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## MEMORANDUM

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**TO:** PLANNING COMMISSION

**FROM:** KEN ONDICH – PLANNING / COMMUNITY DEVELOPMENT DIRECTOR

**SUBJECT:** PLANNING COMMISSIONER TRAINING

**DATE:** JANUARY 12, 2024

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In years past, the League of Minnesota Cities used to offer an online training course for Planning Commissioners that could be used both for a sort of introduction to being a Planning Commissioner and also as a refresher for those that have served as Planning Commissioners for a while. That training is no longer available by the League and nothing new has replaced it.

In lieu of not having that training available, staff wanted to offer some resources to everyone and to specifically cover a few topics specifically at the meeting just as a refresher for everyone. If you have time before the meeting, it is highly recommended to review all the materials. At the meeting I'm planning to cover the topics of the "Open Meeting Law", the "60 Day Rule" as well as conditional use permits and variances as those are the most common land use requests we review.

### **Staff Recommendation**

Staff recommends that Planning Commissioners review all the attached information before the meeting and to hear the specific presentation during the meeting.

### **Attachments**

1. Planning Commission Guide – Dated 6/4/2020
2. Planning and Zoning 101 Guide – Dated 6/24/2021
3. Old K&G Planning Commission Training Slides – 4/3/2013

## Planning Commission Guide

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

### RELEVANT LINKS:

[Minn. Stat. § 462.355.](#)  
[Minn. Stat. § 473.175.](#)

[Minn. Stat. § 462.352, subd 3.](#)  
[Minn. Stat. § 462.354, subd 1.](#)

[Minn. Stat. § 462.354.](#)

[Minn. Stat. § 410.12.](#)  
See Handbook, *The Home Rule Charter City*.

### I. Creation of a city planning commission

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

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

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

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

- Size or number of planning commission members.
- Terms of members.

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:

[Establishing a Planning Commission, LMC Model Ordinance.](#)

- Organization and structure.
- Powers and duties.

### **A. Size or number of members**

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

Some considerations in choosing the number of commissioners include:

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

### **B. Terms of members**

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

Some considerations in choosing the length of commission terms include:

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

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

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

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

## RELEVANT LINKS:

See Section IV- *Planning Agency Meetings*.

See *Planning Commission Structure and Procedure*, LMC Model Policy.

[Minn. Stat. § 462.354](#).  
See Section III – *Powers and Duties of the Planning Commission*.

[Minn. Stat. § 462.354](#).

### C. Organization and structure

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

### D. Powers and duties

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

## II. Appointment of city planning commission members

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

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

### B. Authority to appoint commissioners

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

**RELEVANT LINKS:**

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

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

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

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

### **C. Residency requirements**

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

### **D. Councilmembers and city staff serving on the planning commission**

In cities where the council as a whole has decided not to serve as the planning commission, it may still be desirable for some councilmembers to sit on the planning commission or attend commission meetings. Cities may establish in their ordinance or planning commission policy various ways for councilmembers to serve on the planning commission.

#### **1. Full voting members**

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

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

## RELEVANT LINKS:

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

[Lenz v. Coon Creek Watershed, Dist.](#), 278 Minn. 1, 153 NW 2d 209 (1967). [ETO, Inc. v. Town of Marion](#), 375 NW 2d 815 (Minn. 1985).

## 2. Non-voting members

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

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

## 3. City staff on planning commission

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

## E. Compensation

City ordinance or commission policy may authorize compensation to planning commission members for their service, or, in the alternative, specify that commission members serve on a strictly non-compensated volunteer basis. Generally, when compensation is provided, it is for a nominal amount on an annual or per meeting basis.

## F. Conflicts of interest

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

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

## G. Removal of planning commission members

State statute does not dictate a process for removal of planning commission members before the expiration of their term.

**RELEVANT LINKS:**

[Minn. Stat. § 462.351.](#)  
[Minn. Stat. § 462.352, subd 5.](#) Sample: [Bethel Comprehensive Plan](#), City Population 502.  
Sample: [La Crescent Comprehensive Plan](#), Population 5,174.  
Sample: [Minnetonka Comprehensive Plan](#), City Population 51,519.

Local ordinance or commission policy may outline such a process. The city should consult the city attorney before establishing criteria and a process for removal.

### **III. Powers and duties of the planning commission**

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

#### **A. Preparing and recommending a comprehensive plan**

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

##### **1. Purpose of comprehensive planning**

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

- Preserve important natural resources, agricultural, and other open lands.
- Create the opportunity for residents to participate in guiding a community's future.
- Identify issues, stay ahead of trends, and accommodate change.
- Ensure that growth makes the community better, not just bigger.
- Foster sustainable economic development.
- Provide an opportunity to consider future implications of today's decisions.
- Protect property rights and values.
- Enable other public and private agencies to plan their activities in harmony with the municipality's plans.

For many cities creating a comprehensive plan is the first step in adopting zoning and subdivision regulations for the city.

## RELEVANT LINKS:

[Minn. Stat. § 462.352, subd. 8.](#)  
[Minn. Stat. § 462.352, subd. 7.](#)  
[Minn. Stat. § 462.352, subd. 8.](#)  
[Minn. Stat. § 462.352, subd. 9.](#)

[Minn. Stat. § 462.357, subd. 2.](#)  
[Minn. Stat. § 462.352, subd. 6.](#)  
[Minn. Stat. § 462.357, subd. 2 \(c\).](#)

[Minn. Stat. § 462.355, subd. 1.](#)  
[Minn. Stat. § 462.355, subd. 2.](#)

[Minn. Stat. § 462.353, subd. 2.](#)

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

- Public or community facilities plan.
- Thoroughfare or transportation plan.
- Parks and open space plan.
- Capital improvement program.

While not all cities are required to adopt a comprehensive plan, a plan is still a good practice for a couple of reasons. First, once a plan is adopted, it guides local officials in making their day-to-day decisions and becomes a factor in their decision-making process.

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

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

## 2. Preparing the comprehensive plan

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

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

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



**RELEVANT LINKS:**

[Minn. Stat. § 462.353, subd. 3.](#)

See LMC information memo, [Competitive Bidding Requirements in Cities](#), American Institute of Certified Planners.

[Minn. Stat. § 462.355, subd 1.](#)

[Minn. Stat. § 462.355, subd 1.](#)

[Minn. Stat. § 462.353, subd 2.](#)

[Minn. Stat. § 462.355, subd 2.](#)

[Minn. Stat. § 462.357, subd. 1h.](#) [Minn. Stat. § 462.355, subd. 1.](#)

**a. Consultants and public input**

**(1) Professional planners**

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

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

**(2) Other consultants**

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

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

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

**b. Public input**

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

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

Non-metropolitan cities located in certain specified counties are subject to the President Theodore Roosevelt Memorial Act to Preserve Agricultural, Forest, Wildlife, and Open Space Land

**RELEVANT LINKS:**

[Minn. Stat. § 103G.005, subd. 10b.](#)

[Minn. Stat. § 103G.005 subd. 10b.](#)

[Minn. Stat. § 462.355.](#)

[Minn. Stat. § 462.357.](#)

(hereinafter the “T. Roosevelt Memorial Preservation Act”) and should consult this law if they adopt or amend a comprehensive plan.

**(1) Cities not subject to the T. Roosevelt Memorial Preservation Act**

Cities in Aitkin, Beltrami, Carlton, Cass, Clearwater, Cook, Crow Wing, Hubbard, Isanti, Itasca, Kanabec, Koochiching, Lake, Lake of the Woods, Milles Lacs, Pine, St Louis and Wadena counties are not subject to the T. Roosevelt Memorial Preservation Act, because they are currently classified as “greater than 80 percent area” counties. A “greater than 80 percent area” means a county or watershed or, for purposes of wetland replacement, bank service area where 80 percent or more of the presettlement wetland acreage is intact and one of the following is true:

- Ten percent or more of the current total land area is wetland.
- Fifty percent or more of the current total land area is state or federal land.

In sum, these “80 percent area” counties still contain a significant portion of their presettlement wetland acreage. “Presettlement wetland” means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

**(2) Cities subject to the T. Roosevelt Memorial Preservation Act**

Cities outside the metro area, and not located in the counties listed above, must comply with the act. Even though these cities are not required to engage in comprehensive planning, if the city decides to do so, they must likely adopt certain findings of fact under the T. Roosevelt Memorial Preservation Act.

Specifically, when preparing or recommending amendments to the comprehensive plan, the planning commission in these cities must consider adopting goals and objectives that will protect open space and the environment again, probably as findings of fact.

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

## RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 2.](#)

[Minn. Stat. § 462.354.](#)

[Minn. Stat. § 473.858, subd. 2.](#)

[Minn. Stat. § 473.175.](#)

[Metropolitan Council.](#)

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

[Minn. Stat. § 462.355, subd. 2.](#)  
See LMC information memo [Newspaper Publication](#).

[Minn. Stat. § 462.355, subd. 3.](#)

### **3. Recommending the comprehensive plan to council**

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

### **4. Adopting the comprehensive plan**

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

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

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

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

#### **c. Public hearing requirements**

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

#### **d. Vote requirements**

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

## RELEVANT LINKS:

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

[Minn. Stat. § 462.356, subd 1.](#)

[Minn. Stat. § 462.356, subd 1.](#)

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

LMC information memo *Zoning Decisions*.  
See Handbook, *Comprehensive Planning, Land Use, and City-Owned Land*.

LMC information memo, *Subdivision Guide for Cities*.

[Minn. Stat. § 462.355, subd 1.](#)

[Minn. Stat. § 462.355, subd. 1a.](#)

[Minn. Stat. § 473.864, subd. 2.](#)

[Minn. Stat. 473.121, subd. 2.](#)

## B. Implementing the plan

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

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

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

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

## C. Role in periodic review of the comprehensive plan

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

Cities within the seven-county metropolitan area must review and update their plan, fiscal devices, and official controls at least every 10 years, and submit their revised plans to the Metropolitan Council for review. “Fiscal devices” means the valuation of property, the designation of urban and rural service districts, and the establishment of development districts and any other statutes authorizing the creation of districts in which the use of tax increment bonding is authorized. “Metropolitan area” or “area” means the area over which the Metropolitan Council has jurisdiction, including the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington, but excluding the cities of Northfield, Cannon Falls, Hanover, Rockford, and New Prague.

## RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 3.](#)

See Section III-A-4 *Adopting the Comprehensive Plan*.  
[Minn. Stat. § 462.355, subd. 3.](#)

[Minn. Stat. § 473.175. Metropolitan Council.](#)

[Minn. Stat. § 462.355, subd. 3.](#)

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

## D. Role in amending the comprehensive plan

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

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

### 1. Procedure for amending a comprehensive plan

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

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

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

## E. Role in purchase and sale of real property

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

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

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

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

## RELEVANT LINKS:

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

[Minn. Stat. § 462.356, subd. 2.](#)

[Minn. Stat. § 475.521, subd. 1 \(b\).](#)

[Minn. Stat. § 373.40, subd. 1\(b\).](#)

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

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

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

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

## F. Role in capital improvements program

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

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

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

The term capital improvement is not defined within the comprehensive planning statute. Other laws governing issuing municipal bonds define “capital improvement” in part as acquisition or betterment of public lands, buildings or other improvements for a city hall, town hall, library, public safety facility, and public works facility. An improvement must have an expected useful life of five years or more to qualify. Capital improvement does not include light rail transit or any activity related to it, or a park, road, bridge, administrative building other than a city or town hall, or land for any of those facilities. For purposes of this section, “capital improvement” may include expenditures involving those for which bonds were or are issued.

## RELEVANT LINKS:

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

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

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

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

Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 7.  
Minn. R. 9502.0315 to 9502.0445.  
Minn. Stat. § 462.357, subd. 8.

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

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

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

## G. Role in zoning ordinance adoption and amendment

### 1. Zoning ordinance adoption

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

Note: The Municipal Planning Act has specific provisions related to local zoning of the following uses, which impact zoning ordinances:

- Manufactured home parks.
- Manufactured homes.
- Existing legal nonconformities at the time of zoning ordinance adoption.
- Feedlots.
- Earth sheltered construction, as defined by Minn. Stat. 216C.06.
- Relocated residential buildings.
- State licensed residential facilities or housing services registered under Minn. 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 to serve 14 or fewer children in single family residential districts.
- State licensed residential facilities serving 7-16 persons in multifamily residential districts.

## RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 7.](#)

[Minn. Stat. § 462.3593.](#)  
[Minn. Stat. § 462.357, subd. 6.](#)

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

[Minn. Stat. § 462.357, subd. 2.](#)

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

[Minn. Stat. § 462.357, subd 3.](#)

LMC information memo, [Newspaper Publication](#).

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

[Minn. Stat. § 462.357, subd 4.](#)

For more information see LMC information memo [Zoning Decisions](#).

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

- 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 state law as set out in the Municipal Planning Act on the uses listed above.

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

In adopting an ordinance, one Minnesota attorney general opinion has found that charter cities may not provide for different voting requirements in their city charter, because the Municipal Planning Act supersedes inconsistent charter provisions.

Prior to the adoption of a zoning ordinance, the city council or planning commission must hold a public hearing. Notice of the time, place, and purpose of the hearing must be published in the official newspaper of the municipality at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates.

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

## 2. Zoning ordinance amendment

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

It is important to note that while state statute provides the planning commission 60 days to respond to proposals, the 60-Day Rule (an entirely different rule with 60 days in the title) still applies to ordinance amendments brought by application or petition of property owners.



## RELEVANT LINKS:

[Minn. Stat. § 462.357, subd 3.](#)

[Minn. Stat. § 462.357, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 5.](#)

[Minn. Stat. § 462.3595.](#)

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

As a result, internal procedures should be developed to coordinate planning commission review that does not violate the 60-Day Rule automatic approval statute.

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

Prior to the adoption of a zoning ordinance amendment, a public hearing must be held. Under state statute, the city council or the planning commission may conduct the hearing.

Cities may adopt an ordinance or policy directing the planning commission to conduct these hearings when necessary.

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

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

First class cities must follow very detailed procedures in state statute for zoning amendments that change residential zoning classifications to new commercial or industrial classifications. Planning commissions in cities of the first class must assist the city in these circumstances by conducting studies and developing reports. The adoption or amendment of any portion of a zoning ordinance that changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body. Charter cities of the first class may opt to follow a different procedure via a city charter provision.

### **H. Conditional use permits**

Some city zoning ordinances provide that some uses within a zoning district will only be allowed upon the granting of a conditional use permit.

Conditional use permits are discussed in detail in the LMC Information Memo *Zoning Guide for Cities*. State statute allows city councils to delegate via ordinance their authority to review and approve conditional use permits to a planning commission or other designated authority.

Planning commissions charged with reviewing applications for conditional use permits must follow fairly strict legal standards for their review.

**RELEVANT LINKS:**

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

Minn. Stat. § 462.359, subd. 2.  
See Handbook, *City Licensing*.  
Minn. Stat. § 462.352, subd. 7, 8.

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

Specifically, the city must follow the requirements of the zoning ordinance it has adopted.

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

**I. Role in adoption of an official map for a major thoroughfare plan and a community facilities plan**

After the planning commission has adopted a comprehensive plan containing a major thoroughfare plan and a community facilities plan or simply these portions of their comprehensive plan, it may adopt an official map. The official map is not the zoning map required for adoption of a zoning ordinance.

In addition, it is not the map adopted as part of the comprehensive planning process. Instead, the official map is a unique map designed to help carry out the policies of the major thoroughfare plan and community facilities plan. The official map can cover the entire city or any portion of the city.

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

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

Following the adoption and filing of an official map, building permits issued under the Minnesota State Building Code are subject to the provisions set forth in the city’s official map. This puts landowners on notice of possible future uses and allows construction to occur within the constraints of the planning.

## RELEVANT LINKS:

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 6 \(1\).](#)

[Minn. Stat. § 462.357, subd. 6 \(2\).](#)  
[Minn. Stat. § 462.359, subd. 4.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

This way landowners can avoid costly expenditures on developments, for example, that sit in a location planned for future public uses. As a result, any building built without obtaining a building permit or in violation of permit conditions, loses the statutory protection for just compensation, and a municipality need not pay a landowner for a building that needs to be destroyed if a street is widened. In other words, while the official map does not give the city a fee interest in land initially, it does authorize the municipality to acquire such interests in the future without having to pay compensation for buildings that are erected in violation of the official map.

## J. Board of zoning adjustment and appeals

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

- To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the zoning ordinance.
- To hear requests for variances from a city zoning ordinance.
- To hear and decide appeals when a land use, zoning permit or approval for a building is denied based upon the city's official map.
- Such other duties as the city council may direct.

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

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

The ordinance creating the BZA should specify at minimum:

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

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

## RELEVANT LINKS:

See information memos, [Zoning Guide for Cities](#) and [Land Use Variances](#).

[Minn. Stat. § 462.358, subd. 3\(b\)](#).

See Handbook, [City Licensing](#). See also LMC information memo, [Subdivision Guide for Cities](#).

See the LMC information memo, [Meetings of City Councils](#).

[Minn. Stat. § 13D.01](#).

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

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

### **K. Role in review of subdivision applications**

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

Planning commissions charged with reviewing subdivision applications must follow fairly strict legal standards for their review. Specifically, the city must follow the requirements of the subdivision ordinance it has adopted. If a subdivision application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial must all relate to the applicant’s failure to meet standards established in the ordinance. The standard of review for subdivision applications is discussed in depth in an LMC information memo on subdivisions, plats and development agreements.

## **IV. Planning commission meetings**

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

### **A. Open Meeting Law**

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

## RELEVANT LINKS:

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

[Minn. Stat. § 13D.01, subd. 1.](#)

[Minn. Stat. § 13D.01, subd. 6.](#)

LMC information memo  
[Meetings of City Councils.](#)

For more information on the 60-Day Rule see the LMC information memo, [Zoning Guide for Cities](#) Section V-A, The 60-Day Rule.

[Minn. Stat. § 15.99.](#)  
[Manco of Fairmont v. Town Bd. of Rock Dell Township](#), 583 N.W.2d 293 (Minn. Ct. App. 1998) cf. [American Tower, L.P. v. City of Grant](#), 636 N.W.2d 309 (Minn. 2001). [Hans Hagen Homes, Inc. v. City of Minnetrista](#), 728 N.W.2d 536 (Minn. 2007) distinguished by [Johnson v. Cook Cty.](#), 786 N.W.2d 291 (Minn. 2010).

See LMC information memo, [Zoning Guide for Cities](#), Section V-A, The 60-Day Rule.

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

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

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

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

## B. The 60-Day Rule

Cities generally have only 60 days to approve or deny a written request relating to zoning, including rezoning requests, conditional use permits and variances. This requirement is known as the "60-Day Rule."

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

All planning commission review of zoning related applications must be completed in a manner that allows the city to complete its entire approval process within the timeframe dictated by the 60-Day Rule. Local ordinance should not establish timeframes for planning commission review of applications or appeal of commission decisions that do not allow the city to comply with the 60-Day Rule.

## RELEVANT LINKS:

See [Planning Commission Structure and Procedure](#), LMC Model Policy.

See LMC information memo, [Meetings of City Councils](#).

See LMC information memo, [Zoning Guide for Cities](#), Section V-C-2-b on conducting a public hearing

See Handbook, [Records Management](#).  
[Minn. Stat. § 15.17, subds. 1, 2.](#)

See LMC information memo, [Meetings of City Councils](#) for more information on minutes.

See LMC information memo, [Zoning Guide for Cities](#), Section V-C-2 on making a record of the basis for zoning decisions.

## C. Commission policies on order and meeting structure

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

The policy should establish procedures related to:

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

## D. Minutes and official records

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

### 1. Minutes and records

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

Minutes are further recommended because the actions of planning commissions and land use decisions, in general, are frequently subject to court review.

## RELEVANT LINKS:

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

LMC information memos:  
*Taking the Mystery out of  
Findings of Fact; Zoning  
Decisions.*

Minn. Stat. § 15.17.  
Minn. Stat. § 138.225.  
Minn. Stat. §§ 138.161-.21.

When a city land use decision is reviewed by a court of law, the court requires cities to document the basis for their land use decisions in written, contemporaneous findings of fact.

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

## 2. Findings of fact

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

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

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

Minnesota case law and statutory law demand that the reasons for a city’s decision on a land use case be articulated in the official record. Written findings of fact, or “reasons,” and conclusions of law are required whenever an application is denied. In addition, written findings of fact and conclusions of law are strongly recommended whenever a decision or recommendation related to a land use decision is made. Findings of fact and creating accurate records are discussed at length in the LMC Information Memo “Zoning Guide for Cities.”

## 3. Records retention requirements

State law limits the ability of cities, including city planning commissions, to dispose of or destroy city records.

## RELEVANT LINKS:

A.G. Op. 851F (Feb. 5, 1973). See Handbook, [Records Management](#).

See LMC information memos, [Taking the Mystery out of Findings of Fact](#); Land Use Findings of Fact: Elected Officials as Policy makers and [Zoning Decisions](#).

[Minn. Stat. § 462.354, subd. 1.](#)

[Minn. Stat. § 410.12.](#)  
See Handbook, [The Home Rule Charter City](#).

[Minn. Stat. § 462.355, subd. 3.](#)

[Minn. Stat. § 462.356, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 4.](#)

[Minn. Stat. 412.191, subd. 4.](#)

[Minn. Stat. § 410.12.](#)

Cities must retain records that they receive or create according to a records retention schedule. It is a crime to destroy such records without statutory authority.

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

## V. Changing the structure or abolishing the planning commission

### A. Abolishing the planning commission

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

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

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

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

### B. Modifying the planning agency

Planning commissions created by city ordinance may be modified by an ordinance amendment (for example, to change from a five- to seven-member commission). For statutory cities, the ordinance must be approved by a majority of all members of the city council. Consult the city charter to modify planning commissions created by city charter.



## RELEVANT LINKS:

[Minn. Stat. § 462.3535, subd. 1, 2.](#)

[Minn. Stat. § 462.3535, subd. 4.](#)

[Minn. Stat. § 462.358, subd. 1a.](#)

[Minn. Stat. § 462.3585.](#)

## VI. Joint or multijurisdictional planning

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

### A. Community-Based planning

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

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

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

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

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

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

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

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

## RELEVANT LINKS:

[Minn. Stat. § 462.3585.](#)

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.354, subd. 1.](#)

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.355.](#)

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.355, subd. 4.](#)

LMC information memo  
*Zoning Guide for Cities.*

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.357.](#)

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.358.](#)

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.359.](#)

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.3595.](#)

[Minn. Stat. § 462.3585.](#)  
[Minn. Stat. § 462.362.](#)

[Minn. Stat. § 462.3585.](#)

[Minn. Stat. § 462.371.](#)  
See Handbook,  
*Intergovernmental Cooperation.*  
See LMC information memo  
*LMCIT Liability Coverage Guide.*

[Minn. Stat. § 462.372.](#)

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

Once established, the board is authorized to:

- Serve as the governing body and board of appeals and adjustments within the two-mile area.
- Create a planning agency.
- Create a BZA.
- Adopt a comprehensive plan.
- Adopt interim ordinances. Note that the law on interim ordinances for certain uses is specific and varied. Best practice suggests consultation with the city attorney before adopting interim ordinances.
- Adopt zoning ordinances.
- Adopt subdivision regulations.
- Adopt an official map.
- Provide for and issue conditional use permits.
- Enforce official controls and prescribe penalties for violations.
- Adopt and enforce the State Fire Code.

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

### C. Regional planning boards

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

The joint powers agreement creating a regional planning agency should:

## RELEVANT LINKS:

[Minn. Stat. § 462.373, subd. 1.](#)

[Minn. Stat. § 462.373, subd. 2.](#)

[Minn. Stat. § 462.374.](#)

[Minn. Stat. § 462.375.](#)

[Minn. Stat. § 462.383.](#)

[Minn. Stat. § 462.385.](#)

[Northwest Development Commission.](#)

[Headwaters Regional Development Commission.](#)

[Arrowhead Regional Development Commission.](#)

[West Central Initiative.](#)

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

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

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

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

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

## D. Regional development commissions and comprehensive planning activities

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

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

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

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

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

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

## RELEVANT LINKS:

[Region Five Development Commission.](#)

[Mid-Minnesota Development Commission.](#)

[Upper Minnesota Valley Regional Development Commission.](#)

[East Central Regional Development Commission.](#)

[Southwest Regional Development Commission.](#)

[Region Nine Development Commission.](#)

[Metropolitan Council.](#)

[Minn. Stat. § 462.39, subds. 4, 5.](#)

[Minn. Stat. § 462.391, subd. 1a.](#)

[LMCIT Land Use Resources.](#)

[Government Training Services. American Planning Association.](#)

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

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

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

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

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

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

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

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

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

## VII. Training and resources for planning commission members

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

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

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

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



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# Planning and Zoning 101

INFORMATION MEMO

Published: June 24, 2021

## Land use regulation

City governments provide many important services, but one function stands apart in its impact on future generations — the authority to engage in planning and zoning of the community.

Comprehensive plans and zoning ordinances adopted and enforced by current officials affect the layout and landscape of a city for many years to come. Whether it is the development or preservation of open space, or the redevelopment and revival of existing properties, what a community will look like dozens of years from now depends on decisions made today.

City planning and zoning took root in the early 20th century as a way to minimize conflicts between incompatible land uses and to plan more coherent development. People increasingly were living in built-up urbanized areas and were suffering health impacts, including reduced life span, related to density and industrialization.

To promote better health, safety, and welfare, cities began regulating the use, size, and location of structures on the land through zoning ordinances, and developing future plans for harmonious and healthy land use patterns.

## Conflicts and lawsuits

People have strong feelings about land use in most communities, and it often goes both ways.

Private property owners may feel they should be able to use their land as they see fit, without government telling them what they can and cannot do. On the other hand, residents may have equally strong feelings about what others are doing nearby — to the extent that it may injure or disturb the peace and quiet of their neighborhood. For example, most people do not want to live next door to a major industrial operation.

Conflicts about land use regulation can lead to litigation. It was through litigation that the U.S. Supreme Court first upheld the constitutionality of zoning in a seminal 1926 decision (*Euclid v. Ambler*, 272 U.S. 365, 47 S. Ct. 114, 71, (1926)), and lawsuits continue to this day.

The League of Minnesota Cities Insurance Trust (LMCIT) provides a unique land use insurance coverage that defends cities in land use lawsuits, even when there is not a claim for damages. LMCIT members spend almost \$3 million a year defending these lawsuits.

## Making versus applying law

Land use litigation is costly, and often puts city officials in the difficult position of dealing with controversies that may displease people, no matter the outcome. City officials can help

themselves through these controversies by educating themselves about land use regulation authority, and the process and procedures necessary to exercise it.

Cities need to understand how much authority they have over any given land use decision. A city has much broader authority when creating its land use plans and ordinances than it does when administering the same. Thus, a city official should be aware of what authority the city is acting under whenever making a particular decision.

## Legislative authority

When creating, adopting, and amending land use plans and zoning ordinances, a city is making law by exercising so-called “legislative” authority. The council sits as a body of elected representatives to make plans and laws (ordinances) for the entire community to advance health, safety, and welfare.

When acting legislatively, a city council can engage in far-ranging policy discussion, and sort through competing views about what plans and laws would be in the best interest of the city. Although not everyone may be on board with the outcome, the more public participation in the law-making stage, the better the understanding among the public of why the city has a particular plan or law in place.

The council has broad discretion when acting legislatively, and any reviewing court will give the city considerable deference.

## Quasi-judicial authority

In contrast, when applying existing plans and laws, a city council exercises so-called “quasi-judicial” authority. The limited task is to determine the facts associated with a particular request, and then apply those facts to the relevant law. A city council has less discretion when acting quasi-judicially, and a reviewing court will examine whether the city council applied rules already in place to the facts before it.

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

Land use disputes arise most often when a city is applying laws, rather than when making law. But a city usually has less ability to address the root of the dispute when applying the law, than it would when making the law in the first instance.

## Comprehensive plans

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

State law defines a comprehensive plan as a compilation of policies, goals, standards, and maps for guiding the physical, social, and economic development — both public and private — of the municipality and its environment ([Minn. Stat. § 462.351](#)). Its purpose is to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities ([Minn. Stat. § 462.352, subd.5](#)).

The comprehensive plan provides the foundation for all land use regulation in the city. State law encourages all cities to prepare and implement a comprehensive municipal plan. In addition, cities within the seven-county metro area are required to adopt comprehensive plans.

State law assigns the creation of the city's comprehensive plan to its planning commission or department

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

1. The community takes stock of where it is today.
2. The community generates a shared vision and goals for what the city will be like in the future.
3. The city develops a set of specific strategies to achieve that vision over time.

[Learn more about planning commissions in the \*Planning Commission Guide\*](#)

There are many reasons cities create and adopt comprehensive plans. The planning process helps communities:

- Identify issues before they arise.
- Stay ahead of trends in land use development and redevelopment.
- Anticipate and navigate change in populations and land use patterns.
- Protect and make the most out of public investment by ensuring that development coincides with investments in infrastructure.
- Protect and promote the value of private property.
- Provides legal justification for a community's land-use decisions and ordinances.

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

The land use plan lays out desired timing, location, design, and density for future development, redevelopment, or preservation. They also typically include plans for:

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

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

## Adopting and amending a comprehensive plan

State law provides processes cities must follow to adopt and amend a comprehensive plan.

Prior to adopting a comprehensive plan, the planning commission must hold at least one public hearing. It must publish a notice of the time, place, and purpose of the hearing once in the official newspaper of the municipality at least 10 days before the day of the hearing.

Unless otherwise provided in a city charter, the city council may — by resolution by a two-thirds vote of all of its members — adopt and amend the comprehensive plan or a portion of the plan. This means that on a five-member council, the comprehensive plan must receive at least four affirmative votes. ([Minn. Stat. § 462.355, subd. 2.](#))

After a city has adopted a comprehensive plan, the council must refer all future plan amendments to the planning commission for review and comment. The city council may not act on any plan amendment until it receives the planning commission's recommendation, or until 60 days after the date an amendment proposed by the city council has been submitted to the planning commission for its recommendation.

The planning commission serves in a strictly advisory role when it submits review and comment to the council. The city council ultimately decides on the acceptance, rejection, or the revision of the plan, and is not bound by planning commission recommendations ([Minn. Stat. § 462.355, subd. 3.](#))

Adopting and amending a comprehensive plan should be a dynamic public process with an eye towards implementation. Public participation ensures broad and ongoing support, brings a variety of information and perspectives, and instills a sense of community ownership in the plan.

Once adopted, the city should actively consult the plan, periodically review it for consistency with current policies and practices, and recommend amendments whenever necessary. State law provides that comprehensive plans should be implemented through zoning and subdivision regulations, as well as coordination of public improvements and city services, and a capital improvements program. ([Minn. Stat. § 462.356, subd. 1.](#))

## Role of the Metropolitan Council

Cities in the seven-county metropolitan area must submit their comprehensive plan to the Metropolitan Council for review of its compatibility and conformity with the Metropolitan Council's regional system plans.

When the Metropolitan Council finds a city's comprehensive land use plan may have a substantial impact on, or contains a substantial departure from the Metropolitan Council's regional system plans, the Council can require the city to conform to the Council's system plans ([Minn. Stat. § 473.175](#)). Metro area cities must review and update their plans, fiscal devices, and official controls at least every 10 years, and submit their revised plans to the Metropolitan Council for review ([Minn. Stat. § 462.355, subd. 1a](#)).

## Zoning ordinances

State law authorizes a city zoning ordinance as a tool to implement a comprehensive plan.

Zoning is a method of establishing a land use pattern by regulating the way land is used by landowners. A zoning ordinance has area standards that regulate the size and location of buildings and structures in the city. Comprised of text and a map, most zoning ordinances also typically divide a city into various zoning districts, and set standards regulating uses in each district. ([Minn. Stat. § 462.357](#)).

[Learn more about zoning in the \*Zoning Guide for Cities\*](#)

“Area standards” are rules that constrain the size and location of buildings and other structures. These typically include rules about building location and size, including height,



width, and bulk; the percentage of lot space that may be occupied; and required yards or open spaces. Other standards might be performance standards such as related to density, parking, or lighting.

Most zoning ordinances use a map to divide the community into zoning districts that establish similar compatible land uses. By creating zoning districts that separate uses, the city can provide adequate space for each and ensure that transition areas or buffers exist between distinct and incompatible uses. Example zoning districts include residential, commercial, industrial, and agricultural districts. Larger cities will often have districts of varying density or intensity, such as single-family residential and multi-family residential, or light industrial and heavy industrial.

For each district, a zoning ordinance typically sets forth allowable uses and required performance standards. The allowed uses often are set forth in lists or use tables. They typically include:

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

State law mandates a procedure for the adoption or amendment of zoning ordinances (Minn. Stat. §§ 462.357, subd. 2 – 5). The process includes:

- The city council (or the planning commission if one exists) must hold a public hearing before the city adopts or amends a zoning ordinance.
- The city must publish a notice of the time, place, and purpose of the hearing in the official newspaper of the municipality at least 10 days prior to the day of the hearing. In addition, if an amendment to a zoning ordinance involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least 10 days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies.
- Zoning ordinances must be adopted by a majority vote of all of the members of the council.

An important component of the zoning ordinance is the zoning ordinance map, which assigns zoning districts to given parcels in the community. The city may change the zoning district designation of a parcel from one zoning district to another (called “rezoning”), and it must be done after a public hearing. Rezoning is an amendment to the actual zoning ordinance, and the procedures for amendments to the zoning ordinance apply.

State law, however, has a two-tiered voting requirement for rezoning of residential property.

- When property is rezoned from residential to commercial or industrial, a two-thirds majority of all members of the city council is required.
- For other rezoning decisions, a simple majority vote of all members is all that is required.

Rezoning should be consistent with the comprehensive plan land use plan map (Minn. Stat. § 462.357, subd. 2).

# Results of careful planning

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

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

[View more League land use resources](#)

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Your LMC Resource

**Jed Burkett**

Loss Control/Land Use Attorney

(651) 281-1247 or (800) 925-1122

[jburkett@lmc.org](mailto:jburkett@lmc.org)

## Planning Commission Training

April 9, 2013

Presented by:  
Sarah J. Sonsalla, Attorney  
Kennedy & Graven, Chartered



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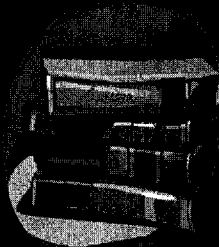
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## Sources of the City's Zoning Powers

- Federal and state constitutions: Regulation of land use is a valid police power of the City, as long as it is not used arbitrarily
- State statutes give the City the authority to adopt comprehensive plans, zone property, adopt subdivision regulations, and approve variances
- City ordinances implement zoning and must not conflict with state statutes



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## Duties of the Planning Commission

- Advisory to the City Council on most matters
- Review and make recommendations to the City Council on:
  - The comprehensive plan
  - Zoning and subdivision ordinances
  - Conditional use permits and interim use permits
  - Official maps
  - Proposed subdivisions (plats)
  - Concept plans
- Act as the City's Board of Appeals and Adjustments and hear and decide various matters, including variances
- Review and approve site plans

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### Information to be Relied Upon

- + The Planning Commission must rely upon and make its decisions and recommendations in accordance with the City's **Comprehensive Plan, state statutes** and the City's **zoning and subdivision ordinances**
- + The Planning Commission is **not** authorized by state law or the City Code to be able to make new policy to arrive at its decisions and recommendations

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### Other City Boards and Commissions

- +
  - Parks and Recreation Commission
  - Port Authority
  - Utility Commission
  - Youth Commission

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### The Comprehensive Plan

- +
  - The comprehensive plan is a policy statement for the future development of the City
  - City ordinances should not conflict with the Comprehensive plan
  - Inconsistencies must be corrected
  - Periodic review of the comprehensive plan is required



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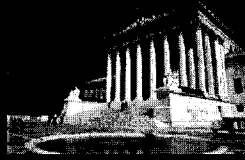
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### Court Review of Land Use Decisions

- General rule: a land use decision by the City will be upheld by a court if it is found to be reasonable under the circumstances



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### Court Review of Land Use Decisions

- Comprehensive Plans & Zoning:
  - ✓ These items are policy documents so decisions are considered to be legislative
  - ✓ Courts give greater discretion to the City on these types of decisions
  - ✓ The City's decision will be upheld by the court unless it is found to be arbitrary or contrary to law

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### Court Review of Land Use Decisions

- Conditional and interim use permits, variances, site plans, and plats:
  - ✓ The City's decisions implement the policies expressed in ordinances; quasi-judicial, not legislative
  - ✓ Courts give less deference to the City
  - ✓ Courts look at the standards set out in the City's ordinance; if the application satisfies the criteria in the ordinance, it must be approved; important to know ordinance requirements
  - ✓ CUP/IUP should be approved if ordinance can be satisfied with imposition of reasonable conditions

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### Court Review of Land Use Decisions

- + ■ Variances:
  - Must show that there are "practical difficulties," meaning that
    - the owner proposes to use the property in a reasonable manner that is not permitted by the ordinance;
    - the owner's plight is due to circumstances unique to the property and not caused by the owner;
    - the variance, if granted, will not alter the essential character of the locality
  - Economic considerations alone do not constitute a "practical difficulty"

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### Public Hearings and Decision-Making

- + ■ The court's review of the City's decision may be restricted to the evidence that was presented before the Planning Commission and the City Council
  - In making its decision, the City Council also relies upon the evidence that was presented before the Planning Commission and the Planning Commission's analysis of the issues
  - Therefore, it is important to follow these guidelines when considering an application:
    - Allow all parties to fully present information
    - Thoroughly study and review staff reports
    - Actively participate in the discussion
    - Know and state the reasons for the recommendation or the decision
    - Written findings of fact are required, both for court review and by the 60-day law
- Neighborhood opposition alone is an insufficient reason to deny a request, but evidence from neighbors may be considered

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### Voting

- + ■ If a tie vote occurs and the decision is one where the Planning Commission is acting in an advisory capacity, the item may proceed to the City Council with a tie vote.
- If a tie vote occurs and the decision is one where the Planning Commission is acting as the Board of Appeals and Adjustments or is reviewing a site plan, the motion fails.



The Chair should then inquire as to whether there are any other motions to be made.

If no other motions are made, the Chair should declare that the application is denied.

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### Commonly Heard Arguments

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  - "The decision being made will reduce the value of my property and result in a taking."
  - "If you make this decision you will be setting a 'precedent.'"

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### 60-Day Rule



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  - The City has 60 days to review applications related to zoning (includes zoning, CUPs, site plans, and variances, but not plats)
  - The City can extend the deadline up to a maximum of an additional 60 days
  - The City can extend the deadline for more than 60 days if the applicant agrees to the extension
  - Applications that are not finally approved or denied within the time period are automatically approved
  - Written reasons are required for any denial

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### Open Meeting Law



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  - Meetings of the Planning Commission must be open to the public
  - A meeting occurs when a quorum or more meets to discuss Planning Commission business, even if no decision is made
  - E-mail discussions can be considered meetings - if a quorum or more of the Commission participates, it would violate the open meeting law
  - Penalties include loss of office, monetary penalties and possible attorneys' fees awards

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**ZONING AND PLANNING 101:  
INTRODUCTION TO BASIC PRINCIPLES**

Sarah J. Sonsalla, Attorney, Kennedy & Graven, Chartered

**I. Authority of Cities to Zone Property: Where Does It Come From?**

A. Constitutional Basis – Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

The United States Supreme Court held in Euclid that government could lawfully adopt zoning regulations that restrict the use of property. The validity of such regulations is based upon the police power of the government, if it is used for the public welfare.

B. Statutory Basis.

Minnesota cities are authorized to plan and adopt zoning regulations and charge fees pursuant to the Municipal Planning Statute, Minnesota Statutes Chapter 462. Three planning tools that the statute gives to cities are:

1. The authority to adopt comprehensive plans.

Section 462.355 of Minnesota Statutes requires cities to adopt a comprehensive plan. The comprehensive plan “*represents the planning agency’s recommendation for the future development of the community.*” Minn. Stat. § 462.352, subd. 5 (2012).

2. The authority to zone property.

Minnesota Statutes Section 462.357, subdivision 1 grants the city the authority to adopt zoning ordinances. It specifies the subjects that can be regulated to promote the public health, safety, and welfare, which include:

*“ . . . the location, height, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, ... access to direct sunlight for solar systems ..., flood control or other purposes...”*



3. The authority to adopt subdivision regulations.

Minnesota Statutes Section 462.358 grants cities the authority to enact subdivision regulations.

C. Ordinances: Implementation of the Authority to Zone

Through the adoption of ordinances, the city implements its authority to plan and zone, consistent with the constitutional and statutory requirements.

## II. Planning Commission

A. Organization and form.

Section 2-1-1 of the Rosemount City Code establishes a planning commission which consists of up to five members appointed by the city council. The commission is advisory to the city council on most matters, but when acting as the board of appeals and adjustments, deciding variance requests, or in reviewing site plans, the commission's decisions are final unless appealed to the city council. City Code, §§ 11-12-1 and 11-12-3. The city's community development staff provides staff services to the planning commission.

B. Duties.

The planning commission must perform the duties required of planning agencies under state law and as specified in city ordinances. Those duties include:

- To prepare and update the comprehensive plan for city council consideration; to periodically review the plan and recommend amendments when necessary. Minn. Stat. § 462.355, subd. 1; City Code § 2-1-4.
- To conduct at least one public hearing on the comprehensive plan or any amendment thereof. Minn. Stat. § 462.355, subd. 2.
- To study and recommend to the city council reasonable and practicable means for implementing the comprehensive plan, such as the adoption of zoning ordinances, subdivision ordinances, capital improvement programs, etc. Minn. Stat. § 462.356, subd. 1.
- To review proposals for the acquisition, disposal or capital improvement of publicly owned land and report findings to the council concerning conformance to the comprehensive plan. Minn. Stat. § 462.356, subd. 2.
- To conduct public hearings on proposed zoning ordinances or amendments thereto. Minn. Stat. § 462.357, subd. 3; City Code § 11-10-11
- To make recommendations to the city council regarding proposed zoning ordinances (upon instruction by the city council). Minn. Stat. § 462.357, subd. 4; City Code § 11-10-11.

- To serve as the board of appeals and adjustments, including deciding appeals from decisions made by an administrative officer. City Code § 11-12-1; Minn. Stat. § 462.375, subd. 6.
- To hear and grant requests for variances as the board of appeals and adjustments. Minn. Stat. § 462.357, subd. 6; City Code § 11-12-1.
- To conduct hearings on conditional use permit applications and interim use permit applications and make recommendations to the city council. Minn. Stat. § 462.3595; City Code §§ 11-10-7, 11-10-8.
- To review and comment on concept plans. City Code § 11-10-3.
- To hold public hearings on and approve site plans. City Code § 11-10-3.
- To prepare and recommend official maps to the city council. Minn. Stat. § 462.359, subd. 2.
- To hold public hearings on proposed plats and make recommendations to the city council. Minn. Stat. § 462.358, subd. 3b; City Code § 12-2-2.

C. Information to be relied upon.

In performing the above duties, the planning commission must rely upon and make its decisions in accordance with the city's comprehensive plan, state statutes and the city's current zoning and subdivision ordinances. The planning commission is not authorized by state law or the city code to be able to make new policy in order to arrive at its decisions.

### III. Other City Boards and Commissions.

A. Parks and Recreation Commission.

The Parks and Recreation Commission advises the city council in the acquisition and maintenance of parks, playgrounds, and other public lands. It makes recommendations to the city council regarding expansion and plans for the development of the city park and recreation system, any desired regulatory ordinances, and any other matters related to the city's park and recreation system.

B. Port Authority.

The Port Authority encourages and carries out economic development and redevelopment within the City, acting as the development authority on behalf of the City's interest to increase the tax base, promote new job development, and enhance the health, safety and welfare of the City's residents. The Port Authority is a separate entity from the City.

C. Utility Commission.

The Utility Commission is an advisory board to the City Council that helps review infrastructure development; reviews operating budgets for water, sewer, sanitary sewer, and storm sewer; and reviews a consultant's study on rates every

five years. The Commission also handles residents' concerns on water and sewer matters.

D. Youth Commission.

The Youth Commission provides the youth of the City with a leadership opportunity, to participate in government, and to represent and articulate the needs of youth (ages 14-18) in the City. It is an advisory board to the City Council.

#### IV. The Comprehensive Plan

A. What it is and how the city adopts it.

The comprehensive plan is a "*compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality ...*". Minn. Stat. 462.352, subd. 5. It includes several elements, including a land use plan, transportation plan, and community facilities plan. In the metropolitan area, the comprehensive plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure "*planned, orderly, and staged development and redevelopment consistent with the comprehensive plan.*" Minn. Stat. 473.858, subd. 1.

B. Process for adopting and amending the comprehensive plan.

1. Plan preparation. Typically, the planning commission, with the assistance of staff, prepares the comprehensive plan. The city council, however, may propose a comprehensive plan or amendments to the comprehensive plan by resolution.
2. Public hearing(s). The planning commission must hold at least one public hearing on the plan or any amendment to the plan before adopting the plan or any section or amendment of the plan. The notice of the public hearing must be published once in the official newspaper at least 10 days prior to the hearing.
3. Metropolitan Council Review. In the metropolitan area, cities must submit their proposed plans to the Metropolitan Council following approval of the planning commission and after consideration but before final adoption of the plan by the city council. The Metropolitan Council reviews the plan for consistency with metropolitan system statements. Metropolitan cities' comprehensive plans must be consistent with the metropolitan system statements.
4. Adoption. To adopt the comprehensive plan or amendments to the plan, the city council must approve the plan or amendment by a two-thirds

majority vote. The council cannot adopt the plan or amendments until it has received the planning commission's recommendation or until at least 60 days have passed from the date that the city council proposed an amendment to the planning commission.

C. Effect of the comprehensive plan.

The comprehensive plan is the policy statement for the future development of the city. In the metropolitan area, however, cities are required to take steps to ensure that their official controls (subdivision ordinances, zoning ordinances, capital improvement programs, etc.) do not conflict with the comprehensive plan. If inconsistencies exist, cities must either amend the plan or amend their official controls to remove the inconsistencies. Metropolitan cities may not adopt any fiscal device or official control that is in conflict with their comprehensive plans or that permit activity in conflict with metropolitan system plans.

**V. Judicial Review of Zoning Decisions**

A. General: Courts review cities' zoning decisions to determine whether they are reasonable under the facts and circumstances. A zoning decision will not be overturned if there is a reasonable basis for the decision. Courts will overturn decisions that are arbitrary or capricious – based on “whim or caprice.”

B. Zoning and Rezoning:

1. Zoning and rezoning is a legislative act.
  - The City is formulating public policy.
  - Courts give cities greater latitude in this area.
2. Zoning decisions by a city must be upheld unless it can be shown that the classification is not supported by any rational basis relating to promoting public health, safety, or welfare, or that it amounts to a taking of the property without just compensation.
3. It is insufficient for a property owner to show only that the property has been devalued through a zoning change, or that the property would be more valuable in another classification.
4. If a proposed rezoning conforms to the comprehensive plan, denial will be considered arbitrary, unless reasons are articulated to show that the proposed rezoning did not conform to the plan in all respects (e.g., timing is premature) or circumstances have changed so that the comprehensive plan no longer reflects the City's vision and the plan requires amendment.

## **VI. Conditional or Interim Use Permits and Variances.**

- A. Quasi-Judicial Zoning Act – The city applies the ordinance standards to a particular use.
- B. Conditional Use Permits – Standard is governed by the ordinance criteria, as public policy is established by it.
  - 1. Follow ordinance criteria – public health, safety, and welfare are assumed to be incorporated in the ordinance.
  - 2. Examine the facts to see that there is compliance with the ordinance. If the ordinance is satisfied, or can be complied with by the imposition of conditions, the permit should be issued.
  - 3. When a zoning ordinance expressly authorizes a proposed use by conditional use permit, denial must be for reasons relating to public health, safety, and general welfare, using the ordinance criteria as a guide.
- C. Interim Use Permits – Standard is governed by the ordinance criteria, as public policy is established by it.
  - 1. The city may grant an interim use permit if the interim use conforms to the city’s zoning ordinances, there is an identifiable termination date or event and the user agrees to conditions deemed appropriate by the city.
  - 2. There should be a time limitation placed on the interim use permit. It should cease on a date certain, upon the occurrence of a specific event or until zoning regulations no longer permit it.
- D. Variances. The standard for granting or denying a variance is governed by the criteria set forth in state statute and the ordinance.
  - 1. Variances, by definition, are the exception to the rule. If you find that you are often granting variances from a particular zoning provision, you might consider re-examining the usefulness of the rule rather than granting multiple variances.
  - 2. The standard for granting variances changed as the result of legislation passed in 2011. Owners are no longer required to show “undue hardship” but must show there are “practical difficulties” in complying with the zoning ordinance. “Practical difficulties” means the owner proposes to use the property in a reasonable manner that is not permitted by the ordinance; the owner’s plight is due to circumstances unique to the property and not caused by the owner; and the variance, if granted, will

not alter the essential character of the locality. The variance must be in harmony with the general purposes and intent of the ordinance and must be consistent with the comprehensive plan. Economic considerations alone do not constitute a practical difficulty. Conditions may be imposed on variances, but the conditions must be directly related to and bear a rough proportionality to the impact created by the variance.

## VII. Procedure before Planning Commission and Council

- A. Not only are the planning commission's proceedings reviewed by the city council and used in making its decision on an application, but they are also relied upon by a court in legal action against the city.
- B. While new evidence can be submitted at trial, additional evidence can be offered only where there is good cause why the evidence was not submitted to the city.
- C. Cases require both the city and landowner or developer to "lay their cards on the table" so the city can make a decision with all information available.
  - If additional time is needed to respond to issues raised, table the matter to allow for the presentation of all of the evidence, whether this is from the city, the landowner, the developer, or opponents of an application. *Caveat*: remember that you must comply with the 60-day law.
- D. The procedure requires that the planning commission and the city council be thoroughly prepared for the hearing on the request.
  - 1. Allow all parties to fully present information.
  - 2. Thoroughly study and review the city staff reports.
  - 3. Actively participate in the discussion.
  - 4. Know and state the reasons for granting or denying the request.
  - 5. Articulate the reasons for a decision (each commissioner should articulate his or her specific reasons for voting the way that he or she voted (even if the reasons are similar)). This is not only helpful to a court, but also helps the city council understand the issues that the planning commission reviewed and how it arrived at its decision.
- E. What not to do at the hearing on the request.
  - 1. Do not make off the cuff comments that could damage the city's position.
  - 2. Do not shoot from the hip in stating reasons for denial.

3. Do not make a quick decision if new evidence comes out at the hearing. The matter can be tabled to prepare a thorough response to new matters raised by the applicant or the parties opposing the application, *subject* to compliance with the 60-day law, of course.
- F. Do not pre-judge applications or demonstrate bias on quasi-judicial matters. In a recent decision, the Minnesota Court of Appeals determined that the City of Minneapolis had acted arbitrarily and capriciously in denying applications for a conditional use permit and variances, where one of the council members had “exhibited a closed mind” and “adopted an advocacy role in opposition to the project” before the application had even been heard. The court required the City to conduct new hearings and to render a decision without the participation of the biased council member.
- G. Voting.
1. If a tie vote occurs and the decision is one where the planning commission is acting in an advisory capacity (i.e. providing recommendations on proposed plats, concept plans, conditional use permits, zoning ordinance amendments, etc.), the item may proceed to the city council. The city council should be advised that a tie vote occurred.
  2. If a tie vote occurs and the decision is one where the planning commission is acting as the board of appeals and adjustments, or is reviewing a site plan, the motion fails. In this case, the commission chair should first inquire as to whether there are any other motions to be offered. If no other motions are made, the chair should declare that the application is denied (a failure to gain enough votes in favor of an application constitutes a denial).

### **VIII. Commonly Heard Arguments.**

- A. “The decision being made will reduce the value of my property and result in a taking.”

Thumbnail sketch of takings law. A regulation adopted by a state or political subdivision constitutes a “regulatory taking” in two situations:

1. A categorical taking occurs if the regulation destroys the entire value of the property. In such a case, the city must compensate the property owner.
2. In those instances where a regulation diminishes, but does not destroy, the value of property, a taking can still occur based on the facts and circumstances of each case. In making this type of determination, courts look at such things as: (a) the nature of the regulation; (b) the extent to

which the regulation impacts the value of the property; and (c) the legitimate investment-backed expectations of the property owner.

- B. “If you make this decision you will be setting a ‘precedent.’” It is important to treat similarly situated properties similarly. In most instances, differences exist between zoning applications that may justify different treatment. Courts also recognize that circumstances change with the passage of time, and time alone may be a sufficient basis (from a legal perspective) to distinguish two different applications. As a practical matter, it is important to articulate reasons and the factual basis for making zoning decisions, so that distinguishing facts are identified in the planning commission and city council records.

## **IX. The 60-Day Rule**

- A. Decisions subject to the 60-day rule. The 60-day rule applies to written requests for a permit, license or other government approval related to zoning, septic systems, or the expansion of the Metropolitan Urban Service Area. This means it applies to requests for rezoning, conditional use permits, interim use permits, variances, and probably comprehensive plan amendments. It does not apply to subdivision approvals, which have their own specific time limits.
- B. Starting the Clock. The 60 days do not begin to run until a completed application is received. However, the law deems any application to be complete (at least for purposes of starting the clock) unless the city within 15 business days after receipt notifies the applicant that the application is not complete and specifies what information is missing.
- C. Extensions of the 60-day Period.
1. The 60 days is automatically extended if a state or federal law or a court order requires a process to occur before the city acts on the request. (example: in cases where an environmental assessment worksheet (EAW) or environmental impact statement (EIS) is required). In that case, the deadline is extended until 60 days after the process is completed. (e.g., 60 days after a determination that an EIS is adequate). Similarly, the time limit is extended if the application requires prior approval of a state or federal agency; the deadline is then extended to 60 days after the required prior approval is given.
  2. The city can extend the deadline for an additional 60 days by giving written notice to the applicant before the initial 60-day period expires. The written notice must give a reason for the extension and the length of the extension. There is some inconsistency in the court decisions as to what type of reason will justify an extension: one court decision indicated any reason is sufficient, and another indicated that only exigent circumstances warrant an extension.



3. The city can extend the deadline for more than an additional 60 days, if the applicant agrees. It is preferable, but not required, to get the applicant's consent to such an extension in writing.

D. Effect of Missing the Deadline. An application that is subject to the 60-day law is automatically approved unless the city approves or denies the application within the 60-day period or extended period. If the application is denied, the city must state the reasons for denial on the record and provide the applicant with a written statement of the reasons for denial before the 60-day period expires. The written statement must be adopted at the same meeting where the decision is made or at the next meeting, but before applicable period expires. Resolutions with written findings should be used on applications subject to the 60-day law.

E. Planning Commission and Council Action. Both the planning commission and the city council must act on an application within the 60-day period. The clock does not start over after the planning commission. This includes variances and appeals from variance decisions.

**X. Open Meeting Law.**

A. Planning commission meetings must be open to the public pursuant to the Open Meeting Law, Minnesota Statutes Chapter 13D.

B. A meeting occurs when a quorum or more meets to discuss planning commission business, even if no decision is made.

C. E-mail discussions can be considered meetings in some circumstances. If a quorum or more of the planning commission participates in the discussion, it could violate the Open Meeting Law.

D. Penalties for violation of the Open Meeting Law include loss of office, monetary penalties, and possible attorneys' fees awards.