

RESEARCH 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.

RELEVANT LINKS:

[Minn. Stat. § 462.351.](#)
[Minn. Stat. § 462.357.](#)

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

[Minn. Stat. § 462.357, subd. 1.](#)

[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 built and the uses to which the land is put. Individuals and businesses seeking to develop property for their own private use do most of the building in a community—whether residential, commercial, or industrial. Cities use zoning to guide this private development and to ensure land gets used in a way that promotes both the best use of the land and the prosperity, health, and welfare of 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 normally divides the land in a city into different districts, or zones, and then regulates the uses within each district. Generally, specific districts are set aside for residential, types of commercial and various industrial uses. A city can also use zoning to further agricultural and open space objectives.

By creating zoning districts that separate uses, a city assures adequate space is provided for each use and 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 limit the types and location of structures. The regulations apply equally within each district but may vary from district to district. These regulations often control:

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

RELEVANT LINKS:

[Vill. of Euclid, Ohio v. Ambler Realty Co.](#), 272 U.S. 365, (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.](#)

[Minn. Stat. § 473.851.](#)

[Minn. Stat. §§ 103F-103F.155.](#) [Minn. Stat. § 103F.335.](#) [Minn. Stat. § 40A.01.](#) [Minn. Stat. § 138.71.](#)

[Minn. Stat. § 462.351.](#)

- Building location, height, width, bulk.
- Type of building foundation.
- Number of stories, size of buildings and other structures.
- The percentage of lot space 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

Cities derive authority to adopt zoning ordinances from Minnesota and U.S. Supreme Court cases and from 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. The Municipal Planning Act applies to all cities, including a city operating under a home rule charter.

Cities in the metropolitan area also must comply with the Metropolitan Land Planning Act. The “Metropolitan 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. The Metropolitan Planning Act is enforced by the Met Council and imposes certain mandatory zoning and regulatory requirements on metropolitan cities.

Cities also have additional authority to impose land use controls on development through other state statutes, including 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.

C. Role of comprehensive planning in zoning ordinance adoption

Zoning ordinances and planning can vary greatly from city to city. Each city determines the needs of its community to draft a zoning ordinance and comprehensive plan that meets those needs.

RELEVANT LINKS:

See LMC information memo,
[Planning Commission Guide](#).

Minn. Stat. § 462.352, subd.
5. Minn. Stat. § 462.353.
Minn. Stat. § 462.355, subd.
1a.
*Nordmarken v. City of
Richfield*, 641 N.W.2d 343
(Minn. Ct. App. 2002).

Minn. Stat. § 473.851.
*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.

See LMC information memo,
[Planning Commission Guide](#).

1. Comprehensive planning

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

Minnesota statutes grant all cities authority to adopt a formal comprehensive plan for their community that, in essence, establishes a blueprint for a city's long-range (usually between five and 15 years) social, economic, and physical development.

In Metropolitan Area cities, the adoption of a comprehensive plan is mandatory under the Metropolitan Land Planning Act. All other cities have the option to adopt a comprehensive plan and are encouraged to do so.

When adopting or updating a comprehensive plan in a city located within a county that is not a "greater than 80 percent area" and is located outside the metropolitan area, the city 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. This requirement arises out of the President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land and, hereinafter, or the "T. Roosevelt Memorial Preservation Act." 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. A "greater than 80 percent area" means a county or watershed (or, for purposes of wetland replacement, bank service area) where (1) 80 percent or more of the pre-settlement wetland acreage is intact and (2) either 10 percent or more of the current total land area is wetland; or 50 percent or more of the current total land area lies within state or federal land.

2. Reasons to adopt a comprehensive plan

Although a comprehensive plan may not be required under statute, adopting a comprehensive plan represents a good practice for Minnesota cities. The comprehensive planning process helps a city develop a plan for creating and maintaining a desirable environment, and a safe and healthy community.

Once adopted, a comprehensive plan guides local officials in their decision-making regarding land use.

RELEVANT LINKS:

Hay v. City of Andover, 436 N.W.2d 800 (Minn. Ct. App. 1989).

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).

See LMC information memo, *Planning Commission Guide*.

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

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

Minn. Stat. § 462.357, subd. 1.

Preparing a comprehensive plan prior to the adoption of a zoning ordinance affords a city additional legal protection if a particular ordinance provision or zoning decision is challenged in court. A city acts in a legislative capacity under its delegated police powers when it adopts or amends a zoning ordinance or adopts a comprehensive plan. As a result, the adoption of zoning ordinances and land use decisions based on those 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 zoning provision in question appears to have no rational basis, or clearly exceeds a city's regulatory authority.

If a city cannot or has not developed a comprehensive plan prior to adopting a zoning ordinance, a city should adopt the zoning ordinance in conjunction with written finding of facts, stating the policy reasons that necessitate the ordinance's adoption.

3. Relation of the comprehensive plan to zoning

City officials should not think of zoning and planning as the same thing. Municipal planning involves 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 embodies a city's vision for the future, including its aspirations and plans for future development that may not appear for many years to come.

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

It is important to emphasize that zoning merely represents one of the tools available to a city to assist implementing a comprehensive plan. A city also may 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

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 usually is 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

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

2. The performance standards section

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

3. The 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 also may have further designations reflecting desired density and 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). Modern zoning may also create “mixed-use” or “hybrid” districts, in which traditional use categories are mixed, like a downtown residential/commercial district. This section typically contains the following concepts for each district:

a. Use designations

Use designations, usually in a list form, specify the permitted, conditionally permitted and prohibited uses for a district or zone. The following types of uses generally are found in a zoning ordinance:

RELEVANT LINKS:

[Minn. Stat. § 462.3595.](#)

[Minn. Stat. § 462.3597.](#)

- Permitted uses: Uses allowed in a district as a matter of right, without further need for review or approval of the city.
- Prohibited Uses: Uses not permitted in a district under any circumstances. An explicit listing of prohibited uses is rare. Many ordinances simply provide that any uses not specifically listed are deemed prohibited.
- Conditional uses: Uses permitted with the approval by 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.
- Interim uses: Uses permitted with the approval of the city for a limited amount of time (contain a sunset provision), if conditions listed in the ordinance are met.
- Accessory uses: Uses permitted or conditionally permitted to serve a permitted or conditionally permitted use. An accessory use generally will not be permitted absent the primary use. For example, a tool shed represents a standard accessory use in a residential zone.

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 their attachments (such as antennas, cupolas, etc.).
- Density requirements establish the number of structures or units allowed in an area.

4. Additional provisions

Depending upon the individual needs of a city, some ordinances may contain additional provisions. However, keep in mind that the quality of a zoning ordinance does not depend upon the length or complexity of its provisions (nor the number of districts established).

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

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

RELEVANT LINKS:

[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.

[Minn. Stat. § 103F.335.](#)

See also [MN DNR](#) website for more information on MN Wild and Scenic Rivers.

[Minn. Stat. § 103F.221.](#)
[Minn. R. 6120.2500 – 3900.](#)
See [shoreland management ordinance, DNR Model.](#)
See also [MN DNR](#) website for more information and resources on shoreland management.

- 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 residential multifamily uses.
- 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.
- Overlay district: A district developed to “overlay” one or more existing zoning districts that imposes additional zoning requirements. Overlay districts may be developed with a specific land area in mind or may be developed to “float” until anchored to a suitable development proposal. In some cities, overlay districts may be structured as conditional uses.

5. Natural resource protection and flood plain provisions

Zoning in cities that contain certain natural resources, such as lakes and rivers, or that sit within a floodplain, also may contain the following:

- Floodplain requirements: Floodplain management ordinances are required by state law. Flood plain ordinances regulate the use of land in the floodplain to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.
- Wild and scenic rivers development requirements: Wild and Scenic Rivers development ordinances are required by state law for cities that have shoreland located within the Minnesota Wild and Scenic Rivers System. These ordinances must comply with state standards set by the Commissioner of Natural Resources.
- 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.

RELEVANT LINKS:

[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

Drafting a well-organized, easy to understand ordinance benefits all. A good zoning ordinance:

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

1. Suggestions for drafting a readable zoning ordinance:

The following are tips to simplify a city 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.

RELEVANT LINKS:

[*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 \(1950\).](#)
[*Vill. of St. Louis Park v. Casey*, 218 Minn. 394, 16 N.W.2d 459 \(1944\).](#)

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

[*Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 \(Minn. 1984\).](#)
[*Clear Channel Outdoor Adver., Inc., v. City of St. Paul*, 675 N.W.2d 343, 346 \(Minn. Ct. App. 2004\).](#)
[*Melleyco P'rsHIP v. West St. Paul*, 874 N.W.2d 440 \(Minn. Ct. App. 2016\).](#)

- Be careful about copying zoning provisions from other jurisdictions, especially in a piece-meal manner. A zoning ordinance fitting one community may not fit another. Also, 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

Unclear or ambiguous language in a zoning ordinance may cause public controversy and loss of efficiency. In some instances, a city may find itself in court defending whether it interpreted its own ambiguous ordinance correctly. Courts have been asked to resolve controversies over such undefined terms in an ordinance as:

- “Lawn and garden center”
- “Accessory”
- “Subordinate”
- “Incidental”
- “Main”
- “Structure”

When a court resolves 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 intended or would prefer. Courts generally, give deference to the city’s interpretation of the ordinance.

When interpreting the language in zoning ordinances, courts generally attempt to find the plain and ordinary meaning of the terms and will interpret any doubtful language against the city and in favor of the landowner. Courts will also look to underlying policy goals of the ordinance when construing an ordinance.

Clear and concise drafting from the outset serves as the best way to avoid the time and expense of a lawsuit over the meaning of basic terms in a zoning ordinance, making the definition section 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

When drafting a zoning ordinance, cities must draft an ordinance so that it conforms to the requirements of state and federal law.

RELEVANT LINKS:

Hubbard Broad., 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).

Minn. Stat. § 462.357, subs. 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.

Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 8.

Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.3593.

Minn. Stat. § 462.357, subd. 1.

Northshor Experience, Inc. v. City of Duluth, 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).

1. The Municipal Planning Act

Cities have a wide range of discretion in developing a zoning ordinance. City zoning requirements can range from very complex to minimal.

However, no matter the complexity involved, all city zoning authority arises out of, and is subject to, the Municipal Planning Act, including both the substantive and procedural requirements contained in that act.

The Municipal Planning Act contains provisions related to the local zoning 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 and serving six or fewer persons in single family residential districts.
- Licensed day care facilities serving 12 or fewer persons in single family residential districts.
- 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.
- Temporary family health care dwellings.
- Solar energy systems.

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

RELEVANT LINKS:

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

[Minn. Stat. §§ 327.31 -
327.35.](#)
[Minn. Stat. § 462.357,
subd.1.](#)

[Minn. Stat. § 462.357, subd.
1.](#)
[Code Construction and
Licensing Division,
Minnesota Department of
Labor and Industry.](#)

[Minn. Stat. § 327.31, subd. 6.](#)

[Minn. Stat. § 327.31, subd. 3.](#)

2. Additional state law requirements

Cities also must draft their zoning ordinances to meet the requirements of state law outside of the Municipal Planning Act.

The following does not represent a comprehensive list of state laws that regulate city zoning but illustrate some of the most common regulations outside the Municipal Planning Act.

a. Flood plains, shoreland, and wild and scenic rivers

State law provides special protection to lands containing important natural resources, such as lakes and rivers. City regulations of such lands must meet these state standards. Generally, the state commissioner of Natural Resources reviews these ordinances.

b. Manufactured homes

Many cities have manufactured homes as part of their housing stock. They may be found both throughout residential areas and grouped together into manufactured home parks. Zoning regulations may not prohibit manufactured homes built in conformance with the manufactured home building code and in compliance with all other zoning ordinances promulgated pursuant to state law. State statute also specifically provides that cities cannot require a manufactured home that meets the requirements in the manufactured home building code to comply with any other building, plumbing, heating, or electrical code, or any construction standards.

Both the federal and state law require the placement of an official seal on a manufactured home to certify compliance with federal and state regulations. Minnesota law protects homes in compliance with the manufactured home building code from being prohibited.

State law defines a manufactured home as “a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected, on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in it, and which complies with the manufactured home building code.”

State law does not protect noncompliant manufactured or “mobile” homes. Often this includes homes built before July 1, 1972; however, cities should work with their city attorneys since existing noncompliant mobile homes may have continuance rights as legal nonconformities.

RELEVANT LINKS:

[Minn. Stat. § 327.32, subd. 5.](#)

[Minn. Stat. § 462.357, subds. 1a, 1b.](#)

[Minn. Stat. Ch. 327.](#)
[Minn. R. Ch. 4630.](#)
Environmental Health
Services Section of the
Minnesota Department of
Health
651-201-4500
or see [their manufactured
home park program web site.](#)

Cities can apply architectural and aesthetic requirements to manufactured homes, but only if the same architectural and aesthetic requirements also apply to other homes in the zoning district. Importantly, cities can continue to enforce zoning requirements, such as minimum width or square footage, but only if those standards also apply to all residential structures. In sum, cities should not single out manufactured homes for special treatment.

c. Manufactured home parks

State law also regulates manufactured home parks. Cities cannot require licensing for manufactured home parks but may regulate them as conditional uses. Cities must allow a manufactured home park 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. City ordinance should explicitly state the standards for granting the conditional use. Ordinance standards might address such things as:

- Site drainage
- Ground cover
- Setbacks
- Separation between homes
- Open space
- Trees
- Streets and walks
- Driveways
- Parking

Keep in mind, cities cannot 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 Jan. 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size, and setback requirements, if any.

The Minnesota Department of Health (MDH) licenses manufactured home parks pursuant to state law and administrative rule. State regulations cover the following health and safety matters:

- Drainage
- Water supply
- Plumbing
- Sewage disposal, garbage, and refuse

RELEVANT LINKS:

[Minn. Stat. § 327.26, subd. 1.](#)
[Minn. Stat. § 327.15, subd. 2.](#)

Office of the Minnesota
Attorney General,
*Manufactured Home Parks
Handbook.*

LMC information memo,
Public Nuisances.

[Minn. Stat. § 462.3593.](#)

MDH licenses are renewed annually and require an inspection at least once every two years. In some counties, the MDH has delegated the administration of its licensing to county health officials. Also, about a dozen cities administer these licenses through the MDH local environmental health delegation program.

The Minnesota Attorney General’s Office publishes a handbook summarizing Minnesota laws concerning manufactured home park residents and park owners in general. Typically, the park owner owns the land, which the residents rent, but the residents own their own manufactured homes.

In some communities, concerns may arise over living conditions at some existing manufactured home parks. The state MDH license is renewed annually by the park owner, so ongoing health problems and unsanitary conditions may be best addressed by the health licensing authority. However, if conditions persist that violate the terms of the conditional use permit, a city can revoke the conditional use permit upon proper notice and hearing. Some cities have implemented time of sale inspection programs to address livability issues. If concern about nuisance conditions arises, a city may wish to focus on its power to regulate and abate public nuisances.

d. Temporary Family Health Care Dwellings

State law has created a process for landowners to place mobile residential dwellings on their property to serve as a temporary family health care dwelling. The law was adopted as a result of community desire to provide transitional housing for those with mental or physical impairments and the increased need for short term care for aging family members.

The law requires cities to allow temporary family health care dwellings, as long as those dwellings comply with state law. The law creates an expedited permit process and contains specific requirements related to the application, as well as the applicants and proposed residents of the dwelling.

A city may opt out of this requirement by amending its zoning ordinance. In the alternative, a city may opt out of the state requirements and adopt its own regulations related to temporary health care dwellings. Cities should work with their city attorney to ensure their zoning ordinance complies with state requirements.

RELEVANT LINKS:

LMC information memo,
*Cell Towers, Small Cell
Technologies and Distributed
Antenna Systems.*

Minn. Stat. § 237.162
Minn. Stat. § 237.163

47 U.S.C. § 253.
47 U.S.C. § 332(c)(7).

LMC information memo,
*Cell Towers, Small Cell
Technologies and Distributed
Antenna Systems.*

Section 6409(a) of the
Middle-Class Tax Relief and
Job Creation Act of 2012,
codified at 47 U.S.C. § 1455.

FCC Public Notice AD 12-
2047 (January 25, 2013).

e. Telecommunications right-of-way users

State law also impacts local zoning regulation of wireless telecommunications towers and antennas.

In addition to mirroring some of the federal law requirements, such as the requirement of equal treatment of all like providers, state law permits cities, by ordinance, to further regulate “telecommunications right-of-way users,” including permitting, recovery of management costs and the ability to place other limitations. Minnesota’s Telecom ROW Law expressly includes both wire-lined and wireless service providers as telecommunications right-of-way users who can access the right-of-way, making the law applicable to the siting of both large and small, wire-lined or wireless telecommunications equipment and facilities. State law, however, provides additional protections for the permitting of most small wireless facilities and wireless support structure placement (other than those owned, controlled or served by municipal utilities). Because of the complexities of Minnesota’s Telecom ROW law, cities should work with city attorneys when drafting, adopting, or amending their ordinance.

3. Federal law considerations:

a. Telecommunications Act of 1996

The federal Telecommunications Act of 1996 influences local zoning regulation of wireless telecommunications towers and antennas. Under the act, local governments generally may 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 based on the environmental effects of radio frequency emissions to the extent they comply with the Federal Communications Commission’s (FCC) regulations. Further, if a siting request proposes modifications to and/or collocations of wireless transmission equipment on existing FCC-regulated towers or base stations, then federal law further limits local municipal control.

RELEVANT LINKS:

[FCC 14-153, Report & Order \(October 21, 2014\).](#)

[47 U.S.C. § 303 \(v\).](#)
[47 C.F.R. § 25.104.](#)

[42 U.S.C. § 2000cc.](#)

See [Department of Justice RLUIPA Policy Statement, Sept. 2010.](#)

[Church v. City of St. Michael](#), 205 F.Supp.3d 1014 (D.Minn. 2016).

[42 U.S.C. § 2000cc\(a\)\(2\).](#)

[42 U.S.C. § 2000cc-5\(7\)\(B\).](#)

Specifically, federal law requires cities to grant requests for modifications or collocation to existing FCC-regulated structures when that modification would not “substantially change” the physical dimensions of the tower or base station. The FCC has established guidelines on what “substantially change the physical dimensions” means and what constitutes a “wireless tower or base station.” To avoid conflicts with federal law, a city should consult the city attorney before adopting zoning provisions that regulate telecommunication towers and antennas.

The FCC also has exclusive jurisdiction over direct to home satellite dishes and on-site relay station. Its regulations pre-empt 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.

b. The Religious Land Use and Institutionalized Persons Act

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 furthers a compelling government interest and is the least restrictive means of furthering that interest. Religious exercise includes the use, building, or conversion of real property for the purpose of religious exercise. As a result, in some circumstances, a religious use may be exempted from city zoning requirements, if the regulation substantially burdens the religious organization or person’s exercise of religion.

Minor costs or inconveniences imposed on religious institutions do not trigger RLUIPA’s protections. The burden must rise to the level of “substantial.” Once the institution has shown a substantial burden on its religious exercise, a city must demonstrate that the reason for imposing a restriction is “compelling.” Cities should carefully consider whether an ordinance requires religious uses to undergo any particular approval process. If the ordinance leaves a city with significant discretion over the approval and conditions that may be attached, a city likely may find itself defending a substantial burden challenge under RLUIPA.

In addition to weighing the “compelling” government interest of a regulation against the substantial burden on the religious exercise caused by that regulation, RLUIPA also provides that a city may not impose or implement a land use regulation in a manner that:

RELEVANT LINKS:

Church v. City of St. Michael, 205 F.Supp.3d 1014 (D.Minn. 2016).
42 U.S.C. § 2000cc(b)(1).

42 U.S.C. § 2000cc-3(e).

Church v. City of St. Michael, 205 F.Supp.3d 1014 (D.Minn. 2016).

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).

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).

- Treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution. However, courts have stated that mandating identical treatment of all secular assemblies and churches could lead to nonsensical results.
- Discriminates against any assembly or institution based on religion or religious denomination.
- Totally excludes religious assemblies from their jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.
- Unreasonably limits religious assemblies, institutions, or structures within its jurisdiction.

RLUIPA contains a “safe harbor” provision, which allows a government to avoid RLUIPA’s “pre-emptive force” by changing its policies and practices, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden. Additionally, some ordinances now employ a broad definition of “places of assembly” that include both religious and non-religious uses. This approach may go a long way toward protecting a city from an equal terms challenge under RLUIPA.

It is important to recognize that RLUIPA does not shield religious institutions from all land use regulation. A zoning ordinance can be enforced as long as it does not discriminate against or exclude religious uses, does not treat religious uses less favorably than comparable non-religious uses, and does not impose a substantial burden.

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

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, a city should consult its attorney for specific guidance.

RELEVANT LINKS:

Vill. of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926).

Kiges v. City of St. Paul, 240 Minn. 522, 62 N.W.2d 363 (1953).

State ex rel. Berndt v. Iten, 259 Minn. 77106 N.W.2d 366 (1960).

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).

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

State v. Northwestern Preparatory School, 228 Minn. 363, 37 N.W.2d 370 (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*.

State v. Northwestern Preparatory School, 228 Minn. 363, 37 N.W.2d 370, (1949) (tax exemption case).

4. Federal and state constitutional concerns

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

While both the state and federal constitutions provide procedural protections and compensation to landowners for 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, some federal and state constitutional restraints on city zoning authority still exist.

The adoption or amendment of a zoning ordinance represents a legislative decision of the city council. Courts normally give legislative decisions great deference and weight, but a court may set aside or intervene in city zoning decisions in instances when it finds a violation of important constitutional restraints. First, the courts may overrule a city zoning decision when it finds the zoning ordinance unsupported by any rational basis related to promoting public health, safety, morals, or general welfare. Usually, in these cases, the court determines if the city acted in an arbitrary and/or capricious manner. 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

Under the federal and state constitution, cities must use their zoning authority in a reasonable manner, free from arbitrariness or discrimination. A city zoning decision is reasonable, when it bears a reasonable relationship to the purpose of the zoning ordinance.

Courts often find zoning ordinances unreasonable when they are deemed arbitrary. When a zoning classification treats similarly situated individuals differently, there must be a 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 exists, the court may decide that the city acted in an arbitrary manner.

RELEVANT LINKS:

U. S. Const. Amend. V.
Minn. Const. art. I § 13.
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393(1922).

See House Research Memo,
Eminent Domain: Regulatory Takings.

Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 (Minn. 2007).
Czech v. City of Blaine, 312 Minn. 535, 253 N.W.2d 272 (1977). *Pearce v. Vill. of Edina*, 263 Minn. 553, 118 N.W.2d 659, (1962).

Penn Central Transp. V. New York City, 438 U.S. 104 (1978).

Murr v. Wisconsin, 137 S.Ct. 1933 (2017).

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

Both the U.S. Constitution and the Minnesota Constitution forbid taking private property for public use without just compensation. Zoning regulations may result in a “taking” if a regulation goes too far.

This is generally termed a “regulatory taking.” Regulatory takings or inverse condemnations involve a property owner claiming that a regulation or government action resulted in a “de facto” taking triggering the obligation to pay compensation for property that the government effectively purchased by way of the regulation or action. Determining when a regulation becomes a taking involves a complex legal analysis.

Generally, a court finds a zoning scheme a regulatory taking only when it denies a landowner all economically viable or beneficial use of property or, stated differently, all reasonable use of property. Not all diminution of property values results in a taking. Zoning often has the side effect of increasing the value of some property, while decreasing the value of other property. To rise to the level of 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.

c. Parcel as a whole rule

The *Parcel as a Whole Rule* often applies in regulatory takings cases but does not apply in other types of takings cases. Historically, review of allegations of a regulatory taking did not involve dividing a single parcel into discrete segments and determining if rights of a particular segment had been entirely abrogated. Instead, judicial review focused on both the character of the action and on the nature and extent of interference by the action to the parcel *as a whole*. The United States Supreme Court has opined that the definition of “relevant parcel” in determinations of whether a taking occurred or not, turns on “whether reasonable expectations about property ownership would lead a landowner to anticipate that his holdings would be treated as one parcel.” Relevant factors of “reasonable expectations” include (1) how the land is bounded and divided under state and local law, (2) the physical characteristics of the property in question, and (3) the potentially positive impact of the restriction on one of the claimant’s holdings on the value of an adjacent holding.

See LMC information memo, [Land Use Conditional Use Permits](#).

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 with drafting 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 contribute the needed expertise to the zoning ordinance adoption process and, while not required, are highly recommended. Because numerous and diverse state and federal laws and court cases apply to zoning, the assistance of the city attorney, at a minimum, helps a 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 opens up many possibilities for dealing with concerns and challenges faced by a particular community.

However, cities must be careful not to exceed their authority in drafting a city zoning ordinance. Below are some common concerns raised by cities in relation to initial drafting of a zoning ordinance.

A. Establishing permitted and conditional uses

In drafting a zoning ordinance, city officials often struggle to decide the permitted and conditional uses for each zoning district. Appropriate uses change from district to district. Uses designated as “permitted” are automatically allowed, with no need for further application or review (related to zoning) by a city. Therefore, the list of permitted uses in a zoning ordinance should only contain uses about which the city has no reservations.

Conditional are uses that will be allowed provided the applicant can meet the conditions specified in the ordinance. Uses specified as conditional generally represent uses favorable and desired, but that may pose potential hazards that may need to be mitigated (for example a gas station on a corner in a residential neighborhood). These potential hazards require review by the city council or planning commission to determine if conditions are needed to minimize the adverse effect of the development.

RELEVANT LINKS:

Naegele Outdoor Advertising Co. of Minn. v. Vill. of Minnetonka, 281 Minn. 492, 162 N.W.2d 206 (1968).

Pine County v. State, Dept. of Natural Resources, 280 N.W.2d 625 (Minn. 1979).
Odell v. City of Eagan, 348 N.W.2d 792 (Minn. Ct. App. 1984).

It is important to stress that conditional uses, like permitted uses, must be allowed if the applicant can prove that the application meets all the conditions and requirements of a city's ordinance and will not be detrimental to the health, safety and welfare of the public. When a city places conditions on a CUP, those conditions must relate to the requirements stated in the zoning ordinance.

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 city residents.

For example, many cities address a host of aesthetic concerns through a "design standards" section(s) in their zoning ordinance. Design standards often specify the types of building materials (such as brick or stone) for buildings in a particular district.

Traditionally, challengers to aesthetic zoning criticize it as not adequately relating to protecting the public's health and safety. However, the Minnesota Supreme Court has ruled that the "mere fact that adoption of zoning ordinance reflects desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance." Furthermore, the courts consider local city officials in the best position to determine whether aesthetic regulations promote the community's well-being. However, aesthetic considerations alone generally do not provide sufficient basis for denials.

Generally, courts uphold zoning ordinances that contain aesthetic regulations if the council has made findings reasonably tied to promoting a community's health safety and welfare, in addition to the findings reflecting mere aesthetic concerns.

C. Performance standards

Zoning ordinances commonly set forth performance standards. Performance standards establish 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 apply to all districts. Certain districts, however, such as industrial districts, may call for specific standards.

RELEVANT LINKS:

[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.

[Minn. Stat. § 169.04](#).

[Minn. Stat. § 138.74](#).

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

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 to obtain such a goal is cluster zoning. Cluster zoning groups new homes onto part of the development parcel and reserve the remainder of a parcel as unbuilt open space. 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 represent a regulatory taking.

E. Parking requirements

Cars, ubiquitous to American life, make off-street parking requirements a common feature of city zoning ordinances. Off-street parking requirements may reduce congestion on city streets, thereby improving safety and aesthetics. For example, state law allows a local governmental unit to, by ordinance, prohibit parking on any street or highway to create a fire lane, or to accommodate heavy traffic during morning and afternoon rush hours.

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 parking requirements in their zoning ordinances.

F. Historic Preservation

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, specifically have authority under state law to create zoning regulations for their historic districts that:

RELEVANT LINKS:

[Minn. Stat. § 138.73.](#)

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

[Pao Xiong v. City of Moorhead](#), 641 F.Supp.2d 822 (D.Minn. 2009).

[Minn. Stat. § 617.242.](#)

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

[Unconstitutional and Preempted Statutes.](#)

- 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 a city to remove blighting influences, including signs, unsightly structures and debris, incompatible with the maintenance of the physical well-being of the district.
- allow a city “to adopt other measures as necessary to protect, preserve and perpetuate the district.”

Currently state law lists 25 official historic districts as historic districts.

Cities that do not contain official historic districts, may preserve their historic properties and districts through local zoning ordinances. Often this occurs by a city 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 a city’s police powers to protect the health, safety and welfare of the public.

G. Zoning regulation of adult uses

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 content neutral zoning ordinances to reduce their negative secondary effects.

A state law, enacted in 2006, required 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 included numerous other provisions focused on regulation of adult use businesses. In 2006, the federal district court in Minnesota reviewed a challenge to the city of Duluth’s adult use ordinance and found the ordinance invalid based on noncompliance with the Municipal Planning Act. Since the court invalidated the ordinance, state law generally would have applied; however, the court found the constitutional challenge of the new state law legitimate (questioning whether content neutral) and granted an injunction against the city from enforcing the new law. Since then, the Revisor of Statutes has recognized the state law as substantively unconstitutional, making it so cities should not rely on state law as a mechanism for regulating adult entertainment establishments, but rather should adopt adult use ordinances supported by findings of furthering health, welfare and safety of the community.

Cities may want to consider taking proactive measure to adopting local adult use regulations. However, because of the legal complexities of adopting any regulations of adult uses, a city should involve the city attorney in the drafting of any adult use ordinances.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 1g.](#)

[Minn. Stat. § 462.357 subd. 1g\(a\).](#)

[Minn. Stat. § 462.357, subd. 1g\(b\)\(2\).](#)

[Minn. Stat. § 462.357. A.G. Op. 59-A-32 \(Aug. 18, 1995\).](#)

H. Restricting Feedlots

Zoning ordinances that regulate feedlots must comply with specifics 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 the commissioner of Agriculture at the beginning of the process. A local zoning ordinance that requires a setback for new feedlots from existing residential areas also must 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.

When amending or adopting ordinances related to feedlots, cities must provide additional notice to the state before adopting such an ordinance. A city proposing to adopt a new, or amend an existing, feedlot ordinance must inform the Minnesota Pollution Control Agency and the Commissioner of Agriculture no later than the date notice is given of the first hearing related to the ordinance.

Prior to final approval of a feedlot related zoning ordinance, a city council may request, a city 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

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 extending ordinances, those ordinances may be enforced in the same manner and to the same extent as within a city's corporate limits.

RELEVANT LINKS:

[Minn. Stat. § 462.3585.](#)

[Dobbins v. City of Los Angeles](#), 195 U.S. 223 (1904).

[Pearce v. Vill. of Edina](#), 263 Minn. 553, 118 N.W.2d 659 (Minn. 1962). [Charnofree Corp. v. City of Miami Beach \(Fla.\)](#), 76 So.2d 665 (Fla. 1954).

2. Joint planning

Cities also may use joint planning to coordinate their land use efforts with neighboring townships. State statute authorizes the creation of a joint planning board, when requested by way of a resolution of a city, or county or town board presented to the county auditor of the county of the affected territory to exercise planning and land use control authority in the unincorporated area within two miles of the corporate limits of a city.

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. Each of the participating governmental units appoint members of the board 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

A city's zoning authority arises out of its police power to protect the public's health, safety and welfare. Zoning to protect private economic interests can become problematic because courts generally determine that zoning provisions adopted to protect such interests are not related to protecting the public's health, safety and welfare. 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 often arises in the context of reviewing a particular zoning application. For example, a city may wish to deny a CUP for a new bank in a city, because officials believe too many banks already exist in an area or that 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.

RELEVANT LINKS:

Compare, *State, City of Eden Prairie v. Liepke*, 403 N.W.2d 252 (Minn. Ct. App. 1987) with *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604 (Minn. 1980). *Stillwater Tp. V. Rivard*, 547 N.W.2d 906 (Minn. Ct. App. 1996).

Pilgrim v. City of Winona, 256 N.W.2d 266 (Minn. 1977).

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

[Minn. Stat. § 462.357, subd. 3.](#)

[Minn. Stat. § 462.357, subd. 3.](#)

K. Estoppel

Generally, in Minnesota, the administration of zoning ordinances represents a governmental, not a proprietary function and, as a result, cities generally can enforce its ordinance without threat of others arguing that the city had not enforced the ordinance in other circumstances (or, in other words, asking for “estoppel” of the enforcement now). A heavy burden of proof falls on a party trying to estop (or prevent) cities from enforcing ordinances; however, the courts differ on the extent prior city action relied upon by a landowner can support later enforcement of ordinances. For example, the courts have prevented a city from enforcing an ordinance that the city had not enforced in the past when the applicant proved to the court that the city, through its language or conduct, induced the applicant to rely, in good faith, to his or her detriment or prejudice, that the city would not enforce the ordinance again. However, a mere lapse in time does not diminish a city’s ability to enforce its zoning ordinances. To avoid estoppel arguments, a best practice for cities is to consistently enforce its ordinances.

IV. Zoning ordinance adoption and/or amendment

The Municipal Planning Act mandates a procedure for the adoption or amendment of zoning ordinances for both statutory and charter cities. The city council, the planning commission or affected property owners, by petition, may initiate an amendment to a zoning ordinance.

An amendment, not initiated by the planning commission, must be referred to the commission, 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 of the reference of the amendment without a report by the planning agency.

A public hearing must be held by the council or the planning commission (if one exists) before a city adopts or amends a zoning ordinance. Public hearings also must precede the granting of variances, conditional use permits, or re-zonings, with the exception that a municipality does not have to hold a public hearing on the application for a temporary family health care dwelling for those cities that have not opted out of that state law.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 3.](#)
See LMC information memo
[Newspaper Publication.](#)

A. Notice and hearing

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. Failure to give mailed notice to individual property owners, or defects in the notice, does not invalidate the proceedings, provided the city made a genuine attempt to comply with this subdivision.

B. Proceedings

The chairperson has the responsibility of conducting the public hearing. Generally, best practice for a hearing involves city staff presenting, followed by the applicant.

City staff should identify the subject property, describe the nature of the application, present the zoning and planning issues, and explain the action to be taken by the planning commission, board of appeals, or city council. The staff should leave time for questions not only from the decision makers, but also from the applicant and the public. Then, the applicant should have the opportunity to present. At this juncture, an applicant can submit information showing that the proposal complies with a city's comprehensive plan and zoning ordinance. The planning commission, board of appeals, or city council should ask the applicant whatever questions they have about the proposal. The public also should be allowed to ask questions regarding the proposal. The chairperson should ask for statements from the public in support of the application, as well as any statements against the proposal. The chairperson should encourage people to present factual evidence for public consideration.

RELEVANT LINKS:

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

[Minn. Stat. § 412.191, subd. 4.](#)
[Minn. Stat. § 331A.02.](#)
[Minn. Stat. § 331A.04.](#)
See Handbook, *Meetings, Motions, Resolutions, and Ordinances* for more information on publishing ordinances in summary form.

[Application Log for 60-Day Rule](#), LMC Model Form.

[Minn. Stat. § 15.99.](#)
[Manco of Fairmont v. Town Bd. of Rock Dell Twp](#), 583 N.W.2d 293 (Minn. Ct. App. 1998).
[Hans Hagen Homes, Inc. v. City of Minnetrista](#), 728 N.W.2d 536 (Minn. 2007).

C. Adoption

After the planning commission, board of appeals, or city council has received all the evidence and everyone has had an opportunity to speak, the public hearing should be concluded. The planning commission, board of appeals, or city council should then discuss the proposal, remembering that the discussions must comply with the Open Meeting Law. If applicable, the planning commission or board of appeals then makes a recommendation to the city council on the application. If, in the alternative, the hearing takes place before the council, the council should either deny or approve the application. In acting or making a recommendation, the planning commission, board of appeals, or city council should base its decision on detailed findings of fact and reduce those findings into a written statement that becomes part of the record. 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.

D. Publication

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

A city must approve or deny any request related to zoning within 60 days of receipt of an application. This requirement is known as the “60-Day Rule” and applies to, among other things, rezoning requests, conditional use permits, and variances.

The 60-Day Rule requires cities to approve or deny a written request relating to zoning within 60 days. If a city fails to act on request in that time, the request becomes deemed approved. The underlying purpose of the rule is to keep governmental agencies from taking too long in deciding land use issues. Minnesota courts generally demand strict compliance with the rule.

RELEVANT LINKS:

[Minn. Stat. § 237.163, Subd. 3\(c\).](#) 2017 Minn. Law, ch.94, art. 9, amending Minn. Stat. §237.163, subd. 3c.

[Minn. Stat. § 462.358, subd. 3b.](#)

[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).

Ridge Creek Inc. v. City of Shakopee, No. A09-178, unpublished (Minn. Ct. App. 2010) (wetland application related to zoning).

500, LLC v. City of Minneapolis, 837 N.W.2d 287 (Minn. 2013).

[Minn. Stat. § 15.99, subd. 1\(c\).](#)

[Minn. Stat. § 15.99, subd. 3\(a\).](#)

Restarting 60-Day Timeclock Letter, LMC Model Form.

State law specifically exempts permits for collocation of small wireless facilities on city owned structures from the 60-Day Rule. State law requires that applications for permits to place small wireless facilities on city-owned structures get approved or denied within 90 days, specifically stating that Minnesota’s 60-Day Rule does not apply. Additionally, the 60-day time period does not apply to applications for subdivision approval. The subdivision statute provides its own time periods of 120 days for preliminary plat approval and 60 days for final plat approval.

1. Scope of the rule

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. While it seems clear the language includes requests for conditional use permits, variances, and rezoning, courts also have found the law applicable to requests for sign permits, wetlands determination review, heritage preservations certificates, and road permits. The statute creates an exception for subdivision and plat approvals, since those processes have separate timeframes. The Minnesota Court of Appeals has ruled that the rule does not apply to building permits and state law also specifically exempts applications for permits to site small wireless facilities.

The Legislature defines a written request as a submission on a city-approved application form, or if no such form exists, submission in writing with the specific governmental approval sought listed on the first page of the document.

2. Applications

An applicant must submit a request, 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. A city may reject, as incomplete, a request not on the city’s form or if the request does not include information required. The request may also be considered incomplete if it does not include the required application fee.

The 60-day time period does not begin to run if the city notifies the landowner, in writing and within 15 business days of receiving the application, that the application is incomplete. The city also must detail the missing information. As a best practice, the city should give some thought to exactly what information it requires for various types of land use applications.

RELEVANT LINKS:

[Minn. Stat. § 15.99, subd. 3\(c\).](#)

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

[Minn. Stat. § 15.99, subd. 2\(a\).](#)

[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).

[Minn. Stat. § 15.99, subd. 2\(b\).](#)

[Johnson v. Cook County](#), 786 N.W.2d 291 (Minn. 2010).

A city may want to develop a checklist and review its zoning ordinances to make explicit the required items. This will not only help the applicant but will act as a fail-safe mechanism for city staff who need to thoroughly evaluate applications within the first 15 days.

If a city grants an approval within 60 days of receiving a written request—and a city can document this—it complies with the statute, even if that approval requires the applicant to meet certain conditions. Subsequently, if the applicant fails to meet the conditions, a city may revoke or rescind the approval. An applicant cannot use the revocation or rescission to claim a city did not meet the 60-day time limit.

When a zoning applicant materially amends an 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

When denying a request, the authority denying the request must give written reasons for its denial at the time of denial.

When a multimember governing body, such as a city council or planning commission, denies a request, it must state the reasons for the denial on the record and provide the applicant with a written statement of those reasons. The written statement of the reasons for denial must be consistent with reasons stated in the record at the time of denial. The 60-day deadline requirement is separate from the written reason requirement, meaning the statute does not mandate that those two requirements happen concurrently.

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

A number of court decisions have reviewed the question of what constitutes a denial. In most situations, the courts have required that the city council actually pass a resolution or motion denying the request. However, 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 provision usually comes into play when a motion to approve an application fails because of either a tie vote, or lack of the required number of votes to pass.

A city's failure to give an applicant a written statement of the reasons for its denial of a zoning request within the time deadline does not trigger the automatic-approval penalty.

RELEVANT LINKS:

Minn. Stat. § 15.99, subd. 3(f).

Ridge Creek Inc. v. City of Shakopee, No. A09-178, (Minn. Ct. App. 2010) (unpublished decision) (wetland application related to zoning).

Extending 60-Day Time Period Letter, LMC Model Form.

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).

Minn. Stat. § 15.99, subd. 3(g).
Application Log for 60-Day Rule, LMC Model Form.

Minn. Stat. § 15.99, subd. 3(g).

Waiver of 60-Day Extension Letter, LMC Model Form.

Minn. Stat. § 15.99, subd. 3(d), (e).

Minn. Stat. ch. 116D.
Minn. R. ch. 4410.

Indeed, the court has stated that the “denial is complete when a city votes to deny the application and adopts a written statement of its reasons for denial, whether or not the city provides notice to the applicant.” However, cities should keep in mind that when a zoning authority fails to record legally sufficient reasons for the denial of a zoning request factually supported in the record, a prima facie case of arbitrariness is established, making a denial more vulnerable on appeal.

4. Extensions

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, but the city must follow specific statutory requirements. In order to avail itself of an additional 60 days, the city must give the applicant all of the following:

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

The courts have been particularly demanding on local governments regarding 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, informing the individual applicant the exact reasons for the delay.

The need for more time to fully consider the application may be an adequate reason. However, as stated 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”.

An applicant also may request an extension of the time limit in writing. If a city receives such a request from an applicant, the city should thoroughly document receiving that request.

Once a city has granted itself one 60-day extension, the city must then negotiate additional extensions with the applicant. A city can go beyond 120 days only if it gets the approval of the applicant. A 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.

The 60-day time period also is extended if a state statute requires a process to occur before the city acts on the application and the process will make it impossible for the city to act within 60 days. For example, this situation may arise if an environmental review process needs to occur.

RELEVANT LINKS:

[Minn. Stat. § 15.99, subd. 2\(a\), \(e\).](#)

If a 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 response deadline on the application is extended until 60 days after the completion of the environmental review process. Likewise, if a proposed development requires state or federal approval in addition to city action, the 60-day period for city action gets extended until 60 days after the applicable state or federal entity grants the required prior approval.

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.

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 consists of both staff and city officials ensuring that zoning applications get reviewed and answered in a timely manner and that zoning ordinance provisions get enforced.

1. The zoning administrator

Typically, a city will have a staff person identified as the “Zoning Administrator,” who serves as the first point of contact with the public on zoning matters and who provides and receives zoning application forms.

Generally, this person also will 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 a city and the number of zoning applications a 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:

See LMC information memo
[Planning Commission Guide](#).

[Minn. Stat. § 462.354, subd. 1.](#)

[Minn. Stat. § 462.357, subd. 3.](#)

[Minn. Stat. § 462.357, subd. 3.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.3595.](#)

2. The planning commission

Cities may choose to establish planning commissions to assist in zoning administration but need not do so unless a city has adopted a comprehensive plan (if so, then a planning commission is mandatory). Usually, cities benefit by creating a planning commission because city council officials have multiple budgeting, legislative and administrative duties that they must perform, in addition to land use responsibilities. Planning commissions, on the other hand, focus solely on zoning and development and, thus, can devote their full attention to city land use.

City councils create planning commissions by ordinance or charter and those commissions 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. A city may provide the planning commission with staff, including legal counsel, as necessary.

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 review zoning ordinance amendments and amendments to the official map. With limited exceptions, the planning commission's generally serves in an advisory role when reviewing all types of zoning applications. However, the city council often gives the planning commission recommendations great weight in its considerations, even though not bound by them.

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

Cities also may 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

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).

RELEVANT LINKS:

[Minn. Stat. § 463.355, Subd. 4.](#)

[Minn. Stat. § 462.354, subd. 2.](#)
[Minn. Stat. § 462.357, subd. 6.](#)
[Minn. Stat. § 462.359.](#)

[Minn. Stat. § 462.354, subd. 2.](#)
[Minn. Stat. § 15.99.](#)

The city council cannot delegate its authority to grant rezoning applications and interim use permits.

5. Board of zoning adjustment and appeals

State law requires all cities that have adopted or have in effect a zoning ordinance or an official map to provide, by ordinance, a board of appeals and adjustments. 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 establish, in its ordinance, the effect of board decisions, including if those decisions are:

- Final, subject only to judicial review.
- Appealable to the council and then subject to judicial review.
- Only advisory to the council, who then 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 an applicant has alleged an error in the administration of the zoning ordinance. Upon a denial of a land use or zoning permit or the denial of a request to build on land identified for public use on an official zoning map, the board of appeals and adjustments may, upon appeal filed with it by the landowner, grant the permit or approval for the building if the board finds that:

(a) the entire property of the appellant cannot yield a reasonable return to the owner without the permit or approval is granted, and (b) after balancing the interests of the municipality against those of the owner of the property, the grant of such permit or approval is required to further justice and equity.

The ordinance establishing the board must provide notice and time requirements for hearings before the board. The board must issue its order within a reasonable time and requests before the board must comply with the 60-Day Rule.

RELEVANT LINKS:

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

Zweber v. Credit River Twp., 882 N.W.2d 605 (Minn. 2016).

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

Zweber v. Credit River Twp., 882 N.W.2d 605 (Minn. 2016).

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

When adopting a zoning ordinance, cities use their legislative (law-making) authority and have discretion in choosing their language and identifying uses as permitted, prohibited, or conditional in particular districts. In exercising their legislative authority, cities' zoning decisions must be constitutional, rational, and in some way related to protecting the health, safety, and welfare of the public.

When reviewing zoning decision, courts typically use a standard known as the "rational basis standard." Under this standard, a court will uphold a city's decision if it (1) serves a legitimate public purpose and (2) there is a rational basis for the city to believe that the decision will further that purpose. The district court has direct review of these types of decisions, as well as any derivative constitutional claims that arise from the legislative decision.

In contrast, when interpreting or administering an existing zoning ordinance (for example, when deciding if a proposed use complies with ordinance criteria for permitted conditional uses), a city has less discretion. Generally, when reviewing a zoning application (other than rezoning applications), a city no longer serves in its legislative capacity, but rather exercises a quasi-judicial function. Instead of legislating for the broad population as a whole, a city makes a quasi-judicial (judge-like) determination about an individual zoning application regarding whether the application meets the standards of the city ordinance.

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

These quasi-judicial decisions, on the other hand, are reviewable only through the filing of a petition for a writ of certiorari with the court of appeals (as opposed to district court for review of legislative decisions). Sometimes quasi-judicial decisions also may present derivative claims, which the court of appeals does not have jurisdiction to hear on the writ. Cities should work with their city attorneys to follow proper process.

A city acts in a quasi-judicial manner when it reviews applications for:

RELEVANT LINKS:

Northwestern College v. City of Arden Hills, 281 N.W.2d 865 (Minn. 1979).
Vill. of Edina v. Joseph, 264 Minn. 84, 119 N.W.2d 809, 815, (1962). *Billy Graham Evangelistic Ass'n v. City of Minneapolis*, 667 N.W.2d 117 (Minn.2003). *Melleyco P'ship v. West St. Paul City*, 874 N.W.2d 440 (Minn. Ct. App. 2016).

Billy Graham Evangelistic Ass'n v. City of Minneapolis, 667 N.W.2d 117, 124 (Minn.2003).

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

- Conditional use permits.
- Interim use permits.
- Variances.

With respect to reviewing quasi-judicial decisions (involving judgment and discretion), the Supreme Court has cautioned reviewing courts against substituting their judgment for that of the body making such a decision, guiding those courts to determine whether that body was within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably, and to determine whether the evidence could reasonably support or justify the determination. This means that, when assessing conflicting evidence in quasi-judicial cases, an appellate court does not independently weigh the evidence, but rather, reviews the record “to determine whether there was legal evidence in the record to support the zoning authority’s decision.”

In these quasi-judicial situations, due process and equal protection (or lack thereof) represent factors for determining if the local government acted unreasonably or arbitrarily. Due process and equal protection under the law demand that similar applicants be treated uniformly by the city. The best process for ensuring similar treatment among applicants is to establish standards in the ordinance and to provide that if standards are met, the zoning permit must be granted. An application generally only may 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 or capricious (failed to treat equally situated applicants equally or failed to follow ordinance requirements).

1. Standard of review for re-zoning applications

An application for a rezoning really serves as a request for an amendment to the zoning ordinance, and, as such, represents a quasi-legislative decision. When reviewing applications for re-zoning, the court has ruled that a 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 law presumes an existing zoning ordinance constitutional, and an applicant only is 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.

RELEVANT LINKS:

[Minn. Stat. § 15.99, subd. 2\(a\).](#)

See Section V-A, *The 60-Day Rule*.

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

[Zylka v. City of Crystal](#), 293 Minn. 192, 167 N.W.2d 45 (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.

2. Making a record of the basis for zoning decisions

The 60-Day Rule requires a city provide reasons for its denial of a zoning request within a certain time. The reasons for denial must be stated on the record. In addition, a city must provide the applicant with a written statement of the reasons for denial.

The reasons for denial or approval, whether written or stated on the record, constitute the city's "findings of fact" on the application.

Findings of fact are essential to the zoning process and provide the reviewing court a record to sustain a city's zoning decision. When a land use decision is challenged in court, the reviewing court upholds a city's decision if the findings of fact demonstrate a rational and legally sufficient basis for the decision.

Findings of fact should state all 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 related to the zoning request. 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. These standards will be set out in the city's ordinance, state law, or through court decisions.

a. Neighborhood opposition

Certain zoning issues may generate vocal public opposition. It is important to recognize that neighbors have legitimate interests. While property owners may develop expectations about the regulation of their own land, they also develop expectations of neighboring property. For city officials, the process of gathering public input can cause chaos at meetings. Many cities find the following suggestions helpful when gathering public input:

- Land use ordinances are accessible and easy to read.
- Address potential issues proactively by involving residents early in the planning and zoning process.
- Actively educate the public about the planning and zoning process or the project in question.

RELEVANT LINKS:

[August v. Chisago County Bd. of Commissioners](#), 868 N.W.2d 741 (Minn. Ct. App. 2015) (neighbors' personal experiences with increased noise and increased traffic sufficient finding of fact).
[Roselawn Cemetery v. City of Roseville](#), 689 N.W.2d 254, 260 (Minn. Ct. App. 2004) (city council can disregard an expert's opinion when presented with conflicting non-experts' opinions, so long as the reasons are concrete and based on observations, not merely on fear or speculation.”).

[Minn. Stat. § 462.357, subd. 3.](#)
[Minn. Stat. § 462.3595, subd. 2.](#)
[Minn. Stat. § 462.357, subd. 3.](#)

After hearing from the public, cities sometimes struggle with handling vocal neighborhood opposition in their findings of fact. The decision-making body should not cite vague or general statements of public opposition, including mere comments about fears or speculations, as a finding of fact when denying a zoning application.

However, a decision-making body may consider and cite neighborhood opposition when that opposition arises out of specific, fact-based effects of the project. A significant part of the zoning process is 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, have the opportunity to speak and present their views on the application. While broad, general statements of opposition may not qualify as a reasonable finding of fact, specific statements made by the public that are concrete and factual in nature and relate to the public welfare do rise to the level of acceptable findings.

For example, stating as a finding that “public opposition to the project is strong” would not suffice. However, stating that, “neighbors in the vicinity of the project made numerous statements at the public hearing that streets in the area are already highly congested. The addition of a shopping mall would significantly increase congestion on streets already at capacity” would suffice. 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 a city acting on numerous types of zoning issues. A public hearing must be held for:

- Zoning ordinance adoption or amendment.
- Conditional use permits.
- Rezonings.

City ordinances also may require hearings for other matters. For example, some cities view variances as a type of zoning amendment and hold hearings for variance requests. As this represents an unsettled area of law, cities should consult their city attorney on the practice of holding hearings for variances.

RELEVANT LINKS:

For more information on conducting public hearings see [Minnesota Mayor's Handbook](#).

At a minimum, notice of the hearing must be published in the official newspaper at least 10 days prior to the hearing, and direct 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). Some zoning ordinances may require additional notice and cities should comply with those requirements as well.

Public hearings should include a complete disclosure of the proposal, 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, to ask questions, to provide additional information, to express either support or opposition, or to suggest modifications to the proposal.

A city should conduct public hearings for purposes 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 a 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 need procedures in place 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 re-zonings.

As discussed above, most all of these applications must comply with the 60-Day Rule. However, cities process each type of application differently since state law (and likely local ordinance as well) establishes specific requirements for granting each type of application. Cities should work with their city attorney to make sure they comply with applicable state law and ordinances.

a. Permitted uses

The administrative procedures used for processing permitted use zoning requests varies from city to city. 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 a 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 issued confirms that the use is permitted and meets all other applicable zoning standards.

RELEVANT LINKS:

Chase v. City of Minneapolis, 401 N.W.2d 408 (Minn. Ct. App. 1981).
Rose Cliff Landscape Nursery v. City of Rosemount, 467 N.W.2d 641 (Minn. Ct. App. 1991).

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*.

Amoco Oil Co. v. City of Minneapolis, 395 N.W.2d 115 (Minn. Ct. App., 1986).

Zylka v. City of Crystal, 283 Minn. 192, 167 N.W.2d 45, (1969).

Minn. Stat. § 462.3595.

Zylka v. City of Crystal, 283 Minn. 192, 167 N.W.2d 45, (1969).

Regardless of the administrative procedures used, a city may not impose additional conditions on a permitted use that otherwise meets the standards of a city ordinance. Doing so may lead to a court finding the decision arbitrary or violates an applicant's equal protection or due process rights. Generally, a landowner can engage in the permitted use provided the landowner has met all applicable requirements.

Cities should review their permitted uses regularly to ensure that the listed permitted uses fit current city needs and circumstances. Permitted uses previously allowed (such as carriage houses in residential districts), may be inappropriate in a modern city, residential block. As time passes, permitted uses may need reclassification as prohibited uses or transformed into conditional uses.

b. Prohibited uses

Cities may receive applications requesting permission to engage in uses explicitly prohibited under a city's zoning ordinance. For example, when a city receives a request to engage in industrial activities in a commercial zone. When an ordinance prohibits a use, a city cannot allow the use unless it adopts an amendment to a city's zoning ordinance in accordance with the procedures of the Municipal Planning Act. Cities must not grant variances or conditional use permits to engage in prohibited uses.

c. Conditional use permits

Conditional use permits (CUPs) give cities more flexibility in zoning ordinance administration. Generally, as discussed earlier, conditional uses represent uses that often are too problematic to be permitted without additional review. A classic example of such a 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 represent uses allowed if the applicant meets conditions that minimize problematic.

Cities must specify conditional uses in a city ordinance. Generally, the ordinance will list out conditional uses alongside the permitted uses. The ordinance also must establish the conditions or standards required to allow the conditional use. Courts often find ordinances that fail to establish standards for granting listed conditional uses problematic and may invalidate those ordinances.

RELEVANT LINKS:

Minn. Stat. § 462.3595.
Minn. Stat. § 462.3595, subd. 2.
RDNT, LLC v. City of Bloomington, 861 N.W.2d 71 (Minn. 2015).
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).

Hubbard Broad., 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).

In re Livingood, 594 N.W.2d 889 (Minn. 1999).
CR Investments, Inc., v. Vill. of Shorewood, 304 N.W.2d 320 (Minn. 1981).

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 Cir. 2008).
Minn. Stat. § 462.3597.
A.G. Op. 59-A-32 (February 27, 1990).

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

As stated above, a city must grant the CUP if the applicant satisfies all the conditions established in the ordinance. The burden lies with the applicant to demonstrate that the standards and criteria stated in the ordinance will be satisfied. If a conditional use permit applicant demonstrates to the governing body that imposing a reasonable condition would eliminate any conflict with the ordinance's standards and criteria, and the governing body ignores or does not consider the proposed condition, a court may find a subsequent denial arbitrary. However, if the record shows that the governing body had a reasonable basis that the proposed condition would not address concerns, then a reviewing court likely would uphold the decision.

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.

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.

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 upon the sale or transfer of the property. For this reason, time restrictions on a CUP likely are invalid. In at least one instance, however, courts have upheld a city's decision to issue a time-limited CUP. If a city wishes to issue a time-limited CUP, it should consult its city attorney.

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

d. Requests for variances from the zoning ordinance

Variances serve as an exception to rules laid out in a zoning ordinance.

RELEVANT LINKS:

See LMC information memo, [Land Use Variances](#).

[Minn. Stat. § 462.354, subd. 6.](#)

See Section V-B-5 *Boards of Adjustment and Appeals*.

[Krummenacher, v. City of Minnetonka](#), 783 N.W.2d 721 (Minn. 2010)

(superseded by statute).

[Minn. Stat. § 462.357, subd. 6.](#)

See also LMC information memo, [Land Use Variances](#) for sample ordinance language.

[Minn. Stat. § 462.354, subd. 6.](#)

[Continental Prop. Group v. City of Wayzata](#), A15-1550 (Minn. Ct. App. April 18, 2016) (unpublished decision).

They permit 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 allow deviations to physical standards set forth in a zoning ordinance, (such as setbacks or height limits) and may not allow a use otherwise prohibited in the particular zoning district.

The law provides that the board of adjustment and appeals hear requests for variances. In many communities, the planning commission serves this function. Generally, an applicant may appeal the board’s decision 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.

The practical difficulties test has replaced the “undue hardship” test that had been in place for many years. The “practical difficulties,” standard, as stated in statute, includes the three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character.

The practical difficulties factors include:

- 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 specific, 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 arose out of circumstances unique to the property and not caused by the landowner. The uniqueness generally relates to the physical characteristics of the 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.

Cities should grant variances when 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. State law also requires granting “[v]ariances ...only... 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.”

RELEVANT LINKS:

City of Maplewood v. Valiukas, CO-96-1468 (Minn. Ct. App. Feb 11, 1997) (unpublished opinion).

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).

Stotts v. Wright County, 478 N.W.2d 802 (Minn. Ct. App. 1991).

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).

Minn. Stat. § 462.357, subd. 6.
Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minn. 2000).

Minn. Stat. § 462.357, subd. 6.

Minn. Stat. § 462.357, subd. 6(2).

In granting a variance, a city may attach conditions, but the conditions must directly relate to 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 for a city to impose a condition of additional screening or landscaping to camouflage the structure built within the normal setback.

Cities enjoy broad discretion in denying a request for a variance, but a city must cite legally sufficient reasons for the denial. The board's findings should detail the reasons for the denial or approval and the specify the facts upon which it based the decision. 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.

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

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.

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. These are commonly referred to as a use variance.

A city may not grant a use variance if the use is not allowed 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 then prohibits all uses not specifically listed.

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.

RELEVANT LINKS:

[Minn. Stat. § 462.357.](#)
[Minn. Stat. § 462.358, subd. 2a.](#)
[Minn. Stat. § 15.99.](#)

[Minn. Stat. § 462.357, subd. 4.](#)
See Part V-A, *The 60-day rule*.

[Sun Oil Co. v. Vill. of New Hope](#), 300 Minn. 326, 220 N.W.2d 256 (1974).
[Kelber v. City of St. Louis Park](#), 289 Minn. 456, 185 NW 2d 526 (1971).

[Minn. Stat. § 462.357, subd. 2.](#)

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

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

e. Requests for rezoning or zoning ordinance amendments

Cities have the authority to rezone (such as changing a designation from residential to mixed commercial) or otherwise amend the zoning regulations governing types of property (such as adding a permitted or conditional use). Because rezoning serves as an amendment to the actual zoning ordinance, all the procedures for amendments to the zoning ordinance apply.

The planning commission, council, or a petition by an individual landowner, may initiate rezoning. 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.

The 60-Day Rule discussed previously applies to rezoning requests and an automatic grant of the rezoning will result if the city does not comply with the rule.

Rezoning represents a legislative act and needs only to have a rational basis relating to public health, safety, morals, or general welfare. A city must document, in findings of fact, the rational basis for the rezoning decision. If a city has followed a comprehensive planning process, the findings of fact should further the city's comprehensive plan. For example, the fact that property zoned for residential purposes has greater value if used for commercial purposes has never been grounds for rezoning when the surrounding property is predominantly residential.

(1) Rezoning residential property

When property gets 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, meaning three out of five votes for a five-member council.

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

Property owners do not have vested rights in the specific zoning of their parcel.

RELEVANT LINKS:

Olsen v. City of Hopkins, 178 N.W.2d 719, 288 Minn. 25 (Minn. 1970).

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

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

Alexander v. City of Minneapolis, 125 N.W.2d 583, 267 Minn. 155 (Minn. 1963).

See Handbook, *Environmental Regulations* for more information on environmental review.
Minn. Stat. § 116D.
Minn. R. ch. 4410.
Minn. Stat. § 16D.02.

Minn. Stat. § 15.99, subd. 3(d), (e).
Minn. Stat. § 116D.
Minn. R. ch. 4410.
See Section V-A *The 60-Day Rule*.

Minn. Stat. § 462.353, subd. 4(a).
Minn. Stat. § 462.353, subd. 4(b).

Cities may exercise their legislative discretion to rezone property in furtherance of the public, health, safety and welfare. However, cities should 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:

- Has no supporting rational basis that relates 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.

Spot zoning that results in a total destruction or substantial diminution in the value of property may be considered a form of regulatory taking of private property without compensation.

In these rare instances, courts may award a property owner compensation for damages related to a legislative rezoning.

D. Environmental review

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.

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

E. Fees and escrow

Proper zoning administration can 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 a city in reviewing, investigating, and administering an application related to the zoning ordinance.

RELEVANT LINKS:

[Minn. Stat. § 471.462.](#)

[Minn. Stat. § 462.353, subd. 4\(d\).](#)
[Minn. Stat. § 462.361.](#)

[Minn. Stat. § 462.353, subd. 4\(a\).](#)

[Minn. Stat. § 462.353, subd. 4\(c\).](#)

[Minn. Stat. § 326B.145.](#)

Fees must be fair, reasonable, proportionate, and linked to the actual cost of the service for which the fee is imposed. All cities must 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.

Upon request by an applicant for a permit, license, or other approval relating to real estate development or construction, cities must provide a written non-binding estimate of consulting fees to be charged to the applicant based on the information available at that time. The application is not deemed complete until the city has (1) provided an estimate to the applicant, (2) received required application fees, (3) received the applicant's signed acceptance of the fee estimate, and (4) received the applicant's signed statement that the applicant has not relied on the fee estimate in its decision to proceed with the final application.

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 aggrieved party brings the appeal 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.

Generally, cities must adopt fees by ordinance. An exception to this requirement exists for that collect an annual cumulative total of \$5,000 or less of land use fees. These cities may adopt a fee schedule without adopting a separate ordinance related to fees. These cities can adopt a fee schedule by either ordinance or resolution after providing notice and holding a public hearing.

Notice must be published at least 10 days before the public hearing. The exception also authorizes cities that collect an annual cumulative total that exceeds \$5,000 of land use fees to adopt a fee schedule if they wish, but they may only do so only by ordinance, after following the same notice and hearing procedures.

State law sets January 1 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 adoption of the ordinance.

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.

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 4. 2017 Minn. Law, ch. 94, art. 11, amending Minn. Stat. § 462.355.](#)
[Pawn America Minnesota, LLC v. City of St Louis Park, 787 N.W.2d 565 \(Minn. 2010\).](#)

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 a city's zoning ordinance

On-going maintenance of the zoning ordinance, both the actual text and maps, represents a crucial part of zoning administration. City zoning authority is created and regulated by both statutes and court decisions, which can change or get amended frequently.

As a result, it becomes 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 also should review their ordinances to make sure they are consistent with past staff and council interpretation, as well as with a city's comprehensive plan.

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

G. Interim Ordinances (Moratoria)

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, as allowed by law, 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 and should work with their city attorney to make sure the moratorium is not otherwise prohibited by law. For example, with respect to managing telecommunications right-of-way users, the law prohibits cities from establishing a moratorium with respect to filing, receiving, processing, issuing or approving applications for right-of-way or small wireless facility permits.

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 4\(a\).](#)

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

[Minn. Stat. § 462.355, subd. 4\(c\)\(1\).](#)

1. Procedure for interim ordinance adoption

Cities 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. Unless otherwise prohibited by state law, an interim ordinance may only be adopted where the city:

- Is conducting studies on the issue.
- Has authorized a study to be conducted.
- Wants to regulate, restrict, or prohibit a housing proposal and the ordinance has been approved by a majority vote of all members of the city council.
- 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 findings of fact upon adoption of the ordinance should state the legal justification for the interim ordinance. An interim ordinance may only be adopted for issues that a city will actually review and study. An interim ordinance cannot be used to merely delay a project.

With a couple exceptions, a hearing generally is not necessary before enactment of an interim ordinance. 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.

Also, before adopting an interim ordinance related to a housing proposal, the city council must hold a public hearing after providing written notice to any person who has submitted a housing proposal, has a pending housing proposal, or has provided a written request to be notified of interim ordinances related to housing proposals. The written notice must be provided at least three business days before the public hearing. Notice also must be posted on the city's official website, if it has an official website. The date of the public hearing shall be the earlier of the next regularly scheduled city council meeting after the notice period or within 10 days of the notice. The activities to be restricted by the proposed interim ordinance may not be undertaken before the public hearing.

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 4\(d\).](#)

[Minn. Stat. § 462.355, subd. 4\(d\)\(3\).](#)

[Minn. Stat. § 462.355, subd. 4\(d\) \(1\).](#)

[Minn. Stat. § 462.355, subd. 4\(d\) \(2\).](#)

[Minn. Stat. § 462.355, subd. 4\(d\).](#)

[Minn. Stat. § 462.355, subd. 4\(d\).](#)
[Semler Const., Inc. v. City of Hanover](#), 667 N.W.2d 457 (Minn. Ct. App. 2003).

[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 (2002).

2. Procedure for interim ordinance extension

Extension of an interim ordinance may occur only in limited circumstances and pursuant to specific statutory procedures. A city may extend an interim ordinance if it holds a public hearing and adopts findings of fact stating that additional time is needed to:

- 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.
- 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.
- 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.
- 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.

3. Applicability

An interim ordinance or moratorium may not delay or prohibit a subdivision with 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.

According to the Minnesota Court of Appeals, the use of an interim ordinance prohibiting or limiting land use generally is not compensable if a valid purpose for the interim regulation exists. In evaluating whether an interim ordinance created a temporary taking, in the nature of a regulatory taking, courts will look to the parcel as whole.

The law does not set forth a bright-line rule for regulatory takings; rather, evaluation occurs on a case-by-case basis.

RELEVANT LINKS:

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

[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.](#)

[SLS P'ship v. City of Apple Valley](#), 511 N.W.2d 738 (Minn. 1994).
[Halla Nursery v. Chanhassen](#), 763 NW 2d 42 (Minn. Ct. App. 2009).

[Minn. Stat. § 462.357, subd. 1e.](#)

VI. Zoning ordinance enforcement

The Municipal Planning Act authorizes cities to enforce their zoning ordinance through criminal penalties. In addition, cities also have civil remedies, such as an injunction, 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 a city's zoning regulation.

A. Legal nonconformities predating the adoption of the zoning ordinance

1. Legal nonconformities

Legal nonconformities represent 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 does not apply to adults-only bookstores, adults-only theaters or similar adults-only businesses. This prohibition also does not 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.

Nonconformities that legally existed prior to the adoption of an ordinance prohibiting the use can continue, even though the use is illegal under a current zoning. Besides remaining in effect, legal nonconformities also escape requirements subsequently enacted, such as new setbacks. The state statute on legal nonconformities supersedes any conflicting language in a zoning ordinance.

While legal nonconformities can continue, a zoning ordinance may prohibit them from being expanded, extended or rebuilt in certain situations.

Nonconformities may continue through repair, replacement, restoration, maintenance and improvement (other than expansion), unless:

RELEVANT LINKS:

[Ortell v. City of Nowthen, 814 N.W.2d 40 \(Minn. Ct. App. 2012\).](#)

[Minn. Stat. § 462.357, subd. 1e \(c\). Minn. Stat. § 462.357, subd. 1\(f\).](#)

[Minn. Stat. § 462.357 subd. 1e\(2\).](#)

[Minn. R. 6105.0351 – 6105.0550.](#)

[Minn. R. ch. 7080.](#)

- 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.

Cities may 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. However, in certain instances, the continuation and improvement of these substandard structures may occur in the Lower St. Croix National Scenic Riverway.

2. Shoreland legal nonconformities

a. All shoreland lots

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 a city, if practicable, and reasonable conditions may be placed upon a zoning or building permit to mitigate impact 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.

A 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.

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

RELEVANT LINKS:

- Management of stormwater runoff.
- Reduction of impervious surfaces.
- Increase of setbacks.
- Restoration of wetlands.
- Creation of vegetative buffers.
- Analysis of sewage treatment and water supply capabilities.
- Consideration of other conservation-designed actions.

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

b. Contiguous lots without habitable residential dwellings

In a group of two or more contiguous shoreland lots of record under a common ownership, a 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:

- 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.
- 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 a city-adopted comprehensive plan (if any).

c. Contiguous lots with habitable residential dwellings

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.

[Minn. R. ch. 6120.](#)

[Minn. R. ch. 7080.](#)

[Minn. Stat. § 115.55. Minn. R. ch. 7080.](#)

RELEVANT LINKS:

[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, *Meetings, Motions, Resolutions, and Ordinances* for information on prosecution responsibilities for violations of local ordinances.

[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).

[Minn. Stat. § 462.3595, subd. 3.](#)

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

B. Violations of the zoning ordinance: criminal penalties

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

C. Violations of the zoning ordinance: civil remedies

In many instances, criminal sanctions will not cure a zoning violation. Where a city desires removal of a building or use that violates the zoning ordinance, civil remedies may have greater impact 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 built in violation of a city's zoning ordinance.

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

With conditional use permits, cities have an additional method of compelling compliance with city zoning ordinances since cities can revoke the conditional use permit if the permit holder violates the permit conditions. For example, if the permit requires installation of traffic calming measures, but the permit holder fails to do so, then a city can revoke the permit.

Once granted, conditional use permits constitute a property right that runs with the land. A city seeking to revoke a conditional use permit should provide the permit holder with due process, an opportunity to be heard and to respond to allegations, before revoking a permit. Also, the zoning ordinance should set forth the procedures for revocation.

RELEVANT LINKS:

[Minn. Stat. § 462.358.](#)

See LMC information memo, [Subdivision Guide for Cities](#).

See Handbook, [Comprehensive Planning, Land Use, and City-Owned Land](#) for more information on city subdivision ordinances.

[Minn. Stat. § 462.358, subd. 2b.](#)

[Minn. Stat. § 462.353, subd. 4.](#)

[Minn. Stat. § 462.353, subd. 4.](#)

VII. Conclusion: other land use controls available to cities

Remember, zoning merely serves as one of the tools available to a city to assist in creating a well-planned, even thriving community. A city also may 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

Municipalities have the authority to regulate subdivisions of land for many reasons, including, but not limited to, encouraging orderly development and planning for necessities such as streets, parks and open spaces.

Cities have the authority to adopt a subdivision ordinance that sets forth the standards, requirements and procedures to review, approve or disapprove an application to subdivide tracts of land in the city.

Cities may 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.

In the alternative, city ordinance may require money, to be used for specific purposes, instead of land; state law refers to this as “cash fees.”

Subdivision regulations can get 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.

RELEVANT LINKS:

See LMC information memo, [Subdivision Guide for Cities](#).

[Minn. Stat. § 505.01, subd. 3\(f\)](#).

[Minn. Stat. § 462.358, subd. 3a](#).
[Minn. Stat. ch. 505](#).

[Minn. Stat. § 462.359](#).
[Minn. Stat. § 462.357, subd. 1](#).

For more information on the official map see Handbook, [Comprehensive Planning, Land Use, and City-Owned Land](#).

[Minn. Stat. § 462.359, subd. 3](#).

- 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.

B. Platting requirements

The Minnesota Platting Act governs platting. 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.

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.

C. The official map

Cities have authority to adopt an official map. As a planning tool, official maps ensure that land a 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 a city's comprehensive plan or zoning code.

Official maps do not give a city any right to acquire the areas reserved on the map without payment. When a city wishes to proceed with the opening of a mapped street, the widening or extending of existing mapped streets, or the 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.

D. Safety and maintenance codes

In conjunction with the zoning requirements, cities may promote a city's development by enforcement of the State Building Code and local nuisance and/or property maintenance ordinances.

RELEVANT LINKS:

[State Building Code.](#)
For more information on the State Building Code see Handbook, *Public Safety and Emergency Management*.

[Minn. Stat. § 326B.121.](#)

[Minn. Stat. § 326B.121.](#)

[Minn. Stat. § 326B.121.](#)

[Minn. Stat. § 326B.121.](#)

[Minn. Stat. § 326B.108.](#)

[Minn. Stat. § 326B.16.](#)
[Minn. Stat. § 326B.112.](#)
[Minn. Stat. § 326B.175.](#)

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

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 the people who live and work in those buildings from fire and other hazards.

The State Building Code 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.

If, as of January 1, 2008, a city has adopted the State Building Code, by ordinance, the city must continue to administer and enforce the State Building Code. State statute prohibits the municipality 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 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.

A city must not, by ordinance or through a development agreement, require building code provisions regulating components or systems of any structure that conflict with any provision of the State Building Code. A city may, with the approval of the state building official, adopt an ordinance more restrictive than the State Building Code, where geological conditions warrant a more restrictive ordinance. The State Building Code must be applied to all “places of public accommodation,” which includes “any publicly or privately owned facility that is designed for occupancy by 200 or more people and includes a sports or entertainment arena, stadium, theater, community or convention hall, special event center, indoor amusement facility or water park, or swimming pool.” This provision impacts cities for enforcement purposes, but also because cities often operate such facilities. The law gives the Department of Labor and Industry enforcement of this provision when a municipality has not adopted the State Building Code.

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

RELEVANT LINKS:

[Minn. Stat. § 412.221, subd. 23.](#)
[Minn. Stat. § 561.01.](#)

See LMC information memo, [Public Nuisances.](#)

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

[Minn. Stat. §§ 463.15-26.](#)
See LMC information memo, [Dangerous Properties.](#)

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).

2. Nuisance ordinances

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” represents anything injurious to health, indecent or offensive to the senses, or obstructing the free use of property to the extent it interferes with the comfortable enjoyment of life or property.

3. Property maintenance ordinances

Cities may choose to deal with the specific nuisance posed by dilapidated buildings through the adoption of a property maintenance ordinance. Such ordinances typically establish standards for exterior maintenance related to painting, siding, roofing and broken windows.

City property maintenance ordinances should be drafted and enforced in a manner that is consistent with the State Building Code. Property maintenance ordinances should generally not attempt to regulate construction issues already regulated by the State Building Code, because such regulation may be pre-empted.

4. Hazardous and Substandard Buildings Act

Cities that have not adopted a local ordinance regarding nuisances or property maintenance still may have to 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.

E. City land acquisition

Cities also may control development through the planned acquisition, development and, potentially the resale of land by a 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, and police and fire halls, and to reserve land for future residential and commercial development. Cities also may acquire land through the tax forfeiture process.