

Municipal Consent

Contact

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[Municipal Consent Risk Management](#)

Submittal Letter and Attachments

- [Submittal Letter/Template](#)
- [MN Statutes 161.162 – 161.167](#)
- [Example: Cost Estimate / City Costs](#)
- [Example: City Resolution for Municipal Consent](#)
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Legal Basis

The Minnesota municipal consent statutes were revised in the 2001 legislative session.

State Municipal Consent Statutes

Definitions	MN Statute 161.162
Highway Project Review	MN Statute 161.163
Final Layout Approval Process	MN Statute 161.164
Commissioner Action; Interstate Highways	MN Statute 161.165
Commissioner Action; Other Highways	MN Statute 161.166
Reimbursement of Expenses (for Appeal Board Members)	MN Statute 161.167

Threshold Criteria

Municipal consent should only be requested from a city if it is required.

When Required

Municipal approval is required for any trunk highway project that results in any of the following within a municipality:

- Alters access,
- Increases or reduces traffic capacity, or
- Requires acquisition of permanent right of way.

Increasing or reducing **traffic capacity** means increasing or reducing the number of through lanes. For example, adding an auxiliary lane is not a change in capacity.

Acquisition of **permanent right of way** includes acquisition of **permanent easements** (e.g., drainage easements).

Exceptions

Municipal consent is not required for maintenance activities or for the following:

- HOV Lanes / Dynamic shoulders ([MN Statute 160.93, Subd. 3](#))
- Traffic safety measures ([MN Statute 161.163, Subd. 2](#))

HOV Lanes / Dynamic Shoulder Lanes ([MN Statute 160.93, Subd. 3](#))

Municipal consent is not required (regardless of impacts to access, capacity, or right of way) for the construction and/or designation of lanes on trunk highways for use as either:

- High-Occupancy Vehicle Lanes (e.g., MnPASS), or
- Dynamic Shoulder Lanes,

Traffic safety measures ([MN Statute 161.163, Subd. 2](#))

Municipal consent is not required (regardless of impacts to access, capacity, or right of way) for projects needed for any of the following:

- Regulate traffic, or
- Install traffic control devices, or
- Other safety measures

The term “other safety measures” refers to traffic safety measures. The addition of a turn lane, for example, is a traffic safety measure; the replacement of a structurally-deficient or fracture-critical bridge is not.

Below are examples of traffic safety exceptions:

Safety Improvements for Pedestrian/ADA Facilities

Municipal consent is not required for projects in which the only trigger for municipal consent is the acquisition of minor amounts of right of way needed for safety improvements required to comply with ADA and to further MnDOT’s goal of providing safe, accessible pedestrian facilities.

The Americans with Disabilities Act (ADA) is a federal act that requires MnDOT to provide accessible pedestrian facilities. MnDOT projects often include improvements to comply with ADA and to help reach MnDOT’s goal of providing safe and accessible pedestrian facilities.

NOTE: The Minnesota statutory definition of “pedestrian” includes any person in a wheelchair. (See [Minnesota Statute 169.011](#), Subd.53 and Subd. 93).

Acquisition of permanent right of way is one of the statutory triggers for obtaining municipal consent, and minor amounts of right of way are sometimes needed for safe and accessible pedestrian facilities. However, [Minnesota Statute 161.163, Subd. 2](#) includes a traffic safety exception to the municipal consent requirement. Improvements needed to provide safe, accessible pedestrian facilities are traffic safety measures, and thus are safety exceptions to municipal consent. These safety improvements include curb ramps, accessible sidewalks and ramps, pedestrian refuge areas, areas for safe pedestrian movement, and pedestrian-operated warning devices.

Roundabouts

Roundabouts are used for traffic regulation and as a safety measure, and thus are **exceptions** that do not require municipal consent even if they require acquisition of permanent right of way.

Roles and Procedures

Municipal consent should only be requested from a city if it is required. (See Threshold Criteria above).

Sometimes a city may choose to waive municipal consent on a specific project. In that case the city council must pass a resolution clearly identifying the project and waiving its right to municipal consent for that project. However, the typical municipal consent process is as outlined below.

Procedure (for obtaining municipal consent)

1. Mn/DOT (District) submits to the city the final layout with a letter requesting city approval. The letter includes a good faith cost estimate of the city's share of the project's cost and the following (either in the letter or in an attached report):
 - project purpose
 - route location
 - short description of the proposed design of the highway
 - any additional supporting data
2. City schedules and holds public hearing (within 60 days of submittal).
City must schedule within 15 days of receiving Mn/DOT's request for approval and must give 30 days public notice.
3. City passes resolution approving / disapproving (within 90 days of public hearing).
After 90 from the date of the public hearing, if the city has not passed a resolution disapproving the layout, the layout is deemed approved.
4. If city disapproves, Mn/DOT decides whether to:
 - a. Meet city's condition(s), assuming city approved with conditions:
Mn/DOT writes city a letter indicating this and attaches revised layout with change(s). This ends the MC process.
 - b. Go to the appeal process.
 - c. Stop the project (do not build the project, or scale project down so that municipal consent is no longer required).

5. If in the final plan Mn/DOT alters access, capacity or R/W, Mn/DOT must re-submit changed portion of plan for city's approval. (The city is not required to hold another public hearing and has 60 days to approve or disapprove).

City Approval

The city can approve either by a formal approval resolution (see generic resolution in Appendix), or by not passing a resolution disapproving the layout within 90 days of the public hearing.

The city's review – with regards to layout approval – is limited to the project elements in the final layout that are within the boundaries of that city. A city cannot impose a condition on its approval that is outside of the city's boundaries.

The process allows the city one opportunity to exercise approval or disapproval of the final layout (unless Mn/DOT alters the plan with regards to access, capacity, or right-of-way). Once a city approves the layout, it cannot rescind its approval later. If a city disapproves with conditions, and if Mn/DOT agrees to meet those conditions – and notifies the city in writing (including copy of revised layout) – then municipal consent has been obtained.

The municipal consent statute applies to changes on “any route on the trunk highway system lying within any municipality.” If a T.H. borders a city and no section of the T.H. is completely within the city limits, municipal consent is still required for any of the designated changes (access, capacity, or right of way) that do occur within that city. However, if the changes triggering the municipal consent process are on the other side of the T.H. – and thus outside the city's limits – then municipal consent is not required from that city and is not requested from that city.

City Disapproval

If a city disapproves the final layout, Mn/DOT can stop the project (or scale it back so that municipal consent is no longer required), or Mn/DOT can take the project to the appeal process.

If the city disapproves – but includes condition(s) for approval, Mn/DOT has the above options plus the option of meeting the city’s condition(s), and thus obtaining the city’s approval. To do this, Mn/DOT sends the city a letter to that effect with the layout attached (revised to show the change(s)). This completes the municipal consent process; Mn/DOT then has the city’s approval. (Sending the letter and revised layout is NOT a resubmittal for further consideration by the city).

Appeal Process

The appeal process is the same for interstate and non-interstate projects. However, the Mn/DOT Commissioner is not bound by the recommendations of the appeal board with respect to interstate highways.

If Mn/DOT decides to go to the appeal process, the first step is to establish an Appeal Board of three members: one member appointed by the Commissioner, one member appointed by the City Council, and a third member agreed upon by both the Commissioner and the City Council. (If a third member cannot be agreed upon, the Commissioner refers the selection to the chief justice of the Supreme Court, who then has 14 days to appoint the third member).

After the appeal board is established, the Commissioner refers the final layout to the Appeal Board. The Appeal Board then has 30 days to hold a hearing at which the Commissioner and the City Council may present their cases for or against approval of the layout. Within 60 days after the hearing, the Appeal Board must make its recommendation regarding the final layout. The recommendation can be for:

- approval, or
- approval with modifications, or
- disapproval.

The board can also make additional recommendations consistent with state and federal requirements as it deems appropriate. The board must submit a written report with its findings and recommendations to the Commissioner and the City Council.

Mn/DOT Public Involvement

Glossary

Municipality: A statutory or home rule charter city.

Municipal Consent: A municipality's approval of Mn/DOT's final layout for a project on a Trunk Highway when such approval is required by State Statute – see *Threshold Criteria* above. (Approval is by a resolution passed by the elected council of the municipality – the City Council).

Appendix

Municipal Consent Process & Timeline

Sample City Resolution

Municipal Consent Process & Timeline

Mn/DOT / HPDP

Basic Process

1. Mn/DOT submits the final layout to the City with a letter requesting City approval of the layout.
2. The City holds public hearing within 60 days of Mn/DOT's submittal and gives a 30-day (minimum) public notice of the hearing. Mn/DOT presents the layout at the public hearing. **60 days**
3. The City Council passes a resolution approving / disapproving the layout (within 90 days of public hearing). If after 90 days from the public hearing the City has not passed a resolution disapproving the layout, the layout is deemed approved. **90 days**
4. If the City approves, Mn/DOT can proceed with the project.
5. If the City disapproves, Mn/DOT's options are:
 - o Make the changes requested by the City (if any)
 - o Refer the layout to an Appeal Board
 - o Stop the project
 - o Modify the project so municipal consent is not required
 - o Prepare a new final layout and start the MC process over from beginning

Before Appeal: Total Maximum time = 150 days

Appeal Process

1. Mn/DOT notifies the City that it is appealing.
2. An Appeal Board of three persons is established:
 - o Mn/DOT appoints a member **Undefined time to establish appeal board**
 - o The City appoints a member
 - o Third member selected by mutual agreement between the City & Mn/DOT. If they cannot agree, Mn/DOT requests the MN Chief Justice to select. The Chief Justice appoints third member within 14 days of Mn/DOT's request. **14 days**
3. Mn/DOT refers the final layout to the Appeal Board. **Undefined time**
4. The Appeal Board holds a hearing (within 30 days of receiving final layout from Mn/DOT). The City and Mn/DOT each present their case. **30 days**
5. The Appeal Board makes its recommendation (within 60 days of the hearing):
 - o Approval, or
 - o Approval with modifications, or
 - o Disapproval of the final layout**60 days**
6. If the Board approves, Mn/DOT can proceed with the project.
7. If the Board disapproves, or approves with modifications, Mn/DOT's options are:
 - o Make recommended modifications (if any), and proceed with the project
 - o Stop the project
 - o Modify the project so municipal consent is not required
 - o Prepare a new final layout and start the MC process over from beginning
 - o If it is an Interstate Highway project, Mn/DOT may proceed with the project using the layout that was not approved (and sends a report to the City and the Appeal Board stating the reasons for doing so).

Maximum for Appeal Process = 104 days + (plus time to establish appeal board, etc.)

TOTAL Possible Time = 254 days +

NOTE: If final construction plans contain changes to access, capacity, or right of way from the layout approved by the City, Mn/DOT resubmits the changed portion of the plans to the City for approval. (City has 60 days to approve). This holds whether municipal consent was obtained through the basic MC process or through the appeal process.

Sample City Resolution

RESOLUTION NO. _____

Resolution for Layout Approval

At a Meeting of the City Council of the City of _____, held on the ___ day of _____, 20___, the following Resolution was offered by _____ and seconded by _____ to wit:

WHEREAS, the Commissioner of Transportation has prepared a final layout for State Project **XXXX.XX** on Trunk Highway **XX**, from _____ to _____ within the City of _____ for _____ improvements; and seeks the approval thereof, as described in Minnesota Statutes 161.162 to 161.167: and

WHEREAS, said final layout is on file in the District **X** Minnesota Department of Transportation office, **CITY**, Minnesota, being marked as Layout No. **XXXX**, S.P. **XXXX-XX**, from R.P. **XX+xxx** to **XX+xxx**.

NOW, THEREFORE, BE IT RESOLVED that said final layout for the improvement of said Trunk Highway within the corporate limits be and is hereby approved.

Upon the call of the roll the following Council Members voted in favor of the Resolution:

The following Council Members voted against its adoption:

ATTEST:

Mayor _____

Dated _____, 20___

State of Minnesota

County of _____

City of _____

I do hereby certify that the foregoing Resolution is a true and correct copy of a resolution presented to and adopted by the Council of the City of _____, Minnesota at a duly authorized meeting thereof held on the _____ day of _____, 20 , as shown by the minutes of said meeting in my possession.

(SEAL) _____

City Clerk