance, it has been argued that a request submitted on the back of a napkin was enough to start the clock. The courts also have found that submission of a request in a letter or as part of a settlement proposal may be enough to start the time running. The 2003 legislature clarified the law in this regard by defining a written request as a submission on a city approved application form, or if there is no form, submission in writing with the specific governmental approval sought listed on the first page of the document.

What about an incomplete application?

If the city receives an application that does not include all the city required information, the clock does not begin to run, if within 15 days of receipt of the application, the city informs the applicant in writing that the application is incomplete and what information is missing. (This timeframe was increased by the 2003 Legislature from 10 to 15 days.)

Therefore, the city should give some thought to being clear about exactly what information it requires for various types of land use applications. The city may want to consider developing a checklist and reviewing its zoning ordinances to make explicit what items are required. This will not only help the applicant, but will act as a sort of fail-safe mechanism for city staff who need to thoroughly evaluate applications within the first 15 days.

What is considered "related to zoning?"

It is useful to look at the precise wording of the statute – Minn. Stat. Sec. 15.99 subd. 2 (2011) – to see that the statute, on its face, covers much more than just requests "related to zoning."

> *"Except as otherwise provided in this section, section 462.358 subd. 3b, or 473.175, or chapter 505, and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action."*

Highlight

The law allows cities a 60-day extension to consider an application if the city follows specific statutory requirements. To do so, cities must provide the landowner a written explanation during the initial 60-day period that details the reasons for the extension and the anticipated length of the extension.

The courts have been rather expansive in their interpretation of the phrase "related to zoning."

While no one likely would argue the language includes requests for parcels specific to rezonings, and requests for conditional use permits and variances, courts have also found the law applicable to requests for sign permits, wetlands determination review, and road permits.

In short, almost all requests affecting the use of land have been treated as subject to the law. Subdivision and plat approvals are an exception, since those processes are subject to their own timeframes. The law also does not apply to applications for building permits. Building permits are issued pursuant to the State Building Code to regulate the construction process; they do not regulate the use of land that may occur in a particular zoning district. Therefore, they are not "related to zoning."

More Information

Learn more from these resources:

- *Zoning Decisions*
- *Zoning Guide for Cities*

What happens if the city fails to deny a request within the statutory time period?

Failure of a city to deny a written request within the statutory time period results in automatic approval of the request. Automatic approval can be a harsh penalty. Examples of requests that automatically were approved because the city failed to timely deny the request include a request for a permit to operate a landfill, a request for a permit to build a telecommunications tower, and a request for a permit to install electrical transmission lines. Failing to deny a request within the statutory time period can have severe consequences.

What constitutes a denial under the law?

There have been a number of court decisions on the question of what constitutes denial of a request. In most situations, the courts have required that the city council actually pass a resolution or motion denying the request. In fact, the Minnesota Supreme Court went so far as to find that an unsuccessful motion to approve was not the equivalent of a denial. That decision was overturned by the 2003 Legislature, which amended the law to provide that a motion to approve which fails is the equivalent of a denial, as long as those voting against the motion state, on the record, the reasons for denying the request. The courts also have required a formal motion to deny approval even when a city has a moratorium in place that would otherwise prohibit the proposed application.

Along with the denial motion, the law requires that the city adopt written findings supporting denial. The law states:

> *"If the written statement is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial of the request but before the expiration of the time allowed for making a decision under this section."*

The law also requires that the:

> *"Written statement must be consistent with the reasons stated in the record at the time of the denial. The written statement must be provided to the applicant upon adoption."*

In 2007, the Supreme Court of Minnesota held that failure to provide the applicant with the written reasons for denial of a request within the 60-day period did not result in automatic approval because the law's requirement to provide the applicant with written reasons was only directory and

not mandatory. Then in 2010, the Supreme Court of Minnesota went a step further and held that the law's requirement that the council *adopt* "written-reasons" for a denial was directory, not mandatory. Therefore, where a municipality denied a written request related to zoning within the time period provided for by the law, but failed to provide written reasons for denying the request, the request was not automatically approved under Minn. Stat. Sec. 15.99. However, the Court also cautioned that while failure to provide written reasons for the denial did not result in automatic approval under Minn. Stat. Sec. 15.99, it could still result in the reviewing court overturning the denial because it was deprived of the record necessary to uphold the city's decision. In other words, even though a city's failure to provide contemporaneous written reasons for denying the request may not result in automatic approval of the request, the city must still state legally sufficient reasons for denying the request or the court may not sustain the decision.

What about the internal appeals process?

The statutory time period runs until there is a final approval or denial of a request. There is not a final approval or denial until all internal appeals processes have been resolved. As a result, the city must structure any internal appeals process so all appeals are resolved within the statutory time period.

What needs to be done for the city to extend the time period for an additional 60 days?

The law allows a city the opportunity to give itself an additional 60 days to consider an application, if the city follows specific statutory requirements. In order to avail itself of an additional 60 days, the city must provide the landowner a written notification within the initial 60-day period that details:

- The reasons for extension.
- The anticipated length of the extension.

The courts have been particularly demanding on local governments with regard to this requirement. They have required local governments to meet each element of the statute. Oral notice or an oral agreement to extend is insufficient. However, extending the time period "to take an additional 60 days to make a decision on an application" has been held to be a sufficient written reason for an extension.

What is needed to extend beyond 120 days?

A city only can go beyond 120 days if it gets the approval of the applicant. The city must either initiate the request in writing and have the applicant agree to it in writing, or the applicant by written request, may ask for an extension. Otherwise, the city must act on the request within the designated timeframe. Again, the courts have demanded strict compliance with the statutory requirements. Accordingly, oral representations or actions by the applicant should not be treated as justification for delaying action on a permit.

Your League Resource

For more information, please contact Jed Burkett, Loss Control Land Use Attorney, at:

651-281-1247 or jburkett@lmc.org

James Mongé 1/11

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RISK MANAGEMENT INFORMATION

SUBDIVISIONS, PLATS, AND DEVELOPMENT AGREEMENTS—OH MY!

Regulating the division of land can be a powerful tool in implementing any municipal comprehensive land use plan. This memo summarizes some of the basic law associated with subdivisions, plats, and development agreements. It is by no means a complete discussion of all the issues that may be involved with subdivision regulation.

Definitions

- A "subdivision" is the division or separation of a large tract of typically unimproved land under single ownership into smaller units, lots or parcels.
- A "plat" is a technical drawing or map that shows the lot lines or parcel boundaries, as well as the location of road right-of-way and utility easements.
- A "development agreement" is a contract that a city may enter into with a landowner or developer upon subdivision that details how associated infrastructure will be accomplished.

Chapter 505 Plats

Plats are technical drawings delineating one or more parcels of land drawn to scale depicting the location and boundaries of lots, blocks, outlots, parks, and public way. Plats are prepared and recorded in conformance with Minnesota Statute Chapter 505, and must contain a certification by a land surveyor and be approved by the county surveyor. The 2007 Legislature rewrote Chapter 505 to reflect changes in platting and surveying standards, technologies, and processes. Sometimes a subdivision is said to be the same as a plat, but that is not always true, and the differences between the two can be important in some scenarios as noted below.

Plats shall be presented for approval to the city in which the land is located pursuant to Minn. Stat. 505.03. Plats that document a subdivision of land are subject to the approval of the city council exercising its authority over the subdivision of the land. The 2007 Legislature provided that plats that only delineate existing parcels or comply with a minor subdivision procedure may be approved by a local government official designated by the city council. If a city does not have subdivision regulations under its 462.358 authority, it may nonetheless be presented with plats for approval under 505.03. Without a subdivision ordinance, a city's authority is limited to technical review of plats, and authority to withhold approval to such plats would seem somewhat limited.

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Subdivision Ordinance Authority

Minnesota Statute Section 462.358 authorizes cities to regulate subdivision of land within the municipality. The subdivision ordinance generally can extend its application to unincorporated land within two miles of city limits if the township has not adopted subdivision regulations. Although the subdivision ordinance is sometimes viewed as secondary to the zoning ordinance, in communities that are not fully developed and have open land, the subdivision ordinance is arguably more important than the zoning ordinance in affecting future land use patterns.

More Information

Learn more about cities' authority to regulate land in:

- *The Land Use Cook Book: It's Not All Cookie Cutter*

It's available in the Land Use area of the League website at www.lmc.org.

Minnesota cities have a considerable amount of latitude in the regulation of subdivisions. But that latitude must be exercised through the subdivision ordinance by laying out specific standards and requirements that must be met for subdivision approval. The statute explains that:

> The standards and requirements in the regulations may address without limitation: the size, location, grading, and improvement of lots, structures, public areas, streets, roads, trails, walkways, curbs and gutters, water supply, storm drainage, lighting, sewers, electricity, gas, and other utilities; the planning and design of sites; access to solar energy; and the protection and conservation of flood plains, shore lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features.

Minimum Internal Development Standards

Because the statutory power provided is wide in scope, subdivision ordinances can vary greatly from city to city. The goal of the subdivision standards is to help the city envision the "look and function" of the new development when it reviews an application for the division of land. At a minimum, most subdivision ordinances have standards and require information about:

- The layout and width of proposed road rights-of-way and utility easements;
- Road grades and drainage plans;
- Plans for water supply, sanitary sewer or sewage handling and treatment; and
- Stormwater management.

Many subdivision ordinances also have standards and requirements related to such things as:

- Lot size and front footage;
- Block or cul-de-sac design;
- Alleys, sidewalks, and trails;
- Erosion and sediment control;
- Tree preservation; and
- Protection of wetlands and environmentally sensitive areas.

Minimum External Development Standards

An important consideration to include in the ordinance is how a proposed subdivision will relate to adjoining land uses, such as the connection of one neighborhood to another via roads, trails and open space, and how they relate to shared community services such as schools, parks, and public

safety stations. Cities should require compliance with the external standards of the ordinance. There are at least two ways to approach these requirements.

- *Premature subdivision*. Some ordinances provide that a subdivision may be deemed premature and therefore denied. The ordinance should detail conditions that could make a subdivision premature such as lack of adequate drainage, water supply, roads or highways, waste disposal systems, inconsistency with the comprehensive plan, and lack of city service capacity.
- *Conditional approval.* Other ordinance provisions may condition approval on the construction and installation of streets, sewer and water facilities, and other utility infrastructure.

There are some emerging issues cities should consider when drafting, reviewing, and amending subdivision ordinances, and that mean cities should work closely with planners and attorneys to address these issues, including:

- Wastewater treatment systems—the capacity of current wastewater systems may limit future subdivision, and the permitting of new treatment facilities can be a challenge under environmental laws.
- Stormwater management—large rain events combined with increases in impervious surfaces can overwhelm retention ponds and other stormwater handling systems; and subdivision ordinances may look to the on-site handling of stormwater to help out.
- Conservation design—subdivision ordinances may provide density bonuses and other incentives to cluster housing and development in order to preserve natural and agricultural lands.

Dedication of Land

Subdivisions require infrastructure such as streets, utilities, parks, and drainage systems to support those subdivisions. As part of subdivision approval, a city may require land be "dedicated" to the public for public purposes, such as for roads, utilities, and parks. Through the dedication, a city typically acquires the public easement or right-of-way over the land for the dedicated purpose, with the underlying landowner retaining ownership of fee title to the land. However, when the land dedication is for a park, the 2007 legislation amending Chapter 505 provides that the dedication transfers fee title and not just public easement rights.

If cities require dedication of land for park purposes, the statute sets some further specific restrictions.

- The city must first establish these requirements by ordinance or resolution under Minn. Stat. 462.353 subd. 4a.
- The city must also adopt a capital improvement budget and have a parks and open space plan component in its comprehensive plan.
- The portion of land to be dedicated must be calculated based solely upon the "buildable" land as defined by municipal ordinance.
- The municipality must reasonably determine it will need to acquire that portion of land for recreational and environmental purposes as a result of approval of the subdivision.

- In establishing what portion of land must be dedicated or preserved, city regulations must also give due consideration to the public open space and recreational areas and facilities the developer proposes for the subdivision.
- A city cannot deny subdivision approval based solely on an inadequate supply of parks, playgrounds, trails, wetlands, or open space within the municipality.

Park Dedication Fees

As part of its park dedication requirements, as an alternative to accepting dedicated land, a city may accept an equivalent value of money. Known as "park dedication fees" these fees have received considerable attention during the last several years.

How to Set Fees

Case law and the statute require an "essential nexus" between the fees or dedication imposed and the municipal purpose sought to be achieved by the fee or dedication. The fee or dedication must bear a rough proportionality to the need created by the proposed subdivision or development. If cities require park dedication fees in their subdivision regulations it must be done by ordinance or, depending on the amount of fees collected, by a fee schedule. In 2004, 2006 and 2007, the legislature amended the state statute provisions relating to park dedication fees.

More Information

Learn more about establishing fees in:

- *Establishing Building and Development Fees*

It's available at www.lmc.org.

The park dedication fee now must be based on fair market value of the *unplatted* land for which park fees have not already been paid. If the land in question is subject to a comprehensive plan - eventually scheduled to be served by municipal sanitary sewer, water service or community septic and private well - then the city may include that fact in determining the fair market value. Cities must collect the fee at the time of final plat approval. For purposes of redevelopment on developed land, the municipality may choose to accept a fee based on fair market value of the land no later than the time of final approval.

What Can We Do With Fees?

Fees received must be placed by the municipality in a special fund to be used only for the purposes for which the money was obtained. Park dedication fees received must be used only for the acquisition and development or improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open space based on the approved park systems plan. Fees must not be used for ongoing operation or maintenance of parks, recreational facilities, playgrounds, trails, wetlands, or open space.

Disputes Regarding Fees

If a city is given written notice of a dispute related to a proposed park dedication fee before the municipality's final decision on an application, a municipality must not condition the approval of any proposed subdivision or development on an agreement to waive the right to challenge the validity of a fee in lieu of dedication. An application may proceed as if the fee had been paid, pending a decision on the appeal of a dispute over a proposed fee in lieu of dedication, if

(1) The person aggrieved by the fee puts the municipality on written notice of a dispute over a proposed fee in lieu of dedication,
(2) Prior to the municipality's final decision on the application, the fee in lieu of dedication is deposited in escrow, and
(3) The person aggrieved by the fee appeals under section 462.361, within 60 days of the approval of the application. If such an appeal is not filed by the deadline, or if the person aggrieved by the fee does not prevail on the appeal, then the funds paid into escrow must be transferred to the municipality.

Because of statutory changes and recent scrutiny of the use of park dedication fees, a city that relies on such fees should carefully examine -- in consultation with the city attorney -- its ordinance provisions and make any changes necessary to comply with current law. Review parkland dedication requirements to make sure there is a logical connection between the amount of the dedication requirement and the purpose for which it is used. For example, the city should be able to demonstrate that each new lot that is approved necessitates X amount of new parkland. (See appended Sample Park Dedication Methodology.) Also, the city should take steps to separately account for parkland dedication fees and make sure they are not used for ongoing park "operation or maintenance."

Subdivision Approval Process

The subdivision statute generally requires cities to follow a two-step process in the administration of city subdivision regulations. First, the landowner applies for preliminary plat approval, and then subsequently for final plat approval.

Preliminary Plat Approval

During the preliminary approval stage it is important to note that a city has the most discretion in evaluating the application against its ordinance, as a city cannot generally require significant changes after preliminary approval. The city must hold a public hearing on all subdivision applications prior to preliminary approval, following publication of notice at least 10 days before the hearing. A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension. If no action is taken, the application will be deemed approved after this time period. (Note that this 120 day period differs from the usual 60-day rule).

Sample Resolutions

View sample resolutions in:

- *Sample Resolution to Deny a Preliminary Plat: City of Shakopee*
- *Sample Resolution to Approve a Conditional Use Permit: City of Shakopee*

They're available in the Land Use area of the League website at www.lmc.org.

Review of an application for a preliminary plat is a quasi-judicial determination, in which the city is tasked with determining whether the proposed subdivision meets the standards and the requirements of the city ordinance.

An applicant must submit a plat that shows everything required by city ordinance. Because of the quasi-judicial standard, a city cannot generally deny an otherwise acceptable preliminary plat application for subdivision simply because the city council does not approve of the underlying

proposed permitted use. **If the application adequately addresses all of the ordinance standards and requirements, then the preliminary plat generally should be approved.** If the application is denied, the municipality must adopt written findings based on a record from the public proceedings stating why the application was not be approved.

Conditional Approval
A city may approve a preliminary plat along with conditions that must be satisfied for final plat approval. Conditions for how the final subdivision design will meet ordinance provisions often are quite specific. For example:

- Variances to subdivision regulations may be allowed where an unusual hardship on the land exits, but only on the grounds specifically identified in the subdivision regulations.
- If any public improvements are to be installed, an important condition may be entering into a development agreement between the city and the applicant, as discussed below.

This is the time to impose conditions and address any and all concerns the application may generate. The term "preliminary" approval can be misleading because preliminary plat approval establishes the nature, design, and scope of a development project. After a plat is preliminarily approved, the city generally cannot require further significant changes. Once the conditions and requirements of the preliminary plat approval are satisfied, the applicant is generally entitled to approval of the final plat.

Final Plat Approval
After preliminary plat approval, the statute allows the applicant to seek final approval. If the applicant has complied with the conditions and requirements set out in the preliminary approval, the municipality typically must grant final approval within 60 days. Unlike preliminary plat approval, there is no required public hearing on the final plat. The final plat application must demonstrate conformance with the conditions and requirements of preliminary approval. An applicant may demand the execution of a certificate of final approval where the requirement and conditions have been satisfied. If the municipality fails to act within 60 days, the final plat application may automatically be deemed approved.

After final approval has been received, a subdivision may be filed or recorded. After a subdivision has been approved, for one year after preliminary approval and two years after final approval, an amendment to the comprehensive plan or to the zoning ordinances will not apply to or affect the subdivision with regard to use, density, lot size, lot layout, or dedication or platting -- unless the municipality and the applicant agree otherwise. A municipality may require that an applicant establish an escrow account or financial security for the purpose of reimbursing the municipality for direct costs relating to professional services a city provides during the review, approval, and inspection of the project.

Development Agreements
In many cases, a condition of preliminary plat approval requires the city and applicant to enter into a development agreement. This is particularly important for the city if new public improvements such as roads, water and sewer, and stormwater systems are to be installed as part of the subdivision. The statute specifically authorizes the city in its ordinance to condition subdivision

approval on the execution of a development agreement embodying terms and conditions reasonably related to the ordinance requirements.

A development agreement is a contract between a landowner or developer and the city that sets the understanding between the developer and the city regarding the design and construction of the particular project. It establishes the parameters under which the development will proceed, as well as the rights and the responsibilities of the developer and the city. Issues resolved in a development agreement include:

- The design, installation and financing of public improvements;
- Security for completion of improvements installed by developer, a cash deposit, certified Check, irrevocable letter of credit, bond, or other financial security;
- Design of lighting, landscaping, sidewalks, underground utilities and other site plans issues; and
- Coordination of construction with the installation of various utility improvements.

Development agreements also typically detail who will build, pay for and own the improvements; provide the timeline for the construction or installation; and describe who is liable for any defects or claims.

The agreement will detail how the infrastructure will meet city specifications, and document all of the required right-of-ways and land dedications, including agreement regarding park dedication fees if any. While a city cannot condition approval on agreement to waive the right to challenge the validity of a fee, it may condition the approval on a waiver agreement regarding costs associated with improvements to be installed.

As part of the development agreement, cities should require the developer to provide financial security including a letter of credit from a reputable institution in order to cover costs were the installation of improvements to go awry or payments unmet. Finally, development agreements should contain provisions dealing with liability and indemnification, requiring the developer to have liability coverage and ideally to defend and indemnify the city for related claims. Because the agreement can be a sophisticated legally binding contract, it is extremely important for the city attorney to be involved before it is entered into.

Exceptions and Alternatives

Not all divisions of land are subject to a city's subdivision authority. Excepted under state statute are:

- Separations where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;
- Cemetery lots,
- Court ordered divisions or adjustments; and
- Lot consolidation, since subdivision refers only to separation of land.

Although such divisions may nonetheless go through the city's regulatory subdivision process, it appears cities are without authority to require them do so.

Not all subdivisions necessarily require the preparation of a plat. The state subdivision statute mandates that municipal subdivision ordinances require that all subdivisions should be platted which create five or more lots or parcels which are 2-1/2 acres or less in size. Subdivision ordinances may or may not require other subdivisions be platted. Further, not all subdivisions that require platting must necessarily require both a preliminary and then a final plat. The subdivision statute provides that the city ordinance may provide for the consolidation of the preliminary and final review and approval or disapproval of subdivisions.

Some city subdivision ordinances will provide alternative procedures for certain types of "minor" subdivisions. When the city ordinance consolidates preliminary and final approval, it is sometimes called a simple plat. Often this is allowed if subdivision creates a minimum number of lots of a certain size and the plat does require creation of new roads. A different alternative procedure for minor subdivisions is for divisions of land for which the city is not requiring plats. Often called administrative subdivisions or lot splits, such subdivisions are typically accomplished with metes and bounds descriptions.

Conclusion

City staff and officials should carefully evaluate every application for preliminary plat approval for compliance with the subdivision ordinance. Once the preliminary plat has been approved, the city has limited ability to revisit the issue of adequate compliance. If new public improvements or infrastructure are to be installed, then it is important to enter into a development agreement so the improvements will meet city standards and be completed in a timely fashion. Cities should periodically review their subdivision ordinances for consistency with comprehensive plan and current vision of future land use, particularly with regard to the city's capacity for wastewater, stormwater, and traffic.

Jed Burkett 4/08

Sample Park Dedication Methodology

(This is a sample of one methodology; a city is not required to take it into account.)

Step 1.
The city should conduct a parks study to generally determine what it would like to see in the community regarding parks, recreation, trails, and open space. That study should consider whether current facilities are sufficient to meet the needs of current residents. If there is a deficiency, the city should calculate what additional expenditures would be necessary to meet that city's desired parks plan.

Step 2.
The city should calculate the total amount of city parks, recreation, trails and open space, plus any additional amount to meet current, but unmet park goals.

Step 3.
The city should evaluate usage of city parks, recreation, trails, and open space with a goal of estimating the percentage of facilities that exist to serve residential landowners and percentage that exists to serve the needs of commercial development. In arriving at these percentages, it is helpful to consider the use of park facilities by businesses and their workers and the use by sports teams that may be sponsored by businesses. From this analysis, the city will be able to identify the percentage of its parks needs that should be met by residential development and what percentage should be met by commercial/industrial development.

Step 4.
The city then will use the results of step 2 and step 3 to calculate parkland acreage, per resident or per employee. The following examples may be helpful:

Per Capita Residential Share/Per Capita Commercial Share

Existing Park Lane and Trail Acreage
500 acres

Residential Share
90% X 300 = 270 Acres

Per Capita Residential Share
270 acreas/15,000 residents (population) = .018 acres per Resident

Commercial Share
10% X 300 = 30 acres

Per Capita Commercial Share
30 acres/1000 employees in city = .03 acres per Employee

Step 5.
Establish park dedications by ordinance. The amount of land to be dedicated as part of residential subdivision or plat will be equal to the per acre residential share (determined in Step 4) times the number of residents expected in the development or subdivision. To arrive at an amount in lieu of land dedication, take the per acre value of undeveloped land times the amount of land the city could have required to be dedicated.

Step 6.
To calculate the amount to be dedicated as part of a commercial development, multiply the per acre commercial share (determined in Step 4) by the number of employees expected in the development. To arrive at a cash payment in lieu of land dedication, take the per acre value of undeveloped commercial land times the amount of land the city could have required to be dedicated.

Step 7.
Make provisions in your ordinance to provide that these are the maximum amounts the city can charge and give the council discretion to vary from these requirements as a result of unique attributes of the development or to account for parks or open space that may already be included the development. (Note: The city is not required to take any of these considerations into account when arriving at the park dedication amount.)

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RISK MANAGEMENT INFORMATION

ESTABLISHING BUILDING AND DEVELOPMENT FEES

Introduction

Over the past few years, there have been several legislative, administrative, and legal developments that have put the spotlight on municipal building and development fees. Builders have claimed that city fees are excessive and they have undertaken several initiatives to make municipal officials more accountable.

In light of those initiatives and challenges, we thought it important to review the relevant statutes, rules and legal filings, and make some recommendations about what cities can do to minimize their exposure to lawsuits.

Statutes and Rules

The first statute worth reviewing is Minn. Stat. 16B.685 that reads as follows:

16B.685 ***Annual Report***
Beginning with the first report filed on June 30, 2003, each municipality shall annually report by June 30 to the department, in a format prescribed by the department, all construction and development-related fees collected by the municipality from developers, builders, and subcontractors, if the cumulative fees collected exceeded $5,000 in the reporting year. The report must include:

(1) The number and valuation of units for which fees were paid;
(2) The amount of building permit fees, plan review fees, administrative fees, engineering fees, infrastructure fees, and other construction and development-related fees; and
(3) The expenses associated with the municipal activities for which fees were collected.

This statute requires cities to annually report fee revenue, but more importantly, it requires cities to identify "the expenses associated with municipal activities for which fees were collected." Because other statutes and regulations discussed below require that fees be "fair, reasonable and proportionate" to the cost associated with the service provided, it is imperative that cities give careful thought to filling out the reporting form and do a good job of identifying "all" related expenses. Cities with fee revenue well in excess of reported expenditures could be susceptible to challenge.

The next two laws relate to the requirement that fees be "fair, reasonable, and proportionate . . ." Specifically, with regard to development fees, Minn. Stat. 462.353 subd. 4(a) and (b) reads:

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Subd. 4. ***Fees***

(a) *A municipality may prescribe fees sufficient to defray the costs incurred by it in reviewing, investigating, and administering an application for an amendment to an official control established pursuant to sections 462.351 to 462.364 or an application for a permit or other approval required under an official control established pursuant to those sections. Except as provided in subdivision 4a, fees as prescribed must be by ordinance.* ***Fees must be fair, reasonable, and proportionate and have a nexus to the actual cost of the service for which the fee is imposed.***

(b) *A municipality must adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected. Upon request, a municipality must explain the basis of its fees.*

Regarding building permit fees, Section 1300.0165 subp. 2 of the State Building Code reads:

Subp. 2. ***Fees commensurate with service.***

Fees established by the municipality must be by ordinance and must be ***fair, reasonable, and proportionate to the actual cost of the service for which the fee is imposed.***

Finally, it is instructive to review the "purpose" section of the building code to see that the code is intended to accomplish a fairly broad set of goals.

1300.0030 ***Purpose and Application***

Subp. 1. ***Purpose.***

The purpose of the code is to provide minimum standards to safeguard life and limb, health, property, and public welfare, by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all structures and equipment specifically covered by the code in a jurisdiction that adopts and enforces the code.

Legal Challenges

At least three cities have been sued challenging the amount of fees being collected by the cities. The two most recent suits brought against the cities of Shakopee and Elk River by the Builders Association of the Twin Cities and the Builders Association Minnesota, claim that the cities charged excessive fees. The following are excerpts from the complaints in the two suits.

"To the extent that Elk Rivers[/Shakopees] building permit fees have exceeded the cost of reviewing, investigating and administering applications for building permits, the City has charged an unreasonable and unauthorized charge on builders."

"As such building permit fee applicants from 1998 to 2004 are entitled to a full refund of all building permit fees charged by the City that exceed the cost of reviewing, investigating and administering applications for building permit . . ."

"Elk Rivers[/Shakopees] collection, retention and use of building permit fee revenue that exceeds its costs of reviewing, investigating and administering applications for building permits constitutes a taking of private property under the Fifth and Fourteenth Amendment of the United States Constitution and Article 1, Section 13 of the Minnesota Constitution."

Recommendations

In light of these legal requirements we suggest that the cities adopt the following practices:

1) Cities should review, evaluate, and adopt their fees on an annual basis in order to make sure the fees are "fair, reasonable, and proportionate to the actual cost of the service for which the fee is imposed."
2) Prior to filing the city's annual report with the Department of Administration, the city should consult with its finance department and possibly its auditor, to make sure that all expenses reasonably associated with building code administration and enforcement, and development activity are adequately captured on the reporting form. (See, Methodology below)
3) In adopting building and development fees, cities should not blindly rely on boilerplate fee schedules that may have been established without closely reviewing the costs associated with the services provided.

Methodology for establishing defensible fees

Step 1

Identify all direct cost associated with the building code administration activities. These would include:

- most, if not all, of the salary and benefits associated with staff involved directly in the building code administration function;
- the annualized cost of supplies, equipment and materials associated with the building code administration function.

Step 2

Identify city's general overhead charges such as building costs, insurance, heating, sewer, water, fleet costs, IT costs, administration, finance and city council, and then allocate to the building codes administration function, a proportionate share of these costs.

Step 3

Interview the other city departments to determine what percentage of those departments' time is reasonably related to supporting building codes administration activities. Once that "time spent" evaluation is completed, allocate a percentage of the cost of those department budgets to the building codes administration function. The following departments are likely to devote at least some time to support the code administration function:

- Planning, zoning and development
- Engineering and Public works
- Public safety (police and fire)
- Park and recreation

Step 4
Arrive at an overall annualized cost to support the building codes administration activities. This will be the total of the direct cost identified in Step 1, plus the allocation of the general city overhead identified in Step 2, plus the allocation of a percentage of other departments' time identified in Step 3.

Step 5
Since building permit fees must be based on valuation, you then have to make an estimate of potential valuation and set your fees accordingly, to generate sufficient revenue to cover all or a portion of the costs calculated in Step 4.

Paul Merwin 2005

GOVERNING & MANAGING INFORMATION

Zoning Guide for Cities

600A1A
October 2010

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I. Introduction

This memo discusses the framework of municipal zoning. It provides guidance on zoning ordinance drafting, adoption, administration and enforcement. Finally, this memo introduces, in brief, other land use controls available to cities that may complement or be used separately from zoning controls.

A. The purpose of zoning

Minn. Stat. § 462.351

Town of Oronoco v. City of Rochester, 293 Minn. 468, 197 N.W.2d 426 (Minn. 1972).

Zoning allows a city to control the development of land within the community – both the type of structures that are built and the uses to which the land is put. Most building in a community is done by private individuals and businesses seeking to develop property for their own private use – whether this is residential, commercial or industrial. Zoning is one important tool for guiding this private development, so that land is used in a way that promotes both the best use of the land and the prosperity, health and welfare of the city's residents. Local zoning control over other governmental entities acting or owning property within a city, such as the State of Minnesota and local school districts may be more limited depending on the circumstances.

Minn. Stat. § 462.357, subd. 1

Sample Zoning District Section

Zoning is normally accomplished by dividing the land in the city into different districts or zones and regulating the uses of land within each district. Generally, specific districts are set aside for residential, types of commercial and various industrial uses. The city can also use zoning to further agricultural and open space objectives.

By creating zoning districts that separate uses, the city assures that adequate space is provided for each use and that a transition area or buffer exists between distinct and incompatible uses. Adequate separation of uses prevents congestion, minimizes fire and other health and safety hazards, and keeps residential areas free of potential commercial and industrial nuisances such as smoke, noise and light.

Minn. Stat. § 462.357, subd. 1

Zoning regulations may also constrain the types and location of structures. The regulations must be the same within each district, but may vary from district to district. These regulations often control:

- Building location, height, width, bulk
- Type of building foundation
- Number of stories, size of buildings and other structures
- The percentage of lot space which may be occupied
- The size of yards and other open spaces
- The density and distribution of population
- Soil, water supply conservation

- Conservation of shore lands
- Access to direct sunlight for solar energy systems
- Flood control

B. Legal authority to zone

Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114 U.S., 1926

Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App.2002).

Minn. Stat. § 462.352, subd. 2

Minn. Stat. § 462.351

Statutory and Home Rule Charter Cities are granted the authority to adopt a zoning ordinance by the Minnesota and US Supreme Court cases and by the Municipal Planning Act found in Minnesota Statutes. The Municipal Planning Act establishes a uniform and comprehensive procedure for adopting or amending and implementing a zoning ordinance.

Minn. Stat. § 473.851

Cities in the metropolitan area are governed by the Metropolitan Land Planning Act. The metro area is defined as the cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding New Prague) and Washington. The Metropolitan Planning Act also imposes certain mandatory zoning and regulatory requirements on metropolitan cites.

Minn. Stat. § 103F; Minn. Stat. §§ 103F-103F.155; Minn. Stat. § 103F.335 Minn. Stat. § 40A.01; Minn. Stat. § 138.71

Cities are also granted additional authority by state statute to impose land use controls on development through the Minnesota Water Laws, the Floodplain Management Laws, the Minnesota Wild and Scenic Rivers Act, the Agricultural Land Preservation laws and the Minnesota Historic District Act to name only a few.

C. Role of comprehensive planning in zoning ordinance adoption

Minn. Stat. § 462.351

All cities have the authority to adopt zoning regulations, though cities may follow different paths to adoption of an ordinance. Some cities may engage in extensive formal planning, including the drafting of a comprehensive plan, prior to ordinance adoption, while others may need to follow a more immediate process.

1. Comprehensive planning

See LMC information memo, *Planning Commission Guide*

Minn. Stat. § 462.353; *Roselawn Cemetery v. City of Roseville*, 689 N.W. 2d 254 (Minn. Ct. App. 2004).

Minn. Stat. § 462.352, subd. 5

The adoption of a comprehensive plan is a common first step in the development of a zoning ordinance. Minnesota statutes grant all cities authority to adopt a formal comprehensive plan for their community. A comprehensive plan is a lengthy document that formally establishes a blueprint for the city's long-range (usually between five and 15 years) social, economic, and physical development.

Minn. Stat. § 462.355, subd. 1a; Minn. Stat. § 473.121, subd. 2, Minn. Stat. § 473.864, subd. 2; *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984).

In metropolitan area cities, including cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague) and Washington, the adoption of a comprehensive plan is mandatory under the Metropolitan Land Planning Act. All other cities have the option of adopting a comprehensive plan, but are not required to do so.

Minn. Stat. § 462.357, subd. 1h; Minn. Stat. § 462.355, subd. 1, Minn. Stat. § 103G.005, subd. 10b

Non-metropolitan cities located in counties or watersheds that contain 80 percent of their presettlement wetlands are subject to the President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land (hereinafter the "T. Roosevelt Memorial Preservation Act"). These cities are not required to engage in comprehensive planning, but must meet the requirements of the T. Roosevelt Memorial Preservation Act by adopting certain findings of fact when adopting a comprehensive plan.

a. Reasons to adopt a comprehensive plan

While not all cities are required to adopt a comprehensive plan, a plan is still a good practice for a couple of reasons.

See LMC information memo, *Planning Commission Guide*

For more information on Comprehensive Planning see *Under Construction* by MN Department of Administration

First, the comprehensive planning process helps a city develop a plan for creating and maintaining a desirable environment and safe and healthy community. Once a plan is adopted, it guides local officials in making their day to day decisions and becomes a factor in their decision making process.

Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804 (Minn. Ct. App. 2005); *Larson v. Washington County*, 387 N.W.2d 902 (Minn. Ct. App. 1986).

Second, preparing a comprehensive plan prior to the adoption of a zoning ordinance also affords the city additional legal protections, if a particular ordinance provision is challenged in court. Zoning ordinances must be reasonable and have a rational basis. Comprehensive plans assist a city in articulating the basis for its zoning decisions. Usually the courts will not question the policies and programs contained in a comprehensive plan adopted by a local community, or the ordinances based upon the plan, unless the particular zoning provision appears to be without any rational basis or clearly exceeds the city regulatory authority.

If a city is not able to develop a comprehensive plan prior to adopting a zoning ordinance, the zoning ordinance should be adopted in conjunction with written finding of facts, stating the policy reasons that necessitate the ordinance's adoption.

b. Relation of the comprehensive plan to zoning

See LMC information memo, *Planning Commission Guide*

Zoning and planning are not the same thing. Municipal planning is a lengthy process of collecting and analyzing economic, social and physical data about a city and organizing this information into a formal set of goals and standards for community development. The comprehensive plan is a document that embodies the city's vision for the future, including its aspirations and plans for future development that may not appear for many years to come.

Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162 (Minn.2006).

Once a comprehensive plan is adopted, the city needs a means of attaining its development goals as stated in the comprehensive plan. Zoning is one tool for implementing a comprehensive plan. In cities subject to the Metropolitan Planning Act, zoning directives must harmonize with and not contradict the city's comprehensive plan.

See Part VII, *Other land use controls available for cities.*

It is important to emphasize that zoning is merely *one* of the tools available to a city to assist implementing a comprehensive plan. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs and official map in conjunction with its zoning ordinance to achieve its goal of orderly development.

II. Drafting a zoning ordinance

Minn. Stat. § 462. 357, subd. 1

Zoning regulations can *only* be imposed by a local ordinance adopted in accordance with the Municipal Planning Act. A zoning ordinance consists of both text and maps.

A. Typical zoning ordinance provisions and concepts

The zoning ordinance is usually a lengthy document that consists of three major sections, an administrative section, a performance standards section and a zoning district section.

1. The administrative section

Sample Definitions Section

The administrative section sets forth administrative procedures for implementing the zoning ordinance, including the grant or denial of requests for zoning permits and variances. The administrative section usually contains a fee schedule, an expansive definition section to help interpret and apply the ordinance, a procedure section and a penalty section.

2. The performance standards section

Sample Performance Standards Section

The performance standard section sets forth regulations that are uniformly applicable to all districts, such as noise, property maintenance, parking, fencing and signage standards.

3. The zoning district section

Sample Zoning District Section

The zoning district section establishes the different types of districts, for example residential, commercial or industrial/manufacturing, and sets the regulations for each district. Districts may also be designated reflecting desired density in addition to use, such as residential-1 (usually low density single family homes), residential-2 (usually single family homes and twin homes), residential-3 (usually apartment buildings), etc. Modern zoning may also feature "mixed-use" or "hybrid" districts where traditional use categories are mixed, for example a downtown residential/commercial district. The district section is often the lengthiest section of the zoning ordinance, depending on the number of districts established in the city. This section usually also contains the following concepts for each district:

a. Use designations

Sample Permitted and Conditional Uses

Use Designations are text (usually in a list form) that specify the permitted, conditionally permitted and prohibited uses for a district or zone. There are several types of uses generally found in a zoning ordinance:

- **Permitted Uses:** Uses that are allowed in a district as a matter of right without further need for review or approval of the city
- **Prohibited Uses:** Uses that are not permitted in a district under any circumstances. An explicit listing of prohibited uses is rare. Many ordinances will simply provide that any uses not specifically listed are deemed prohibited.

Minn. Stat. § 462.3595

- **Conditional Uses:** Uses that are permitted, after approval of the city, if conditions listed in the ordinance are met. Some zoning ordinances use the term "special use" instead of conditional use. The Municipal Land Use Planning Act does not recognize special use permits, and the courts would likely apply the same requirements for their issuance as those for conditional uses specified above.

Minn. Stat. § 462.3597

- **Interim Uses:** Uses that are permitted for a limited amount of time (contain a sunset provision), after approval of the city, if conditions listed in the ordinance are met.

- **Accessory Uses:** Uses that are permitted or conditionally permitted to serve a permitted or conditionally permitted use. Generally the accessory use will not be permitted absent the primary use. For example, a tool shed is a standard accessory use in a residential zone.

b. Setbacks, height and density requirements

Sample Setback Requirement Diagram

- **Setbacks requirements:** Establish the minimum horizontal distance between a structure and the lot line, road, highway or high-water mark (if the property abuts shore land).

Sample Height Requirement Diagram

- **Height requirements:** Establish maximum and/or minimum height requirements for structures and/or their attachments (such as antennas, cupolas, etc).

- Density requirements: Establish the number of structures or units allowed per lot or area.

4. Additional provisions

Some ordinances may contain, depending upon the individual needs of the city, additional provisions, though the quality of a zoning ordinance does not depend upon the quantity or complexity of the provisions it contains (nor the number of districts established).

Cities should strive for a zoning ordinance that meets their goals as simply and efficiently as possible. Above all, a zoning ordinance should be a practical document that is as enforceable as possible.

Depending on the individual needs of the city, a zoning ordinance may also contain provisions for the following:

- **Mixed use or hybrid districts**. Districts that do not neatly meet the traditional district categories of residential, commercial or industrial use, but may contain a blend of uses. For example, a “downtown mixed use district” that features a blend of commercial uses and multifamily residences.

- **Planned Use Development (PUD) or cluster development:** A development of contiguous land area that contains developed clusters intermixed with green space or commercial or public development. Often the cluster development allows greater density than normally permitted in the development, in exchange for some other benefit, such as green space or open space.

Sample Overlay District

- **Overlay districts**: A district that is developed to be imposed over or "overlay" one or more existing zoning districts, which impose additional zoning requirements. Overlay districts may be developed with a specific land area in mind or they may be developed to "float" until they are anchored to a suitable development proposal. In some cities, overlay districts may be structured as conditional uses.

5. Natural resource protection and flood plain provisions

In cities that contain certain natural resources such as lakes and rivers, or are located in a floodplain, the zoning ordinance may also contain the following:

Minn. Stat. § 103F.121; Minn. R. 6120.5000l

See MN DNR sample floodplain management ordinances

See also MN DNR for more information and resources on floodplain management

- **Floodplain requirements:** Floodplain management ordinances are required by state law. Flood plain ordinances regulate the use of land in the floodplain in order to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.

Minn. Stat. § 103F.335

See also MN DNR website for more information on MN Wild and Scenic Rivers.

- **Wild and scenic rivers development requirements:** Wild and Scenic Rivers development ordinances are required by state law for cities that have shore land located within the Minnesota Wild and Scenic Rivers System. These ordinances must comply with state standards set by the Commissioner of Natural Resources.

Minn. Stat. § 103F.221; Minn. R. 6120.2500 – 3900

See MN DNR sample shoreland management ordinance

See also MN DNR website for more information and resources on shoreland management.

- **Shoreland development requirements:** For cities that contain shore land, these zoning regulations control the use and development of its shorelands. City shore land regulations must be at least as restrictive as State standards and are subject to the review of the Commissioner of Natural Resources.

Minn. Stat. § 462.355, subd. 1; Minn. Stat. § 103G.005, subd. 10b

- **President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land.** Non-metropolitan cities subject to the T. Roosevelt Memorial Preservation Act when adopting or amending a zoning ordinance, must *consider* restricting new residential, commercial, and industrial development in a manner consistent with the Act's goal of preserving land from development sprawl. Cities are not required to adopt zoning practices consistent with the T. Roosevelt Memorial Preservation Act, but must demonstrate (possibly through findings of fact), that their decision process *considered* the Act's stated goals.

B. Drafting a readable zoning ordinance

Zoning ordinances can be lengthy documents, but from the first to last page, emphasis should be placed upon drafting a well organized ordinance that communicates clearly. A good zoning ordinance:

- Makes information easy to find.
- Is easy to administer and amend.
- Uses plain, well-defined language that reduces the potential for erroneous or controversial interpretations.

1. Suggestions for drafting a readable zoning ordinance:

- Use graphics, tables, maps and illustrations wherever possible.
- Use a consistent numbering system or other system of organization.
- Define terms, words, and phrases, preferably in a separate "definitions" section, so that there is minimal need for interpretation of the text.
- Pick terms and use terms consistently. For example do not interchange the word "residence," with "house," "dwelling" and "single-family home." Instead, pick your preferred term, define the term in your definitions section and use the same term throughout the ordinance.
- Avoid legalese such as "aforesaid," "hereby," and "herewith."
- Avoid archaic and/or potentially offensive terms. For example using, "trailer court" instead of "manufactured home park" or "old folks home" instead of "residential living facility."
- Avoid establishing too many districts and other impractical complexity.
- Be careful about copying neighboring cities' zoning provisions, especially in a piece-meal manner. A zoning ordinance fitting one community may be a bad fit for another. When only portions of an ordinance are copied and utilized, terms and definitions may not remain consistent.

2. The importance ofclear, unambiguous ordinance language

The unfortunate consequence of unclear or ambiguous language in a zoning ordinance is public controversy and loss of efficiency. In some instances, a city may find itself in court simply on the issue of whether the city interpreted its own ambiguous ordinance correctly. In the past the courts have been asked to resolve controversies over such undefined terms in an ordinance as:

Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604 (Minn. 1980).

- "lawn and garden center,"

Lowry v. City of Mankato, 231 Minn. 108, 42 N.W.2d 553 (Minn. 1950).

- The words "accessory", "subordinate," "incidental," and "main,"

Village of St. Louis Park v. Casey, 218 Minn. 394, 16 N.W.2d 459 (Minn. 1944).

- "structure"

Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604 (Minn. 1980).

When a court is called upon to resolve a controversy over an undefined or ambiguous word or phrase in a city ordinance, the court may not always interpret the ordinance in the manner the city would prefer. The court may, but is not required, to give deference to the city's interpretation of the ordinance.

In interpreting zoning ordinances, the court will attempt to find the plain and ordinary meaning of the terms. The court will interpret any doubtful language against the city and in favor of the landowner.

Amcon Corp. v. City of Eagan, 348 N.W.2d 66 (Minn. 1984).

Only in limited circumstances, where the language is so ambiguous on its face that a plain meaning cannot be understood, will the court consider evidence of the city's intent in drafting the ordinance.

Sample Definitions Section.

The best way to avoid the time and expense of a lawsuit over basic terms in a zoning ordinance is clear drafting from the outset. A definition section is essential to any zoning ordinance. Terms and concepts that may be reasonably subject to more than one interpretation should be explicitly defined in this section.

C. Drafting a legally defensible zoning ordinance

In drafting a zoning ordinance, cities must also draft an ordinance that conforms to the requirements of state and federal law. In addition, cities must draft ordinances that are consistent with state and federal court rulings.

1. The Municipal Planning Act

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757, (Minn. 1982); *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997).

Minn. Stat. §§ 462.351 - 462.365.

Minn. Stat. §§ 473.851 - 473.871.

Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002) .

Cities have a wide range of discretion in developing a zoning ordinance. City zoning requirements can range from very complex to minimal. However, all city zoning authority is granted to cities by and subject to the Municipal Planning Act. Ordinances may vary from city to city, but all must comply with both the substantive and procedural requirements contained in the Municipal Planning Act.

It is important to note that the Municipal Planning Act has specific provisions related to local zoning control of:

Minn. Stat. § 462.357, subds. 1a, 1b

- Manufactured home parks

Minn. Stat. § 462.357, subd. 1

- Manufactured homes

Minn. Stat. § 462.357, subd. 1e

- Existing *legal* nonconformities at the time of zoning ordinance adoption

Minn. Stat. § 462.357, subd. 1g

- Feedlots

Minn. Stat. § 462.357, subd. 1

- Earth sheltered construction as defined by MN Stat. 216C.06

Minn. Stat. § 462.357, subd. 1

- Relocated residential buildings

Minn. Stat. § 462.357, subd. 7

- State licensed residential facilities or housing services registered under MN Stat. 144D serving six or fewer persons in single family residential districts

Minn. Stat. § 462.357, subd. 7

- Licensed day care facilities serving 12 or fewer persons in single family residential districts

Minn. Stat. § 462.357, subd. 7

- Group family day care facilities licensed under Minnesota Rules 9502.0315 to 9502.0445 to serve 14 or fewer children in single family residential districts

Minn. Stat. § 462.357, subd. 8

- State licensed residential facilities serving 7-16 persons in multifamily residential districts

Minn. Stat. § 462.357, subd. 7

- Licensed day care facilities serving 13-16 persons in multifamily residential districts

Minn. Stat. § 462.357, subd. 6

- Solar energy systems

Northshor Experience, Inc. v. City of Duluth, MN, 442F.Supp.2d 713 (D.Minn. 2006); *Costley v. Caromin House, Inc.*, 313 N.W.2d 21 (Minn. 1981); A.G. Op. 59-A-32 (Jan. 25, 2002).

Cities cannot adopt local ordinances which contradict the explicit provisions of the Municipal Planning Act.

2. Additional state law requirements

Cities must also draft their zoning ordinances to meet the requirements of state law outside of the Municipal Planning Act. The following is not a comprehensive list of state laws that effect city zoning, but discusses some of the most common limitations of city zoning authority.

a. Flood plains, shoreland and wild and scenic rivers

See also Section III-D, *Zoning to protect natural resources or preserve open spaces and green space.*

Some land is subject to special protection under state law because it contains important natural resources, such as lakes and rivers. Cities are generally required to adopt standards for development of these types of land areas that meet established state standards. Generally such ordinances are subject to the review of the State through the Commissioner of Natural Resources.

b. Manufactured homes

Minn. Stat. §§ 327.31 - 327.35; Minn. Stat. § 462.357, subd.1

No city zoning regulation may prohibit manufactured homes built in conformance with the manufactured home building code and which comply with all other zoning ordinances promulgated pursuant to state law.

For more information on manufactured homes and parks see the LMC information memo, *Manufactured Homes and Zoning: Comprehensive Advice*

Minn. Stat. § 327.32, subd. 5

Cities *can* apply architectural and aesthetic requirements to manufactured homes, but only if the same architectural and aesthetic requirements also apply to all other single-family homes in the zoning district, not just to manufactured homes.

c. Manufactured home parks

Minn. Stat. § 462.357, subds. 1a,1b.

A manufactured home park must be allowed as a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Standards for granting the conditional use should be explicitly stated in the city ordinance.

See Section III-A, *Establishing permitted and conditional uses*.

Cities cannot enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home set back requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements, if any.

3. Federal law considerations: The Religious Land Use and Institutionalized Persons Act

42 U.S.C. § 2000cc.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 provides that no government entity shall impose or implement a land use regulation in a manner that puts a substantial burden on the religious exercise of a person, religious assembly or religious institution, unless the government can show the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. This means that if a religious use may be, in some circumstances, exempted from city zoning requirements if the regulation substantially burdens the religious organization or person's exercise of religion.

RLUIPA also provides that no government may impose or implement a land use regulation in a manner that:

- Treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. For example, a zoning ordinance that allows community centers and fraternal organization centers in a particular district, but not a religious center (such as a church, mosque or synagogue), whose use would be strikingly similar to the other allowed uses.
- Discriminates against any assembly or institution on the basis of religion or religious denomination.
- Totally excludes religious assemblies from their jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

City of Woodinville v Northshore United Church of Christ, 162 P 3d 639 (Wash. Ct. App. 2007) ; *McGann v Inc. Vill. Of Old Westbury*, 719 N.Y.S.2d 803 (N.Y. Sup. 2000).

Activities beyond worship services for religious institutions *may* potentially be protected by the RLUIPA, including schools and childcare. However, this is an unsettled area of the current law.

Williams Island Synagogue, Inc. v. City of Aventura, 358 F.Supp.2d 1207 (S.D.Fla. 2005); *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 326 F.Supp.2d 1140 (E.D.Cal. 2003); *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F.Supp.2d 1203 (C.D.Cal. 2002); *Civil Liberties for Urban Believers v. City of Chicago*,342 F.3d 752 (C.A.7 (Ill.) 2003).

Since RLUIPA was adopted in 2000, numerous cases have been brought in federal court concerning the law's application to various city zoning requirements. However, federal courts in the 8th Circuit (which includes Minnesota) have not ruled on many RLUIPA cases. If a city has concerns about RLUIPA, the city should consult its attorney for specific guidance.

4. Federal and state constitutional concerns

Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114 (1926); *Kiges v. City of St. Paul*, 240 Minn. 522, 62 N.W.2d 363 (Minn. 1953); *State ex rel. Berndt v. Iten*, 259 Minn. 77, 106 N.W.2d 366 (Minn. 1960).

Zoning regulations limit the ability of landowners to use their property in any manner they wish. While both the state and federal constitutions provide protections to landowners from government seizures of land (takings), the courts have long upheld zoning regulations as a reasonable use of a government's police power to protect the health, safety and welfare of the public. However, there are still some federal and state constitutional restraints on city zoning authority.

State, by Rochester Ass'n of Neighborhoods v. City of Rochester 268 N.W.2d 885 (Minn. 1978); *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984).

The adoption or amendment of a zoning ordinance is considered a legislative decision of the city council. Courts normally give legislative decisions great deference and weight, but the court *will on occasion* set aside or intervene in city zoning decisions if two important constitutional restraints in the federal and state constitution are violated. First, the courts may overrule a city zoning decision, when it determines that a zoning ordinance is unsupported by any rational basis related to promoting public health, safety, morals, or general welfare. Usually, in these cases the court finds that the city's actions were arbitrary and/or capricious. Second, when a zoning ordinance denies the landowner practically all reasonable use of the land, resulting is a "taking" of the land without just compensation; the court may order the city to pay compensation to the affected landowner.

a. Legislative authority must be reasonable

Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162 (Minn. 2006); *State v. Northwestern Preparatory School*, 37 N.W.2d 370 (Minn. 1949); *County of Morrison v. Wheeler*, 722 N.W.2d 329 (Minn. Ct. App. 2006)

See Section VC, *Standards for reviewing zoning applications: limits on city discretion*.

Under the federal and state constitution, zoning authority must be used in a manner that is reasonable and free from arbitrariness or discrimination. A city zoning decision is reasonable (not arbitrary), when it bears a reasonable relationship to the purpose of the zoning ordinance.

State v. Northwestern Preparatory School, 37 N.W.2d 370 (Minn. 1949)

Zoning ordinances may be found to be unreasonable when they appear arbitrary. When a zoning classification treats similarly situated individuals differently, there must be rational reason for the unequal treatment that bears a relation to the purposes of the ordinance (protection of the health, safety and welfare of the public). If no such reasonable or rational justification can be found, the court may decide that the city has been arbitrary.

State v. Northwestern Preparatory School, 37 N.W.2d 370 (Minn. 1949)

For example, the Minnesota Supreme Court invalidated provisions of one zoning ordinance that allowed public schools, but not private schools, to be located in a residential zone. The court ruled, in that instance, that the ordinance was arbitrary, because "the distinction between the different kinds of schools, upon which the classification made in the ordinance rests, is not based upon alleged evils which it is claimed exist in the case of private schools and do not exist in the case of public or parochial schools." In the courts view two very similar entities (public and private schools) were being treated differently under the law. This difference was not reasonably related to protecting the health, safety and welfare of the public. As a result, the distinction was ruled to be arbitrary.

b. A zoning designation may not be so restrictive as to deny all reasonable use of the land

U. S. Const. Amend. V.

Minn. Const. art. I § 3.

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S.Ct. 158 U.S. 1922.

See House Research Memo, *Eminent Domain: Regulatory Takings*.

Both the U.S. Constitution and the Minnesota Constitution forbid taking private property for public use without just compensation. Zoning regulations may be considered "takings" if a regulation goes too far. This is generally termed a "regulatory taking."

Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 (Minn.,2007) *Czech v. City of Blaine*, 253 N.W.2d 272 (Minn. 1977); *Pearce v. Village of Edina*, 118 N.W.2d 659 (Minn. 1962)

Generally, a zoning scheme will constitute a regulatory taking only if it denies landowner all economically viable or beneficial use of property or, stated differently, all reasonable use of property. However, not all diminution of property values will be considered a taking. Zoning often has the side effect of increasing the value of some property while decreasing the value of other property. To be ruled a regulatory taking, the regulation must be so severe as to render the property practically useless for the purpose for which it is zoned. For example, a regulation that would prohibit a residence in a strictly residential zone. In these cases, the court will order the city to pay the affected landowner compensation for the land lost to the regulatory taking.

D. Obtaining technical assistance in ordinance drafting

LMCIT Land Use Loss Control Brochure

The Municipal Planning Act grants cities the authority to hire staff, including professional planners and attorneys, to assist in the drafting of a zoning ordinance. Local city officials and staff often have in-depth knowledge regarding the community and its needs, but lack expertise in the many technical and legal aspects of zoning. Professional planners and the city attorney can contribute this needed information to the zoning ordinance adoption process and, while not required, are highly recommended. Because zoning is regulated by numerous diverse state and federal laws and court cases, at a minimum, the assistance of the city attorney is necessary to help the city evaluate whether its ordinance complies with all applicable laws. Assistance may also be obtained by contacting the LMCIT Land Use Services for zoning information and materials.

III. Common issues in ordinance drafting

Zoning ordinances can accomplish a great deal of good for a community. Drafting a zoning ordinance seemingly opens up many possibilities for dealing with concerns or even outright problems and challenges faced by a particular community. However, cities must be careful not to exceed their authority in drafting a city zoning ordinance. Below are some common concerns raised by cities in relation to an initial drafting of a zoning ordinance.

A. Establishing permitted and conditional uses

Sample Permitted and Conditional Uses.

See LMCIT risk management memo *Conditional Use Permits: Frequently Asked Questions*.

In drafting a zoning ordinance, cities often struggle to decide what their permitted and conditional uses should be for each zoning district. For each district created by the zoning ordinance, the ordinance typically provides a list of the permitted and conditional uses. Appropriate uses will change from district to district. Uses designated as "permitted" will be automatically allowed with no need for further application or review (related to zoning) by the city. Therefore, the list of permitted uses should only contain uses about which the city has no reservations.

Conditional uses are also a form of authorized permitted use, provided that the applicant can meet the conditions specified in the ordinance. Uses specified as conditional are uses which are generally favorable and desired, but may also pose potential hazards that need to be mitigated (for example a gas station on a corner in a residential neighborhood). As a result of these potential hazards, council review is necessary.

It is important to stress that conditional uses, like permitted uses, ***must*** be allowed if the applicant can prove that the application meets all of the conditions and requirements of the city's ordinance and will not be detrimental to the health, safety and welfare of the public. As a result, the list of conditional uses should only contain uses that the city is certain should be allowed once appropriate conditions are met.

B. Aesthetic zoning requirements

Aesthetic zoning seeks to create a pleasant appearance in a district or community. Advocates for aesthetic zoning assert that it confers a beneficial effect on property values and on the well-being of its residents. For example, many cities address a host of aesthetic concerns through "design standards" section(s) in their zoning ordinance. Design standards often specify the type of building materials (such as brick or stone) that should be used in that district.

Naegele Outdoor Advertising Co. of Minn. v. Village of Minnetonka, 162 N.W.2d 206 (Minn. 1968); *Pine County v. State, Dept. of Natural Resources*, 280 N.W.2d 625 (Minn.. 1979).

Traditionally aesthetic zoning has been criticized as not adequately related to the protecting the health and safety of the public. However, the Minnesota Supreme Court has ruled that "mere fact that adoption of zoning ordinance reflects desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance." Furthermore, the courts recognize that local city officials are in the best position to determine whether aesthetic regulations promote the community's well-being. Generally, zoning ordinances that contain aesthetic regulations will be upheld if the council has made findings that they are reasonably tied to promoting a community's health safety and welfare in addition to mere aesthetic concerns.

C. Performance standards

Sample Performance Standards Section

Performance standards are a common feature of zoning ordinances. Typically, the performance standard section of the ordinance sets forth regulations governing the uses within districts, such as noise, vibration, smoke, property maintenance (i.e. outdoor storage), parking, fencing and signage standards. Proposed uses that cannot meet the performance standards are not allowed in the district. Performance standards typically are adopted to apply to all districts. However, particular districts, such as industrial districts, may call for specific standards.

D. Zoning to protect natural resources or preserve open spaces and green space

Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 (Minn. 2007) ; *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162 (Minn. 2006); *Pine County v. State, Dept. of Natural Resources*, 280 N.W.2d 625 (Minn.. 1979).

Minn. Stat. § 103F.335

Minn. Stat. § 103F.221

See Section VE1c *Applicability* for more information on regulatory takings.

The Minnesota Supreme Court has ruled that a municipality has legitimate interests in protecting open, green and recreational space for the public through comprehensive planning and zoning. City ordinances use a variety of methods to promote open space and green space. A common zoning tool is cluster zoning. Cluster zoning groups new homes onto part of the development parcel, so that the remainder can be preserved as unbuilt open space. However, it is important to note that zoning regulations (including regulations mandating green or open spaces) that deny an owner all practical use of their property may be considered a regulatory taking.

E. Parking requirements

Sample Parking Requirements.

Cars are ubiquitous to American life and off-street parking requirements are a common feature of city zoning ordinances. Off-street parking requirements may reduce congestion on city streets, thereby improving safety and aesthetics.

Typically a city zoning ordinance will require a certain number of off-street parking space for each type of use. For example, an ordinance may require a landowner in a commercial district to provide four parking spaces per 1,000 sq ft of useable floor space. Many zoning ordinances find it helpful to use a table to illustrate the city's parking requirements.

F. Historic Preservation

Minn. Stat. § 138.74

Historic preservation ordinances seek to protect and maintain buildings and sites of significance to history and pre-history, architecture and culture. Certain cities, which contain historic districts established by state statute, are specifically empowered by state law to create zoning regulations for their historic districts that:

- regulate the construction, alteration, demolition and use of structures within the district.
- prevent the construction of buildings of a character not in conformity with that of the historic district.
- allow the city to remove blighting influences, including signs, unsightly structures and debris, incompatible with the maintenance of the physical well-being of the district.
- allow the city "to adopt other measures as necessary to protect, preserve and perpetuate the district."

Minn. Stat. § 138.73

Currently there are 25 official historic districts designated by state law.

State, by Powderly v. Erickson, 285 N.W.2d 84 (Minn. 1979).

Cities that do not contain official historic districts, as designated by state law, may also preserve their historic properties and districts through local zoning ordinances. Often this is accomplished by establishing a standalone district or an overlay district with specific design standards. The Minnesota Supreme Court has upheld historic preservation ordinances as a reasonable use of the city's police powers to protect the health, safety and welfare of the public.

G. Zoning regulation of adult uses

See LMCIT risk management memo, *Strip Clubs: The Bare Essentials*

See LMC information memo, *Adult Use Packet* for more information and ordinance samples

Adult uses typically refer to bookstores, theaters, bars, and other establishments where sexually explicit books, magazines and videos are sold or sexually explicit films or live performances are viewed. Cities can control the location of adult uses through zoning ordinances to reduce the negative secondary effects of adult uses.

Minn. Stat. § 617.242

Northshor Experience, Inc. v. City of Duluth, MN 442 F.Supp.2d 713 (D.Minn. 2006)

A state law, enacted in 2006, requires that anyone intending to open an adult use business provide notice, 60 days in advance, to the city where the business will locate. The law includes numerous other provisions focused on regulation of adult uses businesses. The new law is the subject of an injunction issued by a federal district court; the court finds that questions about the law's constitutionality are valid and rules that the city may not enforce the new law. Until the constitutional questions regarding the new law are resolved, cities probably should not rely on it as the sole mechanism for regulating adult entertainment establishments.

Instead, cities may consider taking proactive measure to adopt local adult use regulations. However, adopting any regulations of adult uses is legally complex and the city attorney should be involved in the drafting of any adult use ordinances.

H. Restricting Feedlots

Minn. Stat. § 462.357, subd. 1g.

Zoning ordinances that regulate feedlots must comply with certain procedures outlined in the Municipal Planning Act. When a city considers adopting a new or amended feedlot ordinance, it must notify the Minnesota Pollution Control Agency and commissioner of Agriculture at the beginning of the process.

A local zoning ordinance that requires a setback for new feedlots from existing residential areas must also require that new residential areas have the same setbacks from existing feedlots in agricultural districts. This requirement does not pertain to a new residence built to replace an existing residence. A city may grant a variance from this requirement.

At the request of the city council, the city must prepare a report on the economic effects from specific provisions in the feedlot ordinance. Assistance with the report, in the form of a template, is available from the commissioner of Agriculture, in cooperation with the Department of Employment and Economic Development. Upon completion, the report must be submitted to the commissioners of Employment and Economic Development and Agriculture along with the proposed ordinance.

I. Extra-territorial zoning and joint planning

1. Extra-territorial zoning

Minn. Stat. § 462.357

A.G. Op. 59-A-32 (Aug. 18, 1995).

A city's zoning authority may be extended by ordinance to unincorporated territories within two miles of its boundaries, unless that area falls within another city, county or township that has adopted its own zoning regulations. Where zoning is extended, ordinances may be enforced in the same manner and to the same extent as within the city's corporate limits.

2. Joint planning

Minn. Stat. § 462.3585

Joint planning may also assist cities in coordinating their land use efforts with neighboring townships. State statute authorizes the creation of a joint planning board, when requested by a resolution of a city, or county or town board.

The joint planning board exercises planning and land use control authority in the unincorporated area within two miles of the corporate limits of a city. Members of the board are appointed by each of the participating governmental units to equally represent the governmental units that comprise the board.

J. Zoning ordinances that limit competition or protect local business from being displaced by new business

Dobbins v. City of Los Angeles, 195 U.S. 223, 25 S.Ct. 18, 49 L.Ed. 169; *Pacific Palisades Assn. v. City of Huntington Beach,* 196 Cal. 211, 237 P. 538; *Charnofree Corp. v. City of Miami Beach (Fla.)*, 76 So.2d 665; State ex rel. *Killeen Realty Co. v. City of East Cleveland*, 108 Ohio App. 99, 153 N.E.2d 177; *Linden Methodist Episcopal Church v. City of Linden*, 113 N.J.L. 188, 173 A. 593

A city's zoning authority is based upon its police power to protect the public's health, safety and welfare. Zoning to protect private economic interests is problematic, because it is not generally perceived to be related to the public's health and welfare. In general, the federal courts have ruled that cities should not adopt zoning regulations with the sole intent to protect enterprises from competition in a particular district or to create monopolies or to make certain areas subservient to others.

Cities may encounter this issue in the zoning drafting process, when specifying permitted and conditional uses for a district. More commonly, the issue will arise in the context of reviewing a particular zoning application. For example, a city may wish to not grant a CUP for a new bank in the city, because officials perceive that there are too many banks in an area or that the a new bank may put long-established businesses out of business. This type of economic favoritism is not permitted in zoning ordinance drafting or application.

IV. Zoning ordinance adoption and/or amendment

A.G. Op. 59-A-32 (Jan. 25, 2002); *Pilgrim v. City of Winona*, 256 N.W.2d 266 (Minn. 1977)

The Municipal Planning Act mandates a procedure for the adoption or amendment of zoning ordinances for both statutory and charter cities.

A. Public hearings and adoption

Minn. Stat. § 462.357, subd. 3; For information on conducting hearings, see LMCIT risk management memo *Public Hearings*.

A public hearing must be held by the council or the planning commission (if one exists) before the city adopts or amends a zoning ordinance.

1. Notice and hearing

Minn. Stat. § 462.357, subd. 3

See LMC information memo *Newspaper Publication*

A notice of the time, place and purpose of the hearing must be published in the official newspaper of the municipality at least ten days prior to the day of the hearing.

If an amendment to a zoning ordinance involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least ten days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies. However, failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided that a genuine attempt to comply with this subdivision has been made.

Following the public hearing, the planning commission (if one exists) must review the proposed zoning ordinances and any comments from the public hearing, and make any appropriate and reasonable revisions. The planning commission must then present the zoning ordinance and any amendments in final draft form and a report to the council.

Minn. Stat. § 462.357, subds. 2, 5 .

A.G. Op. 59-A-32 (Jan. 25, 2002).

If there is no planning commission, the city council itself should review and address comments from the public hearing and make any appropriate and reasonable revisions. Zoning ordinances must be adopted by a majority vote of all of the members of the council. For example, this would mean three votes on a five member council. One Minnesota attorney general opinion has found that charter cities may not provide for different voting requirements in their city charter, because the Municipal Planning Act supersedes inconsistent charter provisions.

2. Publication

Minn. Stat. § 412.191, subd. 4;

Minn. Stat. § 331A.02;

Minn. Stat. § 331A.04.

See Handbook, Chapter 7 for more information on publishing ordinances in summary form

After adopting or amending a zoning ordinance, the council must publish or summarize it in the official newspaper.

V. Zoning ordinance administration

A. The 60-Day Rule

See LMCIT risk management memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*

Most importantly in administering a zoning ordinance, cities must remember that they generally have only 60 days to approve or deny a written request relating to zoning, including rezoning requests, conditional use permits, and variances. This requirement is known as the "60-Day Rule."

Minn. Stat. § 15.99

Manco of Fairmont v. Town Bd. of Rock Dell Township, 583 N.W.2d 293 (Minn. Ct. App. 1998) .

Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007) .

The 60-Day Rule is a state law that requires cities to approve or deny a written request relating to zoning within 60 days or it is deemed approved. The underlying purpose of the rule is to keep governmental agencies from taking too long in deciding land use issues. Minnesota courts have generally demanded strict compliance with the rule.

1. Scope of the rule

Minn. Stat. § 15.99, subd. 1(c) .

Minn. Stat. § 15.99, subd. 2(a).

Minn. Stat. § 462.358, subd. 3b.

Advantage Capital Mgmt, v. City of Northfield, 664 N.W.2d 421 (Minn. Ct. App. 2003) .

The rule applies to a "request a related to zoning." The courts have been rather expansive in their interpretation of the phrase "related to zoning," and many requests affecting the use of land have been treated as subject to the law. The statute creates an exception for *subdivision and plat approvals*, since those processes are subject to their own timeframes. The Minnesota Court of Appeals has ruled that Minn. Stat. § 15.99 does not apply to building permits.

2. Applications

Minn. Stat. § 15.99, subd. 1(c) .

A request must be submitted in writing on the city's application form, if one exists. A request not on the city's form must clearly identify on the first page the approval sought. The city may reject as incomplete a request not on the city's form, if the request does not include information required by the city. The request is also considered incomplete if it does not include the application fee.

Minn. Stat. § 15.99, subd. 3(a) .

The 60-day time period does not begin to run if the city notifies the landowner *in writing* within 15 business days of receiving the application that the application is incomplete. The city must also state what information is missing.

Minn. Stat. § 15.99, subd. 3(c) .

If a city grants an approval within 60 days of receiving a written request – and the city can document this - it meets the time limit even if that approval includes certain conditions the applicant must meet. Subsequently, if the applicant fails to meet the conditions, the approval may be revoked or rescinded. An applicant cannot use the revocation or rescission to claim the city did not meet the 60-day time limit.

Tollefson Dev., Inc. v. City of Elk River, 665 N.W.2d 554 (Minn. Ct. App. 2003).

When a zoning applicant materially amends their application, the 60-day period runs from the date of the written request for the amendment, not from the date of the original application. However, minor changes to a zoning request should not affect the running of the 60-day period.

3. Denials

Minn. Stat. § 15.99, subd. 2(a); *Johnson v Cook County*, No. A08-1501 (Minn. 2010) (unpublished decision).

If an agency or a city denies a request, it must give written reasons for its denial at the time it denies the request. When a multimember governing body such as a city council denies a request, it must state the reasons for denial on the record and provide the applicant with a written statement of the reasons for denial. The written statement of the reasons for denial must be consistent with reasons stated in the record at the time of denial. The written statement of reasons for denial must be provided to the applicant upon adoption.

Minn. Stat. § 15.99, subd. 2(c) .

Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W. 2d 536 (Minn. 2007)

Minn. Stat. § 15.99, subd. 2(b) .

State statute provides that the failure of a motion to approve an application constitutes a denial, provided that those voting against the motion state on the record the reasons why they oppose the request. This situation usually occurs when a motion to approve fails because of a tie vote, or because the motion fails to get the required number of votes to pass.

4. Extensions

Minn. Stat. § 15.99, subd. 3(f) .

The law allows a city the opportunity to give itself an additional 60 days (up to a total of 120 days) to consider an application, if the city follows specific statutory requirements. In order to avail itself of an additional 60 days, the city must give the applicant:

- Written notification of the extension before the end of the initial 60-day period;
- The reasons for extension; and
- The anticipated length of the extension.

American Tower, L.P. v. City of Grant, 636 N.W.2d 309(Minn. 2001) ; *Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. Ct. App. 2002) .

The courts have been particularly demanding on local governments with regard to this requirement and have required local governments to meet *each element* of the statute. An oral notice or an oral agreement to extend is insufficient. The reasons stated in the written notification should be *specific* in order to inform the individual applicant exactly why the process is being delayed. Needing more time to fully consider the application may be an adequate reason. As demonstrated in one Minnesota Supreme Court case, the written notification should not take the form of a blanket statement on the zoning application that the city will need the extension.

Minn. Stat. § 15.99, subd. 3(g).

An applicant may also request an extension of the time limit by written notice. If a city receives an applicant request for an extension, this should be thoroughly documented.

Minn. Stat. § 15.99, subd. 3(g).

Once the city has granted itself one 60 day extension, additional extensions must be negotiated with the applicant. A city can only go beyond 120 days if it gets the approval of the applicant. The city must initiate the request for additional time in writing and have the applicant agree to an extension in writing. The applicant may also ask for an additional extension by written request.

Minn. Stat. § 15.99, subd. 3(d), (e).

Minn. Stat. ch. 116D.

Minn. R. ch. 4410.

The 60-day time period is also extended if a state statute requires a process to occur before the city acts on the application if the process will make it impossible for the city to act within 60 days. The environmental review process is an example. If the city or state law requires the preparation of an environmental assessment worksheet (EAW) or an environmental impact statement (EIS) under the state Environmental Policy Act, the deadline is extended until 60 days after the environmental review process is completed. Likewise, if a proposed development requires state or federal approval in addition to city action, the 60-day period for city action is extended until 60 days after the required prior approval is granted from the state or federal entity.

Minn. Stat. § 15.99, subd. 2(a), (e).

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On occasion, a local city zoning ordinance or charter may contain similar or conflicting time provisions. The 60-Day Rule generally supersedes those time limits and requirements.

See LMCIT risk management memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*.

Cities should adopt a procedure or set of procedures to ensure planning staff, the planning commission, and the city council follow the 60-Day Rule. City staff should develop a timetable, guidelines and forms (checklists for each application may be helpful) to ensure that no application is deemed approved because the city could not act fast enough to complete the review process.

B. Organizational structure for review of zoning applications

The pressures posed by the 60-Day Rule mandate that any city with a zoning ordinance have in place an efficient system of zoning administration. Generally, this system is composed of both staff and city officials, who ensure that zoning applications are reviewed and answered in a timely manner and that zoning ordinance provisions are enforced.

1. The zoning administrator

Typically, a city will have a staff person who acts as the "Zoning Administrator" who is the first point of contact with the public on zoning matters and provides and receives zoning application forms. Generally, this person will also perform a preliminary review of the application, refer the application to the Planning Commission (if one exists) or City Council for review and offer one or both bodies a staff report reviewing the adequacy of the application. Depending on the size of the city and the number of zoning applications the city typically receives, the position of zoning administrator may be a full-time position or a part-time position. In some cities, the city clerk simply bears the additional title of zoning administrator.

2. The planning commission

See LMC information memo *Planning Commission Guide*

Cities may choose to establish planning commissions to assist in *zoning* administration, but are not required to do so. (However, if a city has adopted a comprehensive plan, a planning commission is mandatory). Usually, it is a good idea to create a planning commission, because city council officials have multiple budgeting, legislative and administrative duties that they must perform in addition to their land use responsibilities. Planning commissions, on the other hand, are usually composed of people who focus solely on zoning and development and, thus, can devote their full attention.

Minn. Stat. § 462.354, subd. 1

Planning commissions are created by ordinance or charter and may vary in size. City council members may be appointed to serve as commission members. Once formed, planning commissions, with city council consent, may adopt bylaws or their own rules of procedure. The city may provide the planning commission with staff, including legal counsel, as necessary.

Minn. Stat. § 462.357, subd. 3

In many cities all zoning applications for conditional use permits, rezoning and variances are submitted to the planning commission for review. If a planning commission exists, state law requires that the planning commission *must* review zoning ordinance amendments and amendments to the official map. With limited exceptions, the planning commission's role in reviewing all types of zoning applications is generally advisory. The City Council usually gives the planning commission recommendations great weight in their considerations, but is not bound by them.

Minn. Stat. § 462.357, subd. 3

The planning commission may hold required public hearings on behalf of the city council, such as a hearing for a zoning ordinance amendment.

3. Planning departments

Minn. Stat. § 462.354, subd. 2

Cities may also form a planning department. In cities that chose this option, the planning commission becomes advisory to the planning department while the planning department takes on the role of advising city council.

4. The city council

Minn. Stat. § 462.3595

In many cities the city council makes the final determination on all applications for rezoning, conditional use permits and interim use permits after consulting the zoning administrator, planning commission and City Attorney as needed. However, the Municipal Planning Act allows cities to delegate final decision making authority concerning conditional use permits to a "designated authority" (presumably the Planning Commission). The City Council cannot delegate its authority to grant rezoning applications and interim use permits.

5. Board of zoning adjustment and appeals

Minn. Stat. § 462.354, subd. 2 and 462.357, subd. 6.

State law requires all cities that have adopted a zoning ordinance to create a Board of Appeals and Adjustments. The Board of Appeals and Adjustment must be created by ordinance. The council may designate itself as the Board of Appeals and Adjustments, or appoint a separate board or the planning commission to serve the city in this capacity. If the board is a separate body, the council can provide in its ordinance that board decisions are:

- final and subject only to judicial review;
- final subject to appeal to the council and judicial review; or
- only advisory to the council, who will makes the final determination.

The board hears requests for variances from the zoning code and makes the determination to grant or deny the variance. In addition, the Board of Appeals and Adjustment hears requests for reconsideration of zoning applications (usually denials), where it is alleged there has been an error in the administration of the zoning ordinance.

Minn. Stat. § 462.354, subd. 2.

Minn. Stat. § 15.99.

The ordinance establishing the board must provide notice and time requirements for hearings before the board. All orders by the board are due within a reasonable time. Requests before the board are subject to the 60-day rule.

C. Standards for reviewing zoning applications: limits on city discretion

State, by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 (Minn. 1978)

When drafting and adopting a zoning ordinance, cities have enormous discretion in choosing their language and specifying uses as permitted, prohibited or conditional in particular districts. When drafting and adopting a zoning ordinance, the city is said to be utilizing its legislative (or law-making) authority. When using its legislative authority, the only limits on the city's zoning authority are that action must be constitutional, rational and in some way related to protecting the health, safety and welfare of the public. This is known as the "rational basis standard" and it generally a very friendly standard for cities to meet.

For more information on applications for re-zoning see Section VC *Standards for reviewing zoning applications: limits on city discretion*

The varying discretion available to cities in making zoning decisions has been described as following a pyramid diagram

In contrast, when administering an existing zoning ordinance (for example when reviewing specific zoning applications for conditional use permits), the city's discretion is much more limited. Generally, when reviewing a zoning application (with the exception of rezoning applications), the city is no longer acting in its legislative capacity. When reviewing zoning applications, the city is said to be exercising a quasi-judicial function. Rather than legislating for the broad population as whole, the city is making a quasi-judicial (judge-like) determination about an individual zoning application regarding whether the application meets the standards of the city ordinance.

In quasi-judicial circumstances, the city must follow the standards and requirements of the ordinance it has adopted. If an application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial must all relate to the applicant's failure to meet standards established in the ordinance. In sum, the city has a great deal of liberty to establish the rules, but once established, the city is as equally bound by the rules as the public.

A city is acting is a quasi-judicial manner when it reviews applications for:

- Conditional use permits.

- Interim use permits.

- Variances.

Northwestern College v. City of Arden Hills, 281 N.W.2d 865 (Minn. 1979)

In quasi-judicial situations, a reviewing court will closely scrutinize the city's decision, to determine whether they city has provided a legally and factually sufficient basis for denial of an application.

In quasi-judicial situations, due process and equal protection are the main reasons for the more stringent scrutiny. Due process and equal protection under the law demand that similar applicants must be treated uniformly by the city. The best process for insuring similar treatment among applicants is to establish standards in the ordinance and to provide that if standards are met, the zoning permit must be granted. An application may generally only be denied for failure to meet the standards in city ordinances.

A reviewing court will overrule a quasi-judicial city zoning decision if it determines that the decision was arbitrary (failed to treat equally situated applicants equally or failed to follow ordinance requirements).

1. Standard of review for re-zoning applications

State, by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 (Minn. 1978)

See Section VC *Standards for reviewing zoning applications: limits on city discretion.*

An application for a rezoning is a request for an amendment to the zoning ordinance. When reviewing applications for re-zoning, the court has ruled that the city continues to act in a legislative capacity, even though the re-zoning application may only relate to one specific parcel owned by one individual. The existing zoning ordinance is presumed to be constitutional, and an applicant is only entitled to a change if they can demonstrate that the existing zoning is unsupported by any rational basis related to the public health, safety and welfare.

2. Making a record of the basis for zoning decisions

Minn. Stat. § 15.99, subd. 2(a) .

See Section VA *The 60-Day Rule*.

The 60-Day Rule requires the city to provide reasons for its denial of a zoning request. These reasons for denial must be stated on the record. In addition, the city must provide the applicant with a written statement of the reasons for denial. The reasons for denial or approval, whether written or stated on the record are considered the city's "findings of fact" on the application if later court review of the city's decision is necessary.

SuperAmerica Group, Inc. v City of Little Canada, 539 NW 2d 264 (Minn. Ct. App. 1995); *Swanson v City of Bloomington*, 421 NW 2d 307 (Minn. 1988); *Larson v Washington County*, 387 N.W.2d 902 (Minn. Ct. App 1986)

See also LMCIT risk management memo, *The Necessity of Adequate Findings/Reasons to Support Municipal Land Use Decisions* and LMC information memo, *Findings of Fact: Elected Officials as Policymakers.*

Findings of fact are also essential to the zoning process, because they enable a reviewing court to sustain a city's zoning decisions. When a land use decision is challenged in court, the standard of review used by the court is very limited. The city's decision will be upheld if the *findings of fact* demonstrate a *rational and legally sufficient basis* for the decision that is not arbitrary or capricious.

Zylka v. City of Crystal, 167 N.W.2d 45,(Minn. 1969)

See Sections V3c *Conditional use permits* and V3d *Requests for variances from the zoning ordinance*, for more information on the standards of review for conditional use permits and variances.

Findings of fact should state all of the relevant facts the city considered in making its decision on the zoning application. A fact is relevant if it proves or disproves that the application meets the legal standards of the city ordinance and state law for granting the zoning request. For example, applications for conditional use permits and variances are all subject to particular standards that are or should have been spelled out in city ordinances, or have been defined by state law or court decision. In evaluating any particular zoning request, the reviewing body should apply the relevant facts to the particular standards that govern the specific type of decisions being made. The basis for reviewing specific types of zoning applications is discussed more extensively later in this memo.

a. Neighborhood opposition

Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee, 226 N.W.2d 306 (Minn. 1975)

For more information on public opposition see LMCIT risk management memos, *Land Use: The Neighbor Factor*; *Frolicking Between the Landmines*.

Certain zoning applications may generate vocal public opposition. Frequently, cities struggle with handling vocal neighborhood opposition in their findings of fact. However, general statements of public opposition should not be a finding of fact listed as a basis for denying a zoning application. Nor should the official record intimate that public opposition is the underlying basis for the city's findings of fact. If a zoning application meets the requirements of the ordinance, it must be granted, despite the disapproval of the neighbors.

Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee, 226 N.W.2d 306 (Minn. 1975)

However, this does not mean that all statements of the public must be disregarded. A significant part of the zoning process is generally the public hearing mandated by the Municipal Planning Act. The Municipal Planning Act requires that all parties interested in an application, including the applicant and neighbors, be granted an opportunity to speak and present their views on the application. While general statements of opposition may not be used as a finding of fact, statements made by the public that are concrete and factual relating to the public welfare are acceptable findings.

For example, a finding of fact should not be "public opposition to the project is strong." But a finding of fact can be, "numerous statements were made at the public hearing by neighbors in the vicinity of the project that streets in the area are already highly congested. The addition of a shopping mall would significantly increase congestion on streets that are at capacity." Where possible, findings of fact that refer to statements by the public should be corroborated by studies and/or expert testimony or opinions.

b. Conducting a public hearing

Public hearings are required prior to the city taking action on numerous types of zoning issues. A public hearing must be held for:

Minn. Stat. § 462.357, subd. 3.

- Zoning ordinance adoption or amendment.

Minn. Stat. § 462.3595, subd. 2.

- Conditional use permits.

Minn. Stat. § 462.357, subd. 3.

- Rezonings.

City ordinances may also require additional hearings for certain matters. Since variances are considered in the nature of a zoning amendment, some cities hold hearings for variance requests as well. As this is an unsettled area of law, please consult your city attorney on the practice of holding hearings for variances.

See Sample Public Hearing Notice

Notice of the hearing must be published in the official newspaper at least 10 days prior to the hearing, and notice must be mailed to property owners within a 350-foot radius of the land in question (including landowners within the 350 foot radius who may live outside the city).

Public hearings should include a complete disclosure of what is being proposed, and a fair and open assessment of the issues raised. A public hearing must include an opportunity for the general public and interested parties to hear and see all information and to ask questions, provide additional information, express support or opposition, or suggest modifications to the proposal.

For more information on conducting public hearings see LMCIT risk management memo, *Public Hearings*.

Public hearings should be conducted with a goal of developing findings of fact to support the city's decision to grant or deny a zoning application. As a result, it may be helpful for the city to provide the public with guidelines for the procedure of the hearing and to encourage the public to present only factual evidence for public consideration.

3. Review of specific types of zoning applications

Cities who have adopted a zoning ordinance need procedures to help them review the different types of zoning applications they receive. Cities typically receive applications for conditional use permits, interim uses, variances and requests for rezonings. As discussed above, all of these applications are subject to the 60-Day Rule. However, this is where the similarities among the review procedures for each type of application ends. Each type of application requires a different standard of review, because state law (and likely local ordinance as well) establishes specific requirements for granting each type of application.

a. Permitted uses

Cities may vary in their administrative procedures for handling permitted uses. For example, some cities will have their building inspector confirm that a use is permitted and meets all applicable zoning rules at the time a building permit is issued with no other formal action from the city. Other cities, that may not enforce the State Building Code, may require all landowners seeking to develop or build to apply for a formal zoning permit. The permit is issued to confirm that that the use is permitted and/or meets all other applicable zoning standards.

Chase v. City of Minneapolis, 401 N.W.2d 408 (Minn. 1981).

Rose Cliff Landscape Nursery v. City of Rosemount, 467 N.W.2d 641 (Minn. Ct. App. 1991).

Regardless of the administrative procedures used, it is important to remember that a city may not impose additional conditions on a permitted use that fits the standards of city ordinance. Such actions are likely to be seen as arbitrary or denying the landowner equal protection and due process. Generally, a landowner is entitled to engage in the permitted use provided they have met all applicable requirements.

See Section III-A *Establishing permitted and conditional uses.*

Cities should regularly review their permitted uses to be certain that the listed permitted uses fit current city needs and circumstances. Permitted uses that may have previously been standard (such as carriage houses in residential districts), may be inappropriate on a modern city, residential block. As time passes, permitted uses may need to be reclassified as prohibited uses or transformed into conditional uses, where conditions may be imposed to prevent any negative secondary effects.

b. Prohibited uses

See Section VC *Standards of reviewing zoning applications: limits on city discretion.*

Minn. Stat. § 462.357, subd. 6; *Sunrise Lake Ass'n v. Chisago County Bd. of Comm'rs*, 633 N.W.2d 59 (Minn. Ct. App. 2001)

See Section VC3d *Requests for variances from the zoning ordinance.*

Cities may receive applications requesting permission to engage in uses explicitly prohibited under the city's zoning ordinance. For example, a request to engage in industrial activities in a commercial zone. When a use is prohibited, the city cannot allow the use unless an amendment to the city's zoning ordinance is adopted in accordance with the procedures of the Municipal Planning Act. Cities are prohibited from granting variances or conditional use permits to engage in prohibited uses.

c. Conditional use permits

Amoco Oil Co. v. City of Minneapolis, 395 N.W.2d 115 (Minn. Ct. App.,1986); *Zylka v. City of Crystal*, 167 N.W.2d 45 (Minn. 1969).

See Sample resolution granting a CUP

See Sample resolution denying a CUP

The concept of a conditional use permit (CUP) was created to give cities more flexibility in zoning ordinance administration. Generally, conditional uses are uses that are often too problematic to be permitted uses as of right in a district. However, since the use is still generally favorable or necessary, outright prohibition of the use is generally not practical or desired. A classic example of such a mixed positive/negative use is a gas station in a residential area. Conditional uses seek to strike a middle ground between outright, unchecked permissive establishment and complete prohibition. Conditional uses are uses that will be allowed if certain conditions (that minimize the problematic features of the use) are met.

Minn. Stat. § 462.3595

Zylka v. City of Crystal, 167 N.W.2d 45, (Minn. 1969)

Cities must specify conditional uses in a city ordinance. Generally, a list of conditional uses will be found alongside the permitted uses in a city ordinance. The ordinance must also establish what conditions or standards must be met to allow the conditional use. Ordinances that fail to establish standards for granting the listed conditional uses are problematic and potentially invalid.

Minn. Stat. § 462.3595.

Minn. Stat. § 462.3595, subd. 2.

Schwardt v. County of Watonwan, 656 N.W.2d 383 (Minn. 2003);*Yang v. County of Carver*, 660 N.W.2d 828 (Minn. Ct. App. 2003);*Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13 (Minn. Ct. App. 2003);*Trisko v. City of Waite Park*, 566 N.W.2d 349 (Minn. Ct. App. 1997).

The city *must* grant the CUP if the applicant satisfies all the conditions established in the ordinance.

A city may deny a CUP if the proposed use:

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757 (Minn. 1982).

- Does not meet the specific standards or conditions established in the zoning ordinance;

See Section IC *Role of comprehensive planning in zoning ordinance adoption.*

- Is not consistent with the city's officially adopted comprehensive plan;

SuperAmerica Group, Inc. v. City of Little Canada, 539 N.W.2d 264 (Minn. Ct. App. 1995).

- Endangers or is not compatible with the health, safety and welfare of the public.

In re Livingood, 594 N.W.2d 889 (Minn. 1999).

When a local government denies a landowner a CUP without sufficient evidence to support its decision, a court can order the issuance of the permit subject to reasonable conditions.

Minn. Stat. § 462.3595, subd. 4

Once a CUP is granted, a certified copy of the CUP (including a detailed list of all applicable conditions) must be recorded with the county recorder or the registrar of titles, and must include a legal description of the land.

Northpoint Plaza v. City of Rochester, 465 N.W.2d 686 (Minn. 1991); *Snaza v. City of St Paul*, 548 F 3d 1178 (8th Cit. 2008)

Minn. Stat. § 462.3597.

A.G. Op. 59-A-32 (February 27, 1990).

CUPs are considered property interests that run with the land—that is, they pass from seller to buyer when the land is sold or transferred. For this reason, time restrictions on a CUP are potentially invalid. In one instance, however, the courts have supported the city's decision to issue a time-limited CUP. If the city wishes to issue a time-limited CUP, the city attorney should be consulted.

Upper Minnetonka Yacht Club v. City of Shorewood, 770 NW 2d 184 (Minn. Ct. App. 2009)

Once issued, a CUP's conditions cannot be unilaterally altered by the city, absent a violation of the CUP itself.

d. Requests for variances from the zoning ordinance

See LMCIT risk management memo, *FAQs on Variances*

Variances are an exception to rules laid out in a zoning ordinance. They are permitted departures from strict enforcement of the ordinance as applied to a particular piece of property if strict enforcement would cause the owner "undue hardship." Variances are generally related to physical standards (such as setbacks or height limits) and may not be used to allow a *use* that is prohibited in the particular zoning district. Essentially, variances allow the landowner to deviate from the rules that would otherwise apply

Minn. Stat. § 462.354, subd. 6.

See Section VB5 *Boards of Adjustment and Appeals*

The law provides that requests for variances are heard by the board of adjustment and appeals. In many communities, the planning commission serves this function. Generally, the board's decision is subject to appeal to the city council. Under the statutory undue hardship standard, a landowner is entitled to a variance if, and only if, the facts satisfy the three-factor test for undue hardship, which are:

Krummenacher, v. City of Minnetonka, 783 N.W.2d 721 (Minn. 2010); *Rowell v. Board of Adjustment of the City of Moorhead*, 446 N.W.2d 917 (Minn.App.,1989)

- The property cannot be put to a reasonable use without the variance. **Caution!** In June 2010, the Minnesota Supreme Court issued a decision that changed the longstanding interpretation of the first factor. The Court held that the reasonable use factor is not whether the proposed use is reasonable, but rather whether there is reasonable use in the absence of the variance. This is a much stricter test, which considerably limits variance opportunities. A city will need to work closely with the city attorney to determine if a variance application can satisfy the first factor.

- The landowner's situation is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone cannot create an undue hardship.

- The variance, if granted, will not alter the essential character of the locality. This factor generally contemplates whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

Myron v. City of Plymouth, 562 N.W.2d 21 (Minn. Ct. App. Apr. 15, 1997), aff'd, 581 N.W.2d 815 (Minn. 1998) overruled on other grounds by *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623 (Minn. 2007).

Variances are to be granted only if strict enforcement of a zoning ordinance causes undue hardship. A landowner who purchased land knowing a variance would be necessary in order to make the property buildable is not barred from requesting a variance on the grounds the hardship was self-imposed.

City of Maplewood v. Valiukas, (Minn. Ct. App. Feb 11, 1997).

In granting a variance, the city may attach conditions, but the conditions must be reasonable and bear some relationship to the purpose of the variance. For example, if the variance reduces side yard setbacks, it may be reasonable to impose a condition of additional screening or landscaping to camouflage the structure built within the normal setback.

Mohler v. City of St. Louis Park, 643 N.W.2d 623 (Minn. Ct. App. 2002).

Nolan v. City of Eden Prairie, 610 N.W.2d 697 (Minn. Ct. App. 2000).

Graham v. Itasca County Planning Comm'n, 601 N.W.2d 461 (Minn. Ct. App. 1999).

Broad discretion is permitted when denying a request for a variance, but there must be legally sufficient reasons for the denial. The board must make findings concerning the reasons for the denial or approval and the facts upon which the decision was based. The findings must adequately address the statutory requirements. Best practice suggests seeking specific legal advice from the city attorney before making decisions on requests for variances.

Stotts v. Wright County, 478 N.W.2d 802 (Minn. Ct. App. 1992).

An applicant for a variance is not entitled to a variance merely because similar variances were granted in the past, although in granting variances, the city ought to be cautious about establishing precedent.

Mohler v. City of St. Louis Park, 643 N.W.2d 623 (Minn. Ct. App. 2002)..

Error by city staff in approving plans does not constitute undue hardship entitling a person to a variance. While the result might be harsh, a municipality cannot be estopped from correctly enforcing a zoning ordinance even if the property owner relies to his or her detriment on prior city action.

Minn. Stat. § 462.357, subd. 6.

Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minn. 2000).

As discussed above, the most common requests for variances relate to physical conditions on the property. For example, setbacks and height restrictions. On occasion a city may receive requests for variances related to *uses.* For example, a request to use the property for a landscaping business out of a home in a residential district. This is commonly known as a *use variance.*

A use variance may not be granted if the use is prohibited in a zoning district. This may occur when the local zoning ordinance specifically lists prohibited uses (such as industrial uses in a residential zone) or when a zoning ordinance lists permitted uses and states that all uses not specifically listed are considered prohibited.

Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minn. 2000)

A city *may* grant a use variance when a use is not prohibited in the zoning district. For example, the zoning ordinance is silent on the issue or when the use is explicitly allowed, but limited by another portion of the city ordinance. For example, when a permitted use cannot meet performance standards elsewhere in the ordinance (such as parking or screening). The requirements of unusual hardship and other statutory requirements still apply to use variances.

Minn. Stat. § 462.357, subd. 6(2)

Finally, state statute create two use variances that a city may always choose (but is not required to) permit through a variance. State statute specifically empowers cities to grant use variances for solar energy systems where a variance is needed to overcome inadequate access to direct sunlight and for the temporary use of a single family residence as a two-family residence.

e. Requests for rezoning or zoning ordinance amendments

Minn. Stat. § 462.357.

Minn. Stat. § 462.358, subd. 2a.

Minn. Stat. § 15.99.

Cities have the authority to rezone (change a designation from residential to mixed commercial) or otherwise amend the zoning regulations governing a particular parcel of property (such as adding a permitted or conditional use). ***Note however, that rezoning is an amendment to the actual zoning ordinance and therefore all the procedures for amendments to the zoning ordinance apply.***

Minn. Stat. § 462.357, subd. 4.

See Part III, *The 60-day rule*

Rezoning may be initiated by the planning commission, council, or a petition by an individual landowner. If a request for rezoning does not come from the planning commission, the matter must be referred to the planning commission for study and report. Care should be taken so that the 60-Day Rule discussed previously is not violated, resulting in an automatic granting of the rezoning.

Sun Oil Co. v. Village of New Hope, Minn. N.W.2d 256 (Minn. 1974).

Rezoning is a legislative act and needs only to be reasonable and have some rational basis relating to public health, safety, morals, or general welfare. A rezoning decision must be supported by findings of fact that indicate the city's rational basis for the rezone. If the city has followed a comprehensive planning process, the findings of fact should also indicate that the decision is consistent with the city's comprehensive plan.

i. Rezoning residential property

Minn. Stat. § 462.357, subd. 2.

When property is rezoned from residential to commercial or industrial, a two-thirds majority of *all members of the city council* is required. (This means there must be four affirmative votes on a five-member council, in most cases.) For other rezoning decisions, a simple majority vote of all members is all that is required.

A.G. Op. 59-A-32 (Jan. 25, 2002).

The Minnesota attorney general has issued an opinion that charter cities may not alter this voting requirement in their charter. The purpose of state law is to provide a uniform set of procedures for city planning and such procedures apply to all cities, charter or statutory.

ii. Spot zoning

Amcon Corp. v. City of Eagan, 348 N.W.2d 66 (Minn.,1984); *Olsen v. City of Hopkins*, 178 N.W.2d 719 (Minn. 1970);

Three Putt, LLC v. City of Minnetonka, No. A08-1436 (Minn. Ct. App 2009) (unpublished decision).

The general rule is that property owners to do not acquire any vested rights in the specific zoning of their parcel. Cities may exercise their legislative discretion to rezone property in furtherance of the public, health, safety and welfare. Cities should, however, avoid a type of rezoning known as "spot zoning."

Spot zoning usually involves the rezoning of a small parcel of land in a manner that:

State, by Rochester Ass'n of Neighborhoods v. City of Rochester. 268 N.W.2d 885 (Minn. 1978).

- Is unsupported by any rational basis relating to promoting public welfare.
- Establishes a use classification inconsistent with surrounding uses and creates an island of nonconforming use within a larger zoned district (for example one lot where industrial uses are permitted in an otherwise residential zone).
- Dramatically reduces the value for uses specified in the zoning ordinance of either the rezoned plot or abutting property.

Alexander v. City of Minneapolis, 125 N.W.2d 583 (Minn. 1963).

Spot zoning that results in a total destruction or substantial diminution of value of property may be considered a form of regulatory taking of private property without compensation. In these rare instances, a property owner may be entitled to compensation for damages related to a legislative rezoning.

D. Environmental review

See Handbook, Chapter 16 for more information on environmental review

Minn. Stat. § 116D.

Minn. R. ch. 4410.

Minn. Stat. § 16D.02.

Minnesota has adopted a comprehensive and detailed environmental review program to determine the significant environmental effects of private and governmental actions. The idea behind the program is that if governmental bodies require documents that identify the environmental consequences of a proposed development and those documents are available to the public, decision-makers can incorporate environmental protection into the proposed development. The law prohibits the issuance of permits or development prior to completion of necessary documents.

Minn. Stat. § 15.99, subd. 3(d), (e).;Minn. Stat. § 116D; Minn. R. ch. 4410.

See Section VA *The 60-Day Rule*

The state-mandated environmental review process usually occurs in conjunction with the city's administration of its zoning ordinance. The environmental review process may require the city to delay consideration of an application. The 60-Day Rule allows an extension for these purposes.

E. Fees and escrow

Minn. Stat. § 462.353, subd. 4(a).

Minn. Stat. § 462.353, subd. 4(b).

Proper zoning administration may require significant financial commitment from a city. However, a city may establish land use fees under the Municipal Planning Act sufficient to defray the costs incurred by the city in reviewing, investigating, and administering an application for an amendment to an official control, or an application for a permit or other approval required under the zoning ordinance.

Fees are required by law to be fair, reasonable, proportionate, and be linked to the actual cost of the service for which the fee is imposed. All cities are required to adopt management and accounting procedures to ensure fees are maintained and used only for the purpose for which they are collected. Upon request, a city must explain the basis of its fees.

Minn. Stat. § 462.353, subd. 4(d).

Minn. Stat. § 462.361.

If a dispute arises over a specific fee imposed by a city related to a specific application, the person aggrieved by the fee may appeal to district court provided the appeal is brought within 60 days after approval of application and deposit of the fee into escrow. An approved application may proceed as if the fee had been paid, pending a decision on the appeal.

Minn. Stat. § 462.353, subd. 4(a).

Generally, cities must adopt fees by ordinance. However, there is a statutory exception to this general requirement. The exception authorizes cities that collect an annual cumulative total of $5,000 or less of land use fees to simply refer to a fee schedule in the ordinance that governs the official control or permit. These cities are authorized to adopt a fee schedule by ordinance or by resolution, either annually or more frequently, after providing notice and holding a public hearing. Notice must be published at least 10 days before the public hearing. The exception also authorizes cities that collect an annual cumulative total in excess of $5,000 of land use fees to adopt a fee schedule if they wish, but they may only do so by ordinance, after following the same notice and hearing procedures.

Minn. Stat. § 462.353, subd. 4(c).

January 1 is set by statute as the standard effective date for changes to fee ordinances, but a city may set a different effective date as long as the new fee ordinance does not apply to a project for which application for final approval was submitted before the ordinance was adopted.

Minn. Stat. § 16B.685; Minn. Stat. § 326B.145

Cities that collect over $10,000 in fees annually must report annually to the Department of Administration all construction and development-related fees collected or face penalties. The report must include information on the number and valuation of the units for which fees were paid, the amount of building permit fees, plan review fees, administrative fees, engineering fees, infrastructure fees, other construction and development related fees, and the expenses associated with the municipal activities for which the fees were collected.

F. Updating and maintaining the city's zoning ordinance

The last, but perhaps most important topic to discuss in zoning administration is on-going maintenance of the zoning ordinance itself, both its actual text and maps. City zoning authority is created and regulated by statutes and court decisions. Both are changed or are amended frequently, making it imperative that cities remain abreast of current developments in the law and, with the assistance of legal counsel, amend their zoning ordinances accordingly.

Any city that has adopted a zoning ordinance should regularly review it to make sure it is consistent with current law. In addition, cities should also review their ordinances to make sure they are consistent with past staff and council interpretation and to make sure they are consistent with the city's comprehensive plan.

Finally, the zoning ordinance should be reviewed to ensure that it is consistent with the city council's current goals and visions for the community. Changes in the city's economic situation, population changes and surges in development interest may quickly make a zoning ordinance outdated with current city realities. Regulations that are inconsistent with what the staff and council see as the future of the community can only cause conflicts when particular applications have to be evaluated.

1. Interim Ordinances (Moratoria)

Minn. Stat. § 462.355, subd. 4); *Pawn America Minnesota, LLC v. City of St Louis Park,* No. A08-1697 (Minn. Ct. App. 2009) (unpublished decision) (rev. granted Oct. 28. 2009)

Adoption of a interim ordinance (more commonly known as a moratorium) may aid cities in the zoning ordinance amendment process, by allowing a city to study an issue without the pressure of time generated by pending applications. Cities may use a moratorium to protect the planning process, particularly when formal studies may be needed on a particular issue. Cities must follow the procedures established in state statute to initiate a moratorium.

a. Procedure for interim ordinance adoption

Minn. Stat. § 462.355, subd. 4(a)

Cities must initiate a moratorium by adopting an ordinance (interim ordinance). The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the city or a portion of the city for a period not to exceed one year from the effective date of the ordinance. An interim ordinance may only be adopted where the city:

- Is conducting studies on the issue.
- Has authorized a study to be conducted.
- Has held or scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or other official controls, including the zoning code, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.
- Has annexed new territory into the city for which plans or controls have not been adopted.

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted.

Minn. Stat. § 462.355, subd. 4(b), *Duncanson v. Board of Supervisors of Danville Tp.*, 551 N.W.2d 248 (Minn. Ct. App.,1996).

No notice or hearing is generally necessary before an interim ordinance is enacted. However, a public hearing must be held if the proposed interim ordinance regulates, restricts or prohibits livestock production (feedlots). In such case, the notice of the hearing must be published at least ten days prior to the hearing in a newspaper of general circulation in the city.

b. Procedure for interim ordinance extension

Minn. Stat. § 462.355, subd. 4(c).

An interim ordinance may be extended only in *limited* circumstances if the procedures of state statute are followed. An interim ordinance may be extended if the city holds a public hearing and adopts findings of fact stating that additional time is needed to:

Minn. Stat. § 462.355, subd. 4(c)(3))

- Complete and adopt a comprehensive plan in cities that did not have comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.

Minn. Stat. § 462.355, subd. 4(c)(1).

- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city's official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd. 4(c)(2).

- Complete "any other process" required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd. 4(c).

- Review an area that is affected by a city's master plan for a municipal airport. This allows for an additional period of 18 months.

The required public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing.

c. Applicability

Minn. Stat. § 462.355, subd. 4(c) *Semler Const., Inc. v. City of Hanover*, 667 N.W.2d 457 (Minn.App., 2003).

An interim ordinance or moratorium may not delay or prohibit a subdivision that has been given preliminary approval, nor extend the time for action under the 60-day rule with respect to any application filed prior to the effective date of the interim ordinance.

Woodbury Place Partners v. Woodbury, 492 N.W.2d 258 (Minn. Ct. App. 1993).

Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 122 S. Ct. 1465 (2002)

According to the Minnesota Court of Appeals, the use of an interim ordinance prohibiting or limiting use of land is generally not compensable if there is a valid purpose for the interim regulation. In evaluating whether an interim ordinance is a temporary taking in the nature of a regulatory taking, courts will look to the parcel as whole. There is no bright-line rule for regulatory takings; rather, they must be evaluated on a case-by-case basis.

VI. Zoning ordinance enforcement

A.G. Op. 477b-34 (July 29, 1991).

The Municipal Planning Act authorizes cities to enforce their zoning ordinance through criminal penalties. In addition, civil remedies, such as an injunction, are available to cities to cure on-going violations. The Minnesota Attorney General has ruled that it is a general duty of a city to enforce its zoning ordinance and that a city cannot refuse to enforce zoning requirements by ignoring illegal land uses. In enforcing city ordinances, however, a city must be aware that certain landowners may have specific rights as existing non-conformities; if their non-conforming use pre-dated the city's zoning regulation.

A. Legal nonconformities predating the adoption of the zoning ordinance

1. Legal nonconformities

Minn. Stat. § 462.357, subd. 1c.

Jake's, Ltd., Inc. v. City of Coates, 284 F.3d 884 (8th Cir. 2002)

Minn. Stat. § 462.357, subd. 1d.

Legal nonconformities are legal *uses, structures, or lots* that predate current zoning regulations and thus do not comply with the current zoning ordinance. In most cases, nonconformities cannot be amortized or phased out. A municipality must not enact, amend or enforce an ordinance that eliminates a use which use was lawful at the time of its inception. Similar protections do not exist for nonconformities that were not lawful, or prohibited by state law or city ordinance, at the time of their inception. This prohibition also does not apply to adults-only bookstores, adults-only theaters or similar adults-only businesses, as defined by ordinance. Nor does it prohibit a municipality from enforcing an ordinance providing for the prevention or abatement of nuisances, or eliminating a use determined to be a public nuisance.

SLS P'ship v. City of Apple Valley, 511 N.W.2d 738 (Minn. 1994); *Halla Nursery v. Chanhassan*, 763 NW 2d 42 (Minn. St. App. 2009)

Legal nonconformities are those uses, structures or lots that legally existed prior to the creation of the zoning district and, in recognition of the landowner's property rights, are allowed to continue even though they are now illegal. Besides being allowed to remain in effect, legal nonconformities also escape requirements subsequently enacted, such as setback requirements. The state statute on legal nonconformities supersedes any conflicting language in a zoning ordinance.

Minn. Stat. § 462.357, subd. 1e.

While legal nonconformities must be allowed to continue, a zoning ordinance may prohibit them from being expanded, extended or rebuilt in certain situations. However, nonconformities, including the lawful use or occupation of land or premises existing at the time of an amendment to the zoning ordinance, may be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion, unless:

- The nonconformity or occupancy is not used for a period of more than one year.

- Any nonconforming use is destroyed by fire or other 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. In this case a municipality may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property or bodies of water.

Minn. Stat. § 462.357, subd. 1e (c)

Cities can also regulate nonconforming uses and structures to maintain eligibility in the National Flood Insurance Program. State law specifically authorizes city regulation of nonconforming uses to mitigate potential flood damage or flood flow.

Minn. Stat. § 462.357, subd. 1f.

Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy

2. Shoreland legal nonconformities

a. All shoreland lots

Minn. Stat. § 462.357 subd. 1e(2)

When a nonconforming structure in a shoreland district, as defined by local ordinance, 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 estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be *increased* by the city if practicable and reasonable conditions may be placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

In addition, nonconforming shoreland lots *of record* in the office of the county recorder, on the date of adoption of local shoreland controls, that do not meet the requirements for lot size or lot width have additional state law protections.

The city *may* (but is not required to) allow this type of lot to be used as a building site if:

- All structure and septic system setback distance requirements can be met.

Minn. R. ch. 7080

- A Type 1 sewage treatment system, consistent with Minn. R. ch. 7080, can be installed or the lot is connected to a public sewer.

- The impervious surface coverage does not exceed 25 percent of the lot.

In evaluating all variances, zoning and building permit applications, or conditional use requests related to nonconforming shoreland lots, the city must require the property owner to address, when appropriate:

- Stormwater runoff management.
- Reducing impervious surfaces.
- Increasing setbacks.
- Restoration of wetlands.
- Vegetative buffers.
- Sewage treatment and water supply capabilities.
- Other conservation-designed actions.

A portion of a conforming shoreland lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

b. Contiguous lots without habitable residential dwellings

In a group of two or more contiguous shoreland lots of record under a common ownership, the city *must* allow an individual lot to be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

Minn. R. ch. 6120

- The lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minn. R. ch. 6120.

Minn. R. ch. 7080

- The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minn. R. ch. 7080, and local government controls.

- The lot's impervious surface coverage does not exceed 25 percent of each lot.

- The development of the lot is consistent with the city-adopted comprehensive plan (if any).

c. Contiguous lots with habitable residential dwellings

Minn. Stat. § 115.55, Minn. R. ch. 7080

Two or more contiguous nonconforming shoreland lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a ***habitable residential dwelling*** at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minn. R. ch. 7080, or are connected to a public sewer.

B. Violations of the zoning ordinance: criminal penalties

Minn. Stat. § 462.362

Minn. Stat. § 169.89, subd. 2.

Minn. Stat. §§ 609.02, subds. 3, 4a; 609.0332; 609.034.

See Handbook, Chapter 7 for information on prosecution responsibilities for violations of local ordinances

Cities may provide for criminal penalties for violation of the city zoning ordinance. In an ordinance, cities may designate ordinance violations as misdemeanors or petty misdemeanors. Cities may impose maximum penalties for misdemeanors of a $1,000 fine or 90 days in jail, or both. In addition, the costs of prosecution may be added. The maximum penalty for a petty misdemeanor is a fine of $300.

C. Violations of the zoning ordinance: civil remedies

Minn. Stat. § 462.362

City of Minneapolis v. F and R, Inc. 300 N.W.2d 2 (Minn. 1980); *Rockville Tp. v. Lang*, 387 N.W.2d 200 (Minn. Ct. App. 1986); *Hall Nursery v Chanhassen,* 763 NW 2d 42 (Minn. Ct. App. 2009)

In many instances, criminal sanctions will not cure a zoning violation. Where the city desires removal of building or use that violates the zoning ordinance, civil remedies may be more effective than even repeated criminal fines. A city may enforce its zoning ordinance through requesting an injunction (a court order requiring someone to stop a particular activity or type of conduct) or other appropriate remedy from the court. These remedies can be used to compel owners to cease and desist illegal uses of their property or even to tear down structures that have been built in violation of the city's zoning ordinance

D. Violations of the zoning ordinance: conditional use permit revocation

Minn. Stat. §462.3595, subd. 3

Where a conditional use permit has been issued, a city may have an additional method of compelling compliance with city zoning ordinances. Conditional use permits may be revoked if the permit holder violates the conditions of the permit. For example, if the permit requires the installation traffic calming measures, but the permit holder fails to do so.

Northpoint Plaza v. City of Rochester, 465 N.W.2d 686 (Minn. 1991)

However, it is important to emphasize that conditional use permits, once granted, are a property right. A city seeking to revoke a conditional use permit should provide the permit holder with due process, an opportunity to be heard and respond to allegations, prior to permit revocation. Procedures for revocation should be established in the zoning ordinance.

VII. Conclusion: other land use controls available to cities

It is important to emphasize that zoning is merely *one* of the tools available to a city to assist in creating a well-planned, even thriving community. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs and official map in conjunction with its zoning ordinance to achieve its planning goals and assure the social, economic and cultural future of the community.

A. Subdivision ordinances

Minn. Stat. § 462.358
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See LMC info rmation memo, *Subdivision Guide for Cities*

See Handbook, Chapter 14 for more information on city subdivision ordinances

Municipalities have the authority to regulate subdivisions of land for many reasons including but not limited to encouraging orderly development and planning for necessities such as streets, parks and open spaces. Cities have the authority to adopt a subdivision ordinance setting out the standards, requirements and procedures to review, approve or disapprove an application to subdivide tracts of land in the city.

Minn. Stat. § 462.358, subd. 2b.

Minn. Stat. § 462.353, subd. 4.

Cities have the authority to require, as part of the subdivision regulations, that a reasonable portion of buildable land in any proposed subdivision be dedicated to the public or preserved for public use as some or all of the following:

- Streets, roads.

- Sewers.
- Electric, gas, and water facilities.
- Stormwater drainage and holding areas or ponds and similar utilities and improvements.
- Parks, recreational facilities, playgrounds, trails.
- Wetlands.
- Open space.

Minn. Stat. § 462.353, subd. 4

In the alternative, city ordinance may require money instead of land; state law refers to this as "cash fees."

Subdivision regulations may be as extensive as city zoning regulations. Subdivision regulations, in addition to the dedication requirements discussed above, may address:

- The size, location, grading and improvement of lots, structures, public areas, streets, roads, trails, walkways, curbs, gutters, water supply, storm and drainage, lighting, sewers, electricity, gas and other utilities.
- The planning and design of sites.
- Access to solar energy.
- The protection and conservation of floodplains, shore lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features.

- Consistency of the subdivision with the official map (if one exists) and other local controls such as zoning and the comprehensive plan (if one exists).

Finally, subdivision regulations may require the installation of sewers, streets, electric, gas, drainage, water facilities and similar utilities and improvements.

1. Platting requirements

See LMC information memo, *Subdivision Guide for Cities*

Minn. Stat. § 505.01, subd. 3(f)

All platting is governed by the state Platting Act at Minn. Stat. ch. 505. A plat is a scale drawing of one or more existing parcels of land that depicts the location and boundaries of lots, blocks, outlots, parks, and public ways and other data required by the Platting Act.

Minn. Stat. § 462.358, subd. 3a; Minn. Stat. ch. 505.

City subdivision regulations may require plats where any subdivision creates parcels, tracts, or lots. Cities *must* require plats if any subdivision creates five or more lots or parcels which are 2-1/2 acres or less in size. City subdivision regulations must not conflict with state platting laws but may address the same or additional subjects.

B. The official map

Minn. Stat. § 462.359.

Minn. Stat. § 462.357, subd. 1.

For more information on the official map see Handbook, Chapter 14

Cities have authority to adopt an official map. As a planning tool, official maps ensure that land the city needs for street widening, street extensions, future streets, local airports and other public purposes will be available at basic land prices by reserving these areas on a map. The official map is *not* the map adopted with the city's comprehensive plan or zoning code.

Minn. Stat. § 462.359, subd. 3.

Official maps do not give a city any right to acquire the areas reserved on the map without payment. When the city is ready to proceed with the opening of a mapped street, the widening and extension of existing mapped streets, or acquisition for aviation purposes, it still must acquire the property by gift, purchase, or condemnation. It need not, however, pay for any building or other improvement erected on the land without a permit or in violation of the conditions of the permit.

C. Safety and maintenance codes

In conjunction with the zoning requirements, cities may promote the city's development by enforcement of the State Building Code and local nuisance and/or property maintenance ordinances. All three types of regulation ensure that the structures allowed within zoning districts are well-maintained and safe for the public, by preventing and combating blight.

1. The State Building Code

State Building Code

For more information on the State Building Code see Handbook, Chapter 13

The State Building Code is a series of standards and specifications related to the type of building materials, spacing and other dimensions of building materials and structures designed to establish minimum safeguards in the construction of buildings, to protect the general public and people who live and work in them from fire and other hazards.

Minn. Stat. § 326B.121.

The State Building Code is the standard that applies statewide for the construction, reconstruction, alteration, and repair of buildings and other structures of the type governed by the code. The State Building Code supersedes the building code of any municipality.

Minn. Stat. § 326B.121

Minn. Stat. § 326B.121

If, as of Jan. 1, 2008, a municipality has in effect an ordinance adopting the State Building Code, the municipality must continue to ***administer and enforce*** the State Building Code within its jurisdiction. The municipality is prohibited by state statute from repealing its ordinance adopting the State Building Code. However, this provision does not apply to cities that have a population of less than 2,500, according to the last federal census, and that are located outside of a metropolitan county. These cities may repeal an ordinance adopting the State Building Code and they are not required to administer and enforce the code (although the State Building Code will remain in effect). These cities may, however, opt to enforce and administer the State Building Code by adopting a local ordinance.

Minn. Stat. § 326B.121.

A city must not, by ordinance or through a development agreement, require building code provisions regulating components or systems of any structure that are different from any provision of the State Building Code. However, a city may, with the approval of the state building official, adopt an ordinance that is more restrictive than the State Building Code where geological conditions warrant a more restrictive ordinance.

Minn. Stat. § 326B.16

Minn. Stat. § 326B.112

Minn. Stat. § 326B.175

Requirements regarding accessibility, elevator safety, and bleacher safety apply statewide, with no exception.

2. Nuisance ordinances

Minn. Stat. § 412.221, subd. 23.

Minn. Stat. § 561.01.

See LMC information memo, *Public Nuisance*

With or without zoning, cities may prevent and abate nuisances through the passage of a local ordinance that defines nuisances and provides for their regulation, prevention and/or abatement. Generally a “nuisance” is anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with a comfortable enjoyment of life or property.

3. Property maintenance ordinances

Wessman v. Mankato, No. A08-0273 (Minn. Ct. App. 2008)(unpublished decision)

Cities may choose to deal with the specific nuisance posed by dilapidated buildings through the adoption of a property maintenance ordinance. Such ordinances typically establish standards for exterior maintenance related to painting, siding, roofing and broken windows. City property maintenance ordinances should be drafted and enforced in a manner that is consistent with the State Building Code. Property maintenance ordinances should generally not attempt to regulate construction issues already regulated by the State Building Code, because such regulation may be pre-empted.

4. Hazardous and Substandard Buildings Act

Minn. Stat. § 463.15

See LMC information memo, *Dangerous Properties*

Cities that have not adopted a local ordinance regarding nuisances or property maintenance may still abate the public safety threat posed by dangerous dilapidated buildings through the Hazardous and Substandard Building Act in state statute The Hazardous Buildings Act allows cities to order landowners to abate (through repair or razing) hazardous conditions on their property or to abate hazardous conditions itself and then seek compensation for the property owner.

D. City land acquisition

For more information on city acquisition of property see the LMC information memo, *Purchase and Sale of Real Property*

Minn. Stat. § 282. 01; *City of St Paul v State*, 754 NW 2d 386, (Minn. Ct. App. 2008)

Cities may also control development through the planned acquisition, development and potentially the resale of land by the city itself. Through purchase and acquisition programs cities can acquire the land they need for present and future public purposes such as parks, streets, public buildings, such as police and fire halls, and to reserve land for future residential and commercial development. Cities may also acquire land through the tax forfeiture process.

GOVERNING & MANAGING INFORMATION

Subdivision Guide for Cities

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July 2010

The League of Minnesota Cities provides this publication as a general informational memo. It is not intended to provide legal advice and should not be used as a substitute for competent legal guidance. Readers should consult with an attorney for advice concerning specific situations.

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I. Introduction

This memo discusses the framework of municipal subdivision regulation. It provides guidance on subdivision ordinance drafting, adoption, administration, and enforcement.

A. The purpose of subdivision regulations

Minn. Stat. § 462.358 subd. 1a, 2a

Cities may regulate the subdivision of land through a subdivision ordinance. Developers who seek to subdivide larger tracts of land into smaller parcels for development and/or sale must follow the city's subdivision ordinance. Subdivision regulations specify the standards of the city related to size, location, grading, and improvement of:

Minn. Stat. § 462.358 subd. 2a

- Lots
- Structures
- Public areas, trails, walkways, and parks
- Streets and street lighting
- Installations necessary for water, sewer, electricity, gas, and other utilities.

Subdivision regulations allow cities to ensure that a new development or redevelopment meets the standards of the city for a safe, functional and enjoyable community. Importantly, subdivision regulations can help the city preserve and protect vital natural resources.

1. Ensuring safe and functional communities

Subdivision standards keep communities safe and functional in a number of ways. Some typical examples include:

- Preventing the flooding of basements by requiring the subdivider to grade appropriately for the subdivision and install curbs, gutters, and stormwater facilities.
- Preventing car accidents by requiring the subdivider to provide for streets of an appropriate width and design for expected levels of traffic circulation.
- Keeping pedestrians safe by requiring the installation of sidewalks, street lights, and trails.
- Preventing cracked foundations, soil erosion and soil loss, and washed-out streets by requiring the developer to perform soil suitability tests.

2. Ensuring enjoyable and livable communities

Subdivision standards keep communities enjoyable and livable in a number of ways. Some typical examples include:

- Requiring lots to be a suitable size for the houses built upon them and for the provision of yards and side yards that avoid crowding and afford privacy.
- Requiring that streets and facilities in new areas harmonize with and complement existing features.
- Requiring the subdivider to provide parks, trails, and other public places for the enjoyment of residents.
- Requiring the subdivider to meet design standards that create a harmonious and aesthetically pleasing subdivision.

3. Preserve and protect vital natural resources.

Subdivision standards help the city preserve and protect vital natural resources. Some typical examples include:

- Requiring the preservation of trees, woodlands, and significant vegetation during the time of construction, and replanting after construction.
- Setting standards for the location, size, and sealing of wells, septic tanks water and/or sewer systems to avoid pollution problems.
- Preserving and encouraging green and open space by setting standards for lot layout, such as requiring cluster developments.
- Requiring preservation of important wetlands during the grading and construction process.
- Requiring erosion and sediment control during construction, and regulating grading of the development to minimize the potential for soil loss

Sample Lot Layouts

For each development built within a city on bare ground there are many possibilities for how the end product will look and interact with the surrounding city environs. A 20-acre development can be subdivided a myriad of ways—to feature tightly clustered town homes surrounded by open space; 20 houses on one-acre lots on a straight grid pattern; or a middle ground of 10 houses, featuring cul-de-sacs and a shared park. Street patterns within the same 20 acres may also vary greatly, providing for cul-de-sacs and winding lanes, or broad heavy volume streets connected by feeder streets and alleys.

If a city does not adopt subdivision regulations, the city's authority to control the development of the community is limited at best. Without city subdivision regulations, developers do not have any constraints on the subdivision of land and location of streets and utilities in their developments. In these situations, developers may be tempted to maximize their potential profits at the expense of quality. For example, they may do this by creating too many small lots for sale, developing streets that are cheaper but too narrow and unsafe, and even building homes on inappropriate soils where flooding or erosion may occur.

When there are problems with a completed development, there is a potential that the city will need to step in and correct issues that affect the health, safety, and welfare of residents. When a city must repair or replace streets, infrastructure, and utility lines, these costs are often passed along to homeowners through special assessments, potentially creating financial hardship for the homeowners in the subdivision.

Minn. Stat. §462.358 subd 10

Minn. Stat. §§ 473.121 subd 2 473.865; 473.859 subd 4

See Section II-C-2 *Metropolitan Council requirements and Metropolitan Planning Act,* for more information on the Metropolitan Land Planning Act.

It is important to note, however, that state law does not require cities outside the metropolitan area to adopt subdivision regulations. Metropolitan cities, which includes all cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington, must adopt subdivision regulations under the Metropolitan Land Planning Act.

B. Applicability of city subdivision regulations

Minn. Stat. § 462.352 subd. 12

Generally city subdivision regulations will apply to ***most*** land divisions a city encounters. The subdivision regulations generally govern all separations of "areas, parcels, or tracts of land" under single ownership into two or more "parcels, tracts, or lots." The subdivision regulations may even apply to long-term leasehold interests, when the lease agreement necessitates the creation of streets or alleys for residential, commercial, industrial, or mixed use.

1. Certain types of subdivisions exempted by state statute

A few divisions of land are ***not*** subject to a city's subdivision authority. The following are excepted under state statute:

Minn. Stat. § 462.352 subd. 12 (1)

- Separations where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses.

- Separations where all the resulting parcels, tracts, lots, or interests will be five acres or larger in size for commercial and industrial uses.

Minn. Stat. § 462.352 subd. 12 (2)

- Cemetery lots.

Minn. Stat. § 462.352 subd. 12 (3)

- Court ordered divisions or adjustments.

Minn. Stat. § 462.352 subd. 12

- Lot consolidation, since subdivision refers only to separation of land.

A developer may still choose to submit these types of divisions to the city's regulatory subdivision process. However, it appears cities are without authority to require them do so. As a result, the city attorney should be consulted on these applications.

2. Extra-territorial application

Minn. Stat. § 462.358 1a; A.G. Op. 59A-32, (Nov. 4, 1977); A.G. Op. 59a-32, (Dec. 1, 1972.)

When neighboring towns have not adopted their own subdivision regulations, a city can extend the application of its subdivision regulations to unincorporated territory located within two miles of its limits in any direction. These regulations would supersede any county subdivision regulations. A city cannot extend its subdivision regulations into a neighboring incorporated city, whether or not the neighboring city has adopted subdivision regulations. When two cities that do not share a common border have boundaries less than four miles apart, each city is authorized to control the subdivision of land an equal distance from its boundaries within this area. The city must pass a resolution if it opts to extend the application of its subdivision regulations.

Minn. Stat. §462.36 subd 3

When a city opts to extend its subdivision regulations beyond its borders, the city must file copies of all resolutions approving subdivisions in the extra-territorial area with the clerk of the affected town.

C. Interactions with and differences from the city's zoning ordinance

LMC information memo, *Planning Commission Guide*

LMC information memo, *Zoning Guide for Cities*

See Section II-C-2 *Metropolitan Council requirements and the Metropolitan Land Planning Act* for more information on the Metropolitan Land Planning Act

Much like a zoning ordinance, a city subdivision ordinance can be a powerful tool to help cities implement their comprehensive plan. Subdivision ordinances may cover similar topics and are often confused with zoning regulations. However, there are important differences between zoning regulation and subdivision regulation. Ideally, a city will have both in place, though this is not required by state statute for cities outside of the metropolitan area.

Subdivision and zoning ordinances are similar in that they seek to regulate private use of land. Zoning regulations and subdivision regulations may both impose regulations as to lot size, location and improvements. Subdivision is different from the more familiar zoning in that it:

- Typically regulates projects that are larger in scope, contemplating eventual multiple owners of the newly created lots.
- Generally is imposed at the initial development phase of a project, whereas zoning is applicable through the development phase of a subdivision and through the life of the completed subdivision.

II. Drafting a subdivision ordinance

Minn. Stat. §§ 462.351 to 462.365.

Subdivision regulations can only be imposed by a local ordinance adopted in accordance with the Municipal Planning Act.

A. Appropriations and expenditures

Minn. Stat. § 462.353 subd 3

Cities may use any funds not dedicated by law to other purposes for funding the drafting of a subdivision ordinance. Cities may accept grants and gifts to finance planning and land use activities and may contract with federal and state agencies or other public and private agencies for drafting assistance.

B. Typical subdivision ordinance provisions and concepts

Subdivision regulations vary widely from city to city, depending on the development goals and plans of the city. For example, one city may value preservation of agricultural space, while another city values the creation of affordable housing. One city may prefer "cluster" developments, while another prefers large single-owner, one-acre lots. These different values will be reflected in the subdivision regulations the city develops. Despite this, subdivision ordinances have many commonalities related to structure and form. This section discusses some common features of subdivision ordinances.

1. Definitions

Sample Definitions Ordinance (Minnetonka)

Sample illustrated definition

See LMC information memo, *Zoning Guide for Cities* for more information on definitions in ordinance drafting.

A definition section is essential to any subdivision ordinance. Terms and concepts that may be reasonably subject to more than one interpretation should be explicitly defined in this section. Graphics may also be included to further clarify difficult concepts.

2. Reimbursement for city review costs

Minn. Stat. § 462.358 subd 2a; Minn. Stat. § 462.353 subd 4

See Section IV-A-2-b *Reimbursement for city review costs* for more information on reimbursement of costs

City review of a proposed subdivision application may involve significant staff time as well as consulting services of planners, attorneys, engineers, and other professionals. Cities are authorized to seek reimbursement for the city's costs for review, approval, and inspection of a project.

3. Preliminary/final plat approval process

Minn. Stat. § 462.358 subd 3b

See Section IV *Subdivision ordinance administration.*

Sample Preliminary Plat Approval Process Ordinance Excerpt

Sample Final Plat Approval Process Ordinance Excerpt

Cities must establish a process for review of subdivision applications in the ordinance. Most cities have a two-part process involving preliminary approval and final approval. However, state law does permit cities to combine these two approval processes.

4. Platting

Minn. Stat. § 462.358 subd 3a; Minn. Stat. § 505.01 subd 3(f)

See Section IV- I *Platting requirements.*

A plat is a scale drawing of one or more parcels of land that shows the location and boundaries of the parcels' lots, blocks, parks, road, and other significant features. Cities may require that all subdivision of land be platted and must require the platting of larger subdivisions.

5. Variances

Minn. Stat. § 462.358 subd 6

Sample Variance Ordinance Excerpt

See Section IV-G *Variances*

Similar to zoning, cities may issue variances from their subdivision ordinance. Cities may issue variances where an unusual hardship related to the land exists. If a city wishes to allow variances, the process and criteria must be established in the local ordinance. State statute does not set a standard for issuing variances.

6. Design guidelines

Sample Design Guidelines Ordinance Excerpt

Design guidelines in a subdivision ordinance allow a city to set community standards for issues such as street lighting, street design and width, drainage, and lot sizes and arrangement.

7. Land dedication

Minn. Stat. §462.358 subd 2b (a)

See Section VI *Land dedication for public facilities*

Sample land dedication language

Cities may by ordinance require that developers dedicate a reasonable portion of land within the development to public use for such things as streets, utilities, drainage, and parks and recreational facilities.

a. Park dedication fees

Minn. Stat. §462.358 subd 2b(c)

See Section VI-A *Cash fees in lieu of land dedication*

Sample park dedication language

In lieu of dedication of land for park, recreational, and open space purposes, cities may require developers to pay to the city cash fees. The city must use the cash fees only to acquire recreational, park, or open space land off-site from the development. The fees cannot be used for ongoing maintenance.

8. Required improvements and development agreements

Minn. Stat. § 462.358 subd 2a

For more information on improvements see Section V *Public improvement requirements*

For more information on development agreements see Section V-B *Development agreements.*

Cities may condition approval of a subdivision upon the developer's agreement to construct and provide needed public improvements such as streets, utilities, and similar improvements. This agreement should be formalized in a written development agreement.

9. Environmental concerns and natural resource protection

Sample environmental preservation ordinance

Many cities utilize their subdivision ordinance to preserve trees, soils, wetlands, and other natural features during the development process. Where development requires the removal of natural features, cities may require replacement or other mitigation.

10. Minor subdivisions

Minn. Stat. § 462.358 subd 3b; Minn. Stat. § 505.03 subd 1

Sample ordinance and forms for minor subdivisions

See Section IV-H *Minor subdivisions.*

State statute allows cities to adopt ordinance provisions that consolidate the preliminary and final plat approval process. Sometimes this is referred to as a "minor subdivision." State statute also allows cities to approve subdivisions without requiring the expense of a formal plat, in instances where the subdivision of land results in less than five lots that are more than 2 ½ acres in size. This is also sometimes called a "minor subdivision." Cities may opt to do one or both in their ordinance.

C. Legal standards in drafting subdivision ordinances

City subdivision ordinances may differ greatly from city to city to reflect the concerns and development goals of the city. However, all city subdivision ordinances must conform to legal standards in state and federal statute. In addition, cities' ordinances must be consistent with state and federal court rulings.

1. Municipal Planning Act

Minn. Stat. §§ 462.351 to 462.365.

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757, (Minn. 1982; *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997.) *Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App. 2002); *Northshor Experience, Inc. v. City of Duluth, MN*, 442 F.Supp.2d 713 (D.Minn.,2006) *Costley v. Caromin House, Inc*., 313 N.W.2d 21 (Minn. 1981; A.G. Op. 59-A-32 (Jan. 25, 2002) .

All city subdivision authority is granted to cities by and subject to the Municipal Planning Act found at Minn. Stat. ch. 462. Ordinances may vary from city to city, but all must comply with both the substantive and procedural requirements contained in the Municipal Planning Act. In addition, cities, including home rule charter cities, cannot adopt local ordinances that contradict the explicit provisions of the Municipal Planning Act.

The Municipal Planning Act contains numerous directives to cities on drafting a subdivision ordinance. These include but are not limited to the following requirements:

Minn. Stat. § 462.358 subd 2a

- The subdivision regulations must be consistent with the city's official map and zoning ordinance.

Minn. Stat. § 462.358 subd 1a

- The subdivision ordinance may provide for different types or classes of subdivisions, but the regulations within each type of class must be uniform.

Minn. Stat. § 462.358 subd 3a

See Section IV-I *Platting requirements.*

- The subdivision ordinance must require plats for subdivisions that create five or more lots that are 2 ½ acres or less in size.

Minn. Stat. § 462.358 subd 3a

See Section IV-H on platting requirements

- All plats must conform to the technical requirements found in Minn. Stat. ch. 505.

Minn. Stat. § 462.358 subd 3b

See Section IV A *Process for adoption,* for more information on the 120 day rule.

- The subdivision ordinance must require that a complete subdivision application for a preliminary plat be approved or disapproved within 120 days, unless the city and the applicant have agreed to an extension.

See Minn. Stat. § 462.358 subd 2b, 2c

In addition, land dedication requirements are subject to numerous additional directives as discussed in section VI of this memo.

2. Metropolitan Council requirements and the Metropolitan Land Planning Act

Minn. Stat. §§ 473.121 subd 2; 473.865; 473.859 subd 4

Metropolitan Council

Metropolitan Council *Local Planning Handbook*

Sample subdivision ordinances for metropolitan cities are available from the Metropolitan Council.

Metropolitan cities are subject to the Metropolitan Land Planning Act. Metropolitan cities include all cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington. In drafting a subdivision ordinance, these cities must consult with the Metropolitan Council and meet the council's additional directions.

3. State law provisions related to natural resource protection and floodplains

In cities that contain certain natural resources such as lakes and rivers, or are located in a floodplain, the subdivision ordinance must also conform to the following state standards:

Minn. Stat. § 103F.121; Minn. R. 6120.5000 et al

See MN DNR sample floodplain management ordinances

See also MN DNR for more information and resources on floodplain management

- **Floodplain requirements:** State law sets minimum requirements and standards for development in flood plains. City subdivision ordinances must be consistent with state standards in order to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.

Minn. Stat. § 103F.335

See also MN DNR website for more information on MN Wild and Scenic Rivers.

- **Wild and scenic rivers development requirements:** Cities with shoreland located within the Minnesota Wild and Scenic Rivers System are subject to additional state law restrictions when developing a subdivision ordinance. Subdivision ordinances in these cities must comply with minimum state standards set by the commissioner of Natural Resources.

Minn. Stat. § 103F.221; Minn. R. 6120.2500 – 3900

See MN DNR sample shoreland management ordinance

See also MN DNR website for more information and resources on shoreland management.

- **Shoreland development requirements:** For cities that contain shoreland, state regulations control the use and development of its shorelands. City shoreland subdivision regulations must be at least as restrictive as state standards and are subject to the review of the commissioner of Natural Resources.

Minn. Stat. § 462.355 subd 1; Minn. Stat § 103G.005 subd. 10b

- **President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land.** When adopting or amending a subdivision ordinance, cities must *consider* restricting new residential, commercial, and industrial development in a manner consistent with the Act's goal of preserving land from development sprawl. Cities are not required to adopt subdivision practices consistent with the T. Roosevelt Memorial Preservation Act, but must demonstrate (possibly through findings of fact), that their decision process *considered* the Act's stated goals.

D. Obtaining technical assistance in ordinance drafting

LMCIT Land Use Loss Control

City subdivision is regulated by numerous diverse state and federal laws and court cases. As a result, cities should retain the assistance of an experienced planner and attorney when drafting subdivision ordinances. Cities may also contact the League of Minnesota Cities Insurance Trust (LMCIT) for assistance. Resources are posted on the League website, and LMCIT land use attorneys are also available to provide customized information and training to member cities.

III. Subdivision ordinance adoption and amendment

Minn. Stat. §§ 462.352 subd 14; 462.358 1a

Cities must adopt and amend subdivision regulations in ordinance form.

A. Process for adoption

Minn. Stat. §§ 462.352 subd 14; 462.358 1a

Unlike with zoning regulations, cities are not required to hold a public hearing or provide published or mailed notice prior to adopting or amending their subdivision regulations.

See Handbook, Ch. 7.

State statute does not specify any particular or extraordinary voting requirements for subdivision ordinance adoption or amendment. As a result, an ordinance may be adopted and amended by a simple majority vote of the council. Cities should follow their regular publication requirements.

See Section VI *Land dedication for public facilities* .

Minn. Stat. § 462.358 2b(b)

If the subdivision regulations require dedication of buildable land for streets, sewers, parks, utilities, recreational facilities, playgrounds, trails, wetlands, or open space, the city must first have in place a capital improvement budget *and* a parks and open space plan. The parks and open space plan may be a component of the city comprehensive plan.

Minn. Stat. §462.358 subd 3b

See LMC information memo, *Planning Commission Guide*

State law does not require planning commission review of subdivision ordinances and ordinance amendments prior to their adoption. However, the city may adopt a policy requiring planning commission review if it prefers.

B. Publication

For more information See Handbook, Ch. 7

See LMC information memo, *Newspaper Publication*

Minn. Stat. § 412.191, subd. 4.

In statutory cities, ordinances and ordinance amendments must be published once in the city's official newspaper. A statutory city may, in the alternative, choose to publish a summary of lengthy ordinances, provided that certain legal requirements are met.

To publish a summary of an ordinance, the city must meet the following requirements:

- The city council makes the determination that publication of the title and a summary of the ordinance would clearly inform the public of the intent and effect of the ordinance.
- The city council approves summary publication by a four-fifths vote of its members.

Minn. Stat. § 331A.01, subd. 10

- The title and summary conform to Minn. Stat. § 331A.01, subd. 10.

- The summary includes notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the office of the city clerk and at any other location designated by the council or by standard or electronic mail.
- The council approves the text of the summary prior to its publication, and determines that it clearly informs the public of the intent and effect of the ordinance.
- A copy of the entire text of the ordinance is posted in the community library or, if no library exists, in any other public location designated by the council.
- The text of the summary must be published in a type size no smaller than eight-point type.
- Proof of the publication is attached to and filed with the ordinance.

Minn. Stat. § 331A.05, subd. 6.

In home rule charter cities, the charter can impose additional or special requirements for the publication of ordinances.

C. Filing with county recorder

Minn. Stat. § 462.36 subd 1

A certified copy of a subdivision ordinance or ordinance amendment must be filed with the county recorder.

D. Interim ordinances (moratorium)

Minn. Stat. § 462.355, subd 4.

In order to protect the planning process, a city that is considering adopting or amending a subdivision ordinance may implement an interim ordinance (also known as a moratorium) to prevent subdivisions while the city is considering the issue. Cities must follow the procedures established in state statute to initiate a moratorium.

1. Applicability

Minn. Stat. § 462.355 subd 4(c) *Semler Const., Inc. v. City of Hanover*, 667 N.W.2d 457 (Minn.App., 2003).

See Handbook, Ch. 14 for more information on interim ordinances

An interim ordinance or moratorium may not delay or prohibit a subdivision that has been given preliminary approval, nor extend the time for action under the 60-day rule with respect to any application filed prior to the effective date of the interim ordinance.

2. Procedure for adoption of an interim ordinance

Minn. Stat. § 462.355 subd 4(a)

Cities must initiate a moratorium by adopting an ordinance. The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the city or a portion of the city ***for a period not to exceed one year*** from the effective date of the ordinance. An interim ordinance may be adopted only for one of the following circumstances; the city:

- Is conducting studies on the issue
- Has authorized a study to be conducted
- Has held or scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or other official controls, including the zoning code, subdivision controls, site plan regulations, sanitary codes, building codes, and official maps
- Has annexed new territory into the city for which plans or controls have not been adopted

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted. No notice or hearing is generally necessary before an interim ordinance is enacted.

3. Procedure for interim ordinance extension

Minn. Stat. § 462.355, subd 4(c)

An interim ordinance may be extended only in *limited* circumstances if the procedures of state statute are followed. An interim ordinance may be extended if the city holds a public hearing and adopts findings of fact stating that additional time is needed to:

Minn. Stat. § 462.355, subd 4(c)(3)

- Complete and adopt a comprehensive plan in cities that did not have a comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.

Minn. Stat. § 462.355, subd 4(c)(1)

- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city's official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd 4(c)(2)

- Complete "any other process" required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd 4(c)

- Review an area that is affected by a city's master plan for a municipal airport. This allows for an additional period of 18 months.

The required public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published in the official newspaper at least 10 days before the hearing.

IV. Subdivision ordinance administration

A. The application process: overview

The application review process involves many steps, from submission of an initial application on the appropriate city form, to staff review, until ultimate city council acceptance or denial.

Minn. Stat § 462.358 subd 3b

See Section IV-B-4 *120 day rule: preliminary plat review.*

Timelines are a critical component of the application process. A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension.

Similar to the 60-Day Rule in the zoning context, if no action is taken within 120 days, the application will be deemed approved after this time period. Similarly, final plats must be approved in 60 days from the date of application for the final plat. This concept is discussed in more depth in section IV-B-4 below.

1. Application forms and required materials

See Sample Preliminary Plat Ordinance

Sample Final Plat Ordinance

The city subdivision ordinance must include the city requirements for the content of applications submitted to the city. For example, the city ordinance should require that all applications for approval be submitted on an official city form and also require that application include scale drawings or graphics, legal descriptions, plats and surveys, and all information needed by the city to evaluate the application.

2. City staff and the structure for review

Sample Preliminary Plat Checklist

Sample Final Plat Checklist

Because subdivision applications must be approved within a relatively short time period, it is important that the city have an organized system for reviewing and processing subdivision applications. Generally, this system is composed of staff, city consultants (such as city engineers and attorneys), and city officials, who ensure that subdivision applications are reviewed and answered in a timely manner, and that subdivision ordinance provisions are enforced. Cities may wish to develop forms and checklists to ensure subdivision applications receive the appropriate review and report from city staff and consultants.

a. Planning commission review

Minn. Stat. §462.358 subd 3b

See LMC information memo, *Planning Commission Guide*

State law does not require that subdivision applications be submitted to the city planning commission for review. However, cities may delegate review authority to the planning commission in city ordinance; but statutory cities may not delegate *final* approval or disapproval to the planning commission. Final approvals or disapprovals can only be granted by the city council. Charter cities may delegate this authority if their charter specifically provides for this.

b. Reimbursement for city review costs

Minn. Stat. § 462.358 subd 2a

Sample ordinance for review costs

City review of a proposed subdivision application may involve significant staff time as well as consulting services of planners, attorneys, engineers, and other professionals. Cities are authorized to seek reimbursement for the city's costs for review, approval, and inspection of a project. Cities must authorize reimbursement in their subdivision ordinance.

For outside consulting services, such as an attorney or engineer, cities must charge a subdivision applicant at the same rate as the city itself is billed. Cities cannot attach an additional premium to consultant rates. When billing for city staff time, cities must bill applicants at an established rate.

For subdivision applications for projects of any size, cities should require that an applicant provide the city with escrowed cash in an amount likely to cover the city's costs for reviewing, approving, and inspecting a project. In the alternative, cities may require some other type of security—such as a letter of credit—in an amount sufficient to guarantee coverage of the city's review costs. These requirements should also be stated in the subdivision ordinance.

i. Verification of plats and surveys

Minn. Stat. § 505.03 subd 3

When a city requires a plat to be submitted along with a subdivision application, cities have additional authority to seek reimbursement for city review costs. Cities are authorized to employ qualified persons, such as a surveyor, to check and verify surveys and plats and to determine the suitability of the plat from the standpoint of community planning. Cities may require the applicant to reimburse the city for such services. When the city uses a city employee to perform these reviews, the city may charge for these services based upon the employee's regular wage.

ii. Fee requirements: accounting/management

Minn. Stat. § 462.353 subd 4 (b)

All cities are required to adopt management and accounting procedures to ensure fees are maintained and used only for the purpose for which they are collected.

iii. Fee ordinances and fee schedules

Minn. Stat. § 462.353 subd 4 (c),(a)

Sample fee schedule

Generally, cities must adopt fees by ordinance. However, there is a statutory exception to this general requirement. Cities that collect an annual cumulative total of $5,000 or less of land use fees may adopt a fee schedule by ordinance or by resolution after holding a public hearing. Notice must be published at least 10 days before the public hearing. Cities that collect an annual cumulative total in excess of $5,000 of land use fees may also adopt a fee schedule if they wish, but they may only do so by ordinance, after following the same notice and hearing procedures.

Jan. 1 is set by statute as the standard effective date for changes to fee ordinances. A city may set a different effective date, but the new fee ordinance must not apply to a project if its application for final approval was submitted before the ordinance was adopted.

iv. Fee disputes

Minn. Stat. § 462.353 subd 4 (d)

If a dispute arises over a specific fee imposed by a city related to a specific application, the applicant may appeal the fee to district court. The applicant must provide notice to the city of the appeal by certified letter and place the disputed fee in an escrow account. After notice and deposit, the application must be processed as if the fee had been paid. The appeal must be brought within 60 days after approval of application and deposit of the fee into escrow.

B. Preliminary plat review

Minn. Stat. § 462.358 3b

Minn. Stat. § 462.358 3b; Minn. Stat. § 505.03 subd 1

See Section IV-H *Minor subdivisions*

Sample ordinance on application requirements

The city subdivision ordinance must establish the process for review of applications. Cities have discretion in determining the process that they would like to use. However, the subdivision statute generally requires cities to follow a two-step process in the administration of city subdivision regulations. First, the landowner applies for preliminary plat approval, and then subsequently for final plat approval. Cities may also opt to consolidate these two reviews and/or provide for administrative review of plats that delineate existing parcels and minor subdivisions. However, the two-step process is the most widely used process.

Generally for preliminary plat approval, the applicant will submit to the city a plat and various concept drawings as required by city ordinance. Some cities require applicants to meet with staff for a "pre-application" review, prior to the filing of the preliminary plat application. This internal review allows staff to inform applicants of the city's expectations and ordinance requirements.

Sample preliminary plat ordinance

It is important to note that a city has the most discretion in evaluating the application against its ordinance requirements during the preliminary approval stage. This is the time to impose conditions and address any and all concerns the application may generate. The term "preliminary approval" can be misleading, since it implies that the review is cursory or limited in scope. This is not the case in the subdivision context.

Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. Ct. App.,2003) ; *Jordan Real Estate Services, Inc. v. City of Gaylord (*Minn.Ct. App., April 14, 2009) (unpublished) .

The preliminary plat approval stage establishes the nature, design, and scope of a development project. It sets the conditions or guidelines, in large part, under which final plat approval can be obtained. After a plat is preliminarily approved, changes should generally be limited to meeting requirements imposed as a condition of approval and/or to meeting legal requirements under city ordinance and state or federal law (where applicable).

1. Conditional approval: Preliminary plats

Minn. Stat. § 462.358 2a; Minn. Stat. § 462.358 3b

A city may approve a preliminary plat along with conditions that must be satisfied for final plat approval. Conditions for how the final subdivision design will meet ordinance provisions often are quite specific. For example:

- Requiring the developer to reduce the number of lots and provide for a greater wetland buffer in the final plat.
- Requiring the developer to add sidewalks and develop a trail plan in consultation with city staff.
- If any public improvements are to be installed by the developer, requiring a development agreement between the city and the applicant.

See Section V-B *Development agreements.*

Conditional approvals related to required public improvements and development agreements are discussed in more detail V.

2. Partial approval: Preliminary plats

Minn. Stat. § 462.358 subd 3b

Cities may also provide for partial approval of a preliminary plat application. For example, where a proposed subdivision includes multiple phases or is otherwise large in scope, the city may grant preliminary approval to some parts of an application, but deny others.

3. Public hearing requirements: Preliminary plats

Minn. Stat. § 462.358 subd 3b

LMCIT risk management memo, *Public Hearings*

The city must hold a public hearing on all subdivision applications prior to preliminary approval, following publication of notice at least 10 days before the hearing.

4. 120-Day Rule: Preliminary plats

Minn. Stat § 462.358 subd 3b

Minn. Stat § 15.99

Calm Waters, LLC v. Kanabec County Bd. of Com'rs, 756 N.W.2d 716 (Minn.,2008) (applies 60-Day Rule tolling only to county review of subdivisions)

A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension. If no action is taken, the application will be deemed approved after this time period. (Note that this 120-day period differs from the usual 60-Day Rule. By its terms, the 60-Day Rule found at Minn. Stat. § 15.99 does not apply to city subdivisions). The city should document all extensions in writing.

If the city does not act on an application within 120 days, the applicant may demand a certificate of approval from the city. Following receipt of the certificate, the applicant may request final approval by the city as discussed in section IV-C of this memo.

5. Review of preliminary plats bordering trunk highways, county and state roads, or highways

a. Trunk highways

Minn. Stat. § 505.03 subd 2(a)

State law mandates special procedures for when a city receives a preliminary plat application for land that:

- Abuts an existing or established trunk highway or state rail property.
- Abuts a proposed trunk highway or state rail property that has been designated by a centerline order filed with the county clerk.

The city must refer these applications to the commissioner of the Minnesota Department of Transportation (MnDOT) for written comments and recommendations. Plats must be submitted to MnDOT at least 30 days prior to the city taking final action on the preliminary plat application. After receiving a plat application for the city, MnDOT has 30 days to respond. The city may not take action on the preliminary plat until comments have been received or 30 days have elapsed.

Calm Waters, LLC v. Kanabec County Bd. of Com'rs, 756 N.W.2d 716 (Minn.,2008) (applies 60-Day Rule tolling only to county review of subdivisions)

Minn. Stat. 15.99 subd 2 (a)

The statute requiring the referral to MnDOT does not provide for tolling of the 120-Day Rule, while MnDOT considers the application. The general tolling provisions of the 60-Day Rule for issues related to zoning *do not apply.* As a result, the city must complete its review of the preliminary application, including any MnDOT review, within 120 days, unless an extension is agreed to by the applicant.

b. County roads, highways, and state-aid highways

Minn. Stat. § 505.03 subd 2(b)

Similar requirements exist for when a preliminary plat includes land that borders an existing or proposed county road, highway, or county state-aid highway. These plats must be submitted to the county engineer for review within five days of receipt by the city for written comments and findings.

Minn. Stat. § 505.03 subd 2(b),(c)

The county engineer has 30 days to provide written comments on the plat. The city may not take final action on the preliminary plat until comments have been received or 30 days have elapsed. The county engineer's review must be limited to commenting on factors related to the county's officially adopted guidelines for such reviews.

When the county engineer has submitted comments, the city must notify the county of its eventual final approval of a preliminary plat within 10 days of such approval. Along with this notice, the city must submit a statement that explains the city's response to the county engineer's written concerns. Where the preliminary plat was not amended or changed to address the county engineer's concerns, state law requires further consultation between the two entities. Prior to approval of the final plat, representatives of the city and county must meet to discuss their differences and agree on whether changes to the plat are appropriate prior to final approval. In situations where this conference is necessary, the city should make county approval a formal condition to final plat approval.

Calm Waters, LLC v. Kanabec County Bd. of Com'rs, 756 N.W.2d 716 (Minn.,2008) (applies 60-Day Rule tolling only to county review of subdivisions)

Minn. Stat. §15.99 subd 2 (a)

The statute requiring the referral to county engineer does not provide for tolling of the 120-Day Rule, while the county considers the application. In addition, the general tolling provisions of the 60-Day Rule for issues related to zoning do not apply, because the 60-Day Rule statute specifically excepts from its provisions municipal decisions on subdivisions subject to the 120-day requirement. As a result, the city must complete its review of the preliminary application, including any county review, within 120 days, unless an extension is agreed to by the applicant.

c. Trunk highways, county roads, and highways

Minn. Stat. § 505.03 subd 2(b)

When a preliminary plat abuts upon a trunk highway or state rail property and includes county roads, the city must follow both processes detailed above and submit a copy of the application to both MnDOT and the county engineer.

d. Required information for submission to MnDOT and the county engineer

Minn. Stat. § 505.03 subd 2(d)

Submissions to MnDOT or the county engineer must include both a legible preliminary drawing or print of the proposed preliminary plat and an attached written statement describing:

- The outlet for and means of disposal of surface waters from the platted area.

- The land use designation or zoning category of the proposed platted area.
- The locations of ingress and egress to the proposed platted area.
- A preliminary site plan for the proposed platted area, with dimensions to scale, authenticated by a registered engineer or land surveyor, showing the existing or proposed state highway, county road, or county highway and all existing and proposed rights-of-way, easements, general lot layouts, and lot dimensions.

When a subdivision application is finally approved and recorded, the city must file with the plat, in the office of the county recorder or registrar of titles, a certificate or other evidence showing submission of the preliminary plat to the commissioner or county highway engineer as required by law.

C. Final plat review

Minn. Stat. § 462.358 subd 3b

Sample final plat ordinance

Semler Const., Inc. v. City of Hanover 667 N.W.2d 457(Minn.Ct. App.,2003) ; *Jordan Real Estate Services, Inc. v. City of Gaylord* (Minn. Ct. App., April 14, 2009) (unpublished)

After preliminary plat approval, state statute allows the applicant to seek final approval. The final plat application must demonstrate conformance with the conditions and requirements of preliminary approval and conformance with city regulations and state and federal law (where applicable).

1. Public hearing requirements: Final plats

Unlike preliminary plat approval, there is no required public hearing on the final plat.

2. 60-Day Rule: Final plats

Minn. Stat. § 462.358 subd 3b

Sample final plat ordinance

Once an applicant has requested final approval, the city must approve or disapprove of the application in 60 days. If the municipality fails to act within 60 days, the final plat application may automatically be deemed approved.

D. Standard of review for preliminary and final plats

State, by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 (Minn. 1978); *Henning v. Village of Prior Lake,* 435 N.W.2d 627 (Minn. Ct. App.,1989); *VanLandschoot v. City of Mendota Heights,* 336 N.W.2d 503 (Minn.,1983)

When drafting and adopting a subdivision ordinance, cities have a lot of discretion in choosing their language and setting design standards. When drafting and adopting a subdivision ordinance, the city is said to be utilizing its legislative (or law-making) authority. When using its legislative authority, the only limits on the city's authority is that action must be constitutional, rational, and in some way related to protecting the health, safety, and welfare of the public. This is known as the "rational basis standard" and it is generally a relatively easy standard for cities to meet.

In contrast, when administering an existing subdivision ordinance by reviewing a preliminary or final plat application, the city's discretion is much more limited. Generally, when reviewing a subdivision application, the city is no longer acting in its legislative capacity. When reviewing subdivision applications, the city is said to be exercising a quasi-judicial (judge-like) function. Rather than legislating for the broad population as a whole, the city is making a quasi-judicial determination about an individual subdivision application regarding whether the application meets the standards of the city ordinance.

In quasi-judicial circumstances, the city must follow the standards and requirements of the ordinance it has adopted. If an application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial must all relate to the applicant's failure to meet standards established in the ordinance. In sum, the city has a great deal of liberty to establish the rules, but once established, the city is as equally bound by the rules as the public.

Northwestern College v. City of Arden Hills, 281 N.W.2d 865 (Minn. 1979)

In quasi-judicial situations, a reviewing court will closely scrutinize the city's decision to determine whether the city has provided a legally and factually sufficient basis for denial of an application.

Kottschade v. City of Rochester, 537 N.W.2d 301(Minn. Ct. App., 1995).

In quasi-judicial situations, due process and equal protection are the main reasons for the more stringent scrutiny. Due process and equal protection under the law demand that similar a pplicants must be treated uniformly by the city. The best process for ensuring similar treatment among applicants is to establish standards in the ordinance and to provide that if standards are met, the subdivision application must be granted. An application may generally only be denied for failure to meet the standards in city ordinances.

A reviewing court will overrule a quasi-judicial city subdivision decision if it determines that the decision was arbitrary (failed to treat equally situated applicants equally or failed to follow ordinance requirements).

E. Importance of documentation of city decisions on applications

LMCIT risk management memos, *The Necessity of Adequate Findings: Reasons to Support Municipal Land Use Decisions*, and *Land Use Findings of Fact*

City decisions on subdivision applications, just like zoning decisions, may result in a lawsuit challenging the city's approval or denial of the application. Documentation of the city's basis for denials and approvals is essential to defending the city's decision in a court of law.

F. Effect of Approval

Minn. Stat. § 462.358 subd 3c

For a period of one year after approval of a preliminary plat and two years after final approval of a plat, amendments to the city's comprehensive plan and official controls cannot alter or affect the approved development's:

- Use
- Development density
- Lot size
- Lot layout
- Dedications or platting required or permitted by the approved plat.

Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. Ct. App., 2003).

Cities and developers may mutually agree to alterations within these time periods. Cities may also agree by resolution or written agreement to extend these one- and two-year timelines for planned and staged developments. Once a city has agreed to an extension, it may not unilaterally revoke the extension. Cities may place conditions on such extensions.

Henning v. Village of Prior Lake, 435 N.W.2d 627 (Minn. Ct. App., 1989)

Where a subdivision has been granted preliminary approval, but final approval has not been applied for in one year, or where final approval is granted, but the development is not completed within two years, the city may request that a developer submit a new subdivision application. Cities may not request a new application where:

- Substantial development and investment have occurred in reliance on the approved preliminary or final plat.
- The developer will suffer substantial financial damage as a result of the requirement to submit a new application.

In these instances, a city may still require the developer to submit to any applicable conditions and requirements as a prerequisite to an extension.

See Section III-D *Interim ordinances.*

An interim ordinance or moratorium may not delay or prohibit a subdivision that has been given preliminary approval, nor extend the time for action under the 60-Day Rule with respect to any application filed prior to the effective date of the interim ordinance.

G. Variances

Minn. Stat. § 462.358 subd 6

VanLandschoot v. City of Mendota Heights, 336 N.W.2d 503 (Minn.,1983)

Sample variance ordinance

Cities may grant variances from their subdivision ordinance requirements, where the regulations would create an unusual hardship on the land. In order to grant variances, cities must first adopt a procedure for granting variances, with detailed standards in the city subdivision ordinance. State law does not explicitly set standards for granting variances.

H. Minor subdivisions

Minn. Stat. § 462.358 subd 3b ; Minn. Stat. § 505.03 subd 1

Sample ordinance and forms for minor subdivisions

State statute allows cities to adopt ordinance provisions that consolidate the preliminary and final plat approval process. Sometimes this is referred to as a "minor subdivision." State statute also allows cities to approve subdivisions without requiring the expense of a formal plat in instances where the subdivision of land results in less than five lots that are more than 2 ½ acres in size. This is also sometimes called a "minor subdivision." Cities may opt to do one or both in their ordinance, and establish procedures for each.

Minn. Stat. § 505.03; Minn. Stat. § 505.021 subd 9 (b)

Normally all plats are subject to city council review. In addition, normally, all plats are required to contain certification of council approval. However, when a city offers a "minor subdivision" option, it may designate by resolution or ordinance a local official, such as the city clerk or zoning administrator, to approve plats administratively without full council review. Some cities choose this option for increasing the ease and speed of city administration related to minor subdivisions.

I. Platting requirements

Minn. Stat. § 462.358 subd 13; Minn. Stat. §505.01 subd 3(f)

A plat is a scale drawing of one or more parcels of land that shows the location and boundaries of the parcels' lots, blocks, parks, roads, and other significant features.

Minn. Stat. §462.358 subd 3a; Minn. Stat. § 505.03 subd 1

City ordinance must require that all subdivisions creating five or more parcels that are 2 ½ acres or less in size be platted. In addition, the city can also choose to require that *all* subdivisions of land creating lots or parcels be platted, regardless of number or size.

Minn. Stat. § 505.03 subd 1

Whether or not the city has adopted subdivision regulations, all plats in cities with populations over 5,000 must be presented to the city council for approval. Home rule charter cities may delegate this review to a municipal officer or body other than the city council.

Minn. Stat. § 505.03 subd 1

When a plat only depicts a minor subdivision, as defined in city ordinance, or depicts only existing parcels, the city may appoint a city official, such as the city clerk or administrator, to approve such plats.

Plats must comply with many technical requirements found in Minn. Stat. ch. 505. Among other things chapter 505 requires:

Minn. Stat. § 505.021 subd 9

- Plats must be certified by a land surveyor who both surveyed the land being platted and prepared the plat or supervised preparation of the plat.
- Plats must contain a plat name that does not duplicate or is not similar to any other plat name within the county.
- Plats must be signed by all fee owners, contract for deed vendees, and mortgage holders of record.

In addition, plats must meet various technical requirements related to paper size, scale, and delineation of land features.

1. Verification of plats and surveys

Minn. Stat. § 505.03 subd 3

When a city requires a plat to be submitted along with a subdivision application, cities have additional authority to seek reimbursement for city review costs. Cities are authorized to employ qualified persons, such as a surveyor, to check and verify surveys and plats and to determine the suitability of the plat from the standpoint of community planning. Cities may require the applicant to reimburse the city for such services. When the city uses a city employee to perform these reviews, the city may charge for these services based upon the employee's regular wage.

J. Certification of taxes paid

Minn. Stat. § 462.353 subd 5

Cities may require, as part of their subdivision ordinance, that an applicant certify that there are no delinquent taxes, special assessments, penalties, interest, or municipal utility fees due on any parcel of land included in the subdivision application. In addition, cities may condition approval of a subdivision upon payment of all moneys due.

K. Recording and filing of approved plats

1. County recorder

Minn. Stat. § 505.04

Once approved, all final plats must be certified as approved by the city and recorded with the county recorder.

2. Neighboring communities

Minn. Stat. § 462.36 subd 3

Minn. Stat. § 462.358 subd 1a

See Section I-B-2 *Extra territorial application.*

Copies of resolutions approving subdivision plats within a city, but contiguous with another city or town must be filed with the governing body of the contiguous city or town. When a city has opted to enforce its subdivision regulations extra-territorially within a town, it must file copies of approved subdivisions in the regulated area with the neighboring town.

V. Public improvement requirements

Minn. Stat. § 462.358 subd 2a

Sample public improvement ordinance

The city subdivision ordinance may condition approval of an application upon the construction and installation of needed public improvements for the subdivision such as:

- Drainage facilities
- Streets
- Electric, gas, sewer, water, and similar utilities
- Similar improvements

The city may require that the developer install the improvements to the city's specifications as detailed in the subdivision ordinance. For example, the city may wish to specify the width and composition of any streets installed by the developer. In addition, in order to ensure that the improvements are installed correctly and completely, the city may condition approval upon:

- Providing a cash deposit, certified check, irrevocable letter of credit, bond, or some other type of financial security in an amount sufficient to ensure that the required improvements will be completed as specified.

See Section V – B *Development agreements*

- The signing of a development agreement between the city and the developer, which may be enforced by legal and equitable remedies in a court.

Cities are not required to condition approval upon developer installation of needed improvements. Cities may also install the improvement themselves. Often these cities recoup the cost through special assessments on the newly subdivided parcels. Cities may prefer to install improvements on their own because it gives the city direct control and supervision of a public improvement project, rather than simply inspecting the work of a third-party developer. However, there are some risks to this approach that should be considered by the city.

Specifically, when a city installs significant public improvements in a new development, it typically expects to recoup its costs through special assessments from buyers of the subdivided parcels in the development once the project is completed. However, the city might experience unexpected delays in cost recovery from assessments if:

- Public improvements are installed, but the developer does not finish the project (likely due to insolvency or other financial issues).
- Public improvements are installed and the project is completed, however, the subdivided lots do not sell and sit empty (due to market factors on a nationwide or local scale).

Attempts to recover the city's costs in these types of scenarios may result in legal fees and other unexpected administrative costs for the city. In addition, if the city financed the public improvements through bonds, the city's bond rating may be affected while the special assessments remain unpaid and the bonds are outstanding.

Cities that require the developer to install improvements may still exercise a high degree of control over the installation and construction of the public improvements. Cities may:

- Develop detailed specifications for each type of improvement required by the city.
- Hire professional engineers to review and inspect each phase of installation or construction of a required public improvement (these costs can be recouped from the developer).
- Require the developer to provide the city with a cash deposit, bond, letter of credit, or other financial security that will allow the city to finish or fix a failed or flawed public improvement with cash on hand (rather than needing to bond or use city reserves).
- Require the developer to enter into a development agreement that includes quality controls and addresses any unique issues related to the particular public improvement project.
- Require completion of all needed public improvements prior to the issuance of any building permits for construction on parcels within the development.

Because cities may exercise such a high degree of control over public improvements installed by a developer, there is limited risk for the city in requiring the developer to construct and install public improvements.

A. Release and return of financial securities

Minn. Stat. § 462.358 subd 2a

As discussed, the city may require a subdivision applicant to provide some type of financial security for the purpose of reimbursing the city for its costs related to review, approval, and inspection of a specific project. There is a specific statutory process regulating the release and return of developer financial securities.

A developer who has completed a project for which there are still outstanding financial securities may request that its security be released and returned by sending a certified letter to the city.

When the city receives a letter requesting release, the city must either (1) release and return to the applicant any outstanding financial securities within 30 days; or (2) provide notice to the developer, within seven days of receipt of the certified letter, that all required conditions for approval have not been met, and provide a list of the specific conditions which have not been completed.

If the city does not release and return the securities within 30 days, or provide notice of the reasons why the security is not being released, state statute requires the city to pay any interest accrued on the security to the applicant.

B. Development agreements

Minn. Stat. §462.358

Sample ordinance language on development agreements

The subdivision ordinance may provide that the city may condition approval of an application on any requirements reasonably related to the city's regulations. These requirements may be reduced to a written contract known as a development agreement. Once executed, a development agreement may be enforced by all legal and equitable remedies in a court of law.

Sample development agreement ordinance

Written development agreements are the city's most important tool to enforce the expectations of the city's subdivision regulations. State law does not dictate the contents of a development agreement. Since a development agreement implicates important legal rights for the city, these contracts are typically drafted with the advice and assistance of the city attorney. Development agreements are usually recorded with the county after execution (signing). A typical development agreement will:

- Contain a detailed legal description of the property governed by the development agreement.
- Set specifications and plans related to any required infrastructure improvements (for example, streets and roads to be installed in the development).
- Set timelines and deadlines related to any required infrastructure improvements.
- Provide for city access to the development site and require all necessary inspections.
- Detail the city's requirements for financial securities related to any infrastructure improvements.
- Set procedure for city final inspection and acceptance of required infrastructure improvements.
- Set expectations for erosion control, grading, and environmental/tree preservation during development and construction.
- Require the developer to clean up and remove dirt and debris from the development upon completion of the development.

- Require payment of park and trail dedication fees and sewer/water access charges.
- Provide legal descriptions for any dedicated land and require the exchange of deeds or granting of easements as necessary.
- Require the developer to warrant work related to public infrastructure for a period of years after the development. This usually includes streets and utilities, but may also include sod, plantings, play equipment, and required tree plantings.
- Require the developer to maintain liability insurance in an appropriate amount during the development and construction period.
- Require the developer to hold the city harmless and indemnify the city from all third-party claims related to the development.
- Set provisions for dealing with any potential default by the developer under the agreement. For example, allowing the city to step in and complete all agreed-to improvements, using money from a letter of credit or other financial security.
- Prohibit the issuance of building permits or occupation of any structures within a development until all public infrastructure is completed and accepted by the city.

A development agreement prepared by the city attorney is often the most efficient and best method to ensure that the city's regulations are followed by a developer. In addition, a development agreement can provide the city with a measure of protection against the threat of developer insolvency or bankruptcy. Finally, a well written agreement (with attention to issues of financial security) can protect the city from developers who fail to complete public improvements or abide by city requirements.

VI. Land dedication for public facilities

Minn. Stat. § 462.358 subd 2b; *Collis v. City of Bloomington* 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976); *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App.,1986); *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App.,1995)

Sample land dedication ordinance

A subdivision ordinance may require a subdivision applicant to dedicate a reasonable portion of land within the development to the public to address infrastructure needs created by the development. Cities may require dedication of land to the public for numerous uses including:

- Streets, roads and alleys
- Water, sewer, and similar facilities
- Gas, electric, and similar facilities
- Stormwater drainage and hold areas or ponds
- Parks, recreational facilities, and playgrounds
- Trails and sidewalks
- Wetlands and wetland preservation
- Open space

Prior to adopting dedication requirements in a subdivision ordinance, the city must first adopt a capitol improvement budget and adopt a parks and open space plan. The plan may be a component of the city comprehensive plan.

When the city requires land to be dedicated within a specific subdivision, it must reasonably determine that:

Minn. Stat. § 462.358 subd 2b (e) ; Minn. Stat. § 462.358 subd 2c (c); *Collis v. City of Bloomington* 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976); *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App.,1986); *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App.,1995)

- The city reasonably needs to acquire the specific portion of land for reasons permitted by state statute (e.g. streets, parks, utilities) as a result of approval of the subdivision (this is sometimes referred to as a nexus requirement).

Minn. Stat. § 462.358 subd 2c (c) ; *Collis v. City of Bloomington* 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976); *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App.,1986); *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App.,1995)

- The need created by the subdivision is roughly proportional to the city's dedication requirement. For example, in a five-house subdivision, it may be reasonable to require dedication of park land for a small, local swing-set park. It may not be reasonable to require the same small subdivision to dedicate multiple acres for a community park serving hundreds of city residents.

Minn. Stat. § 462.358 subd 2b (d)

The city must also give due consideration to whether the need for the dedicated land has not already been offset or obviated by other actions of the developer in setting aside for public use other open space, recreational, common areas, or other facilities within the development.

Minn. Stat. § 505.01 subd 2; Minn. Stat. § 505.01 subd 1

A dedication of land to the public is usually reflected on the plat document or in an easement or other deed document. When park land is dedicated to the public, the dedication conveys complete ownership to the city (known as "fee title"). Land for streets, roads, alleys, trails, and other public ways dedicated to the public conveys an easement only to the city for the dedicated purposes. Land dedicated for all other uses is conveyed to the city "in trust" for the dedicated use.

Minn. Stat. § 462.358 subd 2b (i)

Land which has been previously subdivided and from which a park dedication has been received, is exempted by state statute from further dedication requirements if a re-subdivision creates the same number of lots. Where new lots are created, a park dedication fee may be applied only to the net increase in lots.

A. Cash payments in lieu of land dedication

Minn. Stat. § 462.358 subd 2b(c)

Sample ordinance on park and trail fees

In lieu of land dedication for parks, recreational facilities, playgrounds, trails, wetlands, or open space, cities may require a developer to pay "cash fees" commonly referred to as "park dedication fees" and/or "trail fees" (cumulatively referred to as park dedication fees in the rest of this memo) Park dedication fees excuse a developer from a local land dedication for park and recreational purposes, but still allow the city to purchase and acquire new off-site facilities to serve needs created by the subdivision. When a city establishes and imposes a park dedication fee, in lieu of land dedications, it must still comply with all of the requirements discussed above for land dedications related to procedure, nexus, and proportionality.

Minn. Stat § 462.358 subd 2b(d)

In collecting park dedication fees, the city must give due consideration the park and recreational facilities that the applicant already proposes to incorporate into the development for public use. For example, if the proposed development already includes park and trail facilities for residents, it may be more difficult to justify an additional cash fee.

1. Setting park dedication fees

Minn. Stat. § 462.358 subd 2b(c)

Park dedication fees must be established by ordinance or a fee schedule that meets the requirements of state statute discussed in Section VI-A-2. Fees must be set based upon the average fair market value of land within the area:

- That is unplatted.
- For which park fees have not been paid.
- That is to be served at the time of final approval or will be served under the city's comprehensive plan by city sanitary sewer and water.

Cities may wish to retain the services of a land appraiser or some other professional to help them determine the appropriate rate for their park dedication fees.

2. Fee schedules

Minn. Stat. §462.353 subd 4a

See LMC information memo, *Newspaper Publication*

Park dedication fees may generally be imposed only by ordinance. However, cities that collect less than $5,000 per year in land use and development fees (this includes all subdivision and zoning fees) may use a fee schedule adopted by city resolution. Prior to adoption of the resolution, the city must hold a public hearing on the fee schedule with 10 days published notice. Cities that collect over $5,000 in land use fees per year may also use a fee schedule. However, the fee schedule must be adopted in ordinance form, following a public hearing for which there has been 10 days published notice.

3. Fee accounting and disputes

Minn. Stat. §462.358 subd 2b (f), (g)

Park dedication fees must be placed in a special, segregated fund. Park dedication fees can only be used for the acquisition, development, and improvement of parks, recreational facilities, playgrounds, trails, wetland, and open space based upon the city-approved park systems plan. Park dedication fees cannot be used for the city operational or maintenance costs, such as lawn mowing or garbage pick-up.

a. Fee disputes

Minn. Stat. § 462.353 subd 4 (d); Minn. Stat. § 462.358 subd 2c(b)

Cities may not condition approval of a subdivision application upon a waiver of applicant rights to challenge city fees in a law suit.

Minn. Stat. § 462.358 subd 2c(c)

An applicant who disputes a park dedication fee, may request that the application be processed as if the fee had been paid. An applicant who disputes a fee, but still wishes to have the application processed must do all of the following:

- Provide written notice to the city of his or her dispute over the city's fee.
- Place in escrow for the city the disputed fee amount.
- File an appeal in court of the city's fee using the procedures specified in statute within 60 days of the approval/denial of the application.

Minn. Stat. § 462.361

If an applicant does not appeal the fee by filing suit in a court of law within 60 days following approval/denial or if the applicant appeals but does not prevail in his or her request to have the fee overturned, the fee held in the escrow account must be paid to the city.

VII. Subdivision ordinance enforcement

Cities have numerous strong tools to enforce the requirements of their subdivision ordinances. Some of these tools are discussed here.

A. Sellers and buyers disclosure requirements

Minn. Stat. § 462.358 subd 4a

Whenever a landowner seeks to convey land (through a metes and bounds description or in reference to a plat) that has not previously been filed or recorded, state law requires the seller to make certain disclosures to protect buyers from illegal subdivisions. If the newly recorded land is the result of a subdivision, the seller must attach one of the following to the instrument of conveyance:

- A recordable certification by the clerk of the municipality that the city's subdivision regulations do not apply, or that the subdivision has been approved by the governing body, or that the restrictions on the division of taxes and filing and recording have been waived by resolution of the governing body of the municipality.

See Section VII-B-2 *City option to grant waivers* for information on waivers

- A statement which names and identifies the location of the appropriate municipal offices and advises the grantee that municipal subdivision and zoning regulations may restrict the use or restrict or prohibit the development of the parcel, or construction on it, and that the division of taxes and the filing or recording of the conveyance may be prohibited without prior recordable certification of approval, non-applicability, or waiver from the municipality.

A buyer who purchases illegally subdivided land may bring a lawsuit against the seller alleging misrepresentation of or the failure to disclose material facts under this statute. A buyer with a successful lawsuit may be awarded damages, reasonable costs and fees (including attorney fees), and punitive damages up to 5 percent of the purchase price of the land.

B. Restrictions on filing and recording conveyances

Minn. Stat. § 462.358 subd 4b;

A.G. Op. 373-B-9 (Feb. 1, 1977)

In a city that has adopted and recorded subdivision regulations with the county recorder, no conveyance of land to which the regulations are applicable may be filed or recorded if the conveyance does not demonstrate conformance to the regulations. A few exceptions to this law apply to:

- Some transactions entered into before 1945, but not previously recorded.
- Single parcels of commercial or industrial land of not less than five acres and having a width of not less than 300 feet where the conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width.

- Single parcels of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet where the conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.

1. Enforcement

Minn. Stat. § 462.358 subd 4b (d), (e)

Any owner or agent of the owner of land who conveys a lot or parcel in violation of this state law may be required to pay to the city a penalty of not less than $100 for each lot or parcel so conveyed. In addition, the city may ask a court to stop or prevent the conveyance or may recover the penalty by filing suit in court.

2. City option to grant waivers

Minn. Stat. § 462.358 subd 4b (c)

Cities may opt to waive enforcement of this statute in instances where the city determines that enforcing this prohibition on recording will create an unnecessary hardship, and failure to comply does not interfere with the purpose of the subdivision regulations.

The city may waive this statute by adoption of a resolution, and the conveyance may then be filed or recorded.

C. Civil remedies

Minn. Stat. § 462.358 subd 2a

City ordinance provisions may allow the city to deny issuance of permits and approvals for any tracts, lots, or parcels for which subdivision approval has not been obtained. This provision applies not only to subdivision permits, but building, occupancy, and zoning permits as well.

Minn. Stat. § 462.362

A city may also enforce its subdivision ordinance by requesting an injunction (a court order requiring someone to stop a particular activity or type of conduct) or other appropriate remedy from the court.

D. Criminal remedies

Minn. Stat. § 462.362

Minn. Stat. § 169.89, subd. 2.

Minn. Stat. §§ 609.02, subds. 3, 4a; 609.0332; 609.034.

See Handbook, Ch. 7 for information on prosecution responsibilities for violations of local ordinances

Cities may provide for criminal penalties for violation of the city subdivision ordinance. In an ordinance, cities may designate ordinance violations as misdemeanors or petty misdemeanors. Cities may impose maximum penalties for misdemeanors of a $1,000 fine or 90 days in jail, or both. In addition, the costs of prosecution may be added. The maximum penalty for a petty misdemeanor is a fine of $300.

Special Planning Commission **6. 2.**

Meeting Date: 06/02/2011

By: Tim Gladhill, Community Development

Title:

Discuss Employment District Concepts for West of Armstrong Boulevard and South of Highway 10

Background:

As part of the 2011 Council Strategic Goals, Employment District concepts for West of Armstrong as well as South of Highway 10 (Office Park) were discussed.

Notification:

None required.

Observations:

As part of the 2030 Comprehensive Plan, a new land use designation was created entitled Office Park. An area south of Highway 10 was identified as the location of this office park. In addition, the City has discussed expanding this area to include portions of the undeveloped property west of Armstrong Boulevard and north of Highway 10 near the newly approved Legacy Christian Academy campus. This land use designation was intended to be similar to the City's existing Employment Districts, but with less outside storage and less manufacturing. This area was created to attempt to promote corporate campuses, logistical (warehouse distribution users), etc.

The intent of tonight's discussion is to identify permitted uses, bulk standards, and performance standards. A new zoning district will need to be established that reflects these proposed standards.

Funding Source:

Creation of the new zoning district is being handled as part of regular staff duties. A portion of the drafting may be assigned to the City's planning consultant.

Staff Recommendation:

Staff recommends the City Council and Planning Commission identify zoning standards for the Office Park land use designation.

Committee Action:

Based on discussion.

Attachments

Office Park Surrounding Land Uses

Office Park Area

Potential Zoning Text

Form Review

Inbox	Reviewed By	Date
Heidi Nelson	Heidi Nelson	05/26/2011 11:29 AM
Kurt Ulrich	Kurt Ulrich	05/26/2011 01:47 PM
Tim Gladhill (Originator)	Tim Gladhill	05/26/2011 02:01 PM
Aaron Backman	Aaron Backman	05/26/2011 03:36 PM

Form Started By: Tim Gladhill Started On: 05/09/2011 10:13 AM

Final Approval Date: 05/26/2011

ALPINE DR

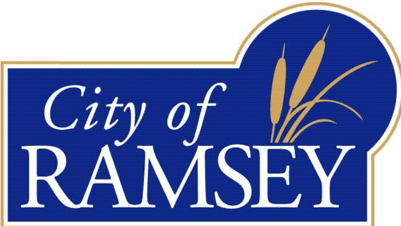
ALPINE DR

ARMSTRONG BLVD

BUNKER

US HWY 10

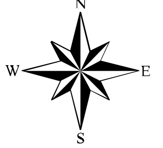
SUNWOOD DR

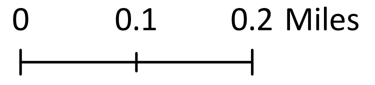


Office Park General Area

Future Land Use

- LDR
- MDR
- HDR
- Office Park
- Commercial
- MU
- Business Park
- Public
- Rural Developing
- Rural Preserve
- Park
- MUSA
- MRCCA Boundary





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PINE DR

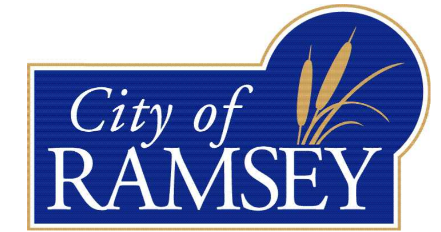
ALPINE DR

US HWY 10

ARMSTRONG BLVD

SUNWOOD DR

BUNKE

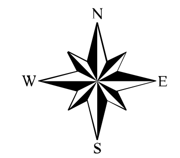


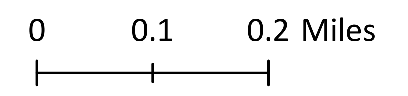
Office Park
General Area

Office Park

MUSA

MRCCA Boundary





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Sec. 117-116. - E-3 Employment District.

(a)
Intent. The purpose of the E-3 Employment District is to provide for larger scale corporate office complexes, goods and services, wholesale/warehouse activities and limited retail activities.
(b)
Permitted uses. The following are permitted uses, subject to general requirements and performance standards as specified by this chapter:
(1)
Office buildings and uses
(2)
Radio and television offices and stations.
(3)
Warehousing of non-explosive material or equipment.
(4)
Wholesale business
(5)
Governmental and public utility buildings and structures.
(6)
Indoor commercial recreation.
(7)
Business incubators/multitenant facilities housing manufacturing, research labs, testing labs, offices, motor vehicle, implement and recreation equipment sales or repair, governmental or public uses, indoor commercial recreation, manufacturing, radio and television offices and stations, and wholesale businesses, provided they are indoor operations with no outside storage or display areas. A maximum of 20 percent of the units or suites of such a facility may be occupied by enclosed retail and rental activity as a principal use.
(8)
Self-storage facilities.
(c)
Accessory uses.
(1)
Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 50 percent of the gross floor space of the principal use.
(2)
Off-street parking as regulated and required by this chapter.
(3)
Off-street loading as regulated and required by this chapter.
(4)
Signing as regulated by this Code.
(5)
Open and outdoor storage as an accessory use not to exceed 30 percent of the property provided that:
a.
Storage area is surfaced with concrete or bituminous with B6-12 curb and gutter.
b.
This use does not take up parking space or loading area as required for conformity to this chapter.
(6)
Enclosed retail and rental activity as an accessory to a permitted use in a business incubator or multitenant facility provided the retail or rental activity does not occupy more than 50 percent of the gross floor area of the occupied unit or suite.
(d)
Conditional uses. The following are conditional uses and require a conditional use permit based upon procedures set forth in and regulated by section 117-50:
(1)
Oversizing of signs.
(2)
Expansion or enlargement of lawful nonconforming uses.
(3)
Cell towers.
(e)

Standards. (Also refer to article II, division 6 of this chapter for general performance standards).

(1)

Bulk standards.

Standard	Requirement
Minimum lot size	1 acre
Minimum lot width	200 feet
Building setbacks:	
Front	35 feet
Rear	25 feet
Side	25 feet
Major and minor arterials	60 feet from centerline of road right-of-way plus the local applicable setback
From service road	30 feet
Setbacks when adjacent to residential district:	
Buildings	60 feet
Off-street parking, storage areas, and driveways	40 feet
Parking and pavement (includes maneuvering areas) setback from street right-of-way	20 feet
Maximum building height	65 feet
Maximum lot coverage	45 percent

(2)Performance standards.

a.

Building design. Building massing shall be varied throughout the development site and should include building components such as columns, articulated rooflines and facades, specialized window and door treatments, and unique architectural details.

b.

Building materials. All exterior wall surfaces shall be brick, glass, stone, stucco, or pre-cast concrete units whose surface has been integrally treated with an applied decorative material, texture, or color. Other exterior materials may be used as approved by the planning commission and city council. Exterior materials shall not include smooth-faced concrete block, steel panels, fiberglass or vinyl siding. The use of metal for architectural accents may be permitted. A color palette for all materials shall be included in the site plan submittal.

c.

Building orientation. Buildings should be oriented to face public streets where possible. When this is not possible, additional landscaping and/or improved building design will be required to improve street-facing facades. Multiple buildings are permitted on one lot, if approved as part of the master plan.

d.

Street system. The street system internal to the development site is an essential element of the master plan. The new system must connect to existing city streets.

e.

Pedestrian circulation/sidewalks/trails. A comprehensive pedestrian network is required in the overall master plan for this zoning district. While this zoning district is intended to accommodate larger-scale office uses, safe pedestrian access is required throughout the zoning district and between the district and adjacent neighborhoods. Crosswalks are required where all sidewalks meet the street and shall be indicated with paver bricks or integrally-treated pavement rather than paint.

f.

Landscaping. The master plan shall include a landscape plan for the entire development site. Landscaping shall be integrated throughout the site and shall include a combination of overstory trees, ornamental trees, shrubs, flowers (planting beds and raised planters), ground cover, and other landscaping elements. The required number of plantings will be site specific and will be determined largely by the total pervious area of a site. Landscaping should be used to soften and shade parking areas, line sidewalks and streets, accent building entrances, and break up large building facades. Plant selection should focus on functionality and take into account characteristics such as tolerance of soil compaction, poor drainage, and deicing salts. All landscaping shall be over at least six (6) inches of topsoil, as defined in section 117-1, and all landscaped areas shall include underground irrigation systems.

1.

Minimum landscaping requirements. All open space areas of a lot which are not used or improved for required parking areas, drives or storage shall be landscaped with a combination of overstory trees, ornamental trees, shrubs, flowers, ground cover, decorative walks, or other similar site design materials in a quantity and placement suitable for the site. A reasonable attempt should be made to preserve as many existing trees as is practicable and to incorporate them into the development. For each

existing significant tree retained one overstory tree can be deducted from the minimum requirements.
2.
Number of plantings. The minimum number of overstory trees on any given site shall be as indicated below. These are minimum requirements that are typically supplemented with other understory trees, shrubs, flowers and ground covers deemed appropriate for a complete quality landscape treatment of a site.

Type	Number of Plantings
Deciduous/coniferous trees	1 per 50 lineal feet of site perimeter or 1 tree per 1,000 square feet of building footprint area, whichever is greater. For expansions to buildings, 1 tree is required for each 1,000 square feet of additional building footprint area.
Shrubs	1 per 30 lineal feet of site perimeter or 1 per 300 square feet of building footprint area, whichever is greater.

3.
Minimum size of plantings. Landscaping material shall be of the following minimum planting size:

Type	Size
Deciduous trees	2.5 inches diameter as measured three feet above ground
Coniferous trees	6 feet in height
Deciduous shrubs	2 feet in height
Evergreen shrubs	2 feet in height or 2 feet in width, whichever applies
Ornamental trees	1.5 inches diameter as measured three feet above ground

4.
Planting types.
(i)
Acceptable plantings shall be determined by the City of Ramsey Tree Book.
(ii)
The compliment of trees fulfilling the landscaping requirements shall be not less than 25 percent deciduous and lot less than 25 percent coniferous. No more than 25 percent of the required plantings shall consist of ornamental trees.
(iii)
For every 35 feet of public road frontage, one overstory tree shall be planted on the private property adjacent to the public road right-of-way.
b.
Topsoil. All exposed ground areas of a site not occupied by building, parking or storage, excluding natural areas that are left undisturbed, shall be covered with six (6) inches of topsoil, as defined in section 117-1.
c.
Sodding and ground cover. All areas not otherwise improved in accordance with approved site plans shall be finished with sod up to the edge of improved streets. Any alternative to the sod requirement shall require city council approval.
d.
Irrigation.
1.
All landscaping areas required under this section shall include underground irrigation systems.
2.
Exceptions include natural areas that are left undisturbed.
e.
Parking lot landscaping. All parking lots are required to provide internal overstory tree plantings in an effort to shade parking surfaces and provide visual relief. Plantings are required at the following minimum schedule. The planting schedule is established to provide an acceptable number of plantings that may be planted in regular symmetrical patterns or irregular clusters or groupings.
1.
1 tree per every ten parking spaces.
2.
Every overstory tree planting shall be provided with a planting area of 162 square feet.
3.
Acceptable ground cover materials include sod, mulch, and other natural ground cover. Landscaping rock and plastic underlayment is not allowed.

4.
All parking lot planting areas shall include underground irrigation systems.
f.
Bufferyards. Bufferyards are greenspace areas intended to provide additional screening of businesses that are adjacent to residential areas. The following table details the width of the bufferyard along the common adjacent property line. An additional increase of landscape plantings would be required in the bufferyard. That increase is expressed in the table below as a percentage of the total required site landscaping.

		Existing Adjacent Development				
		R-1	R-2	R-3	B-1	B-2
Proposed Development	E-2	60 ft.	60 ft.	60 ft.	35 ft.	35 ft.
	Bufferyard width	30%	30%	30%	20%	20%
	% increase in plantings required					

g.
Stormwater. The master plan shall include a stormwater plan for the entire development site. In addition to traditional stormwater management methods, low impact development (LID) strategies are encouraged throughout the development site, particularly in parking areas. Such methods might include special soil systems, pervious pavements, storm ceptors, underground storage, and bio-retention strips and cells (rain gardens).
h.
Parking areas. A parking plan shall be included as part of the master site plan submittal. Parking lots, stalls, and drive accesses shall be designed to accommodate a variety of vehicle sizes and turning movements.
i.
Building service areas (loading docks, trash storage and removal). Such areas shall be internal to the building wherever possible and in all cases constructed of the same exterior materials and screened from adjacent lots, public streets, and building entrances.
j.
Mechanical equipment. All mechanical equipment associated with buildings must be completely screened from view, whether located on the roof or ground level.
k.
Outdoor storage. All storage, including open storage, storage in containers, trailers, or similar enclosures, is prohibited, except as permitted under subsection (f) of this section.
l.
Lighting. A lighting plan shall be included as part of the master plan submittal. Lighting must be used to illuminate off-street parking areas, signs, structures, and pedestrian walkways. The scale of lighting fixtures must be appropriate to the scale of what is proposed to be lighted. Fixtures must be arranged so that the bulb is not visible from outside the area proposed to be lighted by that fixture. Bulbs emitting in excess of 3,000 lumens (150 watts) shall be so directed that the bulb is not visible from off of the property where such light source is located.

Special Planning Commission **6. 3.**

Meeting Date: 06/02/2011

By: Tim Gladhill, Community Development

Title:

Review Outside Storage in Employment Districts

Background:

As part of the 2011 Council Strategic Goals, an item for discussion is to review outside storage requirements in the City's employment zoning districts.

Notification:

None required.

Observations:

The zoning district standards for the E-1 and E-2 zoning districts are attached for your review. Generally speaking, the outside storage requirements are as follows:

<u>E-1 Employment District</u>

Open and outdoor storage is permitted as an accessory use of the property provided that:

a. Storage area is surfaced to control dust and subject to the approval of the zoning administrator.
b. This use does not take up parking space or loading area as required for conformity to this chapter.

Open and outdoor storage is permitted as a principal use with the issuance of a conditional use permit, provided that:

a. Storage area is surfaced to control dust and subject to the approval of the zoning administrator.
b. This use does not take up parking space or loading area as required for conformity to this chapter.

<u>E-2 Employment District</u>

Open and outdoor storage is permitted as an accessory use not to exceed 30 percent of the property provided that:

a. Storage area is surfaced with concrete or bituminous.
b. This use does not take up parking space or loading area as required for conformity to this chapter.

Open and outdoor storage as a principal use, provided that:

a. Storage area is surfaced with concrete or bituminous.
b. This use does not take up parking space or loading area as required for conformity to this chapter.

Some potential items for discussion include, but are not limited to, further clarification of surfacing requirements, screening requirements, and enforcement.

Funding Source:

Review of outside storage requirements is being handled as part of regular staff duties.

Staff Recommendation:

Staff recommends providing feedback on the City's outside storage requirements for potential amendments to City Code.

Committee Action:

Based on discussion.

Attachments

Employment District Zoning Districts

Form Review

Inbox	Reviewed By	Date
Kurt Ulrich	Kurt Ulrich	05/26/2011 01:09 PM
Tim Gladhill (Originator)	Tim Gladhill	05/26/2011 01:39 PM
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Form Started By: Tim Gladhill

Started On: 05/09/2011 10:10 AM

Final Approval Date: 05/26/2011

Sec. 117-116. - E-2 Employment District.

(a) *Intent.* The purpose of the E-2 Employment District is to provide for the mix of typically large volumes or bulk commercial goods and services, wholesale/warehouse activities and limited retail activities.

(b) *Permitted uses.* The following are permitted uses, subject to general requirements and performance standards as specified by this chapter:

(1) Adult uses principal and accessory.

(2) Building materials sales stores.

(3) Governmental and public utility buildings and structures.

(4) Indoor commercial recreation.

(5) Manufacturing.

(6) Office buildings and uses.

(7) Radio and television offices and stations.

(8) Transportation terminals.

(9) Warehousing of non-explosive material or equipment.

(10) Wholesale business.

(11) Storage.

(12) Business incubators/multitenant facilities housing manufacturing, research labs, testing labs, offices, motor vehicle, implement and recreation equipment sales or repair, governmental or public uses, indoor commercial recreation, manufacturing, radio and television offices and stations, and wholesale businesses, provided they are indoor operations with no outside storage or display areas. A maximum of 20 percent of the units or suites of such a facility may be occupied by enclosed retail and rental activity as a principal use.

(13) Self-storage facilities.

(c) *Accessory uses.*

(1) Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 50 percent of the gross floor space of the principal use.

(2) Off-street parking including semi-trailer trucks, as regulated and required by this chapter.

(3) Off-street loading as regulated and required by this chapter.

(4) Signing as regulated by this Code.

(5) Open and outdoor storage as an accessory use not to exceed 30 percent of the property provided that:

a. Storage area is surfaced with concrete or bituminous.

b. This use does not take up parking space or loading area as required for conformity to this chapter.

(6) Enclosed retail and rental activity as an accessory to a permitted use in a business incubator or multitenant facility provided the retail or rental activity does not occupy more than 50 percent of the gross floor area of the occupied unit or suite.

(d) *Conditional uses.* The following are conditional uses and require a conditional use permit based upon procedures set forth in and regulated by section 117-50

(1) Open and outdoor storage as a principal use, provided that:

a. Storage area is surfaced with concrete or bituminous.

b. This use does not take up parking space or loading area as required for conformity to this chapter.

c. The provisions of section 117-51 are considered and satisfactorily met.

(2) Open or outdoor service, sale, display and rental as a principal use, provided that:

a. The use does not take up parking space or loading area as required for conformity to this chapter.

b. Sales area is surfaced with asphalt or concrete material to control dust.

c. The provisions of section 117-51 are considered and satisfactorily met.

(3) Oversizing of signs.

(4) Expansion or enlargement of lawful nonconforming uses.

(5) Cell towers.

(6) Micro-scale WECS.

(7) Medium-scale WECS.

(e) *Standards.* (Also refer to article II, division 6 of this chapter for general performance standards).

(1) Bulk standards.

Standard	Requirement
Minimum lot size	1 acre
Minimum lot width	200 feet
Building setbacks:	
Front	35 feet

Rear	25 feet
Side	25 feet
Major and minor arterials	60 feet from centerline of road right-of-way plus the local applicable setback
From service road	30 feet
Setbacks when adjacent to residential district:	
Buildings	60 feet
Off-street parking, storage areas, and driveways	40 feet
Parking and pavement (includes maneuvering areas) setback from street right-of-way	20 feet
Maximum building height	65 feet
Maximum lot coverage	45 percent

(2) Lighting. Any lighting used to illuminate an off-street parking area, sign or structure, shall be arranged to deflect light away from an adjoining residential district or public street. Bulbs emitting in excess of 3,000 lumens (150 watts) shall be so directed that the bulb is not visible from off of the property where such light source is located.

(3) Landscaping and buffering.

a. Site landscaping.

1. Minimum landscaping requirements. All open space areas of a lot which are not used or improved for required parking areas, drives or storage shall be landscaped with a combination of overstory trees, ornamental trees, shrubs, flowers, ground cover, decorative walks, or other similar site design materials in a quantity and placement suitable for the site. A reasonable attempt should be made to preserve as many existing trees as is practicable and to incorporate them into the development. For each existing significant tree retained one overstory tree can be deducted from the minimum requirements.

2. Number of plantings. The minimum number of overstory trees on any given site shall be as indicated below. These are minimum requirements that are typically supplemented with other understory trees, shrubs, flowers and ground covers deemed appropriate for a complete quality landscape treatment of a site.

Type	Number of Plantings
Deciduous/coniferous trees	1 per 50 lineal feet of site perimeter or 1 tree per 1,000 square feet of building footprint area, whichever is greater. For expansions to buildings, 1 tree is required for each 1,000 square feet of additional building footprint area.
Shrubs	1 per 30 lineal feet of site perimeter or 1 per 300 square feet of building footprint area, whichever is greater.

3. Minimum size of plantings. Landscaping material shall be of the following minimum

planting size:

Type	Size
Deciduous trees	2.5 inches diameter as measured three feet above ground
Coniferous trees	6 feet in height
Deciduous shrubs	2 feet in height
Evergreen shrubs	2 feet in height or 2 feet in width, whichever applies
Ornamental trees	1.5 inches diameter as measured three feet above ground

4. Planting types.

(i) Acceptable plantings shall be determined by the City of Ramsey Tree Book.

(ii) The compliment of trees fulfilling the landscaping requirements shall be not less than 25 percent deciduous and lot less than 25 percent coniferous. No more than 25 percent of the required plantings shall consist of ornamental trees.

(iii) For every 35 feet of public road frontage, one overstory tree shall be planted on the private property adjacent to the public road right-of-way.

b. Topsoil. All exposed ground areas of a site not occupied by building, parking or storage, excluding natural areas that are left undisturbed, shall be covered with six (6) inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348

c. Sodding and ground cover. All areas not otherwise improved in accordance with approved site plans shall be finished with sod up to the edge of improved streets. Any alternative to the sod requirement shall require city council approval.

d. Irrigation.

1. All landscaping areas required under this section shall include underground irrigation systems.

2. Exceptions include natural areas that are left undisturbed.

e. Parking lot landscaping. All parking lots are required to provide internal overstory tree plantings in an effort to shade parking surfaces and provide visual relief. Plantings are required at the following minimum schedule. The planting schedule is established to provide an acceptable number of plantings that may be planted in regular symmetrical patterns or irregular clusters or groupings.

1. 1 tree per every ten parking spaces.

2. Every overstory tree planting shall be provided with a planting area of 162 square

feet.

3. Acceptable ground cover materials include sod, mulch, and other natural ground cover. Landscaping rock and plastic underlayment is not allowed.

4. All parking lot planting areas shall include underground irrigation systems.

f. Bufferyards. Bufferyards are greenspace areas intended to provide additional screening of businesses that are adjacent to residential areas. The following table details the width of the bufferyard along the common adjacent property line. An additional increase of landscape plantings would be required in the bufferyard. That increase is expressed in the table below as a percentage of the total required site landscaping.

		Existing Adjacent Development				
		R-1	R-2	R-3	B-1	B-2
Proposed Development	E-2 Bufferyard width	60 ft.	60 ft.	60 ft.	35 ft.	35 ft.
	% increase in plantings required	30%	30%	30%	20%	20%

(4) Off-street loading. All off-street loading dock/berth areas shall be a minimum of 50 feet in length and there shall be at least one dock/berth for the first 10,000 square feet of floor area and one additional berth/dock for each additional 25,000 square feet of floor area.

(Code 1978, § 9.20.23; Ord. No. 86-2, 8-25-1986; Ord. No. 96-12, 7-29-1996; Ord. No. 03-21, 8-25-2003; Ord. No. 03-22, 8-25-2003; Ord. No. 04-20, 6-1-2004; Ord. No. 09-06, § 2, 4-28-2009; Ord. No. 09-12, § 2, 9-8-2009; Ord. No. 10-04, § 2, 4-13-2010)

Sec. 117-117. - E-1 Employment District.

(a) *Intent.* To accommodate general industrial activities.

(b) *Permitted uses.* The following are permitted uses, subject to general requirements and performance standards as specified by this chapter:

(1) Manufacturing.

(2) Research labs.

(3) Testing labs.

(4) Offices.

(5) Supply yards with building.

(6) Warehousing and storage.

(7) Self storage facilities, indoor.

(8) Truck terminals with building.

(9) Athletic facilities/fitness centers/dance studios.

(10) Business incubators/multitenant facilities housing manufacturing, research labs, testing labs, offices, athletic facilities/fitness centers/dance studios, motor vehicle implement and recreation equipment sales or repair, governmental or public uses, indoor commercial recreation, light manufacturing, radio and television offices and stations, and wholesale businesses, provided they are indoor operations with no outside storage or display areas. A maximum of 20 percent of the units or suites of such a facility may be occupied by enclosed retail and rental activity as a principal use.

(c) *Accessory uses.*

(1) Commercial or business buildings and structures for a use accessory to the principal use but such use shall not exceed 50 percent of the gross floor space of the principal use.

(2) Off-street parking including semi-trailer trucks, as regulated and required by this chapter.

(3) Off-street loading as regulated and required by this chapter.

(4) Signing as regulated by this Code.

(5) Open and outdoor storage as an accessory use of the property provided that:

a. Storage area is surfaced to control dust and subject to the approval of the zoning administrator.

b. This use does not take up parking space or loading area as required for conformity to this chapter.

(6) Indoor retail and rental activity as an accessory to a permitted use in a business incubator or multitenant facility provided the retail or rental activity does not occupy more than 15 percent of the gross floor area of the occupied unit or suite.

(d) *Conditional uses.* The following are conditional uses and require a conditional use permit based upon procedures set forth in and regulated by section 117-50

(1) Open and outdoor storage as a principal use, provided that:

a. Storage area is surfaced to control dust and subject to the approval of the zoning administrator.

b. This use does not take up parking space or loading area as required for conformity to this

chapter.

c. The provisions of section 117-51 are considered and satisfactorily met.

(2) Open or outdoor service, sale, display and rental as a principal use, provided that:

a. The use does not take up parking space or loading area as required for conformity to this chapter.

b. Sales area is surfaced with asphalt or concrete material to control dust.

c. The provisions of section 117-51 are considered and satisfactorily met.

(3) Indoor retail, rental or service activity, or industrial uses other than that allowed as a permitted use or conditional use within this section provided that:

a. Such use meets the stated intent of this district.

b. Adequate off-street parking and off-street loading in compliance with the requirements of this chapter is provided.

c. All signing and informational or visual communication devices shall be in compliance with the applicable provisions of this Code.

d. The provisions of section 117-51 are considered and satisfactorily met.

(4) Heavy manufacturing provided that:

a. The operation does not adversely impact abutting properties.

b. The physical facilities and operation are in keeping with the character of the district and surrounding properties.

c. The provisions of section 117-51 are considered and satisfactorily met.

(5) Oversizing of signs.

(6) Expansion or enlargement of lawful nonconforming uses.

(7) Cell towers.

(8) Micro-scale WECS.

(9) Medium-scale WECS.

(e) *Standards.* (Also refer to article II, division 6 of this chapter for general performance standards)

(1) *Bulk standards.*

Standard	Requirement
Minimum lot size	1 acre
Minimum lot width	200 feet

Building setbacks	
Front	35 feet
Rear	35 feet
Side	20 feet
Major and minor arterials and county and state roadways	60 feet from centerline of road right-of-way plus the local applicable setback
From service road	35 feet
Setbacks when adjacent to residential district:	
Buildings	60 feet
Off-street parking, storage areas, and driveways	40 feet
Parking and paving (includes maneuvering areas) setback from street right-of-way	20 feet
Maximum building height	65 feet
Maximum lot coverage	45 percent

(2) *Lighting.* Any lighting used to illuminate an off-street parking area, sign or structure, shall be arranged to deflect light away from an adjoining residential district or public street. Bulbs emitting in excess of 3,000 lumens (150 watts) shall be so directed that the bulb is not visible from off of the property where such light source is located.

(3) *Landscaping and buffering.*

a. *Site landscaping.*

1. *Minimum landscaping requirements.* All open space areas of a lot which are not used or improved for required parking areas, drives or storage shall be landscaped with a combination of overstory trees, ornamental trees, shrubs, flowers, ground cover, decorative walks, or other similar site design materials in a quantity and placement suitable for the site. A reasonable attempt should be made to preserve as many existing trees as is practicable and to incorporate them into the development. For each existing significant tree retained one overstory tree can be deducted from the minimum requirements.

2. *Number of plantings.* The minimum number of overstory trees on any given site shall be as indicated below. These are minimum requirements that are typically supplemented with other understory trees, shrubs, flowers and ground covers deemed appropriate for a complete quality landscape treatment of a site.

Type	Number of Plantings
Deciduous/coniferous trees	1 per 50 lineal feet of site perimeter or 1 tree per 1,000 square feet of building footprint area, whichever is greater. For expansions to buildings, 1 tree is required for each 1,000 square feet of additional building footprint area.

Shrubs	1 per 30 lineal feet of site perimeter or 1 per 300 square feet of building footprint area, whichever is greater.

3. *Minimum size of plantings.* Landscaping material shall be of the following minimum planting size:

Type	Size
Deciduous trees	2.5 inches diameter as measured three feet above ground
Coniferous trees	6 feet in height
Deciduous shrubs	2 feet in height
Evergreen shrubs	2 feet in height or 2 feet in width, whichever applies
Ornamental trees	1.5 inches diameter as measured three feet above ground

4. *Planting types.*

(i) Acceptable plantings shall be determined by the City of Ramsey Tree Book.

(ii) The compliment of trees fulfilling the landscaping requirements shall not be less than 25 percent deciduous and lot less than 25 percent coniferous. No more than 25 percent of the required plantings shall consist of ornamental trees.

(iii) For every 35 feet of public road frontage, one overstory tree shall be planted on the private property adjacent to the public road right-of-way.

b. *Topsoil.* All exposed ground areas of a site not occupied by building, parking or storage, excluding natural areas that are left undisturbed, shall be covered with six inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348

c. *Sodding and ground cover.* All areas not otherwise improved in accordance with approved site plans shall be finished with sod up to the edge of improved streets. Any alternative to the sod requirement shall require city council approval.

d. *Irrigation.*

1. All landscaping areas required under this section shall include underground irrigation systems.

2. Exceptions include natural areas that are left undisturbed.

e. *Parking lot landscaping.* All parking lots are required to provide internal overstory tree plantings in an effort to shade parking surfaces and provide visual relief. Plantings are required at the following minimum schedule. The planting schedule is established to provide an acceptable number of plantings that may be planted in regular symmetrical patterns or irregular clusters or groupings.

1. One tree per every ten parking spaces.

2. Every overstory tree planting shall be provided with a planting area of 162 square feet.

3. Acceptable ground cover materials include sod, mulch, and other natural ground cover. Landscaping rock and plastic underlayment is not allowed.

4. All parking lot planting areas shall include underground irrigation systems.

f. *Bufferyards.* Bufferyards are intended to provide additional screening of businesses that are adjacent to residential areas. The following table details the width of the bufferyard along the common adjacent property line. An additional increase of landscape plantings would be required in the bufferyard. That increase is expressed in the table below as a percentage of the total required site landscaping in the setback area.

		Existing Adjacent Development				
		R-1 R-2	R-3	B-1	B-2	
Proposed Development	E-1 Bufferyard width % increase in plantings required	60 ft.	60 ft.	60 ft.	35 ft.	35 ft.
	30%	30%	30%	20%	20%	

(4) *Off-street loading.* All off-street loading dock/berth areas shall be a minimum of 50 feet in length and there shall be at least one dock/berth for the first 10,000 square feet of floor area and one additional berth/dock for each additional 25,000 square feet of floor area.

(f) *Architectural standards.* All exterior wall finishes on any building shall be:

(1) Face brick;

(2) Stucco;

(3) Glass;

(4) Wood;

(5) Natural stone;

(6) Specifically designed pre-cast concrete units whose surfaces have been integrally treated with an applied decorative material or texture;

(7) Other material as may be approved by the city.

Combinations of such materials shall be permitted.

(Code 1978, § 9.20.24; Ord. No. 86-2, 8-25-1986; Ord. No. 96-12, 7-29-1996; Ord. No. 97-09, 7-28-1997; Ord. No. 03-21, 8-25-2003; Ord. No. 03-22, 8-25-2003; Ord. No. 09-06, § 2(9.20.24), 4-28-2009; Ord. No. 09-12, § 2, 9-8-2009; Ord. No. 10-04, § 2, 4-13-2010)

Special Planning Commission **6. 4.**

Meeting Date: 06/02/2011

By: Tim Gladhill, Community Development

Title:

Legislative Update

Background:

The 2011 Minnesota Legislative Session has been fairly active on land use issues. The following topics have had legislation introduced at the State Legislature:

1. Variance Authority
2. Interim Ordinances (moratorium) and Development Contracts
3. Mississippi River Corridor Critical Area (MRCCA) Rule making Authority

Notification:

No notification required.

Observations:

On May 5, the Governor signed into law approved legislation amending State Variance procedures in response to local cities' response to a recent Minnesota Supreme Court ruling. The bill essentially restores pre-Krummenacher v. the city of Minnetonka interpretation of reasonable use. The bill eliminates the term 'undue hardship' and replaces with 'practical difficulty'. In this section, practical difficulty means means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Essentially, this bill allows the City to approve requests for Variances provided that the City finds that the request is reasonable and consistent with the Comprehensive Plan.

Staff will provide a brief update of the remaining legislative items.

Funding Source:

None required.

Staff Recommendation:

For discussion only.

Committee Action:

Based on discussion.

Attachments

Approved Variance Bill

Form Review

Inbox	Reviewed By	Date
Kurt Ulrich	Kurt Ulrich	05/26/2011 01:07 PM
Tim Gladhill (Originator)	Tim Gladhill	05/26/2011 01:10 PM
Aaron Backman	Aaron Backman	05/26/2011 03:38 PM

Form Started By: Tim Gladhill Started On: 05/09/2011 09:53 AM

Final Approval Date: 05/26/2011

A bill for an act
relating to local government; providing for variances from city, county, and town zoning controls and ordinances; amending Minnesota Statutes 2010, sections 394.27, subdivision 7; 462.357, subdivision 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 394.27, subdivision 7, is amended to read:

Subd. 7. **Variances; ~~hardship~~ practical difficulties.** The board of adjustment shall have the exclusive power to order the issuance of variances from the ~~terms~~ requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control ~~in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control,~~ and when ~~the terms of~~ the ~~variance~~ variances are consistent with the comprehensive plan. ~~"Hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality.~~ Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "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; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone ~~shall~~ do not constitute ~~a hardship if a reasonable~~

~~use for the property exists under the terms of the ordinance~~ practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is ~~prohibited~~ not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances ~~to~~. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance ~~insure compliance and to protect adjacent properties and the public interest~~. ~~The board of adjustment may consider the inability to use solar energy systems a "hardship" in the granting of variances.~~

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2010, section 462.357, subdivision 6, is amended to read:

Subd. 6. **Appeals and adjustments.** Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the ~~literal provisions of the ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. "Undue hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under conditions allowed by the official controls,~~ requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "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 the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner~~,~~; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone ~~shall~~ do not

constitute ~~an undue hardship if reasonable use for the property exists under the terms of the ordinance. Undue hardship also includes~~ practical difficulties. Practical difficulties include, but ~~is~~ are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not ~~permitted~~ allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances ~~to insure compliance and to protect adjacent properties.~~. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

EFFECTIVE DATE. This section is effective the day following final enactment.