

Land Use Ordinances Require Ongoing Review

BY JED BURKETT

Among the more expansive and long-lasting powers of municipal governance is regulating the use of private property through zoning and subdivision ordinances. Cities engage with community to create comprehensive plans, setting forth a shared vision for the future. And land use regulations are a tool to implement those plans.

Like any tool, land use ordinances need to be maintained over time, as they can become out of date and inconsistent with developing trends and law. If an ordinance is not clear or not working well, then it may need to be sharpened by amending the ordinance. Cities should periodically review their ordinances to ensure they are consistent with current plans, uses, protections, and law.

A comprehensive plan is a document that sets forth a vision and goals for the city's future. 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.

After adopting a new comprehensive plan, cities will typically need to amend their land use ordinances to implement the latest plan. Many cities may need to amend their zoning ordinances related to housing and density, for example, or transportation and parking, particularly when a new and different vision has emerged.

Administration of zoning ordinance is an ongoing process

Zoning ordinance maintenance is a daunting task. Zoning is a method of establishing a land use pattern by regulating the way land is used by landowners. A zoning ordinance typically attempts to list all allowed uses in a zoning district, and if a use is not listed then it is generally prohibited. These lists tend to reflect activity at the time they were written, so they often become out of date as new uses emerge.

For example, when the coffee shop craze took off about 30 years ago, many

cities had to change their zoning ordinances. Coffee was allowed at cafes and restaurants, but a beverage-only business had not been contemplated. Amending ordinances to keep up with new uses can be an ongoing process.



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Another hazard of zoning ordinance administration is that some land uses have protections in federal or state law from adverse or discriminatory zoning decisions. Some uses have federal constitutional rights — adult entertainment businesses, religious institutions, and signs. Others have statutory protections — group homes, manufactured homes, and telecommunications facilities. Cities need to be careful when dealing with these protected uses. Cities should work closely with the city attorney to evaluate related ordinance provisions.

Ensure ordinances comply with Municipal Planning Act

The legal foundation for city land use ordinances in Minnesota is the Municipal Planning Act, which the Legislature amends from time to time. City leaders should make sure their land use ordinances are consistent with the act and with other state and federal laws. A few areas that have been changed over the years and that should be evaluated for consistency are time limits, voting thresholds, and land use fees.

Time limits. In 1995, Minnesota adopted the so-called 60-day rule of Minn. Stat. Sec. 15.99, which says a city must approve or deny a written request related to zoning within 60 days or it is deemed

approved. Timelines should either not be included in land use ordinances or should conform with the 60-day rule.

Voting thresholds. While state law used to require a supermajority (two-thirds) vote of the council to adopt

or amend a zoning ordinance, it now requires only a simple majority of the council to adopt or amend a zoning ordinance with one exception — changing from residential to either commercial or industrial. Cities should remove any outdated supermajority requirements from their land use ordinance provisions.

Land use fees. Cities should make sure their land use fee provisions and practices meet current state standards. Under current law, a city may prescribe fees sufficient to defray the costs incurred in reviewing, investigating, and administering a land use application. The fees must be fair, reasonable, proportionate, and have a nexus to the actual cost of the service. Cities that collect land use fees must adopt management and accounting procedures to ensure fees are maintained and used only for the purpose for which they are collected.

There are other ways in which a city land use ordinance may fall out of harmony with state law. Cities should work closely with their city attorney to review land use ordinances for consistency with current law or practice. Learn more from the LMC information memo at www.lmc.org/landuseupdates.

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COTTAGE FOOD PRODUCER REGISTRATION



In 2015, the passage of the Cottage Food Law in Minnesota changed sections of legislation under Minnesota Statutes (MS) Section 28A.151 previously known as the "non-potentially hazardous foods section" and "the pickle bill". The Cottage Food Law

(<https://www.revisor.mn.gov/statutes/cite/28A.152>) replaces both of these sections. Additional legislative changes were passed in 2021, with an effective date of August 1, 2021. This included the addition of cottage pet treats, found in MS 25.391.

Key changes on August 1, 2021 included:

- Increasing the sales cap per registered individual to \$78,000.
- Allowing individuals to organize their cottage food business as a business entity recognized by state law.
- Adding pet treats as an allowed cottage food (MS 25.391).
- Requiring all producers to pass an exam prior to registration.
- Requiring all cottage foods and cottage pet treats to be labeled with the statement, "These products are homemade and not subject to state inspection".

Cottage food producers must do the following:

1. Register with the Minnesota Department of Agriculture (MDA) each year before selling food under the cottage food exemption, regardless of the amount of food sold.
 - Tier 1: For gross annual sales of \$5,000 or less, complete an online training and exam each year before registering or renewing.
 - Tier 2: For gross annual sales of \$5,001 - \$78,000, take an approved food safety course once every three years while actively selling cottage food.

2. Prepare and sell only non-potentially hazardous food (such as baked goods, certain jams and jellies) and/or home canned pickles, vegetables, or fruits with a pH of 4.6 or lower and a water activity of 0.85 or less.
3. Label product with your name, address OR cottage food registration number, the date on which the food was produced, the ingredients (including potential allergens for human foods) and the statement, "These products are homemade and not subject to state inspection".
4. Display a clearly legible sign or placard at the point of sale that says, "These products are homemade and not subject to state inspection." If you are selling on the internet, post this statement on your webpage.
5. Deliver food directly to the ultimate consumer. The person who makes the food must be the same person who sells and delivers the food.
6. Sell from a private home, farmers' market, community event, or on the internet. Food cannot be shipped or wholesaled.
7. Check with your local city, county, or township regarding business licensing or sales prohibitions due to zoning requirements.
8. Sell less than \$78,000 in a calendar year. If you sell between \$5,001 and \$78,000 dollars per year, a \$50 fee applies to your registration.

Please be aware that these sales are subject to income tax and may be subject to sales tax. Contact the Minnesota Department of Revenue for more information at 651-556-3000.

Basic Registration Process:

Step 1: Determine if you are eligible to register for this license exemption. This includes verifying the food you plan to make is non-potentially hazardous and that your local city, county, or township does not have home sales prohibitions due to zoning requirements. The [MDA online training \(https://www.mda.state.mn.us/sites/default/files/docs/2021-07/cottagefoodproducertraining_0.pdf\)](https://www.mda.state.mn.us/sites/default/files/docs/2021-07/cottagefoodproducertraining_0.pdf) may be helpful to review to verify eligibility.

Step 2: If you are eligible, complete the training and exam for Cottage Food Producer Registration. Your training and exam requirements will depend on your expected gross annual sales.

- If your sales are expected to be less than \$5,000 per year, take the [MDA Tier 1 training \(https://www.mda.state.mn.us/sites/default/files/docs/2021-07/cottagefoodproducertraining_0.pdf\)](https://www.mda.state.mn.us/sites/default/files/docs/2021-07/cottagefoodproducertraining_0.pdf) and exam.
- If your sales are expected to be more than \$5,000 per year, take the Tier 2 training through the [University of Minnesota Extension Food Safety Program \(https://extension.umn.edu/courses-and-events/cottage-food-producer-food-safety-training\)](https://extension.umn.edu/courses-and-events/cottage-food-producer-food-safety-training) before registering with MDA. This course can be taken online or in-person.

Step 3: Complete the [online cottage food producer registration \(https://www.mda.state.mn.us/licensing-inspections/online-licensing-payment-options\)](https://www.mda.state.mn.us/licensing-inspections/online-licensing-payment-options) and exam (<https://www2.mda.state.mn.us/webapp/erenewal/apply.jsp>). Choose "Cottage Foods Producer

Registration” from the dropdown menu.

If you do not have access to a computer, you may request a paper application, training, and exam by emailing MDA.CottageFood@state.mn.us (<mailto:MDA.CottageFood@state.mn.us>) or calling 651-201-6062. Leave a detailed message, including your first and last name and mailing address.


Step 4: MDA will send you a registration card in the mail with a unique registration number. Post the registration card in a location visible to customers where you are selling your food. Please allow approximately 3-4 weeks for processing.

You may check the status of your registration at [Licensing Information Search](http://www2.mda.state.mn.us/webapp/lis/default.jsp) (<http://www2.mda.state.mn.us/webapp/lis/default.jsp>). If your registration has been processed, you will be listed and can sell your cottage food items.

APPLY HERE

- >  License Application and Renewal Portal
(<https://www2.mda.state.mn.us/webapp/erenewal/apply.jsp>)

FORMS + RESOURCES

- >  Cottage Food Producer Tier 1 Training
(https://www.mda.state.mn.us/sites/default/files/docs/2021-07/cottagefoodproducertraining_0.pdf)

CONTACT US

Cottage Food (/cottage-food)
651-201-6081 (tel:651-201-6081)
MDA.CottageFood@state.mn.us (<mailto:MDA.CottageFood@state.mn.us>)

Licensing & Registration (/licensing-registration)

City Code, Chapter 7A: GENERAL ZONING REGULATIONS

41. **“Floor Area, Usable”** - Same as Gross Floor Area.
42. **“Floor Area Ratio”** - The floor area of the Building divided by the area of the Lot on which such Building is located.
43. **“Food Processing”** - The preparation, storage, or processing of food products. Examples of these activities include bakeries, dairies, canneries, etc.
44. **“Frontage, front, rear”** - “Frontage” is the width of a Lot measured on the line separating it from a Public Street or right-of-way. “Front” is the end of the Building or end of the Lot which most closely faces the Frontage. “Rear” is the opposite of front.
[§ 7A-201 44., formerly § 7A-201A. 42, amended by Ord. No. 89-1, effective July 21, 1989.]
45. **“Garage, Private”** - An Accessory Building, or an accessory portion of the Principal Building, that is stick-built with a concrete floor and used for storing or parking of automobiles, Recreational Vehicles and/or boats of the occupants of the Premises and wherein not more than one (1) space is rented for parking to a person not resident on the Premises.
[§ 7A-201 45, amended by Ord. No. 13-01, effective January 31, 2013.]
46. **“Garage, Public”** - A Principal or Accessory Building other than a Private or Storage Garage, used for parking or temporary storage of passenger automobiles, and in which no service shall be provided for remuneration.
[§ 7A-201 46., formerly § 701-A.44, amended by Ord. No. 89-1, effective July 21, 1989.]
47. **“Garage, Storage”** - Any Building or Premises, used for housing only motor-driven vehicles, other than trucks and commercial vehicles.
48. **“Grade”** - The average level of the finished surface of ground adjacent to the exterior walls of the Building.
- 48A. **“High Water Table”** - The highest in elevation of any of the following:
- (a) Water in a test hole;
 - (b) Mottled soil;
 - (c) The elevation which is 1.0 feet below that portion of the 100-Year Flood Plain which lies within a 1,000 foot radius of the site being tested or evaluated;
 - (d) The high water mark of that portion of a lake, stream or wetland which lies within a 1,000 foot radius of the site being tested or evaluated; or
 - (e) As demonstrated by a geotechnical engineer’s report by use of piezometers over a minimum period of twelve (12) months, subject to the City Engineer’s discretion.
- [§ 7A-201 48.A, formerly § 7A-201A 46.A: added by Ord. No. 89-15, effective December 29, 1989; amended by Ord. No. 90-5, effective August 17, 1990, amended by Ord. No. 18-01, effective May 31, 2018.]*
49. **“Home Occupation”** - An occupation or business or activity intended to generate a profit and conducted in a Dwelling Unit, provided that:
- (a) No persons other than members of the Family who reside on the Premises shall be engaged in such occupation;
 - (b) The use of the Dwelling Unit for the Home Occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty percent (20%) of floor area of the Dwelling Unit shall be used in the conduct of the Home Occupation, and not more than 300 square feet of any garage or Accessory Building shall be used in the conduct of the Home Occupation;
 - (c) There shall be no change in the outside appearance of the Building or Premises, or other visible evidence of the conduct of such Home Occupation other than one (1) sign not exceeding two (2) square feet in area, with a vertical length of not more than four times the horizontal width, non-illuminated, and mounted flat against the wall of the Principal Building;

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(d) No traffic shall be generated by such Home Occupation in greater volume than would normally be expected to a residence in a residential neighborhood, and the Driveway shall be designed accordingly;

(e) Parking lots shall not exceed four (4) stalls and shall not be located within twenty (20) feet of any Lot line. Parking lots shall be located along the side of or at the rear of the Dwelling Unit;

(f) No equipment, activity, or process shall be used in such Home Occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the Lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the Premises, or cause fluctuations in line voltage off the Premises.

(g) No outside storage is permitted.

[§ 7A-201 49., amended by Ord. No. 89-1, effective July 21, 1989, amended by Ord. No. 92-1, effective June 12, 1992 and amended by Ord. No. 00-06, effective August 17, 2000, amended by Ord. No. 08-03, effective April 17, 2008.]

50. **“Hotel or Motel and Apartment Hotel”** - A Building in which lodging and boarding are provided and offered to the public for compensation. As such it is open to the public in contra-distinction to a rooming house, boarding house, lodging house, or dormitory which is herein separately defined.

51. **“Institution”** - Building(s) and/or land designed to aid individuals in need of mental, therapeutic, rehabilitative counseling or other correctional services.

52. **“Junk”** - Any worn out, cast off or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use. Any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall not be considered Junk. Common examples of Junk include wrecked vehicles, scrap metal, scrap paper and rags, rubber tires, scrap plastic, and scrap glass.

[§ 7A-201 52., formerly § 7A-201A 50., amended by Ord. No. 89-1, effective July 21, 1989.]

53. **“Junk Buildings, Junk Shops, Junk Yards”** - Any land, property, Structure, Building or combination of the same, on or in which Junk is stored or processed.

[§ 7A-201 53., formerly § 7A-201A 51., amended by Ord. No. 89-1, effective July 21, 1989.]

54. **“Kennel”** - Any Premises where four (4) or more animals over six (6) months of age are housed, groomed, bred, boarded, trained, or sold and which may offer provisions for minor medical treatment.

54.A. **“Lighting Fixtures, Outdoor”** - Any type of fixed or movable lighting equipment that is designed or used for illumination outdoors. The term includes billboard lighting, building lighting, parking lot lighting, streetlights, searchlights, and other lighting used for advertising purposes and area lighting. The term does not include lighting equipment that is required by law to be installed on motor vehicles, lighting required for the safe operation of aircraft, or lighting installed for the illumination of flagpoles.

55. **“Loading Space, Off-Street”** - Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required Off-Street Parking Spaces are filled. Required Off-Street Loading Space is not to be included as Off-Street Parking Space in computation of required Off-Street Parking Space. All Off-Street Loading Spaces shall be located totally outside of any Street or Alley right-of-way.

56. **“Lot”** - For the purposes of this Ordinance, a Lot is a parcel of land of sufficient size to meet minimum Zoning requirements for use, coverage, and area, and to provide such Yards and other open spaces as are herein required. Such Lot shall have Frontage on an improved Public

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SECTION 7A-806. RESIDENTIAL ZONE BUSINESSES. Residential Zone Businesses are clearly accessory and incidental to the principal residential use of property in the Rural Residential (RR) District. Residential Zone Businesses are considered a privilege and not a right. The use of a residence for a business is allowed only for those businesses that can be conducted on residential property with little or no impact on adjacent residential uses. Residential Zone Businesses are not intended for growing or larger businesses that are customarily located in commercially zoned properties. The use of a residence for a business is considered temporary and is not allowed to change the appearance of the residential property or affect the future use of the principal or accessory structures for residential purposes. Residential Zone Businesses are subject to the following additional minimum requirements and limitations:

- A. Residential Zone Businesses are allowed only in the Rural Residential (RR) District..
- B. The property on which a Residential Zone Business is proposed must be in conformance with all minimum dimensional standards required in Section 7A-801.
- C. A Residential Zone Business requires an Interim Use Permit as provided in Section 7A-530 through 7A-532.
- D. A Residential Zone Business Interim Use Permit is required for any Home Occupation that does not meet the definition and standards in Section 7A-201, subsection 49, for a Home Occupation.
- E. Residential Zone Businesses are allowed only when the principal use of the property is maintained and occupied as a residence. The owner of the Residential Zone Business must own and reside in the residence.
- F. Employees of Residential Zone Businesses that use the premises of the Residential Zone Business on a regular basis are limited to the occupants of the principal residential structure. Employees or subcontractors of a Residential Zone Business not residing on the premises are allowed on the premises only on a non-regular or infrequent basis.
- G. No outside display or storage of materials, products, debris, junk, waste, equipment, or vehicles associated with Residential Zone Businesses is permitted except vehicles customarily allowed for the principal residential use of the property...
- H. The operation and conduct of Residential Zone Businesses shall be consistent with the performance standards and all other requirements of the Columbus City Code.
- I. The operation and conduct of Residential Zone Businesses shall occur only within principal and accessory buildings, except for vehicle usage, deliveries and similar incidental activities that cannot be conducted within structures.
- J. The operation and conduct of Residential Zone Businesses shall be considered "invisible" to adjacent properties to the extent practicable and shall not impact the principal use and enjoyment of adjacent properties for residential purposes.
- K. Proposed additions and renovations to principal and accessory buildings to be used for Residential Zone Businesses shall not be permitted when such additions and renovations may be determined by the City to jeopardize or limit the future use of the property for normal residential purposes.
- L. A Residential Zone Business Interim Use Permit application must clearly identify the daily routine and frequency of proposed business activities with regard to business vehicular use, deliveries, and many customer or client visits to the premises.
- M. Normal hours of residential Zone Business activities are visible or detectable outside the principal or accessory structures shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday. Exceptions to the hours of operation may be considered and only when specified in the Interim Use Permit for service-oriented businesses, such as hair and personal care facilities,

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music studios, dance studios, animal training facilities, small equipment repair, and similar services required by or benefiting area residents.

N. Parking required for Residential Zone Businesses shall be based upon the nature of the business and may be limited to restrict Residential Zone Business activities to a level or intensity of use that does not impact adjacent properties or future residential use of the property.

O. Additional landscaping, screening, fencing, or other buffering may be required for any Residential Zone Business.

P. Only one sign, parallel to and affixed to the plane of a wall of the principal structure and not exceeding two square feet in area, is permitted for any Residential Zone Business. Permitted vehicles or equipment with business identification signs or other advertising associated with the Residential Zone Business shall not be parked or displayed on the premises for advertising purposes.

Q. The City may impose additional conditions, standards, or requirements for a Residential Zone Business deemed appropriate and necessary to protect the public health, safety and welfare.

R. No expansion or intensification of an Interim Use Permit for a Residential Zone Business shall be permitted unless in conformance with the procedures provided in Sections 7A-532 through 7A-532 and all other provisions of the City Code.

S. An Interim Use Permit for a Residential Zone Business shall be terminated consistent with the provisions in Section 7A-532 of the City Code.

[§ 7A-807 formerly, § 7A-823, added by Ord. No. 00-06, effective August 17, 2000, Ord. No. 00-08, effective August 31, 2000, Ord. No. 01-01, effective May 17, 2001, and Ord. No. 02-01, effective May 17, 2002, § 7A-806, formerly 7A-807 amended (renumbered) by Ord. No. 04-04A, effective June 3, 2004, amended by Ord. No. 08-03, effective April 17, 2008.]

SECTION 7A-807. SWIMMING POOLS. The term “swimming pool” shall include any pool, “hot tub,” or “spa” with a water depth capacity of three (3.0) feet or greater, and shall include any such Structure with a capacity greater than 5,000 gallons. Swimming pools are permitted subject to the following conditions:

A. Swimming Pools shall be permitted only as an accessory use, on the same lot as, and intended for use by the occupants of, an accompanying residential unit or units.

B. A Building permit is required, except where specifically exempted by the Uniform Building Code. Compliance with the Building Code is required.

C. The property owner’s application for a Building permit shall include a site plan scaled drawing showing the type and size of pool, location of pool, location of house, garage, fencing and other improvements on the Lot, location of Structures on all adjacent Lots, location of filter unit and pump and writing indicating the types of such units, location of back-flush and drainage outlets, grading plan, finished elevations and final treatment (decking, landscaping, etc.) around pool, location of existing overhead or underground wiring, utility Easements, trees and similar features, and location of any water heating unit.

D. Pools shall not be located within twenty (20) feet of any septic tank/drainfield nor within six (6) feet of any principal Structure or frost footing unless the pool is constructed entirely within the Dwelling. The edge of the pool shall be located no closer than twenty-five (25) feet from any side or Rear Lot Line, and no closer than eighty (80) feet from the edge of any right-of-way or the front of the house (whichever is greater). The required safety fencing or surrounding Structure shall be located no closer than twenty (20) feet from any side or Rear Lot Line and no closer than seventy-five (75) feet from the edge of any right-of-way, unless the entire Yard area with the pool is enclosed with fencing which meets the safety standards described at Paragraph K below in which case the Fence may be located on side or Rear Lot Lines.