City of Ramsey
Agenda

Joint Environmental Policy Board (EPB) and Planning Commission

Monday April 20, 2015
6:30 pm
The Lake Itasca Room, 7550 Sunwood Drive NW

1. Call to Order

2. Citizen Input

3. Approve Agenda

4. Approve Minutes

1. Approve Meeting Minutes Dated March 30, 2015

5. Policy Board Business

1. Review of Environmental Policy Board's Statement of Purpose

2. Review Development Review Process and Meeting Procedures

3. Review Structure of Chapter 13 (Environmental Protection/Resource Management) of the Comprehensive Plan and Prioritize Areas of Revisions for Current Goals and Strategies

4. Receive Presentation on Update of Development Projects

6. Board/Staff Input

- EAB Informational Meeting--April 30, 2015
- Spring Recycling Day Event Reminder
- May EPB Meeting Date

7. Adjournment

Environmental Policy Board (EPB) **4. 1.**

Meeting Date: 04/20/2015

By: Chris Anderson, Community Development

Information

Title:

Approve Meeting Minutes Dated March 30, 2015

Action:

Attachments

Meeting Minutes Dated March 30, 2015

Form Review

Inbox	Reviewed By	Date
Chris Anderson (Originator)	Chris Anderson	04/16/2015 12:07 PM
Form Started By: Chris Anderson		Started On: 04/15/2015 12:08 PM
Final Approval Date: 04/16/2015		

SPECIAL ENVIRONMENTAL POLICY BOARD
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

On Monday, March 30, 2015, the Special Environmental Policy Board (EPB) met in the COR Conference Room at the Ramsey Municipal Center, 7550 Sunwood Drive N.W., Ramsey, Minnesota.

Members Present:	Chairperson Thomas Stodola Board Member Reid Bernard Board Member Michael Hiatt Board Member Larry Lewis Board Member Michael Valentine
Members Absent:	Board Member Bob Bentz
Also Present:	City Planner Chris Anderson Community Development Director Timothy Gladhill City Council Liaison John LeTourneau Board Member-Elect Jane Covart

1. CALL TO ORDER

Chairperson Stodola called the meeting to order at 6:30 p.m.

2. CITIZEN INPUT

None.

3. APPROVE AGENDA

Motion by Board Member Valentine and seconded by Board Member Hiatt to approve the agenda as submitted.

Motion carried. Voting Yes: Chairperson Stodola, Board Member Valentine, Hiatt, Bernard, and Lewis. Voting No: None. Absent: Board Member Bentz.

4. APPROVE MINUTES

4.01: Approve Meeting Minutes Dated March 2, 2015

Motion by Board Member Lewis and seconded by Board Member Valentine to approve the regular meeting minutes dated March 2, 2015.

Motion carried. Voting Yes: Chairperson Stodola, Board Member Lewis, Valentine, Bernard, and Hiatt. Voting No: None. Absent: Board Member Bentz.

5. POLICY BOARD BUSINESS

5.01: Appointment of Chairperson and Vice Chairperson

City Planner Anderson introduced new Board Member Jane Covart whose term will start in April.

City Planner Anderson asked for nominations for Chairperson and Vice Chairperson for an April, 2015 to March, 2016 term.

Motion by Board Member Hiatt and seconded by Board Member Lewis to nominate Thomas Stodola for Chairperson.

Motion carried. Voting Yes: Chairperson Stodola, Board Member Hiatt, Lewis, Bernard, and Valentine. Voting No: None. Absent: Board Member Bentz.

Motion by Board Member Lewis and seconded by Board Member Hiatt to nominate Michael Valentine for Vice Chairperson.

Motion carried. Voting Yes: Chairperson Stodola, Board Member Lewis, Hiatt, Bernard and Valentine. Voting No: None. Absent: Board Member Bentz.

5.02: Review Landscape and Tree Preservation Plans Associated with the Preliminary Plat Application for Harvest Estates; case of NIK Management, Inc.

City Planner Anderson presented the staff report.

Board Member Valentine inquired about storm water compliance.

City Planner Anderson replied that the engineering staff is responsible for storm water compliance but from what he can see, it appears to meet the minimum standards. There would not be tree loss directly related to storm water ponding. He pointed out that the proposed lot sizes are approximately a quarter of an acre and each site would get two front yard trees. He stated that a concern raised by adjacent residents that they would like to see more of a buffer has been addressed with the plan. He spoke about reforestation standards and their interpretations.

Board Member Lewis asked about the area between phase one and two.

City Planner Anderson replied that it may be ponding for the site.

Board Member Lewis asked if it was a ponding area or swale.

Community Development Director Gladhill stated his assumption that it is needed for storm water purposes.

Board Member Lewis asked if there is any possibility for additional plantings in that area.

City Planner Anderson replied that it may be a possibility and the Board could make a recommendation to explore the possibility of additional plantings at the rim of the ponding area.

Board Member Valentine stated it was worth looking at it if it wasn't going to create interference with storm water management.

Community Development Director Gladhill stated this is an excellent example of how the ordinance is being applied and that we have more plantings with the reforestation requirements. He stated that Staff is looking for a policy direction on how the ordinance is interpreted and calculated to make sure the Board is accomplishing what it intended.

Board Member Valentine stated that the ordinance would be unworkable without some flexibility and he is comfortable with the City's interpretation of the ordinance in this case.

City Planner Anderson stated that this is one of the benefits we should see with the Board reviewing proposed development plans.

Board Member Hiatt said he could see the logic of two options and asked if the City is setting a precedent for other developers. He asked if the Board is giving flexibility without giving precedent.

City Planner Anderson stated that every request or proposal is unique and that everything cannot be accounted for in an ordinance. Having flexibility and checking in with various advisory boards protects the City from setting undesirable precedents.

Board Member Valentine stated that he felt another developer would try to take advantage of a precedent if it was advantageous to them, but that checking in with the various advisory boards should protect the City.

City Planner Anderson stated that Staff is supportive of what is being proposed in this case as meeting the City's overall intent of the ordinance. He is hoping to get feedback from the Board in terms of policy direction moving forward and would like direct feedback on perimeter plantings in the rear yards of properties. He stated that it is Staff's opinion that it should be a stage one improvement and should be the developer's responsibility to install the trees. He is seeking feedback from the Board on Staff's recommendation that excluding the two front yard trees, the remainder of the plantings be the responsibility of the developer as a stage one improvement. He is seeking a motion to recommend that the landscaping and tree preservation plans are acceptable.

Board Member Lewis would like to get additional feedback on the recommendation. He would like to take a look at additional plantings at the perimeter to avoid it being mowed grass and to make sure that these plantings are part of the original plan.

City Planner Anderson stated that Staff is open to additional plantings around the perimeter. He stated that the City's engineering staff would have to determine that the plantings would not cause any additional maintenance issues.

Board Member Lewis stated that his intention is not to interfere, but to enhance the area.

Motion by Board Member Valentine and seconded by Board Member Hiatt to recommend Option 1; to include Staff's recommendation that excluding the two front yard trees, the remainder of the plantings be the responsibility of the developer as a stage one improvement; and to explore the potential for additional plantings around the rim or perimeter of the area between Block One Harvest Estates and Block One Harvest Estates Second Addition.

City Council Liaison LeTourneau suggested adding the recommendation that the plantings be the responsibility of the developer in the phase one improvement clause also.

Board Member Valentine accepted that as a friendly amendment.

Motion carried. Voting Yes: Chairperson Stodola, Board Member Valentine, Hiatt, Bernard, and Lewis. Voting No: None. Absent: Board Member Bentz.

5.03: Consider Landscape Plan Associated with a Site Plan Application for Parkview East; Case of PSD, LLC

City Planner Anderson presented the staff report.

Board Member Stodola asked if the developer could put shrubbery in along the perimeter.

City Planner Anderson replied that the City is trying to stay clear of shrubbery installations on the boulevard area for maintenance reasons.

Board Member Lewis inquired about the ratio of parking spaces to apartment units.

Community Development Director Gladhill stated the number of parking spaces are more than the City would require and there are tuck under garages in the apartment building. He stated that the applicant feels that they are meeting the parking needs from a marketing perspective. If the issue becomes a storm water question, the Board will be addressing it.

Board Member Lewis stated that the planting proposal seems unimaginative to him and talked about the back wall of the parking stalls. He indicated that there was no photometric plan included in the proposal.

City Planner Anderson agreed and stated that plans for internal landscaping and photometrics have not yet been received from the applicant.

Community Development Director Gladhill stated that currently the architectural plans don't match up with civil engineering plans.

Board Member Hiatt asked if an internal landscaping plan can be required as part of their proposal.

City Planner Anderson replied that it is not specifically required within the Design Framework but that it is reasonable to ask what the intentions are and the City will be reaching out to the applicant.

Board Member Hiatt stated that the City should make sure the applicant is aware that we are expecting an internal landscaping plan from them and suggested addressing the landscaping along the back wall of the garage.

Community Development Director Gladhill asked the Board if they wanted to continue the trend to prescribe the plantings in the boulevard area for a consistent look and the Board's desire with regard to reducing the parking lot size.

Board Member Hiatt stated that the Board could not take the number of parking spaces below the code for minimum parking spaces.

Board Member Lewis stated he was not proposing that the Board force the applicant down to the minimum number of parking spaces, but that it seemed to him that there was an inordinate amount of parking. He would like to know if the parking is appropriate for the size of the building and he would like to see more imaginative landscaping.

City Council Liaison LeTourneau stated he would like to know about any economic reasons for having that much parking.

City Planner Anderson confirmed the Board's general consensus to explore the question of parking and if there is an ability to shrink it and to offset it with landscaping.

Board Member Valentine stated that it would be useful to look at landscaping to provide drainage and a way to handle storm water management.

City Council Liaison LeTourneau stated his concern is any storm water that makes it back into the river and he would want to think about it before we asked them to re-engineer.

Board Member Valentine stated he was not talking about major re-design of their storm water system but trying to create more pervious area.

City Planner Anderson stated that the Staff Review Letter can be revised and general advisory comments added regarding the parking lot and the storm water plan and stating that the City feels this is an issue worth exploring. He stated that the Board is identifying a best management practice that could be implemented on this site.

Community Development Director Gladhill will forward the Board's comments on the aesthetic components of development plans to the Planning Commission.

City Council Liaison LeTourneau stated that the Board should be focused on the exterior development plan and that the garage issue does need to be addressed.

Board Member Lewis felt that it was important to look at the overall development plan.

City Council Liaison LeTourneau stated that the Board is making judgements without an internal concept.

Chairperson Stodola stated that the review process is new to the Board.

City Council Liaison LeTourneau stated that the feedback from the Board is very valuable.

City Planner Anderson stated he is looking for a recommendation with regard to the landscape plan. He summarized the Board's wishes to explore with the project developer the quantity of parking on site and if there are opportunities to shrink that and offset it with additional green space and to consider as an advisory comment opportunities within the two largest islands for additional plantings of some sort. He stated that Staff is looking for a recommendation to approve the landscape plan contingent on compliance with the Staff Review Letter and upon exploring the quantity of parking and additional plantings raised by the Board.

Board Member Lewis added the issue of taking some of trees that are being displaced in the current plan and placing them in the back of garages.

City Council Liaison LeTourneau asked about the tree species along Ramsey Parkway being consistent with what is on the North side of the parkway.

City Planner Anderson stated that the North side is a park and it will likely have a different look.

Motion by Board Member Hiatt and seconded by Board Member Valentine to support Staff's recommendation of Option 1 with exploration with the developer the quantity of parking on site and if there are opportunities to shrink that and offset it with additional green space; an advisory comment to consider opportunities within the two largest islands for additional plantings of some sort; and to look at relocating landscaping to the South side of the enclosed parking structure.

Motion carried. Voting Yes: Chairperson Stodola, Board Member Hiatt, Valentine, Bernard, and Lewis. Voting No: None. Absent: Board Member Bentz.

5.04 Review Landscape and Storm Water Management Plan Associated with a Site Plan Application for Sunwood Village: Case of Common Bond

City Planner Anderson presented the staff report.

Chairperson Stodola asked if they would be sharing the ramp.

City Planner Anderson replied that the access points off Sunwood and Veterans Drives will be shared.

Community Development Director Gladhill stated that there is on-site parking.

Board Member Lewis inquired if it was all surface parking.

Community Development Director Gladhill responded affirmatively.

Chairperson Stodola asked if there is enough parking.

Community Development Director Gladhill stated that the type of floor plan and income levels were considered. This project would likely be more one car households so it would meet the minimum of one stall per unit.

City Planner Anderson stated that there is visitor parking a half a block away that is not overnight parking for guests.

Board Member Lewis commented that this plan was well thought out and robust and that he was impressed. He doesn't have a problem with it and felt that it was more innovative and detailed than the previous proposal.

Community Development Director Gladhill stated that this project did receive $580,000 in funding from the Metropolitan Council.

Board Member Lewis stated that this is the kind of project and plan that should be looked at for the Eco-Star Award.

City Council Liaison LeTourneau spoke to the Staff regarding the contrast between the two cases and how the Board is appreciative of a complete picture. He asked how likely is it that the Board can ask developers to provide more complete plans in the future.

Community Development Director Gladhill stated that this is something the Staff strives to achieve. He spoke about project deadlines and said that historically the City has tried to give some contingent recommendations and revisit them. If the Board feels that the information in the last case was not enough, then Staff should know and then they can go back to the developer. He stated that if it is the Board's wish to have the kind of detail found in this project, Staff will make sure they provide it without delaying projects. Staff can work with code to provide the desired level of detail.

Board Member Valentine would like to support the Staff. He talked about the huge contrast between the cases. He felt that the Parkview East case was close to the line of not having complete plans. He would like to support the Staff to be able to go back to developers to get more fully developed plans.

City Council Liaison LeTourneau stated that he doesn't think it is the Board's intention to push developers away by setting too high a standard.

Community Development Director Gladhill stated that the Parkview East case warrants pursuing additional details and that the City can commit to a smooth process if they are provided with detail.

Chairperson Stodala asked about the timeframe of the projects.

Community Development Director Gladhill replied that the City tries to provide approval 45 days from the date the application is received. Some cases do take longer depending on complexity.

Motion by Board Member Bernard and seconded by Board Member Lewis to recommend approval of the Landscape Plan.

Motion carried. Voting Yes: Chairperson Stodola, Board Member Bernard, Lewis, Hiatt, and Valentine. Voting No: None. Absent: Board Member Bentz.

6. BOARD / STAFF INPUT

- **EAB Confirmed in Anoka County**

City Planner Anderson reported that emerald ash borer was confirmed in Anoka County in Ham Lake. He reported that the county will be put under an emergency quarantine and ultimately the county will be placed under a state and federal quarantine. The quarantine would limit the movement of ash wood products and all firewood outside the boundaries of the county without a compliance agreement.

- **Joint Meeting with Planning Commission April 20**

City Planner Anderson reported that the Board's regular meeting will now be held the third Monday of the month. He stated that the joint meeting with the Planning Commission will address this Board's involvement in land use review; a recap of Roberts Rules; and looking at the Natural Resources Chapter of the Comprehensive Plan.

- **Spring Recycling Day Event May 2**

City Planner Anderson stated that the recycling event will be held at the Public Works facility. He stated that there will be many of the same vendors as in the past, but the appliance vendor has changed. There is information on-line and in the May/June issue of the newsletter.

Board Member Hiatt inquired about putting information on the emerald ash borer quarantine on City's website.

City Planner Anderson replied that information on the quarantine was placed in the weekly update and that he will update the emerald ash borer section of the website.

City Council Liaison LeTourneau asked about the status of the quarantine.

City Planner Anderson replied that the emergency quarantine is now in affect but that there is a more drawn out process for the formal quarantine that will eventually be in place.

City Council Liaison LeTourneau stated that he wanted to go over Roberts Rules because he has been experiencing questions about the rules and how they apply to the City's meetings. He questioned if he has a voting position on this Board.

7. ADJOURNMENT

Motion by Board Member Hiattt and seconded by Board Member Valentine to adjourn the meeting.

The meeting adjourned at 8:04 p.m.

Respectfully submitted,

_____
Chris Anderson
City Planner

ATTEST:

_____
JoAnn Shaw
Community Development Secretary

Drafted by Denise Bosch
TimeSaver Off Site Secretarial, Inc.

Environmental Policy Board (EPB) **5. 1.**

Meeting Date: 04/20/2015

By: Chris Anderson, Community Development

Information

Title:

Review of Environmental Policy Board's Statement of Purpose

Purpose/Background:

As the Environmental Policy Board (EPB) developed their 2015-2016 Work Plan last year, a question arose regarding their purpose and whether the EBP was still relevant/necessary or if their work could be assumed by other advisory boards/commissions. Through a joint meeting with the City Council to review their Work Plan, the City Council and EPB collaboratively developed various purposes and strategies appropriate for the board, including involvement in the Comprehensive Plan update process and an active role in review of certain Land Use Applications. The purpose of this case is to provide the Planning Commission with an update on the EPB's newly approved Statement of Purpose and to provide an opportunity for the both advisory boards to discuss how the EPB's new role can benefit the overall review process.

Observations/Alternatives:

The EPB has begun reviewing Land Use Applications for Major Plats (four [4] or more lots with public infrastructure improvements), Site Plans (new development only, not for building expansions), Variances in Overlay Districts (Wild and Scenic, Critical Area, Shoreland, and Floodplain), and Comprehensive Plan Amendments. Their review focuses on natural resources, generally consisting of the Tree Preservation and Landscape Plans, but also allows the board to provide input or comments regarding opportunities for potential inclusion of Best Management Practices (BMPs) related to concepts such as alternative landscapes and stormwater. Staff is incorporating comments from the EPB's review into the Staff Review Letter that is generated for the applicant.

The EPB will also have an active role in the Comprehensive Plan update. Similar to other advisory boards/commissions, the EPB's involvement will be dependent on the topic. However, the EPB will take the lead on the Environmental Protection/Resource Management chapter.

Having the EPB take a more active part in review of certain Land Use Applications and the Comprehensive Plan also allows them to better gauge whether existing natural resource focused standards are achieving their intended goal. By closing this loop, the EPB will be better informed and in a better position to identify opportunities to recommend improvements and/or amendments to City Code.

Funding Source:

This case is being handled under regular staff duties.

Action:

No action is necessary, this is for informational purposes only.

Attachments

EPB's Statement of Purpose

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	04/16/2015 12:43 PM

Chris Anderson (Originator)	JoAnn Shaw	04/16/2015 12:50 PM
Form Started By: Chris Anderson		Started On: 04/15/2015 04:36 PM
Final Approval Date: 04/16/2015		

Statement of Purpose

The Environmental Policy Board (EPB) will promote environmental awareness and conservation practice by citizens by advising the City Council on policy issues, review of new development proposals, communication and education. Through careful review, the EPB will present multiple perspectives, ideas, and new technologies that promote both discovery and accountability.

Scope

Land Use Application Review

Beginning in 2015, the EPB will have an active role in reviewing various land use applications with respect to natural resources. The EPB's review will occur concurrently with other advisory boards/commissions to ensure compliance with State Statute 15.99 (generally known as the sixty [60] day rule). The EPB will review and provide recommendations regarding landscape plans, tree preservation plans, potential impacts to natural communities/areas as identified in the Natural Resources Inventory and Wetland Functions and Values report, and the potential for implementing Best Management Practices (BMPs).

The EPB will actively review land use applications for Major Plats (four [4] or more lots with public infrastructure improvements), Site Plans (new development only, not for building expansions), Variances in Overlay Districts (Wild and Scenic, Critical Area, Shoreland, and Floodplain), and Comprehensive Plan Amendments. In general, the EPB will not review applications for Conditional or Interim Use Permits, Minor Plats (three [3] or fewer lots), Administrative Subdivisions, Easement Vacations, Home Occupation Permits (unless a request has potential environmental hazards), or Variances (except for the Overlay Districts as noted above). Finally, the EPB will, on occasion, also review Zoning Amendments, dependent on the subject of a proposed/requested amendment.

The EPB's role in land use application review will be conducted for a trial period of one (1) year without amending City Code. At the conclusion of the trial period, the process will be reviewed by the Board (and City Council) for effectiveness and efficiency. If found to add value to the overall land use application review process, an ordinance amendment will be prepared for consideration by City Council.

Comprehensive Plan Review

The City has begun preparations for an update to its Comprehensive Plan and has noted a significant role the EPB will have in this process. This document will lay out the vision for the community through 2040 and sets the foundation for how the community will develop over time. Once adopted, the Comprehensive Plan likely will set in motion certain updates or amendments to the Zoning Ordinance and should any amendment or updates relate to natural resources, the EPB will be directly involved with that process as well.

The EPB will have a role in reviewing various portions of the Comprehensive Plan and will take the lead on the Natural Resources Chapter. While the update is not due until 2018, the EPB will begin a review of the existing Natural Resources Chapter early in 2015 and subsequently establish guiding principles and a framework for updating this Chapter. In 2016 (or early 2017), the EPB will complete a draft update to the Natural Resources Chapter.

Involvement with the Comprehensive Plan update, potential ordinance amendments, and review of land use applications will provide the EPB the opportunity to review existing standards to determine whether they are accomplishing their intended outcome. In essence, the EPB will be involved with establishing the vision and goals for natural resources, drafting standards to accomplish those goals, and applying those standards to proposed projects. This 'full circle' approach should provide the EPB with invaluable insight regarding natural resources standards and identify areas where improvement or amendments are necessary.

It will be the goal of the EPB to regularly (annually) review the relevant chapters of the Comprehensive Plan and the zoning tools in place to determine whether current policies and/or standards are adequate to accomplish the vision of the community.

Education

Ensuring that the residents of Ramsey are well informed on emerging and current issues is critical. Thus, education and community awareness have been identified as a key function of the EPB. The EPB will strive to keep the public informed of new and existing issues as well as what actions the City is taking to address those issues. The intent will not only be to keep the citizenry well informed but also to provide explanation and/or clarification on why certain standards are in place and how they are intended to address a specific issue. This will primarily be accomplished through mediums such as the newsletter and website, but may also include other outlets such as QCTV.

Emerging Issues

Staying informed on emerging issues and 'hot' topics is another critical role for the EPB. As the City's primary advisory board on natural resources, the EPB's role, at least in part, is to stay ahead of emerging issues facing the City by researching and understanding how it may impact the City. Depending on the topic and other factors, this could be accomplished through the use or establishment of a subcommittee comprised of no more than three (3) existing EPB members that would report back to the EPB as a whole during regularly scheduled meetings. Based on the EPB's review and analysis of an issue, the EPB will work to formulate options for consideration by the City Council as to how best to address or mitigate the issue. This could include, but is not necessarily limited to, focused educational pieces, recommendations for Best Management Practices (BMPs), ordinance amendments, and/or comprehensive plan amendments.

Review of Zoning Code

As new technologies and ideas develop, updates to City Code, and more specifically the Zoning & Subdivisions Chapter, may be warranted. The EPB will routinely, or as time permits, review sections of City Code to ensure they are still relevant and will accomplish the stated goals of the Comprehensive Plan relating to natural resources. If, through this review, the EPB identifies opportunities for improvement, outdated or conflicting standards, and/or sections that do not support or will not achieve the goals of the Comprehensive Plan, it will recommend pertinent amendments to the Planning Commission.

Environmental Policy Board (EPB) **5. 2.**

Meeting Date: 04/20/2015

By: Tim Gladhill, Community Development

Information

Title:

Review Development Review Process and Meeting Procedures

Purpose/Background:

The purpose of this case is to review the City's standard development review process for new development projects. General topics of review are anticipated to be the following:

1. Powers given to the City by Minnesota Statute Chapter 462
2. Structure of City Code pertaining to new development standards (City Code Chapter 117)
3. Meeting Format (decorum and order, Robert's Rules of Order)

Observations/Alternatives:

This intent of this case is to provide a broad overview of the development review process for the City. Attached to this case are a number of resources available to Commissioners. There is a significant amount of material attached to the case. The intent is not to review each detail of these materials, but to have a generalized discussion. The purpose is to provide a general understanding of the framework and identify where to find resources and standards when needed to apply to a particular project.

Generally speaking, the City derives its powers to create a Zoning and Subdivision Code through Minnesota Statute Chapter 462. Policies and procedures created in Ramsey City Code Chapter 117 must be consistent with this State Statute. Attached to this case are the pertinent sections of Minnesota Statute Chapter 462; however, discussion will focus on Ramsey's local City Code Chapter 117. Staff will not present individual details of the content of Chapter 117, rather the structure and how to quickly find process and standards to apply to cases in front of the Board.

Additionally, attached to this case are materials provided by the League of Minnesota Cities which serve as an excellent Quick Reference to assist in interpreting Minnesota Statutes and Rules.

Action:

No action is being request. The intent of this case is for discussion purposes only.

Attachments

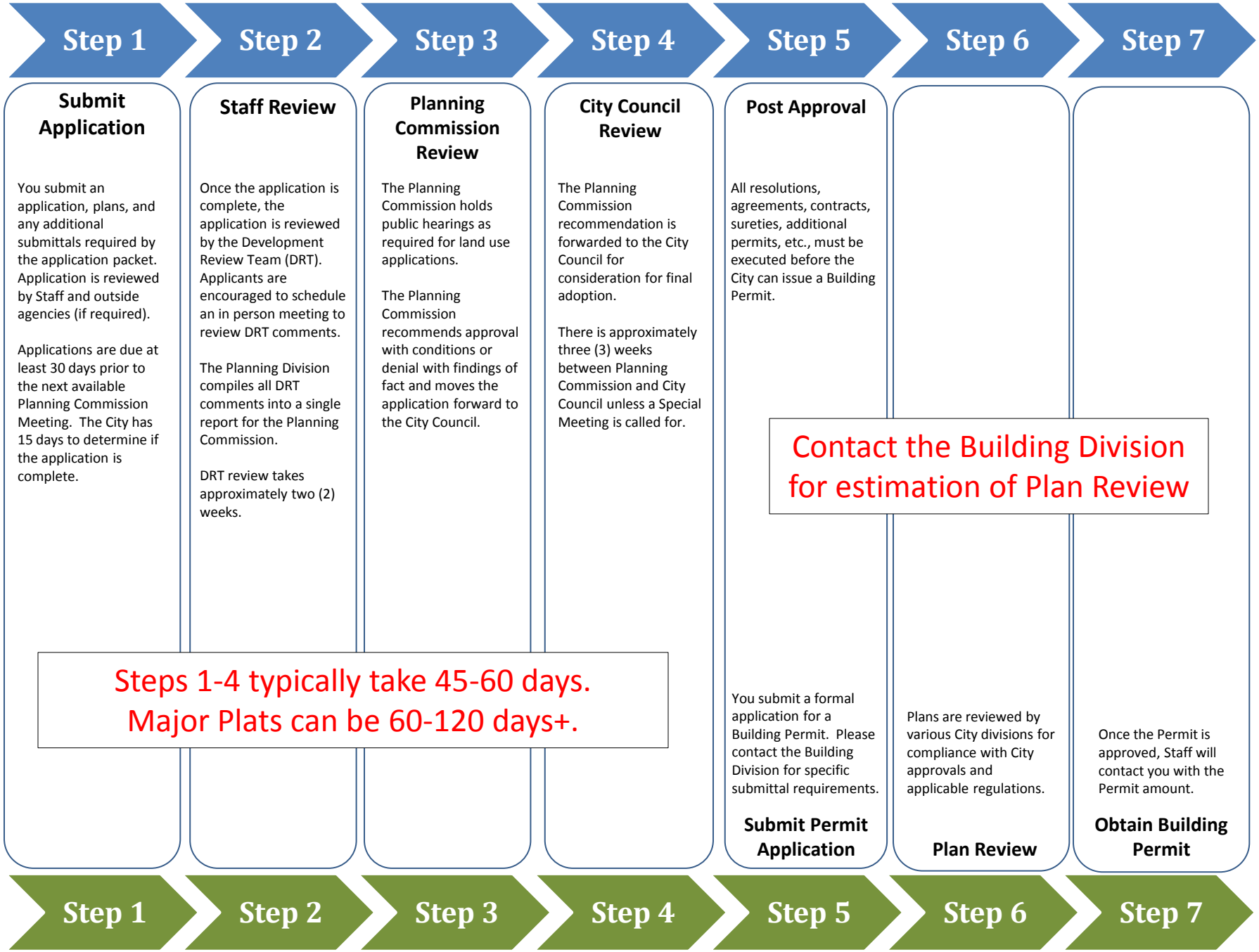
Review Process
Review Dates
Key Reminders
Planning and Zoning 101
Planning Commission Guide
Zoning Guide
Subdivision Guide
Introduction to Robert's Rules of Order
Administration for Boards and Commissions
Structure of Chapter 117

Zoning Statute

Subdivision Statute

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	04/16/2015 12:10 PM
Form Started By: Tim Gladhill		Started On: 04/16/2015 08:33 AM
Final Approval Date: 04/16/2015		


Step 1
Step 2
Step 3
Step 4
Step 5
Step 6
Step 7
Submit Application
You submit an application, plans, and any additional submittals required by the application packet. Application is reviewed by Staff and outside agencies (if required).
Applications are due at least 30 days prior to the next available Planning Commission Meeting. The City has 15 days to determine if the application is complete.
Staff Review
Once the application is complete, the application is reviewed by the Development Review Team (DRT). Applicants are encouraged to schedule an in person meeting to review DRT comments.
The Planning Division compiles all DRT comments into a single report for the Planning Commission.
DRT review takes approximately two (2) weeks.
Planning Commission Review
The Planning Commission holds public hearings as required for land use applications.
The Planning Commission recommends approval with conditions or denial with findings of fact and moves the application forward to the City Council.
City Council Review
The Planning Commission recommendation is forwarded to the City Council for consideration for final adoption.
There is approximately three (3) weeks between Planning Commission and City Council unless a Special Meeting is called for.
Post Approval
All resolutions, agreements, contracts, sureties, additional permits, etc., must be executed before the City can issue a Building Permit.
Contact the Building Division for estimation of Plan Review
Steps 1-4 typically take 45-60 days.
Major Plats can be 60-120 days+.
You submit a formal application for a Building Permit. Please contact the Building Division for specific submittal requirements.
Submit Permit Application
Plans are reviewed by various City divisions for compliance with City approvals and applicable regulations.
Plan Review
Once the Permit is approved, Staff will contact you with the Permit amount.
Obtain Building Permit
Step 1
Step 2
Step 3
Step 4
Step 5
Step 6
Step 7

Milestone	Date
Applications Due	First Thursday of Month
Development Review Meeting (City Staff)	Second Tuesday of Month
Environmental Policy Board Agenda	Second Friday of Month
Environmental Policy Board Meeting	Third Monday of Month
Planning Commission Agenda	Last Friday of Month
Planning Commission Meeting	First Thursday of Month

KEY REMINDERS

Agendas

Agendas are available online at www.cityoframsey.com/agendas-minutes. The City encourages you to utilize the online agenda system. If you desire a paper copy, you must inform City Staff in advance.

Agendas are published to an online software system known as AgendaQuick. You should access active agendas through this system. This is a very intuitive system that allows users to navigate through a series of hyper-links. Older agendas are then archived to the City's document repository known as Laser Fiche. This is a scanned, non-hyperlinked version of the agenda.

Planning Commission Agendas

When Planning Commission Agendas are published, you will be notified by City Staff via email that the agenda is available online.

City Code

The City Code is available online through a software system known as MuniCode. This is accessible through the City Code tab at www.cityoframsey.com.

Weekly Updates

The City Administrator publishes a Weekly Update to the City Council. You can sign up to be notified when these updates are available by contacting agenda@cityoframsey.com.

INFORMATION MEMO

Planning and Zoning 101

Learn the basics of why and how cities engage in land use planning and regulation, and why local officials should take time to carefully and conscientiously create land use laws. Tools discussed include comprehensive land use plans and zoning ordinances. Find a graphic to illustrating levels of city council discretion to decide at various stages in these processes.

RELEVANT LINKS:

I. Land use regulation

City governments provide many important services, but one function stands apart in its impact on future generations—the authority to engage in planning and zoning of the community. Comprehensive plans and zoning ordinances adopted and enforced by current officials affect the future layout and landscape of a city for many years to come. Whether it is the development or preservation of open space, or the redevelopment and revival of existing properties, what a community will look like dozens of years from now depends on decisions made today.

City planning and zoning took root in the early 20th century as a way to minimize conflicts between incompatible land uses and to plan more coherent development. People increasingly were living in built-up urbanized areas, and were suffering health impacts, included reduced life span, related to density and industrialization. In order to promote better health, safety and welfare, cities began regulating the use, size and location of structures on the land through zoning ordinances, and developing future plans for harmonious and healthy land use patterns.

II. Conflicts and lawsuits

People tend to feel strongly about land use in most communities, and it often goes both ways. Private property owners may feel they should be able to use their land as they see fit, without government telling them what they can and cannot do and where they can and cannot build.

On the other hand, residents may feel equally strongly about what others are doing nearby, to the extent that it may injure or disturb the peace and quiet of their neighborhood—hardly anyone wants to live next door to a major industrial operation for example.

145 University Ave. West
Saint Paul, MN 55103-2044
www.lmc.org
(651) 281-1200 or (800) 925-1122
3/1/2011

RELEVANT LINKS:

Euclid v. Ambler, 272 U.S. 365, 47 S. Ct. 114, 71, (1926).

Conflicts often lead to litigation, and land use regulation is no different. It was through litigation that the U.S. Supreme Court first upheld the constitutionality of zoning in the seminal 1926 decision, Euclid v. Ambler. And lawsuits continue to this day. The League of Minnesota Cities Insurance Trust (LMCIT) provides a unique land use insurance coverage that defends cities in land use lawsuits even when there is not a claim for damages. LMCIT members spend almost $3 million a year defending these lawsuits.

III. Making versus applying law

Land use litigation is costly, and often puts city officials in the difficult position of dealing with controversies that may displease people, no matter the outcome. City officials can help themselves through these controversies by educating themselves about land use regulation authority, and the process and procedures necessary to exercise it. An important consideration is how much authority the city has over any given land use decision. A city has much broader authority when creating its land use plans and ordinances than it does when administering the same. Consequently, it is important for a city official to be aware of what authority the city is acting under whenever making a particular decision.

When creating, adopting and amending land use plans and zoning ordinances, a city is making law by exercising so-called "legislative" authority. The council sits as a body of elected representatives to make plans and laws (ordinances) for the entire community to advance health, safety, and welfare. When acting legislatively, the council has broad discretion and will be afforded considerable deference by any reviewing court. In contrast, when applying existing plans and laws, a city council is exercising so-called "quasi-judicial" authority. The limited task is to determine the facts associated with a particular request, and then apply those facts to the relevant law. A city council has less discretion when acting quasi-judicially, and a reviewing court will examine whether the city council applied rules already in place to the facts before it.

See Appendix A: Pyramid of discretion.

It can be helpful to visualize this as a "pyramid of discretion" that shows cities have greater discretion when making land use decisions at the base of the triangle, and less as decision-making moves up the pyramid. Discretion is greatest when officials are creating local laws and the least when officials are administering those laws.

RELEVANT LINKS:

Land use disputes tend to arise most often when a city is applying laws, rather than when making law. But a city usually has less ability to address the root of the dispute when applying the law, than it would when making the law in the first instance. When acting legislatively, a city council can engage in far-ranging policy discussion, and sort through competing views about what plans and laws would be in the best interest of the city. Although not everyone may be on board with the outcome, the more public participation in the law-making stage, the better the understanding among the public of why the city has a particular plan or law in place.

IV. The comprehensive plan

Minn. Stat. § 462.351.
Minn. Stat. § 462.352, subd.5.

A comprehensive plan is document that sets forth a vision and the goals for the future of the city. State law defines a comprehensive plan as a compilation of policies, goals, standards and maps for guiding the physical, social and economic development, both public and private, of the municipality and its environment. The purpose is to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities.

The comprehensive plan provides the overall foundation for all land use regulation in city. State law encourages all cities to prepare and implement a comprehensive municipal plan. In addition, cities within the seven-county metro area are required to adopt comprehensive plans. Under state law, a city planning commission or department is tasked with the creation of the city's comprehensive plan.

Learn more about planning commissions in LMC information memo, *Planning Commission Guide.*

Planning is a professional field that encompasses a broad array of skills and techniques. In developing comprehensive plans, many cities use educated, certified land use professionals. But at its core, planning is a relatively straightforward three-step process:

- First, a community takes stock of where it is today.
- Second, the community generates a shared vision and goals for what the city will be like in the future.
- Third, but certainly not least, the city develops a set of specific strategies to achieve that vision over time.

There are many reasons cities create and adopt comprehensive plans. The planning process helps communities identify issues before they arise, stay ahead of trends in land use development and redevelopment, and anticipate and navigate change in populations and land use patterns.

RELEVANT LINKS:

A comprehensive plan also protects and makes the most out of public investment by ensuring that development coincides with investments in infrastructure. A comprehensive plan protects and promotes the value of private property. Finally, a comprehensive plan provides legal justification for a community's land-use decisions and ordinances.

The comprehensive plan itself can contain many different elements, and importantly, is not limited in scope to land use.

The land use plan lays out desired timing, location, design and density for future development, redevelopment, or preservation. In addition to a specific land use plan, comprehensive plans typically include plans for:

- Public or community facilities,
- Parks and open space,
- Housing,
- Natural resources,
- Transportation, and
- Infrastructure.

Most comprehensive plans include a variety of maps, including a land use plan map that indicates how the plan guides the future land use in different areas of the community.

Minn. Stat. § 462.355, subd. 2.

State law provides certain processes that cities must follow for comprehensive plan adoption and amendment. Prior to adoption of a comprehensive plan, the planning commission must hold at least one public hearing. A notice of the time, place, and purpose of the hearing must be published once in the official newspaper of the municipality, and at least 10 days before the day of the hearing. Unless otherwise provided in a city charter, the city council may, by resolution by a two-thirds vote of all of its members, adopt and amend the comprehensive plan or a portion of the plan. This means that on a five-member council, the comprehensive plan must receive at least four affirmative votes.

Minn. Stat. § 462.355, subd. 3.

After a city has adopted a comprehensive plan, all future amendments to the plan must be referred to the planning commission for review and comment. No plan amendment may be acted upon by the city council until it has received the recommendation of the planning commission, or until 60 days have elapsed from the date an amendment proposed by the city council has been submitted to the planning commission for its recommendation. In submitting review and comment to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the acceptance, rejection or the revision of the plan, and is not bound by planning commission recommendations.

RELEVANT LINKS:

Minn. Stat. § 473.175.

Minn. Stat. § 473.175, subd. 3.

Minn. Stat. § 462.355, subd. 1a.

Minn. Stat. § 462.356, subd. 1.

Minn. Stat. § 462.357.

For more on zoning see LMC information memo, *Zoning Guide for Cities.*

Cities in the seven-county metropolitan area must submit their comprehensive plan to the Metropolitan Council for review of its compatibility and conformity with the Council's regional system plans. When the Metropolitan Council determines that a city's comprehensive land use plan may have a substantial impact on, or contain a substantial departure from the Metropolitan Council's regional system plans, the Council has the statutory authority to require the city to conform to the Council's system plans. Cities within the seven-county metro area must review and update their plan, fiscal devices, and official controls at least every 10 years, and submit their revised plans to the Metropolitan Council for review.

Adopting and amending a comprehensive plan should be a dynamic public process with an eye towards implementation. Public participation ensures broad and ongoing support, brings a variety of information and perspectives, and instills a sense of community ownership in the plan. Once adopted, the city should actively consult the plan, periodically review it for consistency with current policies and practices, and recommend amendments whenever necessary. State law provides that comprehensive plans should be implemented through zoning and subdivision regulations, as well as coordination of public improvements and city services, and a capital improvements program.

V. The zoning ordinance

State law authorizes a city zoning ordinance as a tool to implement a comprehensive plan. Zoning is a method of establishing a land use pattern by regulating the way land is used by landowners. A zoning ordinance has area standards that regulate the size and location of buildings and structures in the city. Comprised of text and a map, most zoning ordinances also typically divide a city into various zoning districts, and set standards regulating uses in each district.

"Area standards" are rules that constrain the size and location of building and other structures. These typically include rules about building location and size, including height, width and bulk; and the percentage of lot space that may be occupied, and required yards or open spaces. Other standards might be performance standards such as related to density, parking or lighting.

Most zoning ordinances use a map to divide the community into zoning districts that establish similar compatible land uses. By creating zoning districts that separate uses, the city assures that adequate space is provide for each and that transition areas of buffers exist between distinct and incompatible uses. Examples may include, but are not limited to residential, commercial, industrial and agricultural. Larger cites will often have districts of varying density or intensity, such as single-family residential and multi-family residential, or light industrial and heavy industrial.

RELEVANT LINKS:

For each district, a zoning ordinance typically sets forth uses that are allowed in each district and the performance standards that must be met. The allowed uses often are set forth in lists or use tables. Allowed uses typically include permitted uses, accessory uses and conditional uses.

- A permitted use is generally the principal use of the land or building, and is allowed without a public a hearing.
- An accessory use is an allowed use located on the same lot, subordinate or accessory to permitted use.
- A conditional use is a use that is allowed after a public hearing only if the landowner meets the general and specific standards as set forth in the zoning ordinance. The more specific and clear the standards set forth in the ordinance, the easier it will be to administer.

Minn. Stat. §§ 462.357, subd. 2 – 5.

State law mandates a procedure for the adoption or amendment of zoning ordinances. The process includes:

- 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.
- A notice of the time, place and purpose of the hearing must be published in the official newspaper of the municipality at least 10 days prior to the day of the hearing. In addition, 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 10 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.
- Zoning ordinances must be adopted by a majority vote of all of the members of the council.

An important component of the zoning ordinance is the zoning ordinance map which assigns zoning districts to given parcels in the community. When the city changes the zoning district designation of a parcel from one zoning district to another, the process is termed rezoning, and must be done after a public hearing. Rezoning is an amendment to the actual zoning ordinance and the procedures for amendments to the zoning ordinance apply.

Minn. Stat. § 462.357, subd. 2.

State law, however, has a two-tiered voting requirement for rezoning of residential property. When property is rezoned from residential to commercial or industrial, a two-thirds majority of all members of the city council is required. For other rezoning decisions, a simple majority vote of all members is all that is required. Rezoning should be consistent with the comprehensive plan land use plan map.

RELEVANT LINKS:

VI. Results of careful planning

Keeping city plans and ordinances current can save money and headaches. Whether disagreements about the vision for future of city, or disputes between neighboring property owners, land use conflicts eventually confront most city officials. In creating comprehensive plans and adopting zoning ordinances, cities can proactively engage the public to create grounds rules for all.

Planning and zoning a community is a substantial undertaking that deserves thoughtful consideration. The more effort a city puts in at the front end by in adopting and amending plans and ordinances, the easier it will be to administer. Plans and ordinances adopted years ago may not be consistent with current vision, particularly in an economic downturn. A capital improvement program, in particular, should be regularly revisited for consistency with current conditions.

VII. Further assistance

LMCIT offers land use consultations, training and information to members. Contact the League's Loss Control Land Use Attorney for assistance. You can also learn more about land use issues in the land use section of the League's website.

Jed Burkett
651.281.1247
jburkett@lmc.org

League of Minnesota Cities.

Appendix A: The pyramid of discretion

The pyramid framework illustrates how much discretion the city has to make land use decisions based on the role it is playing.

INFORMATION MEMO

Planning Commission Guide

Learn ways the city may create, change or discontinue a city planning commission. Provides information on appointment of members, commission powers and duties, and meeting rules. Understand council and planning commission roles in creating a comprehensive plan for growth and development; how to implement it. Ways to participate in joint or multijurisdictional planning.

RELEVANT LINKS:

Minn. Stat. § 462.355.
Minn. Stat. § 473.175.

See MN Planning *"Under Construction: Tools and Techniques for Local Planning."*

Minn. Stat. § 462.352, subd 3. Minn. Stat. § 462.354, subd 1.

Minn. Stat. § 462.354.

Minn. Stat. § 410.12.
See Handbook, Chapter 4.

I. Creation of a city planning commission

State law encourages all cities to prepare and implement a comprehensive municipal plan. In addition, cities within the seven-county metro area are required to adopt comprehensive plans. Under state law, the city planning commission or planning department is delegated the authority to create the city's comprehensive plan.

A comprehensive plan is an expression of the community's vision for future growth and development. It is also a strategic map to reach that vision. Comprehensive planning is an important tool for cities to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities.

The first step in creating a comprehensive plan is the creation of a city planning agency. A planning agency can be either a planning commission or a planning department with an advisory planning commission. Planning commissions are by and large the most prevalent form of planning agencies in Minnesota. This memorandum discusses the commission form of a planning agency in depth. In most instances the laws related to planning commissions will apply to planning departments as well. However, cities interested in forming a planning department as their main planning agency, or who currently operate a planning department, should consult their city attorney for guidance.

The planning commission must be created by city ordinance or charter provision. When a planning commission is created by ordinance, a simple majority of councilmembers present is needed to adopt the ordinance. When a planning commission is created by charter, the statutory provisions for amending a charter must be followed. In drafting a planning commission ordinance or charter provision, a city will need to include provisions related to:

RELEVANT LINKS:

- Size or number of planning commission members.
- Terms of members.
- Organization and structure.
- Powers and duties.

A. Size or number of members

State statute does not specify how many commissioners a planning commission should have. As a result, the city ordinance should establish a reasonable number that reflects the needs of the city. An odd number is preferred to avoid tie-vote situations. Generally, cities appoint between five and nine individuals to serve as commission members.

Some considerations in choosing the number of commissioners include:

- Costs to the city in terms of salary (if a salary is paid).
- Availability of community members to serve or potential difficulty in recruiting members to serve full terms.

B. Terms of members

LMC Model Planning Commission Ordinance.

State statute does not set the length of terms for commission members, or impose limits on the number of successive terms that commission members may serve. As a result, city ordinance should establish the length of terms for commission members.

Some considerations in choosing the length of commission terms include:

- The substantial length of time necessary to conduct studies, draft, and adopt a comprehensive plan.
- The extensive body of knowledge that commission members must master to be effective planning commissioners.

These two considerations generally favor a longer, four-year term (rather than a two-year term), since rapid turnover of planning commissioners may hinder the city's efficiency in adopting, implementing, and enforcing its comprehensive plan.

Cities establishing a new planning commission for the first time, may wish to provide staggered terms initially. For example, one term may be for one year, another for two years, and another for three years, etc., with successors serving full four-year terms. Staggering terms in this manner will help ensure long-range continuity for the planning commission, and prevent a situation where all commission seats are vacant at once. This ensures that the planning commission is not without veteran members every four years.

RELEVANT LINKS:

Cities may establish consecutive term limits in their ordinance for commission members if desired. In addition, the city may wish to establish ordinance provisions for the removal of commission members, should it become necessary.

C. Organization and structure

See Section IV- *Planning Agency Meetings*.

See LMC Model Planning Commission Policy on Rules and Procedure.

The planning commission ordinance may establish an organizational form for the planning commission. For example, the ordinance may require a chairperson, acting chair, and secretary. In the alternative, the ordinance may enable the planning commission to suggest a policy (commonly known as bylaws), subject to council approval, that establishes a form of organization for its meetings. Placing organizational requirements in a policy adopted by council resolution, rather than in ordinance form, is generally preferred, because it provides a more flexible means to develop and amend policies.

D. Powers and duties

Minn. Stat. § 462.354.
See Section III – *Powers and Duties of the Planning Commission.*

State statutes prescribe several mandatory duties for the city planning commission. A city ordinance should be drafted to include these duties. In addition, state statute permits some optional duties to be assigned to the planning commission in the council's discretion. City ordinance should make it clear which of these optional duties are assigned to the planning commission. Since state statute contains optional duties, general ordinance language stating that commission duties "shall be as established by state statute" may cause confusion over duties and should be avoided. The powers and duties of the planning commission are discussed more extensively below.

II. Appointment of city planning commission members

A. Council as a whole may serve as the planning commission

Minn. Stat. § 462.354.

The city council may choose to designate itself as the city's planning commission by ordinance. However, most cities choose to establish a planning commission as a separate advisory body. This approach reduces the overall workload of the council, promotes citizen involvement, and allows commissioners to specialize in developing their body of knowledge concerning municipal planning.

RELEVANT LINKS:

B. Authority to appoint commissioners

State statute does not establish a process for the appointment of planning commissioners. As a result, the city ordinance or charter provisions should specify who has the authority to appoint commission members. Generally, appointing authority is vested in the city council as a whole.

In the alternative, cities may vest appointment power in the mayor exclusively, or may vest in the mayor the power to appoint commissioners, subject to council approval.

Some city charters may already contain provisions related to general appointments to city boards and commissions. In these cities, the charter provisions preempt local ordinance.

Cities also should consider adopting a policy for the recruitment and retention of commission members. The policy may be adopted as a resolution and need not be in ordinance form. Adopting the policy via resolution will allow more flexibility in developing and amending the ordinance. Although state law does not require the following, the policy may wish to include information regarding:

Sample Advertisement.
Sample City Application Forms.
Sample Interview Questions.

- The advertisement period for open positions.
- The submission of letters of interest and a statement of qualifications for board positions, or a city application form.
- An interview process prior to appointment.

C. Residency requirements

LMC information memo, *Residency Requirements for City Boards and Commissions.*

State statute does not require that planning commissioners reside within city limits. As a result, city ordinance should specify any residency requirements for serving on the planning commission. Frequently, cities limit eligibility for planning commission membership to city residents. Often, these cities feel that planning commissioners should live in the communities they plan for and create. Conversely, some cities may wish to allow non-residents to serve on planning commissions to increase the pool of eligible citizens. In addition, these cities may feel that property owners or business owners who do not reside within the city may still bring a valuable perspective to the planning commission.

D. Councilmembers and city staff serving on the planning commission

See Section II-A, *Council as a Whole May Serve as the Planning Commission.*

In cities where the council as a whole has decided not to serve as the planning commission, it may still be desirable for some councilmembers to sit on the planning commission or attend commission meetings.

RELEVANT LINKS:

Cities may establish in their ordinance or planning commission policy various ways for councilmembers to serve on the planning commission.

1. Full voting members

Local ordinance or commission policy may provide that one or two city councilmembers will participate as full voting members of the planning commission on all decisions, and for discussion and quorum purposes.

2. Non-voting members

Local ordinance or commission policy may provide that one or two city councilmembers will sit on the planning commission as non-voting members. Sometimes these members are called "council liaisons." When city ordinance creates non-voting members, to avoid confusion, city ordinance or the commission policy should specify:

- Whether the councilmembers will count for quorum purposes.
- Whether the councilmembers may participate in discussion on matters before the commission.
- Whether the councilmembers may hold an office on the commission, such as chairperson, secretary, etc.

3. City staff on planning commission

City ordinance or commission policy may require that the city attorney, city engineer or city administrator/clerk serve as an ex-officio, voting member or non-voting of the planning commission. This, however, does not appear to be a common practice. More commonly, city staff may attend planning commission meetings as needed to provide the planning commission with necessary advice and information.

E. Compensation

City ordinance or commission policy may provide that planning commission members may be compensated for their service, or that they serve on a strictly non-compensated volunteer basis. Generally, when compensation is provided, it is for a nominal amount on an annual or per meeting basis.

F. Conflicts of interest

See LMC information memo, *Official Conflict of Interest*. Part IV *Conflict of Interest in Non-Contractual Situations*. 56 Am. Jur. 2d Municipal Corporations § 142.

When appointing planning commissioners, cities should be aware that appointed officials are subject to the same concerns related to conflict of interest as city councilmembers. In the appointment process, the city council should attempt to discern if potential conflicts of interest exist.

RELEVANT LINKS:

Lenz v. Coon Creek Watershed, Dist., 278 Minn. 1, 153 NW 2d 209 (1967).
Township Bd. Of Lake Valley Township v Lewis, 305 Minn. 488, 234 N.W. 2d 815 (1975).

Particularly, conflicts where it is obvious that the potential appointee's own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter.

G. Removal of planning commission members

State statute does not dictate a process for removal of planning commission members before the expiration of their term. Local ordinance or commission policy should establish both criteria for removal and a process for removal.

III. Powers and duties of the planning commission

State statutes vest the planning commission with certain mandatory duties. In addition, state statute allows the city council to prescribe additional duties in local ordinance. In most instances, unless noted in statute or ordinance, the planning commission serves in an advisory capacity.

A. Preparing and recommending a comprehensive plan

The primary duty of a newly created planning agency is advising the city council on the preparation and adoption of a comprehensive plan for the city.

1. Purpose of comprehensive planning

Minn. Stat. § 462.351.
Minn. Stat. § 462.352, subd 5.
See MN Planning *"Under Construction: Tools and Techniques for Local Planning."*
Sample: Bethel Comprehensive Plan, City Population 502.
Sample: Chisago City Comprehensive Plan, City Population 4,307.
Sample: Minnetonka Comprehensive Plan, City Population 51,519.

In essence, a comprehensive plan is an expression of the community's vision for the future and a strategic map to reach that vision. Comprehensive planning is not mandatory in cities outside the seven- county metropolitan area. However, comprehensive planning is an important tool for cities to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities. In addition, planning can help:

- Preserve important natural resources, agricultural, and other open lands.
- Create the opportunity for residents to participate in guiding a community's future.
- Identify issues, stay ahead of trends, and accommodate change.
- Ensure that growth makes the community better, not just bigger.
- Foster sustainable economic development.

RELEVANT LINKS:

- Provide an opportunity to consider future implications of today's decisions.
- Protect property rights and values.
- Enable other public and private agencies to plan their activities in harmony with the municipality's plans.

For many cities creating a comprehensive plan is the first step in adopting zoning and subdivision regulations for the city. As a result, the comprehensive plan normally lays out a vision for the city's future land development and land use, dictating where growth should occur, the type of growth that is allowed in various areas of the city, and the density of such growth. However, a comprehensive plan also may include a:

Minn. Stat. § 462.352, subd. 8.
Minn. Stat. § 462.352, subd. 7.
Minn. Stat. § 462.352, subd. 8.
Minn. Stat. § 462.352, subd. 9.

- Public or Community Facilities Plan.
- Thoroughfare or Transportation Plan.
- Parks and Open Space Plan.
- Capital Improvement Program.

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

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 question the ordinances based upon the plan, unless the particular zoning provision appears to be without any rational basis, or clearly exceeds the city's regulatory authority.

Minn. Stat. § 462.357, subd 2. Minn. Stat. § 462.352, subd. 6. Minn. Stat. § 462.357, subd. 2 (c).

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 extensive, written finding of facts, stating the policy reasons that necessitate the ordinance's adoption.

2. Preparing the comprehensive plan

Minn. Stat. § 462.355, subd. 1.
Minn. Stat. § 462.355, subd. 2.

State statute vests authority for preparing the comprehensive plan in the planning commission. However, the city council also may propose the comprehensive municipal plan and amendments to the plan by a resolution submitted to the planning commission. When this occurs, the council may not adopt the recommended language until it has received a report from the planning commission or 60 days have elapsed.

RELEVANT LINKS:

The plan may be prepared and adopted in sections, each of which relates to a major subject of the plan, or to a major geographical section of the municipality.

Minn. Stat. § 462. 353, subd 2.

Cities are authorized to collect and analyze data; prepare maps, charts, tables, and other illustrations and displays; and conduct necessary studies when developing a comprehensive plan. Cities also may hire planning consultants and other experts to assist in drafting their plan.

a. Consultants and public input

(1) Professional planners

Minn. Stat. § 462.353, subd. 3.

Cities may hire planning consultants and other experts to assist in drafting their plan. Preparing a comprehensive plan is a large undertaking. While a planning commission can and should do most of the job, many communities have found they also need professional assistance from a professional planning consultant or a competent person on the staff of the city, county, regional development commission, or neighboring city.

See LMC information memo, *Competitive Bidding Requirements in Cities*.
American Institute of Certified Planners.

Cities may solicit a planner through a request for proposal. While state law does not require planners to be licensed or certified, many cities prefer to hire planners with professional certification from the American Institute of Certified Planners (AICP). In order to be certified by the AICP, planners need to pass an exam and meet continuing education requirements.

(2) Other consultants

Minn. Stat. § 462.355, subd 1.

In drafting the plan, the planning commission must consult with other city departments and agencies (for example, the city's economic development authority).

Minn. Stat. § 462.355, subd 1.

In drafting a comprehensive plan, the planning commission must consider the planning activities of adjacent units of government and other affected public agencies.

Minn. Stat. § 462. 353, subd 2.

The commissioner of natural resources must provide natural heritage data from the county biological survey, if available, to each city for use in the comprehensive plan.

b. Public input

Minn. Stat. § 462.355, subd 2.

Sample: Newsletter Article on Comprehensive Planning.

Cities are required to hold at least one public hearing prior to adopting a comprehensive plan. However, most cities find it helpful to hold a series of public meetings to educate residents about the comprehensive plan, and to solicit citizen input. Some cities even develop extensive public relations campaigns to create excitement about and compliance with the city's comprehensive planning activities.

RELEVANT LINKS:

c. President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land

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

Non-metropolitan cities located in certain counties 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") when adopting or amending a comprehensive plan.

Cities in Aitkin, Beltrami, Carlton, Cass, Clearwater, Cook, Crow Wing, Hubbard, Isanti, Itasca, Kanabec, Koochiching, Lake, Lake of the Woods, Milles Lacs, Pine, St Louis and Wadena counties are not subject to the T. Roosevelt Memorial Preservation Act, because they are currently classified as "greater than 80 percent area" counties. These counties still contain a significant portion of their presettlement wetland acreage. Cities outside the metro area, and not located in the counties listed above, must comply with the Act.

Cities subject to the T. Roosevelt Memorial Preservation Act are not required to engage in comprehensive planning, but when they do must consider the natural resource and open space preservation goals of the Act when adopting a comprehensive plan.

Minn. Stat. § 462.355.

Specifically, when preparing or recommending amendments to the comprehensive plan, the planning commission in these cities must consider adopting goals and objectives that will protect open space and the environment. Such consideration could potentially be documented in findings of fact.

Minn. Stat. § 462.357.

In addition, within three years of adopting a comprehensive plan, the city must consider adopting ordinances as part of the city's official controls that encourage the implementation of the goals and objectives of the T. Roosevelt Memorial Preservation Act. However, the city is not required to adopt any ordinances. Consideration of ordinance adoption could potentially be documented in findings of fact.

3. Recommending the comprehensive plan to council

Minn. Stat. § 462.355, subd 2.

Minn. Stat. § 462.354.

Once a comprehensive plan is drafted, the planning commission may submit the plan (or a portion of the plan) with its recommendation for adoption to the city council. Upon receipt of the recommended plan, the council may accept the plan, reject the plan, or recommend revisions to the planning commission. In submitting the comprehensive plan to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the acceptance, rejection, or revision of the plan, and is not bound by planning commission's recommendations.

RELEVANT LINKS:

4. Adopting the comprehensive plan

a. Seven-county metro area plan review: adjacent units of government

Minn. Stat. § 473.858, subd. 2.

Prior to plan adoption, cities within the seven-county metro area must submit their proposed comprehensive plans to adjacent governmental units and affected school districts for review and comment.

b. Seven-county metro area plan review: Metropolitan Council

Minn. Stat. § 473.175.

Metropolitan Council.

City of Lake Elmo v. Metropolitan Council, 685 N.W.2d 1 (Minn. 2004).

Cities in the seven-county metropolitan area must submit their comprehensive plan to the Metropolitan Council for review of its compatibility and conformity with the Council's regional system plans. When the Metropolitan Council determines that a city's comprehensive land use plan may have a substantial impact on or contain a substantial departure from the Metropolitan Council's regional system plans, the Council has the statutory authority to require the city to conform to the Council's system plans.

c. All cities: public hearing requirements

Minn. Stat. § 462.355, subd. 2.
See LMC information memo *Newspaper Publication.*

Prior to adoption of a comprehensive plan, the planning commission must hold at least one public hearing. A notice of the time, place, and purpose of the hearing must be published once in the official newspaper of the municipality at least ten days before the day of the hearing.

d. Vote requirements

Minn. Stat. § 462.355, subd. 3.

Unless otherwise provided in a city charter, the city council may, by resolution by a two-thirds vote of all of its members, adopt and amend the comprehensive plan or a portion of the plan. This means that on a five-member council, the comprehensive plan must receive at least four affirmative votes.

B. Implementing the plan

See Section V: *Changing the Structure or Abolishing the Planning Commission.*

Minn. Stat. § 462.356, subd 1.

Once a comprehensive plan is adopted, the planning commission continues to exist (unless dissolved using statutory procedures). Once a plan is adopted, the main task of the planning commission is to study and propose to the city council a reasonable and practicable means for putting the plan or section of the plan into effect.

Minn. Stat. § 462.356, subd 1.

Reasonable and practicable means for putting the plan into action may include:

RELEVANT LINKS:

See LMC information memo, *Zoning Guide for Cities*.

LMC information memo *Zoning Decisions.*

See Handbook, Chapter 14.

LMC information memo, *Subdivisions, Plats and Development Agreements.* See Handbook, Chapter 14.

- Zoning regulations.
- Regulations for the subdivision of land.
- An official map.
- A program for coordination of the normal public improvements and services of the municipality.
- A program for urban renewal, and
- A capital improvement program.

In submitting recommendations for effectuation of the comprehensive plan to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the adoption of any land use ordinances or city programs.

C. Role in periodic review of the comprehensive plan

Minn. Stat. § 462.355, subd 1.

After a city has adopted a comprehensive plan, the planning commission is responsible for periodically reviewing the plan and recommending amendments whenever necessary.

Minn. Stat. § 462.355, subd. 1a. Minn. Stat. § 473.121, subd. 2. Minn. Stat. § 473.864, subd. 2.

Cities within the seven-county metro area must review and update their plan, fiscal devices, and official controls at least every 10 years, and submit their revised plans to the Metropolitan Council for review.

D. Role in amending the comprehensive plan

Minn. Stat. § 462.355, subd. 3.

After a city has adopted a comprehensive plan, all future amendments to the plan must be referred to the planning commission for review and comment. No plan amendment may be acted upon by the city council until it has received the recommendation of the planning commission, or until 60 days have elapsed from the date an amendment proposed by the city council has been submitted to the planning commission for its recommendation.

In submitting review and comment to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the acceptance, rejection or the revision of the plan, and is not bound by planning commission recommendations.

1. Procedure for amending a comprehensive plan

See Section III-A-4 *Adopting the Comprehensive Plan.* Minn. Stat. § 462.355, subd. 3.

In amending a comprehensive plan, cities must follow the same procedure for adoption of a new plan. The planning commission must hold at least one public hearing on the amendment preceded by published notice.

Minn. Stat. § 473.175. Metropolitan Council.

Cities in the seven-county metro area must submit all amendments to their comprehensive plans to the Metropolitan Council for review.

RELEVANT LINKS:

Minn. Stat. § 462.355, subd. 3.

Unless otherwise provided by charter, all amendments to the comprehensive plan must be approved by a two-thirds vote of all of its members.

E. Role in purchase and sale of real property

Minn. Stat. § 462.356, subd. 2. *Lerner v. City of Minneapolis*, 284 Minn. 46, 169 N.W.2d 380 (Minn. 1969). A.G. Op. 63-b-24 (Dec. 9, 1971). A.G. Op. 161-b, (Aug. 8, 1966).
See LMC information memo *Purchase and Sale of Real Property*.

After a comprehensive municipal plan or section of a plan has been recommended by the planning commission and a copy filed with the city council, the planning commission must be given a chance to review and comment on all proposed public acquisitions or disposal of real property within the city. This includes acquisitions or disposal by the city, but also:

- Any special district or agency in the city.
- Any other political subdivision (public schools or the county for example) having jurisdiction within the city.

This provision would appear to apply even when the comprehensive plan has not yet been adopted by council, so long as the planning commission has filed its recommended plan with the city.

After review, the planning commission must report in writing its findings to compliance of the proposed acquisition or to disposal of real estate with the comprehensive municipal plan.

The purpose of this requirement is to allow review of overall municipal development by the city planning commission, the authority charged with developing and reviewing the comprehensive land use plan for the municipality.

The planning commission has 45 days to report on the proposal, unless the city council designates a shorter or longer period for review. If the planning commission does not report within the required timeline, this statutory provision is considered waived by the commission.

In addition, a city council may by resolution adopted by two-thirds vote dispense with this requirement when in its judgment it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.

Lerner v. City of Minneapolis, 284 Minn. 46, 169 N.W.2d 380 (Minn. 1969). A.G. Op. 161-b (Aug. 8, 1966).

In submitting comments and review, the planning commission serves in a strictly advisory role. The city council ultimately decides on the purchase or disposal of real estate and is not bound by planning commission recommendations.

RELEVANT LINKS:

F. Role in capital improvements program

Minn. Stat. § 462.356, subd 2.

After a comprehensive municipal plan or section of a plan has been recommended by the planning commission and a copy filed with the city council, the planning commission must be given a chance to review and comment on all proposed public capital improvements within the city. This includes not only capital improvements built by the city, but also by:

- Any special district or agency in the city.
- Any other political subdivision having jurisdiction within the city.

The planning commission must report in writing to the city council, other special district or agency, or political subdivision concerned, its findings to compliance of the proposed capital improvement with the comprehensive municipal plan.

Minn. Stat. § 475.521, subd. 1 (b). Minn. Stat. § 373.40, subd. 1(b).

The term capital improvement is not defined within the comprehensive planning statute. However, other statutes define a capital improvement as "betterment of public lands, buildings or other improvements."

The planning commission has 45 days to report on the proposal, unless the city council designates a shorter or longer period for review. If the planning commission does not report within the required timeline, this statutory provision is considered waived by the commission.

A city council may by resolution adopted by two-thirds vote dispense with this requirement when in its judgment it finds that the proposed capital improvement has no relationship to the comprehensive municipal plan.

Lerner v. City of Minneapolis, 284 Minn. 46, 169 N.W.2d 380 (Minn. 1969). A.G. Op. 161-b (Aug. 8, 1966).

In submitting comments and review, the planning commission serves in a strictly advisory role. The city council ultimately decides on capital improvements for the city and is not bound by planning commission recommendations.

G. Role in zoning ordinance adoption and amendment

1. Zoning ordinance adoption

Minn. Stat. § 462.357, subd 2. Minn. Stat. § 462.352, subd 6.

Minn. Stat. § 462.357, subd 2 (c).
For more information see LMC information memo, *Zoning Decisions.*

At any time after the adoption of a comprehensive plan or simply a portion of the plan creating a land use plan, the planning commission, for the purpose of carrying out the policies and goals of the land use plan, may prepare a proposed zoning ordinance (including a zoning map) and submit it to the city council with its recommendations for adoption. If a city adopts only a land use plan, the plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the land use plan.

RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 2.

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

Minn. Stat. § 462.357, subd 3.

LMC information memo, *Newspaper Publication.*

See LMC information memo, *Zoning Guide for Cities.*

Minn. Stat. § 462.357, subd 4.

For more information see LMC information memo *Zoning Decisions.*

See Section IV- B *on the 60-Day Rule*.

The city council may adopt a zoning ordinance by a majority vote of all its members.

In adopting an ordinance, 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.

Prior to the adoption of a zoning ordinance, the city council or planning commission must hold a public hearing. 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. When an amendment 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 wholly or partly within 350 feet of the property to which the amendment relates.

The drafting and adoption of a city zoning ordinance is covered in detail in the LMC Information Memo, Zoning Guide for Cities.

2. Zoning ordinance amendment

An amendment to a zoning ordinance, including a rezoning, may be initiated by the governing body, the planning commission, or by petition of affected property owners as defined in the zoning ordinance. An amendment not initiated by the planning commission must be referred to the planning commission for study and report. The city council may not act on the proposed amendment (either by adopting or denying the amendment) until the planning commission has made its recommendations or 60 days have elapsed from the date of reference of the amendment without a report by the planning commission.

It is important to note that while state statute provides the planning commission 60 days to respond to proposals, the 60-Day Rule (an entirely different rule with 60 days in the title) still applies to ordinance amendments brought by application or petition of property owners. As a result, internal procedures should be developed to coordinate planning commission review that does not violate the 60-Day Rule automatic approval statute.

In generating a report on a proposed zoning amendment, the planning commission serves in a strictly advisory role. The city council ultimately decides on the amendment for the city and is not bound by planning commission recommendations.

RELEVANT LINKS:

Minn. Stat. § 462.357, subd 3.

Prior to the adoption of a zoning ordinance amendment, a public hearing must be held. Under state statute, the city council or the planning commission may conduct the hearing. Cities may adopt an ordinance or policy directing the planning commission to conduct these hearings when necessary.

Minn. Stat. § 462.357, subd. 2.

The city council may adopt and amend a zoning ordinance by a majority vote of all its members. However, the adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body.

3. Cities of the first class, additional duties for planning commissions

Minn. Stat. § 462.357, subd. 5.

First class cities must follow very detailed procedures in state statute for zoning amendments that change residential zoning classifications to new commercial or industrial classifications. Planning commissions in cities of the first class must assist the city in these circumstances by conducting studies and developing reports. Charter cities of the first class may opt to follow a different procedure via a city charter provision.

H. Conditional use permits

Minn. Stat. § 462.3595.

See LMC information memo, *Zoning Guide for Cities*.

Some city zoning ordinances provide that some uses within a zoning district will only be allowed upon the granting of a conditional use permit. Conditional use permits are discussed in detail in the LMC Information Memo Zoning Guide for Cities. State statute allows city councils to delegate via ordinance their authority to review and approve conditional use permits to a planning commission or other designated authority.

See LMC information memos *Zoning Guide for Cities*; *Land Use Conditional Use Permits.*

Planning commissions charged with reviewing applications for conditional use permits must follow fairly strict legal standards for their review. Specifically, the city must follow the requirements of the zoning ordinance it has adopted.

If a conditional use permit application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial should all relate to the applicant's failure to meet standards established in the ordinance. The standard of review for conditional use permits is discussed in depth in the LMC Information Memo Zoning Guide for Cities.

RELEVANT LINKS:

I. Role in adoption of an official map

Minn. Stat. § 462.359, subd. 2.
See Handbook, Chapter 11.
Minn. Stat. § 462.352, subd. 7, 8.

After the planning commission has adopted a comprehensive plan containing a major thoroughfare plan and a community facilities plan or simply these portions of their comprehensive plan, it may adopt an official map. The official map is not the zoning map required for adoption of a zoning ordinance. In addition, it is not the map adopted as part of the comprehensive planning process. Instead, the official map is a unique map designed to help carry out the policies of the major thoroughfare plan and community facilities plan. The official map can cover the entire city or any portion of the city.

The purpose of an official map is to identify land needed for future public uses, such as streets, aviation purposes or other necessary public facilities, such as libraries, city halls, parks, etc. Identification on an official map of land needed for future public uses permits both the public and private property owners to adjust their building plans equitably and conveniently before investments are made that will make adjustments difficult to accomplish.

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 the use of lands 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.

See LMC information memo, *Purchase and Sale of Real Property*.

Following the adoption and filing of an official map, the issuance of building permits under the MN State Building Code are subject to its provisions. If any building is built without a building permit or in violation of permit conditions, a municipality need not compensate a landowner whose building may be destroyed if a street is widened. In other words, while the official map does not give any interest in land, it does authorize the municipality to acquire such interests in the future without having to pay compensation for buildings that are erected in violation of the official map.

J. Board of zoning adjustment and appeals

Minn. Stat. § 462.354, subd. 2.

A city that has adopted a zoning ordinance or official map should provide for a Board of Zoning Adjustment and Appeals (BZA). By ordinance, a city may delegate the role of a BZA to the city planning commission or a committee of the planning commission. The duties of a BZA include:

RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 6 (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.

Minn. Stat. § 462.357, subd. 6 (2).

- To hear requests for variances from a city zoning ordinance.

Minn. Stat. § 462.359, subd. 4.

- To hear and decide appeals when a land use, zoning permit or approval for a building is denied based upon the city's official map.

Minn. Stat. § 462.354, subd. 2.

- Such other duties as the city council may direct.

Minn. Stat. § 462.354, subd. 2.

In any city where the council does not serve as the BZA, the city council may, except as otherwise provided by charter, provide by ordinance that the decisions of the BZA on matters within its jurisdiction are:

- Final subject only to judicial review; or
- Final subject to appeal to the council and the right of later judicial review; or
- Advisory to the council.

Minn. Stat. § 462.354, subd. 2.

The ordinance creating the BZA should specify at minimum:

- The time and manner by which hearings by the BZA shall be held, including provisions related to notice to interested parties.
- Rules for the conduct of proceedings before the BZA, including provisions for the giving of oaths to witnesses and the filing of written briefs by the parties.

Minn. Stat. § 462.354, subd. 2.

In cities where the planning commission does not act as the BZA, the BZA may not make a decision on an appeal or petition until the planning commission, or a representative authorized by it, has had reasonable opportunity, not to exceed 60 days, to review and report to the BZA about the appeal or petition.

It is important to note that while state statute provides the planning commission 60 days to respond to appeals or petitions, the 60-Day Rule (an entirely different rule with 60 days in the title) may still apply to some matters brought before the BZA (for example, requests for variances) by application or petition of property owners. As a result, internal procedures should be developed to coordinate planning commission review that does not violate the 60-Day Rule automatic approval statute.

See information memos, *Zoning Guide for Cities* and *Land Use Variances*.

Planning commissions charged with reviewing applications for variances must follow fairly strict legal standards for their review. Specifically, the city must follow the requirements of the state statute related to whether enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner "practical difficulties." The standards for review in granting variances are discussed in depth in the LMC Information Memo Zoning Guide for Cities.

RELEVANT LINKS:

K. Role in review of subdivision applications

Minn. Stat. § 462.358, subd. 3(b).

See Handbook, Chapter 11. See also LMC information memo, *Subdivisions, Plats, and Development Agreements.*

Absent a charter provision to the contrary, in cities that have adopted a subdivision ordinance, the city council may by ordinance delegate the authority to review subdivision proposals to the planning commission. However, final approval or disapproval of a subdivision application must be the decision of the city council.

See LMC information memo *Subdivisions, Plats, and Development Agreements*.

Planning commissions charged with reviewing subdivision applications must follow fairly strict legal standards for their review. Specifically, the city must follow the requirements of the subdivision ordinance it has adopted. If a subdivision 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. The standard of review for subdivision applications is discussed in depth an LMC information memo on subdivisions, plats and development agreements.

IV. Planning commission meetings

See the LMC information memo, *Meetings of City Councils.*

Planning commission meetings are governed by the same statutes as regular city council meetings. For example, planning commission meetings are subject to the Open Meeting Law and subject to the records retention laws.

A. Open Meeting Law

See LMC information memo, *Meetings of City Councils.* Minn. Stat. § 13D.01.

Rupp v. Mayasich, 533 N.W.2d 893 (Minn. Ct. App. 1995).

The Minnesota Open Meeting Law generally requires that all meetings of public bodies be open to the public. This presumption of openness serves three basic purposes:

- To prohibit actions from being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning decisions of public bodies or to detect improper influences.
- To ensure the public's right to be informed.
- To afford the public an opportunity to present its views to the public body.

Minn. Stat. § 13D.01, subd. 1.

The Open Meeting Law applies to all governing bodies of any school district, unorganized territory, county, city, town or other public body, and to any committee, sub-committee, board, department or commission of a public body. Thus, the law applies to meetings of all city planning commissions and any city or commission advisory boards or committees.

Minn. Stat. § 13D.01, subd. 6.

At least one copy of the materials made available to the planning commission at or before the meeting must also be made available for inspection by the public. However, this does not apply to not-public data or materials relating to the agenda items of a closed meeting.

RELEVANT LINKS:

LMC information memo *Meetings of City Councils.*

The Open Meeting Law also contains some specific notice and record-keeping requirements which are discussed in detail in the LMC Information Memo Meetings of City Councils.

B. The 60-Day Rule

For more information on the 60-Day Rule see the LMC information memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*.

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).

Cities 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."

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.

All planning commission review of zoning related applications must be completed in a manner that allows the city to complete its entire approval process within the timeframe dictated by the 60-Day Rule. Local ordinance should not establish timeframes for planning commission review of applications or appeal of commission decisions that do not allow the city to comply with the 60-Day 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 related to zoning." The courts have been rather expansive in their interpretation of the phrase "related to zoning." It is useful to look at the precise wording of the statute to see it 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."

The language covers requests for rezonings, conditional use permits and variances. Courts have also found the law applies 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.

RELEVANT LINKS:

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."

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 the approval sought on the first page. The city may reject a request not on the city's form as incomplete, if the request does not include information required by the city. The request also is 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).
Minn. Stat. § 15.99, subd. 2(c).
Hans Hagen Homes v City of Minnetrista, 728 NW 2d 536 (Minn. 2007). *Johnson v Cook County*, 786 N.W.2d 291 (Minn. 2010).

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(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.

RELEVANT LINKS:

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.
- 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's 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 any additional extensions must be negotiated with and agreed upon by 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 also may 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.

RELEVANT LINKS:

Minn. Stat. § 15.99, subd. 2(a), (e).

See LMC information memo, *The 60 Day Rule: Minnesota's Automatic Approval Statute.*

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.

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.

C. Commission policies on order and meeting structure

See LMC Model Planning Commission Policy on Rules and Procedure.

See LMC information memo, *Meetings of City Councils*.

See LMC information memo, *Public Hearings*.

City ordinance may provide for the adoption, subject to the city council's approval, of planning commission policies related to meeting rules of order and procedure (sometimes referred to as bylaws). Such policies should be adopted by resolution, not ordinance. A policy setting forth rules of procedure can help the planning commission run its meetings, prepare agendas, call special meetings and handle public comment appropriately. Because planning commissions often conduct public hearings, the policy should prescribe a procedure for conducting orderly public hearings.

The policy should establish procedures related to:

- Meeting time and place, including provisions for calling special meetings.
- Quorum requirements.
- Voting and making official recommendations.
- Order of proceedings for both regular meetings and public hearings.
- Creating, ordering and submitting items to an official agenda.
- Minute taking and record keeping requirements.
- Appointment and duties of officers, such as chairperson.
- Filling vacancies.
- Creation of management of subcommittees.

D. Minutes and official records

Cities, including city planning commissions, are required by law to create an accurate record of their activities. In addition, cities, including city planning commissions, must retain government records in accordance with the records retention laws.

RELEVANT LINKS:

1. Minutes and records

See Handbook, Chapter 27. Minn. Stat. § 15.17, subds. 1, 2.
See LMC information memo, *Meetings of City Councils* for more information on minutes.

State law requires all officers and agencies of the state, including planning commissions in statutory and home-rule charter cities, to make and preserve all records necessary for a full and accurate knowledge of their official activities. These records include books, papers, letters, contracts, documents, maps, plans and other items. State statutes do not explicitly require planning commissions to take minutes of their meetings, but such minutes may be necessary to make a full and accurate record of the commission's proceedings.

See LMC information memo, *Zoning Guide,* Section V-C-2

Minutes are further recommended because the actions of planning commissions and land use decisions, in general, are frequently subject to court review. When a city land use decision is reviewed by a court of law, the court requires cities to document the basis for their land use decisions in written, contemporaneous findings of fact.

Planning commission bylaws or city policy should set the requirements for meeting minute approval and content. For example, a policy may require the minutes to reflect all motions and resolutions and votes taken by the commission. Planning commission policy also may assign responsibility for minute taking to the commission secretary or to a city staff member.

2. Findings of fact

LMC information memo *Taking the Mystery out of Findings of Fact.*

In addition to minutes, whenever the planning commission makes an official recommendation related to a matter referred to it by council or on a land use application submitted to the city (for example, a conditional use permit, zoning amendment, variance or subdivision application), it should make written findings of fact related to the recommendation.

Findings of fact from the planning commission serve three important roles:

- They articulate to the city council the planning commission's recommendations on issues before the commission, including its basis for making its recommendations.
- They communicate to a land use applicant the commission's approval of a project or identify for the applicant disapproval and the reasons for such disapproval.
- They support the city's ultimate decision on the issue should the city's decision be challenged in court.

See Sample: Findings of Fact, City of Burnsville.
LMC information memos: *Taking the Mystery out of Findings of Fact*; *Zoning Decisions.*

In land use cases, Minnesota courts are looking for a sufficient statement of the reasons given by the city to grant or deny an application request. The role of the court is to examine the city's reasons and ascertain whether the record before the city council supports them. The reasons given by the city must be legally sufficient and have a factual basis.

RELEVANT LINKS:

Minnesota case law and statutory law demand that the reasons for a city's decision on a land use case be articulated in the official record. Written findings of fact, or "reasons," and conclusions of law are required whenever an application is denied. In addition, written findings of fact and conclusions of law are strongly recommended whenever a decision or recommendation related to a land use decision is made.

Findings of fact and creating accurate records are discussed at length in the LMC Information Memo "Zoning Guide for Cities."

3. Records retention requirements

Minn. Stat. § 15.17.
Minn. Stat. § 138.225.
Minn. Stat. §§ 138.161-.21.
A.G. Op. 851F (Feb. 5, 1973).
See Handbook, Chapter 27.

State law limits the ability of cities, including city planning commissions, to dispose of or destroy city records. Cities must retain records that they receive or create according to a records retention schedule. It is a crime to destroy such records without statutory authority.

Maintaining adequate records is also vital for defending the city's land use decisions in a court of law.

See LMC Information Memos, *Taking the Mystery out of Findings of Fact;* Land Use Findings of Fact: Elected Officials as Policy makers and *Zoning Decisions.* Sample: Findings of Fact: City of Burnsville.

V. Changing the structure or abolishing the planning commission

A. Abolishing the planning commission

Minn. Stat. § 462.354, subd. 1.

State statute provides that planning commissions created by city ordinance may be abolished by two-thirds vote of all the members of the governing body. Planning commissions created by city charter can be abolished by following the statutory provisions for amending a city charter.

Minn. Stat. § 410.12.
See Handbook, Chapter 4.

Cities considering abolishing their planning commission should seek the advice of their city attorney. While state statute allows cities to abolish their planning commission, state statute also vests planning commissions with mandatory duties related to:

Minn. Stat. § 462.355, subd. 3.
Minn. Stat. § 462.356, subd. 2.
Minn. Stat. § 462.357, subd. 4.

- Reviewing amendments to the comprehensive plan.
- Reviewing purchase and sale of public property and capital improvement projects.
- Reviewing zoning ordinance amendments.

RELEVANT LINKS:

Because state statute vests planning commissions with these mandatory duties, it is unclear how a city that has abolished its planning commission would proceed under state statute with necessary amendments to official controls, purchase and sale of property and capital improvements.

B. Modifying the planning agency

"Counting the Votes on Council Actions, Part 1 and Part 2," Minnesota Cities (May and June-July 2006, p. 19).
Minn. Stat. § 410.12.

Planning commissions created by city ordinance may be modified by an ordinance amendment (for example, to change a from a five to seven member commission). The ordinance must be approved by a simple majority of city council members present at the meeting. Planning commissions created by city charter can only be modified by a charter amendment.

VI. Joint or multijurisdictional planning

State statutes create multiple means for cities to collaborate with other governmental bodies, including other cities, counties and towns, on comprehensive land use planning.

A. Community-Based planning

Minn. Stat. § 462.3535, subd. 1, 2.

Minn. Stat. § 462.3535, subd. 4.

Cities are encouraged, but not required, to prepare and implement a community-based comprehensive municipal plan. This language is very similar to comprehensive planning as discussed above, but is not the same. Community-based comprehensive municipal plans contain an element of orderly annexation and/or boundary adjustment planning along with traditional land use and community planning.

In cities that opt for community-based comprehensive municipal plans, the city must coordinate its plan with the plans, if any, of the county and the city's neighbors. Cooperation is designed to:

- Prevent the plan from having an adverse impact on other jurisdictions.
- Complement the plans of other jurisdictions.

In cities that opt for community-based comprehensive municipal plans, the city must prepare its plan to be incorporated into the county's community-based comprehensive plan, if the county is preparing or has prepared one, and must otherwise assist and cooperate with the county in its community-based planning.

Community-based comprehensive municipal plans do not appear to be common. Cities interested in this option should consult their city attorney or a planning consultant.

RELEVANT LINKS:

B. Joint planning boards for unincorporated territory within two miles of the city limits

Minn. Stat. § 462.3585.

If a city has unincorporated area within two miles of the corporate limits of a city, a joint planning board may be formed. A city council or a county board or a town board may require the establishment of a joint planning board on their own initiative by passing a resolution requiring a board to be established. The resolution, once passed, must be filed with the county auditor.

The city, county and town must agree on the number of board members for the joint board. However, each participating governmental unit must have an equal number of members. The members must be appointed from the governing bodies of the city, county and town.

Once established, the board is authorized to:

Minn. Stat. § 462.3585.

- Serve as the governing body and board of appeals and adjustments within the two-mile area.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.354, subd. 1.

- Create a planning agency.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.354, subd. 2.

- Create a BZA.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.355.

- Adopt a comprehensive plan.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.355, subd. 4.

- Adopt interim ordinances.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.357.

- Adopt zoning ordinances.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.358.

- Adopt subdivision regulations.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.359.

- Adopt an official map.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.3595.

- Provide for and issue conditional use permits.

Minn. Stat. § 462.3585.
Minn. Stat. § 462.362.

- Enforce official controls and prescribe penalties for violations.

Minn. Stat. § 462.3585.

- Adopt and enforce the State Fire Code.

The city must provide staff for the preparation and administration of land use controls unless otherwise agreed by the governmental units composing the board.

RELEVANT LINKS:

Minn. Stat. § 462.358, subd. 1a.

If a city has already opted to extend the application of its subdivision regulations to unincorporated territory located within two miles of its limits before the creation of a joint board, the subdivision regulations which the city has extended will apply until the joint board adopts subdivision regulations.

C. Regional planning boards

Minn. Stat. § 462.371.
See Handbook, Chapter 17.
See LMC information memo *Liability Coverage for Joint Powers Agreements*.

Any two or more counties, cities or towns may enter into a joint powers agreement to conduct regional planning activities. The participating entities do not need to be contiguous.

Minn. Stat. § 462.372.

The joint powers agreement creating a regional planning agency should:

- Establish a board composed of members selected from the governing bodies of the participating governmental units.
- Set the number of board members.
- Establish terms of office for board members.
- Establish a method for member appointment and removal.
- Create a framework for adoption of a regional plan, and provide timelines for review and comment on the plan by participating governmental units.
- Create a framework for review of participating governmental unit comprehensive plans and a timeline for comment on such plans by the regional board.

Minn. Stat. § 462.373, subd. 1.

The regional planning board may hire a planning director and staff, including consultants, and appoint an advisory planning commission.

Minn. Stat. § 462.373, subd. 2.

The regional planning board may prepare a plan for the development of the region. However, the plan may not be adopted by the regional planning board until it has been referred to the governing bodies of all participating units for their review and their recommendation.

Minn. Stat. § 462.374.

Once the plan has been prepared, participating governmental units within the region may adopt all or any portion of the regional development plan.

Minn. Stat. § 462.375.

When a regional plan is adopted, the regional planning agency must send a copy of the plan and any future revisions to the commissioner of employment and economic development, to the governing bodies of cooperating governmental units, and to the planning agencies in contiguous areas.

RELEVANT LINKS:

D. Regional development commissions and comprehensive planning activities

Minn. Stat. § 462.383.

Regional development commissions are separate entities from regional development boards discussed above. Regional development commissions are created by state statute to provide a means of pooling the resources of local governments to approach common problems related to urban and rural growth and development.

Minn. Stat. § 462.385.

Development regions are set by state statute and are numbered as follows:

Northwest Development Commission.

Region 1: Kittson, Roseau, Marshall, Pennington, Red Lake, Polk, and Norman.

Headwaters Regional Development Commission.

Region 2: Lake of the Woods, Beltrami, Mahnomen, Clearwater, and Hubbard.

Arrowhead Regional Development Commission.

Region 3: Koochiching, Itasca, St. Louis, Lake, Cook, Aitkin, and Carlton.

West Central Initiative.

Region 4: Clay, Becker, Wilkin, Otter Tail, Grant, Douglas, Traverse, Stevens, and Pope.

Region Five Development Commission.

Region 5: Cass, Wadena, Crow Wing, Todd, and Morrison.

Mid-Minnesota Development Commission.

Region 6E: Kandiyohi, Meeker, Renville, and McLeod.

Upper Minnesota Valley Regional Development Commission.

Region 6W: Big Stone, Swift, Chippewa, Lac qui Parle, and Yellow Medicine.

East Central Regional Development Commission.

Region 7E: Mille Lacs, Kanabec, Pine, Isanti, and Chisago.

Southwest Regional Development Commission.

Region 8: Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, and Jackson.

Region Nine Development Commission.

Region 9: Sibley, Nicollet, LeSueur, Brown, Blue Earth, Waseca, Watonwan, Martin, and Faribault.

Region 10: Rice, Goodhue, Wabasha, Steele, Dodge, Olmsted, Winona, Freeborn, Mower, Fillmore, and Houston.

Metropolitan Council.

Region 11: Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota.

Minn. Stat. § 462.39, subds. 4, 5.

Minn. Stat. § 462.391, subd. 1a.

The creation of a regional development commission does not affect the rights of counties or cities to conduct their own planning activities. Instead, regional development commissions are designed to support planning for cities. Cities may request that a regional commission review, comment, and provide advisory recommendations on local plans or development proposals.

RELEVANT LINKS:

VII. Training and resources for planning commission members

Planning commission members perform a vital role for their community. Training materials and seminars can increase the effectiveness of city planning commissioners and are essential for protecting the city's legal interests.

LMCIT Land Use Resources.

The League of Minnesota Cities Insurance Trust has a Land Use Loss Control Program to assist members through phone consultations and online training. In addition, the Land Use Loss Control Program has extensive written materials available at no cost to members.

Additional training and materials may also be obtained from private vendors such as:

Government Training Services.
American Planning Association.

- Government Training Services (GTS).
- The American Planning Association.

INFORMATION MEMO

Zoning Guide for Cities

Learn the framework of municipal zoning and basics of other land use controls available to cities that may complement or be used separately from zoning controls. Find guidance on zoning ordinance drafting, adoption, administration and enforcement. Links to sample zoning provisions and maps from other Minnesota cities.

RELEVANT LINKS:

Minn. Stat. § 462.351.

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

Minn. Stat. § 462.357, subd. 1.
Sample Zoning District Section.

Minn. Stat. § 462.357, subd. 1.

I. Basic zoning concepts

A. The purpose of zoning

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.

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.

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:

145 University Ave. West
Saint Paul, MN 55103-2044
www.lmc.org
(651) 281-1200 or (800) 925-1122
1/20/2015

RELEVANT LINKS:

- 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.

The adoption of a comprehensive plan is a common first step in the development of a zoning ordinance.

RELEVANT LINKS:

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

Minn. Stat. § 462.352, subd. 5.

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).

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

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.

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.

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

See LMC information memo, *Planning Commission Guide.* For more information on Comprehensive Planning see *Under Construction* by MN Department of Administration.

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

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's 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.

RELEVANT LINKS:

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.

RELEVANT LINKS:

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.
- 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. § 462.3595.

- 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.

Minn. Stat. § 462.3597.

- 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.

RELEVANT LINKS:

Sample Setback Requirement Diagram.

Sample Height Requirement Diagram.

b. Setbacks, height and density requirements

- 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).
- 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.

RELEVANT LINKS:

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. 6120.5000.
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.

RELEVANT LINKS:

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 of clear, 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:

- "lawn and garden center,"
- The words "accessory", "subordinate," "incidental," and "main,"
- "structure"

Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604 (Minn. 1980).
Lowry v. City of Mankato, 231 Minn. 108, 42 N.W.2d 553 (Minn. 1950).
Village of St. Louis Park v. Casey, 218 Minn. 394, 16 N.W.2d 459 (Minn. 1944).

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.

RELEVANT LINKS:

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.

Minn. Stat. § 462.357, subds. 1a, 1b.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 1e.
Minn. Stat. § 462.357, subd. 1g.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 7.

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

- Manufactured home parks
- Manufactured homes
- Existing legal nonconformities at the time of zoning ordinance adoption
- Feedlots
- Earth sheltered construction as defined by MN Stat. 216C.06
- Relocated residential buildings
- State licensed residential facilities or housing services registered under MN Stat. 144D serving six or fewer persons in single family residential districts
- Licensed day care facilities serving 12 or fewer persons in single family residential districts

RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 8.

Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 6.

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).

- 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
- State licensed residential facilities serving 7-16 persons in multifamily residential districts
- Licensed day care facilities serving 13-16 persons in multifamily residential districts
- Solar energy systems

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

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.

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.

RELEVANT LINKS:

c. Manufactured home parks

Minn. Stat. § 462.357, subds. 1a, 1b.
See Section III-A, *Establishing permitted and conditional uses*.

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.

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.

See LMC information memo, *Zoning for Religion*.

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 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, 211 P.3d 406 (Wash. 2009).
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.

RELEVANT LINKS:

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 law considerations: Telecommunications Act of 1996

47 U.S.C. § 332(c)(7).

The federal Telecommunications Act of 1996 influences local zoning regulation of wireless telecommunications towers and antennas. Under the Act, local governments may generally regulate the placement, construction, and modification of cell towers through zoning ordinances and land use regulations. However, local zoning regulations may not unreasonably discriminate among providers of functionally equivalent services. Local zoning regulations also may not prohibit or have the effect of prohibiting the provision of wireless services. Under the Act any decision to deny a request to place, construct or modify cell towers must be in writing and supported by substantial evidence in the written record.

In addition, cities may not regulate the placement, construction or modification of cell towers on the basis of the environmental effects of radio frequency emissions to the extent they comply with the Federal Communication Commission's regulations. To avoid conflicts with federal law, the city should consult the city attorney before adopting zoning provisions that regulate telecommunication towers and antennas.

47 U.S.C. § 303 (v).
47 C.F.R. § 25.104.

The Federal Communications Commission has exclusive jurisdiction over direct to home satellite dishes. Its regulations preempt local ordinances that prohibit or regulate satellite dishes of one meter or less in all areas and two meters or less in commercial areas. Cities may apply to the FCC for a waiver to allow local regulation of satellite dishes upon a showing by the applicant that local concerns of a highly specialized or unusual nature create a necessity for local regulation

5. Federal and state constitutional concerns

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

Zoning regulations limit the ability of landowners to use their property in any manner they wish.

RELEVANT LINKS:

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).

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 in 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 V-C, *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."

RELEVANT LINKS:

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 § 13. 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 a 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

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.

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.

RELEVANT LINKS:

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 LMC information memo, *Land Use Conditional Use Permits*.

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 the "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.

RELEVANT LINKS:

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 *V-F-1-c 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 spaces 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 cities find it helpful to use a table to illustrate the city's parking requirements in their zoning ordinances.

RELEVANT LINKS:

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 LMC information memo, *Regulation of Adult Entertainment Businesses.*

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.

RELEVANT LINKS:

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.

RELEVANT LINKS:

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 (1904).
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 (Fla. 1954).
State ex rel. Killeen Realty Co. v. City of East Cleveland, 108 Ohio App. 99, 153.E.2d 177 (Ohio 1959).
Linden Methodist Episcopal Church v. City of Linden, 113 N.J.L. 188, 173 A. 593 (N.J. 1934).

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. An amendment to a zoning ordinance may be initiated by the city council, the planning commission, or by petition of affected property owners.

An amendment that is not initiated by the planning commission must be referred to it, if there is one, for study and report. The city council may not act on such an amendment until it has received the recommendation of the planning commission or until 60 days have passed from the date the amendment was referred to the planning commission without a report.

RELEVANT LINKS:

A. Public hearings and adoption

Minn. Stat. § 462.357, subd. 3. For information on conducting hearings, see LMC information 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.

2. Adoption

Minn. Stat. § 462.357, subds. 2, 5.
A.G. Op. 59-A-32 (Jan. 25, 2002).

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.

3. 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 LMC information 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."

RELEVANT LINKS:

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).

If an agency or a city denies a request, it must give written reasons for its denial at the time it denies the request.

RELEVANT LINKS:

Johnson v Cook County, 786 N.W.2d 291 (Minn. 2010).
Minn. Stat. § 15.99, subd. 2(c).
Hans Hagen Homes, Inc. v. City of Minnetrista,728 N.W. 2d 536 (Minn. 2007).

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(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.

RELEVANT LINKS:

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).

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 LMC information 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.

RELEVANT LINKS:

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 the 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.

RELEVANT LINKS:

5. Board of zoning adjustment and appeals

Minn. Stat. § 462.354, subd. 2. Minn. Stat. § 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 make 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 is generally a very friendly standard for cities to meet.

For more information on applications for re-zoning see Section V-C *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.

RELEVANT LINKS:

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 V-C, *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 V-A, *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.

RELEVANT LINKS:

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 LMC information memos, *Taking the Mystery Out of Findings of Fact*.

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 V-C-3-c, *conditional use permits* and V-C-3-d, *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).

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.

RELEVANT LINKS:

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.
Minn. Stat. § 462.3595, subd. 2.
Minn. Stat. § 462.357, subd. 3.

- Zoning ordinance adoption or amendment.
- Conditional use permits.
- 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 LMC information 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.

RELEVANT LINKS:

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 the 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 V-C, *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 V-C-3-d, *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.

RELEVANT LINKS:

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).

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.

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757 (Minn. 1982).
See Section I-C *Role of comprehensive planning in zoning ordinance adoption*.
SuperAmerica Group, Inc. v. City of Little Canada, 539 N.W.2d 264 (Minn. Ct. App. 1995).

A city may deny a CUP if the proposed use:

- Does not meet the specific standards or conditions established in the zoning ordinance;
- Is not consistent with the city's officially adopted comprehensive plan;
- 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.

RELEVANT LINKS:

Minn. Stat. § 462.3595, subd. 4.

Northpointe 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).

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

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.

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.

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 LMC information memo, *Land Use 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 "practical difficulties." 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 V-B-5 *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 practical difficulties standard, a landowner is entitled to a variance if the facts satisfy the three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character.

Minn. Stat. § 462.357, subd. 6.
See also LMC information memo, *Land Use Variances* for sample ordinance language.
Krummenacher, v. City of Minnetonka, 783 N.W.2d 721 (Minn. 2010).

Note! "Undue hardship" was the name of the three-factor test prior to a May 2011 change of law. Effective May 6, 2011 Minnesota Laws, Chapter 19, amended Minn. Stat. § 462.357, subd. 6 to restore municipal variance authority in response to the Krummenacher v. City of Minnetonka, case. In Krummenacher, the Minnesota Supreme Court interpreted the statutory definition of "undue hardship" and held that the "reasonable use" prong of the "undue hardship" test was not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance.

See LMC information memo, *Land Use Variances.*

The 2011 law changed the first factor back to the "reasonable manner" understanding that had been used by some lower courts prior to the Krummenacher ruling. The 2011 law renamed the municipal variance standard from "undue hardship" to "practical difficulties," but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character.

RELEVANT LINKS:

The 2011 law also provides that: "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan."

The practical difficulties factors 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 owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance.
- 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 practical difficulties.
- 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 practical difficulties. 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, CO-96-1468 (Minn. Ct. App. Feb 11, 1997) (unpublished opinion).

In granting a variance, the city may attach conditions, but the conditions must be directly related and bear a rough proportionality to the impact created by 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.

RELEVANT LINKS:

City of North Oaks v. Sarpal, 797 N.W.2d 18 (Minn. 2011).
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 entitle 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 creates 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 V-A, *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.

RELEVANT LINKS:

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.

(1) 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.

(2) 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.

RELEVANT LINKS:

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 V-A *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.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 the 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.

RELEVANT LINKS:

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. § 326B.145.

Cities that collect over $10,000 in fees annually must report annually to the Department of Labor and Industry 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

Another 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.

RELEVANT LINKS:

1. Interim Ordinances (Moratoria)

Minn. Stat. § 462.355, subd. 4.
Pawn America Minnesota, LLC v. City of St Louis Park, 787 N.W.2d 565 (Minn. 2010).

Adoption of an 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.

RELEVANT LINKS:

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.

RELEVANT LINKS:

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. Chanhassen, 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:

Ortell v. City of Nowthen, 814 N.W.2d 40 (Minn. App. 2012).

- 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.

RELEVANT LINKS:

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.
- 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.

Minn. R. ch. 7080.

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.

RELEVANT LINKS:

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.
Minn. Stat. § 609.0332.
Minn. Stat. § 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.

RELEVANT LINKS:

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 a 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 installation of traffic calming measures, but the permit holder fails to do so.

Northpointe 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.

See LMC information memo, *Subdivision Guide for Cities*.

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.

RELEVANT LINKS:

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

Minn. Stat. § 462.358, subd. 2b.
Minn. Stat. § 462.353, subd. 4.

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.

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.

RELEVANT LINKS:

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.

RELEVANT LINKS:

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 Nuisances.*

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 the 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.

RELEVANT LINKS:

Minn. Stat. § 463.15.
See LMC information memo, *Dangerous Properties.*

4. Hazardous and Substandard Buildings Act

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.

INFORMATION MEMO

Subdivision Guide for Cities

Learn the framework of municipal subdivision regulation. Find guidance on subdivision ordinance drafting, adoption, administration and enforcement. Links to sample subdivision provisions and maps from other Minnesota cities.

RELEVANT LINKS:

Minn. Stat. § 462.358 subd. 1a, 2a.

Minn. Stat. § 462.358 subd. 2a.

I. The purpose of subdivision regulations

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:

- 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.

A. 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.

RELEVANT LINKS:

B. 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.

C. 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.

RELEVANT LINKS:

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. Minn. Stat. § 473.865. Minn. Stat. § 473.859 subd 4.
See Section III-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.

II. 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.

A. 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.

RELEVANT LINKS:

Minn. Stat. § 462.352 subd. 12 (2).
Minn. Stat. § 462.352 subd. 12 (3).
Minn. Stat. § 462.352 subd. 12.

- Cemetery lots.
- Court ordered divisions or adjustments.
- 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.

B. 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 III-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.

RELEVANT LINKS:

- 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.

III. 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 V-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.

RELEVANT LINKS:

3. Preliminary/final plat approval process

Minn. Stat. § 462.358 subd. 3b.
See Section V *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 V- 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.
See Section V-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 VII *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 VII-A *Cash fees in lieu of land dedication*.
Sample park dedication ordinance.

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.

RELEVANT LINKS:

8. Required improvements and development agreements

Minn. Stat. § 462.358 subd. 2a.
For more information on improvements see Section VI *Public improvement requirements.*
For more information on development agreements see Section VI-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 V-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).

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.

RELEVANT LINKS:

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).

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.
Minn. Stat. § 462.358 subd. 3a.
See Section V-I *Platting requirements.*

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

Minn. Stat. § 462.358 subd. 3a.
See Section V-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. 3b.
See Section V-A *Process for adoption*, for more information on the 120 day rule.

- All plats must conform to the technical requirements found in Minn. Stat. ch. 505.
- 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. Minn. Stat. § 473.865. Minn. Stat. §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. The Act requires metropolitan cities to submit copies of their subdivision ordinances to the Metropolitan Council for information purposes within 30 days following adoption. A metropolitan city may not adopt a subdivision ordinance that conflicts with the metropolitan system plans.

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:

RELEVANT LINKS:

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 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.

IV. Subdivision ordinance adoption and amendment

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

Cities must adopt and amend subdivision regulations in ordinance form.

RELEVANT LINKS:

A. Process for adoption

Minn. Stat. § 462.352 subd. 14. Minn. Stat. § 462.358 subd. 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 VII *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*.

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.

Minn. Stat. § 412.191 subd. 4.

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.

RELEVANT LINKS:

- 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. Ct. 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.

RELEVANT LINKS:

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.

V. 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 III-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.

RELEVANT LINKS:

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.

RELEVANT LINKS:

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.

(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.

(2) 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.

(3) 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.

(4) 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.

RELEVANT LINKS:

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 the application and deposit of the fee into escrow.

B. Preliminary plat review

Minn. Stat. § 462.358 subd. 3b.

Minn. Stat. § 462.358 subd. 3b. Minn. Stat. § 505.03 subd. 1.
See Section V-H *Minor subdivisions.*

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.

Sample ordinance on application requirements.

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* No. A08-0294 (Minn. Ct. App. 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.

RELEVANT LINKS:

- If any public improvements are to be installed by the developer, requiring a development agreement between the city and the applicant.

See Section VI-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.
LMC information 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.

RELEVANT LINKS:

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.

RELEVANT LINKS:

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 No. A08-0294 (Minn. Ct. App. 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.

RELEVANT LINKS:

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 applicants must be treated uniformly by the city.

RELEVANT LINKS:

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

LMC information memos, *Taking the Mystery Out of 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.

RELEVANT LINKS:

See Section IV-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).

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.

RELEVANT LINKS:

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.

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.

RELEVANT LINKS:

See Section II-B, *Extra-territorial application.*

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.

VI. 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:

See Section VI – B *Development agreements.*

- 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.
- 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:

RELEVANT LINKS:

- 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.

RELEVANT LINKS:

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.

RELEVANT LINKS:

- 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.

VII. 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.

RELEVANT LINKS:

- Wetlands and wetland preservation.
- Open space.

Prior to adopting dedication requirements in a subdivision ordinance, the city must first adopt a capital 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.

RELEVANT LINKS:

A. Cash payments in lieu of land dedication

Minn. Stat. § 462.358 subd. 2b(c).

Sample park dedication ordinance.

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 VII-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.

"Fair market value" means the value of the land as determined by the municipality annually based on tax valuation or other relevant data. If the applicant objects to the city's calculation of valuation, then the value must be as negotiated between the city and the applicant, or based on the market value as determined by the city based on an independent appraisal of land in a same or similar land use category.

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.

RELEVANT LINKS:

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.

VIII. 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.

RELEVANT LINKS:

If the newly recorded land is the result of a subdivision, the seller must attach one of the following to the instrument of conveyance:

See Section VIII-B-2 *City option to grant waivers for information on waivers.*

- 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.
- 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.

RELEVANT LINKS:

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.
Minn. Stat. § 609.0332.
Minn. Stat. § 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.

Introduction to Robert's Rules of Order

What Is Parliamentary Procedure?

It is a set of rules for conduct at meetings, that allows everyone to be heard and to make decisions without confusion.

Why is Parliamentary Procedure Important?

Because it's a time tested method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organization. Today, Robert's Rules of Order newly revised is the basic handbook of operation for most clubs, organizations and other groups. So it's important that everyone know these basic rules!

Organizations using parliamentary procedure usually follow a fixed order of business. Below is a typical example:

1. Call to order.
2. Roll call of members present.
3. Reading of minutes of last meeting.
4. Officers reports.
5. Committee reports.
6. Special orders --- Important business previously designated for consideration at this meeting.
7. Unfinished business.
8. New business.
9. Announcements.
10. Adjournment.

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the entire membership take action or a stand on an issue. Individual members can:

1. Call to order.
2. Second motions.
3. Debate motions.
4. Vote on motions.

There are four Basic Types of Motions:

1. Main Motions: The purpose of a main motion is to introduce items to the membership for their consideration. They cannot be made when any other motion is on the floor, and yield to privileged, subsidiary, and incidental motions.
2. Subsidiary Motions: Their purpose is to change or affect how a main motion is handled, and is voted on before a main motion.
3. Privileged Motions: Their purpose is to bring up items that are urgent about special or important matters unrelated to pending business.
4. Incidental Motions: Their purpose is to provide a means of questioning procedure concerning other motions and must be considered before the other motion.

How are Motions Presented?

1. Obtaining the floor
    a. Wait until the last speaker has finished.
    b. Rise and address the Chairman by saying, "Mr. Chairman, or Mr. President."
    c. Wait until the Chairman recognizes you.
2. Make Your Motion
    a. Speak in a clear and concise manner.
    b. Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ...".
    c. Avoid personalities and stay on your subject.
3. Wait for Someone to Second Your Motion
4. Another member will second your motion or the Chairman will call for a second.
5. If there is no second to your motion it is lost.
6. The Chairman States Your Motion
    a. The Chairman will say, "it has been moved and seconded that we ..." Thus placing your motion before the membership for consideration and action.
    b. The membership then either debates your motion, or may move directly to a vote.
    c. Once your motion is presented to the membership by the chairman it becomes "assembly property", and cannot be changed by you without the consent of the members.
7. Expanding on Your Motion
    a. The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
    b. The mover is always allowed to speak first.
    c. All comments and debate must be directed to the chairman.
    d. Keep to the time limit for speaking that has been established.
    e. The mover may speak again only after other speakers are finished, unless called upon by the Chairman.
8. Putting the Question to the Membership
    a. The Chairman asks, "Are you ready to vote on the question?"

b. If there is no more discussion, a vote is taken.
c. On a motion to move the previous question may be adapted.

Voting on a Motion:

The method of vote on any motion depends on the situation and the by-laws of policy of your organization. There are five methods used to vote by most organizations, they are:

1. By Voice -- The Chairman asks those in favor to say, "aye", those opposed to say "no". Any member may move for a exact count.
2. By Roll Call -- Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
3. By General Consent -- When a motion is not likely to be opposed, the Chairman says, "if there is no objection ..." The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.
4. By Division -- This is a slight verification of a voice vote. It does not require a count unless the chairman so desires. Members raise their hands or stand.
5. By Ballot -- Members write their vote on a slip of paper, this method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. Motion to Table -- This motion is often used in the attempt to "kill" a motion. The option is always present, however, to "take from the table", for reconsideration by the membership.
2. Motion to Postpone Indefinitely -- This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once again open on the main motion.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.

Most importantly, *BE COURTEOUS.*

ARTICLE V. - BOARDS, COMMISSIONS AND AUTHORITIES

DIVISION 1. - GENERALLY

Sec. 2-155. - Established; purposes.

(a) *Established.* The city establishes the following boards, commissions and authorities:

(1) Planning commission.

(2) Park and recreation commission.

(3) Board of appeals and adjustments/official maps.

(4) Environmental policy board.

(5) Economic development authority.

(6) Housing and redevelopment authority.

(b) *Purpose.* All boards and commissions created by this section shall be for the purpose of advising the city council with respect to any municipal function or activity or to perform quasi-judicial functions as designated herein and/or as designated from time to time by ordinance.

(Code 1978, § 2.03.01; Ord. No. 92-04, 6-12-1992; Ord. No. 04-30, 8-23-2004; Ord. No. 04-48, 1-31-2005; Ord. No. 06-14, § 1, 4-25-2006; Ord. No. 11-13, § 2, 10-11-2011)

Sec. 2-156. - Appointment of members, terms of office and removal.

(a) *Voting members and residence requirement.* At least two-thirds of the members of each board or commission shall be residents of the city. Members shall represent a broad range of interest in functions of the city.

(b) *Ex officio members.* The city council may appoint, by majority vote, a councilmembers or city staff persons as ex officio members of any board or commission privileged to speak on any matter without a vote, and the ex officio members shall provide a liaison between the board or commission and city council.

(c) *Appointment and oath.* Members of a board or commission shall be appointed by a majority vote of the city council for staggered four-year terms, in addition to any partial term a person may be appointed to complete on behalf of a predecessor who is unable to complete said term. Each appointed member shall, before entering upon the discharge of duties, take an oath agreeing to faithfully discharge the duties of office.

(d) *Serve without compensation.* All members of a board or commission shall serve without compensation. Board or commission members may receive a stipend for expenses as established by resolution of the city council.

(e) *Attendance policy.* The absence of a board of commission member from three or more regularly scheduled meetings of his board or commission within any six-month period shall be cause for removal of that member from his seat on the board or commission. The city council shall have the authority to remove board or commission members for violation of this policy.

(f) *Terms.* Board and commission members shall serve four-year terms. There will be no limit to the number of terms that can be served.

(g) *Code of conduct.* It is the policy of the city to maintain a respectful public service environment free from violence, discrimination and unlawful activities relating specifically to the boards of commission members role with the city, and other offensive or degrading remarks or conduct.

(1) *Expected conduct of board and commission members.* Board and commission members shall conduct themselves at all times in such a manner as to reflect most favorably on the city. Conduct unbecoming a board or commission member shall include any conduct that tends to bring the city into disrepute or reflects discredit on the person as a board or commission member of the city, or that which tends to impair the functioning of a board or commission member.

(2) *Consequences of engaging in inappropriate conduct as a board or commission member.* Board or commission members who are found to engage in inappropriate conduct while acting in their official capacity as a board or commission member are subject to disciplinary action. Discipline may include, but is not limited to, a verbal or written reprimand or suspension from his position on the board or commission.

(h) *Removal of members.*

(1) Board and commission members may be removed from their position at any time, with or without cause, by a majority vote of the city council.

(2) This subsection (h) does not apply to members of the Charter commission or members of the economic development authority as said bodies are organized under the authority of state statutes and; consequently, the removal of members of said bodies is regulated by state statutes.

(Code 1978, § 2.03.02; Ord. No. 92-04, 6-12-1992; Ord. No. 97-10, 8-11-1997; Ord. No. 03-03, 3-17-2003; Ord. No. 03-42, 11-17-2003; Ord. No. 06-12, § 1, 4-11-2006; Ord. No. 09-07, § 2(2.03.02), 5-12-2009)

Sec. 2-157. - Organization, meetings, etc.

(a) *Regular and special meetings.* Regular meetings of boards and commissions shall be held with a date and time determined by the board or commission. Special board and commission meetings may be called by the chairperson, vice-chairperson or any two members of the board or commission as deemed necessary.

(b) *Open meetings, meeting minutes and expenditures.* The board or commission shall follow Robert's Rules of Order, Newly Revised, for the transaction of business. On or before January 1 of each year, the board or commission shall submit to the city council a report of its work during the preceding year.

(c) *Amendment of order of business.* The order of business may be varied by the presiding officer or upon board or commission motion, but all public hearings shall be held at the time specified in the notice of hearing.

(d) *Agendas.* An agenda of business for each regular meeting shall be prepared by the clerk or the clerk's designated representative and filed in the office of the clerk. The agenda shall be prepared in accordance with the order of business and copies thereof shall be delivered to each board or commission member as far in advance of the meeting as time for preparation will permit. No item of business shall be considered unless it appears on the agenda for the meeting, but the commission or board may, in its discretion, consider matters not appearing.

(Code 1978, § 2.03.03; Ord. No. 92-04, 6-12-1992)

Sec. 2-158. - Chairperson and vice-chairperson.

(a) *Election.* The board or commission may create and fill offices as it may determine and create subcommittees as it deems necessary to accomplish its purpose.

(b) *Chairperson duties.* A chairperson shall be selected annually by a majority vote of the board or commission from its appointed members and may be removed by a majority vote of the board or commission. The chairperson shall have the following responsibilities in addition to those otherwise described in this section:

(1) Preside over all meetings of the board or commission.

(2) Appear or appoint a representative to appear, as necessary, before the city council to present the board or commission's viewpoint on matters as it relates to business under consideration by said board, commission, or city council.

(3) Review all city council and other advisory board or commission minutes and inform the board or commission of matters relevant to its function.

(4) Provide liaison with other governmental and volunteer units on matters relating to the board's or commission's function.

(5) Ensure preparation of agendas for each board or commission meeting.

(c) *Vice-chairperson duties.* The vice-chairperson shall act in the absence of the chairperson and shall perform the duties of the chairperson whenever the chairperson is unable to attend a meeting, has resigned or is incapacitated and until a new chairperson is elected.

(Code 1978, § 2.03.04; Ord. No. 92-04, 6-12-1992)

Sec. 2-159. - Duties, responsibilities and objectives.

(a) *Planning commission.* The primary objective of the planning commission is to advise the city council on land use concerns and other duties conferred upon it by this chapter or the city council. In addition, the planning commission shall serve as the planning agency and shall have the powers and duties given such agencies by Minn. Stats. §§ 462.351 to 462.364. The planning commission shall also serve as and be given the powers of the board of appeals and adjustment. Appeals to the board of appeals and adjustment may be taken by any affected person upon compliance with the procedures established by the zoning ordinance. The primary objective of the board of adjustment and appeals shall be 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 as well as to review and approve/deny variances from the provisions of chapter 117 where strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration. The planning commission shall be given the powers and duties given such agencies by Minn. Stats. § 462.357.

(b) *Park and recreation commission.* The primary objective of the park and recreation commission is to monitor and reflect the attitudes and concerns of the citizens of the city relative to the park system and recreation programs, and to advise the city council of citizen attitudes and policy matters relevant to the park and recreation function in the city. The commission shall:

(1) Develop, recommend, and upon adoption by the city council, monitor the execution of a comprehensive plan for the recreation and natural resources function of the city. Report to the city council regarding achievements toward fulfillment of the comprehensive plan and recommend amendments to the plan as necessary.

(2) Continually review and evaluate the park system development and recreation programming. Develop and recommend methods to stimulate positive public interest in the recreation and natural resources functions.

(3) Monitor and reflect attitudes and consensus of citizens relative to the park system and recreation programs and serve as a forum for the citizens to voice their opinions regarding the recreation and natural resources function.

(4) Promote coordination with the school districts serving the city, encouraging the interchangeable use of city and school district facilities and programs to the best interests of the citizens. Encourage coordination with other communities to the extent appropriate in matters pertinent to the recreation and natural resources function.

(5) Encourage dissemination of information to, and coordinate with, city organizations interested in the recreation and natural resources function, such as athletic groups, youth groups, civic organizations, etc.

(6) Develop and recommend feasible programs relative to the conservation of our environment.

(c) *Reserved.*

(d) *Board of appeals and adjustments/official maps.*

(1) *Objective.* The primary objective of the board of appeals and adjustments/official maps is to consider appeals by owners of land within the official map area who have been denied a land use permit, zoning permit, approval for a building on land or any other city action taken pursuant to section 117-4 which may affect the landowner's land. The appeal procedures shall be pursuant to Minn. Stats. § 462.359 and section 117-4

(2) *Membership and term of office.* Notwithstanding section 2-156(c), there shall be five members of the board of appeals and adjustments/official maps who shall be appointed by the city's mayor for staggered four-year terms. At least one of the members shall be a current member of the planning commission. All other terms of this division shall be applicable to the board of appeals and adjustments/official maps.

(e) *Environmental policy board.* The primary objective of the city environmental policy board shall be to review, consider, initiate and recommend to the city council such policies, plans or projects which will enhance and preserve the natural environment of the city. The committee's scope shall include, but not necessarily be limited to matters of the preservation of the community forest, water quality, wetland preservation, groundwater protection, ecological preservation, control of soil erosion and air, noise and light pollution. The committee shall also review, upon request, environmental documents referred to from time to time by the planning commission or city council. The board shall:

(1) Become familiar with state statutes, federal regulations, agency rules, and city ordinances on the subject of an environmental nature.

(2) Receive information regarding the role of the Watershed Management Organization, municipalities, department of natural resources, and Army Corps of Engineers and other regulatory agencies on environmental issues and review related data.

(3) Review environmentally related city policies and ordinances and recommend appropriate revisions and/or additions to the city council.

(4) Promote public outreach and education regarding environmental issues facing the city.

(5) Develop an annual work plan that is subject to the approval of the city council.

(Code 1978, § 2.03.06; Ord. No. 92-04, 6-12-1992; Ord. No. 98-15, 1-11-1999; Ord. No. 04-30, 8-23-2004; Ord. No. 06-14, § 1, 4-25-2006; Ord. No. 09-01, § 1, 2-24-2009; Ord. No. 11-13, § 2, 10-11-2011)

Sec. 2-160. - Rules and procedures.

The board or commission shall adopt such rules and procedures not inconsistent with these provisions as may be necessary for the proper execution and conduct of business.

(Code 1978, § 2.03.07; Ord. No. 92-04, 6-12-1992)

Secs. 2-161—2-188. - Reserved.

462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.

Subdivision 1. **Authority for zoning.** For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, as defined in sections 103F.201 to 103F.221, access to direct sunlight for solar energy systems as defined in section 216C.06, flood control or other purposes, and may establish standards and procedures regulating such uses. To accomplish these purposes, official controls may include provision for purchase of development rights by the governing body in the form of conservation easements under chapter 84C in areas where the governing body considers preservation desirable and the transfer of development rights from those areas to areas the governing body considers more appropriate for development. No regulation may prohibit earth sheltered construction as defined in section 216C.06, subdivision 14, relocated residential buildings, or manufactured homes built in conformance with sections 327.31 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section. The regulations may divide the surface, above surface, and subsurface areas of the municipality into districts or zones of suitable numbers, shape, and area. The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordinance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps. A city may by ordinance extend the application of its zoning regulations to unincorporated territory located within two miles of its limits in any direction, but not in a county or town which has adopted zoning regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the zoning of land on its side of a line equidistant between the two noncontiguous municipalities unless a town or county in the affected area has adopted zoning regulations. Any city may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county or town board adopts a comprehensive zoning regulation which includes the area.

Subd. 1a. **Certain zoning ordinances.** A municipality must not enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home setback 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.

Subd. 1b. **Conditional uses.** A manufactured home park, as defined in section 327.14, subdivision 3, is a conditional use in a zoning district that allows the construction or placement of a building used or intended to be used by two or more families.

Subd. 1c. **Amortization prohibited.** Except as otherwise provided in this subdivision, a municipality must not enact, amend, or enforce an ordinance providing for the elimination or termination of a use by amortization which use was lawful at the time of its inception. This subdivision does not apply to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

Subd. 1d. **Nuisance.** Subdivision 1c does not prohibit a municipality from enforcing an ordinance providing for the prevention or abatement of nuisances, as defined in section 561.01, or eliminating a use

determined to be a public nuisance, as defined in section 617.81, subdivision 2, paragraph (a), clauses (i) to (ix), without payment of compensation.

Subd. 1e. **Nonconformities.** (a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) 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 zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

(d) Paragraphs (d) to (j) apply to 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. A municipality shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to paragraphs (d) to (j).

(e) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

(1) all structure and septic system setback distance requirements can be met;

(2) a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and

(3) the impervious surface coverage does not exceed 25 percent of the lot.

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

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) 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 Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(h) Notwithstanding paragraph (f), contiguous nonconforming 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 Minnesota Rules, chapter 7080, or connected to a public sewer.

(i) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(j) A portion of a conforming 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.

Subd. 1f. **Substandard structures.** Notwithstanding subdivision 1e, Minnesota Rules, parts 6105.0351 to 6105.0550, may allow for the continuation and improvement of substandard structures, as defined in Minnesota Rules, part 6105.0354, subpart 30, in the Lower Saint Croix National Scenic Riverway.

Subd. 1g. **Feedlot zoning controls.** (a) A municipality proposing to adopt a new feedlot zoning control or to amend an existing feedlot zoning control must notify the Pollution Control Agency and commissioner of agriculture at the beginning of the process, no later than the date notice is given of the first hearing proposing to adopt or amend a zoning control purporting to address feedlots.

(b) Prior to final approval of a feedlot zoning control, the governing body of a municipality may submit a copy of the proposed zoning control to the Pollution Control Agency and to the commissioner of agriculture and request review, comment, and recommendations on the environmental and agricultural effects from specific provisions in the ordinance.

(c) The agencies' response to the municipality may include:

(1) any recommendations for improvements in the ordinance; and

(2) the legal, social, economic, or scientific justification for each recommendation under clause (1).

(d) At the request of the municipality's governing body, the municipality must prepare a report on the economic effects from specific provisions in the ordinance. Economic analysis must state whether the ordinance will affect the local economy and describe the kinds of businesses affected and the projected

impact the proposal will have on those businesses. To assist the municipality, the commissioner of agriculture, in cooperation with the Department of Employment and Economic Development, must develop a template for measuring local economic effects and make it available to the municipality. The report must be submitted to the commissioners of employment and economic development and agriculture along with the proposed ordinance.

(e) A local ordinance that contains a setback for new feedlots from existing residences must also provide for a new residence setback from existing feedlots located in areas zoned agricultural at the same distances and conditions specified in the setback for new feedlots, unless the new residence is built to replace an existing residence. A municipality may grant a variance from this requirement under section 462.358, subdivision 6.

Subd. 1h. **Comprehensive plans in greater Minnesota; open spaces.** When adopting or updating a comprehensive plan in a municipality located within a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, and that is located outside the metropolitan area, as defined by section 473.121, subdivision 2, the municipality shall consider adopting goals and objectives for the preservation of agricultural, forest, wildlife, and open space land and the minimization of development in sensitive shoreland areas. Within three years of updating the comprehensive plan, the municipality shall consider adopting ordinances as part of the municipality's official controls that encourage the implementation of the goals and objectives.

Subd. 2. **General requirements.** (a) At any time after the adoption of a land use plan for the municipality, the planning agency, for the purpose of carrying out the policies and goals of the land use plan, may prepare a proposed zoning ordinance and submit it to the governing body with its recommendations for adoption.

(b) Subject to the requirements of subdivisions 3, 4, and 5, the governing body may adopt and amend a zoning ordinance by a majority vote of all its members. The adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body.

(c) The land use plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the land use plan.

Subd. 3. **Public hearings.** No zoning ordinance or amendment thereto shall be adopted until a public hearing has been held thereon by the planning agency or by the governing body. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the municipality at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.

Subd. 4. **Amendments.** An amendment to a zoning ordinance may be initiated by the governing body, the planning agency, or by petition of affected property owners as defined in the zoning ordinance. An

amendment not initiated by the planning agency shall be referred to the planning agency, if there is one, for study and report and may not be acted upon by the governing body until it has received the recommendation of the planning agency on the proposed amendment or until 60 days have elapsed from the date of reference of the amendment without a report by the planning agency.

Subd. 5. **Amendment; certain cities of the first class.** The provisions of this subdivision apply to the adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial of a property located in a city of the first class, except a city of the first class in which a different process is provided through the operation of the city's home rule charter. In a city to which this subdivision applies, amendments to a zoning ordinance shall be made in conformance with this section but only after there shall have been filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situate within 100 feet of the total contiguous descriptions of real estate held by the same owner or any party purchasing any such contiguous property within one year preceding the request, and after the affirmative vote in favor thereof by a majority of the members of the governing body of any such city. The governing body of such city may, by a two-thirds vote of its members, after hearing, adopt a new zoning ordinance without such written consent whenever the planning commission or planning board of such city shall have made a survey of the whole area of the city or of an area of not less than 40 acres, within which the new ordinance or the amendments or alterations of the existing ordinance would take effect when adopted, and shall have considered whether the number of descriptions of real estate affected by such changes and alterations renders the obtaining of such written consent impractical, and such planning commission or planning board shall report in writing as to whether in its opinion the proposals of the governing body in any case are reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use, and shall have conducted a public hearing on such proposed ordinance, changes or alterations, of which hearing published notice shall have been given in a daily newspaper of general circulation at least once each week for three successive weeks prior to such hearing, which notice shall state the time, place and purpose of such hearing, and shall have reported to the governing body of the city its findings and recommendations in writing.

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 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 do not constitute 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 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 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. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subd. 6a. **Normal residential surroundings for persons with disabilities.** It is the policy of this state that persons with disabilities should not be excluded by municipal zoning ordinances or other land use regulations from the benefits of normal residential surroundings. For purposes of subdivisions 6a through 9, "person" has the meaning given in section 245A.02, subdivision 11.

Subd. 7. **Permitted single family use.** A state licensed residential facility or a housing with services establishment registered under chapter 144D serving six or fewer persons, a licensed day care facility serving 12 or fewer persons, and a group family day care facility licensed under Minnesota Rules, parts 9502.0315 to 9502.0445 to serve 14 or fewer children shall be considered a permitted single family residential use of property for the purposes of zoning, except that a residential facility whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses shall not be considered a permitted use.

Subd. 8. **Permitted multifamily use.** Except as otherwise provided in subdivision 7 or in any town, municipal or county zoning regulation as authorized by this subdivision, a state licensed residential facility serving from 7 through 16 persons or a licensed day care facility serving from 13 through 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the residential facility. Nothing herein shall be construed to exclude or prohibit residential or day care facilities from single family zones if otherwise permitted by a local zoning regulation.

Subd. 9. **Development goals and objectives.** In adopting official controls after July 1, 2008, in a municipality outside the metropolitan area, as defined by section 473.121, subdivision 2, the municipality shall consider restricting new residential, commercial, and industrial development so that the new development takes place in areas subject to the following goals and objectives:

(1) minimizing the fragmentation and development of agricultural, forest, wildlife, and open space lands, including consideration of appropriate minimum lot sizes;

(2) minimizing further development in sensitive shoreland areas;

(3) minimizing development near wildlife management areas, scientific and natural areas, and nature centers;

(4) identification of areas of preference for higher density, including consideration of existing and necessary water and wastewater services, infrastructure, other services, and to the extent feasible, encouraging full development of areas previously zoned for nonagricultural uses;

(5) encouraging development close to places of employment, shopping centers, schools, mass transit, and other public and private service centers;

(6) identification of areas where other developments are appropriate; and

(7) other goals and objectives a municipality may identify.

History: *1965 c 670 s 7; 1969 c 259 s 1; 1973 c 123 art 5 s 7; 1973 c 379 s 4; 1973 c 539 s 1; 1973 c 559 s 1,2; 1975 c 60 s 2; 1978 c 786 s 14,15; Ex1979 c 2 s 42,43; 1981 c 356 s 248; 1982 c 490 s 2; 1982 c 507 s 22; 1984 c 617 s 6-8; 1985 c 62 s 3; 1985 c 194 s 23; 1986 c 444; 1987 c 333 s 22; 1989 c 82 s 2; 1990 c 391 art 8 s 47; 1990 c 568 art 2 s 66,67; 1994 c 473 s 3; 1995 c 224 s 95; 1997 c 113 s 20; 1997 c 200 art 4 s 5; 1997 c 202 art 4 s 11; 1997 c 216 s 138; 1999 c 96 s 3,4; 1999 c 211 s 1; 2001 c 174 s 1; 2001 c 207 s 13,14; 2002 c 366 s 6; 2004 c 258 s 2; 2005 c 56 s 1; 1Sp2005 c 1 art 1 s 92; art 2 s 146; 2007 c 140 art 12 s 14; 2008 c 297 art 1 s 60,61; 2009 c 149 s 3; 2011 c 19 s 2*

462.358 OFFICIAL CONTROLS: SUBDIVISION REGULATION; DEDICATION.

Subdivision 1. [Repealed, 1980 c 566 s 35]

Subd. 1a. **Authority.** To protect and promote the public health, safety, and general welfare, to provide for the orderly, economic, and safe development of land, to preserve agricultural lands, to promote the availability of housing affordable to persons and families of all income levels, and to facilitate adequate provision for transportation, water, sewage, storm drainage, schools, parks, playgrounds, and other public services and facilities, a municipality may by ordinance adopt subdivision regulations establishing standards, requirements, and procedures for the review and approval or disapproval of subdivisions. The regulations may contain varied provisions respecting, and be made applicable only to, certain classes or kinds of subdivisions. The regulations shall be uniform for each class or kind of subdivision.

A municipality may by resolution extend the application of its subdivision regulations to unincorporated territory located within two miles of its limits in any direction but not in a town which has adopted subdivision regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the subdivision of land equal distance from its boundaries within this area.

Subd. 2. [Repealed, 1980 c 566 s 35]

Subd. 2a. **Terms of regulations.** 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. The regulations shall require that subdivisions be consistent with the municipality's official map if one exists and its zoning ordinance, and may require consistency with other official controls and the comprehensive plan. The regulations may prohibit certain classes or kinds of subdivisions in areas where prohibition is consistent with the comprehensive plan and the purposes of this section, particularly the preservation of agricultural lands. The regulations may prohibit, restrict or control development for the purpose of protecting and assuring access to direct sunlight for solar energy systems. The regulations may prohibit the issuance of permits or approvals for any tracts, lots, or parcels for which required subdivision approval has not been obtained.

The regulations may permit the municipality to condition its approval on the construction and installation of sewers, streets, electric, gas, drainage, and water facilities, and similar utilities and improvements or, in lieu thereof, on the receipt by the municipality of a cash deposit, certified check, irrevocable letter of credit, bond, or other financial security in an amount and with surety and conditions sufficient to assure the municipality that the utilities and improvements will be constructed or installed according to the specifications of the municipality. Sections 471.345 and 574.26 do not apply to improvements made by a subdivider or a subdivider's contractor.

A municipality may require that an applicant establish an escrow account or other financial security for the purpose of reimbursing the municipality for direct costs relating to professional services provided during the review, approval and inspection of the project. A municipality may only charge the applicant a rate equal to the value of the service to the municipality. Services provided by municipal staff or contract professionals must be billed at an established rate.

When the applicant vouches, by certified letter to the municipality, that the conditions required by the municipality for approval under this subdivision have been satisfied, the municipality has 30 days to release

and return to the applicant any and all financial securities tied to the requirements. If the municipality fails to release and return the letters of credit within the 30-day period, any interest accrued will be paid to the applicant. If the municipality determines that the conditions required for approval under this subdivision have not been satisfied, the municipality must send written notice within seven business days upon receipt of the certified letter indicating to the applicant which specific conditions have not been met. The municipality shall require a maintenance or performance bond from any subcontractor that has not yet completed all remaining requirements of the municipality.

The regulations may permit the municipality to condition its approval on compliance with other requirements reasonably related to the provisions of the regulations and to execute development contracts embodying the terms and conditions of approval. The municipality may enforce such agreements and conditions by appropriate legal and equitable remedies.

Subd. 2b. **Dedication.** (a) The regulations may require that a reasonable portion of the buildable land, as defined by municipal ordinance, of any proposed subdivision be dedicated to the public or preserved for public use as streets, roads, sewers, electric, gas, and water facilities, storm water drainage and holding areas or ponds and similar utilities and improvements, parks, recreational facilities as defined in section 471.191, playgrounds, trails, wetlands, or open space. The requirement must be imposed by ordinance or under the procedures established in section 462.353, subdivision 4a.

(b) If a municipality adopts the ordinance or proceeds under section 462.353, subdivision 4a, as required by paragraph (a), the municipality must adopt a capital improvement budget and have a parks and open space plan or have a parks, trails, and open space component in its comprehensive plan subject to the terms and conditions in this paragraph and paragraphs (c) to (i).

(c) The municipality may choose to accept a cash fee as set by ordinance from the applicant for some or all of the new lots created in the subdivision, based on the average fair market value of the unplatted land for which park fees have not already been paid that is, no later than at the time of final approval or under the city's adopted comprehensive plan, to be served by municipal sanitary sewer and water service or community septic and private well as authorized by state law. For purposes of redevelopment on developed land, the municipality may choose to accept a cash fee based on fair market value of the land no later than the time of final approval. "Fair market value" means the value of the land as determined by the municipality annually based on tax valuation or other relevant data. If the municipality's calculation of valuation is objected to by the applicant, then the value shall be as negotiated between the municipality and the applicant, or based on the market value as determined by the municipality based on an independent appraisal of land in a same or similar land use category.

(d) In establishing the portion to be dedicated or preserved or the cash fee, the regulations shall give due consideration to the open space, recreational, or common areas and facilities open to the public that the applicant proposes to reserve for the subdivision.

(e) The municipality must reasonably determine that it will need to acquire that portion of land for the purposes stated in this subdivision as a result of approval of the subdivision.

(f) Cash payments received must be placed by the municipality in a special fund to be used only for the purposes for which the money was obtained.

(g) Cash payments 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. Cash payments must not be used for ongoing operation or maintenance of parks, recreational facilities, playgrounds, trails, wetlands, or open space.

(h) The municipality must not deny the approval of a subdivision based solely on an inadequate supply of parks, open spaces, trails, or recreational facilities within the municipality.

(i) Previously subdivided property from which a park dedication has been received, being resubdivided with the same number of lots, is exempt from park dedication requirements. If, as a result of resubdividing the property, the number of lots is increased, then the park dedication or per-lot cash fee must apply only to the net increase of lots.

Subd. 2c. **Nexus.** (a) There must be an essential nexus between the fees or dedication imposed under subdivision 2b 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.

(b) If a municipality is given written notice of a dispute over a proposed fee in lieu of dedication 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.

(c) 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.

Subd. 3. [Repealed, 1980 c 566 s 35]

Subd. 3a. **Platting.** The regulations may require that any subdivision creating parcels, tracts, or lots, shall be platted. The regulations shall require that all subdivisions which create five or more lots or parcels which are 2-1/2 acres or less in size shall be platted. The regulations shall not conflict with the provisions of chapter 505 but may address subjects similar and additional to those in that chapter.

Subd. 3b. **Review procedures.** The regulations shall include provisions regarding the content of applications for proposed subdivisions, the preliminary and final review and approval or disapproval of applications, and the coordination of such reviews with affected political subdivisions and state agencies. Subdivisions including lands abutting upon any existing or proposed trunk highway, county road or highway, or county state-aid highway shall also be subject to review. The regulations may provide for the consolidation of the preliminary and final review and approval or disapproval of subdivisions. Preliminary or final approval may be granted or denied for parts of subdivision applications. The regulations may delegate the authority to review proposals to the planning commission, but final approval or disapproval shall be the decision of the governing body of the municipality unless otherwise provided by law or charter. A municipality must approve a preliminary plat that meets the applicable standards and criteria contained in the municipality's zoning and subdivision regulations unless the municipality adopts written findings based on a record from the public proceedings why the application shall not be approved. The regulations shall require that a public hearing shall be held on all subdivision applications prior to preliminary approval, unless otherwise provided by law or charter. The hearing shall be held following publication of notice of the time

and place thereof in the official newspaper at least ten days before the day of the hearing. At the hearing, all persons interested shall be given an opportunity to make presentations. A subdivision application shall be preliminarily approved or disapproved within 120 days following delivery of an application completed in compliance with the municipal ordinance by the applicant to the municipality, unless an extension of the review period has been agreed to by the applicant. When a division or subdivision to which the regulations of the municipality do not apply is presented to the city, the clerk of the municipality shall within ten days certify that the subdivision regulations of the municipality do not apply to the particular division.

If the municipality or the responsible agency of the municipality fails to preliminarily approve or disapprove an application within the review period, the application shall be deemed preliminarily approved, and upon demand the municipality shall execute a certificate to that effect. Following preliminary approval the applicant may request final approval by the municipality, and upon such request the municipality shall certify final approval within 60 days if the applicant has complied with all conditions and requirements of applicable regulations and all conditions and requirements upon which the preliminary approval is expressly conditioned either through performance or the execution of appropriate agreements assuring performance. If the municipality fails to certify final approval as so required, and if the applicant has complied with all conditions and requirements, the application shall be deemed finally approved, and upon demand the municipality shall execute a certificate to that effect. After final approval a subdivision may be filed or recorded.

Subd. 3c. **Effect of subdivision approval.** For one year following preliminary approval and for two years following final approval, unless the subdivider and the municipality agree otherwise, no amendment to a comprehensive plan or official control shall apply to or affect the use, development density, lot size, lot layout, or dedication or platting required or permitted by the approved application. Thereafter, pursuant to its regulations, the municipality may extend the period by agreement with the subdivider and subject to all applicable performance conditions and requirements, or it may require submission of a new application unless substantial physical activity and investment has occurred in reasonable reliance on the approved application and the subdivider will suffer substantial financial damage as a consequence of a requirement to submit a new application. In connection with a subdivision involving planned and staged development, a municipality may by resolution or agreement grant the rights referred to herein for such periods of time longer than two years which it determines to be reasonable and appropriate.

Subd. 4. [Repealed, 1982 c 415 s 3]

Subd. 4a. **Disclosure by seller; buyer's action for damages.** A person conveying a new parcel of land which, or the plat for which, has not previously been filed or recorded, and which is part of or would constitute a subdivision to which adopted municipal subdivision regulations apply, shall attach to the instrument of conveyance either: (a) recordable certification by the clerk of the municipality that the 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 in this case because compliance will create an unnecessary hardship and failure to comply will not interfere with the purpose of the regulations; or (b) 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, nonapplicability, or waiver from the municipality. In any action commenced by a buyer of such a parcel against the seller thereof, the misrepresentation of or the failure to disclose material facts in accordance with this subdivision shall be grounds for damages. If the buyer establishes a right to damages, a district court hearing the matter may in its discretion also award to the buyer an amount sufficient to pay all or any part of the costs incurred in maintaining the action,

including reasonable attorney fees, and an amount for punitive damages not exceeding five per centum of the purchase price of the land.

Subd. 4b. **Restrictions on filing and recording conveyances.** (a) In a municipality in which subdivision regulations are in force and have been filed or recorded as provided in this section, no conveyance of land to which the regulations are applicable shall be filed or recorded, if the land is described in the conveyance by metes and bounds or by reference to an unapproved registered land survey made after April 21, 1961 or to an unapproved plat made after such regulations become effective.

(b) The foregoing provision does not apply to a conveyance if the land described:

(1) was a separate parcel of record April 1, 1945 or the date of adoption of subdivision regulations under Laws 1945, Chapter 287, whichever is the later, or of the adoption of subdivision regulations pursuant to a home rule charter, or

(2) was the subject of a written agreement to convey entered into prior to such time, or

(3) was a separate parcel of not less than 2-1/2 acres in area and 150 feet in width on January 1, 1966, or

(4) was a separate parcel of not less than five acres in area and 300 feet in width on July 1, 1980, or

(5) is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its 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, or

(6) is a single parcel of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet and its 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.

(c) In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the platting authority may waive such compliance by adoption of a resolution to that effect and the conveyance may then be filed or recorded.

(d) Any owner or agent of the owner of land who conveys a lot or parcel in violation of the provisions of this subdivision shall forfeit and pay to the municipality a penalty of not less than $100 for each lot or parcel so conveyed.

(e) A municipality may enjoin such conveyance or may recover such penalty by a civil action in any court of competent jurisdiction.

Subd. 5. **Permits.** Except as otherwise provided by this section all electric and gas distribution lines or piping, roadways, curbs, walks and other similar improvements shall be constructed only on a street, alley, or other public way or easement which is designated on an approved plat, or properly indicated on the official map of the municipality, or which has otherwise been approved by the governing body. When a municipality has adopted an official map, no permit for the erection of any building shall be issued unless the building is to be located upon a parcel of land abutting on a street or highway which has been designated upon an approved plat or on the official map or which has been otherwise approved by the governing body, and unless the buildings conform to the established building line. This limitation on issuing permits shall not apply to planned developments approved by the governing body pursuant to its zoning ordinance. No permit shall be issued for the construction of a building on any lot or parcel conveyed in violation of the provisions of this section.

Subd. 6. **Variances.** Subdivision regulations may provide for a procedure for varying the regulations as they apply to specific properties where an unusual hardship on the land exists, but variances may be granted only upon the specific grounds set forth in the regulations. Unusual hardship includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

Subd. 7. **Vacation.** The governing body of a municipality may vacate any publicly owned utility easement or boulevard reserve or any portion thereof, which are not being used for sewer, drainage, electric, telegraph, telephone, gas and steam purposes or for boulevard reserve purposes, in the same manner as vacation proceedings are conducted for streets, alleys and other public ways under a home rule charter or other provisions of law.

A boulevard reserve means an easement established adjacent to a dedicated street for the purpose of establishing open space adjacent to the street and which area is designated on the recorded plat as "boulevard reserve".

Subd. 8. **Plat approval under other laws.** Nothing in this section is to be construed as a limitation on the authority of municipalities which have not adopted subdivision regulations to approve plats under any other provision of law.

Subd. 9. **Unplatted parcels.** Subdivision regulations adopted by municipalities may apply to parcels which are taken from existing parcels of record by metes and bounds descriptions, and the governing body or building authority may deny the issuance of permits or approvals, building permits issued under sections 326B.101 to 326B.194, or other permits or approvals to any parcels so divided, pending compliance with subdivision regulations.

Subd. 10. **Limitations.** Nothing in this section shall be construed to require a municipality to regulate subdivisions or to regulate all subdivisions which it is authorized to regulate by this section.

Subd. 11. **Affordable housing.** For the purposes of this subdivision, a "development application" means subdivision, planned unit development, site plan, or other similar type action. If a municipality, in approving a development application that provides all or a portion of the units for persons and families of low and moderate income, so proposes, the applicant may request that provisions authorized by clauses (1) to (4) will apply to housing for persons of low and moderate income, subject to agreement between the municipality and the applicant:

(1) establishing sales prices or rents for housing affordable to low- and moderate-income households;

(2) establishing maximum income limits for initial and subsequent purchasers or renters of the affordable units;

(3) establishing means, including, but not limited to, equity sharing, or similar activities, to maintain the long-term affordability of the affordable units; and

(4) establishing a land trust agreement to maintain the long-term affordability of the affordable units.

Clauses (1) to (3) shall not apply for more than 20 years from the date of initial occupancy except where public financing or subsidy requires longer terms.

History: *1965 c 670 s 8; 1971 c 842 s 1; 1973 c 67 s 1; 1973 c 176 s 1; 1975 c 98 s 1; 1976 c 181 s 2; 1978 c 786 s 16,17; 1980 c 560 s 6; 1980 c 566 s 25-33; 1981 c 85 s 7; 1982 c 415 s 2; 1982 c 507 s 23;*

1985 c 194 s 24; 1986 c 444; 1989 c 196 s 1; 1989 c 200 s 1; 1989 c 209 art 2 s 1; 1995 c 254 art 1 s 90; art 3 s 6,7; 2000 c 497 s 1; 2001 c 7 s 74; 2002 c 315 s 1; 2004 c 178 s 2,3; 2006 c 209 s 1; 2006 c 269 s 1; 2006 c 270 art 1 s 6; 2007 c 116 s 1; 2007 c 140 art 4 s 61; art 13 s 4; 2013 c 85 art 5 s 41

Environmental Policy Board (EPB) **5. 3.**

Meeting Date: 04/20/2015

By: Chris Anderson, Community Development

Information

Title:

Review Structure of Chapter 13 (Environmental Protection/Resource Management) of the Comprehensive Plan and Prioritize Areas of Revisions for Current Goals and Strategies

Purpose/Background:

The purpose of this case is to begin the review of Chapter 13 (Environmental Protection/Resource Management) of the Comprehensive Plan. This initial introduction is intended to provide both the Environmental Policy Board (EPB) and the Planning Commission an opportunity to review the existing contents and inform Staff of areas where updates may be necessary or appropriate. This is the first step in the review process and will help Staff frame a future public input meeting.

The intent is not to develop new goals, strategies, or alternatives, yet prioritize areas for future revisions. Essentially, Staff desires the group to identify priority areas for revision and to also identify areas that do not require additional future revisions.

Observations/Alternatives:

Section A of the Chapter reviews the existing conditions within the City, broken down by wetlands, shorelands, soils, rivers (including urban streams and drainage ditches), floodplains, and woodlands. This section also provides a brief overview of existing management efforts and existing data that has been collected. While there may be some revisions identified within this Section, it doesn't appear that any significant updates are necessary.

Section B of Chapter 13 outlines goals and implementation strategies that are intended to serve as the framework for environmental protection. It is within this Section that Staff would really like to focus discussion. The intent is to identify the goals and/or implementation strategies that the EPB and Planning Commission believe need to be addressed, revised, eliminated or added. Staff will subsequently then synthesize this feedback to structure a future collaborative session with the general public.

Funding Source:

This case is being handled as part of Staff's regular duties.

Action:

Identify goals and/or implementation strategies that need to be addressed/updated as part of the Comprehensive Plan update.

Attachments

Chapter 13 (Environmental Protection/Resource Management)

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	04/16/2015 12:46 PM
Chris Anderson (Originator)	JoAnn Shaw	04/16/2015 12:50 PM

Form Started By: Chris Anderson Started On: 04/15/2015 04:38 PM
Final Approval Date: 04/16/2015

13. ENVIRONMENTAL PROTECTION/ RESOURCE MANAGEMENT

A. Existing Conditions

Ramsey is fortunate to have an ample amount of natural resources and open space areas and a community attitude that is increasingly concerned about the environment. The inventory of natural resources and open spaces include a variety of wetlands, woodlands, farmlands, parkland and two golf courses. Many native plants and trees are evident in the community. Early settlers cleared much of the land for farming in the early settlement days, but since then residential development has been the main force behind the loss of native vegetation allowing for the introduction of new species into the Ramsey community. The following is a limited description of the natural features and their characteristics that can be found in the Ramsey community and surrounding areas of the Anoka Sandplain. This inventory includes information that has been gathered at a regional level including sources such as U.S. Fish and Wildlife Services, Department of Natural Resources, U. S. Army Corp of Engineering, U.S. Department of Agriculture, the Metropolitan Council and other federal, state and regional resources. Information has also been obtained by local studies conducted by the City of Ramsey.

1. Wetlands

The City of Ramsey has an abundance of wetlands in a variety of wetland types. The following inventory includes two sources of data: the National Wetland Inventory (NWI) and the DNR's Protected Waters Map (see Figure 13-1). The National Wetland Inventory put together by the U.S. Army Corp of Engineers includes a more thorough inventory of land areas that have an impact on maintaining and enhancing the quality of the water. Table 13-1 represents the wetland types as designated by the U.S. Fish and Wildlife Services that can be found in the City of Ramsey.

Table 13-1 NWI Wetland types found in the City of Ramsey

Wetland Type	Wetland Description
Type 1	Floodplain Forest and Seasonally-Flooded Basin
Type 2	Wet Meadow or Prairie
Type 3	Shallow Marsh
Type 4	Deep Marsh
Type 5	Open Water (Pond)
Type 6	Scrub Shrub Swamp
Type 7	Wooded Swamp

The Minnesota Wetland Conservation Act (WCA) of 1991 outlined a program for the conservation of wetlands. The WCA is directed through the Minnesota Board of

Water and Soil Resources (MBWSR) with the DNR acting as the enforcement agency. The Act places implementation responsibilities in Local Units of Government. The Local Unit of Government that monitors wetland activities in the City of Ramsey is the Lower Rum River Watershed Management Organization. The DNR's inventory includes those wetlands that are classified as Type 3, 4, or 5 of the NWI. Figure 13-1 illustrates the City of Ramsey's wetlands.

2. Shorelands

The City has several lakes and marshes that are classified as part of the shoreland management program. The following table highlights the various shorelands in Ramsey:

Table 13-2 Shorelands of the Ramsey Shoreland Overlay District

Natural Environment Lakes	Recreational Development Lakes	General Development Lakes	General Development Streams
Shack Eddy	Jeglens Marsh	Ramsey Terrace	Trott Brook (part)
Itasca	Peltzer	Magnesium Street	Ford Brook (part)
Rogers	Grass (Sunfish)	Industry Avenue	

3. Soils

The predominant soil types in Ramsey consist of the Hubbard–Nymore Association. These soils are nearly level to gently sloping, excessively drained soils that are sandy throughout. This association is well suited to most urban uses and is moderately well suited to farming and to recreational uses. This soil type is mostly found in the central and southern portions of the City while in the northeast part of the City the Zimmerman-Isanti-Lino Association is prominent. This soil association is also dominated by sandy soil conditions, is well suited to urban uses and moderately well suited to farming. The dominant soils of these associations include Hubbard, Nymore, Zimmerman and Isanti. Some of the sub-soils include Markey, Rifle, Dickman, Anoka, Duelm and Becker. A complete inventory map of Anoka County including the City of Ramsey can be found in the Soil Survey of Anoka County found at City Hall or Anoka County Surveyors office.

4. Rivers, Urban Streams and Drainage Ditches

The Mississippi River forms the southern border of Ramsey and one of its tributaries, the Rum River, forms the eastern border. These two rivers are the drainage basins for the entire City. Much of southern Ramsey is part of the Mississippi River Watershed. The northern and central portions of the City are located in the Lower Rum River Watershed. Trott Brook and Ford Brook are two main ditches in a series of county ditches that provide drainage ways through the northern portion of the City and drain into the Rum River.

5. Floodplains

A good portion of the Cities natural resources are located within designated floodway

or floodplain areas. Floodplain areas can be found along Trott Brook, Ford Brook, many of the drainage ditches and wetlands within the community and the Mississippi and Rum Rivers. Characteristics of floodplains include mucky soils that are poorly drained and seasonally flooded and wetland vegetation. Often, floodplains are used for agriculture purposes because of the high nutrient and organic soils that are unsuitable to development.

6. Woodlands

The City of Ramsey conducted tree inventories in 1979 and again in 1992. These inventories indicate a predominance of bur oak, box elder and red oak. The area was originally higher in oak species: however, clear-cutting for agriculture greatly reduced tree cover. Also the oak population is suffering from oak wilt, which has been increasing in recent years. In addition to disease, residential development has reduced much of the wooded population. As the older tree population begins to die off or be removed, new species are introduced. These species are not very well documented. The City of Ramsey has been designated by the National Arbor Day Foundation as a member of Tree City USA since roughly 1986.

7. Natural Resources Inventory

In 2007, the City completed and Natural Resources Inventory to collect and evaluate information on the natural resources of Ramsey. This document also described potential strategies for the protection of these resources. Figure 13-3 shows the existing natural areas in Ramsey and their ranking.

8. Existing Management Efforts

The following programs are currently being implemented by the City of Ramsey to protect the natural resource base:

The Shoreland Management Program provides orderly development of the shoreland and protects lakes and rivers from pollution by individual sewage treatment systems and other non-point sources. The intent of the program is to encourage development of our shorelands in such a way that the water quality is enhanced and the scenic resources are preserved.

The Floodplain Management Program is intended to minimize the threat to life and property resulting from flooding. This program restricts development in floodplains by preventing structures from being built at too low an elevation in areas that have a high risk of flooding. It also controls encroachment so that the floodplain's capacity to hold floodwater will not be reduced, causing flooding to properly located structures.

The Wild and Scenic Rivers Program is a program to preserve and protect rivers with outstanding scenic, recreational, natural, historical and scientific values. The program is designed to prevent damage to these exceptional rivers caused by intensive development and recreational overuse. Both the Mississippi and Rum Rivers are protected under the Wild and Scenic River's Act. The Mississippi River is designated as a "recreational" river through the City of Ramsey while the Rum River is designated as "scenic."

The Critical Areas Act is a program to protect areas, which are of significant regional or statewide public value or interest. The program is designed to protect, preserve and enhance a unique and valuable resource; its biological and ecological functions; its natural, aesthetic, cultural and historical values; and its significance to the transportation, sewer and water and recreational systems for the benefit of the citizens of the state, region and nation. It is also to prevent and mitigate irreversible damage resulting from urbanization. The Mississippi River is designated as a State Critical Area through Ramsey.

The Mississippi National River and Recreation Area Program is a program that furthers the intent of the Critical Areas Act by emphasizing the preservation and enhancement of the historical, scenic, recreational and cultural values of the Mississippi River Corridor. The program is designed to assist and coordinate from a national, regional and local level, activities and projects that emphasize such things as historic/cultural interpretation, public access or native vegetation restoration.

The American Heritage Rivers Program is intended to improve access to federal expertise and resources for riverfront revitalization. The Mississippi River through the Twin Cities Metropolitan Area received designation as an American Heritage River in 1998.

The City Forester and Recycling Coordinator are staff persons hired by the City to provide assistance to residents and business with tree care and recycling needs. The recycling program is funded through Anoka County Integrated Waste Management, while the City Forester is funded through the City. Citizen volunteer groups also contribute to tree preservation and recycling efforts.

Monitoring of Public Wells. As a condition of the approval of Well #8, the latest municipal well to be constructed in the City of Ramsey, the Minnesota Department of Natural Resources and the City of Ramsey began an initiative to monitor the effects of city wells on nearby wetlands and surface water. The purpose of this initiative was the result of concerns by the DNR of using a single aquifer that may result in depleting the resource and possibly lowering the water table. In addition, the City is studying the possibility of using surface water from the Mississippi River as a source for municipal water.

B. A Plan for Environmental Protection and Natural Resources Management

A very important piece to the vitality of the Ramsey community is the protection, preservation and restoration of the native vegetation that covers the community. The following goals and implementation strategies are intended to act as a framework for environmental protection.

1. Natural resources are protected

STRATEGIES:

a) Identify and prioritize natural areas in the City based on the Natural resource Inventory (NRI)
b) Use cluster ordinances, density credits, and conservation development practices to minimize impact on identified natural resources
c) Explore ways to put an economic value on habitat and other natural areas
d) Provide incentives to homeowners for the permanent protection of high-value natural resource areas
e) Establish a revenue stream dedicated to the permanent protection of natural resource areas such as a dedicated City tax enacted through referendum
f) Manage invasive species and promote the use and protection of native species for private and public development
g) Develop educational materials, such as kiosks, Ramsey Resident article, and maps to inform public about the value of natural resources

2. Recreation opportunities are integrated into protected natural areas

STRATEGIES:

a) Coordinate protection and enhancement of natural corridors with neighboring communities
b) Develop a suitability analysis method for reviewing new development that measures both environmental suitability and efficiency of infrastructure use
c) Prioritize the preservation of large, contiguous natural areas (greenways) that provide the greatest opportunities for animal and plant habitat, as well as a contiguous trail system

3. Clean water and clean air for the current and future generations of Ramsey citizens and businesses

STRATEGIES:

a) Preserve existing tree canopy and promote additional tree planting in new development, both public and private
b) Explore options other than ground water for municipal water supply
c) Manage stormwater on site by using alternative stormwater treatment systems, as described in the Storm Water Management Plan
d) Monitor the quality and quantity of groundwater in aquifers and adopt measures to ensure long-term sustainability
e) Seek out alliances and partnerships with non-profit and governmental agencies to assist in securing funding and other resources to assist in achieving this goal
f) Continue to participate in the North Metro Water Supply Group organized by the Metropolitan Council

4. Reduce waste that goes to the landfill from both private and public sources

STRATEGIES:

a) Continue to improve upon the City's award-winning recycling program
b) Seek out alliances and partnerships with non-profit and governmental agencies to assist in securing funding and other resources to assist in implementing this goal
c) Develop educational materials, kiosks, Ramsey Resident articles and maps to inform public about the value of natural resources

C. Implementation Strategies

The following strategies are a suggested means to achieving the goals set forth in the Environmental Protection and Natural Resources Management element of the Comprehensive Plan.

1. Data and Information inventory

A critical step in being able to implement an Environmental Protection and Natural Resources Management plan is to have information that can be analyzed. Such information might include native species, rare habitat, wetlands, soils, diseased areas, septic system problems or other significant natural resource information. Much of this data is already available from federal, state, county or local agencies: however, this data is often outdated, in a variety of different formats (which makes analysis difficult) or too general to provide analysis information. With advances in modern technology, federal, regional and local governments have been able to provide information in Geographic Information Systems (GIS) making data management and information analysis much more feasible and cost effective. The financial ability to establish such a comprehensive inventory could be made possible through supportive funding by the City in partnership with such agencies as the DNR, Office of Environmental Assistance, Department of Agriculture, private foundations and local businesses. Significant research and grant writing would be involved in securing funding for such an analysis and inventory. A critical element of building an inventory of data is having a database that can manage it and allow easy cost effective retrieval and analysis.

2. The Greenway

Greenway corridors mainly include natural resources such as wetlands, hydric soils, tree canopy, natural vegetation, and unique wildlife habitat. It also includes some lands that may not be environmentally unique but instead simply create a link between other open space areas such as parks or wetlands. Some of the elements within greenways are protected through ordinance or other legal means, while others are not. These corridors may be environmentally sensitive areas, which allow for protection of water quality, wildlife movement, scenic views, and a continuous trail system. The intent of the Greenway is not to prohibit development within this corridor but rather to preserve the existing resource base and return areas to their natural state where possible.

The corridor boundary reflecting the Greenway is not a fixed boundary line. This boundary is intended to reflect general (broad) areas that may fall within the Greenway designation, and should send a message to the developers of lands near or obviously within the greenway to develop in the highest environmentally sensitive way possible.

Implementation of the greenway could be handled in a couple of ways. It could be implemented by creating an overlay-zoning ordinance that simply places a layer of regulation over existing zoning districts. This overlay would not replace existing environmental overlay ordinances nor would it be intended to further restrict areas already regulated by existing ordinances rather it would guide development in areas that are not covered by existing environmental ordinances. If the overlay ordinance is the preferred choice of implementation, a more defined boundary should be

established through more site-specific analysis including field study. The other, and less controlling approach, is to refer to the greenway as voluntary means to preserve the environment and create high quality places to live. This could be done through park dedication, conservation easements or clustering housing techniques that can provide incentives to developers to preserve areas that are not otherwise protected by ordinance. This would be handled through the subdivision and site planning process.

3. Scenic Roadways

Some stretches of roadway in Ramsey provide opportunities for scenic vistas that preserve the rural character of the community. An overlay district that designates roadways as having significant scenic values would apply design and planning principles to preserve the rural character of the community. Such principles might include setback criteria, landscaping guidelines, roadway improvement standards or sign regulations.

4. Land Protection Tools

Many tools are available for efforts to protect areas of significant natural resources. These efforts are summarized in many publications one of which is a publication by the Minnesota DNR Natural Heritage and Nongame Research Program "*Natural Areas: Protecting a Vital Community Asset."* For extensive information about open space preservation tools and techniques, the City should consult organizations such as the Department of Natural Resources, The Nature Conservancy, The Trust for Public Land, The Minnesota Land Trust, The Urban Land Institute and many others. The following is a brief explanation of some of the tools and strategies available:

a) Open-space zoning or cluster zoning

The purpose for establishing an open-space or cluster zoning district is to direct development in an effort to preserve large amounts of contiguous open space and protect natural resources that otherwise may be destroyed. These zoning techniques do not reduce overall density rather they simply transfer density from desired preservation areas to development areas. This way, private property owners are granted the reasonable economic use of their property without negatively impacting the remaining natural or open space areas that the community strongly desires. Residential developments would be clustered together in effort to minimize street and utility construction needs and to systematically provide contiguous open space areas.

Primary components of open-space or cluster zoning

- Smaller lot sizes, street widths, or setbacks in effort to maintain an overall density on a portion of the site that otherwise would be spread over an entire site.
- The developer would be required to preserve a percentage of the land within the development as *permanent open space* by placing the land in a permanent conservation easement or other land preservation tool such as dedication to the City.
- Identification of preservation areas on a community-wide basis, such as the greenway corridor, Wild and Scenic Rivers Area or Mississippi River Critical Area.

b) Conservation Easements

Conservation easements are the voluntary transfer of specified development and land use rights from a landowner to a qualifying organization such as a public body or non-profit agency. Conservation easements can be in the form of permanent easements (lasting forever) or "term" easements (lasting for a period of time at which the land use may be changed). Conservation easements in Ramsey should be used to protect natural resources or to permanently preserve areas of the greenway corridor.

c) Transfer of Development Rights

Transfer of development rights allows landowners who may wish to preserve their lands to still receive a profit from the sale of development rights. The purchaser of the development rights would then be able to develop at greater densities. This technique requires the community to establish (on a community wide basis) sending zones, which are areas the community wishes to preserve and receiving zones, which are areas that are most easily served by utilities and are the most logical growth expansion areas. Examples of sending zones may include lands within the greenway corridor, lands identified as containing significant natural resources or lands within the Mississippi River Critical Area corridor. Receiving zones may be located where utilities are readily available or could be easily extended or possibly within the existing MUSA area.

d) Purchase of Development Rights

Purchase of development rights (PDR) operates basically the same way as in the TDR program except instead of transferring development rights the development rights are basically retired or lost. Development rights are typically purchased by the government or non-profit organizations and the land is put into a permanent conservation easement. This program is more of a tool to reduce total growth and can potentially lead to sprawl or leap frog development when areas adjacent to urban services loose their development rights. This program should be used carefully. Residential lands within the Mississippi River Critical Area may be good candidates for the PDR program.

e) Preferential Taxation

Preferential taxation can be used to protect wetlands, agricultural lands or open space. Several of these programs currently exist such as the Agricultural Preserves and Green Acres program, which provide tax breaks for agricultural uses and the Wetland Tax Exemption program which exempts wetland areas from property tax assessments. The purpose for preferential taxation programs is to level the playing field by acknowledging the land's actual use rather than a market value based approach on uses to which the landowner has no intention of putting the land.

f) Property Acquisition

Property acquisition is probably the simplest form of open space preservation to understand in that it simply means the public buys the land. This technique gives the public control over the use of the property; however, this technique can be very expensive and may not always enjoy strong public support.

g) Land Banking

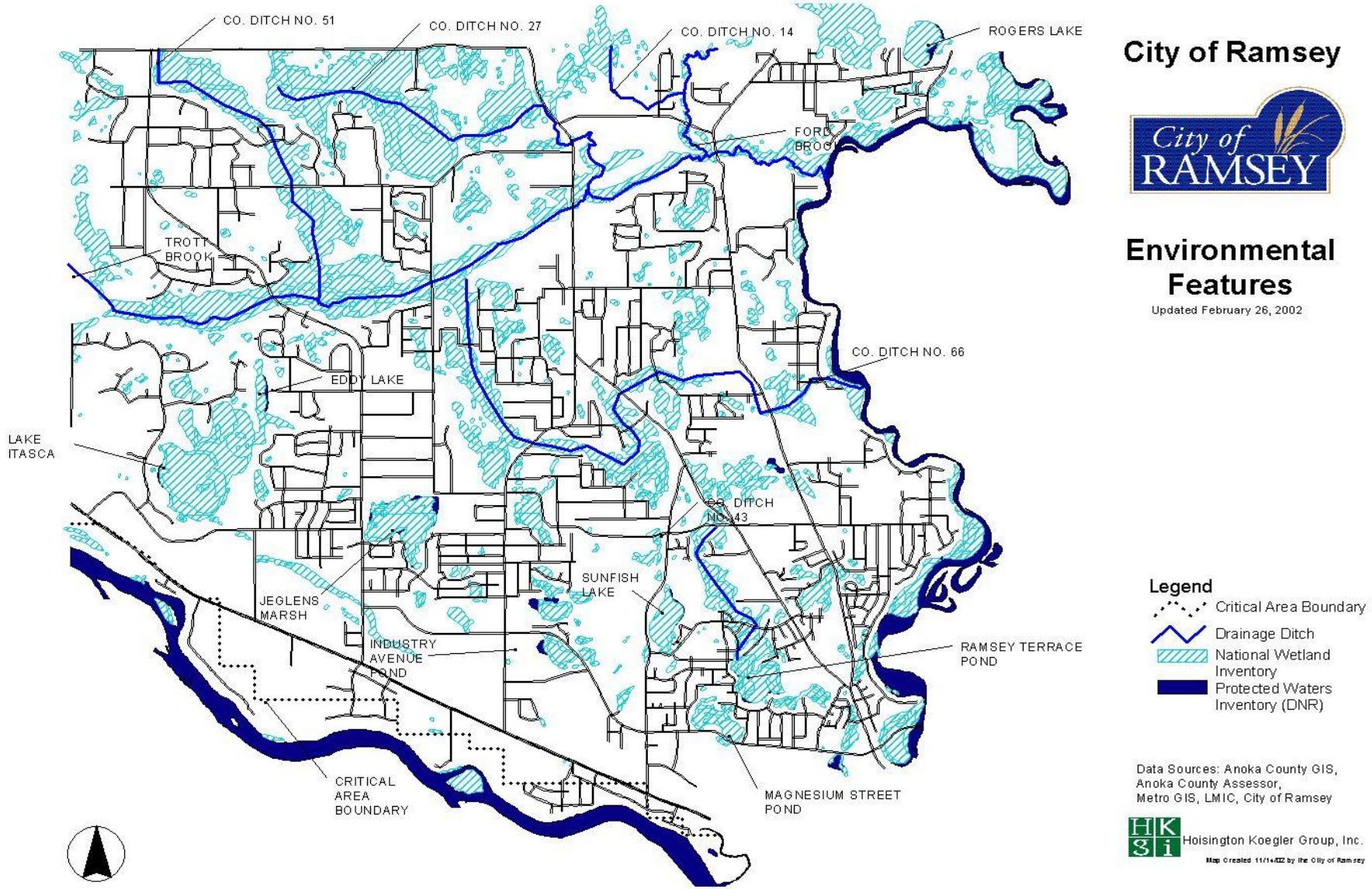
This is a tool similar to property acquisition where the public (City of Ramsey) purchases the land before it is ready to develop. When the area is ready to develop, the City can sell the land with restrictions that preserve open space or limit development. This technique may also be referred to as advanced acquisition.

D. Funding Sources

One of the key obstacles to utilizing some of the tools described above is adequate funding. The following is a list of potential funding sources for implementation of the above-mentioned programs.

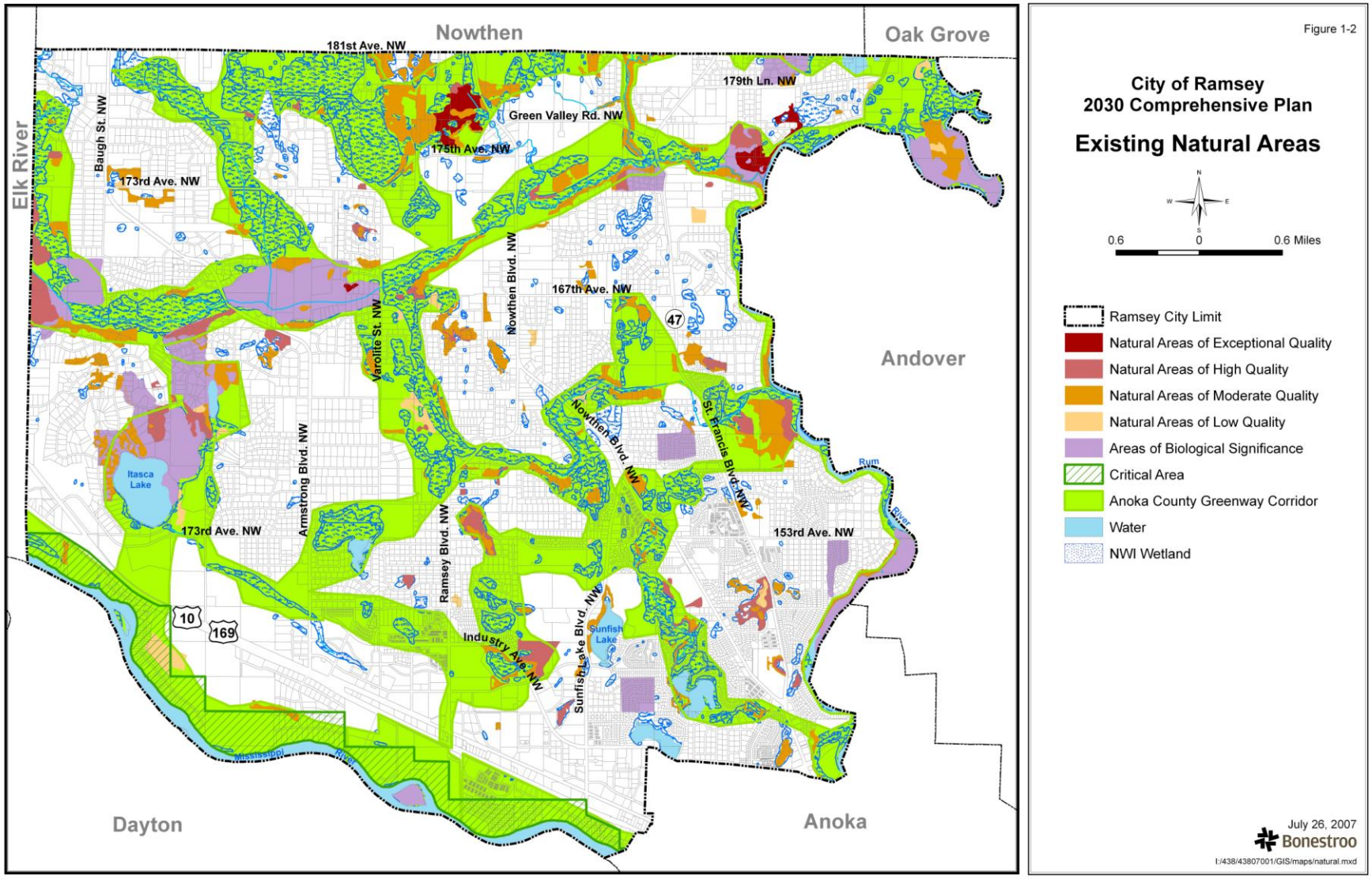
- Minnesota Department of Natural Resources
- National Park Service
- Metropolitan Council
- Minnesota Land Trust
- Trust for Public Lands
- 1,000 Friends of Minnesota
- City referendum
- Park dedication from development

Figure 13-1 Wetlands (NWI and DNR Protected Waters) and Natural Drainage



This page intentionally left blank

Figure 13-3 **Natural Resources Inventory**



This page intentionally left blank

Environmental Policy Board (EPB) **5. 4.**

Meeting Date: 04/20/2015

By: Tim Gladhill, Community Development

Information

Title:

Receive Presentation on Update of Development Projects

Purpose/Background:

Staff will provide an update of various private and public construction projects under construction or scheduled to commence construction in 2015.

In the coming weeks, Staff will be providing updates to our clearinghouse of updates located at www.cityoframsey.com/developmentupdate.

Action:

No action is being request; this case is for update only.

Attachments

No file(s) attached.

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	04/16/2015 12:10 PM
Form Started By: Tim Gladhill		Started On: 04/16/2015 08:33 AM
Final Approval Date: 04/16/2015		