

City of Corcoran

2012 Council and Commissioners Handbook

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Separate Cover: City Code

Ethical Principles in Planning (As Adopted May 1992)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community. Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles. This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker (see also Advisory Ruling "Conflicts of Interest When a Public Planner Has a Stake in Private Development")
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome (see also Advisory Ruling "Honesty in the Use of Information");
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations (see also Advisory "Sexual Harassment").

APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.

APA Members who are practicing planners:

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;

2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;
9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;
11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning. (See also Advisory Ruling "Outside Employment or Moonlighting").

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GOVERNING & MANAGING INFORMATION

Planning Commission Guide

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I. Creation of a city planning commission

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

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.

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

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.

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

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. 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.

Minn. Stat. § 462.354

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

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.
- 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.

C. Organization and structure

See Section IV *Planning Agency Meetings*

See [Model Planning Commission Policy on Order and Procedure](#)

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

D. Powers and duties

[Minn. Stat. § 462.354.](#)
See Section III, *Role of the Planning Agency*

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

II. Appointment of city planning commission members

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

[Minn. Stat. § 462.354.](#)

The city council may choose to designate itself as the city's planning commission by ordinance. However, most cities choose to establish a planning commission as a separate advisory body. This approach reduces the overall workload of 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. In the alternative, cities may vest appointment power in the mayor exclusively, or may vest in the mayor the power to appoint commissioners, subject to council approval.

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

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

[Sample Advertisement](#)

- The advertisement period for open positions.

[Sample City Application Forms](#)

- The submission of letters of interest and a statement of qualifications for board positions, or a city application form.

[Sample Interview Questions](#)

- An interview process prior to appointment.

C. Residency requirements

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

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

D. Councilmembers and city staff serving on the planning commission

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

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

1. Full voting members

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

2. Non-voting members

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

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

3. City staff on planning commission

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

E. Compensation

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

F. Conflicts of interest

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.

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); *Township Bd. Of Lake Valley Township v Lewis*, 305 Minn. 488, 234 N.W. 2d 815 (1975)

G. Removal of planning commission members

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

III. Powers and duties of the planning commission

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

A. Preparing and recommending a comprehensive plan

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

1. Purpose of comprehensive planning

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

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

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

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

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

[Minn. Stat. § 462.352, subd 8](#)

[Minn. Stat. § 462.352, subd 7](#)

[Minn. Stat. § 462.352, subd 8](#)

Minn. Stat. § 462.352, subd 9

- Capital Improvement Program.

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

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

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

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

2. Preparing the comprehensive plan

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

State statute vests authority for preparing the comprehensive plan in the planning commission. However, the city council also may propose the comprehensive municipal plan and amendments 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.

Minn. Stat. § 462.353, subd 2

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

a. Consultants and public input

i. Professional planners

Minn. Stat. § 462.353, subd 3

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

Local Planning Assistance Agency
Advice on Hiring at Planner

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

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

ii. Other consultants

[Minn. Stat. § 462.355 subd 1](#)

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

[Minn. Stat. § 462.355, subd 1](#)

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

[Minn. Stat. § 462.353, subd 2](#)

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

b. Public input

[Minn. Stat. § 462.355, subd 2](#)

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.

[Sample Newsletter Article on
Comprehensive Planning](#)

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

[Minn. Stat. § 462.357, subd. 1h;](#)
[Minn. Stat. § 462.355, subd. 1,](#)
[Minn. Stat. § 103G.005, subd. 10b](#)

Non-metropolitan cities located in certain counties are subject to the President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land (hereinafter the “T. Roosevelt Memorial Preservation Act”) when adopting or amending a comprehensive plan.

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

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

Minn. Stat. § 462.355

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

Minn. Stat. § 462.357

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

3. Recommending the comprehensive plan to council

Minn. Stat. § 462.355, subd 2

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.

Minn. Stat. § 462.354

4. Adopting the comprehensive plan

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

Minn. Stat. § 473.858, subd. 2.

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

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

Minn. Stat. § 473.175

Metropolitan Council

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.

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

c. All cities: 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

Minn. Stat. § 462.355, subd. 3

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

B. Implementing the plan

See Section V: *Changing or Dissolving the Planning Commission*

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

Minn. Stat. § 462.356, subd 1

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

Minn. Stat. § 462.356 subd 1

See LMC information memo, *Zoning Guide for Cities*; LMCIT risk management memo *Zoning Decisions*

- 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.
- A capital improvement program.

See *Handbook, Chapter 14*; LMCIT risk management memo, *Subdivisions, Plats and Development Agreements*

See *Handbook, Chapter 14*

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

C. Role in periodic review of the comprehensive plan

Minn. Stat. § 462.355, subd 1

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

Minn. Stat. § 462.355, subd 1a

Minn. Stat. § 473.121, subd 2

Minn. Stat. § 473.864, subd 2

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

D. Role in amending the comprehensive plan

Minn. Stat. § 462.355, subd 3

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

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

1. Procedure for amending a comprehensive plan

See Section III-A-4 *Adopting the Comprehensive Plan*

Minn. Stat. § 462.355, subd 3

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

Minn. Stat. § 473.175

Metropolitan Council

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

Minn. Stat. § 462.355, subd. 3

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

E. Role in purchase and sale of real property

Minn. Stat. § 462.356, subd 2;
Lerner v. City of Minneapolis, 284
Minn. 46, 169 N.W.2d 380 (Minn.
1969); A.G. Op. 63-b-24 (Dec. 9,
1971); A.G. Op. 161-b, (Aug. 8,
1966)

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

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

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

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

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

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

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

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

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

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

F. Role in capital improvements program

Minn. Stat. § 462.356, subd 2

After a comprehensive municipal plan or section of a plan has been recommended by the planning commission and a copy filed with the city council, the planning commission must be given a chance to review and comment on all proposed *public* capital improvements within the city. This includes capital improvements build 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 by this statute. However, other statutes define a capital improvement as:

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

“betterment of public lands, buildings or other improvements.”

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

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

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

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

G. Role in zoning ordinance adoption and amendment

1. Zoning ordinance adoption

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

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

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

Minn. Stat. § 462.357 subd 2

City councils may adopt 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.

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

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.

Minn. Stat. § 462.357 subd 3

LMC information memo,
Newspaper Publication

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.

See LMC information memo,
Zoning Guide for Cities

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

Minn. Stat. § 462.357 subd 4

For more information see LMCTT risk management memo *Zoning Decisions*

An amendment to a zoning ordinance, also known as a rezoning, may be initiated by the governing body, the planning commission, or by petition of affected property owners as defined in the zoning ordinance. An amendment not initiated by the planning commission must be referred to the planning commission for study and report. The city council may not act on the proposed amendment (either by adopting or denying the amendment) until the planning commission has made its recommendations or 60 days have elapsed from the date of reference of the amendment without a report by the planning commission. It is important to note that while state statute provides the planning commission 60 days to respond to proposals, the 60-Day Rule (an entirely different rule with 60 days in the title) still applies to ordinance amendments brought by application or petition of property owners. As a result, internal procedures should be developed to coordinate planning commission review that does not violate the 60-Day Rule automatic approval statute.

See Section I- B on the *60-Day Rule*

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.

Minn. Stat. § 462.357 subd 3

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

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

Minn. Stat. § 462.357 subd 5

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

H. Conditional use permits

Minn. Stat. § 462.3595

See LMC information memo, *Zoning Guide* for Cities

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

See information memo, *Zoning Guide for Cities*; LMCIT risk management memo, *FAQs on Conditional Uses*; LMCIT risk management memo, *Zoning Decisions*.

Planning commissions charged with reviewing applications for conditional use permits must follow fairly strict legal standards for their review. Specifically, the city must follow the requirements of the zoning ordinance it has adopted. If a conditional use permit application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial should all relate to the applicant's failure to meet standards established in the ordinance. The standard of review for conditional use permits is discussed in depth in the LMC Governing and Managing Memo *Zoning Guide for Cities*.

I. Role in adoption of an official map

Minn. Stat. § 462.359 subd 2

See *Handbook*, Chapter 11

Minn. Stat. § 462.352, subd 7, 8

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

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

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

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

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

J. Board of zoning adjustment and appeals

Minn. Stat. § 462.354 subd 2

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

Minn. Stat. § 462.357 subd 6 (1)

- To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the zoning ordinance.

Minn. Stat. § 462.357 subd 6 (2)

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

Minn. Stat. § 462.359 subd 4

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

Minn. Stat. § 462.354 subd 2

- Such other duties as the city council may direct.

Minn. Stat. § 462.354 subd 2

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

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

Minn. Stat. § 462.354 subd 2

The ordinance creating the BZA should specify at minimum:

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

Minn. Stat. § 462.354 subd 2

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

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

See information memo, *Zoning Guide* for Cities and LMCIT risk management memo, *FAQs on Variances*

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

K. Role in review of subdivision applications

Minn. Stat. § 462.358 subd 3(b)

See *Handbook, Chapter 11*; See also LMCIT risk management memo, *Subdivisions, Plats, and Development Agreements*

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

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 the LMCIT risk management memo *Subdivisions, Plats, and Development Agreements.*

IV. Planning commission meetings

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

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

A. Open Meeting Law

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

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

Minn. Stat. § 13D.01, subd. 1.

Minn. Stat. § 13D.01, subd. 6.

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

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

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 Governing and Managing Memo "*Meetings of City Councils*."

B. The 60-Day Rule

For more information on the 60-Day Rule see the LMCIT risk management memo *The 60-Day Rule: Minnesota's Automatic Approval Statute*

Minn. Stat. § 15.99

Manco of Fairmont v. Town Bd. of Rock Dell Township, 583 N.W.2d 293 (Minn. Ct. App. 1998) .

Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007) .

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

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

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

1. Scope of the rule

Minn. Stat. § 15.99, subd. 1(c) .

Minn. Stat. § 15.99, subd. 2(a).

Minn. Stat. § 462.358, subd. 3b.

Advantage Capital Mgmt. v. City of Northfield, 664 N.W.2d 421 (Minn. Ct. App. 2003) .

The rule applies to a “request related to zoning.” The courts have been rather expansive in their interpretation of the phrase “related to zoning,” and many requests affecting the use of land have been treated as subject to the law. The statute creates an exception for *subdivision and plat approvals*, since those processes are subject to their own timeframes. The Minnesota Court of Appeals has ruled that Minn. Stat. § 15.99 does not apply to building permits.

2. Applications

Minn. Stat. § 15.99, subd. 1(c) .

A request must be submitted *in writing* on the city’s application form, if one exists. A request not on the city’s form must clearly identify the approval sought on the first page. The city may reject a request not on the city’s form as incomplete, if the request does not include information required by the city. The request also is considered incomplete if it does not include the application fee.

Minn. Stat. § 15.99, subd. 3(a) .

The 60-day time period does not begin to run if the city notifies the landowner *in writing* within 15 business days of receiving the application that the application is incomplete. The city must also state what information is missing.

Minn. Stat. § 15.99, subd. 3(c) .

If a city grants an approval within 60 days of receiving a written request, and the city can document this, it meets the time limit even if that approval includes certain conditions the applicant must meet. Subsequently, if the applicant fails to meet the conditions, the approval may be revoked or rescinded. An applicant cannot use the revocation or rescission to claim the city did not meet the 60-day time limit.

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

When a zoning applicant materially amends their application, the 60-day period runs from the date of the written request for the amendment, not from the date of the original application. However, minor changes to a zoning request should not affect the running of the 60-day period.

3. Denials

Minn. Stat. § 15.99, subd. 2(a)
Minn. Stat. § 15.99, subd. 2(c) .
Hans Hagen Homes v City of Minnetrista, 728 NW 2d 536 (Minn. 2007); *Johnson v Cook County*, A08-1501 (Minn. 2010)

If an agency or a city denies a request, it must give written reasons for its denial at the time it denies the request. When a multimember governing body such as a city council denies a request, it must state the reasons for denial on the record and provide the applicant with a written statement of the reasons for denial. The written statement of the reasons for denial must be consistent with reasons stated in the record at the time of denial. The written statement of reasons for denial must be provided to the applicant upon adoption.

Minn. Stat. § 15.99, subd. 2(b) .

State statute provides that the failure of a motion to approve an application constitutes a denial, provided that those voting against the motion state on the record the reasons why they oppose the request. This situation usually occurs when a motion to approve fails because of a tie vote, or because the motion fails to get the required number of votes to pass.

4. Extensions

Minn. Stat. § 15.99, subd. 3(f) .

The law allows a city the opportunity to give itself an additional 60 days (up to a total of 120 days) to consider an application, if the city follows specific statutory requirements. In order to avail itself of an additional 60 days, the city must give the applicant:

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

American Tower, L.P. v. City of Grant, 636 N.W.2d 309(Minn. 2001) ; *Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. Ct. App. 2002)

The courts have been particularly demanding on local governments with regard to this requirement and have required local governments to meet *each element* of the statute. An oral notice or an oral agreement to extend is insufficient. The reasons stated in the written notification should be *specific* in order to inform the individual applicant exactly why the process is being delayed. Needing more time to fully consider the application may be an adequate reason. As demonstrated in one Minnesota Supreme Court case, the written notification should not take the form of a blanket statement on the zoning application that the city will need the extension.

Minn. Stat. § 15.99, subd. 3(g).

An applicant may also request an extension of the time limit by written notice. If a city receives an applicant's request for an extension, this should be thoroughly documented.

Minn. Stat. § 15.99, subd. 3(g).

Once the city has granted itself one 60 day extension any additional extensions must be negotiated with and agreed upon by the applicant. The city must initiate the request for additional time in writing and have the applicant agree to an extension in writing. The applicant also may ask for an additional extension by written request.

Minn. Stat. § 15.99, subd. 3(d), (e).

Minn. Stat. ch. 116D.

Minn. R. ch. 4410.

The 60-day time period is also extended if a state statute requires a process to occur before the city acts on the application if the process will make it impossible for the city to act within 60 days. The environmental review process is an example. If the city or state law requires the preparation of an environmental assessment worksheet (EAW) or an environmental impact statement (EIS) under the state Environmental Policy Act, the deadline is extended until 60 days after the environmental review process is completed. Likewise, if a proposed development requires state or federal approval in addition to city action, the 60-day period for city action is extended until 60 days after the required prior approval is granted from the state or federal entity.

Minn. Stat. § 15.99, subd. 2(a), (e).

On occasion, a local city zoning ordinance or charter may contain similar or conflicting time provisions. The 60-Day Rule generally supersedes those time limits and requirements.

See LMCIT risk management memo, *The 60 Day Rule: Minnesota's Automatic Approval Statute*.

Cities should adopt a procedure or set of procedures to ensure planning staff, the planning commission and the city council follow the 60-Day Rule. City staff should develop a timetable, guidelines and forms (checklists for each application may be helpful) to ensure that no application is deemed approved because the city could not act fast enough to complete the review process.

C. Commission policies on order and meeting structure

See LMC *Model Planning Commission Rules of Procedure*

See LMC information memo, *Meetings of City Councils*

See LMCIT risk management memo, *Public Hearings*.

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

The policy should establish procedures related to:

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

D. Minutes and official records

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

1. Minutes and records

See [Handbook, Chapter 27](#)

[Minn. Stat. § 15.17, subs. 1, 2.](#)

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

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

See LMC information memo, [Zoning Guide](#), Section V-C-2

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

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

2. Findings of fact

See LMCIT risk management memos, [Land Use Findings of Fact Necessity of Adequate Findings: Reasons to Support Municipal Land Use Decisions; Zoning Decisions](#)

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

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

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

See [Sample Findings of Fact, City of Burnsville](#)

LMCIT risk management memos, [Land Use Findings of Fact](#) and [Necessity of Adequate Findings: Reasons to Support Municipal Land Use Decisions](#)

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

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 Governing and Managing Memo “*Zoning Guide for Cities*.”

3. Records retention requirements

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

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

See LMCIT risk management memos, [The Necessity of Adequate Findings: Reasons to Support Municipal Land Use Decisions](#), [Land Use Findings of Fact: Elected Officials as Policymakers and Zoning Decisions](#)
[Sample Findings of Fact: City of Burnsville](#)

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

[Minn. Stat. § 462.354 subd 1](#)
[Minn. Stat. § 410.12](#)
See [Handbook, Chapter 4](#)

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:

[Minn. Stat. § 462.355 subd 3](#)

- Reviewing amendments to the comprehensive plan.

Minn. Stat. § 462.356 subd 2

- Reviewing purchase and sale of public property and capital improvement projects.

Minn. Stat. § 462.357 subd 4

- 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

“Counting the Votes on Council Actions, Part 1 and Part 2,”
Minnesota Cities (May and June-July 2006, p. 19).

Minn. Stat. § 410.12

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

VI. Joint or multijurisdictional planning

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

A. Community-Based planning

Minn. Stat. § 462.3535 subd 1, 2

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.

Minn. Stat. § 462.3535 subd. 4.

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

[Minn. Stat. § 462.3585.](#)

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

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

Once established, the board is authorized to:

[Minn. Stat. § 462.3585.](#)

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

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

- Create a planning agency.

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

- Create a BZA.

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

- Adopt a comprehensive plan.

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

- Adopt interim ordinances.

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

- Adopt zoning ordinances.

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

- Adopt subdivision regulations.

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

- Adopt an official map.

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

- Provide for and issue conditional use permits.

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

- Enforce official controls and prescribe penalties for violations.

[Minn. Stat. § 462.3585.](#)

- Adopt and enforce the State Fire Code.

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

Minn. Stat. § 462.358, subd 1a

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

C. Regional planning boards

Minn. Stat. § 462.371

See [Handbook, Chapter 17](#)

See LMCIT risk management memo *Liability Coverage for Joint Powers Agreement*.

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

Minn. Stat. § 462.372

The joint powers agreement creating a regional planning agency should:

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

Minn. Stat. § 462.373, subd 1

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

Minn. Stat. § 462.373, subd. 2.

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

Minn. Stat. § 462.374

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

Minn. Stat. § 462.375

Once 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

Minn. Stat. § 462.383	Regional development <i>commissions</i> are separate entities from regional development <i>boards</i> discussed above. Regional development commissions are created by state statute to provide a means of pooling the resources of local governments to approach common problems related to urban and rural growth and development.
Minn. Stat. § 462.385.	Development regions are set by state statute and are numbered as follows:
Northwest Development Commission.	Region 1: Kittson, Roseau, Marshall, Pennington, Red Lake, Polk, and Norman.
Headwaters Regional Development Commission.	Region 2: Lake of the Woods, Beltrami, Mahnommen, Clearwater, and Hubbard.
Arrowhead Regional Development Commission	Region 3: Koochiching, Itasca, St. Louis, Lake, Cook, Aitkin, and Carlton.
West Central Initiative	Region 4: Clay, Becker, Wilkin, Otter Tail, Grant, Douglas, Traverse, Stevens, and Pope.
Region Five Development Commission	Region 5: Cass, Wadena, Crow Wing, Todd, and Morrison.
Mid-Minnesota Development Commission	Region 6E: Kandiyohi, Meeker, Renville, and McLeod.
Upper Minnesota Valley Regional Development Commission	Region 6W: Big Stone, Swift, Chippewa, Lac qui Parle, and Yellow Medicine.
East Central Regional Development Commission	Region 7E: Mille Lacs, Kanabec, Pine, Isanti, and Chisago.
Southwest Regional Development Commission	Region 8: Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, and Jackson.
Region Nine Development Commission	Region 9: Sibley, Nicollet, LeSueur, Brown, Blue Earth, Waseca, Watonwan, Martin, and Faribault.
Metropolitan Council	Region 11: Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota.
Minn. Stat. § 462.39 subds 4, 5	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 <i>support</i> planning for cities. Cities may request that a regional commission review, comment, and provide <i>advisory</i> recommendations on local plans or development proposals.
Minn. Stat. § 462.391 subd. 1a.	

VII. Training and resources for planning commission members

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

[LMCIT Land Use Resources](#)

The League of Minnesota Cities Insurance Trust has a Land Use Loss Control Program to assist members through phone consultations and on-site 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](#)

- Government Training Services (GTS)

[American Planning Association](#)

- The American Planning Association



GOVERNING & MANAGING INFORMATION

Zoning Guide for Cities

600A1A
September 2012

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I. Introduction

This memo discusses the framework of municipal zoning. It provides guidance on zoning ordinance drafting, adoption, administration and enforcement. Finally, this memo introduces, in brief, other land use controls available to cities that may complement or be used separately from zoning controls.

A. The purpose of zoning

Zoning allows a city to control the development of land within the community – both the type of structures that are built and the uses to which the land is put. Most building in a community is done by private individuals and businesses seeking to develop property for their own private use – whether this is residential, commercial or industrial. Zoning is one important tool for guiding this private development, so that land is used in a way that promotes both the best use of the land and the prosperity, health and welfare of the city’s residents. Local zoning control over other governmental entities acting or owning property within a city, such as the State of Minnesota and local school districts may be more limited depending on the circumstances.

Zoning is normally accomplished by dividing the land in the city into different districts or zones and regulating the uses of land within each district. Generally, specific districts are set aside for residential, types of commercial and various industrial uses. The city can also use zoning to further agricultural and open space objectives.

By creating zoning districts that separate uses, the city assures that adequate space is provided for each use and that a transition area or buffer exists between distinct and incompatible uses. Adequate separation of uses prevents congestion, minimizes fire and other health and safety hazards, and keeps residential areas free of potential commercial and industrial nuisances such as smoke, noise and light.

Zoning regulations may also constrain the types and location of structures. The regulations must be the same within each district, but may vary from district to district. These regulations often control:

- Building location, height, width, bulk
- Type of building foundation
- Number of stories, size of buildings and other structures
- The percentage of lot space which may be occupied
- The size of yards and other open spaces
- The density and distribution of population
- Soil, water supply conservation

[Minn. Stat. § 462.351.](#)

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

[Minn. Stat. § 462.357, subd. 1.](#)

[Sample Zoning District Section.](#)

[Minn. Stat. § 462.357, subd. 1.](#)

- Conservation of shore lands
- Access to direct sunlight for solar energy systems
- Flood control

B. Legal authority to zone

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

Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App.2002).

Minn. Stat. § 462.352, subd. 2.

Minn. Stat. § 462.351.

Statutory and Home Rule Charter Cities are granted the authority to adopt a zoning ordinance by the Minnesota and US Supreme Court cases and by the Municipal Planning Act found in Minnesota Statutes. The Municipal Planning Act establishes a uniform and comprehensive procedure for adopting or amending and implementing a zoning ordinance.

Minn. Stat. § 473.851.

Cities in the metropolitan area are governed by the Metropolitan Land Planning Act. The metro area is defined as the cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding New Prague) and Washington. The Metropolitan Planning Act also imposes certain mandatory zoning and regulatory requirements on metropolitan cities.

Minn. Stat. § 103F.
Minn. Stat. §§ 103F-103F.155. Minn. Stat. § 103F.335. Minn. Stat. § 40A.01. Minn. Stat. § 138.71.

Cities are also granted additional authority by state statute to impose land use controls on development through the Minnesota Water Laws, the Floodplain Management Laws, the Minnesota Wild and Scenic Rivers Act, the Agricultural Land Preservation laws and the Minnesota Historic District Act to name only a few.

C. Role of comprehensive planning in zoning ordinance adoption

Minn. Stat. § 462.351.

All cities have the authority to adopt zoning regulations, though cities may follow different paths to adoption of an ordinance. Some cities may engage in extensive formal planning, including the drafting of a comprehensive plan, prior to ordinance adoption, while others may need to follow a more immediate process.

1. Comprehensive planning

See LMC information memo, *Planning Commission Guide*.

Minn. Stat. § 462.353. *Roselawn Cemetery v. City of Roseville*, 689 N.W. 2d 254 (Minn. Ct. App. 2004).

Minn. Stat. § 462.352, subd. 5.

Minn. Stat. § 462.355, subd. 1a. Minn. Stat. § 473.121, subd. 2. Minn. Stat. § 473.864, subd. 2. *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984).

Minn. Stat. § 462.357, subd. 1h.

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

The adoption of a comprehensive plan is a common first step in the development of a zoning ordinance. Minnesota statutes grant all cities authority to adopt a formal comprehensive plan for their community. A comprehensive plan is a lengthy document that formally establishes a blueprint for the city's long-range (usually between five and 15 years) social, economic, and physical development.

In metropolitan area cities, including cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague) and Washington, the adoption of a comprehensive plan is mandatory under the Metropolitan Land Planning Act. All other cities have the option of adopting a comprehensive plan, but are not required to do so.

Non-metropolitan cities located in counties or watersheds that contain 80 percent of their presettlement wetlands are subject to the President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land (hereinafter the "T. Roosevelt Memorial Preservation Act"). These cities are not required to engage in comprehensive planning, but must meet the requirements of the T. Roosevelt Memorial Preservation Act by adopting certain findings of fact when adopting a comprehensive plan.

a. Reasons to adopt a comprehensive plan

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

See LMC information memo, *Planning Commission Guide*.

For more information on Comprehensive Planning see *Under Construction* by MN Department of Administration.

First, the comprehensive planning process helps a city develop a plan for creating and maintaining a desirable environment and safe and healthy community. Once a plan is adopted, it guides local officials in making their day to day decisions and becomes a factor in their decision making process.

Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804 (Minn. Ct. App. 2005). *Larson v. Washington County*, 387 N.W.2d 902 (Minn. Ct. App. 1986).

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

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

b. Relation of the comprehensive plan to zoning

See LMC information memo, *Planning Commission Guide*.

Zoning and planning are not the same thing. Municipal planning is a lengthy process of collecting and analyzing economic, social and physical data about a city and organizing this information into a formal set of goals and standards for community development. The comprehensive plan is a document that embodies the city's vision for the future, including its aspirations and plans for future development that may not appear for many years to come.

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

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

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

It is important to emphasize that zoning is merely *one* of the tools available to a city to assist implementing a comprehensive plan. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs and official map in conjunction with its zoning ordinance to achieve its goal of orderly development.

II. Drafting a zoning ordinance

Minn. Stat. § 462.357, subd. 1.

Zoning regulations can *only* be imposed by a local ordinance adopted in accordance with the Municipal Planning Act. A zoning ordinance consists of both text and maps.

A. Typical zoning ordinance provisions and concepts

The zoning ordinance is usually a lengthy document that consists of three major sections, an administrative section, a performance standards section and a zoning district section.

1. The administrative section

Sample Definitions Section.

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

2. The performance standards section

Sample Performance Standards Section.

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

3. The zoning district section

Sample Zoning District Section.

The zoning district section establishes the different types of districts, for example residential, commercial or industrial/manufacturing, and sets the regulations for each district. Districts may also be designated reflecting desired density in addition to use, such as residential-1 (usually low density single family homes), residential-2 (usually single family homes and twin homes), residential-3 (usually apartment buildings), etc. Modern zoning may also feature “mixed-use” or “hybrid” districts where traditional use categories are mixed, for example a downtown residential/commercial district. The district section is often the lengthiest section of the zoning ordinance, depending on the number of districts established in the city. This section usually also contains the following concepts for each district:

a. Use designations

Sample Permitted and Conditional Uses.

Use Designations are text (usually in a list form) that specify the permitted, conditionally permitted and prohibited uses for a district or zone. There are several types of uses generally found in a zoning ordinance:

- **Permitted Uses:** Uses that are allowed in a district as a matter of right without further need for review or approval of the city
- **Prohibited Uses:** Uses that are not permitted in a district under any circumstances. An explicit listing of prohibited uses is rare. Many ordinances will simply provide that any uses not specifically listed are deemed prohibited.
- **Conditional Uses:** Uses that are permitted, after approval of the city, if conditions listed in the ordinance are met. Some zoning ordinances use the term “special use” instead of conditional use. The Municipal Land Use Planning Act does not recognize special use permits, and the courts would likely apply the same requirements for their issuance as those for conditional uses specified above.
- **Interim Uses:** Uses that are permitted for a limited amount of time (contain a sunset provision), after approval of the city, if conditions listed in the ordinance are met.
- **Accessory Uses:** Uses that are permitted or conditionally permitted to serve a permitted or conditionally permitted use. Generally the accessory use will not be permitted absent the primary use. For example, a tool shed is a standard accessory use in a residential zone.

Minn. Stat. § 462.3595.

Minn. Stat. § 462.3597.

Sample Setback Requirement Diagram.

Sample Height Requirement Diagram.

b. **Setbacks, height and density requirements**

- **Setbacks requirements:** Establish the minimum horizontal distance between a structure and the lot line, road, highway or high-water mark (if the property abuts shore land).
- **Height requirements:** Establish maximum and/or minimum height requirements for structures and/or their attachments (such as antennas, cupolas, etc).
- **Density requirements:** Establish the number of structures or units allowed per lot or area.

4. **Additional provisions**

Some ordinances may contain, depending upon the individual needs of the city, additional provisions, though the quality of a zoning ordinance does not depend upon the quantity or complexity of the provisions it contains (nor the number of districts established).

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

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

- **Mixed use or hybrid districts.** Districts that do not neatly meet the traditional district categories of residential, commercial or industrial use, but may contain a blend of uses. For example, a “downtown mixed use district” that features a blend of commercial uses and multifamily residences.
- **Planned Use Development (PUD) or cluster development:** A development of contiguous land area that contains developed clusters intermixed with green space or commercial or public development. Often the cluster development allows greater density than normally permitted in the development, in exchange for some other benefit, such as green space or open space.
- **Overlay districts:** A district that is developed to be imposed over or “overlay” one or more existing zoning districts, which impose additional zoning requirements. Overlay districts may be developed with a specific land area in mind or they may be developed to “float” until they are anchored to a suitable development proposal. In some cities, overlay districts may be structured as conditional uses.

Sample Overlay District.

5. **Natural resource protection and flood plain provisions**

In cities that contain certain natural resources such as lakes and rivers, or are located in a floodplain, the zoning ordinance may also contain the following:

Minn. Stat. § 103F.121, Minn. R. 6120.5000I.

See MN DNR sample floodplain management ordinances.

See also MN DNR for more information and resources on floodplain management.

Minn. Stat. § 103F.335.

See also MN DNR website for more information on MN Wild and Scenic Rivers.

Minn. Stat. § 103F.221, Minn. R. 6120.2500 – 3900.

See MN DNR sample shoreland management ordinance.

See also MN DNR website for more information and resources on shoreland management.

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

- **Floodplain requirements:** Floodplain management ordinances are required by state law. Flood plain ordinances regulate the use of land in the floodplain in order to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.
- **Wild and scenic rivers development requirements:** Wild and Scenic Rivers development ordinances are required by state law for cities that have shore land located within the Minnesota Wild and Scenic Rivers System. These ordinances must comply with state standards set by the Commissioner of Natural Resources.
- **Shoreland development requirements:** For cities that contain shore land, these zoning regulations control the use and development of its shorelands. City shore land regulations must be at least as restrictive as State standards and are subject to the review of the Commissioner of Natural Resources.
- **President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land.** Non-metropolitan cities subject to the T. Roosevelt Memorial Preservation Act when adopting or amending a zoning ordinance, must *consider* restricting new residential, commercial, and industrial development in a manner consistent with the Act’s goal of preserving land from development sprawl. Cities are not required to adopt zoning practices consistent with the T. Roosevelt Memorial Preservation Act, but must demonstrate (possibly through findings of fact), that their decision process *considered* the Act’s stated goals.

B. Drafting a readable zoning ordinance

Zoning ordinances can be lengthy documents, but from the first to last page, emphasis should be placed upon drafting a well organized ordinance that communicates clearly. A good zoning ordinance:

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

1. Suggestions for drafting a readable zoning ordinance:

- Use graphics, tables, maps and illustrations wherever possible.
- Use a consistent numbering system or other system of organization.
- Define terms, words, and phrases, preferably in a separate “definitions” section, so that there is minimal need for interpretation of the text.
- Pick terms and use terms consistently. For example do not interchange the word “residence,” with “house,” “dwelling” and “single-family home.” Instead, pick your preferred term, define the term in your definitions section and use the same term throughout the ordinance.
- Avoid legalese such as “aforesaid,” “hereby,” and “herewith.”
- Avoid archaic and/or potentially offensive terms. For example using, “trailer court” instead of “manufactured home park” or “old folks home” instead of “residential living facility.”
- Avoid establishing too many districts and other impractical complexity.
- Be careful about copying neighboring cities’ zoning provisions, especially in a piece-meal manner. A zoning ordinance fitting one community may be a bad fit for another. When only portions of an ordinance are copied and utilized, terms and definitions may not remain consistent.

2. The importance of clear, unambiguous ordinance language

The unfortunate consequence of unclear or ambiguous language in a zoning ordinance is public controversy and loss of efficiency. In some instances, a city may find itself in court simply on the issue of whether the city interpreted its own ambiguous ordinance correctly. In the past the courts have been asked to resolve controversies over such undefined terms in an ordinance as:

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

Lowry v. City of Mankato, 231 Minn. 108, 42 N.W.2d 553 (Minn. 1950).

Village of St. Louis Park v. Casey, 218 Minn. 394, 16 N.W.2d 459 (Minn. 1944).

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

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

When a court is called upon to resolve a controversy over an undefined or ambiguous word or phrase in a city ordinance, the court may not always interpret the ordinance in the manner the city would prefer. The court may, but is not required, to give deference to the city's interpretation of the ordinance.

In interpreting zoning ordinances, the court will attempt to find the plain and ordinary meaning of the terms. The court will interpret any doubtful language against the city and in favor of the landowner.

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

Only in limited circumstances, where the language is so ambiguous on its face that a plain meaning cannot be understood, will the court consider evidence of the city's intent in drafting the ordinance.

Sample Definitions Section.

The best way to avoid the time and expense of a lawsuit over basic terms in a zoning ordinance is clear drafting from the outset. A definition section is essential to any zoning ordinance. Terms and concepts that may be reasonably subject to more than one interpretation should be explicitly defined in this section.

C. Drafting a legally defensible zoning ordinance

In drafting a zoning ordinance, cities must also draft an ordinance that conforms to the requirements of state and federal law. In addition, cities must draft ordinances that are consistent with state and federal court rulings.

1. The Municipal Planning Act

Cities have a wide range of discretion in developing a zoning ordinance. City zoning requirements can range from very complex to minimal. However, all city zoning authority is granted to cities by and subject to the Municipal Planning Act. Ordinances may vary from city to city, but all must comply with both the substantive and procedural requirements contained in the Municipal Planning Act.

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757, (Minn. 1982). *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997).

Minn. Stat. §§ 462.351 - 462.365.

Minn. Stat. §§ 473.851 - 473.871.

Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002).

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

- Manufactured home parks
- Manufactured homes
- Existing *legal* nonconformities at the time of zoning ordinance adoption

Minn. Stat. § 462.357, subs. 1a, 1b.

Minn. Stat. § 462.357, subd. 1.

Minn. Stat. § 462.357, subd. 1e.

Minn. Stat. § 462.357, subd. 1g.

- Feedlots

Minn. Stat. § 462.357, subd. 1.

- Earth sheltered construction as defined by MN Stat. 216C.06

Minn. Stat. § 462.357, subd. 1.

- Relocated residential buildings

Minn. Stat. § 462.357, subd. 7.

- State licensed residential facilities or housing services registered under MN Stat. 144D serving six or fewer persons in single family residential districts

Minn. Stat. § 462.357, subd. 7.

- Licensed day care facilities serving 12 or fewer persons in single family residential districts

Minn. Stat. § 462.357, subd. 7.

- Group family day care facilities licensed under Minnesota Rules 9502.0315 to 9502.0445 to serve 14 or fewer children in single family residential districts

Minn. Stat. § 462.357, subd. 8.

- State licensed residential facilities serving 7-16 persons in multifamily residential districts

Minn. Stat. § 462.357, subd. 7.

- Licensed day care facilities serving 13-16 persons in multifamily residential districts

Minn. Stat. § 462.357, subd. 6.

- Solar energy systems

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).

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

2. Additional state law requirements

Cities must also draft their zoning ordinances to meet the requirements of state law outside of the Municipal Planning Act. The following is not a comprehensive list of state laws that effect city zoning, but discusses some of the most common limitations of city zoning authority.

a. Flood plains, shoreland and wild and scenic rivers

Some land is subject to special protection under state law because it contains important natural resources, such as lakes and rivers. Cities are generally required to adopt standards for development of these types of land areas that meet established state standards. Generally such ordinances are subject to the review of the State through the Commissioner of Natural Resources.

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

Minn. Stat. §§ 327.31 - 327.35. Minn. Stat. § 462.357, subd.1.

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

Minn. Stat. § 327.32, subd. 5.

b. Manufactured homes

No city zoning regulation may prohibit manufactured homes built in conformance with the manufactured home building code and which comply with all other zoning ordinances promulgated pursuant to state law.

Cities *can* apply architectural and aesthetic requirements to manufactured homes, but only if the same architectural and aesthetic requirements also apply to all other single-family homes in the zoning district, not just to manufactured homes.

c. Manufactured home parks

A manufactured home park must be allowed as a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Standards for granting the conditional use should be explicitly stated in the city ordinance.

Cities cannot enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home set back requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements, if any.

3. Federal law considerations: The Religious Land Use and Institutionalized Persons Act

42 U.S.C. § 2000cc.

See LMCIT Risk Management Memo *Zoning for Religion*.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 provides that no government entity shall impose or implement a land use regulation in a manner that puts a substantial burden on the religious exercise of a person, religious assembly or religious institution, unless the government can show the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. This means that a religious use may be, in some circumstances, exempted from city zoning requirements if the regulation substantially burdens the religious organization or person's exercise of religion.

RLUIPA also provides that no government may impose or implement a land use regulation in a manner that:

- Treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. For example, a zoning ordinance that allows community centers and fraternal organization centers in a particular district, but not a religious center (such as a church, mosque or synagogue), whose use would be strikingly similar to the other allowed uses.
- Discriminates against any assembly or institution on the basis of religion or religious denomination.
- Totally excludes religious assemblies from their jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

City of Woodinville v. Northshore United Church of Christ, 211 P.3d 406 (Wash. . 2009). *McGann v Inc. Vill. Of Old Westbury*, 719 N.Y.S.2d 803 (N.Y. Sup. 2000).

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

Williams Island Synagogue, Inc. v. City of Aventura, 358 F.Supp.2d 1207 (S.D. Fla. 2005). *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 326 F.Supp.2d 1140 (E.D. Cal. 2003). *Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F.Supp.2d 1203 (C.D. Cal. 2002). *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (C.A.7 (Ill.) 2003).

Since RLUIPA was adopted in 2000, numerous cases have been brought in federal court concerning the law's application to various city zoning requirements. However, federal courts in the 8th Circuit (which includes Minnesota) have not ruled on many RLUIPA cases. If a city has concerns about RLUIPA, the city should consult its attorney for specific guidance.

4. Federal law considerations: Telecommunications Act of 1996

The federal Telecommunications Act of 1996 influences local zoning regulation of wireless telecommunications towers and antennas. Under the Act, local governments may generally regulate the placement, construction, and modification of cell towers through zoning ordinances and land use regulations. However, local zoning regulations may not unreasonably discriminate among providers of functionally equivalent services. Local zoning regulations also may not prohibit or have the effect of prohibiting the provision of wireless services. Under the Act any decision to deny a request to place, construct or modify cell towers must be in writing and supported by substantial evidence in the written record. In addition, cities may not regulate the placement, construction or modification of cell towers on the basis of the environmental effects of radio frequency emissions to the extent they comply with the Federal Communication Commission's regulations. To avoid conflicts with federal law, the city should consult the city attorney before adopting zoning provisions that regulate telecommunication towers and antennas.

47 U.S.C. § 332(c)(7).

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

47 U.S.C. § 303 (v).

47 C.F.R. § 25.104.

5. Federal and state constitutional concerns

Zoning regulations limit the ability of landowners to use their property in any manner they wish. While both the state and federal constitutions provide protections to landowners from government seizures of land (takings), the courts have long upheld zoning regulations as a reasonable use of a government's police power to protect the health, safety and welfare of the public. However, there are still some federal and state constitutional restraints on city zoning authority.

Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114 (1926).
Kiges v. City of St. Paul, 240 Minn. 522, 62 N.W.2d 363 (Minn. 1953). *State ex rel. Berndt v. Iten*, 259 Minn. 77, 106 N.W.2d 366 (Minn. 1960).

State, by Rochester Ass'n of Neighborhoods v. City of Rochester 268 N.W.2d 885 (Minn. 1978). *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984).

The adoption or amendment of a zoning ordinance is considered a legislative decision of the city council. Courts normally give legislative decisions great deference and weight, but the court *will on occasion* set aside or intervene in city zoning decisions if two important constitutional restraints in the federal and state constitution are violated. First, the courts may overrule a city zoning decision, when it determines that a zoning ordinance is unsupported by any rational basis related to promoting public health, safety, morals, or general welfare. Usually, in these cases the court finds that the city's actions were arbitrary and/or capricious. Second, when a zoning ordinance denies the landowner practically all reasonable use of the land, resulting is a "taking" of the land without just compensation; the court may order the city to pay compensation to the affected landowner.

a. Legislative authority must be reasonable

Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162 (Minn. 2006). *State v. Northwestern Preparatory School*, 37 N.W.2d 370 (Minn. 1949). *County of Morrison v. Wheeler*, 722 N.W.2d 329 (Minn. Ct. App. 2006).

Under the federal and state constitution, zoning authority must be used in a manner that is reasonable and free from arbitrariness or discrimination. A city zoning decision is reasonable (not arbitrary), when it bears a reasonable relationship to the purpose of the zoning ordinance.

See Section VC, *Standards for reviewing zoning applications: limits on city discretion.*

State v. Northwestern Preparatory School, 37 N.W.2d 370 (Minn. 1949).

Zoning ordinances may be found to be unreasonable when they appear arbitrary. When a zoning classification treats similarly situated individuals differently, there must be rational reason for the unequal treatment that bears a relation to the purposes of the ordinance (protection of the health, safety and welfare of the public). If no such reasonable or rational justification can be found, the court may decide that the city has been arbitrary.

State v. Northwestern Preparatory School, 37 N.W.2d 370 (Minn. 1949).

For example, the Minnesota Supreme Court invalidated provisions of one zoning ordinance that allowed public schools, but not private schools, to be located in a residential zone. The court ruled, in that instance, that the ordinance was arbitrary, because "the distinction between the different kinds of schools, upon which the classification made in the ordinance rests, is not based upon alleged evils which it is claimed exist in the case of private schools and do not exist in the case of public or parochial schools." In the courts view two very similar entities (public and private schools) were being treated differently under the law. This difference was not reasonably related to protecting the health, safety and welfare of the public. As a result, the distinction was ruled to be arbitrary.

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

U. S. Const. Amend. V.

Minn. Const. art. I § 3.

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S. Ct. 158 U.S. 1922.

See House Research Memo, *Eminent Domain: Regulatory Takings*.

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

Both the U.S. Constitution and the Minnesota Constitution forbid taking private property for public use without just compensation. Zoning regulations may be considered “takings” if a regulation goes too far. This is generally termed a “regulatory taking.”

Generally, a zoning scheme will constitute a regulatory taking only if it denies a landowner all economically viable or beneficial use of property or, stated differently, all reasonable use of property. However, not all diminution of property values will be considered a taking. Zoning often has the side effect of increasing the value of some property while decreasing the value of other property. To be ruled a regulatory taking, the regulation must be so severe as to render the property practically useless for the purpose for which it is zoned. For example, a regulation that would prohibit a residence in a strictly residential zone. In these cases, the court will order the city to pay the affected landowner compensation for the land lost to the regulatory taking.

D. Obtaining technical assistance in ordinance drafting

LMCIT Land Use Loss Control Brochure.

The Municipal Planning Act grants cities the authority to hire staff, including professional planners and attorneys, to assist in the drafting of a zoning ordinance. Local city officials and staff often have in-depth knowledge regarding the community and its needs, but lack expertise in the many technical and legal aspects of zoning. Professional planners and the city attorney can contribute this needed information to the zoning ordinance adoption process and, while not required, are highly recommended. Because zoning is regulated by numerous diverse state and federal laws and court cases, at a minimum, the assistance of the city attorney is necessary to help the city evaluate whether its ordinance complies with all applicable laws. Assistance may also be obtained by contacting the LMCIT Land Use Services for zoning information and materials.

III. Common issues in ordinance drafting

Zoning ordinances can accomplish a great deal of good for a community. Drafting a zoning ordinance seemingly opens up many possibilities for dealing with concerns or even outright problems and challenges faced by a particular community. However, cities must be careful not to exceed their authority in drafting a city zoning ordinance. Below are some common concerns raised by cities in relation to an initial drafting of a zoning ordinance.

A. Establishing permitted and conditional uses

[Sample Permitted and Conditional Uses.](#)

See LMCIT risk management memo [Conditional Use Permits: Frequently Asked Questions.](#)

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

Conditional uses are also a form of authorized permitted use, provided that the applicant can meet the conditions specified in the ordinance. Uses specified as conditional are uses which are generally favorable and desired, but may also pose potential hazards that need to be mitigated (for example a gas station on a corner in a residential neighborhood). As a result of these potential hazards, council review is necessary.

It is important to stress that conditional uses, like permitted uses, *must* be allowed if the applicant can prove that the application meets all of the conditions and requirements of the city’s ordinance and will not be detrimental to the health, safety and welfare of the public. As a result, the list of conditional uses should only contain uses that the city is certain should be allowed once appropriate conditions are met.

B. Aesthetic zoning requirements

Aesthetic zoning seeks to create a pleasant appearance in a district or community. Advocates for aesthetic zoning assert that it confers a beneficial effect on property values and on the well-being of its residents. For example, many cities address a host of aesthetic concerns through “design standards” section(s) in their zoning ordinance. Design standards often specify the type of building materials (such as brick or stone) that should be used in that district.

Naegele Outdoor Advertising Co. of Minn. v. Village of Minnetonka, 162 N.W.2d 206 (Minn. 1968). *Pine County v. State, Dept. of Natural Resources*, 280 N.W.2d 625 (Minn. 1979).

Traditionally aesthetic zoning has been criticized as not adequately related to the protecting the health and safety of the public. However, the Minnesota Supreme Court has ruled that “mere fact that adoption of zoning ordinance reflects desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance.” Furthermore, the courts recognize that local city officials are in the best position to determine whether aesthetic regulations promote the community’s well-being. Generally, zoning ordinances that contain aesthetic regulations will be upheld if the council has made findings that they are reasonably tied to promoting a community’s health safety and welfare in addition to mere aesthetic concerns.

C. Performance standards

[Sample Performance Standards Section.](#)

Performance standards are a common feature of zoning ordinances. Typically, the performance standard section of the ordinance sets forth regulations governing the uses within districts, such as noise, vibration, smoke, property maintenance (i.e. outdoor storage), parking, fencing and signage standards. Proposed uses that cannot meet the performance standards are not allowed in the district. Performance standards typically are adopted to apply to all districts. However, particular districts, such as industrial districts, may call for specific standards.

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

Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 (Minn. 2007). *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162 (Minn. 2006). *Pine County v. State, Dept. of Natural Resources*, 280 N.W.2d 625 (Minn. 1979).

The Minnesota Supreme Court has ruled that a municipality has legitimate interests in protecting open, green and recreational space for the public through comprehensive planning and zoning. City ordinances use a variety of methods to promote open space and green space. A common zoning tool is cluster zoning. Cluster zoning groups new homes onto part of the development parcel, so that the remainder can be preserved as unbuilt open space. However, it is important to note that zoning regulations (including regulations mandating green or open spaces) that deny an owner all practical use of their property may be considered a regulatory taking.

Minn. Stat. § 103F.335.

Minn. Stat. § 103F.221.

See Section VE1c *Applicability* for more information on regulatory takings.

E. Parking requirements

[Sample Parking Requirements.](#)

Cars are ubiquitous to American life and off-street parking requirements are a common feature of city zoning ordinances. Off-street parking requirements may reduce congestion on city streets, thereby improving safety and aesthetics.

Typically a city zoning ordinance will require a certain number of off-street parking space for each type of use. For example, an ordinance may require a landowner in a commercial district to provide four parking spaces per 1,000 sq ft of useable floor space. Many zoning ordinances find it helpful to use a table to illustrate the city's parking requirements.

F. Historic Preservation

[Minn. Stat. § 138.74.](#)

Historic preservation ordinances seek to protect and maintain buildings and sites of significance to history and pre-history, architecture and culture. Certain cities, which contain historic districts established by state statute, are specifically empowered by state law to create zoning regulations for their historic districts that:

- regulate the construction, alteration, demolition and use of structures within the district.
- prevent the construction of buildings of a character not in conformity with that of the historic district.
- allow the city to remove blighting influences, including signs, unsightly structures and debris, incompatible with the maintenance of the physical well-being of the district.
- allow the city “to adopt other measures as necessary to protect, preserve and perpetuate the district.”

[Minn. Stat. § 138.73.](#)

Currently there are 25 official historic districts designated by state law.

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

Cities that do not contain official historic districts, as designated by state law, may also preserve their historic properties and districts through local zoning ordinances. Often this is accomplished by establishing a standalone district or an overlay district with specific design standards. The Minnesota Supreme Court has upheld historic preservation ordinances as a reasonable use of the city's police powers to protect the health, safety and welfare of the public.

G. Zoning regulation of adult uses

See LMCIT risk management memo, [Strip Clubs: The Bare Essentials](#).

See LMC information memo, [Adult Use Packet](#) for more information and ordinance samples.

Adult uses typically refer to bookstores, theaters, bars, and other establishments where sexually explicit books, magazines and videos are sold or sexually explicit films or live performances are viewed. Cities can control the location of adult uses through zoning ordinances to reduce the negative secondary effects of adult uses.

Minn. Stat. § 617.242.
*Northshor
Experience, Inc. v.
City of Duluth, MN*
442 F.Supp.2d 713
(D. Minn. 2006).

A state law, enacted in 2006, requires that anyone intending to open an adult use business provide notice, 60 days in advance, to the city where the business will locate. The law includes numerous other provisions focused on regulation of adult uses businesses. The new law is the subject of an injunction issued by a federal district court; the court finds that questions about the law's constitutionality are valid and rules that the city may not enforce the new law. Until the constitutional questions regarding the new law are resolved, cities probably should not rely on it as the sole mechanism for regulating adult entertainment establishments.

Instead, cities may consider taking proactive measure to adopt local adult use regulations. However, adopting any regulations of adult uses is legally complex and the city attorney should be involved in the drafting of any adult use ordinances.

H. Restricting Feedlots

Minn. Stat. § 462.357,
subd. 1g.

Zoning ordinances that regulate feedlots must comply with certain procedures outlined in the Municipal Planning Act. When a city considers adopting a new or amended feedlot ordinance, it must notify the Minnesota Pollution Control Agency and commissioner of Agriculture at the beginning of the process.

A local zoning ordinance that requires a setback for new feedlots from existing residential areas must also require that new residential areas have the same setbacks from existing feedlots in agricultural districts. This requirement does not pertain to a new residence built to replace an existing residence. A city may grant a variance from this requirement.

At the request of the city council, the city must prepare a report on the economic effects from specific provisions in the feedlot ordinance. Assistance with the report, in the form of a template, is available from the commissioner of Agriculture, in cooperation with the Department of Employment and Economic Development. Upon completion, the report must be submitted to the commissioners of Employment and Economic Development and Agriculture along with the proposed ordinance.

I. Extra-territorial zoning and joint planning

1. Extra-territorial zoning

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

A city's zoning authority may be extended by ordinance to unincorporated territories within two miles of its boundaries, unless that area falls within another city, county or township that has adopted its own zoning regulations. Where zoning is extended, ordinances may be enforced in the same manner and to the same extent as within the city's corporate limits.

2. Joint planning

Minn. Stat. §
462.3585.

Joint planning may also assist cities in coordinating their land use efforts with neighboring townships. State statute authorizes the creation of a joint planning board, when requested by a resolution of a city, or county or town board.

The joint planning board exercises planning and land use control authority in the unincorporated area within two miles of the corporate limits of a city. Members of the board are appointed by each of the participating governmental units to equally represent the governmental units that comprise the board.

J. Zoning ordinances that limit competition or protect local business from being displaced by new business

Dobbins v. City of Los Angeles, 195 U.S. 223, 25 S. Ct. 18, 49 L. Ed. 169. *Pacific Palisades Assn. v. City of Huntington Beach*, 196 Cal. 211, 237 P. 538. *Charnofree Corp. v. City of Miami Beach (Fla.)*, 76 So.2d 665. State ex rel. *Killeen Realty Co. v. City of East Cleveland*, 108 Ohio App. 99, 153 N.E.2d 177. *Linden Methodist Episcopal Church v. City of Linden*, 113 N.J.L. 188, 173 A. 593.

A city's zoning authority is based upon its police power to protect the public's health, safety and welfare. Zoning to protect private economic interests is problematic, because it is not generally perceived to be related to the public's health and welfare. In general, the federal courts have ruled that cities should not adopt zoning regulations with the sole intent to protect enterprises from competition in a particular district or to create monopolies or to make certain areas subservient to others.

Cities may encounter this issue in the zoning drafting process, when specifying permitted and conditional uses for a district. More commonly, the issue will arise in the context of reviewing a particular zoning application. For example, a city may wish to not grant a CUP for a new bank in the city, because officials perceive that there are too many banks in an area or that the a new bank may put long-established businesses out of business. This type of economic favoritism is not permitted in zoning ordinance drafting or application.

IV. Zoning ordinance adoption and/or amendment

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

The Municipal Planning Act mandates a procedure for the adoption or amendment of zoning ordinances for both statutory and charter cities.

A. Public hearings and adoption

Minn. Stat. § 462.357, subd. 3. For information on conducting hearings, see LMCIT risk management memo *Public Hearings*.

A public hearing must be held by the council or the planning commission (if one exists) before the city adopts or amends a zoning ordinance.

1. Notice and hearing

Minn. Stat. § 462.357, subd. 3. See LMC information memo *Newspaper Publication*.

A notice of the time, place and purpose of the hearing must be published in the official newspaper of the municipality at least ten days prior to the day of the hearing.

If an amendment to a zoning ordinance involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least ten days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies. However, failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided that a genuine attempt to comply with this subdivision has been made.

Following the public hearing, the planning commission (if one exists) must review the proposed zoning ordinances and any comments from the public hearing, and make any appropriate and reasonable revisions. The planning commission must then present the zoning ordinance and any amendments in final draft form and a report to the council.

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

If there is no planning commission, the city council itself should review and address comments from the public hearing and make any appropriate and reasonable revisions. Zoning ordinances must be adopted by a majority vote of all of the members of the council. For example, this would mean three votes on a five member council. One Minnesota attorney general opinion has found that charter cities may not provide for different voting requirements in their city charter, because the Municipal Planning Act supersedes inconsistent charter provisions.

2. Publication

Minn. Stat. § 412.191, subd. 4.

Minn. Stat. § 331A.02.

Minn. Stat. § 331A.04.

See [Handbook, Chapter 7](#) for more information on publishing ordinances in summary form.

After adopting or amending a zoning ordinance, the council must publish or summarize it in the official newspaper.

V. Zoning ordinance administration

A. The 60-Day Rule

See [LMCIT risk management memo, The 60-Day Rule: Minnesota's Automatic Approval Statute](#).

Minn. Stat. § 15.99 .
Manco of Fairmont v. Town Bd. of Rock Dell Township, 583 N.W.2d 293 (Minn. Ct. App. 1998).

Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007).

Most importantly in administering a zoning ordinance, cities must remember that they generally have only 60 days to approve or deny a written request relating to zoning, including rezoning requests, conditional use permits, and variances. This requirement is known as the “60-Day Rule.”

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

1. Scope of the rule

Minn. Stat. § 15.99, subd. 1(c).

Minn. Stat. § 15.99, subd. 2(a).

Minn. Stat. § 462.358, subd. 3b.

Advantage Capital Mgmt. v. City of Northfield, 664 N.W.2d 421 (Minn. Ct. App. 2003).

The rule applies to a “request a related to zoning.” The courts have been rather expansive in their interpretation of the phrase “related to zoning,” and many requests affecting the use of land have been treated as subject to the law. The statute creates an exception for *subdivision and plat approvals*, since those processes are subject to their own timeframes. The Minnesota Court of Appeals has ruled that Minn. Stat. § 15.99 does not apply to building permits.

2. Applications

Minn. Stat. § 15.99, subd. 1(c).

A request must be submitted in writing on the city's application form, if one exists. A request not on the city's form must clearly identify on the first page the approval sought. The city may reject as incomplete a request not on the city's form, if the request does not include information required by the city. The request is also considered incomplete if it does not include the application fee.

Minn. Stat. § 15.99, subd. 3(a).

The 60-day time period does not begin to run if the city notifies the landowner *in writing* within 15 business days of receiving the application that the application is incomplete. The city must also state what information is missing.

Minn. Stat. § 15.99, subd. 3(c).

If a city grants an approval within 60 days of receiving a written request – and the city can document this - it meets the time limit even if that approval includes certain conditions the applicant must meet. Subsequently, if the applicant fails to meet the conditions, the approval may be revoked or rescinded. An applicant cannot use the revocation or rescission to claim the city did not meet the 60-day time limit.

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

When a zoning applicant materially amends their application, the 60-day period runs from the date of the written request for the amendment, not from the date of the original application. However, minor changes to a zoning request should not affect the running of the 60-day period.

3. Denials

Minn. Stat. § 15.99, subd. 2(a); *Johnson v Cook County*, No. A08-1501 (Minn. 2010) (unpublished decision).

If an agency or a city denies a request, it must give written reasons for its denial at the time it denies the request. When a multimember governing body such as a city council denies a request, it must state the reasons for denial on the record and provide the applicant with a written statement of the reasons for denial. The written statement of the reasons for denial must be consistent with reasons stated in the record at the time of denial. The written statement of reasons for denial must be provided to the applicant upon adoption.

Minn. Stat. § 15.99, subd. 2(c).

Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W. 2d 536 (Minn. 2007).

State statute provides that the failure of a motion to approve an application constitutes a denial, provided that those voting against the motion state on the record the reasons why they oppose the request. This situation usually occurs when a motion to approve fails because of a tie vote, or because the motion fails to get the required number of votes to pass.

Minn. Stat. § 15.99, subd. 2(b).

4. Extensions

Minn. Stat. § 15.99, subd. 3(f).

The law allows a city the opportunity to give itself an additional 60 days (up to a total of 120 days) to consider an application, if the city follows specific statutory requirements. In order to avail itself of an additional 60 days, the city must give the applicant:

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

American Tower, L.P. v. City of Grant, 636 N.W.2d 309 (Minn. 2001). *Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. Ct. App. 2002).

The courts have been particularly demanding on local governments with regard to this requirement and have required local governments to meet *each element* of the statute. An oral notice or an oral agreement to extend is insufficient. The reasons stated in the written notification should be *specific* in order to inform the individual applicant exactly why the process is being delayed. Needing more time to fully consider the application may be an adequate reason. As demonstrated in one Minnesota Supreme Court case, the written notification should not take the form of a blanket statement on the zoning application that the city will need the extension.

Minn. Stat. § 15.99, subd. 3(g).

An applicant may also request an extension of the time limit by written notice. If a city receives an applicant request for an extension, this should be thoroughly documented.

Minn. Stat. § 15.99, subd. 3(g).

Once the city has granted itself one 60 day extension, additional extensions must be negotiated with the applicant. A city can only go beyond 120 days if it gets the approval of the applicant. The city must initiate the request for additional time in writing and have the applicant agree to an extension in writing. The applicant may also ask for an additional extension by written request.

Minn. Stat. § 15.99, subd. 3(d), (e).

The 60-day time period is also extended if a state statute requires a process to occur before the city acts on the application if the process will make it impossible for the city to act within 60 days. The environmental review process is an example. If the city or state law requires the preparation of an environmental assessment worksheet (EAW) or an environmental impact statement (EIS) under the state Environmental Policy Act, the deadline is extended until 60 days after the environmental review process is completed. Likewise, if a proposed development requires state or federal approval in addition to city action, the 60-day period for city action is extended until 60 days after the required prior approval is granted from the state or federal entity.

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

Minn. Stat. § 15.99, subd. 2(a), (e).

On occasion, a local city zoning ordinance or charter may contain similar or conflicting time provisions. The 60-Day Rule generally supersedes those time limits and requirements.

See LMCIT risk management memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*.

Cities should adopt a procedure or set of procedures to ensure planning staff, the planning commission, and the city council follow the 60-Day Rule. City staff should develop a timetable, guidelines and forms (checklists for each application may be helpful) to ensure that no application is deemed approved because the city could not act fast enough to complete the review process.

B. Organizational structure for review of zoning applications

The pressures posed by the 60-Day Rule mandate that any city with a zoning ordinance have in place an efficient system of zoning administration. Generally, this system is composed of both staff and city officials, who ensure that zoning applications are reviewed and answered in a timely manner and that zoning ordinance provisions are enforced.

1. The zoning administrator

Typically, a city will have a staff person who acts as the “Zoning Administrator” who is the first point of contact with the public on zoning matters and provides and receives zoning application forms. Generally, this person will also perform a preliminary review of the application, refer the application to the Planning Commission (if one exists) or City Council for review and offer one or both bodies a staff report reviewing the adequacy of the application. Depending on the size of the city and the number of zoning applications the city typically receives, the position of zoning administrator may be a full-time position or a part-time position. In some cities, the city clerk simply bears the additional title of zoning administrator.

2. The planning commission

Cities may choose to establish planning commissions to assist in *zoning* administration, but are not required to do so. (However, if a city has adopted a comprehensive plan, a planning commission is mandatory). Usually, it is a good idea to create a planning commission, because city council officials have multiple budgeting, legislative and administrative duties that they must perform in addition to their land use responsibilities. Planning commissions, on the other hand, are usually composed of people who focus solely on zoning and development and, thus, can devote their full attention.

Planning commissions are created by ordinance or charter and may vary in size. City council members may be appointed to serve as commission members. Once formed, planning commissions, with city council consent, may adopt bylaws or their own rules of procedure. The city may provide the planning commission with staff, including legal counsel, as necessary.

In many cities all zoning applications for conditional use permits, rezoning and variances are submitted to the planning commission for review. If a planning commission exists, state law requires that the planning commission *must* review zoning ordinance amendments and amendments to the official map. With limited exceptions, the planning commission’s role in reviewing all types of zoning applications is generally advisory. The City Council usually gives the planning commission recommendations great weight in their considerations, but is not bound by them.

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

[Minn. Stat. § 462.354, subd. 1.](#)

[Minn. Stat. § 462.357, subd. 3.](#)

Minn. Stat. § 462.357, subd. 3.

The planning commission may hold required public hearings on behalf of the city council, such as a hearing for a zoning ordinance amendment.

3. Planning departments

Minn. Stat. § 462.354, subd. 2.

Cities may also form a planning department. In cities that chose this option, the planning commission becomes advisory to the planning department while the planning department takes on the role of advising city council.

4. The city council

Minn. Stat. § 462.3595.

In many cities the city council makes the final determination on all applications for rezoning, conditional use permits and interim use permits after consulting the zoning administrator, planning commission and City Attorney as needed. However, the Municipal Planning Act allows cities to delegate final decision making authority concerning conditional use permits to a “designated authority” (presumably the Planning Commission). The City Council cannot delegate its authority to grant rezoning applications and interim use permits.

5. Board of zoning adjustment and appeals

Minn. Stat. § 462.354, subd. 2. and 462.357, subd. 6.

State law requires all cities that have adopted a zoning ordinance to create a Board of Appeals and Adjustments. The Board of Appeals and Adjustment must be created by ordinance. The council may designate itself as the Board of Appeals and Adjustments, or appoint a separate board or the planning commission to serve the city in this capacity. If the board is a separate body, the council can provide in its ordinance that board decisions are:

- final and subject only to judicial review;
- final subject to appeal to the council and judicial review; or
- only advisory to the council, who will makes the final determination.

The board hears requests for variances from the zoning code and makes the determination to grant or deny the variance. In addition, the Board of Appeals and Adjustment hears requests for reconsideration of zoning applications (usually denials), where it is alleged there has been an error in the administration of the zoning ordinance.

Minn. Stat. § 462.354, subd. 2.

Minn. Stat. § 15.99.

The ordinance establishing the board must provide notice and time requirements for hearings before the board. All orders by the board are due within a reasonable time. Requests before the board are subject to the 60-day rule.

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

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

When drafting and adopting a zoning ordinance, cities have enormous discretion in choosing their language and specifying uses as permitted, prohibited or conditional in particular districts. When drafting and adopting a zoning ordinance, the city is said to be utilizing its legislative (or law-making) authority. When using its legislative authority, the only limits on the city's zoning authority are that action must be constitutional, rational and in some way related to protecting the health, safety and welfare of the public. This is known as the "rational basis standard" and is generally a very friendly standard for cities to meet.

For more information on applications for rezoning see [Section VC Standards for reviewing zoning applications: limits on city discretion](#).

The varying discretion available to cities in making zoning decisions has been described as following a pyramid diagram.

In contrast, when administering an existing zoning ordinance (for example when reviewing specific zoning applications for conditional use permits), the city's discretion is much more limited. Generally, when reviewing a zoning application (with the exception of rezoning applications), the city is no longer acting in its legislative capacity. When reviewing zoning applications, the city is said to be exercising a quasi-judicial function. Rather than legislating for the broad population as whole, the city is making a quasi-judicial (judge-like) determination about an individual zoning application regarding whether the application meets the standards of the city ordinance.

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

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

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

Northwestern College v. City of Arden Hills, 281 N.W.2d 865 (Minn. 1979).

In quasi-judicial situations, a reviewing court will closely scrutinize the city's decision, to determine whether they city has provided a legally and factually sufficient basis for denial of an application.

In quasi-judicial situations, due process and equal protection are the main reasons for the more stringent scrutiny. Due process and equal protection under the law demand that similar applicants must be treated uniformly by the city. The best process for insuring similar treatment among applicants is to establish standards in the ordinance and to provide that if standards are met, the zoning permit must be granted. An application may generally only be denied for failure to meet the standards in city ordinances.

A reviewing court will overrule a quasi-judicial city zoning decision if it determines that the decision was arbitrary (failed to treat equally situated applicants equally or failed to follow ordinance requirements).

1. Standard of review for re-zoning applications

An application for a rezoning is a request for an amendment to the zoning ordinance. When reviewing applications for re-zoning, the court has ruled that the city continues to act in a legislative capacity, even though the rezoning application may only relate to one specific parcel owned by one individual. The existing zoning ordinance is presumed to be constitutional, and an applicant is only entitled to a change if they can demonstrate that the existing zoning is unsupported by any rational basis related to the public health, safety and welfare.

2. Making a record of the basis for zoning decisions

The 60-Day Rule requires the city to provide reasons for its denial of a zoning request. These reasons for denial must be stated on the record. In addition, the city must provide the applicant with a written statement of the reasons for denial. The reasons for denial or approval, whether written or stated on the record are considered the city's "findings of fact" on the application if later court review of the city's decision is necessary.

Findings of fact are also essential to the zoning process, because they enable a reviewing court to sustain a city's zoning decisions. When a land use decision is challenged in court, the standard of review used by the court is very limited. The city's decision will be upheld if the *findings of fact* demonstrate a *rational and legally sufficient basis* for the decision that is not arbitrary or capricious.

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

See Section VC *Standards for reviewing zoning applications: limits on city discretion.*

Minn. Stat. § 15.99, subd. 2(a).

See Section VA *The 60-Day Rule.*

SuperAmerica Group, Inc. v City of Little Canada, 539 NW 2d 264 (Minn. Ct. App. 1995). *Swanson v City of Bloomington*, 421 NW 2d 307 (Minn. 1988). *Larson v Washington County*, 387 N.W.2d 902 (Minn. Ct. App 1986).

See also *Taking the Mystery Out of Findings of Fact*, and LMC information memo, *Findings of Fact: Elected Officials as Policymakers.*

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

See Sections V3c *Conditional use permits* and V3d *Requests for variances from the zoning ordinance*, for more information on the standards of review for conditional use permits and variances.

Findings of fact should state all of the relevant facts the city considered in making its decision on the zoning application. A fact is relevant if it proves or disproves that the application meets the legal standards of the city ordinance and state law for granting the zoning request. For example, applications for conditional use permits and variances are all subject to particular standards that are or should have been spelled out in city ordinances, or have been defined by state law or court decision. In evaluating any particular zoning request, the reviewing body should apply the relevant facts to the particular standards that govern the specific type of decisions being made. The basis for reviewing specific types of zoning applications is discussed more extensively later in this memo.

a. Neighborhood opposition

Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee, 226 N.W.2d 306 (Minn. 1975).

Certain zoning applications may generate vocal public opposition. Frequently, cities struggle with handling vocal neighborhood opposition in their findings of fact. However, general statements of public opposition should not be a finding of fact listed as a basis for denying a zoning application. Nor should the official record intimate that public opposition is the underlying basis for the city's findings of fact. If a zoning application meets the requirements of the ordinance, it must be granted, despite the disapproval of the neighbors.

Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee, 226 N.W.2d 306 (Minn. 1975).

However, this does not mean that all statements of the public must be disregarded. A significant part of the zoning process is generally the public hearing mandated by the Municipal Planning Act. The Municipal Planning Act requires that all parties interested in an application, including the applicant and neighbors, be granted an opportunity to speak and present their views on the application. While general statements of opposition may not be used as a finding of fact, statements made by the public that are concrete and factual relating to the public welfare are acceptable findings.

For example, a finding of fact should not be "public opposition to the project is strong." But a finding of fact can be, "numerous statements were made at the public hearing by neighbors in the vicinity of the project that streets in the area are already highly congested. The addition of a shopping mall would significantly increase congestion on streets that are at capacity." Where possible, findings of fact that refer to statements by the public should be corroborated by studies and/or expert testimony or opinions.

b. Conducting a public hearing

Public hearings are required prior to the city taking action on numerous types of zoning issues. A public hearing must be held for:

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

Minn. Stat. § 462.357, subd. 3.

Minn. Stat. § 462.3595, subd. 2.

Minn. Stat. § 462.357, subd. 3.

- Rezoning.

City ordinances may also require additional hearings for certain matters. Since variances are considered in the nature of a zoning amendment, some cities hold hearings for variance requests as well. As this is an unsettled area of law, please consult your city attorney on the practice of holding hearings for variances.

See [Sample Public Hearing Notice](#).

Notice of the hearing must be published in the official newspaper at least 10 days prior to the hearing, and notice must be mailed to property owners within a 350-foot radius of the land in question (including landowners within the 350 foot radius who may live outside the city).

Public hearings should include a complete disclosure of what is being proposed, and a fair and open assessment of the issues raised. A public hearing must include an opportunity for the general public and interested parties to hear and see all information and to ask questions, provide additional information, express support or opposition, or suggest modifications to the proposal.

For more information on conducting public hearings see LMCIT risk management memo, [Public Hearings](#).

Public hearings should be conducted with a goal of developing findings of fact to support the city’s decision to grant or deny a zoning application. As a result, it may be helpful for the city to provide the public with guidelines for the procedure of the hearing and to encourage the public to present only factual evidence for public consideration.

3. Review of specific types of zoning applications

Cities who have adopted a zoning ordinance need procedures to help them review the different types of zoning applications they receive. Cities typically receive applications for conditional use permits, interim uses, variances and requests for rezonings. As discussed above, all of these applications are subject to the 60-Day Rule. However, this is where the similarities among the review procedures for each type of application ends. Each type of application requires a different standard of review, because state law (and likely local ordinance as well) establishes specific requirements for granting each type of application.

a. Permitted uses

Cities may vary in their administrative procedures for handling permitted uses. For example, some cities will have their building inspector confirm that a use is permitted and meets all applicable zoning rules at the time a building permit is issued with no other formal action from the city. Other cities, that may not enforce the State Building Code, may require all landowners seeking to develop or build to apply for a formal zoning permit. The permit is issued to confirm that that the use is permitted and/or meets all other applicable zoning standards.

Chase v. City of Minneapolis, 401 N.W.2d 408 (Minn. 1981).

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

See [Section III-A Establishing permitted and conditional uses.](#)

See [Section VC Standards of reviewing zoning applications: limits on city discretion.](#)

Minn. Stat. § 462.357, subd. 6. *Sunrise Lake Ass'n v. Chisago County Bd. of Comm'rs*, 633 N.W.2d 59 (Minn. Ct. App. 2001).

See [Section VC3d Requests for variances from the zoning ordinance.](#)

Amoco Oil Co. v. City of Minneapolis, 395 N.W.2d 115 (Minn. Ct. App., 1986). *Zylka v. City of Crystal*, 167 N.W.2d 45 (Minn. 1969).

See [Sample resolution granting a CUP.](#)

See [Sample resolution denying a CUP.](#)

Regardless of the administrative procedures used, it is important to remember that a city may not impose additional conditions on a permitted use that fits the standards of city ordinance. Such actions are likely to be seen as arbitrary or denying the landowner equal protection and due process. Generally, a landowner is entitled to engage in the permitted use provided they have met all applicable requirements.

Cities should regularly review their permitted uses to be certain that the listed permitted uses fit current city needs and circumstances. Permitted uses that may have previously been standard (such as carriage houses in residential districts), may be inappropriate on a modern city, residential block. As time passes, permitted uses may need to be reclassified as prohibited uses or transformed into conditional uses, where conditions may be imposed to prevent any negative secondary effects.

b. Prohibited uses

Cities may receive applications requesting permission to engage in uses explicitly prohibited under the city's zoning ordinance. For example, a request to engage in industrial activities in a commercial zone. When a use is prohibited, the city cannot allow the use unless an amendment to the city's zoning ordinance is adopted in accordance with the procedures of the Municipal Planning Act. Cities are prohibited from granting variances or conditional use permits to engage in prohibited uses.

c. Conditional use permits

The concept of a conditional use permit (CUP) was created to give cities more flexibility in zoning ordinance administration. Generally, conditional uses are uses that are often too problematic to be permitted uses as of right in a district. However, since the use is still generally favorable or necessary, outright prohibition of the use is generally not practical or desired. A classic example of such a mixed positive/negative use is a gas station in a residential area. Conditional uses seek to strike a middle ground between outright, unchecked permissive establishment and complete prohibition. Conditional uses are uses that will be allowed if certain conditions (that minimize the problematic features of the use) are met.

Minn. Stat. §
462.3595.

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

Minn. Stat. §
462.3595.

Minn. Stat. §
462.3595, subd. 2.

*Schwardt v. County of
Watonwan*, 656
N.W.2d 383 (Minn.
2003). *Yang v. County
of Carver*, 660
N.W.2d 828 (Minn.
Ct. App. 2003).
*Citizens for a
Balanced City v.
Plymouth
Congregational
Church*, 672 N.W.2d
13 (Minn. Ct. App.
2003). *Trisko v. City
of Waite Park*, 566
N.W.2d 349 (Minn.
Ct. App. 1997).

Cities must specify conditional uses in a city ordinance. Generally, a list of conditional uses will be found alongside the permitted uses in a city ordinance. The ordinance must also establish what conditions or standards must be met to allow the conditional use. Ordinances that fail to establish standards for granting the listed conditional uses are problematic and potentially invalid.

The city *must* grant the CUP if the applicant satisfies all the conditions established in the ordinance.

A city may deny a CUP if the proposed use:

*Hubbard
Broadcasting, Inc. v.
City of Afton*, 323
N.W.2d 757 (Minn.
1982).

See Section IC *Role of
comprehensive
planning in zoning
ordinance adoption.*

*SuperAmerica Group,
Inc. v. City of Little
Canada*, 539 N.W.2d
264 (Minn. Ct. App.
1995).

In re Livingood, 594
N.W.2d 889 (Minn.
1999).

Minn. Stat. §
462.3595, subd. 4.

- Does not meet the specific standards or conditions established in the zoning ordinance;
- Is not consistent with the city's officially adopted comprehensive plan;
- Endangers or is not compatible with the health, safety and welfare of the public.

When a local government denies a landowner a CUP without sufficient evidence to support its decision, a court can order the issuance of the permit subject to reasonable conditions.

Once a CUP is granted, a certified copy of the CUP (including a detailed list of all applicable conditions) must be recorded with the county recorder or the registrar of titles, and must include a legal description of the land.

Northpoint Plaza v. City of Rochester, 465 N.W.2d 686 (Minn. 1991). *Snaza v. City of St Paul*, 548 F 3d 1178 (8th Cir. 2008).

Minn. Stat. § 462.3597.

A.G. Op. 59-A-32 (February 27, 1990).

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

CUPs are considered property interests that run with the land—that is, they pass from seller to buyer when the land is sold or transferred. For this reason, time restrictions on a CUP are potentially invalid. In one instance, however, the courts have supported the city’s decision to issue a time-limited CUP. If the city wishes to issue a time-limited CUP, the city attorney should be consulted.

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

d. Requests for variances from the zoning ordinance

Variances are an exception to rules laid out in a zoning ordinance. They are permitted departures from strict enforcement of the ordinance as applied to a particular piece of property if strict enforcement would cause the owner “practical difficulties.” Variances are generally related to physical standards (such as setbacks or height limits) and may not be used to allow a *use* that is prohibited in the particular zoning district. Essentially, variances allow the landowner to deviate from the rules that would otherwise apply.

The law provides that requests for variances are heard by the board of adjustment and appeals. In many communities, the planning commission serves this function. Generally, the board’s decision is subject to appeal to the city council. Under the statutory practical difficulties standard, a landowner is entitled to a variance if the facts satisfy the three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character.

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

The 2011 law changed the first factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling. The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. The 2011 law also provides that: “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan.”

See LMCIT risk management memo, [FAQs on Variances](#).

Minn. Stat. § 462.354, subd. 6.

See Section VB5 [Boards of Adjustment and Appeals](#).

Minn. Stat. § 462.357, subd. 6.

See also [LMC: 2011 Variance Legislation](#) for sample ordinance language.

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

See LMCIT risk management memo, [2011 Variance Legislation](#).

The practical difficulties factors are:

Krummenacher, v. City of Minnetonka, 783 N.W.2d 721 (Minn. 2010). *Rowell v. Board of Adjustment of the City of Moorhead*, 446 N.W.2d 917 (Minn.App.1989).

- The property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance.
- The landowner's situation is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone cannot create practical difficulties.
- The variance, if granted, will not alter the essential character of the locality. This factor generally contemplates whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

Myron v. City of Plymouth, 562 N.W.2d 21 (Minn. Ct. App. Apr. 15, 1997), aff'd, 581 N.W.2d 815 (Minn. 1998) overruled on other grounds by *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623 (Minn. 2007).

Variations are to be granted only if strict enforcement of a zoning ordinance causes practical difficulties. A landowner who purchased land knowing a variance would be necessary in order to make the property buildable is not barred from requesting a variance on the grounds the hardship was self-imposed.

City of Maplewood v. Valiukas, (Minn. Ct. App. Feb 11, 1997).

In granting a variance, the city may attach conditions, but the conditions must be directly related and bear a rough proportionality to the impact created by the variance. For example, if the variance reduces side yard setbacks, it may be reasonable to impose a condition of additional screening or landscaping to camouflage the structure built within the normal setback.

Mohler v. City of St. Louis Park, 643 N.W.2d 623 (Minn. Ct. App. 2002).

Broad discretion is permitted when denying a request for a variance, but there must be legally sufficient reasons for the denial. The board must make findings concerning the reasons for the denial or approval and the facts upon which the decision was based. The findings must adequately address the statutory requirements. Best practice suggests seeking specific legal advice from the city attorney before making decisions on requests for variances.

Nolan v. City of Eden Prairie, 610 N.W.2d 697 (Minn. Ct. App. 2000).

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

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

Stotts v. Wright County, 478 N.W.2d 802 (Minn. Ct. App. 1992).

Mohler v. City of St. Louis Park, 643 N.W.2d 623 (Minn. Ct. App. 2002).

Error by city staff in approving plans does not entitle a person to a variance. While the result might be harsh, a municipality cannot be estopped from correctly enforcing a zoning ordinance even if the property owner relies to his or her detriment on prior city action.

Minn. Stat. § 462.357, subd. 6.

Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minn. 2000).

As discussed above, the most common requests for variances relate to physical conditions on the property. For example, setbacks and height restrictions. On occasion a city may receive requests for variances related to *uses*. For example, a request to use the property for a landscaping business out of a home in a residential district. This is commonly known as a *use variance*.

A use variance may not be granted if the use is prohibited in a zoning district. This may occur when the local zoning ordinance specifically lists prohibited uses (such as industrial uses in a residential zone) or when a zoning ordinance lists permitted uses and states that all uses not specifically listed are considered prohibited.

Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minn. 2000).

A city *may* grant a use variance when a use is not prohibited in the zoning district. For example, the zoning ordinance is silent on the issue or when the use is explicitly allowed, but limited by another portion of the city ordinance. For example, when a permitted use cannot meet performance standards elsewhere in the ordinance (such as parking or screening). The requirements of unusual hardship and other statutory requirements still apply to use variances.

Minn. Stat. § 462.357, subd. 6(2).

Finally, state statute creates two use variances that a city may always choose (but is not required) to permit through a variance. State statute specifically empowers cities to grant use variances for solar energy systems where a variance is needed to overcome inadequate access to direct sunlight and for the temporary use of a single family residence as a two-family residence.

e. Requests for rezoning or zoning ordinance amendments

Minn. Stat. § 462.357.
Minn. Stat. § 462.358, subd. 2a.
Minn. Stat. § 15.99.

Cities have the authority to rezone (change a designation from residential to mixed commercial) or otherwise amend the zoning regulations governing a particular parcel of property (such as adding a permitted or conditional use). ***Note however, that rezoning is an amendment to the actual zoning ordinance and therefore all the procedures for amendments to the zoning ordinance apply.***

Minn. Stat. § 462.357, subd. 4.
See Part III, *The 60-day rule*.

Rezoning may be initiated by the planning commission, council, or a petition by an individual landowner. If a request for rezoning does not come from the planning commission, the matter must be referred to the planning commission for study and report. Care should be taken so that the 60-Day Rule discussed previously is not violated, resulting in an automatic granting of the rezoning.

Sun Oil Co. v. Village of New Hope, Minn. N.W.2d 256 (Minn. 1974).

Rezoning is a legislative act and needs only to be reasonable and have some rational basis relating to public health, safety, morals, or general welfare. A rezoning decision must be supported by findings of fact that indicate the city's rational basis for the rezone. If the city has followed a comprehensive planning process, the findings of fact should also indicate that the decision is consistent with the city's comprehensive plan.

i. Rezoning residential property

Minn. Stat. § 462.357, subd. 2.

When property is rezoned from residential to commercial or industrial, a two-thirds majority of *all members of the city council* is required. (This means there must be four affirmative votes on a five-member council, in most cases.) For other rezoning decisions, a simple majority vote of all members is all that is required.

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

The Minnesota attorney general has issued an opinion that charter cities may not alter this voting requirement in their charter. The purpose of state law is to provide a uniform set of procedures for city planning and such procedures apply to all cities, charter or statutory.

ii. Spot zoning

Amcon Corp. v. City of Eagan, 348 N.W.2d 66 (Minn., 1984).
Olsen v. City of Hopkins, 178 N.W.2d 719 (Minn. 1970).

The general rule is that property owners do not acquire any vested rights in the specific zoning of their parcel. Cities may exercise their legislative discretion to rezone property in furtherance of the public, health, safety and welfare. Cities should, however, avoid a type of rezoning known as "spot zoning."

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

Spot zoning usually involves the rezoning of a small parcel of land in a manner that:

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

- Is unsupported by any rational basis relating to promoting public welfare.
- Establishes a use classification inconsistent with surrounding uses and creates an island of nonconforming use within a larger zoned district (for example one lot where industrial uses are permitted in an otherwise residential zone).
- Dramatically reduces the value for uses specified in the zoning ordinance of either the rezoned plot or abutting property.

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

Spot zoning that results in a total destruction or substantial diminution of value of property may be considered a form of regulatory taking of private property without compensation. In these rare instances, a property owner may be entitled to compensation for damages related to a legislative rezoning.

D. Environmental review

See [Handbook, Chapter 16](#) for more information on environmental review.
[Minn. Stat. § 116D.](#)
[Minn. R. ch. 4410.](#)
[Minn. Stat. § 16D.02.](#)

Minnesota has adopted a comprehensive and detailed environmental review program to determine the significant environmental effects of private and governmental actions. The idea behind the program is that if governmental bodies require documents that identify the environmental consequences of a proposed development and those documents are available to the public, decision-makers can incorporate environmental protection into the proposed development. The law prohibits the issuance of permits or development prior to completion of necessary documents.

[Minn. Stat. § 15.99, subd. 3\(d\), \(e\).](#) [Minn. Stat. § 116D.](#) [Minn. R. ch. 4410.](#)
See [Section VA The 60-Day Rule.](#)

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

E. Fees and escrow

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

Proper zoning administration may require significant financial commitment from a city. However, a city may establish land use fees under the Municipal Planning Act sufficient to defray the costs incurred by the city in reviewing, investigating, and administering an application for an amendment to an official control, or an application for a permit or other approval required under the zoning ordinance.

Fees are required by law to be fair, reasonable, proportionate, and be linked to the actual cost of the service for which the fee is imposed. All cities are required to adopt management and accounting procedures to ensure fees are maintained and used only for the purpose for which they are collected. Upon request, a city must explain the basis of its fees.

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

If a dispute arises over a specific fee imposed by a city related to a specific application, the person aggrieved by the fee may appeal to district court provided the appeal is brought within 60 days after approval of the application and deposit of the fee into escrow. An approved application may proceed as if the fee had been paid, pending a decision on the appeal.

Minn. Stat. § 462.353, subd. 4(a).

Generally, cities must adopt fees by ordinance. However, there is a statutory exception to this general requirement. The exception authorizes cities that collect an annual cumulative total of \$5,000 or less of land use fees to simply refer to a fee schedule in the ordinance that governs the official control or permit. These cities are authorized to adopt a fee schedule by ordinance or by resolution, either annually or more frequently, after providing notice and holding a public hearing. Notice must be published at least 10 days before the public hearing. The exception also authorizes cities that collect an annual cumulative total in excess of \$5,000 of land use fees to adopt a fee schedule if they wish, but they may only do so by ordinance, after following the same notice and hearing procedures.

Minn. Stat. § 462.353, subd. 4(c).

January 1 is set by statute as the standard effective date for changes to fee ordinances, but a city may set a different effective date as long as the new fee ordinance does not apply to a project for which application for final approval was submitted before the ordinance was adopted.

Minn. Stat. § 326B.145.

Cities that collect over \$10,000 in fees annually must report annually to the Department of Labor and Industry all construction and development-related fees collected or face penalties. The report must include information on the number and valuation of the units for which fees were paid, the amount of building permit fees, plan review fees, administrative fees, engineering fees, infrastructure fees, other construction and development related fees, and the expenses associated with the municipal activities for which the fees were collected.

F. Updating and maintaining the city's zoning ordinance

The last, but perhaps most important topic to discuss in zoning administration is on-going maintenance of the zoning ordinance itself, both its actual text and maps. City zoning authority is created and regulated by statutes and court decisions. Both are changed or are amended frequently, making it imperative that cities remain abreast of current developments in the law and, with the assistance of legal counsel, amend their zoning ordinances accordingly.

Any city that has adopted a zoning ordinance should regularly review it to make sure it is consistent with current law. In addition, cities should also review their ordinances to make sure they are consistent with past staff and council interpretation and to make sure they are consistent with the city's comprehensive plan.

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

1. Interim Ordinances (Moratoria)

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

Adoption of a interim ordinance (more commonly known as a moratorium) may aid cities in the zoning ordinance amendment process, by allowing a city to study an issue without the pressure of time generated by pending applications. Cities may use a moratorium to protect the planning process, particularly when formal studies may be needed on a particular issue. Cities must follow the procedures established in state statute to initiate a moratorium.

a. Procedure for interim ordinance adoption

Minn. Stat. § 462.355, subd. 4(a).

Cities must initiate a moratorium by adopting an ordinance (interim ordinance). The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the city or a portion of the city for a period not to exceed one year from the effective date of the ordinance. An interim ordinance may only be adopted where the city:

- Is conducting studies on the issue.
- Has authorized a study to be conducted.
- Has held or scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or other official controls, including the zoning code, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.
- Has annexed new territory into the city for which plans or controls have not been adopted.

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted.

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

No notice or hearing is generally necessary before an interim ordinance is enacted. However, a public hearing must be held if the proposed interim ordinance regulates, restricts or prohibits livestock production (feedlots). In such case, the notice of the hearing must be published at least ten days prior to the hearing in a newspaper of general circulation in the city.

b. Procedure for interim ordinance extension

Minn. Stat. § 462.355, subd. 4(c).

An interim ordinance may be extended only in *limited* circumstances if the procedures of state statute are followed. An interim ordinance may be extended if the city holds a public hearing and adopts findings of fact stating that additional time is needed to:

Minn. Stat. § 462.355, subd. 4(c)(3).

- Complete and adopt a comprehensive plan in cities that did not have comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.

Minn. Stat. § 462.355, subd. 4(c) (1).

- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city’s official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd. 4(c) (2).

- Complete “any other process” required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd. 4(c).

- Review an area that is affected by a city’s master plan for a municipal airport. This allows for an additional period of 18 months.

The required public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing.

c. Applicability

Minn. Stat. § 462.355, subd. 4(c). *Semler Const., Inc. v. City of Hanover*, 667 N.W.2d 457 (Minn. App. 2003).

An interim ordinance or moratorium may not delay or prohibit a subdivision that has been given preliminary approval, nor extend the time for action under the 60-day rule with respect to any application filed prior to the effective date of the interim ordinance.

Woodbury Place Partners v. Woodbury, 492 N.W.2d 258 (Minn. Ct. App. 1993).

According to the Minnesota Court of Appeals, the use of an interim ordinance prohibiting or limiting use of land is generally not compensable if there is a valid purpose for the interim regulation. In evaluating whether an interim ordinance is a temporary taking in the nature of a regulatory taking, courts will look to the parcel as whole. There is no bright-line rule for regulatory takings; rather, they must be evaluated on a case-by-case basis.

Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency, 535 U.S. 302, 122 S. Ct. 1465 (2002).

VI. Zoning ordinance enforcement

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

The Municipal Planning Act authorizes cities to enforce their zoning ordinance through criminal penalties. In addition, civil remedies, such as an injunction, are available to cities to cure on-going violations. The Minnesota Attorney General has ruled that it is a general duty of a city to enforce its zoning ordinance and that a city cannot refuse to enforce zoning requirements by ignoring illegal land uses. In enforcing city ordinances, however, a city must be aware that certain landowners may have specific rights as existing non-conformities; if their non-conforming use pre-dated the city’s zoning regulation.

A. Legal nonconformities predating the adoption of the zoning ordinance

1. Legal nonconformities

Minn. Stat. § 462.357, subd. 1c.

Jake's, Ltd., Inc. v. City of Coates, 284 F.3d 884 (8th Cir. 2002).

Minn. Stat. § 462.357, subd. 1d.

Legal nonconformities are legal *uses, structures, or lots* that predate current zoning regulations and thus do not comply with the current zoning ordinance. In most cases, nonconformities cannot be amortized or phased out. A municipality must not enact, amend or enforce an ordinance that eliminates a use which use was lawful at the time of its inception. Similar protections do not exist for nonconformities that were not lawful, or prohibited by state law or city ordinance, at the time of their inception. This prohibition also does not apply to adults-only bookstores, adults-only theaters or similar adults-only businesses, as defined by ordinance. Nor does it prohibit a municipality from enforcing an ordinance providing for the prevention or abatement of nuisances, or eliminating a use determined to be a public nuisance.

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

Legal nonconformities are those uses, structures or lots that legally existed prior to the creation of the zoning district and, in recognition of the landowner's property rights, are allowed to continue even though they are now illegal. Besides being allowed to remain in effect, legal nonconformities also escape requirements subsequently enacted, such as setback requirements. The state statute on legal nonconformities supersedes any conflicting language in a zoning ordinance.

Minn. Stat. § 462.357, subd. 1e.

While legal nonconformities must be allowed to continue, a zoning ordinance may prohibit them from being expanded, extended or rebuilt in certain situations. However, nonconformities, including the lawful use or occupation of land or premises existing at the time of an amendment to the zoning ordinance, may be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion, unless:

- The nonconformity or occupancy is not used for a period of more than one year.
- Any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case a municipality may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property or bodies of water.

Minn. Stat. § 462.357, subd. 1e (c).

Cities can also regulate nonconforming uses and structures to maintain eligibility in the National Flood Insurance Program. State law specifically authorizes city regulation of nonconforming uses to mitigate potential flood damage or flood flow.

Minn. Stat. § 462.357,
subd. 1f.

Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy

2. Shoreland legal nonconformities

a. All shoreland lots

Minn. Stat. § 462.357
subd. 1e(2).

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

In addition, nonconforming shoreland lots *of record* in the office of the county recorder, on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width have additional state law protections.

The city *may* (but is not required to) allow this type of lot to be used as a building site if:

- All structure and septic system setback distance requirements can be met.
- A Type 1 sewage treatment system, consistent with Minn. R. ch. 7080, can be installed or the lot is connected to a public sewer.
- The impervious surface coverage does not exceed 25 percent of the lot.

Minn. R. ch. 7080.

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

- Stormwater runoff management.
- Reducing impervious surfaces.
- Increasing setbacks.
- Restoration of wetlands.
- Vegetative buffers.
- Sewage treatment and water supply capabilities.
- Other conservation-designed actions.

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

b. Contiguous lots without habitable residential dwellings

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

Minn. R. ch. 6120.

- The lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minn. R. ch. 6120.

Minn. R. ch. 7080.

- The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minn. R. ch. 7080, and local government controls.
- The lot's impervious surface coverage does not exceed 25 percent of each lot.
- The development of the lot is consistent with the city-adopted comprehensive plan (if any).

c. Contiguous lots with habitable residential dwellings

Two or more contiguous nonconforming shoreland lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a *habitable residential dwelling* at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minn. R. ch. 7080, or are connected to a public sewer.

Minn. Stat. § 115.55.
Minn. R. ch. 7080.

B. Violations of the zoning ordinance: criminal penalties

Minn. Stat. § 462.362.

Minn. Stat. § 169.89, subd. 2.

Minn. Stat. §§ 609.02, subds. 3, 4a. Minn. Stat. § 609.0332.

Minn. Stat. § 609.034.

See Handbook, Chapter 7 for information on prosecution responsibilities for violations of local ordinances.

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

C. Violations of the zoning ordinance: civil remedies

Minn. Stat. § 462.362.

City of Minneapolis v. F and R, Inc., 300

N.W.2d 2 (Minn.

1980). *Rockville Tp. v.*

Lang, 387 N.W.2d

200 (Minn. Ct. App.

1986). *Hall Nursery v.*

Chanhassen, 763 NW

2d 42 (Minn. Ct. App.

2009).

In many instances, criminal sanctions will not cure a zoning violation. Where the city desires removal of building or use that violates the zoning ordinance, civil remedies may be more effective than even repeated criminal fines. A city may enforce its zoning ordinance through requesting an injunction (a court order requiring someone to stop a particular activity or type of conduct) or other appropriate remedy from the court. These remedies can be used to compel owners to cease and desist illegal uses of their property or even to tear down structures that have been built in violation of the city's zoning ordinance

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

Minn. Stat.

§462.3595, subd. 3.

Where a conditional use permit has been issued, a city may have an additional method of compelling compliance with city zoning ordinances. Conditional use permits may be revoked if the permit holder violates the conditions of the permit. For example, if the permit requires installation of traffic calming measures, but the permit holder fails to do so.

Northpoint Plaza v.

City of Rochester, 465

N.W.2d 686 (Minn.

1991).

However, it is important to emphasize that conditional use permits, once granted, are a property right. A city seeking to revoke a conditional use permit should provide the permit holder with due process, an opportunity to be heard and respond to allegations, prior to permit revocation. Procedures for revocation should be established in the zoning ordinance.

VII. Conclusion: other land use controls available to cities

It is important to emphasize that zoning is merely *one* of the tools available to a city to assist in creating a well-planned, even thriving community. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs and official map in conjunction with its zoning ordinance to achieve its planning goals and assure the social, economic and cultural future of the community.

A. Subdivision ordinances

Municipalities have the authority to regulate subdivisions of land for many reasons including but not limited to encouraging orderly development and planning for necessities such as streets, parks and open spaces. Cities have the authority to adopt a subdivision ordinance setting out the standards, requirements and procedures to review, approve or disapprove an application to subdivide tracts of land in the city.

Cities have the authority to require, as part of the subdivision regulations, that a reasonable portion of buildable land in any proposed subdivision be dedicated to the public or preserved for public use as some or all of the following:

- Streets, roads.
- Sewers.
- Electric, gas, and water facilities.
- Stormwater drainage and holding areas or ponds and similar utilities and improvements.
- Parks, recreational facilities, playgrounds, trails.
- Wetlands.
- Open space.

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

Subdivision regulations may be as extensive as city zoning regulations. Subdivision regulations, in addition to the dedication requirements discussed above, may address:

- The size, location, grading and improvement of lots, structures, public areas, streets, roads, trails, walkways, curbs, gutters, water supply, storm and drainage, lighting, sewers, electricity, gas and other utilities.

Minn. Stat. § 462.358.
See LMC information memo, *Subdivision Guide for Cities*.
See Handbook, Chapter 14 for more information on city subdivision ordinances.

Minn. Stat. § 462.358, subd. 2b.

Minn. Stat. § 462.353, subd. 4.

Minn. Stat. § 462.353, subd. 4.

- The planning and design of sites.
- Access to solar energy.
- The protection and conservation of floodplains, shore lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features.
- Consistency of the subdivision with the official map (if one exists) and other local controls such as zoning and the comprehensive plan (if one exists).

Finally, subdivision regulations may require the installation of sewers, streets, electric, gas, drainage, water facilities and similar utilities and improvements.

1. Platting requirements

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

Minn. Stat. § 505.01, subd. 3(f).

Minn. Stat. § 462.358, subd. 3a. Minn. Stat. ch. 505.

All platting is governed by the state Platting Act at Minn. Stat. ch. 505. A plat is a scale drawing of one or more existing parcels of land that depicts the location and boundaries of lots, blocks, outlots, parks, and public ways and other data required by the Platting Act.

City subdivision regulations may require plats where any subdivision creates parcels, tracts, or lots. Cities *must* require plats if any subdivision creates five or more lots or parcels which are 2-1/2 acres or less in size. City subdivision regulations must not conflict with state platting laws but may address the same or additional subjects.

B. The official map

Minn. Stat. § 462.359.

Minn. Stat. § 462.357, subd. 1.

For more information on the official map see Handbook, Chapter 14.

Minn. Stat. § 462.359, subd. 3.

Cities have authority to adopt an official map. As a planning tool, official maps ensure that land the city needs for street widening, street extensions, future streets, local airports and other public purposes will be available at basic land prices by reserving these areas on a map. The official map is *not* the map adopted with the city's comprehensive plan or zoning code.

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

C. Safety and maintenance codes

In conjunction with the zoning requirements, cities may promote the city's development by enforcement of the State Building Code and local nuisance and/or property maintenance ordinances. All three types of regulation ensure that the structures allowed within zoning districts are well-maintained and safe for the public, by preventing and combating blight.

1. The State Building Code

State Building Code.

For more information on the State Building Code see [Handbook, Chapter 13](#).

The State Building Code is a series of standards and specifications related to the type of building materials, spacing and other dimensions of building materials and structures designed to establish minimum safeguards in the construction of buildings, to protect the general public and people who live and work in them from fire and other hazards.

Minn. Stat. § 326B.121.

The State Building Code is the standard that applies statewide for the construction, reconstruction, alteration, and repair of buildings and other structures of the type governed by the code. The State Building Code supersedes the building code of any municipality.

Minn. Stat. § 326B.121.

If, as of Jan. 1, 2008, a municipality has in effect an ordinance adopting the State Building Code, the municipality must continue to **administer and enforce** the State Building Code within its jurisdiction. The municipality is prohibited by state statute from repealing its ordinance adopting the State Building Code. However, this provision does not apply to cities that have a population of less than 2,500, according to the last federal census, and that are located outside of a metropolitan county. These cities may repeal an ordinance adopting the State Building Code and they are not required to administer and enforce the code (although the State Building Code will remain in effect). These cities may, however, opt to enforce and administer the State Building Code by adopting a local ordinance.

Minn. Stat. § 326B.121.

Minn. Stat. § 326B.121.

A city must not, by ordinance or through a development agreement, require building code provisions regulating components or systems of any structure that are different from any provision of the State Building Code. However, a city may, with the approval of the state building official, adopt an ordinance that is more restrictive than the State Building Code where geological conditions warrant a more restrictive ordinance.

Minn. Stat. § 326B.16.

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

Minn. Stat. § 326B.112.

Minn. Stat. § 326B.175.

2. Nuisance ordinances

Minn. Stat. § 412.221, subd. 23.

Minn. Stat. § 561.01.

See LMC information memo, *Public Nuisance*.

With or without zoning, cities may prevent and abate nuisances through the passage of a local ordinance that defines nuisances and provides for their regulation, prevention and/or abatement. Generally a “nuisance” is anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property.

3. Property maintenance ordinances

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

Cities may choose to deal with the specific nuisance posed by dilapidated buildings through the adoption of a property maintenance ordinance. Such ordinances typically establish standards for exterior maintenance related to painting, siding, roofing and broken windows. City property maintenance ordinances should be drafted and enforced in a manner that is consistent with the State Building Code. Property maintenance ordinances should generally not attempt to regulate construction issues already regulated by the State Building Code, because such regulation may be pre-empted.

4. Hazardous and Substandard Buildings Act

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

Cities that have not adopted a local ordinance regarding nuisances or property maintenance may still abate the public safety threat posed by dangerous dilapidated buildings through the Hazardous and Substandard Building Act in state statute. The Hazardous Buildings Act allows cities to order landowners to abate (through repair or razing) hazardous conditions on their property or to abate hazardous conditions itself and then seek compensation for the property owner.

D. City land acquisition

For more information on city acquisition of property see the LMC information memo, *Purchase and Sale of Real Property*.

Minn. Stat. § 282.01. *City of St Paul v State*, 754 NW 2d 386, (Minn. Ct. App. 2008).

Cities may also control development through the planned acquisition, development and potentially the resale of land by the city itself. Through purchase and acquisition programs cities can acquire the land they need for present and future public purposes such as parks, streets, public buildings, such as police and fire halls, and to reserve land for future residential and commercial development. Cities may also acquire land through the tax forfeiture process.



Meetings of City Councils

140B
August 2008

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Part I. Introduction

This memo discusses city council meetings. However, much of what is addressed may also apply to city boards, commissions, and other public bodies. Where the discussion is specific to statutory cities, home rule charter cities should consult their charters.

See Part III - *The open meeting law*.

The discussion on the open meeting law applies to all city councils, city boards, commissions, and other public bodies.

Part II. Meetings and hearings

A. Meetings

A meeting is a gathering of a quorum of public officials to discuss, decide or receive information on matters over which they have authority. The members of the public usually do not speak at a meeting, although some city councils will occasionally recognize a member of the audience.

1. Types of meetings

There are two different types of meetings:

Minn. Stat. §§ 412.191, subd. 2; 13D.04, subd. 1.

- **Regular meetings.** Regular meetings of a statutory city council are held at times established by council rules. A council will typically meet once a month on a particular day, although some councils may have regular meetings scheduled more frequently. Home rule charter cities should consult their charters and any council rules concerning the scheduling of regular meetings.
- **Special meetings.** Special meetings are meetings held at times or places that are different from the regularly scheduled meetings. These are often scheduled to deal with specific items that need to be addressed before the next regular meeting. Generally, any matter can be addressed at a special meeting that can be addressed at a regular meeting. There are different types of special meetings, such as emergency meetings and continued meetings, which are discussed in more detail in a later section of this memo.

See Part IV - A - *Who may call a meeting?*

See Part III-E-3-*Emergency meetings*; Part III-E-4-*Recessed or continued meetings*.

2. First meeting of the year

There is no date set by statute for the first meeting of the year. In most statutory cities, the date is set by an ordinance establishing rules of procedure for the council. A home rule charter city should consult both its charter and any procedural rules the council has adopted.

Minn. Stat. §§ 412.02, subd. 2; 645.44, subd. 5.

The term of office for new statutory city council members begins on the first Monday in January. The first meeting is usually held on or shortly after this date. In the meantime, all previously chosen and qualified council members shall serve until their successors qualify. The first day of a new term in a home rule charter city is generally set by the charter.

The following must be done at the first meeting of the year:

Minn. Stat. § 412.121.

- Appoint an acting mayor.

Minn. Stat. § 412.831.

- Select an official newspaper.

Minn. Stat. §§ 427.01-.02; 118A.02, subd. 1; 427.09.

- Select an official depository for city funds. (This must be done within 30 days of the start of the city's fiscal year.)

In addition, although not required by statute, many city councils will also do the following at the first meeting of the year:

- Review council's bylaws and make any needed changes.
- Assign committee duties to members.
- Approve official bonds that have been filed with the clerk.

Home rule charter cities may have additional requirements for their first meeting of the year in their charters.

B. Hearings

A public hearing is a meeting that is held where members of the public can express their opinions. The council is there to regulate the hearing and make sure that people who want to speak on the issue get the opportunity. The council does not deliberate or discuss matters during the public-hearing portion of this type of meeting; instead, it listens to the public. Once the public-comment period is finished, the council will often wrap up the meeting.

See Part III - E - Notice requirements.

In order to recess or continue a meeting of this sort, the council should not formally end the public-comment part of the hearing.

There are two types of hearings, those that are discretionary and those that are required by a specific statute, ordinance or charter provision.

1. Discretionary hearings

Many city councils will hold public hearings even when not legally required to do so. Generally, hearings of this type are for the purpose of allowing the public to comment on a specific issue. Such hearings can be helpful in raising concerns about an issue that the council may not have considered.

2. Required hearings

When a specific statute, ordinance or charter provision requires that the council hold a public hearing, the notice requirements must be followed carefully. Often there are special notice requirements that are more substantial than the notice that is needed for a simple special meeting. For example, hearings required for zoning-ordinance amendments and special assessments have special notice requirements.

See Minn. Stat. §§ 462.357, subd. 3; 429.031, subd. 1(a); 429.061, subd. 1.

Following are several of the more common matters that require public hearings:

Minn. Stat. § 412.851.

Minn. Stat. § 414.033, subd. 2b.

Minn. Stat. § 429.031, subd. 1.

Minn. Stat. § 429.061.

Minn. Stat. § 444.18, subd. 3.

Minn. Stat. § 469.003, subd. 2.

Minn. Stat. § 469.093, subd. 1.

Minn. Stat. § 469.065, subd. 2.

Minn. Stat. § 469.105, subd. 2.

Minn. Stat. § 469.107, subd. 2.

Minn. Stat. § 340A.602.

Minn. Stat. § 275.065, subd. 6.

Minn. Stat. § 462.357, subd. 3.

Minn. Stat. § 462.358, subd. 3b.

Minn. Stat. § 462.3595, subd. 2.

Minn. Stat. § 410.12, subd. 7.

- Street vacation.
- Annexation by ordinance.
- Local improvement projects that will be paid for with special assessments.
- When special assessments are made to property.
- Purchase and improvement of waterworks, sewers, drains, and storm sewers.
- Adoption of a housing redevelopment authority (HRA) resolution.
- Adoption of an economic development authority (EDA) enabling resolution.
- Sale of port authority land.
- Sale of EDA land.
- Increase of levy for an EDA.
- Continuation of a municipal liquor store after a net loss for two of three consecutive years.
- Truth-in-taxation.
- Adoption or amendment of a zoning ordinance.
- Subdivision applications.
- Granting of a conditional use permit.
- Adoption of a charter amendment by ordinance.

There are other situations that may require public hearings. Contact the League for further information if you are unsure about a particular situation.

Part III. The open meeting law

Minn. Stat. § 13D.01.

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:

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

- 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 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.

See Part III - E - *Notice requirements*; and Part V - B - *Required contents*.

The open meeting law also contains some specific notice and record-keeping requirements, which are discussed in detail in later sections of this document.

A. Groups to which the law applies

Minn. Stat. § 13D.01, subd. 1.

The open meeting law applies to all governing bodies of any school district, unorganized territory, county, city, town or other public body, and to any committee, sub-committee, board, department or commission of a public body.

Thus, the law applies to meetings of all city councils, planning commissions, advisory boards, firefighter relief associations, economic development authorities, and housing redevelopment authorities, among others.

Southern Minnesota Municipal Power Agency v. Boyne, 578 N.W.2d 362 (Minn. 1998).

The Minnesota Supreme Court has held, however, that the governing body of a municipal power agency, created under Minn. Stat. §§ 453.51-453.62, is not subject to the open meeting law because the Minnesota Legislature granted these agencies authority to conduct their affairs as private corporations.

B. What is a meeting?

There is no statutory definition of the term “meeting” for the purpose of the open meeting law. Minnesota courts have generally ruled that a meeting is a gathering of a quorum of public officials to discuss, decide or receive information on matters over which they have authority.

See Part III - I - *Common problems in applying the law*.

Because the term “meeting” has not been clearly defined, the issue of whether or not a meeting has been held must be decided on a case-by-case basis. Some examples of cases are discussed in further detail in a later section of this memo.

C. Gatherings to which the law applies

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

Minn. Stat. §§ 412.191, subd. 1; 645.08 (5).

The open meeting law applies to any gathering of a quorum or more of public officials where the members discuss, decide or receive information as a group on issues relating to the official business of the public body.

A “quorum” is a majority of the members of a statutory city council. A majority of the qualified members of any board or commission also constitutes a quorum. Home rule charter cities may have different quorum requirements in their charters.

Thus, the open meeting law would apply to any of the following types of gatherings:

- Regular and special meetings.
- Public hearings.
- Executive sessions.
- Work sessions.
- Retreats.

A.G. Op. 63-A-5 (June 13, 1957); Minn. Stat. § 13D.01, subd. 1.

See Part III - I - Common problems in applying the law.

D. Exceptions and the procedures to use them

Minn. Stat. § 13D.01, subd. 3.

Minn. Stat. § 13D.05, subd. 1(d).

There are some exceptions to the open meeting law. Under certain circumstances, some meetings may be closed. There are also some meetings that must be closed. Before a meeting can be closed under any of the exceptions, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

1. Meetings that may be closed

The public body may choose to close certain meetings. The following types of meetings may be closed:

- **Meetings to consider strategies for labor negotiations under PELRA.** Although a meeting to consider strategies for labor negotiations may be closed, the actual negotiations must be done at an open meeting if a quorum of the council is present.

Minn. Stat. §§ 13D.03; 13D.01, subd. 3.

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the council must decide to close the meeting by a majority vote at a public meeting.
- ii. Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- iii. A written roll of all people present at the closed meeting must be available to the public after the closed meeting.
- iv. The meeting must be tape-recorded.
- v. The recording must be kept for two years after the contract is signed.
- vi. The recording becomes public after all labor agreements are signed by the city council for the current budget period.

If an action claiming that other public business was transacted at the closed meeting is brought during the time the tape is not public, the court will review the recording privately. If it finds no violation of the open meeting law, the action will be dismissed and the recording will be preserved in court records until it becomes available to the public. If the court determines there may have been a violation, the entire recording may be introduced at the trial. However, the court may issue appropriate protective orders requested by either party.

- ***Meetings to evaluate the performance of an individual subject to the public body's authority.***

*Minn. Stat. §§ 13D.05, subds. 3(a),
; 13D.01, subd. 3.*

Procedure. The following must be done to use this exception:

- i. The public body must identify the individual to be evaluated prior to closing the meeting.
- ii. The meeting must be open at the request of the individual who is the subject of the meeting, so some advance notice to the individual is needed in order to allow the individual to make an informed decision.
- iii. Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.
- iv. The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.
- v. At the next open meeting, the public body must summarize its conclusions regarding the evaluation. The council should be careful not to release private or confidential data in its summary.

Minn. Stat. § 13D.05, subd. 3(b).

*Prior Lake American v. Mader,
642 N.W.2d 729 (Minn. 2002).*

*Northwest Publications, Inc. v.
City of St. Paul, 435 N.W.2d 64
(Minn. Ct. App. 1989).*

- ***Attorney-client privilege.*** Meetings between the governing body and its attorney to discuss active, threatened, or pending litigation may be closed when the balancing of the purposes served by the attorney-client privilege against those served by the open meeting law dictates the need for absolute confidentiality. The need for absolute confidentiality should relate to litigation strategy, and will usually arise only after a substantive decision on the underlying matter has been made. This privilege may not be abused to suppress public observations of the decision-making process, and does not include situations where the council will be receiving general legal opinions and advice on the strengths and weaknesses of a proposed underlying action that may give rise to future litigation.

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed. The council should also describe how a balancing of the purposes of the attorney-client privilege against the purposes of the open meeting law demonstrates the need for absolute confidentiality.
- ii. The council must actually communicate with its attorney at the meeting.

*Minn. Stat. § 13D.01, subd. 3; See
The Free Press v. County of Blue
Earth, 677 N.W.2d 471 (Minn. Ct.
App. 2004) (holding that a
statement that a meeting was being
closed under the attorney-client
privilege to discuss "pending
litigation" did not satisfy the
requirement to "describe the
subject to be discussed" at the
closed meeting).*

Minn. Stat. § 13D.05, subd. 3(c).

- **Purchase or sale of property.** A public body may close a meeting to: determine the asking price for real or personal property to be sold by the public body; review confidential or nonpublic appraisal data; develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Minn. Stat. § 13D.05, subd. 3(c).

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting, describe the subject to be discussed, and identify the particular property that is the subject of the meeting.
- ii. The meeting must be tape-recorded and the property must be identified on the tape. The recording must be preserved for eight years, and must be made available to the public after all property discussed at the meeting has been purchased or sold or after the public body has abandoned the purchase or sale.
- iii. A list of council members and all other persons present at the closed meeting must be made available to the public after the closed meeting.
- iv. The actual purchase or sale of the property must be approved at an open meeting, and the purchase or sale price is public data.

Minn. Stat. § 13D.05, subd. 3(d).

- **Security Briefings.** A meeting may be closed to receive security briefing and reports, to discuss issues related to security systems, to discuss emergency-response procedures and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities— if disclosure of the information would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed, and all related financial decisions must be made at an open meeting.

Minn. Stat. § 13D.05, subd. 3(d).

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the public body must state on the record the specific grounds for closing the meeting and describe the subject to be discussed. When describing the subject to be discussed, the public body must refer to the facilities, systems, procedures, services or infrastructure to be considered during the closed meeting.
- ii. The closed meeting must be tape-recorded, and the recording must be preserved for at least four years.

2. Meetings that must be closed

There are some meetings that the law requires to be closed. The following meetings must be closed:

Minn. Stat. §§ 13D.05, subd. 2(b); 13.43, subd. 2(4).

- ***Meetings for preliminary consideration of allegations or charges against an individual subject to the public body's authority.*** While the law permits the council to announce that it is closing a meeting to consider charges against an individual, it is still the best practice not to refer to that individual by name. The council should state only that it is closing the meeting to give preliminary consideration to allegations against someone subject to its authority. However, if someone requests the name of the employee who is the subject of the closed meeting, the name will probably have to be furnished since the existence and status of any complaints against an employee are public data.

Minn. Stat. §§ 13D.01, subd. 3; 13D.05, subds. 1.

Procedure. The following must be done to use this exception:

- i. Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed.
- ii. The meeting must be open at the request of the individual who is the subject of the meeting. Thus, the individual should be given advance notice of the existence and nature of the charges against him or her, so that the individual can make an informed decision.
- iii. The meeting must be electronically recorded and the recording must be preserved for at least three years after the meeting.
- iv. If the public body decides that discipline of any nature may be warranted regarding the specific charges, further meetings must be open.

(Note: There is a special provision dealing with allegations of law enforcement personnel misconduct; see next discussion under ii.)

Minn. Stat. § 13D.05, subd. 2(a).

- **Portions of meetings at which any of the following data is discussed:**
 - i. Data that would identify alleged victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
 - ii. Internal affairs data relating to allegations of law enforcement personnel misconduct or active law enforcement investigative data.
 - iii. Educational data, health data, medical data, welfare data or mental health data that are not-public data.
 - iv. An individual's medical records governed by sections §§ 144.291 to 144.298.

Minn. Stat. §§ 144.291-144.298.

Minn. Stat. §§ 13D.01, subd. 3; 13D.05, subds.1.

Procedure. Before closing the meeting, the council must state on the record the specific grounds for closing the meeting and describe the subject to be discussed. The meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

E. Notice requirements

Minn. Stat. § 13D.04.

Public notice must be given of all meetings of a public body. The notice requirements differ depending on the type of meeting.

Minn. Stat. § 13D.04, subd. 7.

However, if a person receives actual notice of a meeting at least 24 hours before the meeting, all notice requirements under the open meeting law are satisfied, regardless of the method of receipt.

Minn. Stat. § 412.191, subd. 2.

It should also be noted that statutory cities have some additional requirements for mailing notice to their council members regarding special meetings. There may also be additional notice requirements for home rule charter cities to consider. These cities should consult their charters for more information.

1. Regular meetings

Minn. Stat. § 13D.04, subd. 1.

A schedule of the regular meetings must be kept on file in the city office. If the city decides to hold a meeting at a different time or place, it must give the notice required for a special meeting.

Minn. Stat. §§ 13D.04; 412.191, subd. 2.

Cities must keep a schedule of the regular meetings of the council on file at the primary office of the council. This requirement can be complied with by posting the regular meeting schedule in a convenient public location.

2. Special meetings

Minn. Stat. § 13D.04, subd. 2.

A special meeting is a meeting that is held at a time or location different from that of a regular meeting.

Minn. Stat. § 13D.04, subd. 2;
Rupp v. Mayasich, 533 N.W.2d
893 (Minn. Ct. App. 1995).

A city must post written notice of a special meeting on its principal bulletin board or on the door of its meeting room if it does not have a bulletin board. If notice is posted on a bulletin board, the bulletin board must be located in a place that is reasonably accessible to the public. The notice must give the date, time, place, and purpose of the meeting. It must also be mailed to each individual who has filed a written request for notice of special meetings. As an alternative to posting the notice, the city can publish notice in the official newspaper at least three days before the meeting.

Minn. Stat. § 412.191, subd. 2.

In statutory cities, the clerk must mail notice of special meetings to all council members at least one day before the meeting.

Minn. Stat. §§ 645.15; 331A.08.

In calculating the number of days for providing notice, do not count the first day that the notice is given, but do count the last day. If the last day is a Saturday, Sunday or a legal holiday, that day is omitted from the calculation and the following day is considered the last day (unless, of course, it happens to be a Saturday, Sunday or legal holiday).

3. Emergency meetings

Minn. Stat. § 13D.04, subd. 3;
IPAD 06-027 (advising that the city council of Breezy Point had improperly held an emergency meeting to consider complaints against the city's building inspector); *Slippy v. Rach*, No. C5-06-3574 (9th Jud. Dist. June 8, 2007) (after the advisory opinion from the Dept. of Admin. was issued, the trial court held that the city council's decision to hold the emergency meeting complied with the open meeting law).

An "emergency meeting" is a special meeting called because of circumstances that, in the judgment of the public body, require immediate consideration by the public body. Posted or published notice of an emergency meeting is not required. However, the city must make a good faith effort to notify each news outlet that has filed a written request for notice. Notice must be given by telephone or any other method to notify members of the public body. The notice must include the subject of the meeting.

4. Recessed or continued meetings

Minn. Stat. § 13D.04, subd. 4.

No additional notice is needed for a recessed or continued meeting if all of the following criteria are met:

- The meeting is a recessed or continued session of a previous meeting.
- The time and place of the meeting was established during the previous meeting.
- The time and place of the meeting was recorded in the minutes of the previous meeting.

Minn. Stat. § 13D.04, subd. 5.

See Part III - D- Exceptions and the procedures to use them.

5. Closed meetings

The same notice requirements apply to closed meetings as to open meetings. Additionally, advance notice to an individual who will be the subject of such a meeting is needed under certain circumstances (such as to employees who are the subject of performance evaluations or disciplinary proceedings).

F. Written materials

Minn. Stat. § 13D.01, subd. 6.

At least one copy of the materials made available to the council 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.

G. Interactive television meetings

Minn. Stat. § 13D.02.

Meetings may be conducted using interactive television under certain circumstances. When a council meeting is conducted through interactive television, each council member participating in the meeting, wherever he or she is located, is considered present at the meeting for purposes of determining quorum and participation. A meeting may be conducted through interactive television if the following conditions are met:

- All members of the council participating in the meeting, wherever their physical location, can hear and see one another and also hear and see all discussion and testimony presented at any location at which at least one council member is present.
- Members of the public present at the council's regular meeting location can hear and see all discussion, testimony, and council votes.
- At least one member of the council is physically present at the regular meeting location.
- Each location at which a council member is present is open and accessible to the public.
- In addition to the notice required for the meeting, if it was not held through interactive television, the city must also post notice at the regular meeting site and at each of the sites from which a council member will be participating in the meeting.
- If interactive television is used to conduct a meeting, the council must allow a person, to the extent practical, to monitor the meeting electronically from a remote location. The council may require the person to pay for the documented marginal costs that the city incurs as a result of the additional connection.

H. Telephone or electronic meetings

Minn. Stat. § 13D.021, subd. 1.

Meetings may be conducted by telephone or other electronic means as long as the following conditions are met:

See *Minn. Stat. ch. 12.*

- The presiding officer, chief legal counsel or chief administrative officer for the affected governing body determines that an in-person meeting or a meeting conducted through interactive television is not practical or prudent because of a health pandemic or an emergency declared under chapter 12 of the Minnesota Statutes.
- All members of the body participating in the meeting can hear one another and can hear all discussion and testimony.
- Members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration.
- At least one member of the governing body, chief legal counsel or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration.
- All votes are conducted by roll call so that each member's vote on each issue can be identified and recorded.

Minn. Stat. § 13D.021, subd. 2.

Each member of the body participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Minn. Stat. § 13D.021, subd. 3.

If telephone or another electronic means is used to conduct a meeting, to the extent practical, the body shall allow a person to monitor the meeting electronically from a remote location. The body may require the person making a connection to pay for the documented additional cost the body incurs as a result of the additional connection

*Minn. Stat. § 13D.021, subd. 4;
Minn. Stat. § 13D.04.*

If telephone or another electronic means is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and, if practical, of the option of connecting to the meeting remotely. The timing and method of providing notice is the same as other regular, special or emergency meetings held under the open meeting law.

I. Common problems in applying the law

There are many situations for which the open meeting law is unclear. This section provides an overview of some of the more common situations and how the law may be applied.

1. Data practices

Minn. Stat. § 13D.05, subds. 1(a), 2(a).

Generally, meetings may not be closed to discuss data that is not public. However, the public body must close any part of a meeting at which certain types of not-public data are discussed (such as active law enforcement investigative data, police internal affairs data, medical records data, and certain victim, health, medical or welfare data).

Minn. Stat. §§ 13D.05, subd. 2(a); 13.03, subd. 11.

If not-public data is discussed at an open meeting when the meeting is required to be closed, it is a violation of the open meeting law. Discussions of some types of not-public data may also be a violation of the Minnesota Government Data Practices Act (MGDPA). However, not-public data may generally be discussed at an open meeting without liability or penalty if both of the following criteria are met:

Minn. Stat. § 13D.05, subd. 1(b).

- The disclosure relates to a matter within the scope of the council's authority.
- The disclosure is necessary to conduct the business or agenda item before the public body.

Minn. Stat. § 13D.05, subd. 1(c).

Data that is discussed at an open meeting retains its original classification under the MGDPA. However, a record of the meeting is public, regardless of the form. It is suggested that not-public data that is discussed at an open meeting not be specifically detailed in the minutes.

2. Interviews

Channel 10, Inc. v. Indep. Sch. Dist. No. 709, 298 Minn. 306, 215 N.W.2d 814 (Minn. 1974).

See Part III - I - *Serial gatherings.*

The Minnesota Supreme Court has held that a school board must interview prospective employees for administrative positions in open sessions. The court said that the absence of a statutory exception indicated that the Legislature had decided that such sessions should not be closed. The reasoning would seem to apply to city council interviews of prospective officers and employees as well, if a quorum is present.

Mankato Free Press v. City of North Mankato, No. C1-96-100036 (Fifth Jud. Dist. 1996).

In 1996, a district court found that it was not a violation of the open meeting law for candidates to be serially interviewed by members of a city council in one-on-one closed interviews. In this case, five city council members were present in the same building but each was conducting separate interviews in five different rooms. Because there was no quorum present in any of the rooms, the court found there was no meeting. The decision, however, was appealed.

Mankato Free Press v. City of North Mankato, 563 N.W.2d 291 (Minn. Ct. App. 1997).

Mankato Free Press v. City of North Mankato, No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished decision).

In 1997, the Minnesota Court of Appeals reversed the district court's decision and remanded the case back to it for a factual determination on whether the city used the one-on-one interview process in order to avoid the requirements of the open meeting law. On remand, the district court found that the private interviews were not conducted for the purpose of avoiding public hearings. The case was again appealed. In an unpublished decision, the court of appeals agreed.

The implication of this decision appears to be that if serial meetings are held for the purpose of avoiding the requirements of the open meeting law, it will constitute a violation of the law. Cities that are considering holding private interviews with job applicants should first consult their city attorney.

3. Executive sessions

A.G. Op. 63-A-5 (June 13, 1957); See also *Minn. Stat. §13D.01, subd. 1(b)(4)*

The attorney general has advised that executive sessions of a city council must be open to the public.

4. Committees and liaisons

A.G. Op. 10-b (July 3, 1975).

The attorney general has advised that citizen advisory panels that are appointed by a governing body are also subject to the open meeting law.

Many city councils create committees to make recommendations to the council. Commonly, such committees will be responsible for researching a particular area and submitting a recommendation to the council for its approval. Such committees are usually advisory, and the council is still responsible for making the final decision.

A.G. Op. 63a-5 (Aug. 28, 1996).

Sovereign v. Dunn, 498 N.W.2d 62 (Minn. Ct. App. 1993); *IPAD 07-025*

City councils routinely appoint individual council members to act as liaisons between the council and particular committees. These types of meetings may also be subject to the open meeting law if the committee contains a quorum or more of the council or has decision-making authority. In addition, notice for a special council meeting may be needed if a quorum of the council will be present at the meeting and participating in the discussion.

Thuma v. Kroschel, 506 N.W.2d 14 (Minn. Ct. App. 1993); *A.G. Op. 63a-5 (Aug. 28, 1996)*.

For example, when a quorum of a city council attended a meeting of the city's planning commission, the Minnesota Court of Appeals ruled that there was a violation of the open meeting law, not because of the council members' attendance at the meeting, but because the council members conducted public business in conjunction with that meeting. Based on that decision, the attorney general has advised that mere attendance by additional council members at a meeting of a council committee held in compliance with the open meeting law would not constitute a special council meeting requiring separate notice. The attorney general warned, however, that the additional council members should not participate in committee discussions or deliberations absent a separate notice of a special city council meeting.

5. Chance or social gatherings

St. Cloud Newspapers, Inc. v. District 742 Cmty. Sch., 332 N.W.2d 1 (Minn. 1983).

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

Chance or social gatherings of a quorum are not considered meetings under the open meeting law and are therefore exempt from it. However, a quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a social gathering.

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757 (Minn. 1982).

In 1982, the Minnesota Supreme Court held that a conversation between two council members over lunch regarding an application for a special-use permit did not violate the open meeting law because a quorum was not present.

6. Serial gatherings

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

Also see Part III - I - *Interviews and Technology trouble*.

Mankato Free Press v. City of North Mankato, 563 N.W.2d 291 (Minn. Ct. App. 1997).

The Minnesota Supreme Court has noted that meetings of less than a quorum of the public body held serially to avoid public hearings or to fashion agreement on an issue may violate the open meeting law. In short, this type of situation is a circumvention of the statute. As such, council members should avoid this type of practice.

A 1997 Minnesota Court of Appeals' decision also indicates that serial meetings could violate the open meeting law. In this decision, the court looked at a situation where the members of a city council conducted individual interviews of candidates for a city position in separate rooms. Although the district court found that no meetings had occurred because there was never a quorum of the council present, the court of appeals remanded the decision back to the district court for a determination of whether the council members had used this interview process for the purpose of avoiding the requirements of the open meeting law.

Mankato Free Press v. City of North Mankato, No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished decision).

On remand, the district court found that the private interviews were not conducted for the purpose of avoiding the requirements of the open meeting law. This decision was also appealed, and the court of appeals, in a 1998 unpublished decision, agreed. A city that wants to hold private interviews with applicants for city employment should first consult with its city attorney.

7. Training sessions

A.G. Op. 63a-5 (Feb. 5, 1975).

The attorney general has advised that a city council's participation in a non-public training program devoted to developing skills is not covered by the open meeting law. However, the opinion also stated that if there were to be any discussions of city business by the attending members, either outside or during the training session, it could be seen as a violation of the open meeting law.

8. Technology trouble

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

See Part III - I - *Serial gatherings*.

The open meeting law does not address situations that may occur as a result of communication through telephone calls, letters, e-mail or similar technology. The Minnesota Supreme Court found that the open meeting law did not apply to letters or to telephone conversations between less than a quorum. While it is possible that a similar decision might be reached concerning the use of e-mail and other forms of technology, it should be stressed that if a quorum of members are involved in the communication, it would likely be considered to be a violation of the open meeting law.

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983).

See [Electronic Communications Between Council Members](#), LMCIT Information Memo.

In addition, serial discussions between less than a quorum of the council that are used to deliberate matters that should be dealt with at an open meeting would likely violate the open meeting law. Therefore, city councils and other groups to which the open meeting law applies should not use letters, telephone conversations, e-mail, and other such technology if the following circumstances exist:

- A quorum of the council is involved.
- Information relating to official city business is being discussed.

J. Intentional violations of the open meeting law

Minn. Stat. § 13D.06, subds. 1,4.

A public officer who intentionally violates the open meeting law can be fined up to \$300. This fine may not be paid by the public body. In addition, a court may also award reasonable costs, disbursements, and attorney fees up to \$13,000 to the person who brought the violation to court.

Minn. Stat. 13D.06, subd. 4.

If a plaintiff prevails in a lawsuit under the open meeting law, a court shall award reasonable attorney fees if the court determines the public body was the subject of a prior written advisory opinion from the commissioner of the Department of Administration, and the court finds that the opinion is directly related to the lawsuit and that the public body did not act in conformity with the opinion. A court is also required to give deference to the advisory opinion in a lawsuit brought to determine whether the open meeting law was violated.

Minn. Stat. § 13D.06, subd. 3.

Claude v. Collins, 518 N.W.2d 836 (Minn. 1994); *Brown v. Cannon Falls Township*, 723 N.W.2d 31 (Minn. Ct. App. 2006).

If a public official is found to have intentionally violated this chapter in three or more separate actions, the public official must be removed from office and may not serve in any other capacity with that public body for a period of time equal to the term of office the person was serving. However, removal is only required if the conduct constitutes malfeasance or nonfeasance.

Quast v. Knutson, 276 Minn. 340, 150 N.W.2d 199 (Minn. 1967).

The statute does not address whether actions taken at an improper meeting would be invalid. The Minnesota Supreme Court once held that an attempted school district consolidation was fatally defective when the initiating resolution was adopted at a meeting that was not open to the public.

Sullivan v. Credit River Township, 217 N.W.2d 502 (Minn. 1974); *In re D & A Truck Line, Inc.*, 524 N.W.2d 1 (Minn. Ct. App. 1994); *Lac Qui Parle-Yellow Bank Watershed Dist. v. Wollschlager*, No. C6-96-1023 (Minn. Ct. App. Nov. 12, 1996) (unpublished decision).

However, in more recent decisions, Minnesota courts have refused to invalidate actions taken at improperly closed meetings. In an unpublished decision, the court stated that “even a violation of the open meeting law will not invalidate actions taken at that meeting.”

Minn. Stat. § 13D.06, subd. 4(c).

A public body may pay any costs, disbursements or attorney fees incurred by or awarded against any of its members for an action under the open meeting law.

Part IV. Scheduling meetings

A. Who may call a council meeting?

Minn. Stat. § 412.191, subd. 2.

A special meeting may be called by the mayor of a statutory city. Additionally, a special meeting may be called by any two members of a five-member council or three members of a seven-member council. The special-meeting request should be in writing and be filed with the clerk.

Home rule charter city councils may have additional limitations and powers regarding special meetings in their charters.

B. When meetings may not be scheduled

City council meetings may not be held at any of the following times:

Minn. Stat. § 202A.19, subd. 1.

Minn. Stat. § 204C.03, subd. 1.

- After 6 p.m. on the evening of a major political party precinct caucus.
- Between 6 p.m. and 8 p.m. on a day when there is an election being held within the city’s boundaries.

Minn. Stat. § 645.44, subd. 5.

- On any legal holiday. (Note: Legal holidays include: New Year’s Day, Martin Luther King’s Birthday, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. However, political subdivisions have the option of determining whether Columbus Day and the Friday after Thanksgiving are holidays. If it is determined that Columbus Day and the day after Thanksgiving are not holidays, a meeting may be scheduled on these days.)

Home rule charter cities may have additional prohibitions in their charters as to when meetings may be scheduled.

Part V. Minutes

Minn. Stat. § 15.17.

Municipal officers must keep all records necessary to provide a full and accurate knowledge of their official activities.

A. Responsibility for taking minutes

Minn. Stat. § 412.151, subd. 1.

Whalen v. Minneapolis Special Sch. Dist. No. 1, 309 Minn. 292, 245 N.W.2d 440 (Minn. 1976).

A statutory city clerk must keep a minute book. Generally, he or she has wide discretion as to how to keep the minutes. A verbatim record of everything that was said is not normally required. However, in any case where the law or charter requires a verbatim record, using a tape recorder instead of a court reporter to accomplish that objective is probably valid.

B. Required contents

The following items must be included in the minutes:

Minn. Stat. §§ 13D.01, subd. 4; 331A.01, subd. 6; 15.17, subd. 1.

Minn. Stat. §§ 412.151, subd. 1; 412.191, subd. 3; 331A.01, subd. 6.

Minn. Stat. §§ 331A.01, subd. 6; 412.151, subd. 1; 412.191, subd. 3.

Minn. Stat. §§ 331A.01, subd. 6; 412.151, subd. 1.

Minn. Stat. §§ 331A.01, subd. 6; 412.191, subd. 3.

Minn. Stat. §§ 13D.01, subd. 4; 331A.01, subd. 6; 412.151, subd. 1; 412.191, subd. 3.

- The members of the public body who are present.
- The members who make or second motions.
- Roll call vote on motions.
- Subject matter of proposed resolutions or ordinances.
- Whether the resolutions or ordinances are defeated or adopted.
- The votes of each member, including the mayor.

Home rule charter cities may have additional requirements in their charters.

C. Other items that should be in the minutes

Swanson v. City of Bloomington,
421 N.W.2d 307 (Minn. 1988).

Dietz v. Dodge County, 487
N.W.2d 237 (Minn. 1992).

Although not generally required by statute, several court decisions suggest that including certain information in the minutes can help to defend a city's action should a lawsuit occur. The following types of data are examples of information that should be included in the minutes:

- ***Findings of fact.*** Case law requires them for land-use decisions and some personnel decisions.
- ***The council's conclusions.*** Case law requires them for land-use decisions and some personnel decisions.
- ***The specific reasons behind the council's conclusions.*** Examples would include such things as the economical, social, political or safety factors that were considered when the council made a particular decision.
- ***Signature of clerk and mayor.*** Because minutes would likely be considered official papers of the city, they should be signed by the clerk. And although the law does not require it, in many cities the mayor also signs the minutes after they are approved by the council.

Minn. Stat. § 412.151, subd. 1.

See “*Statement of Position Meeting Minutes*,” Office of the State Auditor.

The Office of the State Auditor has also recommended that meeting minutes include the following information in addition to the information required by state statute.

- Type of meeting (regular, special, emergency, etc.)
- Type of group meeting (city council, planning committee, etc.)
- Date and place the meeting was held.
- Time the meeting was called to order.
- Approval of minutes of the previous meeting, with any corrections.
- Identity of parties to whom contracts were awarded.
- Abstentions from voting due to a conflict and the member’s name and reason for abstention.
- Reasons the governing body awarded a particular contract to a bidder other than the lowest bidder.
- Granting of variances and special use permits.
- Approval of hourly rates paid for services provided, mileage rates, meal-reimbursement amounts, and per diem amounts.
- Listing of all bills allowed or approved for payment, noting the recipient, purpose and amount.
- List of all transfers of funds.
- Appointments of representatives to committees or outside organizations.
- Reports of the officers.
- Authorizations and directions to invest excess funds, information on investment redemptions and maturities.
- Time the meeting concluded.

D. Approval of minutes by council

Although it is not statutorily required, the council generally approves the minutes at the next council meeting. After the minutes have been approved, they become the official permanent record of the council meeting.

Problems sometime arise when someone requests a copy of the minutes before they have been approved by the council. The clerk must give out such information if someone requests it, but should make it clear that the minutes will not be officially approved until the next meeting.

Minn. Stat. § 412.191, subd. 3.

If the city publishes or mails the minutes, the council has two options. First, it may wait to publish them until after council approval. Second, the published minutes may include a notation that they are unofficial.

E. Publication

Minn. Stat. §§ 412.191, subd. 3
Minn. Stat. 331A.08, subd. 3.

A statutory city with a population of 1,000 or more must publish the council's official proceedings or a summary of them in its official newspaper within 30 days after every regular and special meeting. If the city council conducts regular meetings not more than once every 30 days, however, it need not publish the meeting minutes until 10 days after the council has approved them. A less expensive alternative is also available; instead of publishing the minutes, the city may mail a copy, at city expense, to any resident upon request. Statutory cities with a population of less than 1,000 are exempt from both of these requirements. Home rule charter cities should check their charters for any publication requirements.

If a statutory city chooses to publish a summary or condensed version of the official minutes, it must meet the following criteria:

Minn. Stat. § 331A.01, subd. 10.

- It must be written in a clear and coherent manner.
- It must avoid the use of technical or legal terms not generally familiar to the public.
- The publication must indicate it is only a summary.
- The publication must indicate the full text of the minutes is available for public inspection at a designated location.

Part VI. Holding meetings

A. Parliamentary procedure

Minn. Stat. § 412.191, subd. 2.

A statutory city council has the power to regulate its own procedure. Home rule charter cities may have similar provisions in their charters or the charter may spell out how meetings are to be conducted.

See Part VII - *Table of motions* and
Part VIII - *Model bylaws*.

Procedural rules are usually provided for in the rules or bylaws adopted by the council. Adoption of council rules may be supplemented by the use of a standard work on parliamentary procedure, such as *Robert's Rules of Order*.

Because of the small size of most city councils, procedures at council meetings, particularly in discussions, tend to be quite informal and many cities prefer to keep things simple and use just the basic rules regarding motions and voting, rather than adopting a more complex set of procedures.

Whatever rules the council adopts, it should follow them. Although the council can vote to change or suspend its rules if the occasion calls for it, it is probably better to stick with the adopted rules except on rare occasions.

B. Preserving order

Minn. Stat. § 412.191, subd. 2.

A statutory city council is authorized to preserve order at its meetings. The mayor, as the presiding officer, is also vested with some authority to prevent disturbances.

While council meetings must be open to the public, no one who is noisy or unruly has a right to remain in the council chambers. When the council decides that a disorderly person should not remain in the meeting hall, the police may be called to execute the orders of the presiding officer or the council.

No matter how disorderly the meeting, it will still be a legal meeting and any action taken at it in proper form will be valid.

If the audience becomes so disorderly that it is impossible to carry on a meeting, the mayor has the right and duty to declare the council meeting adjourned to some other time (and place, if necessary). The members of the council can also move for adjournment.

If the mayor is not conducting the meeting in an orderly fashion, there is relatively little the other council members can do to control the action of the presiding officer. However, a majority of the council can force adjournment whenever they feel it is necessary.

Minn. Stat. § 609.72, subd. 1(2).

State v. Guy, 242 N.W.2d 864 (Neb. 1976).

A person who disturbs a lawfully-held public meeting may be guilty of disorderly conduct. Any conduct that disturbs or interrupts the orderly progress of council proceedings is a disturbance that may be prevented, or punished if an ordinance violation is involved, without infringing on constitutional rights.

C. Participation in meetings

1. Mayor

Minn. Stat. § 412.191, subd. 1.

The mayor of a statutory city is a member of the council, and has the same right to vote and make and second motions at meetings as the other council members.

Minn. Stat. §§ 412.191, subd. 2; 412.121.

The mayor is the presiding officer of the meeting. In the absence of the mayor, the acting mayor must perform the duties of the mayor. The acting mayor is chosen at the first meeting of each year.

In some charter cities, the mayor might abstain from voting or participating unless there is a deadlock. This practice can help to preserve the neutrality of the chair of the meeting. However, counting votes at a meeting where a member abstains can sometimes be tricky.

In some charter cities the mayor has veto power. Charter cities should consult their charters for more information.

2. Clerk

Minn. Stat. § 412.191, subd. 1.

In a Standard Plan statutory city, the clerk is an elected member of the council. As such, he or she has the same voting powers and other privileges as do the other council members. Like the mayor, the clerk in a Standard Plan city is able to make and second motions.

In Plan A or Plan B statutory cities, the clerk is not a member of the council, and therefore, cannot vote or participate in council proceedings. Again, home rule charter cities may have different provisions in their charters.

3. City managers

Minn. Stat. § 412.651, subd. 5.

In a Plan B city, the city manager must attend all council meetings. He or she has the right to take part in the discussions, but not to vote. The council has the power to exclude the city manager from any meeting at which the manager's removal is considered.

4. Council members with disqualifying interests

See [Official Conflict of Interest](#), LMC Information Memo, May 2004 for more information.

Sometimes, a council member may have a personal interest in a matter that the council must address, like licenses, zoning matters, special assessments or actual contracts. If it is determined that an individual council member has such an interest, the individual might be disqualified from participating in the decision.

Minn. Stat. § 471.88.

Lenz v. Coon Creek Watershed Dist., 278 Minn. 1, 153 N.W.2d 209 (Minn. 1967).

Under some circumstances, state statutes require that the interested council member abstain from voting. Under other circumstances, the law is less clear. However, a Minnesota Supreme Court decision suggests that an officer with a disqualifying interest should abstain from voting even when not expressly required under the statutes.

5. Audience participation

See Part II - *Meetings and hearings*.

Audience members are not normally able to take an active part in the council's discussion at a meeting. Only the council can make motions and vote at a council meeting. Audience members may not speak unless they have been recognized by the chair.

Many city councils have scheduled a portion of their meeting for public comment. These are often referred to as "open forums." During this part of the meeting, the chair of the council will recognize members of the audience to speak briefly on topics that concern them.

If a large number of audience members wish to speak, the meeting may not progress efficiently. Likewise, if one person spends a long time expressing his or her view, others may not get the opportunity to present their views. The following sections discuss ways to address some of these problems.

(1) Limiting time

Some councils have addressed this problem by placing a limit on the amount of time audience members are allowed to speak at a meeting. For example, the council may ask people to limit their remarks to no more than three minutes or allow only a specified number of people to speak.

A number of cities have established rules or guidelines that citizens must follow when speaking at a meeting. Often, the speaker must notify the city at least one day in advance so that he or she can be put on the agenda. At the time that the person notifies the city of his or her desire to speak at the meeting, he or she is given a copy of the “rules of conduct,” which lists the time limit for speaking and any other city limitations. This gives the person time to plan his or her speech so it fits within the time limit. The mayor then reminds the speaker of the time limit before the speaker begins to speak. Some cities will have a clock visible to the speakers so they can see when their time for speaking is over.

(2) Limiting topic

Another option may be to limit the scope of comments to those matters being addressed by the council at the specific meeting. While this may be a way to focus the meeting on the matters being addressed by the council, it might also keep people from making the council aware of any new issues. Cities considering this approach might need to allow for other ways for people to bring up other topics.

Some cities will establish general rules outlining when citizens may speak at council meetings. Often these guidelines will require that the topic be identified in writing a few days before the actual meeting. The specific topic and the speaker’s name are then put on the agenda. Such procedures are helpful in allowing the council to plan an efficient meeting and to prepare a response to the issue (if needed). It also helps to remind the speaker that he or she may only address those issues on the agenda.

6. Voting

Minn. Stat. § 13D.01, subd. 4.

City councils meet to discuss matters relating to city business and to make decisions for the city. When a matter is brought to a vote, the votes must be recorded in the minutes. The vote of each individual council member (including the mayor) must also be recorded on each appropriation of money, except for the payment of judgments, claims, and amounts fixed by statute.

*A.G. Op. 471e (Sept. 18, 1962);
A.G. Op. 471e (Aug. 20, 1962).*

Because of this requirement, city councils may not vote by secret ballot on matters addressed at council meetings unless the vote can be taken in such a manner that would comply with the statute's requirement.

(1) Counting votes

For more information on counting votes see "Counting the Votes on Council Actions (*Part I* and *Part II*)," *Minnesota Cities* (May, June-July, 2006); and "*Voting Riddles*," *Minnesota Cities* (April 2007).

Most of the time, a city council acts by majority vote; however, sometimes a simple majority vote is not enough for a matter to pass. Depending upon the matter before the council, more votes may be needed. Likewise, a home rule charter city may have additional requirements in its charter.

i. Entire council is present

When the entire council is present and all members vote, it is generally simple to determine if a matter has passed.

*Minn. Stat. §§ 412.191, subd. 1;
645.08 (5).*

- ***Achieving a quorum.*** A majority of the members of a statutory city council shall constitute a quorum. Obviously, when all members are present, a quorum has been achieved.
- ***Motions and resolutions.*** A majority of the quorum is needed to pass most motions and resolutions. Since most statutory cities have a five-member council, this means that three votes are normally needed if all members are present and voting. In a statutory city with a seven-member council, it would take at least four votes to pass most motions or resolutions.
- ***Most ordinances.*** A simple majority vote of an entire statutory city council is needed to pass most ordinances, regardless of the number of council members present. This means that three votes are needed to pass an ordinance in a city with a five-member council. In a statutory city with a seven-member council, four votes are needed to pass most ordinances. However, some ordinances require more than a simple majority vote.
- ***Situations where statutes require extraordinary votes.*** Several statutes require more than a simple majority to take certain kinds of actions. The following are some examples:

Minn. Stat. § 462.357, subd. 2.

Minn. Stat. § 462.355, subd. 3.

Minn. Stat. § 462.354, subd. 1.

Minn. Stat. § 462.356, subd. 2.

- Adoption or amendment of zoning ordinances that change existing zoning from residential to commercial or industrial.
- Adoption or amendment of comprehensive plans.
- Abolishment of a planning agency.
- Some capital improvements and acquisition or disposal of real property if the city has a comprehensive plan.

Minn. Stat. § 471.88.

See **Official Conflict of Interest**, LMC Information Memo, May 2004.

Minn. Stat. § 429.031, subds. 1, 2.

Minn. Stat. § 410.12, subds. 6, 7.

Minn. Stat. § 412.191, subd. 4.

Minn. Stat. § 412.501.

Minn. Stat. § 412.851.

Minn. Stat. § 412.221, subd. 16.

- Contracts that are allowed even though one of the officers has a personal financial interest. Generally, a council member may not have a financial interest in a city contract. However, the statutes allow certain exceptions to this rule. If such a contract is permitted under an exception, the statute requires that it be approved by unanimous vote of the council. In some cases, the interested officer must abstain from voting, but it is probably advisable for him or her to refrain from participating in the discussion and voting, regardless of whether the statute specifically requires it.
- Some local improvements that will be paid for with special assessments.
- Some types of charter amendments.
- Summary publication of ordinances in statutory cities.
- Abolishing or changing the size of a statutory city park board.
- Some street vacations.
- Abolishment of a hospital board.

Home rule charter cities may have other supermajority vote requirements in their charters.

ii. Vacancies

State v. Hoppe, 194 Minn. 186, 260 N.W. 215 (Minn. 1935) *A.G. Op. 63-b-14 (Jan. 14, 1970)* **Error! Bookmark not defined.**; *A.G. Op. 161-A-20 (July 3, 1974)*.

A vacancy temporarily reduces the size of the council; therefore, when there is a vacancy on a five-member council, the entire council consists of four people. For actions that require approval by a specified portion of the council, the required number of votes is calculated using the current number of seats that are filled.

Minn. Stat. §§ 412.191, subd. 1; 645.08(5).

- ***Achieving a quorum.*** Since a majority of a statutory city council is needed to achieve a quorum, a vacancy can affect the number of members that must be present in order to hold a meeting. One vacancy on a five-member council would not reduce the number of members needed to achieve a quorum (since both a majority of five and a majority of four is three). However, if there were two vacancies on a five-member council, the council would consist of three members and a majority of the council would be two members.
- ***Motions and resolutions.*** Since most motions and resolutions must be approved by a majority of those present at a meeting, a vacancy will have basically the same effect as an absence. A majority of those present must vote to approve in order for most motions and resolutions to pass.

- **Most ordinances.** Since most ordinances must be approved by a majority of the entire council, vacancies on the council can affect the number of votes needed to pass an ordinance. For example, if there were two vacancies on a five-member council, the entire council would consist of three members. In this case, a majority of the entire council would be two rather than three.

A.G. Op. 63a-11 (Oct. 20, 1966).

- **Situations where statutes require extraordinary votes.** If a statute or charter provision requires a specific number of votes (rather than a percentage of the council), the vacancy probably won't affect the required numbers of votes.

iii. Absences

Tracy Cement Tile Co. v. City of Tracy, 143 Minn. 415, 176 N.W. 189 (Minn. 1919).

A council member's absence from a meeting does not affect the number of votes needed if a statute requires an affirmative vote by a specified portion of the entire council.

Minn. Stat. §§ 412.191, subd. 1; 645.08(5).

- **Achieving a quorum.** Absences can certainly affect the ability of a city council to achieve a quorum, since a majority of a statutory city council is needed to achieve a quorum. For example, if one or two members of a five-member council are absent, the three remaining council members would constitute a quorum. However, if three members are absent, the remaining two members would not be able to hold a meeting because a quorum would not be present.

Jensen v. Indep. Consol. Sch. Dist. No. 85, 160 Minn. 233, 199 N.W. 911 (Minn. 1924); *A.G. Op. 471-M* (Oct. 30, 1986); *A.G. Op. 161-A-20* (June 3, 1987); *Minn. Stat. § 645.08(5).*

- **Motions and resolutions.** Since most motions and resolutions must be approved by a majority of those present in order to pass, an absence can affect the number of votes needed. The general rule is that if a quorum is present, a majority of the quorum can pass any action except those where a statute or charter provision requires a larger number. The fewer members present, the fewer needed to constitute a majority. For example, if two members of a five-member council are absent, the remaining three constitute a quorum. A 2-1 vote is sufficient to pass most motions at such a meeting. However, if all five members are present, at least three votes would be needed to pass the same motion.

Minn. Stat. § 412.191, subd. 4.

- **Most ordinances.** The absence of a council member from a meeting does not affect the number of votes needed if the statutes require that a specified portion of the entire council is needed to approve an action. For example, it takes a majority of the entire council to pass an ordinance in a statutory city. In most statutory cities, a majority is three votes. If one council member is absent, it would still take a majority of the entire council (or three votes) to pass the ordinance.
- **Situations where statutes require extraordinary votes.** The absence of a member will not affect the number of votes needed if a statute requires approval by a specific number of votes or a certain portion of the entire council.

iv. Abstentions

Sometimes a council member who is present at a meeting will choose not to vote on a matter before the council. In some home rule charter cities, a mayor might not vote unless there is a tie. If a council member or mayor does not vote, it is recorded in the minutes as an abstention. How the abstention should be considered can sometimes depend upon the reason for the member's abstention.

- **Achieving a quorum.** Whether or not a council member abstains would not appear to have an effect on whether or not a quorum exists, and the meeting may be held.

*A.G. Op. 161-A-20 (June 3, 1987);
A.G. Op. 471-M (Oct. 30, 1986).*

Motions and resolutions. Generally, a motion or resolution is passed if the majority of those voting vote in favor of it. It's not entirely clear, however, if a court would apply this rule to the extreme case where a quorum is present but because of abstentions the number of affirmative votes is less than a majority of the quorum. Again, it may depend upon the reason behind the abstention.

- **Most ordinances.** An abstention by one or more council members does not reduce the number of votes needed if a statute or charter provision specifies a certain number of votes. For example, in a statutory city with a five-member council, three affirmative votes are needed to pass most ordinances; two "yes" votes and three abstentions are not enough.

However, if the abstention is required because a council member is disqualified from voting (such as when one member has a personal interest in the matter being considered by the council), the abstention is treated like a vacancy. In this type of situation, the size of the council is temporarily reduced.

Ram Dev. Co. v. Shaw, 309 Minn. 139, 244 N.W.2d 110 (Minn. 1976).

- **Situations where statutes require extraordinary votes.** An abstention by one or more council members does not reduce the number of votes needed if the statutes require the affirmative vote of a specific number or proportion of the entire council. For example, in a case where a seven-member board attempted to pass a zoning amendment that required a two-thirds vote of its members, three members abstained and four voted in favor of the amendment. The court ruled that this vote was not sufficient to pass the ordinance.

1989 Street Improvement Program v. Denmark Township, 483 N.W.2d 508 (Minn. Ct. App. 1992).

Council members who have a disqualifying interest are generally excluded when counting the number of votes needed to approve an action by a supermajority vote. An example of such a situation was a local improvement project where two town board members owned property that was going to be assessed for the improvement. The court found it was proper for the two to abstain in this case, and that three affirmative votes were sufficient to meet the four-fifths majority vote requirement.

Although council members may be tempted to abstain from voting on a controversial matter, they should remember that the abstention will ultimately tend to pass or defeat the matter. The best advice is to avoid the kinds of problems that can arise from abstentions and vote, unless an abstention is required because a council member has a personal interest in the matter.

b. Long-distance voting

Minn. Stat. §§ 13D.02; 13D.021

Although the open meeting law permits meetings to be held by interactive television, and in the case of a health pandemic or an emergency, permits meetings to be held by telephone or other electronic means, the use of other types of technology have not yet been authorized.

i. Voting by proxy

Sometimes council members who are not able to be at a meeting want to vote on a matter that will be addressed at the meeting. State law does not permit a statutory city council member to vote by proxy. Home rule charter cities may find permission in their charters.

ii. Voting by phone

Minn. Stat. § 13D.021.

Likewise, unless there is a health pandemic or an emergency, state law does not authorize a council member to phone in his or her vote or participate in the meeting by conference call, or other electronic means.

7. Agendas

City clerks generally prepare agendas for council meetings. The agendas are then given to council members and other interested individuals such as department heads and citizens. The agenda establishes the order in which the matters are to be addressed during the meeting.

(1) Consent agenda

The consent agenda or consent calendar is used by many city councils to help shorten the length of the meetings by using time more efficiently. A consent agenda typically groups together many items that are routine and not controversial. Although the council must take action on these items, they do not require further discussion.

Examples of items typically included in a consent agenda are the approval of the minutes, the setting of the next meeting date, approval of routine expenditures, and the final approval of licenses and permits.

The council generally approves all items on the consent agenda with the passage of one motion. If there is any item on the consent agenda that a council member feels warrants further discussion, it is removed from the consent agenda and dealt with individually. It may be placed anywhere within the regular agenda.

The consent agenda may be a valuable tool for city councils that have to deal with many routine matters. Some city councils may need to amend their bylaws to allow the use of this procedure.

(2) Discussing items not on the agenda

Whether the council can discuss an item that was not included on the agenda is a question that may not have a clear answer. In part, the answer may depend upon the type of meeting that is being held and the type of meeting rules the council has adopted.

Cities should first check any rules that have been adopted by the council and any charter provisions, if the city is a home rule charter city. These local items may give more specific guidance where the statutes are vague.

Minn. Stat. §§ 13D.04, subd. 1; 412.191, subd. 2.

- **Regular meetings.** The statutes are basically silent on the ability of the council to address items that are not on the agenda at a regular meeting. However, it seems to be common practice for councils to address items that were not originally on the agenda of a regular meeting through a miscellaneous item on the agenda.

Minn. Stat. § 13D.04, subd. 2.

See Part III - E - Notice requirements.

- **Special meetings.** A city must give notice of a special meeting to the public. This notice must include the date, time, place, and purpose of the meeting. Since the notice of the meeting should announce its purpose, council members should deal only with that specific issue.

Minn. Stat. § 13D.04, subd. 3.

See Part III - E - Notice requirements.

- **Emergency meetings.** Although these types of meetings are very rare, the law seems to be clear. The law requires that notice must include the subject of the meeting. The law also states that if matters not directly related to the emergency are discussed or acted upon in an emergency meeting, the meeting minutes shall include a specific description of the matters. Surprisingly, the statute seems to give the council more leeway to take up other matters at an emergency meeting than at other types of meetings. However, discussion of topics other than the emergency should be avoided.

In conclusion, it is advisable for city councils to only deal with the specific items on the agenda for all but regular meetings. Council members may lose a great deal of credibility with the public if people believe they are trying to circumvent the law.

D. Attendance of council members

It is important for all council members to attend their city council meetings. When members are absent from a meeting, it can be difficult for the council to conduct business. Such difficulties can include the inability of the council to achieve a quorum, the difficulty in getting the needed number of votes to approve an action, and the difficulty in counting votes.

Minn. Stat. §§ 412.191, subd. 1; 645.08 (5).

In statutory cities, a majority of all the council members constitutes a quorum. This means that at least three members of a five-member council or four members of a seven-member council must be present in order for the council to hold a meeting. Home rule charter cities may have different quorum requirements in their charters.

1. Time off from employment

Minn. Stat. § 211B.10, subd. 2.

An elected official must be given time off from employment to attend meetings that are required because of the office. The time off may be with or without pay. If the time off is without pay, the employer must make an effort to allow the person to make up the hours at another time when he or she is available. An employer cannot retaliate against an employee who must take time off to attend such meetings.

2. Non-attendance

Sometimes, a city council will find that a council member is not attending council meetings. The absences may be due to a variety of reasons, such as illness, extended vacations or refusal to attend. Whatever the reason, such extended absences can make it difficult for the council to do its job. This section discusses some of the things city councils can consider to remedy this type of problem.

a. Reprimands

A.G. Op. 471-E (Jan. 21, 1942).

The attorney general has indicated a city council could reprimand a council member for missing meetings. The council would do this by passing a resolution. While such a reprimand might create political pressure and embarrassment for the absent council member, it won't necessarily compel the council member to attend meetings.

b. Compelling attendance

Minn. Stat. § 412.191, subd. 2.

State law authorizes a statutory city council to compel the attendance of its members and punish them for non-attendance. Unfortunately, it is not clear how this power should be exercised.

Minn. Stat. ch. 586.

It might be possible to compel the attendance of a council member through a mandamus action, which is a court order to force a public officer to perform a specific duty of his or her office. This type of remedy may be pursued by the city, individual council members or a citizen. However, city officials should consult with their city attorney before considering this approach.

c. Council pay

Minn. Stat. § 43A.17, subd. 10.

State law prohibits cities from diminishing a council member's pay for absences because of illness or vacation. As a result, if the council's salary is set at a monthly or annual salary, the council members are entitled to receive that pay whether or not they attend meetings.

On the other hand, it might be possible to set council compensation on a per-meeting basis. It should be noted that this state statute has not yet been interpreted by the courts or the attorney general.

d. Fines

Minn. Stat. § 412.191, subd. 2.

A system of fines may be an option a statutory city council could use to punish a council member for non-attendance. If a city wants to use this approach, it should adopt an ordinance or rule establishing a system of fines for missing meetings. However, as discussed above, a city cannot diminish a council member's salary for absences that are the result of illness or vacation.

e. Temporary replacement of council members

Minn. Stat. § 412.02, subd. 2b.

Statutory cities have an option to temporarily replace a council member under certain circumstances. A vacancy in the office of mayor or council member may be declared by the council if either of the following occurs:

- An officeholder is unable to serve in the office or attend council meetings for a 90-day period because of illness.
- An officeholder refuses to attend council meetings for a 90-day period.

If either of these conditions occurs, the council may declare a vacancy to exist and fill it at a regular or special council meeting. The vacancy may be filled for the remainder of the unexpired term or until the person is able to resume duties and attend council meetings, whichever is earlier. When the person is able to resume duties and attend council meetings, the council shall by resolution remove the temporary officeholder and restore the original officeholder.

Minn. Stat. § 410.33.

Home rule charter cities may use the same procedure described in this statute if their charter is silent on the matter.

f. Abandonment of office

A.G. Op. 450-A-11 (March 6, 1957).

Continued failure to attend council meetings may be grounds for a city council to find that an office has been abandoned and declare that the office is vacant. The attorney general has described abandonment as a form of resignation, and indicated that the officer's intent is a key issue in determining whether there has been an abandonment of the office.

A.G. Op. 434-A-2 (July 14, 1955);
Also see previous section.

Whether an office has actually been abandoned is a question of fact that must be determined on a case-by-case basis. The attorney general has said that mere absence by itself does not mean that the office has been abandoned. Following a 90-day period, the office may be declared vacant and the officer replaced on a temporary basis. There are no clear guidelines as to how long a council member must be absent in order for the office to be considered permanently vacant.

A.G. Op. 434-A-2 (July 14, 1955).

If the city council believes that the absent council member has abandoned the office, it can pass a resolution making this finding. The council should first give the absent council member notice and an opportunity to be heard. A city council that is considering declaring an office vacant due to abandonment should first consult with its city attorney.

g. Criminal penalties

Minn. Stat. § 609.43.

It is a gross misdemeanor for a public officer to intentionally fail to perform a known mandatory, nondiscretionary, ministerial duty of his or her office. It is arguable that attending council meetings might fall into this category of duties for council members.

Minn. Stat. § 351.02.

This type of remedy may be an extreme measure. Conviction may constitute a violation of the council member's oath of office, which would result in the office being vacant. Again, a city council that is considering this remedy should first consult with its city attorney.

E. Meeting room

1. Smoking

*Minn. Stat. §§ 144.414, subd 1;
144.412.*

The Minnesota Clean Indoor Air Act prohibits smoking at a public meeting. This law protects employees and the general public from the hazards of secondhand smoke by eliminating smoking in public places, places of employment, public transportation, and at public meetings.

Minn. Stat. § 144.416.

A city must make reasonable efforts to prevent smoking in the public place by posting appropriate signs, by any other appropriate means, and by asking any person who smokes in an area where smoking is prohibited to refrain from smoking, and, if the person does not refrain from smoking after being asked to do so, asking the person to leave. If the person refuses to leave, the city shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.

Minn. Stat. § 144.417, subds. 2, 3.

People who violate this law are guilty of a petty misdemeanor. Additionally, the state commissioner of health, a local health board or any affected party may pursue a court order to enjoin repeated violations.

Minn. Stat. § 144.417, subd. 4.

Nothing in the Minnesota Clean Indoor Air Act prohibits a statutory or home rule charter city from adopting and enforcing more restrictive measures to protect individuals from secondhand smoke.

2. Accessibility

Minn. Stat. § 363A.12.

42 U.S.C. §§ 12101-12213.

Both the meeting and the meeting room must be accessible. To ensure accessibility, the meeting should be located in a room that all people, including people with mobility impairments, will be able to reach. Cities may also need to have individuals sign for people with hearing loss and have written materials available in large print, Braille or audio cassette for people with sight impairments.

F. Broadcasting and recording of meetings

A.G. Op. 63a-5 (Dec. 4, 1972).

The attorney general has advised that the public may tape record a meeting if it will not have a significantly adverse effect on the order of the meeting or impinge on constitutionally-protected rights. Neither the public body nor any member may prohibit dissemination or broadcast of the tape.

*Minn. Stat. §§ 13.03, subd. 1 ;
13.02, subd. 7; 13D.03, subd. 2(b).*

*See Part III - D - Exceptions and
the procedures to use them.*

A city may tape record or videotape a meeting. The tape is a city record and must be kept in accordance with the city's record-retention policy. As a city record, such a tape must also be made available to the public if it contains public data. If the tape is of a closed meeting, it is generally not available to the public. Tapes of meetings that have been closed to consider labor negotiations under PELRA will become public after all labor contracts are signed for the current budget period.

Even though video tapes and sound recordings may indicate verbatim what occurred at a meeting, they are not the official record of the meeting. The approved minutes are the official record of the meeting.

Minn. Stat. § 13D.03, subd. 1(d)
See Part III - D - *Exceptions and the procedures to use them.*

All closed meeting, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

42 U.S.C. §§ 12101-12213.
See Part VI - E - Meeting room.

Many cities broadcast their council meetings over cable television. Such broadcasts may need to be closed-captioned or signed in order to be accessible for those with hearing impairments. It is unclear whether this cost should be paid by the city or the cable company. Cities should consult their cable franchise agreements for clarification.

Part VII. Table of motions

(Note: Also see discussion under Part VI – A. Parliamentary procedure)

There are three basic types of motions: privileged motions, subsidiary motions, and main motions. Privileged motions take precedence over subsidiary motions; subsidiary motions take precedence over main motions. The following charts of motions are listed in order of precedence and are based upon *Robert’s Rules of Order Newly Revised*, 10th Edition (2000):

Chart A: Privileged motions—A privileged motion is a motion that does not relate to the business at hand. Such a motion usually deals with items that require immediate consideration.

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
Fix a time to adjourn.	✓			✓	Majority	✓
To adjourn.	✓				Majority	
Recess. (A motion to take an intermission.)	✓			✓	Majority	
Raise a question of privilege. (A motion referring to a matter of personal concern to a member. Examples are asking to have the heat turned up, the windows opened, less noise, or requesting that the motion be stated again.)		✓			Usually, no vote is taken. The chair decides.	
Call for the orders of the day. (Forces the consideration of a postponed motion.)		✓			Usually, no vote is taken. The chair decides.	

Chart B: Subsidiary motions—A subsidiary motion is a motion that assists the group in disposing of the main motion.

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
Lay on the table. (To postpone discussion temporarily.)	✓				Majority	
Previous question or call for the question. (To stop debate and force an immediate vote.)	✓				2/3	✓
Postpone to a definite time.	✓		✓	✓	Majority	✓
Commit or refer. (A motion to refer to a smaller committee.)	✓		✓	✓	Majority	If group has not begun consideration of a question.
Amend.	✓		✓	✓	Majority	Y
Postpone indefinitely.	✓		✓		Majority	Affirmative vote only

Chart C: Main motions—A main motion is a formal proposal that is made by a member that brings a particular matter before the group for consideration or action.

Motion	Requires a second	Can interrupt speaker	Debatable	Amendable	Votes required to pass	Can be reconsidered
Any general motion, resolution, or ordinance.	✓		✓	✓	Majority	✓
Take from the table.	✓				Majority	
Reconsider. (To reconsider a motion already passed/defeated.)	✓	✓	✓		Majority	
Appeal or challenge a ruling of the chair.	✓	✓	Depends		Majority	✓
Rescind. (A motion to strike out a previously adopted motion, resolution, bylaw, etc.)	✓		✓	✓	Varies, based on motion	Negative vote only

Part VIII. Model bylaws

(Note: Also see discussion under Part VI - Holding Meetings)

Resolution No. _____

A RESOLUTION ESTABLISHING RULES FOR THE ORGANIZATION AND PROCEDURE OF THE CITY COUNCIL OF _____.

The city council of (*name of city*) resolves as follows:

WHEREAS, the city council of (*name of city*) has power to regulate its own procedure under Minn. Stat. § 412.191, subd. 2.

NOW THEREFORE, the city council of (*name of city*) has determined that its rules of organization and procedure are as follows.

Section 1. Meetings

Subdivision 1. Regular meetings. Regular meetings of the city council shall be held on the (*day*) of each calendar month at (*time*) p.m. Any regular meeting falling upon a holiday shall be held on the next following business day at the same time and place. The city clerk shall maintain a schedule of regular meetings. This schedule shall be available for public inspection during regular business hours at the city clerk's office. All meetings, including special emergency meetings, shall be held in the city hall.

Comment: Specify the day and time in the blanks, e.g., "the first Tuesday" of each month at "8:00 p.m." In statutory cities, the time and frequency of council meetings is a matter of council discretion. Home rule charter cities may have other requirements in their charters.

Subd. 2. Special meetings. The mayor or any two (*three, if a seven-member council*) members of the council may call a special meeting of the council upon at least 24 hours written notice to each member of the council. This notice shall be delivered personally to each member, or left at the member's usual place of residence with some responsible person. Similar written notice shall be mailed at least three days before the meeting date to those who have requested notice of such special meetings. This request must be in writing and be filed with the city clerk, designating an official address where notice may be mailed. Such request will be valid for one year.

Comment: In cities with a five-member council, two members may call a special meeting. In cities with a seven-member council, three members may call a special meeting. The procedure specified here conforms to the requirements of the open meeting law. Although the statute permits notice to be mailed to council members, personal delivery is preferable.

Subd. 3. Emergency meetings. The mayor or any two council members (*three council members if a seven-member council*) may call an emergency meeting when circumstances require the immediate consideration of a matter by the council. Notice may be in writing personally delivered to council members or may be in the form of personal telephone communication. Notice must include the date, time, place, and purpose of such a meeting. Where practical, the clerk shall make an effort to contact news gathering organizations that have filed a request to receive notice of special meetings.

Comment: This procedure conforms to the open meeting law. The meeting must be a true emergency and must not be simply a ruse to get around the more stringent notice requirements of special meetings. Posted or published notice is not required, although it is a good idea to post such notice.

Subd. 4. Initial meeting. At the first regular council meeting of January of each year, the council shall do the following:

- 1) Designate the depositories of city funds;
- 2) Designate the official newspaper;
- 3) Choose an acting mayor from the council members who shall perform the mayor's duties during the mayor's absence, disability from the city or, in case of vacancy in the office of mayor, until a successor has been appointed and qualifies;
- 4) Appoint necessary officers, employees, and members of boards, commissions, and committees.

Comment: In some cities, an organizational meeting is held on the first Monday of January. If this is done, the council may wish to change the language of the first sentence accordingly. It is not really necessary to specify what should be done at an organizational meeting, but if it is included in the rules, it will serve as a reminder. Home rule charter cities may have additional requirements in their charters.

Subd. 5. Public meetings. Except as otherwise provided in the open meeting law, all council meetings, including special, emergency, and adjourned meetings and meetings of all council committees shall be open to the public.

Comment: The open meeting law requires open meetings with very few exceptions. Special care is needed in order not to violate this statute when dealing with employment issues.

Section 2. Presiding officer

Subdivision 1. Who presides. The presiding officer shall be the mayor. In the absence of the mayor, the acting mayor shall preside. In the absence of both, the clerk shall call the meeting to order and shall preside until the council members present at the meeting choose one of their number to act temporarily as presiding officer.

Comment: This provision may need adaptation for a home rule charter city where the mayor is not a member of the council.

Subd. 2. Procedure. The presiding officer shall preserve order, enforce the rules of procedure herein prescribed and determine without debate, subject to the final decision of the council on appeal, all questions of procedure and order. Except as otherwise provided by statute or by these rules, the proceedings of the council shall be conducted in accordance with *Robert's Rules of Order, Newly Revised, 10th Edition*.

Subd. 3. Appeals. Any member may appeal to the council from a ruling of the presiding officer. If the appeal is seconded, the member may speak once solely on the question involved and the presiding officer may explain his or her ruling, but no other council member shall participate in the discussion. The appeal shall be sustained if it is approved by a majority of the members present.

Comment: This is covered by Robert's Rules, but it may be desirable to cover the matter in council rules so members are aware of the possibility of appeal. A majority or tie vote sustains the decision of the chair. When the presiding officer is a member of the council, he or she can vote on the appeal.

Subd. 4. Rights of presiding officer. The presiding officer may make motions, second motions, or speak on any question except that on demand of any council member the presiding officer shall pass the chair to another council member to preside temporarily.

Section 3. Minutes

Subdivision 1. Who keeps. Minutes of each council meeting shall be kept by the clerk or in the clerk's absence, the deputy clerk. In the absence of both, the presiding officer shall appoint a secretary pro tem.

Ordinances, resolutions, and claims need not be recorded in full in the minutes if they appear in other permanent records of the clerk and can be accurately identified from the description given in the minutes.

Comment: In a home rule charter city, the subdivision should conform to any applicable charter provisions.

Subd. 2. Approvals. The minutes of each meeting shall be reduced to typewritten form, shall be signed by the clerk, and copies shall be delivered to each council member as soon as practicable after the meeting. At the next regular meeting following such delivery, approval of the minutes need not be read aloud, but the presiding officer shall call for any additions or corrections. If there is no objection to a proposed addition or correction, it may be made without a vote of the council. If there is an objection, the council shall vote upon the addition or correction. If there are no additions or corrections, the minutes shall stand approved.

Subd. 3. Publication. The clerk shall publish a condensed version of the official minutes within 30 days of a regular or special meeting, which includes a summary of the action on motions, resolutions, ordinances, and other official proceedings. If the city council does not meet more than once every 30 days, the publication does not need to occur until ten days after the council has approved the minutes.

Section 4. Order of business.

Subdivision 1. Order established. Each meeting of the council shall convene at the time and place appointed. Council business shall be conducted in the following order:

- 1) Call to order
- 2) Roll call
- 3) Approval of minutes
- 4) Public hearings
- 5) Petitions, requests, and communications
- 6) Ordinances and resolutions
- 7) Reports of officers, boards, committees
- 8) Unfinished business
- 9) New business
- 10) Miscellaneous
- 11) Adjournment

Comment: The order of business will vary considerably from one place to another. The order set forth here is merely illustrative. In some cities, citizens may address the council at some specified time during the meeting. If this practice is to be followed, an item entitled "Comments and suggestions from citizens present" can be added.

Subd. 2. Varying order. The order of business may be varied by the presiding officer, but all public hearings shall be held at the time specified in the notice of the hearing.

Subd. 3. Agenda. The clerk shall prepare an agenda of business for each regular council meeting and file a copy in the office of the clerk not later than (*number*) days before the meeting. The agenda shall be prepared in accordance with the order of business and copies shall be delivered to each council member and to (*others*) as far in advance of the meeting as time for preparation will permit. No item of business shall be considered unless it appears on the agenda for the meeting or is approved for addition to the agenda by a unanimous vote of the council members present.

Comment: In smaller cities, it may not be necessary to prepare a formal agenda for each meeting. However, an agenda does inform the council members and citizens of the matters

which will come before the council and also helps to make certain that all business that needs to be transacted will be considered. Preparation of the agenda should follow a definite schedule, so that anyone desiring to submit a matter for council consideration will know when it should be given to the clerk. Deadlines for inclusion of items should allow sufficient time for the clerk to prepare the agenda. Some have suggested that the clerk should be allowed one or two working days for this purpose. In some cities, copies of the agenda are also furnished to the city attorney, department heads, the news media, and the public.

Subd. 4. Agenda materials. The clerk shall see that at least one copy of printed materials relating to agenda items is available to the public in the meeting room while the council considers their subject matter. The agenda item shall not be considered unless this provision is complied with. This section does not apply to materials that are classified as other than public under the Minnesota Government Data Practices Act or materials from closed meetings.

Comment: The open meeting law subjects a council member who intentionally violates this requirement to a civil penalty of up to \$300. This provision of the ordinance places responsibility with the city clerk to see that the materials are available when the law requires it. The provision relating to the clerk is optional, there is no such provision in the statute.

Section 5. Quorum and voting.

Subd. 1. Quorum. At all council meetings a majority of the elected council members shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. The council may punish non-attendance by a fine not exceeding \$ (dollar amount) for each absence from any meeting unless a reasonable excuse is offered.

Comment: This quorum requirement is fixed for statutory cities by Minn. Stat. § 412.191, subd. 1 and is usually the same in home rule charter cities. The provision that establishes a fine for non-attendance is authorized by the statutory provision empowering the council to punish non-attendance. (Minn. Stat. § 412.191, subd. 2.) Home rule charters usually give the council similar authority.

Subd. 2. Voting. The votes of the members on any question may be taken in any manner, which signifies the intention of the individual members, and the votes of the members on any action taken shall be recorded in the minutes. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims, and amounts fixed by statute. If any member is present but does not vote, the minutes, as to that member's name, shall be recorded as an abstention.

Comment: The requirement that each vote be recorded on actions taken and on appropriations is taken verbatim from the open meeting law, Minn. Stat. § 13D.01. The last sentence dealing with vote abstentions is optional. Some rules require the member to vote unless excused by a majority (or a supermajority) of the other members.

Subd. 3. Votes required. A majority vote of all members of the council shall be necessary for approval of any ordinance unless a larger number is required by statute. Except as otherwise provided by statute, a majority vote of a quorum shall prevail in all other cases.

Comment: In statutory cities, state law requires that a majority of all council members approve an ordinance, Minn. Stat. § 412.191, subd. 4. Most home rule charters have similar requirements, which sometimes extend to resolutions as well. In home rule charter cities, the last sentence may appropriately begin, "Except as otherwise provided by statute or charter."

Section 6. Ordinances, resolutions, motions, petitions, and communications.

Subd. 1. Readings. Every ordinance and resolution shall be presented in writing. An ordinance or resolution need not be read in full unless a member of the council requests such a reading.

Comment: In statutory cities, the council may pass an ordinance at the same meeting at which it is introduced, but requiring that the ordinance be first brought up at least a week before it is

adopted seems desirable even though a council may still be able to pass a valid ordinance without meeting the two-reading requirement. Most charters require at least two readings except in emergency ordinances.

Subd. 2. Signing and publication proof. Every ordinance and resolution passed by the council shall be signed by the mayor, attested by the clerk, and filed by the clerk in the ordinance or resolution book. Proof of publication of every ordinance shall be attached and filed with the ordinance.

Subd. 3. Repeals and amendments. Every ordinance or resolution repealing a previous ordinance or resolution or a section or subdivision thereof shall give the number, if any, and the title of the ordinance or code number of the ordinance or resolution to be repealed in whole or in part. Each ordinance or resolution amending an existing ordinance or resolution or part thereof shall set forth in full each amended section or subdivision as it will read with the amendment.

Subd. 4. Motions, petitions, communications. Every motion shall be stated in full before the presiding officer submits it to a vote and shall be recorded in the minutes. Every petition or other communication addressed to the council shall be in writing and shall be read in full upon presentation to the council unless the council dispenses with the reading. Each petition or other communication shall be recorded in the minutes by title and filed with the minutes in the office of the clerk.

Comment: The statutory city code does not define ordinances, resolutions, and motions, nor indicate in most cases where the council should use them. An ordinance should be used for regulatory legislation, including any which includes provisions for a penalty of fine or imprisonment. The local improvement code requires many of the procedural steps to be made by resolution. Otherwise, councils frequently take most administrative action by motion. Proceedings simply in the form of a motion duly adopted and entered in the minutes are frequently held to be equivalent to a resolution and probably this is sufficient for most administrative acts.

Section 7. Committees.

Subd. 1. Committees designated. The following committees shall be appointed by the council at the first regular council meeting in January of each year:

- 1) Auditing committee
- 2) Personnel committee
- 3) Purchasing committee
- 4) Public-reporting committee

Comment: This committee structure is illustrative only. In the absence of specific charter provisions, which are rare, the council determines the number and kind of committees. In general, the council should not set up committees on the basis of line functions, e.g., streets, since this is likely to involve them in administrative matters. In some small cities with no administrative staff this may, however, be unavoidable. It is better to have as few standing committees as possible, and set up special committees on particular subjects when necessary. Instead of setting forth the committee structure, some rules provide: "The council may create such committees, standing or special, as it deems necessary. Committees shall consist of as many members and perform such duties, as the council may require." In some cities, the council itself appoints the committees, although selection by a group is often difficult.

Subd. 2. Referral and reports. Any matter brought before the council for consideration may be referred by the presiding officer to the appropriate committee or to a special committee that the presiding officer appoints for a written report and recommendation before it is considered by the council as a whole. A majority of the members of the committee shall sign the report and file it with the clerk prior to the

council meeting at which it is to be submitted. Minority reports may be submitted. Each committee shall act promptly and faithfully on any matter referred to it.

Section 8. Suspension or amendment of rules.

These rules may be suspended or amended only by a two-thirds vote of the members present and voting.

Passed by the city council of (*name of city*) this _____ day of _____, 20__.

Mayor

Clerk

Robert's Rules of Order

www.robertsrules.org

Roberts Rules, [full text](#) (1915 version)

[Introduction to Robert's Rules](#)

[Quick Chart of Motions](#)

[Chart of Motions in Arabic](#)

Robert's Rules of Order - Summary Version

For Fair and Orderly Meetings & Conventions

Provides common rules and procedures for deliberation and debate in order to place the whole membership on the same footing and speaking the same language. The conduct of ALL business is controlled by the general will of the whole membership - the right of the deliberate majority to decide. Complementary is the right of at least a strong minority to require the majority to be deliberate - to act according to its considered judgment AFTER a full and fair "working through" of the issues involved. Robert's Rules provides for constructive and democratic meetings, to help, not hinder, the business of the assembly. Under no circumstances should "undue strictness" be allowed to intimidate members or limit full participation.

The fundamental right of deliberative assemblies require all questions to be thoroughly discussed before taking action!

The assembly rules - they have the final say on everything!

Silence means consent!

- Obtain the floor (the right to speak) by being the first to stand when the person speaking has finished; state Mr./Madam Chairman. Raising your hand means nothing, and standing while another has the floor is out of order! Must be recognized by the Chair before speaking!
- Debate can not begin until the Chair has stated the motion or resolution and asked "are you ready for the question?" If no one rises, the chair calls for the vote!
- Before the motion is stated by the Chair (the question) members may suggest modification of the motion; the mover can modify as he pleases, or even withdraw the motion without consent of the seconder; if mover modifies, the seconder can withdraw the second.
- The "immediately pending question" is the last question stated by the Chair! Motion/Resolution - Amendment - Motion to Postpone
- The member moving the "immediately pending question" is entitled to preference to the floor!
- No member can speak twice to the same issue until everyone else wishing to speak has spoken to it once!
- All remarks must be directed to the Chair. Remarks must be courteous in language and deportment - avoid all personalities, never allude to others by name or to motives!
- The agenda and all committee reports are merely recommendations! When presented to the assembly and the question is stated, debate begins and changes occur!

The Rules

- **Point of Privilege:** Pertains to noise, personal comfort, etc. - may interrupt only if necessary!
- **Parliamentary Inquiry:** Inquire as to the correct motion - to accomplish a desired result, or raise a point of order
- **Point of Information:** Generally applies to information desired from the speaker: "I should like to ask the (speaker) a question."
- **Orders of the Day (Agenda):** A call to adhere to the agenda (a deviation from the agenda requires Suspending the Rules)
- **Point of Order:** Infraction of the rules, or improper decorum in speaking. Must be raised immediately after the error is made
- **Main Motion:** Brings new business (the next item on the agenda) before the assembly
- **Divide the Question:** Divides a motion into two or more separate motions (must be able to stand on their own)
- **Consider by Paragraph:** Adoption of paper is held until all paragraphs are debated and amended and entire paper is satisfactory; after all paragraphs are considered, the entire paper is then open to amendment, and paragraphs may be further amended. Any Preamble can not be considered until debate on the body of the paper has ceased.
- **Amend:** Inserting or striking out words or paragraphs, or substituting whole paragraphs or resolutions
- **Withdraw/Modify Motion:** Applies only after question is stated; mover can accept an amendment without obtaining the floor
- **Commit /Refer/Recommit to Committee:** State the committee to receive the question or resolution; if no committee exists include size of committee desired and method of selecting the members (election or appointment).
- **Extend Debate:** Applies only to the immediately pending question; extends until a certain time or for a certain period of time
- **Limit Debate:** Closing debate at a certain time, or limiting to a certain period of time
- **Postpone to a Certain Time:** State the time the motion or agenda item will be resumed
- **Object to Consideration:** Objection must be stated before discussion or another motion is stated
- **Lay on the Table:** Temporarily suspends further consideration/action on pending question; may be made after motion to close debate has carried or is pending
- **Take from the Table:** Resumes consideration of item previously "laid on the table" - state the motion to take from the table
- **Reconsider:** Can be made only by one on the prevailing side who has changed position or view
- **Postpone Indefinitely:** Kills the question/resolution for this session - exception: the motion to reconsider can be made this session
- **Previous Question:** Closes debate if successful - may be moved to "Close Debate" if preferred
- **Informal Consideration:** Move that the assembly go into "Committee of the Whole" - informal debate as if in committee; this committee may limit number or length of speeches or close debate by other means by a 2/3 vote. All votes, however, are formal.
- **Appeal Decision of the Chair:** Appeal for the assembly to decide - must be made before other business is resumed; NOT debatable if relates to decorum, violation of rules or order of business
- **Suspend the Rules:** Allows a violation of the assembly's own rules (except Constitution); the object of the suspension must be specified

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Robert's Rules of Order Motions Chart

Based on *Robert's Rules of Order Newly Revised (10th Edition)*

Part 1, Main Motions. These motions are listed in order of precedence. A motion can be introduced if it is higher on the chart than the pending motion. § indicates the section from Robert's Rules.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§21	Close meeting	I move to adjourn	No	Yes	No	No	Majority
§20	Take break	I move to recess for ...	No	Yes	No	Yes	Majority
§19	Register complaint	I rise to a question of privilege	Yes	No	No	No	None
§18	Make follow agenda	I call for the orders of the day	Yes	No	No	No	None
§17	Lay aside temporarily	I move to lay the question on the table	No	Yes	No	No	Majority
§16	Close debate	I move the previous question	No	Yes	No	No	2/3
§15	Limit or extend debate	I move that debate be limited to ...	No	Yes	No	Yes	2/3
§14	Postpone to a certain time	I move to postpone the motion to ...	No	Yes	Yes	Yes	Majority
§13	Refer to committee	I move to refer the motion to ...	No	Yes	Yes	Yes	Majority
§12	Modify wording of motion	I move to amend the motion by ...	No	Yes	Yes	Yes	Majority
§11	Kill main motion	I move that the motion be postponed indefinitely	No	Yes	Yes	No	Majority
§10	Bring business before assembly (a main motion)	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority

Part 2, Incidental Motions. No order of precedence. These motions arise incidentally and are decided immediately.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§23	Enforce rules	Point of Order	Yes	No	No	No	None
§24	Submit matter to assembly	I appeal from the decision of the chair	Yes	Yes	Varies	No	Majority
§25	Suspend rules	I move to suspend the rules	No	Yes	No	No	2/3
§26	Avoid main motion altogether	I object to the consideration of the question	Yes	No	No	No	2/3
§27	Divide motion	I move to divide the question	No	Yes	No	Yes	Majority
§29	Demand a rising vote	I move for a rising vote	Yes	No	No	No	None
§33	Parliamentary law question	Parliamentary inquiry	Yes	No	No	No	None
§33	Request for information	Point of information	Yes	No	No	No	None

Part 3, Motions That Bring a Question Again Before the Assembly.

No order of precedence. Introduce only when nothing else is pending.

§	PURPOSE:	YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§34	Take matter from table	I move to take from the table ...	No	Yes	No	No	Majority
§35	Cancel previous action	I move to rescind ...	No	Yes	Yes	Yes	2/3 or Majority with notice
§37	Reconsider motion	I move to reconsider ...	No	Yes	Varies	No	Majority

City Staff - 2012

<u>Position</u>	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Phone</u>	<u>Cell Phone</u>	<u>Fax</u>	<u>Email</u>
Administrator	Dan Donahue	8200 County Rd 116	Corcoran	55340	763-400-7030	763-291-7701	763-420-6056	ddonahue@ci.corcoran.mn.us
City Clerk/Bookkeeper	Jeanie Heinecke	8200 County Rd 116	Corcoran	55340	763-400-7032		763-420-6056	jheinecke@ci.corcoran.mn.us
Code Enforcement	Mike Pritchard	8200 County Rd 116	Corcoran	55340	763-400-7033	612-483-6737	763-420-6056	mpritchard@ci.corcoran.mn.us
Office Manager	Jill Smith/Arens	8200 County Road 116	Corcoran	55340	763-400-7032	612-234-2190	763-420-6056	jsmith-arens@ci.corcoran.mn.us
Public Safety Director	Sean Gormley	8200 County Road 116	Corcoran	55340	763-400-7001		763-420-8965	sgormley@ci.corcoran.mn.us
Public Works Superintendent	Pat Meister	9525 Cain Road	Corcoran	55340	763-400-7037	763-286-6740	763-420-6056	pmeister@ci.corcoran.mn.us

City Consultants - 2012

Building Inspector

Metro West
Loren Kohnen
PO Box 248
Loretto MN 55357

763-479-1720
763-479-3090 (fax)

Attorney

Carson Clelland & Schreder
Jeff Carson

6300 Shingle Creek Pkwy. Ste. 305
Mpls., MN 55430-2190

763-561-2800
763-561-1943

City Planner

Landform
Kendra Lindahl, AICP Planner
105 South Fifth Avenue
Suite 513
Minneapolis, MN 55401

612-638-0225
612-252-9077 fax
612-290-8102 Cell

Assessor

Rolf Erickson Enterprises Inc
Southwest Assessing
Rolf Erickson, Principal
Box 47841
Plymouth MN 55447

763-473-3978

Engineer

Wenck Associates, Inc
1800 Pioneer Creek Center
PO Box 249
Maple Plain, MN 55359
KentonTolve

Vince Vandertop
763-479-4209
763-479-4242 Fax

Planning Commission - 2012 Members

<u>Term</u>	<u>Position</u>	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Home Phone</u>	<u>Cell Phone</u>	<u>Email</u>	
Dec-12	Chair	Pat Hank	9425 Trail Haven Rd	Corcoran	55340	763-494-3290	651-338-2580	pathank@embarqmail.com	
Dec-12	Commissioner	Dean Jacobs	20415 Duffney Circle	Corcoran	55374	763-420-4559	612-240-6195	Dean_Jacobs@cargill.com	
Dec-13	Commissioner	Nell Kadlec	10510 Robert Lane	Corcoran	55374	612-696-5485	612-770-3261	nell.kadlec@yahoo.com	
Dec-13	Commissioner	Rickey Ravnholdt	6795 Horseshoe Bend Road	Corcoran	55340	763-478-9864	612-834-3484	rpravnh@ties2.net	
Dec-14	Commissioner	Darrell Krueger	9945 Sundance Road	Rogers	55374	763-498-7442	612-961-3555	darrellwkrueger@yahoo.com	
Dec-14	Commissioner	Meredith Wu	8695 Cain Rd	Corcoran	55340	763-416-9311	612-205-1914	meredith_wu@msn.com	
Dec-12	1st Alternate	Robert Laddusaw	19885 Country Road	Rogers	55374	763-420-7972	612-308-9292	Laddusaw@comcast.net	
Dec-12	2nd Alternate	Dorthey Theis	9530 Cain Rd	Corcoran	55340	763-420-3238			
Term									
Full Member	3 years								
Alternate	1 year								
Distribution of Packets		8 - Commission	5- Council	1 - Book	1- Administrator		1-Planner	1-Minute Taker	
17		*Any Applicants that are listed receive copy of property info. and agenda							

Parks and Trails Commission - 2012 Members

<u>Term</u>	<u>Position</u>	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Home Phone</u>	<u>Cell Phone</u>	<u>Email</u>
Dec-13	Chair	Trish Krueger	9945 Sundance	Corcoran	55340	763-498-7442		trishkrueger@yahoo.com
Dec-12	Commissioner	Chad Robran	19805 Olde Sturbridge Rd	Corcoran	55340	763-478-0167	612-965-7539	chadrobran@excelmedsolutions.com
Dec-12	Commissioner	Kevin Dale	9820 Creek View Circle	Corcoran	55374	763-498-0013	763-923-4154	kdalefamily@usfamily.net
Dec-12	Commissioner	Thomas Anderson	22385 Rush Creek Dr.	Corcoran	55374	763-428-2559	651-216-8125	tompan@yahoo.com
Dec-14	Commissioner	Rachel Tessmer	23825 Tessmer Rd	Corcoran	55357	763-498-7347	612-382-4158	
Dec-14	Commissioner	Val Nybo	22850 Oakdale Drive	Corcoran	55374	763-498-7905	612-518-4314	vnybo@q.com
Dec-13	Commissioner	Judith Strehler	22196 County Road 50	Corcoran	55340	763-295-9773	612-867-8819	judystrehler@gmail.com

Term
 Full Member 3 years
 Alternate 1 year

Distribution of Packets	7 - Commission	5- Council	1 - Book	1- Administrator
14				

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Charter Commission - 2012 Members

<u>Term</u>	<u>Date Appointed</u>	<u>Position</u>	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Home Phone</u>	<u>Cell Phone</u>	<u>Email</u>
June 2012	05.14.09	Chair	Ken Guenthner	6315 Butterworth Lane	Corcoran MN	55340	763-478-6699	612-710-0734	Ken.Guenthner@aol.com
July 2014	07.16.10	Member	Tom Cossette	9200 Shannon Lane	Corcoran MN	55340			meltomc@embarqmail.com
July 2014		Secretary	Brian Lother	10110 County Road 116	Rogers MN	55374		612-685-4970	blother@comcast.net
June 2012	05.14.09	Member	George Gmach	22600 Oakdale Drive	Rogers MN	55374	763-498-7026		Gmach@spacestar.net
July 2014	11.04.10	Member	John Hausladen	9520 Fox Valley Drive	Corcoran MN	55340	763-416-5940		hausladen78@hotmail.com
March, 2016	03.22.12	Member	Dorothy Theis	9530 Cain Rd	Corcoran MN	55340	763-420-3238		
July 2014	07.23.10	Member	Ken Kluck	21800 Co. Rd. 50	Corcoran MN	55340	763-420-2279		
June 2012	05.28.09	Member	Jim Tilbury	22201 Horseshoe Tr	Corcoran MN	55340	763-478-2183		j.tilbury@hotmail.com

Distribution of Packets	8- Commissic	5- Council	1 - Book	1- Administrator
15	*Any Applicants that are listed receive copy of property info.and agenda			

City Council 2012 - 2014 Members

<u>Term</u>	<u>Position</u>	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>Zip</u>	<u>Home Phone</u>	<u>Work #</u>	<u>Cell #</u>	<u>Fax</u>	<u>Personal Email Address</u>
Dec.2012	Mayor	Ken Guenthner	6315 Butterworth Lane	Corcoran	55340	763-478-6699		612-710-0734		kguenthner@aol.com
Dec. 2014	Councilor	Rich Asleson	20500 Rush Meadow Lane	Rogers	55341	763-428-2535				richa-cc@comcast.net
Dec. 2014	Councilor	Tom Cossette	9200 Shannon Lane	Corcoran	55340	763-494-9937				meltomc@empargmail.com
Dec. 2012	Councilor	George Gmach	22600 Oakdale Drive	Rogers	55374	763-498-7366	763-253-9148	763-242-7148		george.gmach@trusightinc.com
Dec. 2012	Councilor	Rosalyn Milbrandt	10010 High Bluff Lane	Corcoran	55340	763-416-4396				rmilbrandt@centurylink.net

Distribution of Packets	5- Council	1 - Book	1- Administrator	1-Chief of Police	1-Public Works
11	*Any Applicants that are listed receive copy of property info.and agenda			1- John Hamilton	1- Clerk

CITY OF CORCORAN 2012 SCHEDULE FOR PLANNING APPLICATIONS

Application Submission Deadline 4:00 p.m.	Parks & Trails Commission Meeting Date 7:00 p.m.	Planning Commission Meeting Date 7:00 p.m.	City Council Meeting Date 7:00 p.m.
January 17, 2012	February 21, 2012	March 1, 2012	March 22, 2012
February 21, 2012	March 20, 2012	April 5, 2012	April 26, 2012
March 20, 2012	April 17, 2012	May 3, 2012	May 24, 2012
April 17, 2012	May 15, 2012	June 7, 2012	June 28, 2012
May 15, 2012	June 19, 2012	July 5, 2012	July 26, 2012
June 19, 2012	July 17, 2012	August 2, 2012	August 23, 2012
July 17, 2012	August 21, 2012	September 6, 2012	September 27, 2012
August 21, 2012	September 18, 2012	October 4, 2012	October 28, 2012
September 18, 2012	October 16, 2012	November 1, 2012	November 22, 2012*
October 16, 2012	November 20, 2012	December 6, 2012	December 27, 2012
November 20, 2012	December 18, 2012	January 3, 2013	January 24, 2013
December 18, 2012	January 15, 2013	February 7, 2013	February 28, 2013

* Meeting date is subject to change. (Publish at least 10 days prior to the hearing)

City of Corcoran 2012 Land Use Fee Schedule

Land Use Permit/Application Type	Non-Refundable Application Fee	Escrow
Agriculture Preserve Application - Placement (fee limited by state)	50.00	0.00
Agriculture Preserve Application - Removal (fee limited by state)	50.00	0.00
Administrative Permit	80.00	600.00
Certificate of Compliance	80.00	300.00
Comprehensive Plan Amendment	1,000.00	2,200.00
Conditional Use Permit (CUP)	550.00	2,000.00
Environmental Review	500.00	5,000.00
Electronic File Waiver	180.00	500.00
Interim Use Permit	500.00	2,000.00
Final Plat – Base Fee Regular / OSP	575.00	5,000.00
Final Plat – Per Lot Regular /OSP	50.00	N/C
Lot Split – Base Charge	450.00	2,000.00
Lot Split – Per Lot	50.00	N/C
Park Dedication Fees (Subdivision Ordinance)	See Section 955	
Maximum Fee per residential unit in the MUSA	4,000.00	
Maximum Fee per residential unit outside the MUSA	3,000.00	
Preliminary Plat – Base Regular - OSP	600.00	5,000.00
Preliminary Plat – Per Lot Regular / OSP	50.00	N/C
PUD -Preliminary Development Plan	575.00	5,000.00
PUD - Final Development Plan	500.00	5,000.00
PUD - Sketch Plat/Plan Review	450.00	2,000.00
Rezoning	575.00	2,000.00
Sketch Plat/Plan Review - Regular / OSP	450.00	1,750.00
Site Plan	425.00	1,500.00
Topography Exemption	180.00	500.00
Vacation	350.00	1,000.00
Variance	550.00	2,000.00
Zoning/Subdivision Code Amendment	700.00	2,000.00
Meetings w/ City Planner or City Engineer on projects not yet submitted to City - First 30 minutes no cost. Additional time requires an escrow to be determined by the City Administrator with a minimum of \$500.00		

[1] The application fee includes administrative costs which are necessary to process the application, including but not limited to the preparation of the legal notice, publication of legal notice, postage, coordination and copying of agenda material and other items relative to the specific application.

Payment of all application fees will be required whether the application is granted or denied.

[2] The escrow fee will include all charges for staff time by the Planning Consultant, City Engineer, City Attorney and/or other consultant as needed to process the application.

Payment of all fees charged against escrow account will be required whether the application is granted or denied.



Administrative Permit Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- ___ 1) A completed and signed Land Use Application Form.
- ___ 2) A non-refundable fee and escrow deposit.
- ___ 3) Proof of ownership or owner authorization to proceed with the request.
- ___ 4) 3 full-size (24x36) set (collated, stapled and folded) and one reduced (11x17) set of plans.
- ___ 5) The plans should contain the following information:
 - ___ a) A statement describing the proposed use, event or activity (Section 1070.060, Subd. 4, A), including:
 - i) dates and times of operation
 - ii) number of employees
 - iii) provisions for security
 - iv) provisions for parking
 - v) any additional information requested by the Zoning Administrator
 - ___ b) A copy of the approved site plan or certified survey of the property (see the Certified Survey handout) (Section 1070.060, Subd. 4, B)
 - ___ c) A floor plan, including all floor levels and locations of electrical, mechanical and gas metering equipment, and storage areas for trash and recyclable materials, as identified by the Zoning Administrator. (Section 1070.060, Subd. 4, C)
 - ___ d) A copy of the current sales tax certificate, or any other information identified by the Zoning Administrator as necessary to properly evaluate the request. (Section 1070.060, Subd. 4, D)
 - ___ e) Certification that all property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1070.060, Subd. 7)

Unless otherwise specified by the Zoning Administrator at time of approval, approval will expire within one year unless the property owner or applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the approval. Prior to the expiration, the applicant may apply for a time extension of up to one year.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Administrative Permit requirements can be found in Section 1070.060 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Certificate of Compliance Supplemental Form

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness and return a copy of the signed application with any applicable conditions. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Certificate of Compliance requirements can be found in Section 1070.065 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.

- ___ 1) A completed and signed Land Use Application Form.
- ___ 2) A non-refundable fee.
- ___ 3) Proof of ownership or owner authorization to proceed with the request.
- ___ 4) One set of plans.
- ___ 5) The plans should contain the following information:
 - ___ a) A statement describing the proposed use, event or activity (Section 1070.065, Subd. 4, A):

 - ___ b) A copy of the approved site plan or certified survey of the property (except where specifically exempted by Chapter 40 of the City Code) (Section 1070.065, Subd. 4, B)
 - ___ c) A floor plan, including all floor levels and locations of electrical, mechanical and gas metering equipment, and storage areas. (Section 1070.065, Subd. 4, C)
- ___ 6) Choose the item below for which a Certificate of Compliance is requested (you may check more than one box):
 - Is the Certificate of Compliance requested for an Agricultural Building that is exempted from building permit?** (*AGRICULTURAL BUILDING is an accessory building located on residential property for the exclusive use of an Agricultural Use. Agricultural buildings shall not be used for storage of personal or business vehicles or materials unrelated to the Agricultural Use. To be classified as an agricultural building for the purposes of the Zoning Ordinance, the building must be located on a minimum of 10 contiguous acres that are used for agricultural purposes.*)
 - Yes
 - No

You must answer yes to qualify for a Certificate of Compliance under this section.

Is the Certificate of Compliance requested for an Agricultural building that would result in more than 3,969 square feet of accessory building footprint on this lot?

- Yes
- No

If yes, do you certify that the agricultural building is used for agricultural purposes only?

- Yes
- No

Is the lot at least 10 acres in size *and* located in the Urban Reserve (UR) or Rural Residential (RR) zoning district?

- Yes
- No

You must answer yes to all three items above to qualify for a Certificate of Compliance under this section.

Is the Certificate of Compliance requested for an Agricultural building that would exceed the maximum building height as required by Section 1030.020, Subd. 5 of the Zoning Ordinance?

- Yes
- No

Would the building height comply with the maximum principal building height for the zoning district in which the project is located?

Property is zoned _____.

- Yes
- No

You must answer yes to both items above to qualify for a Certificate of Compliance under this section.

Is the Certificate of Compliance requested for a metal roof on a residential home or metal roofing and or siding on a residential accessory building as allowed by Section 1060.050 of the Zoning Ordinance?

- Yes
- No

Does the proposed roof meet the performance standards outlined in Section 1060.050?

- Yes
- No

You must answer yes to both items above to qualify for a Certificate of Compliance under this section.

___ 7) Please provide any additional information that you feel is relevant to your application.

I declare that to the best of my/ our knowledge the information contained on this application is complete, true and correct.

Signature of Applicant(s): _____ Date: _____
_____ Date: _____

CITY ZONING APPROVAL BY: _____ DATE: _____

City File No: _____



Comprehensive Plan Amendment Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) A legible and reproducible narrative describing the request, including:
 - a) Existing and proposed land use designation.
 - b) Existing zoning and proposed zoning.
 - c) The nature and reason for the request and a demonstration that the proposed amendment has merit beyond the interests of the proponent.
 - d) Evidence that the plan should be changed, including but not limited to whether new information has become available since the Comprehensive Plan was adopted that supports re-examination of the plan, or that existing or proposed development offers new opportunities or constraints that were not previously considered by the Plan.
 - e) Nature of uses of adjacent properties.
 - f) Impacts of the amendment on adjoining properties, and mitigating measures to minimize impacts.
 - g) Impacts of the amendment on the elements of the plan such as transportation, utilities, parks and the natural environment, etc. and mitigating measures to avoid or minimize these impacts.
- _____ 5) 7 full-size (24x36 - collated, stapled and folded) and two reduced (11x17) maps showing the topography of the subject property and existing conditions within 500 feet.
- _____ 6) Certification that all property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the application relates have been paid.
- _____ 7) The Planning Commission and City staff shall have the authority to request additional information from the applicant or to retain expert testimony with the consent and at the expense of the applicant concerning any information deemed necessary.

The Comprehensive Plan Amendment will be scheduled for a public hearing before the Planning Commission. The City Council will then review and take action on the request. City approvals will be subject to review and comment by the Metropolitan Council. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.

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Office 763.420.2288 / Fax 763.420.6056



Conditional Use Permit Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) A written narrative describing the proposal (Section 1070.020 Subd. 2, A), including:
 - a) Nature of request.
 - b) Impact on adjoining properties and mitigating measures to minimize impact.
 - c) Buildings to be constructed or utilized.
 - d) Intended use of buildings and property.
 - e) Hours and days of operation.
 - f) Number of employees.
 - g) Size of operation, including number of animals, if applicable.
 - h) Impact on traffic, including type and amount of traffic, access, and parking provisions.
 - i) Impact on septic system and well.
 - j) Potential environmental impacts and measures to avoid or minimize the potential impacts.
 - k) Proposed measures to provide buffering from proposed use to adjacent properties.
 - l) Future expansion plans.
 - m) Nature of other uses in the neighborhood.
- _____ 5) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans.
Plus:
 - 2 additional sets if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.

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- _____ 6) The plans should contain all the information required for a site plan approval. (See the Site Plan process handout.) (Section 1070.020, Subd. 4, A)
- _____ 7) Necessary permits or licenses from other agencies, or confirmation of appropriate applications in process.
- _____ 8) Certified Survey of property by registered surveyor, if deemed necessary. (See the Guide to Certified Surveys handout.)
- _____ 9) Septic (primary and secondary) and well locations, if located outside of the MUSA. Verification that the existing system is a working system, as applicable. Sanitary sewer and municipal water system design if located inside the MUSA. (Section 1070.020, Subd. 3, E)
- _____ 10) Compliance with Wetland Conservation Act. A wetland report by a Certified Wetland Specialist. Identification and delineation of all wetlands on the site including preservation and filling and mitigation. (Section 1070.020, Subd. 4, B)
- _____ 11) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1070.020, Subd. 9)
- _____ 12) The Planning Commission and City staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning any information declared necessary to establish performance conditions. (Section 1070.020, Subd. 4, B)

The Conditional Use request will be scheduled for a public hearing before the Planning Commission. The Planning Commission's recommendation will then be considered by the City Council. Unless otherwise specified by the Zoning Administrator or City Council at time of approval, the Conditional Use Permit will expire within one year unless the property owner or applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the approved plan. Prior to the expiration, the applicant may apply for a time extension of up to one year.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Conditional Use Permit procedures can be found in Section 1070.020 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Home Occupation Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 3 sets (collated, stapled and folded) of plans, including a site plan.
- _____ 5) The application should contain the following information:
 - a) A statement describing the proposed home occupation (Section 1030.100) and responding to ALL of the following items:
 - _____ i) A description of your home occupation, including the business name and business start date.
 - _____ ii) Does your home occupation generate any noise, odor or light? If so, please explain.
 - _____ iii) To the best of your knowledge, does your home occupation generate any environmental concerns or issues?
 - _____ iv) Where will the home occupation be located on site (house, accessory building, etc.)? How much space (square footage) does your home occupation occupy?
 - _____ v) What special equipment does your home occupation require?
 - _____ vi) Do you have any outside storage for your home occupation? If so, please list the materials/ equipment that are stored outside.
 - _____ vii) Does your home occupation include inside storage of materials that would require completion of a material safety data sheet (MSDS) sheet? If so, please provide a copy.
 - _____ viii) Does your home occupation generate deliveries other than normal residential deliveries (i.e. U.S. Mail, UPS, etc.)? If so, please list the type and number of deliveries per week, month or year.
 - _____ ix) Does your home occupation generate more than 10 daily, non-residential trips to and from the property? If so, please list the number of trips that are generated per day.
 - _____ x) Do you have customer visits on site? If so, please state the number of customer visits your home occupation generates per week, month or year.

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- _____ xi) Does your home occupation require additional parking spaces for customers? If so, please state the number of additional parking spaces your business requires.
 - _____ xii) Do you have outside employees on site or reporting on site for assignments? If so, please state the number of outside employees your home occupation utilizes and the hire date for each employee.
 - _____ xiii) Do you have signs displayed for your home occupation? If so, please list the number, location and size of each sign displayed.
 - _____ xiv) What special vehicles do you use for your home occupation? Please list the number, type and size of each vehicle.
 - _____ xv) Does your home occupation require any federal, state, county or local permits or licenses? If so, please provide a copy.
 - _____ xvi) any additional information requested by the Zoning Administrator
- b) If the Home Occupation is defined as a **Special Home Occupation** (Section 1030.100, Subd. 6), you must also submit the following for the Administrative Permit:
- _____ i) A copy of the approved site plan or certified survey of the property (see the Certified Survey handout) (Section 1070.060, Subd. 4, B)
 - _____ ii) A floor plan, including all floor levels and locations of electrical, mechanical and gas metering equipment, and storage areas for trash and recyclable materials, as identified by the Zoning Administrator. (Section 1070.060, Subd. 4, C)
 - _____ iii) A copy of the current sales tax certificate, or any other information identified by the Zoning Administrator as necessary to properly evaluate the request. (Section 1070.060, Subd. 4, D)
 - _____ iv) Certification that all property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1070.060, Subd. 7)
- c) If the Home Occupation is defined as a **Conditional Home Occupation** (Section 1030.100, Subd. 7), you must also submit the following for the Interim Use Permit:
- _____ i) A copy of the approved site plan or certified survey of the property (see the Certified Survey handout) (Section 1070.030, Subd. 2)
 - _____ ii) A floor plan, including all floor levels and locations of electrical, mechanical and gas metering equipment, and storage areas for trash and recyclable materials, as identified by the Zoning Administrator. (Section 1070.030, Subd. 2)
 - _____ iii) A copy of the current sales tax certificate, or any other information identified by the Zoning Administrator as necessary to properly evaluate the request. (Section 1070.030, Subd. 2)
 - _____ iv) Certification that all property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1070.030, Subd. 2)

All home occupation approvals granted under City Code section 1030.100 shall be reviewed by the City every 3 years from the date of issuance for a determination that the existing Home Occupation, considered in light of the existing standards and criteria, still warrants the issuance of a license. The City may revoke or modify a home occupation upon a finding that conditions have changed to warrant revocation or modification of the license.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. The Home Occupation standards can be found in Section 1030.10 of the Zoning Ordinance. Administrative Permit procedural requirements can be found in Section 1070.060 of the Zoning Ordinance. Interim Use Permit procedural requirements can be found in Section 1070.030 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Interim Use Permit Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) A written narrative describing the proposal (Section 1070.030 Subd. 2), including:
 - a) Nature of request.
 - b) Impact on adjoining properties and mitigating measures to minimize impact.
 - c) Buildings to be constructed or utilized.
 - d) Intended use of buildings and property.
 - e) Hours and days of operation.
 - f) Number of employees.
 - g) Size of operation, including number of animals, if applicable.
 - h) Impact on traffic, including type and amount of traffic, access, and parking provisions.
 - i) Impact on septic system and well.
 - j) Potential environmental impacts and measures to avoid or minimize the potential impacts.
 - k) Proposed measures to provide buffering from proposed use to adjacent properties.
 - l) Future expansion plans.
 - m) Nature of other uses in the neighborhood.
- _____ 5) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans.
Plus:
 - 2 additional sets if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.

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Office 763.420.2288 / Fax 763.420.6056

- _____ 6) The plans should contain all the information required for a site plan approval. (See the Site Plan process handout.) (Section 1070.030, Subd. 2)
- _____ 7) Necessary permits or licenses from other agencies, or confirmation of appropriate applications in process.
- _____ 8) Certified Survey of property by registered surveyor, if deemed necessary. (See the Guide to Certified Surveys handout.)
- _____ 9) Septic (primary and secondary) and well locations, if located outside of the MUSA. Verification that the existing system is a working system, as applicable. Sanitary sewer and municipal water system design if located inside the MUSA. (Section 1070.030, Subd. 2)
- _____ 10) Compliance with Wetland Conservation Act. A wetland report by a Certified Wetland Specialist. Identification and delineation of all wetlands on the site including preservation and filling and mitigation. (Section 1070.030, Subd. 2)
- _____ 11) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1070.030, Subd. 5)
- _____ 12) The Planning Commission and City staff have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning any information declared necessary to establish performance conditions. (Section 1070.030, Subd. 2)

The Interim Use request will be scheduled for a public hearing before the Planning Commission. The Planning Commission's recommendation will then be considered by the City Council. Unless otherwise specified by the Zoning Administrator or City Council at time of approval, the Interim Use Permit will expire within one year unless the property owner or applicant has substantially started the construction of any building, structure, addition, alteration, or use requested as part of the approved plan. Prior to the expiration, the applicant may apply for a time extension of up to one year.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Interim Use Permit procedures can be found in Section 1070.030 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.

CITY OF CORCORAN LAND USE APPLICATION FORM

For Internal Use Only

Fees Paid: \$ _____

Escrow Paid \$ _____

Project # _____

Development/Project Name _____

Type of Application

- | | |
|--|---|
| <input type="checkbox"/> Comprehensive Plan Amendment
<input type="checkbox"/> Zoning/Subdivision Ordinance Amendment
<input type="checkbox"/> Conditional Use Permit (CUP)
<input type="checkbox"/> Vacation (Street/Easements)
<input type="checkbox"/> Sketch Plat/Plan Review (Reg./OS&P)
<input type="checkbox"/> Final Plat (Reg./OS&P)
<input type="checkbox"/> PUD Preliminary Plan
<input type="checkbox"/> Administrative Permit
<input type="checkbox"/> Topography Exemption
<input type="checkbox"/> Certificate of Compliance | <input type="checkbox"/> Rezoning
<input type="checkbox"/> Variance
<input type="checkbox"/> Interim Use Permit
<input type="checkbox"/> Site Plan
<input type="checkbox"/> Preliminary/Plat – Base (Reg./OS&P)
<input type="checkbox"/> PUD Sketch Plan
<input type="checkbox"/> PUD Final Plan
<input type="checkbox"/> Building Right Appeal
<input type="checkbox"/> Electronic Filing Waiver |
|--|---|

Property Information

Address _____ PID Number _____-119-23-_____-_____

Legal Description (attach if necessary)

Applicant Information

Applicants Name: _____

Address: _____
Street City State Zip

Phone (W) _____ Phone (H) _____ Fax _____

Print or Type Name: _____ Email Address _____

Signature: _____ Date _____

Contact Person Name (If other than applicant) _____

Phone: _____ Address: _____

Owner Information

Name: _____

Address: _____
Street City State Zip

Phone (W) _____ Phone (H) _____ Fax _____

Print or Type Name: _____ Email Address _____

Signature: _____ Date _____

Agreement to Pay Costs of Processing Application

The City of Corcoran requires all applicants and/or the owner(s) of the property to reimburse the City for any and all costs incurred by the City to review and act upon applications so that these costs are not absorbed by the tax payers.

The application fee includes administrative costs which are necessary to process the application, including but not limited to the preparation of the legal notice, publication of legal notice, postage, coordination and copying of agenda material, and other items relative to the specific application.

The escrow fee will include all charges for staff time by the Planning Consultant, City Engineer, City Attorney and / or Other Consultant as needed to process the application

The City will track all consultant costs associated with the application. If these costs are projected to exceed the money initially deposited to your escrow account you will be notified in the manner that you have identified below that additional monies are required in order to continue your application process. All work on the application shall cease until the escrow account is replenished with the amount estimated by staff to complete the work. If you choose to terminate the application (notice must be in writing) you will be responsible for all costs incurred to that point. If you choose to continue the process you will be billed for the additional monies and an explanation of expenses will be furnished. If payment is not received within seven (7) days as required by this agreement, the City will suspend the application review process and may deny the application for failure to comply with the requirements for processing the application. **Payment for all costs will be required whether the application is granted or denied.**

With my signature below, I hereby acknowledge that I have read this agreement in its entirety and understand the terms herein. **I agree to pay to the City all costs incurred during the review process as set forth in this Agreement.** This includes any and all expenses that exceed the initial Escrow Deposit to be paid within 30 days of billing notification. I further understand that the application process will be terminated if payment is not made and application may be denied for failure to reimburse the City for costs.

Property owners: I/we understand and acknowledge that if the aforementioned costs are not paid in a timely manner, the City may approve a special assessment for which the I/we, as the property owner(s), specifically agree to be assessed 100 percent per annum, and I/we waive any and all appeals under Minnesota Statutes § 429.061.

I wish to be notified of additional costs in the following manner: E-mail Fax USP – Certified Mail

Print or Type Name of Property Owner(s) and any other Party Responsible for Payment:

Signature of Responsible Party _____

Date _____

STATE OF MINNESOTA)
):ss
COUNTY OF HENNEPIN)

On this _____ day of _____, 20____, before me, a Notary Public within and for said County, personally appeared

_____, executed the foregoing instrument as their free act and deed.

Notary Seal

Notary Public

Revised 12/19/11

Please attach a brief description of your project/reason for your request.



Open Space Preservation Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

Following City review of the OSP sketch plan, the applicant may request approval of a Conditional Use Permit and a Preliminary Plat. (See the Preliminary Plat and Conditional Use Permit application process handouts). In addition to the items required in the above referenced application forms, the following items must be submitted:

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans. Plus:
 - 3 additional sets if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.
- 5) The plans should contain all of the information required for a preliminary plat, plus:
 - _____ a) A resource inventory presented on an aerial photograph at a scale of no less than one inch equals 200 feet (Section 940.030, Subd. 1, C, 1), including:
 - _____ i) Soil types and characteristics, such as depth of water table.
 - _____ ii) Vegetation inventory identifying the general cover types (woodland, pasture, etc.), defining boundaries of woodland areas and stand-alone trees with a caliper of more than 8 inches when measured at a point four feet above the ground level. Vegetation types shall be classified as generally deciduous, coniferous or mixed and described by plant community, relative age and condition. Trees to be removed for streets, drives, buildings, drainage or other purposes shall be identified.
 - _____ iii) Current land use including all buildings, structures, and paved areas, and all encumbrances, such as easements or covenants.

- _____ iv) Visual resources, showing views onto the tract from surrounding roads and public areas, as well as views within the tract.
- _____ v) Cultural resources, including a brief description of the historic character of buildings and structures, historically important landscapes, and archeological features.
- _____ vi) Context, including general outlines of existing buildings, land use, and natural features such as water bodies or wooded areas, roads and property boundaries within 500 feet of the tract.
- _____ b) A calculation of the proposed open space preservation plat density as determined by Section 940.060. (Section 940.030, Subd. 1, C, 2)
- _____ c) A narrative from the applicant as to the rationale behind the proposed layout and open space. (Section 940.030, Subd. 1, C, 3)
- _____ d) Homeowners' association documents, including bylaws, deed restrictions, covenants, and proposed conservation easements, prepared by the holder of the conservation easement. (Section 940.030, Subd. 1, C, 5)
- _____ e) For developments with shared septs, a management plan (Section 940.040, Subd. 1, D, 3, a) clearly identifying the following:
 - _____ i) The ownership of the centralized wastewater treatment system.
 - _____ ii) An annual schedule for maintenance, inspection and monitoring of the centralized wastewater treatment system.
 - _____ iii) A contingency plan in the event of failure of the centralized wastewater treatment.
 - _____ iv) Provisions describing how the sewage treatment portion of the system will be protected from vehicles, animals, humans and other sources of risk.
 - _____ v) Assignment of responsibility for the management of and payment for the centralized wastewater treatment system.
 - _____ vi) The name and license number of the system's designer.
- _____ f) An itemized list of all documents, agreements and actions necessary to be completed prior to recording of the plat, including land area to be protected with a conservation easement as open space or park, the number and size of lots, areas proposed for stormwater management and on-site sewage treatment areas (primary and secondary). (Section 940.030, Subd. 1, C, 4),
- _____ 6) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid.

Following approval of the Conditional Use Permit and the Preliminary Plat, the applicant may submit a Final Plat application. (See the Final Plat process handout.)

This handout is intended to provide a summary of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Open Space Preservation Plat requirements can be found in Section 940.030 of the Subdivision Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Open Space Preservation Sketch Plan Application Process

Prior to filing a formal Open Space Preservation Plat application, applicants may present a sketch plan to the Zoning Administrator. Request for sketch plan review and comment by the Planning Commission shall be filed with the Zoning Administrator on an official application form.

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

All regular platting procedures will apply to Open Space Preservation Plats. The applicant must schedule and attend a pre-application meeting with City staff at least one week prior to the application deadline.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 6 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of sketch/conceptual plans.
- _____ 5) The sketch should contain the following information:
 - _____ a) Topography (minimum of 10-foot contours). (Section 940.030, Subd. 1, B, 1)
 - _____ b) Soil types and characteristics, such as depth to water table. (Section 940.030, Subd. 1, B, 2)
 - _____ c) Hydrological features, including surface water bodies, floodplains, wetlands, natural swales and drainage ways. (Section 940.030, Subd. 1, B, 3)
 - _____ d) Vegetation of the site (pasture, woodlands, hedgerows, etc.). (Section 940.030, Subd. 1, B, 4)
 - _____ e) Description of the current land use and structures on the land, and all encumbrances such as easements or covenants. (Section 940.030, Subd. 1, B, 5)
 - _____ f) All roads, buildings, utilities, property boundaries, and property use within 500 feet of the parcel. (Section 940.030, Subd. 1, B, 6)
 - _____ g) An outline of the land area to be protected as open space or park, the number and acreage of lots, areas proposed for stormwater management and on-site or off-site sewage treatment. (Section 940.030, Subd. 1, B, 7)
 - _____ h) All possible future roads, parks and open space on or adjacent to the subject property. (Section 940.030, Subd. 1, B, 8)

- _____ i) Preliminary calculation of the amount of acreage that is public road right-of-way and the area of wetlands and/or public water bodies. (Section 940.030, Subd. 1, B, 9)
- _____ j) Identification of natural resource features as identified by the Comprehensive Plan. (Section 940.030, Subd. 1, B, 10)
- _____ 6) Meeting with potential easement holders. In addition to a pre-application meeting with the city, it is recommended that the applicant meet with potential conservation easement holders in order to be made fully aware of any procedures, policies, or other issues regarding the plat. (Section 940.030, Subd.1, A)
- _____ 7) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid.

The Zoning Administrator shall have the authority to refer the sketch plan to the Planning Commission and/or City Council for discussion, review, and informal comment. Any opinions or comments provided to the applicant by the Zoning Administrator, Planning Commission, and/or City Council shall be considered advisory only and shall not constitute a binding decision on the request.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Sketch Plan requirements can be found in Section 940.030 of the Subdivision Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Final Plat Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans.
Plus:
 - 3 additional sets if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.
- 5) The plans should contain the following information:
 - _____ a) Cost estimates for grading and all public improvements. (Section 935.020, Subd. 2, B)
 - _____ b) Lot sizes for all lots and outlots in tabular form. (Section 935.020, Subd. 2, C)
 - _____ c) A copy of any proposed homeowners association documents, private covenants or deed restrictions. (Section 935.020, Subd. 2, D)
 - _____ d) Certified Survey prepared by a registered land surveyor including but not limited to: topography in 2-foot intervals, gross and net acreage, floodplain and shoreland district boundaries, and the location of other natural features, septics, wells, structures, roads and adjacent property boundary lines. (See the Guide to Certified Surveys handout.) (Section 935.020, Subd. 5)
 - _____ e) A Final Plat. (Section 935.020, Subd. 6, A)
 - _____ f) A Final Drainage, Grading and Erosion/Sedimentation Control Plans, including but not limited to: proposed elevations, driveway grades, building pad locations, and elevations at the lowest floor and garage slab, surface water ponding and treatment areas and the location of storm sewers and catch basins. (Section 935.020, Subd. 6, B)
 - _____ g) A Drainage Calculations Worksheet. (Section 935.020, Subd. 6, B)

- _____ h) Landscape Plan indicating, among other things: tree, shrub and ground cover species, size, quantities, root specification and provisions for plant material watering as well as the location of berms, fences, retaining walls, sidewalks, trails, signage and lighting. The plan should also delineate sodded and seeded areas and contain planting details. (Section 935.020, Subd. 6, E, 2)
- _____ i) A Final Utility Plan, including the location, dimension and purpose of all easements, as well as the location, type, size, grades, rims and invert elevation of all existing and proposed sanitary sewer, storm sewer, water mains, culverts, catch basins, manholes, hydrants and other similar facilities within the proposed plat and to a distance of 100 feet beyond the plat. (Section 935.020, Subd. 6, C)
- _____ j) A Final Tree Preservation Plan, including the location, type and size of all existing significant trees to be removed or preserved and details the tree protection technique (fencing) to be employed. (Section 935.020, Subd. 6, D)
- _____ k) Final Street Plans. (Section 935.020, Subd. 6, F)
- _____ 6) If the final plat varies from the approved preliminary plat, a written description of the nature and extent of the changes. (Section 935.020, Subd. 1, C)
- _____ 7) Electronic files of the drawings in a manner specified by the City in the Engineering Design Standards. (Section 935.020, Subd. 4, E)
- _____ 8) Three specification books for construction of public improvements. (Section 935.020, Subd. 2, A)
- _____ 9) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid.

The Final Plat must be approved by the City Council. Final Plats will within expire 2 years unless the applicant has recorded the Final Plat with Hennepin County; or, unless before expiration of the 2-year period, the applicant submits a written request for an extension and such extension is approved in writing by the City.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Final Plat procedures can be found in Section 935 of the Subdivision Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Preliminary Plat Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) A written description of the proposed plat including, but not limited to, the number of lots, development type and anticipated completion date. (Section 930.020, Subd. 1, C)
- _____ 5) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans.
Plus:
 - _____ 3 additional sets if adjacent to State right-of-way,
 - _____ 2 additional sets if adjacent to Hennepin County right-of-way,
 - _____ 1 additional set if the site contains or is adjacent to wetlands,
 - _____ 1 additional set if the wetland is a DNR wetland,
 - _____ 1 additional set if the site is in the shoreland area.
- _____ 6) The plans should contain the following information:
 - _____ a) Estimated lot sizes for all lots and outlots in tabular form. (Section 930.020, Subd. 2, A)
 - _____ b) Written verification that all commonly owned contiguous land is included in the plat. (Section 930.020, Subd. 2, B)
 - _____ c) Compliance with Wetland Conservation Act. A wetland report by a Certified Wetland Specialist. Identification and delineation of all wetlands on the site including preservation and filling and mitigation. (Section 930.020, Subd. 2, C)
 - _____ d) Certified Survey prepared by a registered land surveyor including but not limited to: topography in 2-foot intervals, gross and net acreage, floodplain and shoreland district boundaries, and the location of other natural features, septics, wells, structures, roads and adjacent property boundary lines. (See the Guide to Certified Surveys handout.) (Section 930.020, Subd. 5)
 - _____ e) A Preliminary Plat. (Section 930.020, Subd.6, A)

- _____ f) A Preliminary Grading and Erosion Control Plan, including but not limited to: proposed elevations, driveway grades, building pad locations, and elevations at the lowest floor and garage slab, surface water ponding and treatment areas and the location of storm sewers and catch basins. (Section 930.020, Subd. 6, B)
- _____ g) A Drainage Calculations Worksheet. (Section 930.020, Subd. 6, B)
- _____ h) A Preliminary Landscape Plan, indicating, among other things: tree, shrub and ground cover species, size, quantities, root specification and provisions for plant material watering as well as the location of berms, fences, retaining walls, sidewalks, trails, signage and lighting. The plan should also delineate sodded and seeded areas and contain planting details. (Section 930.020, Subd. 6, E, 4)
- _____ i) A Preliminary Tree Preservation Plan, including the location, type and size of all existing significant trees to be removed or preserved and details the tree protection technique (fencing) to be employed. (Section 930.020, Subd.6, D)
- _____ j) A Preliminary Utility Plan, including the location, dimension and purpose of all easements, as well as the location, type, size, grades, rims and invert elevation of all existing and proposed sanitary sewer, storm sewer, water mains, culverts, catch basins, manholes, hydrants and other similar facilities within the proposed plat and to a distance of 100 feet beyond the plat. (Section 930.020, Subd. 6, C)
- _____ k) Septic (primary and secondary) and well locations, if located outside of the MUSA. Verification that the existing system is a working system, as applicable. Sanitary sewer and municipal water system design if located inside the MUSA. . (Section 930.020, Subd. 6, E, 2)
- _____ l) Other drawings as required by the Planning Commission or Zoning Administrator. (Section 930.010, Subd. 4, C)
- _____ 7) Electronic files of the drawings in a manner specified by the City in the Engineering Design Standards. (Section 930.020, Subd. 4, E)
- _____ 8) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid.

The Preliminary Plat will be scheduled for a public hearing before the Planning Commission. Following the Planning Commission recommendation, the City Council shall consider the request. The approval of a Preliminary Plat expires one year from the date it was approved, unless the applicant has filed a complete application for approval of a final plat; or, unless before expiration of the one-year period, the applicant submits a written request for an extension and such extension is approved in writing by the City. If a preliminary plat application is denied by the City Council, a similar application for preliminary plat affecting substantially the same property may not be considered for at least 6 months.

This handout is intended to provide a summary of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Preliminary Plat procedures can be found in Section 930 of the Subdivision Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Final Planned Unit Development Application Process

Once the Preliminary Planned Unit Development (PUD) Development Plan is approved, a Final PUD Plan may be submitted.

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 6 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans. Plus:
 - 2 additional set if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.
- _____ 5) The plans should contain all of the information required for submission of the Preliminary PUD plan (see the Preliminary PUD process handout), plus:
 - _____ a) A location map which indicates existing and future land uses. (Section 1040.120, Subd. 9, A)
 - _____ b) Maps of existing and proposed site features and uses at a minimum scale of 1" = 100' which indicates topography in two-foot contours; building outlines; location of significant vegetation; water bodies and wetlands; location of streets, drives and parking areas; and other significant features. (Section 1040.120, Subd. 9, B)
 - _____ c) Final architectural, site, landscaping, grading and utility plans and all additional information which was requested by the Planning Commission as a result of its review of the preliminary plan. The final plan must incorporate all recommendations of the Planning Commission and City Council, or shall indicate how the final plan fails to incorporate the Commission's recommendations and why. (Section 1040.120, Subd. 9, M)
 - _____ d) A note of all changes in preliminary plan data. (Section 1040.120, Subd. 9, M)

- _____ e) Detailed drawings of all proposed structure elevations, including scaled elevations and exterior building materials of all buildings and signs. Samples of all proposed materials that will be used on the exterior of structures may be required with the elevation drawings. (Section 1040.120, Subd. 9, C)
- _____ f) Proposed floor plans for all floor levels of multi-family and non-residential buildings, including locations of electrical, mechanical and gas metering equipment, and storage areas for trash and recyclable materials. (Section 1040.120, Subd. 9, D)
- _____ g) A final landscape plan indicating tree, shrub and ground cover species, size, and provisions for plant material watering. (Section 1040.120, Subd. 9, E)
- _____ h) A final circulation plan indicating pedestrian and vehicular movement systems. This plan shall also include service access for receiving and trash/recycling removal. (Section 1040.120, Subd. 9, F)
- _____ i) A lighting plan showing foot-candle levels, luminaire location, fixture type and height. (Section 1040.120, Subd. 9, G)
- _____ j) Rooftop equipment and screening plan and elevation drawings of rooftop equipment and screening of views from adjacent streets and property. (Section 1040.120, Subd. 9, H)
- _____ k) Final drainage, grading and erosion and sedimentation control plans. Such plans shall comply with the requirements of this ordinance. (Section 1040.120, Subd. 9, I)
- _____ l) Final utility plans, including the location, dimension and purpose of all easements, as well as the location, type, size, grades, rims and invert elevation of all proposed sanitary sewer, storm sewer, water mains, culverts, catch basins, manholes, hydrants and other similar facilities. (Section 1040.120, Subd. 9, I)
- _____ m) Compliance with Wetland Conservation Act. A wetland report by a Certified Wetland Specialist. Identification and delineation of all wetlands on the site including preservation and filling and mitigation. (Section 1040.120, Subd. 9, J)
- _____ n) A written report (Section 1040.120, Subd. 9, K), which:
 - _____ i) Describes the proposed uses.
 - _____ ii) Indicates covenants or agreements which will influence the use and maintenance of the proposed development.
 - _____ iii) Describes the analysis of site conditions and development objectives which has resulted in the planned development proposal.
 - _____ iv) Includes a statement of which primary zoning district provisions are being modified by the planned development.
- _____ o) A shift of density or intensity of the plan, if applicable. For example, a ten-acre site with seven acres of "Commercial" guiding and three acres of "Urban Residential" guiding could be developed with 70 percent of the land area commercial and 30 percent of the land area at the urban residential density identified in the Comprehensive Plan. This type of shift would only be allowed as part of a PUD and the location of uses within the site would be determined as part of the PUD process. This implementation technique would not require an amendment to the Land Use Guide Plan Map. (Section 1040.120, Subd. 9, L)
- _____ p) Any other information deemed necessary by City Staff in order to evaluate the plans. (Section 1040.120, Subd. 9, M)
- _____ 6) A development agreement. (Section 1040.120, Subd. 10, A)
- _____ 7) A performance bond or irrevocable letter of credit. (Section 1040.120, Subd. 10, B)

- _____ 8) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1040.120, Subd. 9, M)

The Final PUD plan shall be scheduled for review by the Planning Commission and approval by the City Council. The rezoning of the property defined in the preliminary PUD development plan shall not become effective until such time as the City Council approves an ordinance reflecting said amendment, which shall take place at the time that the City Council approves the final PUD development plan.

Construction of each PUD development must commence within one year. Upon good cause shown, the City Council may extend the time for one additional year. If construction is not commenced within these time periods, any building permits issued for the PUD shall be void and the Planning Commission may initiate proceeding to rezone the subject property.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. PUD procedures can be found in Section 1040.120 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Preliminary Planned Unit Development Application Process

Prior to filing a Preliminary Planned Unit Development (PUD) Development Plan application, the applicant must submit a sketch plan of the project for conceptual approval. The purpose of the sketch plan is to inform the City of the applicant's intentions and to inform the applicant as to the general acceptability of the proposal before extensive costs are incurred.

Once a sketch plan review has been conducted, a Preliminary PUD Development Plan may be submitted. The Preliminary PUD must be processed concurrently with the Preliminary Plat and Rezoning. (See the Preliminary Plat and Rezoning process handouts.)

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans.
Plus:
 - 2 additional sets if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.
- 5) The plans should contain the following information:
 - _____ a) A location map that indicates existing and future land uses. (Section 1040.120, Subd. 8, A)
 - _____ b) Maps of existing and proposed site features and uses at a minimum scale of 1" = 100' which indicates topography in two-foot contours; building outlines; location of significant vegetation; water bodies and wetlands; location of streets, drives and parking areas; and other significant features. (Section 1040.120, Subd. 8, B)
 - _____ c) A site plan showing all proposed structure and building locations including signs. Plans shall note structure height, general architectural design features and anticipated exterior materials. (Section 1040.120, Subd. 8, C)

- _____ d) A preliminary circulation plan indicating pedestrian and vehicular movement systems. This plan shall also include service access and screening for receiving material and trash removal. (Section 1040.120, Subd. 8, D)
- _____ e) A preliminary drainage, Grading and Erosion/Sedimentation Control Plans, including but not limited to: proposed elevations, driveway grades, building pad locations, and elevations at the lowest floor and garage slab, surface water ponding and treatment areas and the location of storm sewers and catch basins. (Section 1040.120, Subd. 8, E)
- _____ f) Drainage Calculations Worksheet. (Section 1040.120, Subd. 8, D)
- _____ g) A preliminary landscaping plan indicating, among other things: tree, shrub and ground cover species, size, quantities, root specification and provisions for plant material watering as well as the location of berms, fences, retaining walls, sidewalks, trails, signage and lighting. The plan should also delineate sodded and seeded areas and contain planting details. (Section 1040.120, Subd. 8, F)
- _____ h) Septic (primary and secondary) and well locations, if located outside of the MUSA. Verification that the existing system is a working system, as applicable. Sanitary sewer and municipal water system design if located inside the MUSA. (Section 1040.120, Subd. 8, E)
- _____ i) Compliance with Wetland Conservation Act. A wetland report by a Certified Wetland Specialist. Identification and delineation of all wetlands on the site including preservation and filling and mitigation. (Section 1040.120, Subd. 8, I)
- _____ j) A written report (Section 1040.120, Subd. 8, G), which:
 - i) Describes the proposed uses.
 - ii) Indicates covenants or agreements which will influence the use and maintenance of the proposed development.
 - iii) Describes the analysis of site conditions and development objectives which has resulted in the planned development proposal.
 - iv) Includes a statement of which primary zoning district provisions are being modified by the planned development.
- _____ k) A shift of density or intensity of the plan, if applicable. For example, a ten-acre site with seven acres of "Commercial" guiding and three acres of "Urban Residential" guiding could be developed with 70 percent of the land area commercial and 30 percent of the land area at the urban residential density identified in the Comprehensive Plan. This type of shift would only be allowed as part of a PUD and the location of uses within the site would be determined as part of the PUD process. This implementation technique would not require an amendment to the Land Use Guide Plan Map. (Section 1040.120, Subd. 8, H)
- _____ l) Phasing Plan (Section 1040.120, Subd. 8, I)
- _____ m) Any other information deemed necessary by the City Staff in order to evaluate plans. (Section 1040.120, Subd. 8, I)
- _____ 6) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid.
- _____ 7) All items required for a Preliminary Plat submittal (see the Preliminary Plat process handout).
- _____ 8) All items required for a Rezoning submittal (see the Zoning Amendment process handout).

The Preliminary PUD plan will be scheduled for a public hearing before the Planning Commission. Following the Planning Commission recommendation, the City Council shall consider the request.

Following the Preliminary PUD review and approval, a Final PUD plan must be submitted for review and approval. The final PUD must be processed concurrently with the Final Plat.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. PUD procedures can be found in Section 1040.120 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Planned Unit Development Sketch Plan Application Process

Prior to filing a Planned Unit Development (PUD) Sketch Plan, the applicant shall arrange for and attend a conference with the Zoning Administrator. The primary purpose of the conference shall be to provide the applicant with an opportunity to gather information and obtain guidance as to the general suitability of the proposal for the area and its conformity to the provisions of this district prior to incurring substantial expenditures in the preparation of plans, surveys, and other data.

The applicant must submit a Sketch Plan of the project for conceptual approval. The purpose of the sketch plan is to inform the City of the applicant's intentions and to inform the applicant as to the general acceptability of the proposal before extensive costs are incurred. The sketch plan will be sent to the Planning Commission and City Council discussion, review and informal comment. Any opinions or comments provided to the applicant shall be considered advisory only and shall not constitute a binding decision on the request.

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans.
Plus:
 - 2 additional sets if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.
- _____ 5) The plans should contain the following information:
 - _____ a) A location map that indicates existing and future land uses. (Section 1040.120, Subd. 6, B, 1)
 - _____ b) Aerial photograph of the area.
 - _____ c) All identified natural resources and wetland inventories on and abutting the premise.
 - _____ d) General location of existing and proposed structures.

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- _____ e) Tentative access, circulation and street arrangements, both public and private.
- _____ f) Amenities to be provided such as recreational areas, open space, walkways, landscaping, etc.
- _____ g) General location of parking areas.
- _____ h) A general statement of concept, identifying the intent of the project and compatibility with the surrounding area.
- _____ i) A representative example of the style of structures to be constructed.
- _____ j) A written narrative, which:
 - i) Describes the proposed uses.
 - ii) Indicates covenants or agreements which will influence the use and maintenance of the proposed development.
 - iii) Describes the analysis of site conditions and development objectives which has resulted in the planned development proposal.
 - iv) Includes a statement of which primary zoning district provisions are being modified by the planned development.
- _____ k) Any other information deemed necessary by the City Staff in order to evaluate plans. (Section 1040.120, Subd. 6, B, 9)
- _____ 6) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. PUD procedures can be found in Section 1040.120 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Site Plan Application Process

Site Plan approval is required for all development except:

- Agricultural uses and tree farms in the Agricultural District
- Single-family detached dwellings in the Rural Residential District
- Two-family attached dwellings in the Rural Residential District

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 7 full-size (24x36) sets (collated, stapled and folded) and 1 reduced (11x17) set of plans.
Plus:
 - 3 additional sets if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.
- _____ 5) The plans should contain the following information:
 - _____ a) Site Plan, including, among other things: location, setback and dimension of all improvements and natural features within and up to 100 feet from the site, including roads, buildings, parking areas, easements, etc - plus data computations, a site lighting plan and a sign plan. (Section 1070.050, Subd. 6, C)
 - _____ b) Drainage, Grading and Erosion/Sedimentation Control Plans, including but not limited to: proposed elevations, driveway grades, building pad locations, and elevations at the lowest floor and garage slab, surface water ponding and treatment areas and the location of storm sewers and catch basins. (Section 1070.050, Subd. 6, D)
 - _____ c) Drainage Calculations Worksheet. (Section 1070.050, Subd. 6, D)
 - _____ d) Landscape Plan indicating, among other things: tree, shrub and ground cover species, size, quantities, root specification and provisions for plant material watering as well as the location of berms, fences, retaining walls, sidewalks, trails, signage and lighting. The plan should also delineate sodded and seeded areas and contain planting details. (Section 1070.050, Subd. 6, E)

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- _____ e) Certified Survey prepared by a registered land surveyor including but not limited to: topography in 2-foot intervals, gross and net acreage, floodplain and shoreland district boundaries, and the location of other natural features, septic, wells, structures, roads and adjacent property boundary lines. (See the Guide to Certified Surveys handout.) (Section 1070.050, Subd. 6, F, 2)
- _____ f) Architectural elevations of all principal and accessory buildings (type, color, and materials used in all external surfaces). (Section 1070.050, Subd. 6, F, 3)
- _____ g) "Typical" floor plan and "typical" room plan. (Section 1070.050, Subd. 6, F, 4)
- _____ h) Fire Protection Plan. (Section 1070.050, Subd. 6, F, 5)
- _____ i) Compliance with Wetland Conservation Act. A wetland report by a Certified Wetland Specialist. Identification and delineation of all wetlands on the site including preservation and filling and mitigation. (Section 1070.050, Subd. 6, F, 6)
- _____ j) Extent of and any proposed modifications to land within the Wetland, Shoreland or Floodplain District as described and regulated in Sections 1050.010, 1050.020, and 1050.030. (Section 1070.050, Subd. 6, F, 6)
- _____ k) Type, location and size (area and height) of all signs to be erected upon the property in question. (Section 1070.050, Subd. 6, F, 7)
- _____ l) A Sound Source Control Plan. (Section 1070.050, Subd. 6, F, 9)
- _____ 6) Electronic files of the drawings in a manner specified by the City. (Section 1070.050, Subd. 6, A)
- _____ 7) Certification that all property taxes, special assessments, interest, or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1070.050, Subd. 6, F, 8)

Site Plans require review by the Planning Commission and approval by the City Council. Unless otherwise specified by the Zoning Administrator or City Council at time of approval, approval will expire within one year unless the property owner or applicant has substantially started the construction of any building, structure, addition, alteration or use requested as part of the approved plan. Prior to the expiration, the applicant may apply for a time extension of up to one year.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Site Plan requirements can be found in Section 1070.050 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Sketch Plan Application Process

Prior to filing a formal Site Plan application, applicants may present a sketch plan to the Zoning Administrator. Request for sketch plan review and comment by the Planning Commission shall be filed with the Zoning Administrator on an official application form.

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) 7 full-size (24x36) sets (collated, stapled and folded) and 1 reduced (11x17) set of conceptual plans.
- _____ 5) The plans should contain the following information:
 - _____ a) The proposed site with reference to existing development on adjacent properties, at least to within 200 feet. (Section 1070.050, Subd. 3, A, 1)
 - _____ b) General location of proposed structures. (Section 1070.050, Subd. 3, A, 2)
 - _____ c) Tentative street arrangements, both public and private. (Section 1070.050, Subd. 3, A, 3)
 - _____ d) Amenities to be provided such as recreational areas, open space, walkways, etc. (Section 1070.050, Subd. 3, A, 4)
 - _____ e) General location of parking areas. (Section 1070.050, Subd. 3, A, 5)
 - _____ f) Proposed sewer/septic, water/well and storm drainage. (Section 1070.050, Subd. 3, A, 6)
 - _____ g) A statement showing the proposed density of the project and the method of calculating said density. (Section 1070.050, Subd. 3, A, 7)
 - _____ h) Extent of and any proposed modifications to land within the Overlay Districts as described and regulated in Section 1050. (Section 1070.050, Subd. 3, A, 8)
- _____ 6) The plan shall be drawn to scale with topography of a contour interval not greater than 2 feet. (Section 1070.050, Subd. 3, A)

The Zoning Administrator shall have the authority to refer the sketch plan to the Planning Commission and/or City Council for discussion, review, and informal comment. Any opinions or comments provided to the applicant by the Zoning Administrator, Planning Commission, and/or City Council shall be considered advisory only and shall not constitute a binding decision on the request.

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This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Sketch plan requirements can be found in Section 1070.050 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Vacation Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) For vacation of a right-of-way, the addresses of all properties that directly abut the right-of-way must be obtained from Hennepin County and submitted to the City. (Section 975.020, C)
- _____ 5) For vacation of an easement, the legal description of the subject easement must be submitted. (Section 975.020, D)
- _____ 6) Information, both written and graphic, that describes the reason for, and location of, the proposed vacation. (Section 975.020, A)

In the case of a vacation of right-of-way, each landowner directly abutting the right-of-way must sign the written request. In the case of a request for vacation of an easement, a landowner of the property encumbered by the easement must sign the written request

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Vacation procedures can be found in Section 975 of the Subdivision Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Variance Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) A written description of the request for the variance, including an explanation of compliance with the variance criteria set forth in this section. (Section 970.030 and Section 1070.040, Subd. 2, B)
 - a) That because of the particular physical surroundings, shape, or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.
 - b) That the conditions upon which a petition for a variation is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.
 - c) That the granting of the variation will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.
 - d) That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.
- _____ 5) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans. Plus:
 - 2 additional sets if adjacent to State right-of-way,
 - 2 additional sets if adjacent to Hennepin County right-of-way,
 - 1 additional set if the site contains or is adjacent to wetlands,
 - 1 additional set if the wetland is a DNR wetland,
 - 1 additional set if the site is in the shoreland area.
- _____ 6) The plans should contain the following information (Section 970.040 Subd. 1, A, 2 and 1070.040, Subd. 3, B, 1, b):

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- _____ a) A certified survey of property by registered surveyor, including dimensions of lot, location and size of all buildings, location of septic system, setbacks from all property lines, setbacks from septic system and well, and location of all easements. Also, topographic contours if topography or extreme grades are the basis on which the request is being made. (See the Guide to Certified Surveys handout.)
- _____ b) B. A Site Plan showing location and setbacks of proposed buildings and adjacent uses. (See the Site Plan process handout.)
- _____ 7) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1070.040, Subd. 7)
- _____ 8) The Zoning Administrator shall have the authority to request additional information from the applicant or to retain expert testimony with the consent and at the expense of the applicant, concerning operational factors, said information to be declared necessary to establish performance conditions in relation to all pertinent sections of this Chapter. (Section 1070.040, Subd. 3, B, 2)
- _____ 9) A performance bond or irrevocable letter of credit. (Section 1070.040, Subd. 6)

The variance will be scheduled for the Planning Commission review and recommendation. The recommendation will then be forwarded to the City Council for consideration. Approved variances will expire within one year unless the applicant has commenced the authorized use or improvement. Prior to the expiration, the applicant may apply for a time extension of up to one year.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Variance procedures can be found in Section 1070.040 of the Zoning Ordinance and Section 970 of the Subdivision Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



Zoning Amendment/Rezoning Application Process

All of the following information must be submitted. Once the application has been submitted with the appropriate fees, staff will review for completeness. Applications will be scheduled for public meetings only if all required items are submitted. The applicant will be notified within 15 business days as to whether or not the application is complete. Once the application is deemed complete, the 60-day statutory review period will begin. The City may extend the review period an additional 60 days if necessary to complete the review process.

- _____ 1) A completed and signed Land Use Application Form.
- _____ 2) A non-refundable fee and escrow deposit.
- _____ 3) Proof of ownership or owner authorization to proceed with the request.
- _____ 4) A narrative describing the request (Section 1070.101 Subd. 1), including:
 - a) Existing zoning and proposed zoning.
 - b) The nature and reason for request.
 - c) Intended use of the property.
 - d) Nature of uses of adjacent properties.
 - e) Impacts on adjoining properties, and mitigating measures to minimize impacts.
 - f) Impact on traffic.
 - g) Potential environmental impacts, and measures to avoid or minimize those potential impacts.
- _____ 5) 7 full-size (24x36) sets (collated, stapled and folded) and one reduced (11x17) set of plans.
- _____ 6) The plans should contain the following information (Section 1070.010, Subd. 2):
 - _____ a) Location map, including existing conditions and uses within 500 feet of the subject property.
 - _____ b) Certified Survey of subject property showing existing conditions and uses. (See the Guide to Certified Surveys handout)
 - _____ c) Property dimensions and area in acres.
 - _____ d) Septic (primary and secondary) and well locations, if located outside of the MUSA. Verification that the existing system is a working system, as applicable. Sanitary sewer and municipal water system design if located inside the MUSA.
 - _____ e) Grading, erosion control and drainage plan, if applicable.
- _____ 7) Certification that all property taxes, special assessments, interest or City utility fees due upon the parcel of land to which the application relates have been paid. (Section 1070.010, Subd. 4)

- _____ 8) The Planning Commission and City staff shall have the authority to request additional information from the applicant concerning operational factors or to retain expert testimony with the consent and at the expense of the applicant concerning any information declared necessary to establish performance conditions. (Section 1070.010, Subd. 1, F)

The Zoning Amendment will be scheduled for a public hearing before the Planning Commission. The Planning Commission's recommendation will then be considered by the City Council.

For any application that changes all or part of the existing classification of a zoning district from residential to either commercial or industrial, approval shall require passage by a 2/3 vote of the full City Council. Approval of any other proposed amendment shall require passage by a simple majority vote of the full Council.

This handout is intended to provide a *summary* of the submittal requirements. It is the responsibility of the applicant to know the applicable land use regulations. Please see the Corcoran City Code for a complete, detailed listing of requirements. Zoning Amendment procedures can be found in Section 1070.010 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to **Administrative Permits**

The zoning district regulations specify uses that are allowed by administrative permit. These are typically minor projects or projects where the city has limited discretion. If the administrative permit includes any building or site alterations, a site plan approval will also be required.

Upon receipt of an application, staff will notify the applicant in writing that the application is either incomplete or complete. If the application is incomplete, staff will identify the items necessary to make the application complete. If the application is complete, staff will identify the statutory review deadline and tentative meeting dates.

Upon receipt of a complete application, the Zoning Administrator will review the application for compliance with ordinance standards and prepare a letter of administrative permit approval. This approval may contain conditions that must be met.

This handout is intended to provide a *summary* of the Administrative Permit process. Please see the Corcoran City Code for a complete, detailed explanation of the process. Administrative Permit procedures can be found in Section 1070.060 of the Zoning Ordinance.

If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to **Certified Survey**

A certificate of survey is required for all planning applications, including subdivisions, conditional use permits, interim use permits, variances, site plans, zoning amendments and any other type of planning application where the City Planner or City Administrator deems it necessary to process the application.

The Certified Survey shall be attested to by a Registered Land Surveyor duly qualified by registration as required by Section 326.02, Minnesota Statutes. The Certified Survey shall be current within one year and shall provide the following:

1. Scale of drawing.
2. Legal Description.
3. Dimensions of lots and north point.
4. Date of preparation and any revisions thereto.
5. Signature and title of the person who prepared the drawing with registration number or professional certification number.
6. Topography in 2-foot contour intervals within the subject property and to a distance of 100 feet beyond the boundary lines of the property.
7. Dimensions of front, rear and side yards.
8. Indicate "buildable area." (That portion of the lot on which buildings or structures are functionally possible and permitted to be located by regulation. Buildable areas do not include protected wetlands, non-buildable floodplain area, setback areas, public waters, easements or other similarly restricted areas.)
9. The gross and net acreage of the plat, computed to one-tenth of an acre.
10. Location and size of all existing buildings on the lot.
11. The location of all recorded and platted easements.
12. The location, width and name of all existing street, public ways, parks and other public lands, railroads, utility rights-of-way, and corporate lines within the subject property and to a distance of 100 feet beyond the boundary lines of the property.
13. Location and size of all existing sewers, watermains, culverts and other underground facilities (both public and private) within the subject property and to a distance of 100 feet beyond the boundary lines of the property. Data such as rim and invert elevations, locations of catch basins and manholes, and fire hydrants shall also be provided.
14. Grade elevations.
15. Existing drainage patterns and the location of any known draitiles.
16. Floodplain and shoreland district boundaries.

17. Existing watercourses, wetlands (a complete wetland delineation and report is required), marshes, wooded areas, rock outcrops, power transmission poles and lines, fences, and other significant features within the subject property and to a distance of 100 feet beyond the boundary lines.

This handout is intended to provide a *summary* of the Certified Survey requirements as outlined in Section 930 of the City Code. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to **Conditional and Interim Use Permits**

The zoning district regulations specify uses allowed by both Interim Use Permits (IUP) and Conditional Use Permits (CUP). Interim Uses are similar to Conditional Uses except that Interim Uses have a date or event that will terminate the use.

Both IUPs and CUPs require Planning Commission review and City Council approval. The City's discretion in approving or denying a conditional or interim use permit is limited to whether or not the changes meet the standards outlined in the Zoning Ordinance. If it meets these standards, the City must approve the permit. The City may impose conditions upon the uses which are consistent with the intent of the zoning district and help to preserve the health, safety and general welfare of the community.

Staff has prepared a planning application schedule. Applications are due by 4:00 p.m. on the date identified therein. The application must be deemed complete in order to be scheduled for public meetings. The Planning Commission meets the first Thursday of every month at 7:00 p.m. The City Council meets on the second and fourth Thursday of each month also at 7:00 p.m. The Council typically considers applications at the second meeting of the month. (See the planning application schedule handout.)

Upon receipt of an application, staff will notify the applicant in writing that the application is either incomplete or complete. If the application is incomplete, staff will identify the items necessary to make the application complete. If the application is complete, staff will identify the statutory review deadline and tentative meeting dates. Staff will then prepare a report, which will be available to the applicant prior to the public hearing at the planning commission meeting. An applicant or the applicant's representative is encouraged to attend the public meetings to present information and answer questions concerning the request.

If a CUP or IUP has been denied, the applicant may not resubmit a similar application affecting substantially the same property again for at least 6 months from the date of denial.

The applicant will be required to enter into a performance agreement and financial guarantee. Unless otherwise specified at the time of approval, conditional use permits shall expire within one year of the date of approval unless the applicant has commenced the authorized use. A request for extension may not exceed one year, may require a fee and must be submitted not less than 30 days prior to expiration.

The Planning Commission may recommend and the City Council may direct the revocation of any Conditional Use Permit for non-conformance with the following:

- The conditions of the permit
- The intent of the Zoning Ordinance
- The City Code
- Any other applicable regulation

Termination of an Interim Use will happen upon any of the following:

- The date stated in the permit
- Violation of the conditions of the permit
- A change in the City's zoning regulations which render the use nonconforming
- The redevelopment of the use to a permitted or conditional use

Amendments may be made to a Conditional Use at any time, following the same procedures required for a new permit.

This handout is intended to provide a *summary* of the CUP/IUP process. Please see the Corcoran City Code for a complete, detailed explanation of the process. Conditional Use Permit procedures can be found in Section 1070.020 of the Zoning Ordinance. Interim Use Permit procedures can be found in Section 1070.030 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to **Home Occupations**

A Home Occupation is any gainful occupation or profession engaged in by the legal resident of a dwelling, at or from the dwelling or from an accessory building. The City of Corcoran defines three types of home occupations:

- allowed
- special (requiring an administrative permit)
- conditional home occupations (requiring an interim use permit)

The purpose of this Ordinance is to maintain the character and integrity of residential areas and to also provide a means for residents to conduct a home-based business in a way that is compatible with the surrounding neighborhood. In addition, this Ordinance is intended to provide a mechanism enabling the distinction between permitted home occupations and special or customarily “more sensitive” home occupations, so that appropriate, permitted home occupations may be allowed outright or through an administrative process rather than a legislative hearing process.

Process

All home occupations must register with the City by completing a home occupation application. If your business is an **allowed home occupation**, that is the extent of the process.

If your business is a **special home occupation**, you must complete the home occupation application form and the land use application form. There is a fee required for an administrative permit (see the administrative permit application process form).

If your business is defined as a **conditional home occupation**, you must complete the home occupation applicant form and the land use application form. There is a fee required for an interim use permit. This application will be processed as an interim use permit (see the interim use permit application process form).

Standards

All home occupations must comply with the following general conditions:

- No objectionable effect upon adjacent or nearby property.
- No electrical, visual or audible interference shall affect adjacent properties.
- must be clearly incidental and secondary to the residential use of the premises
- No internal or external alterations to the home no construction features not customarily found in dwellings
- No exterior evidence visible from public roads or adjacent parcels of the Home Occupation, including but not limited to storage of material, equipment, supplies, garbage dumpsters, etc.
- The home occupation must meet all fire and building codes
- There shall be no signs or display advertising the home occupation.
- The home occupation must comply with all city code requirements.

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- The home occupation shall not include work staging areas or employees reporting to the home occupation site to receive work assignments and working elsewhere.
- The septic system or wastewater system must be adequate to support the home occupation.
- Only persons who reside in the home may be employed by the home occupation

Furthermore, the following standards apply to **allowed home occupations**:

- The home occupation must be located within the home, except that a business office or computer workstation may be maintained in any permitted structure.
- No customer visits to the premises shall be permitted.
- No deliveries other than those routinely made in a residential district (U.S. Mail, United Parcel Service, etc.) shall be permitted.

Furthermore, the following standards apply to **special home occupations**:

- Services may be provided to customers on site provided no more than 2 additional parking stalls are necessary
- The home occupation will not add more than 10 daily, non-residential vehicle trips to or from the property.
- A single vehicle up to 26,000 lb. GVW may be allowed

All home occupations that exceed the standards of the allowed and special home occupations are defined as **conditional home occupations**.

- Conditional Home Occupations with seasonal retail sales may be allowed one temporary freestanding or wall sign as allowed by Section 84.04 (10) of the City Code.
- Conditional home occupation interim use permit shall be reviewed by the City every 3 years to ensure compliance.

Legal, non-conforming Home Occupations that were existing on May 24, 2001 shall be allowed to continue until such time as the homeowner ceases to operate the home occupation, ownership of the business is transferred, or the property is sold.

Daycare home facilities and group family daycare home facilities that are licensed by the State are exempt from the requirements of this Ordinance.

This handout is intended to provide a *summary* of the Home Occupation process. Please see the Corcoran City Code for a complete, detailed explanation of the process. Home Occupations standards and the approval procedures can be found in Section 1030.100 of the Zoning Ordinance.

If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to

Open Space Preservation Developments

Open Space Preservation (OSP) plats are intended to maintain the rural character of the city and provide public benefit by preserving natural resources (see sketch on next page). At the discretion of the Council, density bonuses may be permitted provided certain requirements are met. In addition, the City may approve centralized wastewater systems, provided certain requirements are met and the project is developed as a Planned Unit Development (PUD) (See the PUD application process handout for more details about that process).

A pre-application meeting with City staff, as well as a meeting with potential easement holders, is not required but is strongly recommended. Three steps are required for approval of an OSP plat:

1. The applicant must submit an application for sketch plan review. (See the OSP Sketch Plan application process handout.) Both the Planning Commission and the City Council review the sketch plan. Comments are advisory and non-binding in nature.
2. The applicant must then submit an application for Conditional Use Permit and Preliminary Plat. (See the Preliminary Plat and Conditional Use Permit application process handouts.) The Parks Commission, the Planning Commission and the City Council must review this application.
3. The applicant must submit an application for Final Plat. (See the Final Plat application process handout.) This will require review and approval by the City Council only.

Staff has prepared a planning application schedule. Applications are due by 4:00 p.m. on the date identified therein. The application must be deemed complete in order to be scheduled for public meetings. The Parks Commission must review the application. The Parks Commission meets on the third Tuesday of every month. The Planning Commission meets the first Thursday of every month and the City Council meets on the second and fourth Thursday of each month. The Council typically considers applications at the second meeting of the month. All meetings take place at City Hall and start at 7:00 p.m. (See the planning application schedule handout.)

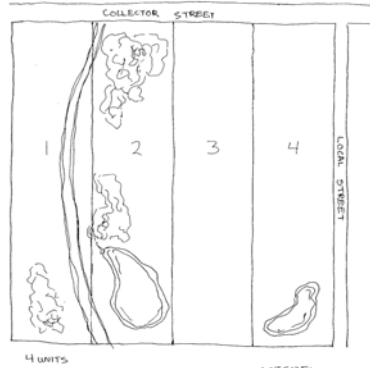
Upon receipt of an application, staff will notify the applicant in writing that the application is either incomplete or complete. If the application is incomplete, staff will identify the items necessary to make the application complete. If the application is complete, staff will identify the statutory review deadline and tentative meeting dates. Staff will then prepare a report, which will be available to the applicant prior to the first public meeting. An applicant or the applicant's representative is encouraged to attend the public meetings to present information and answer questions concerning the request.

The Council requires that the owner/developer of any OSP plat to execute a development agreement and post a performance bond.

If an OSP plat has been denied, an application for a similar development affecting substantially the same property may not be submitted for at least 6 months from the date of denial.

40-Acre Example:

Traditional Plat:
4 units on 40 acres,
all developed.



Open Space
Preservation Plat:
8 units on 40 acres,
20 acres preserved.



This handout is intended to provide a *summary* of the Open Space Preservation Plat process. Please see the Corcoran City Code for a complete, detailed explanation of the process. OSP procedures can be found in Section 940 of the Subdivision Regulations. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to **Planned Unit Developments**

A Planned Unit Development (PUD) provides flexibility from the strict application of zoning district requirements to promote creative and efficient use of the land in a manner that would not otherwise be possible under conventional zoning.

The City has a relatively high level of discretion in approving a PUD. It must be consistent with the City's Comprehensive Plan. The City may impose reasonable requirements in a PUD not otherwise required if the City deems it necessary to promote the general health, safety and welfare of the community and surrounding area.

A PUD is a zoning district and; therefore, requires a rezoning to PUD. (See the Zoning Amendment process handout.) PUDs are processed simultaneously with Plats. (See the Preliminary Plat and Final Plat process handouts.) The process involves the following:

- A pre-application conference with City staff.
- A PUD sketch plan application, which is reviewed by both the Planning Commission and City Council. The Parks Commission may also review sketch plans.
- A rezoning, preliminary PUD development plan and preliminary plat application, which is reviewed by the Parks Commission, the Planning Commission (at a public hearing) and the City Council.
- A final PUD development plan and final plat application, which is reviewed by both the Planning Commission and City Council.

For detailed information about the submittal requirements for these steps, please review the three PUD application process handouts – sketch, preliminary and final.

If the applicant desires, and the City Council concurs, the preliminary and final PUD development plans may be processed concurrently, provided all items required for both applicants are submitted.

The rezoning of the property will be reviewed and acted on with the preliminary PUD development plan application but will not become effective until the City Council approves an ordinance reflecting said amendment, which shall take place at the time that the City Council approves the final PUD development plan.

Staff has prepared a planning application schedule. Applications are due by 4:00 p.m. on the date identified therein. The application must be deemed complete in order to be scheduled for public meetings. The Parks Commission meets the third Tuesday of every month at 7:00 p.m. The Planning Commission meets the first Thursday of every month at 7:00 p.m. The City Council meets on the second and fourth Thursday of each month also at 7:00 p.m. All meetings take place at City Hall. The Council typically considers applications at the second meeting of the month. (See the planning application schedule handout.)

Upon receipt of an application, staff will notify the applicant in writing that the application is either incomplete or complete. If the application is incomplete, staff will identify the items necessary to make the application complete. If the application is complete, staff will identify the statutory review deadline and tentative meeting dates. Staff will then prepare a report that will be available to the applicant prior to the public meeting. An applicant or the applicant's representative is encouraged to attend the public meetings to present information and answer questions concerning the request.

If a PUD has been denied, an application for a similar development affecting substantially the same property may not be submitted for at least 6 months from the date of denial.

The Council requires that the owner/developer of any PUD execute a development agreement and post a performance bond. Construction of a PUD must commence within one year after the effective date of the rezoning/PUD approval.

This handout is intended to provide a *summary* of the Planned Unit Development process. Please see the Corcoran City Code for a complete, detailed explanation of the process. PUD procedures can be found in Section 1040.120 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to

Zoning Amendments and Comprehensive Plan Amendments

There are two types of Zoning Amendments:

- a text amendment to change the Zoning Ordinance
- a rezoning to change the Zoning Map

There are two types of Comprehensive Plan Amendments:

- a text amendment to change the Comprehensive Plan
- a reclassification to change a map in the Comprehensive Plan

Any person owning real estate within the City may initiate a request to amend the zoning of his or her property or the text of the Zoning Ordinance. Similarly, any person owning real estate within the City may initiate a request to amend the comprehensive plan classification for his or her property or the text of the Comprehensive Plan.

The Zoning Ordinance and Map are the enforcement tools used to implement the goals and standards set in the Comprehensive Plan.

The Comprehensive Plan is a community-driven planning document that outlines out the goals, objectives and policies that shape the future of the City. When a Comprehensive Plan Amendment (CPA) is requested, a substantial burden of proof rests upon the applicant to demonstrate that the change is in the best interests of the City overall.

The City has a relatively high level of discretion in approving or denying a Rezoning application. The proposed zoning for a property must be consistent with the City's Comprehensive Plan. If the proposed zoning is not consistent with the Comprehensive Plan, the City must deny the rezoning or amend the Comprehensive Plan.

Any Comprehensive Plan amendment or a zoning map amendment that changes all or part of the existing zoning from residential to either commercial or industrial, approval requires passage by a 2/3 vote of the Council. All other changes require a simple majority. Both Zoning Ordinance Amendments and Comprehensive Plan Amendments require a public hearing before the Planning Commission and approval by the City Council.

Staff has prepared a planning application schedule. Applications are due by 4:00 p.m. on the date identified therein. The application must be deemed complete in order to be scheduled for public meetings. The Planning Commission meets the first Thursday of every month at 7:00 p.m. The City Council meets on the second and fourth Thursday of each month also at 7:00 p.m. The Council typically considers applications at the second meeting of the month. (See the planning application schedule handout.)

Upon receipt of an application, staff will notify the applicant in writing that the application is either incomplete or complete. If the application is incomplete, staff will identify the items necessary to make the application complete. If the application is complete, staff will identify the statutory review deadline and tentative meeting dates. Staff will then prepare a report, which will be available to the applicant prior to the public meeting. An applicant or the applicant's representative is encouraged to attend the public meetings to present information and answer questions concerning the request. The Planning Commission shall forward to the Council findings of fact and a recommendation on the request.

As required by state law, Comprehensive Plan Amendments will be subject to review and comment by the Metropolitan Council.

If an amendment is denied, an application for a similar amendment affecting substantially the same property may not be submitted for at least 6 months from the date of denial.

This handout is intended to provide a *summary* of the Zoning and Comprehensive Plan Amendment processes. Please see the Corcoran City Code for a complete, detailed explanation of the process. Zoning Amendment procedures can be found in Section 1070.010 of the Zoning Ordinance. Comprehensive Plan Amendment procedures are based on Minnesota Statutes Chapter 462.

If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to **Site Plans**

Site plan approval is required for all development, except the following:

- A. Agricultural uses and tree farms in the A and RR districts.
- B. Single family detached dwellings.
- C. Two family attached dwellings.

Site plan reviews that required as part of an administrative permit are administrative and all others will require Planning Commission and City Council review. The City's discretion in approving or denying a site plan is limited to whether or not the application meets the standards outlined in the Zoning Ordinance. If it meets these standards, the City must approve the site plan. The City may impose conditions upon the uses which are consistent with the intent of the zoning district and help to preserve the health, safety and general welfare of the community.

Staff has prepared a planning application schedule. Applications are due by 4:00 p.m. on the date identified therein. The application must be deemed complete in order to be scheduled for public meetings. The Planning Commission meets the first Thursday of every month at 7:00 p.m. The City Council meets on the second and fourth Thursday of each month also at 7:00 p.m. The Council typically considers applications at the second meeting of the month. (See the planning application schedule handout.)

Upon receipt of an application, staff will notify the applicant in writing that the application is either incomplete or complete. If the application is incomplete, staff will identify the items necessary to make the application complete. If the application is complete, staff will identify the statutory review deadline, the review process (whether administrative or requiring Planning Commission and Council review) and tentative meeting dates.

Upon receipt of a complete application, the Zoning Administrator will review the application for compliance with ordinance standards and prepare a letter of administrative site plan approval OR prepare a report, which will be available to the applicant prior to the public hearing at the planning commission meeting. An applicant or the applicant's representative is encouraged to attend the public meetings to present information and answer questions concerning the request.

If the site plan is approved, the applicant will be required to enter into a performance agreement and financial guarantee prior to issuance of a building permit. Unless otherwise specified at the time of approval, site plan approval shall expire within one year of the date of approval unless the property owner or applicant has substantially started the construction of any building, structure, addition or alteration, or use requested as part of the approved plan. A request for extension may not exceed one year, may require a fee and must be submitted not less than 30 days prior to expiration.

This handout is intended to provide a *summary* of the Site Plan process. Please see the Corcoran City Code for a complete, detailed explanation of the process. Site Plan review procedures can be found in Section 1070.050 of the Zoning Ordinance. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.

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A Guide to Subdivisions

A subdivision is any division or rearrangement of land. State law provides for 3 exceptions:

- Where all the resulting parcels, tracts, lots or interests will be 20 acres or larger in size *and* 500 feet in width for residential uses and 5 acres or larger in size for commercial and industrial uses;
- Creating cemetery lots;
- Resulting from court orders or the adjustment of a lot line by the relocation of a common boundary.

In Corcoran, all subdivisions must be processed as a plat. Plats graphically delineate the boundaries of land parcels for identification and title. Parcels are typically platted into “lots” and “blocks.” Dedication of land for public purposes such as streets, parks, and utility and drainage areas can be accomplished through the platting process.

Plats are usually approved through a two-step process: preliminary plat review and final plat review. During this process, the plat design and layout is reviewed to meet City standards. First, the preliminary plat is proposed and a public hearing is held before the Planning Commission. The Planning Commission will make a recommendation on the request for City Council action. Second, after the Planning Commission review and City Council approval of the preliminary plat, the applicant prepares a final plat for approval, incorporating changes required as part of the preliminary plat review process. The final plat requires review and approval by the City Council only.

If the applicant desires, and the City Council concurs, the preliminary and final plat may be processed concurrently, provided all items required for both applications are submitted.

Following approval of the final plat, the applicant must record the signed final plat at Hennepin County with the approving resolutions and any other documents required by the City Council approval.

Staff has prepared a planning application schedule. Applications are due by 4:00 p.m. on the date identified therein. The application must be deemed complete in order to be scheduled for public meetings. The Parks Commission meets the third Tuesday of every month. The Planning commission meets the first Thursday of every month and the City Council meets on the second and fourth Thursday of each month. All meetings begin at 7:00 p.m. and take place at City Hall. (See the planning application schedule handout.)

Upon receipt of an application, staff will notify the applicant in writing that the application is either incomplete or complete. If the application is incomplete, staff will identify the items necessary to make the application complete. If the application is complete, staff will identify the statutory review deadline and tentative meeting dates. Staff will then prepare a report that will be available to the applicant prior to the public meeting. An applicant or the applicant’s representative is encouraged to attend the public meetings to present information and answer questions concerning the request.

If a subdivision has been denied, the applicant may not resubmit a similar subdivision application affecting substantially the same property for at least 6 months from the date of denial.

This handout is intended to provide a *summary* of the various subdivision processes. Please see the Corcoran City Code for a complete, detailed explanation of the process. Plat procedures can be found in Sections 930 and 935 of the Subdivision Regulations. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to **Vacations**

A vacation can be requested for a public right-of-way or an easement. For vacations, the City Council shall conduct the public hearing, consider the request and render its decision.

Staff has prepared a planning application schedule. Applications are due by 4:00 p.m. on the date identified therein. The application must be deemed complete in order to be scheduled for public meetings. The City Council meets on the second and fourth Thursday of each month also at 7:00 p.m. The Council typically considers applications at the second meeting of the month. (See the planning application schedule handout.)

Upon receipt of a complete application form, staff will notify the applicant in writing that the application is complete, identify the statutory review deadline and tentative meeting dates. Staff will then prepare a report, which will be available to the applicant prior to the public meeting. An applicant or the applicant's representative is encouraged to attend the public meetings to present information and answer questions concerning the request.

If a vacation is denied, a similar application affecting substantially the same property shall not be considered again by the Council for at least 6 months from the date of denial.

This handout is intended to provide a *summary* of the Vacation process. Please see the [Corcoran City Code](#) for a complete, detailed explanation of the process. Vacation procedures can be found in Section 975 of the Subdivision Regulations. If you have any questions about these requirements, please contact City Hall to speak with the City Planner.



A Guide to Variances

Variances provide for deviations from the requirements of the Zoning Ordinance or Subdivision Regulations when strict enforcement would cause undue hardship due to circumstances unique to the individual property.

The City Council acts as the Board of Adjustments and Appeals. For variances from both the Zoning Ordinance and the Subdivision Regulations, the Planning Commission shall make a recommendation and findings of fact to the City Council for approval.

Staff has prepared a planning application schedule. Applications are due by 4:00 p.m. on the date identified therein. The application must be deemed complete in order to be scheduled for public meetings. The Planning Commission meets the first Thursday of every month at 7:00 p.m. The City Council meets on the second and fourth Thursday of each month also at 7:00 p.m. The Council typically considers applications at the second meeting of the month. (See the planning application schedule handout.)

Upon receipt of an application, staff will notify the applicant in writing that the application is either incomplete or complete. If the application is incomplete, staff will identify the items necessary to make the application complete. If the application is complete, staff will identify the statutory review deadline and tentative meeting dates. Staff will then prepare a report, which will be available to the applicant prior to the public meeting. An applicant or the applicant's representative is encouraged to attend the public meetings to present information and answer questions concerning the request. The Planning Commission shall forward to the Council findings of fact and a recommendation on the request. The City Council may impose conditions in connection with the request that will, in its opinion, secure the objectives of the regulations or provisions to which the variance is granted.

If a variance is denied, a similar application affecting substantially the same property shall not be considered again by the City for at least 6 months from the date of denial. Unless otherwise specified by the City Council at this time of approval, variances from the Zoning Ordinance shall expire within one year and variances from the Subdivision Regulations shall expire with the related subdivision (typically one or two years), after the date of approval unless the applicant has commenced the authorized use or improvement. Not less than 30 days prior to expiration, the applicant may submit an application and any required fee for administrative approval of a time extension of up to one year. Additional extensions would require City Council approval.

If the variance is approved, a performance agreement and financial guarantee may be required for variances prior to issuance of building permits.

This handout is intended to provide a *summary* of the variance process. Please see the Corcoran City Code for a complete, detailed explanation of the process. Variance procedures can be found in Section 1070.040 of the Zoning Ordinance *and* in Section 970 of the Subdivision Regulations.

If you have any questions about these requirements, please contact City Hall to speak with the City Planner.

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STAFF CHECKLIST
ADMINISTRATIVE PERMIT

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID

Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

ADMINISTRATIVE APPROVAL LETTER

Approved On: _____

A copy of the approval letter shall be placed on file in the City Office.

BUILDING PERMIT ISSUED

Issued On: _____ **Building permit #** _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

*If the administrative permit includes site improvements, a site plan approval is generally required and the site plan approval checklist should be used in conjunction with this form.

STAFF CHECKLIST
CERTIFICATE OF COMPLIANCE

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID
Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before application is accepted for processing

ADMINISTRATIVE APPROVAL ON APPLICATION FORM
Approved On: _____

A copy of the signed form shall be placed on file in the City Office.

BUILDING PERMIT ISSUED
Issued On: _____ **Building permit #** _____

If a building permit is required for the building, it should not be issued until the Certificate of Compliance is approved by the City.

ESCROW RELEASED
Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

STAFF CHECKLIST
COMPREHENSIVE PLAN AMENDMENT

Applicant: _____ **City File Number:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

- APPLICATION SUBMITTED – FEE PAID**
Received On: _____ **Application Fee:** \$ _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

- AFFIDAVIT OF PUBLICATION**
Published On: _____

A public hearing must be held in order to reclassify the property or amend the comprehensive plan. The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

- AFFIDAVIT OF MAILING**
Mailed On: _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This affidavit should include a copy of the notice sent to the property owners, a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners within 350' at least ten days in advance of the hearing.

- RETURNED NOTICES**

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

- RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION**
Recommendation Adopted On: _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

- RESOLUTION (OR MINUTES) APPROVING OR DENYING REQUEST – COUNCIL**
Approved On: _____ **Resolution #/Ordinance #** _____

If the reclassification is approved a resolution must be adopted. A copy must be placed with the file. If the request is denied, the file must include a copy of an excerpt of the minutes or other certified copy of the minutes of the City Council meeting.

- LAND USE MAP AMENDED**

The amendments must be noted on the Land Use Map, whether in handwritten form for an interim period or to the City's base maps.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

STAFF CHECKLIST
CONDITIONAL USE PERMIT

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID

Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

AFFIDAVIT OF PUBLICATION

Published On: _____

The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING

Mailed On: _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This affidavit should include a copy of the notice sent to the property owners, a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners within 350 feet at least ten days in advance of hearing.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

FINDINGS OF FACT

Hearing Held On: _____

The "findings of fact" for approving or denying the application must be included in the file, and should be included in the resolution itself, if there is one.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION

Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – CITY COUNCIL

Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

DOCUMENT RECORDING

Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

FINANCIAL GUARANTEE SUBMITTED

Placed on File with the City Clerk On: _____

Amount of Guarantee: _____

Method of Guarantee: _____

A financial guarantee in the amount of 125% the estimated cost of improvements must be provided to ensure that the work is completed as approved. This must be provided PRIOR to issuance of a building permit. This financial guarantee shall not be released until city staff has inspected the site to ensure completion.

BUILDING PERMIT ISSUED

Issued On: _____ **Building permit #** _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been received by the City.

PERFORMANCE GUARANTEE SUBMITTED

Placed on File with the City Clerk On: _____

Amount of Guarantee: _____

Method of Guarantee: _____

A performance guarantee is provided to the city to guarantee the work for a period of time (1-2 years depending on the type of improvements). The applicant shall submit either 1) a performance bond or 2) a letter of credit for 25 percent of the amount of the original cost of the improvements.

FINANCIAL GUARANTEE RELEASED

Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete, the finance guarantee may be released.

PERFORMANCE GUARANTEE RELEASED

Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete and work has met the warranty period, the performance guarantee may be released.

STAFF CHECKLIST
INTERIM USE PERMIT

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID
Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

AFFIDAVIT OF PUBLICATION
Published On: _____

The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING
Mailed On: _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This affidavit should include a copy of the notice sent to the property owners, a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners within 350 feet at least ten days in advance of hearing.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

FINDINGS OF FACT
Hearing Held On: _____

The “findings of fact” for approving or denying the application must be included in the file, and should be included in the resolution itself, if there is one.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION
Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – CITY COUNCIL
Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

DOCUMENT RECORDING

Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

FINANCIAL GUARANTEE SUBMITTED

Placed on File with the City Clerk On: _____

Amount of Guarantee: _____

Method of Guarantee: _____

A financial guarantee in the amount of 125% the estimated cost of improvements must be provided to ensure that the work is completed as approved. This must be provided PRIOR to issuance of a building permit. This financial guarantee shall not be released until city staff has inspected the site to ensure completion.

BUILDING PERMIT ISSUED

Issued On: _____ **Building permit #** _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

PERFORMANCE GUARANTEE SUBMITTED

Placed on File with the City Clerk On: _____

Amount of Guarantee: _____

Method of Guarantee: _____

A performance guarantee is provided to the city to guarantee the work for a period of time (1-2 years depending on the type of improvements). The applicant shall submit either 1) a performance bond or 2) a letter of credit for 25 percent of the amount of the original cost of the improvements.

FINANCIAL GUARANTEE RELEASED

Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete, the finance guarantee may be released.

PERFORMANCE GUARANTEE RELEASED

Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete and work has met the warranty period, the performance guarantee may be released.

STAFF CHECKLIST
OPEN SPACE PRESERVATION PLAT

Applicant: _____ **Name of Plat:** _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

SKETCH PLAN
Submitted On: _____

PRE-APPLICATION MEETING
Held On: _____

CONCEPT PLAN REVIEW
Commission On: _____ **Council On:** _____

PRELIMINARY PLAT AND CONDITIONAL USE PERMIT APPLICATION SUBMITTED – FEE PAID
Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

AFFIDAVIT OF PUBLICATION
Published On: _____

The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING
Mailed On: _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This affidavit should include a copy of the notice sent to the property owners; a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners within 350' at least ten days in advance of hearing. For developments that are abutting another city's property, a notice should be sent to the City Clerk as well as any known residents within the notification distance.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

ENGINEER, FIRE CHIEF, PUBLIC WORKS SUPERINTENDENT & BUILDING OFFICIAL REVIEWED PRELIMINARY PLAT

Engineer Comment On: _____ **Comments Made: Yes** ____ **No** ____

Fire Chief Comment On: _____ **Comments Made: Yes** ____ **No** ____

Public Works Superintendent Comment On: _____ **Comments Made: Yes** ____ **No** ____

Building Official Comment On: _____ **Comments Made: Yes** ____ **No** ____

The City Engineer, Fire Chief, Public Works Superintendent and Building Official should review the preliminary plat prior to the public hearing. Staff is to record the date which the reports are made, and

whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

HENNEPIN COUNTY TRANSPORTATION DEPARTMENT AND ELM CREEK WATERSHED REVIEWED PRELIMINARY PLAT

Hennepin County Comment On: _____ **Comments Made: Yes** ____ **No** ____
Elm Creek Watershed Comment On: _____ **Comments Made: Yes** ____ **No** ____

Hennepin County Transportation and Elm Creek Watershed Advisor are required to review the preliminary plat prior to the public hearing, if applicable. Staff is to record the date which the reports are made, and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION
Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – CITY COUNCIL
Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

DOCUMENT RECORDING
Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

FINAL PLAT SUBMITTED – FEE PAID
Received On: _____

ENGINEER, FIRE CHIEF, PUBLIC WORK SUPERINTENDENT & BUILDING OFFICIAL REVIEWED FINAL PLAT

Engineer Comment On: _____ **Comments Made: Yes** ____ **No** ____
Fire Chief Comment On: _____ **Comments Made: Yes** ____ **No** ____
Public Works Superintendent Comment On: _____ **Comments Made: Yes** ____ **No** ____
Building Official Comment On: _____ **Comments Made: Yes** ____ **No** ____

The City Engineer, Fire Chief, Public Works Superintendent and Building Official should review the final plat prior to the public hearing. Staff is to record the date which the reports are made, and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

HENNEPIN COUNTY TRANSPORTATION DEPARTMENT AND ELM CREEK WATERSHED REVIEWED PRELIMINARY PLAT

Hennepin County Comment On: _____ **Comments Made: Yes** ____ **No** ____
Elm Creek Watershed Comment On: _____ **Comments Made: Yes** ____ **No** ____

Hennepin County Transportation and Elm Creek Watershed Advisor are required to review the final plat prior to the public hearing, if applicable. Staff is to record the date which the reports are made, and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

RESOLUTION (OR MINUTES) APPROVING FINAL PLAT – CITY COUNCIL
Resolution # _____ Approved On: _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

PARK FEE PAID
Paid On: _____

The park dedication fee shall be paid prior to executing the plat.

ADDRESSES HAVE BEEN ASSIGNED

Addresses must be assigned by the City to each parcel within the plat. A copy of the address map must be placed on file in City records.

COPY OF ADDRESS MAP MAILED TO APPROPRIATE PARTIES
Mailed On: _____

The address map should be shared with the post office, police and fire dispatch, the developer and all applicable City departments (i.e.: finance).

COPY OF PLAT PLACED ON FILE
Filed On: _____

An original, signed version of the final plat map must be placed in the City's map drawers, and the document must be recorded in the index of maps. Staff should ensure that the map contains all necessary signatures and seals.

ELECTRONIC FILE
Received On: _____

DOCUMENT RECORDING
Recorded On: _____ Document #(s) _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

- FINANCIAL GUARANTEE SUBMITTED**
Placed on File with the City Clerk On: _____
Amount of Guarantee: _____
Method of Guarantee: _____

A financial guarantee in the amount of 125% the estimated cost of improvements must be provided to ensure that the work is completed as approved. This must be provided PRIOR to issuance of a building permit. This financial guarantee shall not be released until city staff has inspected the site to ensure completion.

- BUILDING PERMIT ISSUED**
Issued On: _____ **Building permit #** _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

- ESCROW RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been received by the City.

- PERFORMANCE GUARANTEE SUBMITTED**
Placed on File with the City Clerk On: _____
Amount of Guarantee: _____
Method of Guarantee: _____

A performance guarantee is provided to the city to guarantee the work for a period of time (1-2 years depending on the type of improvements). The applicant shall submit either 1) a performance bond or 2) a letter of credit for 25 percent of the amount of the original cost of the improvements.

- FINANCIAL GUARANTEE RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete, the finance guarantee may be released.

- PERFORMANCE GUARANTEE RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete and work has met the warranty period, the performance guarantee may be released.

STAFF CHECKLIST
FINAL PLAT

Applicant: _____ **Name of Plat:** _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID

Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

RESOLUTION APPROVING PRELIMINARY PLAT – CITY COUNCIL

Resolution # _____ **Approved On:** _____

This preliminary plat resolution should be referenced for any outstanding approval conditions prior to release of the final plat mylar.

RESOLUTION (OR MINUTES) APPROVING OR DENYING FINAL PLAT– CITY COUNCIL

Resolution # _____ **Approved On:** _____

A copy of the final plat resolution should be placed in the file. If possible, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

PARK DEDICATION

FEE PAID – Paid On: _____

LAND DEDICATION – Trail Easement Or Deed Recorded:

Date: _____ **County Document #** _____

The park dedication fee shall be paid prior to executing the plat. If land is deeded or a trail easement is dedicated to satisfy the park dedication requirements, the City must review and approve the deed/easement prior to recording the plat and related documents at the County. The applicant must provide proof of recording prior to issuance of a building permit or release of escrow.

ELECTRONIC FILE

Received On: _____

The electronic (CAD) files must be submitted to the city prior to release of the mylars for filing.

DOCUMENT RECORDING

Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be provided to the applicant in the form of a plat filing letter. The letter shall notify the applicant that the request was approved and shall list the name of the plat to be recorded and all documents to be recorded with the plan, including 3 copies of these documents for the applicant to file at Hennepin County. One copy is for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until these documents are returned with the Recorder's stamp on the document.

COPY OF PLAT PLACED ON FILE – Filed On: _____

An original, signed version of the final plat map must be placed in the City's map drawers and the document must be recorded in the index of maps. Staff should ensure that the map contains all necessary signatures and seals.

ADDRESSES HAVE BEEN ASSIGNED

Addresses must be assigned by the City to each parcel within the plat. A copy of the address map must be placed on file in City records.

COPY OF ADDRESS MAP MAILED TO APPROPRIATE PARTIES – Mailed On: _____

FINANCIAL GUARANTEE SUBMITTED

Placed on File with the City Clerk On: _____

Amount of Guarantee: _____

Method of Guarantee: _____

A financial guarantee in the amount of 125% the estimated cost of improvements must be provided to ensure that the work is completed as approved. This must be provided PRIOR to issuance of a building permit. This financial guarantee shall not be released until city staff has inspected the site to ensure completion.

BUILDING PERMIT ISSUED

Issued On: _____ **Building permit #** _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

PERFORMANCE GUARANTEE SUBMITTED

Placed on File with the City Clerk On: _____

Amount of Guarantee: _____

Method of Guarantee: _____

A performance guarantee is provided to the city to guarantee the work for a period of time (1-2 years depending on the type of improvements). The applicant shall submit either 1) a performance bond or 2) a letter of credit for 25 percent of the amount of the original cost of the improvements.

FINANCIAL GUARANTEE RELEASED

Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete, the finance guarantee may be released.

PERFORMANCE GUARANTEE RELEASED

Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete and work has met the warranty period, the performance guarantee may be released.

STAFF CHECKLIST PRELIMINARY PLAT

Applicant: _____ **Name of Plat:** _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID
Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

ORDER LABELS – Date Ordered _____
 Mailing labels for landowners within 350 feet of the subject property should be requested from Hennepin County so that they are available for the public hearing notice mailing.
 Hennepin County (612-348-3272)

AFFIDAVIT OF PUBLICATION – PRELIMINARY PLAT – PUBLISHED ON _____

The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING – Mailed On _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This Affidavit should include a copy of the notice sent to the property owners; a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners with 350 ft. at least ten days in advance of hearing. For developments that abut another city's property, a notice should be sent to the City Clerk as well as any known residents within the notification distance. If any of the mailed notices are returned for any reason, these mail pieces should be kept in file.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

CITY OFFICIAL REVIEW OF PRELIMINARY PLAT

Engineer Comment On: _____	Comments Made: Yes <input type="checkbox"/>	No <input type="checkbox"/>
Fire Chief Comment On: _____	Comments Made: Yes <input type="checkbox"/>	No <input type="checkbox"/>
Street Superintendent Comment On: _____	Comments Made: Yes <input type="checkbox"/>	No <input type="checkbox"/>
Building Official Comment On: _____	Comments Made: Yes <input type="checkbox"/>	No <input type="checkbox"/>

These City staff and consultants should review the preliminary plat prior to the public hearing. Staff is to record the date which the reports are made and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

AGENCY REVIEW OF PRELIMINARY PLAT.

Hennepin County Comment On: _____	Comments Made: Yes <input type="checkbox"/>	No <input type="checkbox"/>
Elm Creek Watershed Comment On: _____	Comments Made: Yes <input type="checkbox"/>	No <input type="checkbox"/>
Minn. Dept. of Transportation Comment On: _____	Comments Made: Yes <input type="checkbox"/>	No <input type="checkbox"/>
Dept. of Natural Resources Comment On: _____	Comments Made: Yes <input type="checkbox"/>	No <input type="checkbox"/>

The plans should be sent to these agencies for review prior to the public hearing. Staff is to record the date which the reports are made and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION
Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION APPROVING OR DENYING – CITY COUNCIL
Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

ELECTRONIC FILE
Received On: _____

The electronic (CAD) files must be submitted to the city prior to release of the mylars for filing.

DOCUMENT RECORDING
Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

ESCROW RELEASED
Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been received by the City.

STAFF CHECKLIST
FINAL PLANNED UNIT DEVELOPMENT

Applicant: _____ **Name of Plat:** _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID
Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

ENGINEER, FIRE CHIEF, PUBLIC WORK SUPERINTENDENT & BUILDING OFFICIAL REVIEWED FINAL PUD PLAN
Engineer Comment On: _____ **Comments Made: Yes** ____ **No** ____
Fire Chief Comment On: _____ **Comments Made: Yes** ____ **No** ____
Public Works Superintendent Comment On: _____ **Comments Made: Yes** ____ **No** ____
Building Official Comment On: _____ **Comments Made: Yes** ____ **No** ____

The City Engineer, Fire Chief, Public Works Superintendent and Building Official should review the final plat prior to the public hearing. Staff is to record the date which the reports are made, and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION
Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – CITY COUNCIL
Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

DOCUMENT RECORDING
Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

DEVELOPMENT AGREEMENT
Received On: _____

BUILDING PERMIT ISSUED
Issued On: _____ Building permit # _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

ESCROW RELEASED
Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been received by the City.

STAFF CHECKLIST

PRELIMINARY PLANNED UNIT DEVELOPMENT

Applicant: _____ **Name of Plat:** _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID

Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

AFFIDAVIT OF PUBLICATION

Published On: _____

The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING

Mailed On: _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This affidavit should include a copy of the notice sent to the property owners; a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners within 350' at least ten days in advance of hearing. For developments that are abutting another city's property, a notice should be sent to the City Clerk as well as any known residents within the notification distance.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

ENGINEER, FIRE CHIEF, PUBLIC WORKS SUPERINTENDENT & BUILDING OFFICIAL REVIEWED THE PRELIMINARY PUD PLAN

Engineer Comment On: _____ **Comments Made: Yes** ___ **No** ___

Fire Chief Comment On: _____ **Comments Made: Yes** ___ **No** ___

Public Works Superintendent Comment On: _____ **Comments Made: Yes** ___ **No** ___

Building Official Comment On: _____ **Comments Made: Yes** ___ **No** ___

The City Engineer, Fire Chief, Public Works Superintendent and Building Official should review the preliminary plat prior to the public hearing. Staff is to record the date which the reports are made, and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION

Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – CITY COUNCIL

Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

DOCUMENT RECORDING

Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

STAFF CHECKLIST

PLANNED UNIT DEVELOPMENT - SKETCH

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID

Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

PRE-APPLICATION CONFERENCE

Held On: _____

Prior to submittal of the sketch plan, the applicant shall arrange a conference with the Zoning Administrator. Following this meeting, the Zoning Administrator shall refer the sketch plan to the Planning Commission and the City Council for discussion, review and informal comment.

RESOLUTION (OR MINUTES) WITH PUD SKETCH PLAN COMMENTS – PLANNING COMMISSION

Recommendation Adopted On: _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

RESOLUTION (OR MINUTES) WITH PUD SKETCH PLAN COMMENTS – CITY COUNCIL

Resolution # _____ **Approved On:** _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been received by the City.

STAFF CHECKLIST
PLANNED UNIT DEVELOPMENT

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

PRE-APPLICATION CONFERENCE
Held On: _____

Prior to submittal of the sketch plan, the applicant shall arrange a conference with the Zoning Administrator.

SKETCH PLAN REVIEW
Commission On: _____ **Council On:** _____

The Zoning Administrator shall refer the sketch plan to the Planning Commission and the City Council for discussion, review and informal comment.

APPLICATION SUBMITTED – FEE PAID
Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

AFFIDAVIT OF PUBLICATION
Published On: _____

The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING
Mailed On: _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This affidavit should include a copy of the notice sent to the property owners; a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners within 350' at least ten days in advance of hearing. For developments that are abutting another city's property, a notice should be sent to the City Clerk as well as any known residents within the notification distance.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

ENGINEER, FIRE CHIEF, PUBLIC WORKS SUPERINTENDENT & BUILDING OFFICIAL REVIEWED THE PRELIMINARY PUD PLAN

Engineer Comment On: _____ **Comments Made: Yes** _____ **No** _____
Fire Chief Comment On: _____ **Comments Made: Yes** _____ **No** _____
Public Works Superintendent Comment On: _____ **Comments Made: Yes** _____ **No** _____
Building Official Comment On: _____ **Comments Made: Yes** _____ **No** _____

The City Engineer, Fire Chief, Public Works Superintendent and Building Official should review the preliminary plat prior to the public hearing. Staff is to record the date which the reports are made, and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

RESOLUTION (OR MINUTES) APPROVING OR DENYING PRELIMINARY PUD PLAN – PLANNING COMMISSION

Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING PRELIMINARY PUD PLAN – CITY COUNCIL
Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

ENGINEER, FIRE CHIEF, PUBLIC WORK SUPERINTENDENT & BUILDING OFFICIAL REVIEWED FINAL PUD PLAN

Engineer Comment On: _____ **Comments Made: Yes** ____ **No** ____
Fire Chief Comment On: _____ **Comments Made: Yes** ____ **No** ____
Public Works Superintendent Comment On: _____ **Comments Made: Yes** ____ **No** ____
Building Official Comment On: _____ **Comments Made: Yes** ____ **No** ____

The City Engineer, Fire Chief, Public Works Superintendent and Building Official should review the final plat prior to the public hearing. Staff is to record the date which the reports are made, and whether any comments were received from these individuals. Comments should be forwarded to the Planning Commission.

RESOLUTION (OR MINUTES) APPROVING FINAL PUD PLAN – PLANNING COMMISSION
Recommendation Adopted On: _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING FINAL PUD PLAN – CITY COUNCIL
Resolution # _____ **Approved On:** _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

DEVELOPMENT AGREEMENT

Recorded On: _____ **Document #(s)** _____

DOCUMENT RECORDING

Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

- FINANCIAL GUARANTEE SUBMITTED**
Placed on File with the City Clerk On: _____
Amount of Guarantee: _____
Method of Guarantee: _____

A financial guarantee in the amount of 125% the estimated cost of improvements must be provided to ensure that the work is completed as approved. This must be provided PRIOR to issuance of a building permit. This financial guarantee shall not be released until city staff has inspected the site to ensure completion.

- BUILDING PERMIT ISSUED**
Issued On: _____ **Building permit #** _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

- ESCROW RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

- PERFORMANCE GUARANTEE SUBMITTED**
Placed on File with the City Clerk On: _____
Amount of Guarantee: _____
Method of Guarantee: _____

A performance guarantee is provided to the city to guarantee the work for a period of time (1-2 years depending on the type of improvements). The applicant shall submit either 1) a performance bond or 2) a letter of credit for 25 percent of the amount of the original cost of the improvements.

- FINANCIAL GUARANTEE RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete, the finance guarantee may be released.

- PERFORMANCE GUARANTEE RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete and work has met the warranty period, the performance guarantee may be released.

STAFF CHECKLIST
ZONING AMENDMENT/REZONING

Applicant: _____ **City File Number:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID
Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

AFFIDAVIT OF PUBLICATION
Published On: _____

A public hearing must be held in order to rezone property. The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING
Mailed On: _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This affidavit should include a copy of the notice sent to the property owners, a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners within 350' at least ten days in advance of the hearing.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION
Recommendation Adopted On: _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

ORDINANCE ADOPTED OR RESOLUTION (OR MINUTES) APPROVING OR DENYING REQUEST – COUNCIL
Approved On: _____ **Resolution #/Ordinance #** _____

If the rezoning is approved an ordinance must be adopted. An original must be filed with the other City ordinances, a copy must be placed with the rezoning file. If the request is denied, the file must include a copy of an excerpt of the minutes or other certified copy of the minutes of the City Council meeting.

AFFIDAVIT OF PUBLICATION ORDINANCE PUBLICATION

Recorded On: _____

If the rezoning is approved by the City Council the ordinance must be published in the official newspaper. The ordinance will only become effective after it has been published. An Affidavit of Publication must be placed with the original copy of the ordinance. A copy of the Affidavit should be placed with the rezoning file as well.

ZONING MAP AMENDED

The amendments must be noted on the Zoning Map, whether in handwritten form for an interim period or to the City's base maps.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

STAFF CHECKLIST

SITE PLAN

Applicant: _____ **Name of Plat:** _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID
Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

SKETCH PLAN REVIEW (IF APPLICABLE)
Commission On: _____ **Council On:** _____

The applicant may present a sketch plan to the Planning Commission and the City Council for discussion, review and informal comment.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION
Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – CITY COUNCIL
Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

DOCUMENT RECORDING
Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

ELECTRONIC FILE
Received On: _____

The electronic (CAD) files must be submitted to the city prior to release of the escrow.

- FINANCIAL GUARANTEE SUBMITTED**
Placed on File with the City Clerk On: _____
Amount of Guarantee: _____
Method of Guarantee: _____

A financial guarantee in the amount of 125% the estimated cost of improvements must be provided to ensure that the work is completed as approved. This must be provided PRIOR to issuance of a building permit. This financial guarantee shall not be released until city staff has inspected the site to ensure completion.

- BUILDING PERMIT ISSUED**
Issued On: _____ Building permit # _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

- ESCROW RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been received by the City.

- PERFORMANCE GUARANTEE SUBMITTED**
Placed on File with the City Clerk On: _____
Amount of Guarantee: _____
Method of Guarantee: _____

A performance guarantee is provided to the city to guarantee the work for a period of time (1-2 years depending on the type of improvements). The applicant shall submit either 1) a performance bond or 2) a letter of credit for 25 percent of the amount of the original cost of the improvements.

- FINANCIAL GUARANTEE RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete, the finance guarantee may be released.

- PERFORMANCE GUARANTEE RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete and work has met the warranty period, the performance guarantee may be released.

STAFF CHECKLIST
SKETCH PLAN

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID

Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

PRE-APPLICATION CONFERENCE

Held On: _____

Prior to submittal of the sketch plan, the applicant shall arrange a conference with the Zoning Administrator. Following this meeting, the Zoning Administrator may refer the sketch plan to the Planning Commission and the City Council for discussion, review and informal comment.

RESOLUTION (OR MINUTES) WITH SKETCH PLAN COMMENTS – PLANNING COMMISSION

Recommendation Adopted On: _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

RESOLUTION (OR MINUTES) WITH SKETCH PLAN COMMENTS – CITY COUNCIL

Resolution # _____ **Approved On:** _____

If a resolution is not utilized an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been received by the City.

STAFF CHECKLIST
VACATION

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID

Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

ORDER LABELS – Date Ordered _____

Mailing labels for all landowners of property directly abutting the area to be vacated should be requested from Hennepin County so that they are available for the public hearing notice mailing. Hennepin County (612-348-3272) Notice shall also be sent to utility companies serving the area.

AFFIDAVIT OF PUBLICATION – PUBLISHED ON _____

The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING – Mailed On _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This Affidavit should include a copy of the notice sent to the property owners; a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners and utility companies at least ten days in advance of hearing. If any of the mailed notices are returned for any reason, these mail pieces should be kept in file.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

RESOLUTION APPROVING OR DENYING – CITY COUNCIL

Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

ELECTRONIC FILE

Received On: _____

The electronic (CAD) files must be submitted to the city prior to release of the mylars for filing.

DOCUMENT RECORDING

Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

BUILDING PERMIT ISSUED

Issued On: _____ **Building permit #** _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

ESCROW RELEASED

Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been receipted by the City.

STAFF CHECKLIST
VARIANCE

Applicant: _____ **File #:** _____

The following is a checklist that should be included in the file before it is placed on permanent file. All boxes must be checked and all dates must be filled in before placing the file on permanent storage. *Please check off and initial each item as it is completed.*

APPLICATION SUBMITTED – FEE PAID

Received On: _____ **Application Fee: \$** _____ **Escrow Deposit \$** _____

The fees must be paid before notice is sent for publication

AFFIDAVIT OF PUBLICATION

Published On: _____

The original Affidavit of Publication for the public hearing should be kept with the file. The publication must occur at least ten days in advance of the hearing.

AFFIDAVIT OF MAILING

Mailed On: _____

The original Affidavit of Mailing for the public hearing should be kept with the file. This affidavit should include a copy of the notice sent to the property owners, a list of all parties sent a notice and the signature of the staff person principally responsible for mailing the notice. The notice must be mailed to adjacent property owners within 350' at least ten days in advance of hearing.

RETURNED NOTICES

If any of the mailed notices are returned for any reason these mail pieces should be kept in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – PLANNING COMMISSION

Recommendation Adopted On: _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the Planning Commission meeting should be placed in the file.

RESOLUTION (OR MINUTES) APPROVING OR DENYING – CITY COUNCIL

Resolution # _____ **Approved On:** _____

If a resolution is not utilized, an excerpt of the minutes or other certified copy of the minutes of the City Council meeting should be placed in the file.

DOCUMENT RECORDING

Recorded On: _____ **Document #(s)** _____

A "Notice of Approval" should be included in the file. This notice of approval shall be sent to the applicant in the form of a resolution filing letter. The letter shall notify the applicant that the request was approved and shall include 3 copies of the approving resolution(s) for the applicant to file at Hennepin County. One copy if for the County, one copy for the applicant and one copy shall be returned to the City. The file should not be placed on permanent file until this document is returned with the Recorder's stamp on the document.

- FINANCIAL GUARANTEE SUBMITTED**
Placed on File with the City Clerk On: _____
Amount of Guarantee: _____
Method of Guarantee: _____

A financial guarantee in the amount of 125% the estimated cost of improvements must be provided to ensure that the work is completed as approved. This must be provided PRIOR to issuance of a building permit. This financial guarantee shall not be released until city staff has inspected the site to ensure completion.

- BUILDING PERMIT ISSUED**
Issued On: _____ Building permit # _____

A building permit should not be issued until the conditions of approval have been met and financial guarantees for the improvements have been submitted to the City.

- ESCROW RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner, the remaining escrow balance should be refunded to the applicant after all consultants billing for the project has been received by the City.

- PERFORMANCE GUARANTEE SUBMITTED**
Placed on File with the City Clerk On: _____
Amount of Guarantee: _____
Method of Guarantee: _____

A performance guarantee is provided to the city to guarantee the work for a period of time (1-2 years depending on the type of improvements). The applicant shall submit either 1) a performance bond or 2) a letter of credit for 25 percent of the amount of the original cost of the improvements.

- FINANCIAL GUARANTEE RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete, the finance guarantee may be released.

- PERFORMANCE GUARANTEE RELEASED**
Released On: _____

Upon request from the applicant and approval the city planner and city engineer that the project is complete and work has met the warranty period, the performance guarantee may be released.

PART II

ELECTIONS, ELECTED OFFICIALS, AND COUNCIL MEETINGS

CHAPTER 6: ELECTED OFFICIALS AND COUNCIL STRUCTURE AND ROLE

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Chapter 6

Elected officials and council structure and role

The cornerstone of city government in Minnesota is the elected city council (council). The council fashions the policies that determine a community's present and future well-being. Because people look to their local government for leadership, much of the responsibility for community development falls on the shoulders of city councilmembers.

See [Handbook, Chapter 3](#) for more information about the different forms of statutory city government.

Although the mayor is a member of the council in statutory cities and the clerk is a member of the council in Standard Plan cities, the mayor and clerk in all cities have some special duties. This chapter will discuss the duties of these positions and the council's role in city governance.

I. Elected officials in general

[Minn. Stat. § 412.02, subd. 1.](#)
[Minn. Stat. § 412.191, subd. 1.](#)

Although not all statutory cities have the same elective offices, all must have a mayor and at least three councilmembers. Whether a statutory city elects other officers depends on several factors, including the form of government under which it operates.

For home rule charter cities, the city's charter specifies the type and number of elected officials.

A. Eligibility for office

[Minn. Const. art. VII, § 6.](#)
[Minn. Const. art. XII, §§ 3, 4.](#)
[Minn. Stat. § 201.014.](#) [Minn. Stat. § 204B.06.](#) See also, *Jude v. Erdahl*, 296 Minn. 200, 207 N.W.2d 715 (Minn. 1973).
[Minn. Const. art. VII, § 1.](#)

The Minnesota Constitution and state statutes set the qualifications for elective office. To hold elective city office, individuals must be qualified city voters, at least 21 years of age on the date of taking office, U.S. citizens, and residents of the city for at least 30 days before the election. An individual who has been convicted of a felony under either state or federal law cannot hold elective office in Minnesota unless the individual's civil rights have been restored.

[Minn. Stat. § 351.02\(6\).](#)
[Minn. Stat. § 412.02, subd. 2a.](#)

If an individual fails to qualify for elective office within the allotted time, the city council may, by resolution, declare a vacancy and proceed to fill it by appointment. Individuals appointed to fill vacancies must also satisfy the requirements for elective office.

Minn. Stat. § 10A.01, subd. 26. Minn. Stat. § 10A.07. Minn. Stat. § 10A.09, subds. 1, 6a. See LMC information memo, *Official Conflict of Interest*.

Elected and some appointed officials of cities with populations over 50,000 located in the seven-county metropolitan area must comply with conflict-of-interest disclosure and economic-interest-reporting requirements. Candidates for elected office in these cities must submit statements of economic interest to the city council within 14 days of filing an affidavit of candidacy. Persons accepting employment as public or local officials in these cities must file the disclosure statement within 60 days of accepting employment. In both cases, the law requires the filing of supplementary annual reports.

B. Terms of office

Minn. Stat. § 412.02, subd. 2. Minn. Stat. § 351.02. Minn. Stat. § 205.07, subd. 1a.

Terms of office in statutory cities begin on the first Monday of January following the election. The terms of the old officers in statutory cities end at this time, or as soon after that as the newly elected officers qualify by taking an oath and filing a bond, if one is required. If the newly elected officer refuses or fails to qualify, the incumbent officer continues to hold office until the council declares the office vacant and appoints a successor. The terms of all city councilmembers in charter cities expire on the first Monday in January of the year in which they expire. The length of the various terms of office is provided by statute. The attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

A.G. Op. 471-M (Nov. 23, 1999).

C. Oath of office

Minn. Stat. § 358.05.

Whether or not officials need a bond, they must take and sign an oath of office before exercising any of their powers. This includes members of councils, boards, commissions, and administrative officers. This applies to appointed as well as to elected officials.

See Minn. Const. art. V, § 6. Minn. St at. § 358.06.

The required oath is: “I, (name), do solemnly swear to support the Constitution of the United States, the Constitution of the State of Minnesota, and to discharge faithfully the duties of the office of (insert brief description of office) of the city of (insert city), Minnesota, to the best of my judgment and ability, so help me God.”

Minn. Stat. § 358.08.

If the officer objects to an oath on religious grounds, the word “affirm” can substitute for the word “swear,” and the phrase “and this I do under the penalties of perjury” can substitute for the phrase “so help me God.”

Minn. Stat. § 358.09. Minn. Stat. § 358.10.

Any person with authority to take and certify acknowledgments may administer the oath, including the city clerk, a justice of the peace, a notary public or a register of deeds. The candidate taking the oath must lift his or her hand while reciting the oath. The candidate qualifying for office must take the oath and sign a copy of the oath in the presence of the administering official.

Minn. Stat. § 358.11(3). See “Bonds for City Officials and Employees,” *Minnesota Cities*, May-June 2002.

The signed copy should go to the city clerk for filing. City assessors should file their copy with the county auditor. If an officer must also submit a bond, the oath should be attached to the bond and both documents should go to the council for approval and then to the clerk for filing.

D. Term limits

Minn. Const. art. VII, § 6.
Minn. Const. art. XII, §§ 3,4.
Minneapolis Term Limits Coalition v. Keefe, 535 N.W.2d 306 (Minn. 1995).

The Minnesota Constitution establishes the eligibility requirements for public office without authorizing the adoption of additional requirements. Therefore, a charter city may not enact term limits as an eligibility requirement.

E. Vacancies

Minn. Stat. § 351.02.

Vacancies in an elective office in a statutory or home rule charter city may occur for the following reasons:

1. Death

Minn. Stat. § 351.02(1), (8).

The vacancy exists as of the date of death. If the elected officer has not yet begun the term of office, the vacancy exists from the date the term would have started.

2. Resignation

Minn. Stat. § 351.02(2). Minn. Stat. § 351.01, subd. 1.

A resigning elected public official must submit a written resignation to the council. After receiving a resignation, the council should pass a resolution stating it has received and accepted the resignation, and declaring that a vacancy exists.

Minn. Stat. § 351.01, subs. 2, 3, 4. See informal A.G. letter opinion dated March 3, 2003 (advising that Minnesota law does not require that a written resignation be “received” by the council during a formal meeting in order to be effective).

Unless the resignation expressly states it is to take effect at a future date, the resignation will be effective when received by the council. If the resignation states it takes effect on a specified date, the vacancy occurs on that date if it has been received by the council or other official authorized by the council to receive documents on its behalf even if the council has not formally accepted it at a council meeting. To withdraw a prospective resignation, the resigning officer must submit a written statement of withdrawal in the same manner as the resignation. In order to be effective, the withdrawal must be received before the council accepts the resignation by resolution or before an officer authorized to receive it has issued a written acceptance.

3. Removal by operation of law

In most situations, it is not possible to remove statutory elected officials before the end of their terms, for cause or otherwise. Cities should consult with their city attorneys before attempting removal of any elected official.

Statutory city voters have no recall authority. Some home rule charters, however, give voters this option, but there remains some question as to whether this type of charter provision is constitutional.

Minn. Stat. § 351.02(5).
A.G. Op. 490D (Nov. 18,
1952). Minn. Stat. § 609.02,
subd. 2. Minn. Stat. § 609.42.

In certain situations, removal by operation of law can occur. A vacancy occurs if an elected official is convicted of any “infamous” crime. An infamous crime is a felony; that is, a crime for which a sentence of imprisonment for more than one year may be imposed. For example, bribery is a felony. Thus, a bribery conviction would result in the elected official’s immediate removal from office. In addition, any public officer convicted of bribery is forever disqualified from holding public office.

Minn. Stat. § 609.43. Minn.
Stat. § 609.02, subd. 4.

Misconduct of a public officer or employee, as defined by law, is a gross misdemeanor. Therefore, a misconduct conviction is not an infamous crime, and does not automatically result in an elected official’s removal from office.

Minn. Stat. § 351.02(5). Minn.
Stat. § 358.05. Minn. Const.
art. V, § 6.

See, Minn. Stat. §§ 609.415-
.475.

A vacancy does occur, however, when an elected official is convicted of an offense involving a violation of the individual’s official oath. Many offenses that are not felonies or “infamous” crimes may involve a violation of an individual’s oath and may result in a vacancy upon conviction.

Minn. Stat. § 13D.06, subd. 3.
Brown v. Cannon Falls Twp.,
723 N.W.2d 31 (Minn. App.
2006).

A vacancy also occurs if a councilmember is found to have intentionally violated the open meeting law on at least three separate occasions. If a court finds a third, separate intentional violation, it must declare the position vacant and notify the appointing authority or clerk.

4. Termination of city residency

Minn. Stat. § 351.02(4).

A vacancy occurs when a city councilmember ceases to be a resident of the city. Residence is a factual question the council must determine in each case. Voting in the city is only one indication of residence. The office holder’s intent and availability to perform official duties are additional criteria that should be considered. A councilmember becomes a non-resident when the property where the councilmember lives is detached from the city.

5. Failure to qualify for office

Minn. Stat. § 351.02(6).

An elected official may fail to qualify for office by refusing or neglecting to take the oath of office, to give or renew an official bond, or to deposit such oath or bond within the time prescribed by law. This type of vacancy is not automatic. A newly elected official may qualify at any time prior to the council declaring the office vacant.

6. Abandonment

A.G. Op. 99 (Aug. 26, 1920).

Whether an abandonment of office actually occurs is difficult to determine. The intent of the office holder is the controlling factor. The attorney general, while cautioning that this is a question of fact, has indicated that failure to participate in council activities for three months is sufficient grounds for declaring an abandonment of office.

7. 90-day absence rule

Minn. Stat. § 412.02, subd. 2b.

A vacancy in the office of mayor or councilmember may be declared by the council when the office holder is unable to serve in the office or to attend council meetings for a 90-day period because of illness, or because of absence from or refusal to attend council meetings. If any of the preceding conditions occur, the council may, by resolution, declare a vacancy and then fill it at a regular or special council meeting. The appointed councilmember will serve for the remainder of the unexpired term, or until the absent councilmember is again able to resume duties and attend council meetings, whichever is earlier. When the absent councilmember is able to resume duties and attend council meetings, the council shall, by resolution, remove the temporary office holder and restore the original office holder.

8. Qualifying for a second or incompatible office

See LMC information memo, *Official Conflict of Interest* for more information.

If an officer accepts a second office that is incompatible with the first, the first office is automatically vacated. (Section J of this chapter discusses incompatible offices in more detail.)

9. Expiration of elected term

Minn. Stat. § 412.02, subd. 2.

Generally, the vacancy occurring at the conclusion of an incumbent's term of office is filled immediately by the successor. If no one has been elected, the incumbent fills the office until the council appoints a successor and that person qualifies for the office.

10. Habitual drunkenness

Minn. Stat. § 351.07.

State law provides that the habitual drunkenness of any person holding office is good cause for removal from office.

F. Filling vacancies

Minn. Stat. § 412.02, subd. 2a.
A.G. Op. 59a-30 (July 24, 1996).

See "Vacancies on a Statutory City Council," *Minnesota Cities*, Oct. 2000.

While a council might identify and declare the facts giving rise to a vacancy, for all practical purposes they occur automatically and are not based upon any removal action. Because the council must fill vacancies in elective offices, it should determine whether a vacancy exists. After investigating the facts, the council should pass a resolution declaring a vacancy and then fill it as soon as possible.

Minn. Stat. § 412.02, subd. 2a.

A.G. Op. 471-M (Oct. 30, 1986).

State law provides that statutory city councils make the appointment to fill a vacancy, except in the case of a tie vote when the mayor makes the appointment. That means all members of the council, including the mayor, can vote on the appointment. And as long as at least a quorum of the council is present, a majority vote of those present is sufficient to make the appointment.

- Minn. Stat. § 412.121. Minn. Stat. § 471.46. State law does not place any limitation on a mayor's ability to make an appointment in the case of a tie vote. As a result, the mayor can appoint any qualified person willing to fill the vacancy even if that person was not the subject of the original appointment vote. If the vacancy is for the mayor's office and the council casts a tie vote, the acting mayor should make the appointment. The acting mayor may not, however, appoint himself or herself.
- Minn. Const. art. VII, § 6. The council may appoint any individual who is eligible for election to that office. Generally, to be eligible a person must be a U.S. citizen, a resident of the city, a qualified city voter, and at least 21 years old. The council is not obligated to appoint any candidate previously defeated in an election for the office.
- Minn. Stat. § 415.15. A.G. Op. 471-M (Dec. 27, 1977). A retiring councilmember may not vote on the appointment of the successor to that vacancy. A councilmember who is elected mayor, however, may participate in the appointment vote to fill the vacancy in his or her former council position.
- Minn. Stat. § 412.02, subd. 2a. Under certain circumstances, individuals appointed to fill council vacancies serve on a temporary basis, and the city must hold a special election to elect a permanent replacement to fill the vacancy. Two factors determine whether an election is required: first, whether filing has opened for the next regular city election, and second, the length of the unexpired portion of the term at the time of the vacancy.
- Minn. Stat. § 412.02, subd. 2a. If the vacancy occurs on or after the first day to file as a candidate for the next regular city election or if less than two years remain in the unexpired term, the city does not need to hold a special election, and the appointed person can serve out the remainder of the unexpired term. In the alternative, if the vacancy occurs before the first day to file as a candidate for the next regular city election and more than two years remain in the unexpired term, the city must hold a special election to fill the council vacancy at or before the next regular city election, and the person elected will serve out the remainder of the unexpired term.
- Minn. Stat. § 412.02, subd. 2a. If the council chooses to hold a special election to fill a vacancy at a time other than at the regular city election, it must first adopt an ordinance specifying the circumstances under which such an election will be held.
- Minn. Stat. § 412.02, subd. 2. A.G. Op. 471-M (Nov. 23, 1999). State law generally provides that the terms of elected city officials begin on the first Monday in January following the election. However, the attorney general has advised that a person elected to fill a vacancy is eligible to qualify and assume office upon receipt of an election certificate.

G. Councilmembers ineligible to fill certain vacancies

Minn. Stat. § 471.46.

City councilmembers, including mayors and elected clerks, may not be considered to fill vacancies in other city elective offices if the council has the power to make the appointment to fill the vacancy. This rule applies even if a councilmember resigns the position on the council before the council makes the appointment. An exception to this rule is that the council may appoint one of its members to the office of either mayor or clerk. In such a case, the councilmember being considered for the appointment may not vote.

H. Gifts

Minn. Stat. § 471.895.

Elected and appointed “local officials” are generally prohibited from accepting gifts from “interested persons.”

Minn. Stat. § 10A.071, subd. 1.
Minn. Stat. § 471.895, subd. 1(b).

A “gift” is defined as money, real or personal property, a service, a loan, a forbearance or forgiveness of debt, or a promise of future employment, that is given and received without the giver receiving something of equal or greater value in return.

Minn. Stat. § 471.895, subd. 1(d).

A “local official” is defined as an elected or appointed official of a city, or of an agency, authority, or instrumentality of a city. The gift prohibition clearly applies to all members of a city council and to appointed officials on city boards, commissions, and committees. However, it is not clear whether city employees like city managers and administrators would also be considered local officials under the gift law. Because so many city employees can be involved in a city’s decision-making process, some cities have decided that the safest course of action is to assume that the gift law applies to all city employees.

Minn. Stat. § 471.895, subd. 1(c).

An “interested person” is a person or a representative of a person or association with a direct financial interest in a decision the local official is authorized to make.

An interested person under the gift law likely includes anyone who may provide goods or services to a city, such as engineers, attorneys, fiscal advisors, contractors, and sales representatives.

In addition, virtually every resident of the city and anyone doing business in the city could at some time have a direct financial interest in a decision a city official is authorized to make and thus could qualify as an interested person. The following are possible examples where a resident or business owner’s financial interest could be affected:

- The levying of property taxes.
- The spreading of special assessments.
- The valuation of property for tax purposes.
- The issuing of a license.

- The zoning of property or granting of a land-use permit.

As a result, any person doing business or residing in the city is potentially an interested person as far as a city councilmember is concerned. Whether a resident or business owner is an interested person, as far as members of boards and commissions are concerned, depends on the types of decisions or recommendations the boards or commissions are authorized to make.

It is important to note that the decision or recommendation a city official is authorized to make does not have to be pending. If an individual could at any time have a direct financial interest in a decision or recommendation that a city official would be authorized to make, that individual would likely be considered an interested person.

[Minn. Stat. § 471.895, subd. 3.](#)
[Minn. Stat. § 211A.01, subd. 5.](#) See opinions issued by the MN Campaign Finance and Public Disclosure Board relating to some of these exceptions.

There are a few limited exceptions to the gift law. For example, the following types of gifts are permitted under the gift law.:

- Political contributions.
- Services to assist an official in the performance of official duties.
- Services of insignificant monetary value.
- A plaque or similar memento recognizing individual services in a field of specialty or to a charitable cause.
- A trinket or memento costing \$5 or less.
- Informational material of unexceptional value.
- Food or a beverage given at a reception, meal or meeting away from the recipient's place of work by an organization before whom the recipient makes a speech or answers questions as part of a program. (This exception probably permits only the principal speakers at meetings to receive gifts of food or beverage.)
- Gifts given because of the recipient's membership in a group, a majority of whose members are not local officials, if an equivalent gift is offered to or given to the other members of the group.
- Gifts between family members, unless the gift is given on behalf of someone who is not a member of that family.
- Food or beverages given by a national or multi-state organization of governmental organizations or officials at a reception or meal to attendees at a conference sponsored by that organization if a majority of the dues to the organization are paid from public funds and an equivalent gift is given or offered to all other attendees.

Minn. Stat. § 465.03. *Kelly v. Campaign Finance and Public Disclosure Bd.*, 679 N.W.2d 178 (Minn. Ct. App. 2004).

The law prohibits gifts to city officials, not to cities. Thus, an interested person can give a gift to a city. If the giver has no control over who will receive the gift and the gift was not targeted to a specific person, perhaps a city official could benefit from that gift. If the person who benefits from the gift has any control over its use, the gift would likely be prohibited. For example, if an interested person gave a city five tickets to a football game, the councilmembers probably could not decide to use the tickets for themselves.

Minn. Stat. ch. 10A. See LMC information memo *Official Conflict of Interest* for more information.

Metropolitan cities with a population over 50,000 are subject to additional regulations. Under the Ethics in Government Act, local officials in these cities are also prohibited from receiving gifts from “lobbyists” and “principals” although there are exceptions similar to those for the gift law.

Minnesota Campaign Finance and Public Disclosure Board.

The Minnesota Campaign Finance and Public Disclosure Board issues advisory opinions regarding the lobbyist gift ban. These opinions may be relevant to any Minnesota city struggling with the application of a gift ban to a particular situation.

I. Conflicts of interest

There are two types of conflicts of interest that a councilmember may encounter: those involving contractual decisions, and those involving non-contractual decisions.

1. Contracts

Minn. Stat. § 471.87. Minn. Stat. § 412.311.

See LMC information memo, *Official Conflict of Interest*, for more information about the exceptions.

Public officers are generally prohibited from having a personal, financial interest in any sale, lease, or contract they are authorized to make in their official capacity. There are limited exceptions to this law. Unless there is an exception, any contract made in violation of this law is void.

City councilmembers, who knowingly authorize a prohibited contract, even though they do not benefit from it, may be guilty of a crime. The councilmember who would benefit from the contract could also be guilty of a crime if that person entered into it knowing it was prohibited.

A.G. Op. 90-E-5 (Nov. 13, 1969).

The attorney general has advised that the conflict of interest law applies to any councilmember “who is authorized to take part in any manner” in the making of the contract. Simply abstaining from voting on the contract is not sufficient. The attorney general reasoned that if the Legislature had only wanted to prohibit interested officers from voting on the contract, it would not have used the word “authorized.”

A.G. Op. 90e-6 (June 15, 1988).

2. Non-contractual situations

See LMC information memo, [Official Conflict of Interest](#), for more information on non-contractual conflicts of interest.

There are also situations where councilmembers may find that they have an interest in a non-contractual decision the council will make. This type of interest does not have to be of a financial nature. These non-contractual matters may include such things as council decisions on zoning, local improvements, and the issuance of licenses. Although not generally prohibited by state law, an interested councilmember most likely should abstain from participating in the council discussion and from voting on these issues.

J. Incompatibility of offices

State v. Sword, 157 Minn. 263, 196 N.W. 467 (1923). *Kemney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (Minn. 1886).

Whether a city official can also serve the city or other government entity in some other capacity is complicated. State laws generally do not prevent a person from holding two or more government positions. However, without specific statutory authority, government officials cannot hold more than one position if the functions are incompatible or if the positions create a conflict between two different public interests.

McCutcheon v. City of St. Paul, 216 N.W.2d 137 (Minn. 1974).

“Compatibility of Offices,” House Research, Oct. 2005.

The common law doctrine of incompatibility applies to the functions of two inconsistent offices. However, there is no clear definition of what constitutes an “office” for the purpose of the law. Certainly, it would include all elected offices and the Minnesota Supreme Court has reasoned that it would also apply to those appointed positions that have independent authority under law to determine public policy or to make a final decision not subject to a supervisor’s approval. As a result, the incompatibility law might also apply to appointed positions such as city administrators, managers, and police chiefs.

1. Public employment

a. Federal employment

5 U.S.C. §§ 7321-7326.
[Political Activity and the Federal Employee](#).

Federal employees are generally prohibited from being candidates in local partisan elections. An election is considered “partisan” if candidates are elected as representing political parties.

b. State employment

[Minn. Stat. § 43A.32](#).
[Minnesota Management & Budget](#).

State employees generally can run for and hold elected office as long as there is no conflict with their regular state employment. The commissioner of the department of management and budget will determine whether a conflict exists.

c. City employment

Minn. Stat. § 410.191. Minn. Stat. § 412.02, subd. 1a.

State law prohibits the mayor and councilmembers in both statutory and home rule charter cities from being “employed” by their city. The term “employed” is defined as “full-time permanent employment as defined by the city’s employment policy.” This law applies to persons elected or appointed to serve as mayor or city councilmembers on or after August 1, 2010. For part-time positions, it must be determined if the positions qualify as offices and if the elements or responsibilities of the two positions are incompatible with one another.

2. Incompatible offices

A.G. Op. 471-M (Dec. 11, 1957).

Unless otherwise limited by law, an individual may apply for a job or run for an office that is incompatible with a current position without resigning from the current position. When the individual is elected or appointed to an incompatible office, the individual is considered to have resigned from the first position.

See, for example, Minn. Stat. § 410.191. Minn. Stat. § 412.02, subd. 1a.

Generally, positions are incompatible when a specific statute or charter provision: conditions exist:

- States that one person may not hold two or more specific positions.
- Requires that the officer may not take another position.
- Requires that the officer devote to the position full-time.

See *Kenney v. Goergen*, 36 Minn. 190, 31 N.W. 210 (Minn. 1886). *State v. Sword*, 157 Minn. 263, 196 N.W. 467 (1923). See LMC information memo, *Official Conflict of Interest*, for more information on incompatible offices.

In addition, positions may be incompatible if the holder of one position or the group or board of which the person is a member:

- Hires or appoints the other.
- Sets the salary for the other.
- Performs functions that are inconsistent with the other.
- Makes contracts with the other.
- Approves the official or fidelity bond of the other.

K. Codes of Conduct

See the Model Statement of Values and the Template Code of Conduct created by the LMC Ethics Advisory Panel.

Some cities have adopted their own policies on ethics and conflicts of interest. These policies must be consistent with state law. They generally take one of two forms: either a values statement expressing core principles for ethical conduct or a formal code of conduct. State law does not require cities to adopt an ethics policy.

[ICMA/MCMA Code of Ethics.](#) In addition, many professional organizations have adopted rules of conduct to guide individuals working in particular fields. For example, the International City/County Management Association (ICMA) as well as our state's affiliate (MCMA) has adopted a code of ethics that defines a city manager's core set of values and a city manager's ethical obligations to the city council, other staff, the general public, and the profession itself.

L. Ethics in Government Act

[Minn. Stat. ch. 10A.](#)

The Ethics in Government Act (Act) regulates campaign financing and requires certain local officials to make public disclosures of certain information. The Act only applies to local officials of cities in the seven-county metropolitan area with a population over 50,000.

[Minnesota Campaign Finance and Public Disclosure Board.](#)

The Minnesota Campaign Finance and Public Disclosure Board administers the Act. Individuals subject to the Act may request an advisory opinion from the Board to guide their compliance with the Act.

[Minn. Stat. § 10A.01, subd. 22.](#)

The Act defines a local official as a person who holds elected office or is appointed to public position in which the person has authority to make, recommend, or vote on as a member of the governing body, major decisions regarding the expenditure or investment of public money.

[Minn. Stat. § 10A.09. Minn. R. ch. 4505. Minn. Stat. § 10A.071, subd. 2. Minn. Stat. § 10A.07.](#)

For more information about these requirements see LMC information memo *Official Conflict of Interest*.

Local officials subject to the Act must comply with three main requirements: First, they must file statements of economic interest. Second, they are prohibited from accepting gifts from lobbyists or principals. Third, they must file conflict-of-interest statements in certain circumstances.

[Minn. Stat. § 383B.053.](#)

There are additional economic-interest disclosure requirements for elected officials of cities in Hennepin County with a population of 75,000 or greater.

M. Publications and Web sites

[Minn. Stat. § 10.60, subds. 2, 3.](#)

The purpose of a city Web site or publication must be to provide information about the duties and jurisdiction of the city or to facilitate access to public services and information related to city responsibilities or functions. A city Web site or publication must not include pictures or other materials that tend to attribute the Web site or publication to an individual or group of individuals instead of to the city. A city publication must not include the words "with the compliments of" or contain letters of personal greeting that promote an elected or appointed official of a city.

[Minn. Stat. § 10.60, subd. 3.](#)

A city Web site may not contain a link to a Web-blog or site maintained by a candidate, a political committee, a political party or party unit, a principal campaign committee, or a state committee.

Minn. Stat. § 10.60, subd. 4.

A city Web site or publication may include biographical information about an elected or appointed official, a single official photograph of the official, and photographs of the official performing functions related to the office. There is no limitation on photographs, Web-casts, archives of Web-casts, and audio or video files that facilitate access to city information or services or inform the public about the duties and obligation of the city office or that are intended to promote trade or tourism. A city Web site or publication may include press releases, proposals, policy positions, and other information directly related to the legal functions, duties, and jurisdiction of a city official or organization.

Minn. Stat. § 10.60, subd. 5.

Cities may adopt more restrictive standards for the content of city publications or Web sites.

II. City council and its powers

It is the duty of the mayor, clerk, and councilmembers to ensure that the city is fulfilling its duties under the law and lawfully exercising its powers.

See [Handbook, Chapter 18](#).

City officials can sometimes be held personally liable for failing to act or for taking unauthorized actions on the part of the city. To avoid personal-liability lawsuits, city officials should gain a working knowledge of the laws that regulate city government. Whenever there is any doubt about the validity of an action or procedure, city officials should consult their city attorney.

A. Role of the individual councilmember

Councilmembers' statutory duties are to be performed, almost without exception, by the council as a whole. For example, it is the council and not individual councilmembers that must supervise administrative officers, formulate policies, and exercise city powers.

Councilmembers should devote their official time to problems of basic policy and act as liaisons between the city and the general public. Councilmembers should be concerned, not only with the conduct of daily affairs, but also with the future development of the city.

The most important single responsibility of a councilmember is participation at council meetings. In statutory cities, each councilmember, including the mayor, has full authority to make and second motions, participate in discussions, and vote on every matter before the council.

Minn. Stat. § 412.191, subd. 2.
Minn. Stat. § 13D.04.

In a statutory city, the mayor or any two councilmembers of a five-member council or any three councilmembers of a seven-member council may call a special meeting. Care should be exercised to give proper notice, however.

As individuals, councilmembers have no administrative authority. They cannot give orders or otherwise supervise city employees unless specifically directed to do so by the council. The council, however, has complete authority over all administrative affairs in the city. In Plan B cities, this authority is generally restricted to conducting investigations and establishing policies to be performed by the manager.

[Minn. Stat. § 412.101](#)
(repealed by Laws 2001, ch. 135, sec. 3).

Under state law that was repealed in 2001, all members of the council, including mayors, were “peace officers.” Councilmembers were authorized to suppress any “riotous or disorderly conduct” in the streets or public places of the city. The mayor and individual councilmembers no longer have peace-officer authority.

B. The council’s authority

Van Cleve v. Wallace, 216 Minn. 500, 13 N.W.2d 467 (Minn. 1944).

The city council is a continuing body. New members have no effect on the body except to change its membership. This means that all ordinances and resolutions remain in effect until the council alters or rescinds them, or until they expire through their own terms. At any time, the council can change any resolution, ordinance, or administrative order whether or not the individuals presently on the council are the same as those serving when the council originally took action.

[Minn. Stat. § 306.41](#).
Reed v. City of Anoka, 85 Minn. 294, 88 N.W. 981 (1902). *Ketterar v. Indep. Sch. Dist. No. 1*, 248 Minn. 212, 79 N.W.2d 428 (1956).

There are exceptions to this rule. For example, the council cannot dissolve a perpetual-cemetery-maintenance fund. In addition, the council cannot rescind or unilaterally alter any valid contracts. This means the law of contracts applies to the council as it does to any other party. Whether a contract was validly made is a question of fact.

The following information outlines the major areas of council authority and responsibility.

1. Judging the qualification and election of its own members

[Minn. Stat. § 412.191, subd. 2.](#)

The council evaluates the credentials of individuals who are, or who claim to be, members of the council. This power includes certifying election results, determining whether an individual has the necessary qualifications to hold office, and deciding whether a council vacancy exists.

2. Setting and interpreting rules governing its own proceedings

[Minn. Stat. § 412.191, subd. 2.](#)

The council has the following powers:

- To preserve order during its own meetings.
- To establish rules of procedure.
- To compel the attendance of members at meetings and to punish non-attendance. The council does not have the power to remove members from office, but it may punish members by fines or by deducting a part of the absentee’s compensation for failure to comply with attendance orders.

See [Minn. Stat. § 43A.17, subd. 10](#) (prohibiting the reduction of councilmembers’ salaries because of absences from official duties because of vacation or sickness).

3. Exercising all the powers of cities that the law does not delegate to others

Except for powers that the statutes delegate to a specific official or independent board or commission, the council has the authority to exercise all powers given to the city.

4. Legislating for the city

[Minn. Stat. § 412.191, subd. 4.](#)

The council may enact ordinances by a majority vote of all its members except where a larger number is required by law. The power to legislate also includes setting administrative policies and otherwise establishing public policy for the city.

[Minn. Stat. § 412.231.](#)

The council has the power to declare that violations of any ordinance are a crime and may prescribe penalties for ordinance violations. The statutory city code limits the penalty for ordinance violations to a fine of up to \$1,000 or up to 90 days in jail, or both.

5. Directing the enforcement of city ordinances

The council directs the enforcement of city ordinances by determining the level of law enforcement, setting qualifications for the police chief and police officers, purchasing certain types of equipment for police use, and by directing and supervising the work of police officers. The city council also directs all departments and employees responsible for the administration of its policies and ordinances in the general administration of their duties. The city council generally should not direct the enforcement efforts of its employees as to particular situations.

6. Appointing administrative personnel

In Standard Plan and Plan A cities, the council has the sole authority to appoint all city employees.

[Minn. Stat. § 412.661.](#)

In Plan B cities, the council appoints a city manager, who in turn appoints all city employees. The council may not dictate that the city manager appoint a particular person to city employment. Additionally, the council may not give any orders to employees hired by the manager.

7. Transacting city business

[See Minn. Stat. § 412.201.](#)
[Minn. Stat. § 412.211.](#)

The transaction of city business includes a wealth of activities, such as purchasing, executing legal papers, taking bids, letting contracts, making discretionary administrative decisions, and evaluating the work of the administrative departments and personnel.

8. Managing the city's financial operations

[Minn. Stat. § 412.241.](#)

The council has full authority over the city's financial affairs, including but not limited to:

Minn. Stat. § 412.251.

Minn. Stat. § 412.701. Minn. Stat. § 275.065.

Minn. Stat. § 412.241.

Minn. Stat. § 412.241.

Minn. Stat. § 118A.02. Minn. Stat. §§ 427.01-.02.

- Levying taxes.
- Adopting a budget.
- Auditing and settling accounts.
- Safekeeping and disbursement of public money.
- Borrowing money.
- Designating depositories.

Councils should seek the advice of their staff and of consultants in making many of these decisions.

9. Appointing members of the boards

Minn. Stat. § 412.111.

The council may create departments and advisory boards and appoint officers, employees, and agents for the city as deemed necessary for the proper management and operation of the city.

10. Conducting the city's intergovernmental affairs

Minn. Stat. § 471.59. Minn. Stat. § 465.58.

The council may make agreements for the joint exercise of powers through agreements with other units of government, appoint people to serve on intergovernmental bodies, conduct city business with state and federal agencies, and participate in intergovernmental programs and the work of municipal associations such as the League of Minnesota Cities.

11. Protecting the welfare of the city and its inhabitants

Minn. Stat. § 412.221, subd. 32.

Elected officials must formulate policies that will help the city solve future problems and adjust to social and economic trends. This requires long-range planning regarding city facilities and needs.

12. Providing community leadership

In addition to participating in civic events, city officials must provide leadership by promoting new ideas and suggesting new programs to improve the community and its surrounding areas.

13. Other specific powers

The city council also has specific powers in the following areas:

Minn. Stat. § 412.221, subds. 3, 28.

Buildings. The council has the power to construct or acquire structures needed for city purposes, and to control, protect, and insure public buildings, property, and records. The council also has the power, by ordinance, to regulate the construction of buildings.

- Minn. Stat. § 412.221, subd. 5. **Actions at law.** The council has the power to provide for the initiation or defense of actions in which the city may be interested. The council may employ attorneys for this purpose.
- Minn. Stat. § 412.221, subd. 6. **Streets.** The council has the power to lay out or change streets, parks, and other public grounds. By ordinance, the council may regulate the use of streets and public grounds.
- Minn. Stat. § 412.491. **Parks.** A statutory city may establish, improve, maintain, and manage parks and recreational facilities and, by ordinance, protect and regulate their use.
- Minn. Stat. § 412.221, subd. 8. **Trees.** The council has the power to provide for and, by ordinance, regulate the setting out and protection of trees, shrubs, and flowers in the city or upon its property.
- Minn. Stat. § 412.221, subd. 9. **Cemeteries.** The council has the power to acquire, hold, and manage cemetery grounds and to sell and convey cemetery lots. By ordinance, the city may regulate cemeteries and the disposal of cadavers.
- Minn. Stat. § 412.221, subd. 11. **Waterworks.** The council has the power to provide for and, by ordinance, regulate the use of wells, cisterns, reservoirs, and other types of water supply.
- Minn. Stat. § 412.221, subd. 16. **Hospital.** The council has the power to establish hospitals.
- Minn. Stat. § 412.221, subd. 17. **Fire prevention.** The council has the power to establish a fire department, appoint its officers and members, and prescribe their duties. The council also has the power, by ordinance, to prevent, control or extinguish fires.
- Minn. Stat. § 412.221, subd. 18. **Naming streets.** The council has the power, by ordinance, to name or rename the streets and public places of the city and to number or re-number the lots and blocks of the city. The council may make and record a consolidated plat of the city.
- Minn. Stat. § 412.221, subd. 21. **Animals.** The council has the power, by ordinance, to regulate the keeping of animals, to restrain their running at large, and to authorize their impoundment and destruction.
- Minn. Stat. § 412.221, subd. 22. **Health.** The council has the power, by ordinance, to provide for the disposal of solid waste, sewage, garbage, and other unwholesome substances.
- Minn. Stat. § 412.221, subds. 24, 25. **Noise and nuisances.** The council has the power, by ordinance, to regulate and prevent noise and to define and provide for the prevention or abatement of nuisances.
- Minn. Stat. § 412.221, subd. 25. **Amusement.** The council has the power, by ordinance, to prevent or license and regulate billiard tables, bowling alleys, gambling devices, circuses, theatrical performances, amusements, or shows of any kind.
- Minn. Stat. § 412.221, subd. 26. **Vice.** The council has the power, by ordinance, to restrain and punish vagrants, prostitutes, and individuals guilty of lewd conduct.
- Minn. Stat. § 412.221, subd. 27. **Dances.** The council has the power, by ordinance, to license and regulate the operation of public-dance halls and the conduct of public dances.
- Minn. Stat. § 412.221, subd. 30. **Restaurants.** The council has the power to license and regulate restaurants and public-eating places.

Minn. Stat. § 412.221, subd. 31.

Sewer and water connections. The council has the power, by ordinance, to require the owner of any property that is abutting or adjacent to any street in which sewer and water mains have been laid to install a toilet in such buildings and connect it with the sewer and water mains.

Minn. Stat. § 412.221, subd. 32.

General welfare. The council has the power to provide for the government and good order of the city, the prevention of crime, the protection of public and private property, and the promotion of health, order, and convenience through the enactment of ordinances.

Minn. Stat. § 415.01.

Township powers. The council has all the powers given to towns in chapters 365 and 368 of the Minnesota Statutes.

C. Council committees

Although the statutes do not require the use of committees, some councils find they are helpful in reducing workload. By dividing their membership into several committees, a council enables its members to devote most of their time to specific areas of the city's operations. Each councilmember becomes a relative specialist in these areas and that councilmember's services become of greater value to the council as a whole.

Council action is necessary to establish committees either in the council's bylaws, by special resolution, or through a motion.

The council may set up special and standing committees. The council appoints special committees to deal with a single transaction or project. For example, the council might appoint a special committee to study the advisability of purchasing land for a new park. Standing committees concentrate on work that is continuous or repeated from time to time during the year. Many cities, for example, have a standing committee on finance.

Sometimes councils set up their committees on a functional basis. Such committees deal with fire, police, health, public works, welfare, or public utilities. This system encourages councilmembers to handle administrative details and, consequently, does not make full and proper use of the city's administrative officers. Thus, councils should try to limit their work to special policy problems or to certain staff or public-relations functions that are not the responsibility of administrative personnel. Examples include committees on auditing, personnel, budget, public reporting, purchasing, and licensing.

Committees may exercise all duties the council has legally assigned to them. They can have authority to conduct investigations and to make recommendations. Committees, however, may not make decisions on behalf of the council. Committees are subject to the same rules as the full council under the open meeting law.

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

In many cities, it is routine for the council to approve a committee's recommendations if it has done a thorough and competent job. It is important, however, for all councilmembers to be aware of their independent obligation to the city when considering whether to adopt a committee's recommendation. It is only the council's final decision, and not the committee's recommendation, that can bind the city. For example, committees may not enter into contracts or employ workers even if a specific motion of the council delegates such power to them.

D. Delegation of council power

[A.G. Op. 624a-3 \(Nov. 2, 1998\)](#).

Muehring v. School Dist. No. 31, 224 Minn. 432, 28 N.W.2d 655 (Minn. 1947). *Jewell Belting Co. v. Village of Bertha*, 91 Minn. 9, 97 N.W. 424 (Minn. 1903). *Minneapolis Gas-Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (Minn. 1886).

Absent specific statutory or charter authority, a city council may not delegate its legislative or quasi-judicial power. In addition, a council may not delegate any administrative power of a discretionary nature. Merely ministerial functions, however, may be delegated to an officer or committee.

1. Discretionary and ministerial powers

The courts have not been explicit in describing the meaning of discretionary administrative power. They have, however, provided several rules that offer some basis for distinguishing which powers the council can delegate.

[Johnson v. State](#), 553 N.W.2d 40 (Minn. 1996).

Discretionary powers or functions are those that involve the exercise of judgment. Ministerial functions are absolute, fixed, and certain so that no judgment is necessary in fulfilling them.

For example, the approval of a budget is a discretionary function while the signing of legal papers is a ministerial function. There are many tasks, however, for which the difference is largely one of degree. The courts, in these cases, generally differentiate by using a test of reasonableness.

2. Administrative standards

Courts generally permit the delegation of administrative power when the council establishes a fixed standard or rule to guide the subordinate. The courts usually permit delegation when the subordinate has reasonable discretion in administering an established standard or rule. Administration of land-use ordinances, building codes, and many other ordinances are examples.

3. Making vs. executing the law

Finally, the courts sometimes recognize a distinction between the power to make the law and the authority to execute it. A council cannot delegate the power to make a law, but the council can delegate the authority to execute it.

E. Salaries of mayor and councilmembers

Minn. Stat. § 415.11. See “Changing City Council Salaries,” *Minnesota Cities*, Sept. 2002.

The city council in Second Class, Third Class, and Fourth Class cities establishes, by ordinance, the salaries of the mayor and councilmembers in an amount that the council deems “reasonable.” Generally, no change in salary shall take effect until after the next succeeding regular city election.

Minn. Stat. § 415.11, subd. 3.

A city council, however, may adopt an ordinance to take effect before the next city election that reduces the salaries of the mayor and councilmembers. The ordinance shall be in effect for 12 months, unless another period of time is specified in the ordinance, after which the reduced salary reverts to the salary in effect immediately before the ordinance was adopted.

Salaries may be an annual or monthly sum, or a per-meeting rate. The ordinance should specify whether the per-meeting rate applies only to regular meetings or to both regular and special meetings.

Minn. Stat. § 43A.17, subd. 10.

Cities are prohibited from including provisions for vacation or sick leave in the compensation plan for councilmembers. Cities are also prohibited from reducing the salaries of councilmembers because of absences from official duties because of vacation or sickness.

Minn. Stat. § 415.10.

Iron Range cities have special legislative authority to make per-diem payments to councilmembers up to \$25 per day, not to exceed \$250 per year, for absences from the city while on official city business.

See IRS Publication 1542—*Per Diem Rates (For Travel Within the Continental United States)*. IRS Publication 463—*Travel, Entertainment, Gift and Car Expenses*. IRS Publication 15—*Circular E, Employer’s Tax Guide*.

Some non-Iron Range cities have sought to pay their councils using per-diem rates. Cities should be careful in this area. A per diem is an expense allowance or an advanced reimbursement for business travel away from home. The IRS has strict guidelines for per-diem pay, including dollar limits above which the per diem must be treated as wages for tax purposes. Cities wishing to establish per-diem rates for councilmembers should consult with their financial advisors or the IRS for further guidance.

Minn. Stat. § 211B.10, subd. 2.

An employer must allow a councilmember to take time off from regular employment to attend council meetings. The time off may be without pay, with pay or made up with other hours as agreed to between the employee and the employer. When the councilmember takes time off without pay, the employer must make an effort to allow the employee to make up the time with other hours when the employee is available. No retaliatory action may be taken by the employer for absences to attend meetings necessitated by reason of the employee’s public office.

III. Mayor

Minn. Stat. § 412.191, subds. 2, 1. For more information about the office of mayor see the *Minnesota Mayors Handbook*.

As the head of the city, the mayor officially speaks for both the council and the community as a whole. In all statutory cities and in most charter cities, the mayor is the presiding officer and a regular member of the council. The mayor has all the powers and duties for the office of councilmember in addition to those of mayor.

In a home rule charter city, the charter spells out the duties and responsibilities of the mayor. This chapter, however, deals with mayors of statutory cities.

Many mayors belong to the Minnesota Mayors' Association (MMA), which is affiliated with the League and holds an annual conference on issues of interest to mayors. Contact the League for more information about the MMA.

A. Official head of the city

As the official head of the city, the mayor has three important responsibilities:

First, the mayor usually serves as the city's representative before the Minnesota Legislature, federal agencies, and other local governments.

Second, the mayor performs ceremonial duties on behalf of the community. The mayor usually greets important visitors, gives formal and informal talks, and takes part in public events. Because local civic groups frequently ask the mayor to speak, the mayor must be prepared to explain and defend city problems and programs.

A third responsibility is to exert leadership in city affairs. Because the mayors of statutory cities lack significant individual authority, this responsibility frequently calls for tact rather than overt acts of direction or supervisory control.

B. Executing official documents

Minn. Stat. § 412.191, subd. 4.
Minn. Stat. § 412.201.
A.G. Op. 61-J (June 2, 1966).

The mayor of a statutory city must sign ordinances, contracts authorized by the council, and written orders for payment of claims that have been audited and allowed by the council. These are ministerial duties, and the mayor may not refuse to sign if the purpose, approval, and form are legally correct and complete.

C. Power to make some appointments

The power to appoint usually resides in the council. The mayor has authority to make the following appointments, however, subject to council approval:

Minn. Stat. § 412.501. (The council appoints the members of an advisory park board or commission created under Minn. Stat. § 412.111.)

Minn. Stat. § 134.09, subd. 1.
Minn. Stat. § 134.195, subd. 2 (joint school and public library).

Minn. Stat. § 412.221, subd. 16.

- Park board members.
- Public library board members.
- Hospital board members.

Minn. Stat. § 44.04, subd. 1.
See Minn. Stat. § 419.02, subd. 1 (authorizing the creation of a joint police and fire commission with members appointed by the council).

Minn. Stat. § 469.003, subd. 6.

Minn. Stat. § 469.095, subd. 2.

- Some members of the police civil-service commission.
- HRA members.
- EDA members.

The mayor has authority to make the following appointments without needing council approval:

Minn. Stat. § 450.20.

Minn. Stat. § 12.25, subd. 1.

Minn. Stat. § 412.02, subd. 2a.

- City art commission members (First Class cities).
- Emergency management director
- The mayor also appoints to fill vacancies in elective offices if the council's vote to fill the vacancy is tied.

D. Presiding officer at council meetings

Minn. Stat. § 412.191, subd. 1.

Minn. Stat. § 412.02, subd. 6.

Plan A and Plan B statutory city councils are usually composed of five members consisting of the mayor and four councilmembers. In a Standard Plan city, the council consists of the mayor, the clerk, and three councilmembers. Any statutory city, however, may adopt a council size of seven following adoption of a council ordinance and voter approval at the next general city election.

Minn. Stat. § 412.191, subd. 2.

The mayor serves as presiding officer at council meetings. The mayor generally recognizes speakers for debate and motions, and rules on questions of council procedure. The power to rule on council procedure is especially significant because once rulings are made they are binding on the council, unless the council votes to challenge them.

Minn. Stat. § 412.191, subd. 2.
See "Mayor's Power to Vote and Make Motions,"
Minnesota Cities, Jan. 2004.

A statutory city mayor can vote on all motions put before the council, but does not have the right to veto council actions. The right of the mayor to make and second motions is implied from the mayor's privilege of voting and taking part in regular council deliberations. The mayor has an obligation to be impartial and objective in conducting the meeting. To maintain this objectivity, many mayors choose to minimize making or seconding motions, and to allow other members of the council to speak before expressing an opinion. Mayors may also call special meetings.

E. Weed inspector

Minn. Stat. § 18.80, subs. 2, 3.

The mayor is the city weed inspector. The city may appoint one or more assistant weed inspectors. An assistant weed inspector has the same power, authority, and responsibility of the mayor in the capacity of weed inspector.

Minn. Stat. § 18.81, subd. 2.

Local weed inspectors examine all lands, including highways, roads, and alleys, to determine if the landowner has complied with the rules regarding the eradication of noxious weeds. Weed inspectors also issue permits for the transportation of materials infested with noxious, weed-propagating parts. A claim for the expenses of performing the weed inspector's duties is a legal charge against the city.

F. Election duties

Minn. Stat. § 204C.07, subds. 3, 4.

Mayors of all cities have election duties. At elections where cities will vote on a question, the mayor, upon receiving a written petition signed by at least 25 eligible voters, must appoint one voter for each precinct to act as a challenger of voters in the polling place. A challenger must be present in the polling place during voting hours, and must remain until the votes are counted and the results declared. Challengers cannot attempt to influence voting in any manner.

Minn. Stat. § 204C.31, subd. 1.

Mayors or chairs of the town board from the most populous municipality in each county serve as members of the county-canvassing board. Any member of the canvassing board may appoint a designee to appear at a meeting of the board.

G. Investigating fires

Minn. Stat. § 299F.04.

In cities without fire departments, the mayor must investigate or have investigated the cause, origin, and circumstances of any fire where damages exceed \$100. The investigation must begin within two days of the fire. The mayor must report the fire to the state fire marshal. Within one week of the fire, the mayor must furnish a written statement to the state fire marshal.

H. Declaring local emergencies

Minn. Stat. § 12.29, subd. 1.

Only the mayor can declare a local emergency. A local emergency cannot last for more than three days except with the council's consent. A local emergency must receive prompt and general publicity. The clerk must promptly file any order or proclamation declaring, continuing, or terminating the emergency.

Minn. Stat. § 12.29, subds. 2, 3.

A declaration of a local emergency invokes the response and recovery aspects of any local or interjurisdictional disaster plans and may authorize aid and assistance. No interjurisdictional agency or official may declare a local emergency unless expressly authorized by an agreement. An interjurisdictional disaster agency must provide aid and services in accordance with the agreement.

IV. Clerk and treasurer

See LMC information memo, *City Administration: Clerk, Administrator, Manager*, for more information regarding the clerk position.

This section gives an overview of the positions of clerk and treasurer.

A. Clerk

Minn. Stat. § 412.191, subd. 1. Minn. Stat. § 412.02. Minn. Stat. § 412.151.

See Discussion of filling council vacancies at Part I-F of this chapter.

See Handbook, Chapter 8.

The clerk position in a Standard Plan statutory city is an elected office. The clerk serves as a member of the council, as well as fulfilling the other duties of a city clerk prescribed by statute or by the council. Vacancies in the elected clerk position are handled in the same manner as council vacancies.

The clerk position in Plan A and Plan B cities is an appointed office. The clerk does not serve on the council, but is responsible for the duties prescribed by statute and by the council.

B. Treasurer

Minn. Stat. § 412.141. Minn. Stat. § 412.02.

See Discussion of filling council vacancies at Part I-F of this chapter.

See Handbook, Chapter 8.

The treasurer in a Standard Plan statutory city is also an elected position, but the treasurer does not serve on the council. Vacancies in the elected treasurer position are handled the same as council vacancies.

The treasurer in Plan A and Plan B cities is not an elected office. All treasurers are responsible for those duties prescribed by statute or their city councils.

C. Combination of clerk-treasurer

Minn. Stat. § 412.02, subd. 3. Minn. Stat. § 412.541, subd. 1. Minn. Stat. § 412.591, subd. 2.

In statutory cities operating under either the Standard Plan or Plan A, the council may, by ordinance, combine the offices of clerk and treasurer into the office of clerk-treasurer. In Standard Plan cities, the council must adopt the ordinance at least 60 days before the next regular city election. The ordinance does not go into effect until the expiration of the term of the incumbent treasurer, or when an earlier vacancy occurs.

Minn. Stat. § 412.02, subd. 3. Minn. Stat. § 412.591, subd. 2.

In a Plan A city, the clerk-treasurer is an appointed official and the ordinance generally goes into effect immediately. A Plan A city can abolish the position of treasurer even if an appointed person holds the position. Under either the Standard Plan or Plan A, the council may reestablish separate offices of clerk and treasurer by ordinance.

[Minn. Stat. § 412.591, subd. 3](#) (In 2005 and after, the threshold amount for requiring an audit is a base of \$150,000, which is adjusted for inflation using the annual implicit price deflator for state and local expenditures as published by the United States Department of Commerce.). [Minn. Stat. § 471.697](#). See *E-Update*, [Office of the State Auditor \(Feb. 3, 2012\)](#). *E-Update*, [Office of the State Auditor \(Feb. 18, 2011\)](#).

If the offices of clerk and treasurer have been combined in a Standard Plan or a Plan A city, the council must provide for an audit of the city's financial affairs by the state auditor or a certified public accountant in accordance with minimum procedures prescribed by the state auditor. According to the calculations of the Office of the State Auditor, a city with a population of 2,500 or less and a combined clerk and treasurer must have an annual audit for 2011 if its annual revenue is greater than \$198,000 and must have an audit once every five years if its annual revenue is \$198,000 or less. A city with a population over 2,500 must have an annual audit performed.

V. Citizen boards and commissions

One way to increase positive feelings about government is to promote citizen involvement. Citywide or neighborhood committees, special-project-review committees, and even block organizations are some of the committees cropping up in many cities. In many cases, the council has formed or encouraged these citizen committees. The committees have saved time and have made contributions that could only occur through citizen participation.

Councilmembers have found that ignoring citizen concerns can result in their removal from office at the next election, or in the defeat of a program or activity as a result of citizen opposition.

Although city officials cannot, in most cases, delegate decision-making authority to citizen groups, they can use citizens in advisory roles. This technique only works, however, if the council listens to the advice. If the council does not follow the advice of the committee, it should give understandable reasons for taking other action.

When a council forms a citizen-advisory body, it should also establish the ground rules for its activities. The council should also stress that in the absence of clear statutory authority to delegate responsibility, the council must, by law, make the final decisions. State law allows, and in some cases requires, city councils to delegate decision-making power to certain independent boards and commissions.

A. Independent citizen boards and commissions

A.G. Op. 624a-3 (Nov. 2, 1998). A.G. Op. 1007 (July 8, 1977). A.G. Op. 1001-a (Sept. 15, 1950). A.G. Op. 1001-a (Aug. 27, 1957).

See *Muehring v. School Dist. No. 31*, 224 Minn. 432, 28 N.W.2d 655 (Minn. 1947). *Minneapolis Gas-Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (Minn. 1886).

Minn. Stat. § 412.621.

The amount of discretionary power the council can give to independent citizen boards and commissions varies. Absent specific statutory or charter authority, local governing bodies may not delegate their discretionary powers and duties to other persons or bodies, including independent citizen boards and commissions.

In Plan B cities, with the exception of civil-service boards, there shall be no independent administrative board or commission, except for the purpose of administering a function jointly with another city or political subdivision. The council itself shall perform the duties and exercise the powers of the board of health, and shall govern and administer the library, parks, and utilities as fully as any other municipal function. The council may, however, create boards or commissions to advise the council with respect to any municipal function or activity, or to investigate any subject of interest to the city.

The statutes specifically authorize various independent boards and commissions in other statutory cities. The following is a list of the most common.

1. Airport board

Minn. Stat. § 360.038, subd. 2.

The council may establish, by ordinance or resolution, an airport board. The board shall be vested with authority for construction, enlargement, improvement, maintenance, equipment, operation, and regulation of the airport.

2. Civil-service board and commission

See [Handbook, Chapter 9](#).

Civil-service commissions can take several different forms depending on the state statute under which the council establishes them.

3. Hospital board

Minn. Stat. § 412.221, subd. 16.

The council has the power to provide hospitals and, by ordinance, to establish a hospital board. Hospital boards may exercise any hospital-management powers conferred by the council. The council may abolish the board by a vote of all five members of the council. The board shall consist of five members appointed by the mayor with council approval for overlapping five-year terms. The council may remove members for cause.

4. Housing and redevelopment authority

Minn. Stat. § 469.003, subds. 1, 2.

A housing and redevelopment authority (HRA) has been created in each city by the Legislature. The HRA may not transact any business or exercise any powers until the city council, by resolution, finds that the city: has substandard, slum or blighted areas that cannot be redeveloped without government assistance; or, has a shortage of decent, safe, and sanitary low-income dwellings. The council may consider such a resolution only after holding a public hearing and meeting publication requirements.

Minn. Stat. § 469.003, subds. 5, 6.

An HRA consists of up to seven members who may be officers and employees of the city. The mayor appoints members with the approval of the council for overlapping five-year terms. In many cities, councilmembers appoint themselves to serve on the HRA; so the council becomes the HRA.

5. Intergovernmental boards and commissions

Minn. Stat. § 471.59. See Handbook, Chapter 17.

The council may create intergovernmental boards and commissions. A mutual agreement of the cooperating governments will set up the organizational format, powers, and duties of such boards.

6. Library board

Minn. Stat. § 134.09.

When a public library is established, except in First Class cities operating under a home rule charter, the mayor of the city, with council approval, shall appoint a board of five, seven, or nine members from among the residents of the city. The number of members shall be determined by resolution or ordinance. The board members shall serve staggered, three-year terms and may be removed for misconduct or neglect.

Minn. Stat. § 134.10.

Library board members serve without pay but may be reimbursed for actual and necessary traveling expenses.

Minn. Stat. § 134.11, subd. 2.
Minn. Stat. § 134.13.

Once established, the board prescribes its rules of procedure, selects its officers, and controls the library fund. Besides appointing new members to the board, the council has approval of all purchases of land and proposals for the erection of buildings. The board must file an annual report each year with the city council and the Department of Education.

7. Park board

Minn. Stat. § 412.501. (Cities may also create advisory park boards and commissions under Minn. Stat. § 412.111).

The council of any city of more than 1,000 population may, by ordinance, establish a park board. The board shall consist of three, five, seven, or nine members as determined by resolution or ordinance. The mayor, with council approval, appoints the board members. Members serve three-year overlapping terms and may be removed by the mayor, with the council's consent, for cause after a hearing. Board members receive no compensation, unless the council authorizes it. The board may be dissolved by a unanimous vote of the council.

Minn. Stat. § 412.501. Minn. Stat. § 412.521.

The park board shall maintain, beautify, and care for park property and perform all other acts necessary to carry out its statutory powers. The board must make quarterly reports of its activities to the council and file an annual statement of receipts and disbursements with the city clerk.

8. Recreation board

Minn. Stat. § 471.15.

Recreation is usually a function that is administered by the city council, the park board, or the local school board. Any city may operate and expend funds for a public-recreation program and playgrounds, and acquire, equip, and maintain land, buildings, or other recreational facilities, including swimming pools.

Minn. Stat. § 471.16.

Generally, a recreation board refers to an independent commission that is established cooperatively by the city council, school board, and park board. The statutes specifically authorize the formation of an intergovernmental commission with representatives from all three bodies.

9. Utilities commission

Minn. Stat. § 412.321, subds. 1, 2.

Any statutory city may own and operate facilities for supplying utility service. No gas, light, power, or heat utility may operate until approval by five-eighths of the voters voting on the proposition at a regular or special election.

Minn. Stat. § 412.331. Minn. Stat. § 412.341, subd. 1.

By ordinance, a city may establish a public-utilities commission. Utility commissions must have three council-appointed members who serve overlapping three-year terms. The council may appoint no more than one of its own members to the commission. City residence is not a qualification for membership on the commission unless required by the council.

Minn. Stat. § 412.341, subd. 2. Minn. Stat. § 412.351. Minn. Stat. § 412.361.

The commission shall adopt rules for its proceedings, but must hold at least one regular meeting each month. The commission may exercise all of the discretionary administrative authority necessary for the management of the utilities. The council may prescribe a salary for the commissioners and decide, by ordinance, which of the following municipally owned public utilities shall be within the commission's jurisdiction:

- Water.
- Light and power, including any system for the production and distribution of steam heat.
- Gas.
- Sanitary or storm sewer, or both.
- Public buildings owned or leased by the city.
- District heating systems.

Minn. Stat. § 465.70.

Additionally, some Third Class and Fourth Class cities may own and operate a television-signal-distribution system that shall be considered a public utility.

10. Municipal power agencies

Minn. Stat. §§ 453.51-.62.

Any two or more cities may form a municipal power agency if each city passes a resolution authorizing an agreement. The purpose of the agency is to secure an adequate, economical, and reliable supply of energy for cities that own and operate a utility for the distribution of electric energy. All agency powers lie with its board of directors and include constructing and acquiring generating and transmission facilities, the power of eminent domain, and the authority to issue bonds and notes. Any city council may, by resolution, exercise any of these powers as if it were a municipal power agency.

11. Municipal gas agencies

Minn. Stat. §§ 453A.01-.12.

Any two or more cities owning or operating a utility for the local distribution of gas may form a municipal gas agency if each passes a resolution authorizing the agreement. The purpose is to secure an adequate, economical, and reliable supply of gas for utility customers. The board of directors exercises all agency powers. Any city may, by resolution, exercise any of the powers of a municipal gas agency as if it were an agency.

12. Special board of review

Minn. Stat. § 274.01, subd. 2.

The governing body of any city may appoint a special board of review. This special board of review serves at the direction and discretion of the city council. The council determines the number of members, the compensation and expenses to be paid, and the term of office of each member. At least one member of the special board must be an appraiser, realtor, or someone familiar with property valuations in the assessment district.

B. Advisory citizen boards and commissions

Minn. Stat. § 412.111.

Minn. Stat. § 462.354, subd. 1.

Another important link in city governing activities is the work of advisory boards and commissions. These entities are much like the independent or administrative boards and commissions. The city council may create and dissolve them by resolution, appoint people to serve on them, and exercise other powers of general supervision. The council must, however, pass an ordinance to create a planning commission.

There are several differences between independent boards and advisory boards. State statutes establish most independent boards and commissions and give them some discretionary powers. Advisory boards conduct studies and investigations on behalf of the council, and submit reports and recommendations for council consideration. An advisory-board recommendation does not take effect unless the council accepts it by passing an ordinance or resolution.

The council may organize advisory groups in any manner it deems appropriate. The council may find it wise to appoint people who represent various special-interest groups in the city.

An advisory commission may be created by the council for a special purpose, such as for conducting an investigation, and will cease to exist once the purpose of the commission has been achieved.

1. Planning commissions

Minn. Stat. §§ 462.351-.364.
See LMC information memo,
Planning Commission Guide.

Cities can establish planning commissions by passing an ordinance describing their organization and powers. City officials, such as the mayor, attorney, and engineer, frequently are advisory members.

2. Other advisory boards and commissions

Other advisory boards and commissions commonly established by city councils include: industrial commissions, which have power to study the ways and means of attracting more commercial and industrial development to the city; safety councils, which advise the council on safety programs; and intergovernmental agencies, such as a joint-planning commission, which the city sponsors in cooperation with other units of government.

See LMC information memo,
*City Administration: Clerk,
Administrator, Manager*, for
more information about the
manager and administrator
positions.

As government has become increasingly complex, cities have used fewer independent or administrative citizen boards and commissions. Instead of diffusing authority for government administration over a number of different agencies, many cities place all authority in the city council. This decision centralizes responsibility for the proper direction of local government affairs and increases voter understanding of government. Frequently, this trend leads to pressures for greater simplification and centralization in administration as well. The council-manager form of government (Plan B) is an answer to this pressure. Administrators, whose duties and functions lie somewhere between those of a manager and those of a clerk, may also help to centralize government.

VI. How chapter 6 applies to home rule charter cities

Several sections of this chapter may be useful to charter cities:

Minn. Stat. § 410.20. Minn.
Const. art. VIII, § 5.
A.G. Op. 59a-30 (July 24,
1996). Minn. Stat. § 410.20.

In the section concerning elected officials, the discussion of statutory city officers does not apply to charter cities, but the portions on eligibility, removal, resignations, and vacancies generally do apply. It may be possible that a charter could specify the particular conduct that would result in removal of a councilmember for nonfeasance of office. The attorney general, however, has advised that a charter provision which provides that a council vacancy would occur if a councilmember did not attend a specified number of meetings would not be valid. A charter may provide for the recall of any elective municipal officer and for removal of the officer by the electors of the city.

If the mayor of a charter city presides at the council meeting, most of the section concerning the mayor applies to charter cities. Otherwise, only the portions dealing with weed inspection, election duties, and other duties apply.

The section concerning the statutory city council and its powers might prove interesting to charter city councilmembers since many of their powers are similar to those of statutory city councils. The laws relating to conflicts of interest and prohibiting gifts to local officials also apply to members of charter city councils, but many charter cities have more restrictive provisions concerning both issues in their charters.

PART II**ELECTIONS, ELECTED OFFICIALS, AND COUNCIL MEETINGS**

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Chapter 7

Meetings, motions, resolutions, and ordinances

This chapter reviews the requirements city councils must follow when conducting meetings and when passing motions, resolutions, and ordinances.

I. Types of council meetings

See LMC Information Memo, *Meetings of City Councils*, for more information.

The city council has vast authority to make decisions and operate municipal affairs, but it can only exercise this authority only when it meets as a group. Under state law, there are certain requirements for council meetings.

A. Annual meeting (first meeting of the year)

Minn. Stat. § 412.02, subd. 2.

At its first meeting of the year, sometimes referred to as the annual meeting, the council must perform certain functions. State law does not set a date for the annual meeting, but council bylaws usually establish when it will occur. The annual meeting usually takes place on or shortly after the first Monday in January, which is when the terms of new councilmembers begin. At this first meeting, the council must:

Minn. Stat. § 412.831; Minn. Stat. § 331A.02; See also LMC Information Memo, *Newspaper Publication*, for more information.

- Designate a newspaper of general circulation as its official newspaper in which the city will publish ordinances and other matters as required by law.
- Select an official depository, by resolution, for city funds. This must be done within 30 days of the start of the city's fiscal year.
- Elect an acting mayor from among the councilmembers. The acting mayor shall perform the duties of the mayor during the mayor's disability or absence from the city, or, if there is a vacancy, until a successor has been appointed.

Minn. Stat. §§ 427.01-.12;
Minn. Stat. § 118A.02, subd. 1.

Minn. Stat. § 412.121.

Councils should also, on at least an annual basis:

Minn. Stat. § 424A.04, subd. 1.

- Review different council appointments to city boards and commissions. For example, the council must appoint one elected city official and one elected or appointed city official to serve with the city's fire chief on the board of trustees for a city fire department's volunteer relief association.

- Review the council’s bylaws or rules of procedure, and make any necessary changes. An ordinance amendment is necessary if the bylaws are in ordinance form; otherwise a resolution or motion is sufficient.
- Assign committee duties to members.
- Approve official bonds that have been filed with the clerk.

Minn. Stat. § 412.111.

B. Regular meetings

Minn. Stat. § 412.191, subd. 2.

No statutes govern the time, place, or frequency of council meetings. Regular meetings of the council, however, must be held at times and places established by council rules. Councils typically meet once or twice a month in the city hall or at another place in the city.

Minn. Stat. § 13D.04, subd. 1.

The council must keep a schedule of its regular meetings on file at its primary office. The council should also set an alternate day for meetings when the regular meeting day falls on a legal holiday. If the council decides to hold a meeting at a different time or place from that stated in its schedule of regular meetings, it must give the notice required for special meetings.

C. Adjourned meetings

City officials often use the terms “adjourned,” “continued,” and “recessed” interchangeably. The terms refer to meetings that are postponed to a future time for lack of a quorum, for convenience, or to complete pending business from a regular meeting.

Minn. Stat. § 412.191, subd. 1.

Although a quorum (majority of councilmembers) is necessary in order to conduct business, less than a quorum may adjourn or postpone a regularly organized meeting to a fixed, future time. When the council calls an adjourned meeting to complete pending business, the adjournment should be treated as a recess.

Minn. Stat. § 13D.04, subd. 4.

If the date, time, and place of the adjourned or recessed meeting are announced at an open meeting and the information is recorded in the minutes, no additional public notice is necessary. Otherwise, the notice required for a special meeting is necessary.

D. Special meetings

Minn. Stat. § 13D.04, subd. 2;
Minn. Stat. § 412.191, subd. 2.

A special meeting of the council refers to any meeting at a time or place different from the time or place stated in its schedule of regular meetings. The council may transact any business within its powers at a special meeting. The council should, however, only transact business for which notice has been provided. All statutory provisions governing regular meetings, including the open meeting law, apply to special meetings.

Minn. Stat. § 412.191, subd. 2.

Special meetings may be called by the mayor, by any two members of a five-member council, or by any three members of a seven-member council. Special meetings are called by filing a written statement with the city clerk.

Minn. Stat. § 13D.04, subd. 2.

Unless otherwise expressly established by statute, the following notice requirements apply to all special meetings.

1. Notice to the council

Minn. Stat. § 412.191, subd. 2;
A.G. Op. 471-e (Jan. 22, 1957).

When a special meeting has been called, the clerk must mail a notice to all councilmembers, at least one day before the meeting, stating the time and place of the meeting. If all of the councilmembers attend and participate in the meeting, the notice requirements will be considered to have been satisfied.

2. Notice to the public

Minn. Stat. § 13D.04, subd. 2;

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

The clerk must also post written notice of the date, time, place, and purpose of the special meeting on the city's principal bulletin board at least three days before the meeting. A principal bulletin board must be located in a place reasonably accessible to the public. If the city does not have a principal bulletin board, the notice must be posted on the door of its usual meeting room.

Minn. Stat. § 13D.04, subd. 2
(b), (c);

See LMC Information Memo,
Newspaper Publication, for
more information.

In addition to posting notice, the city must also mail or deliver notice to each person who has filed a written request for notice of special meetings with the city. Notice to these individuals must be mailed or delivered at least three days before the meeting. As an alternative to mailing or delivering the notice, the city may publish the notice once in its official newspaper at least three days before the meeting. If there is no official newspaper, notice must be published in a qualified newspaper of general circulation that covers the city.

Minn. Stat. § 645.15; *In re Appeal from an Order of Lake Valley Township Bd.*, 305 Minn. 488, 234 N.W.2d 815 (Minn. 1975).

In calculating the number of days for providing notice, the first day the notice is given should not be counted, but the last day should be counted. If the last day is a Saturday, Sunday, or a legal holiday, however, that day is omitted from the calculation and the following day is considered the last day. For example, if a special meeting is scheduled for a Thursday, notice has to be given on Monday to meet the three-day notice provision. In this example, Tuesday is day one, Wednesday is day two, and Thursday is day three. Monday is not included in the time computation. Similarly, if a special meeting is planned for Monday, notice must be given on Friday; Saturday is day one, Sunday is day two, and Monday is day three (Saturday and Sunday are included in the time computation since they are not the last day of the fixed period).

Minn. Stat. § 13D.04, subd. 2
(d).

A person filing a written request for notice of special meetings may limit the request to notification of special meetings that cover a particular subject. In this case, the city only needs to send notice of special meetings addressing those subjects.

Minn. Stat. § 13D.04, subd. 2
(e), (f).

Cities may set an expiration date for requests for notices of special meetings, and require people to re-file a request once each year. The city must notify each person of the requirement not more than 60 days before the re-filing is due.

A.G. Op. 63a-5 (Aug. 28, 1996). If a council committee or other public body meets where a quorum of the councilmembers also attend, the city most likely does not need to give additional notice of a special council meeting as long as proper notice of the committee or other public meeting has been given. If councilmembers participate in committee discussions or deliberations, however, additional separate notice of a special council meeting may be required.

Minn. Stat. § 331A.05, subd. 7. If, through no fault of the city, an error occurs in the publication of a notice, the error generally does not impact the validity of a public meeting.

E. Meetings conducted by interactive television

Minn. Stat. § 13D.02. A city council meeting may be conducted by interactive television if all of the following provisions are met:

- At least one councilmember is physically present at the regular meeting location.
- All councilmembers must be able to hear and see each other and all discussion and testimony presented at any location at which at least one councilmember is present.
- All members of the public at the regular meeting location must be able to hear and see all discussion, testimony, and votes of all councilmembers.
- Each location at which a councilmember is present must be open and accessible to the public.
- If possible, a member of the public should be able to monitor the meeting electronically from a remote location.

F. Telephone or electronic meetings

Minn. Stat. § 13D.021, subd. 1. Meetings may be conducted by telephone or by other electronic means if the following conditions are met:

- The presiding officer, chief legal counsel or chief administrative officer for the affected governing body determines an in-person meeting or a meeting conducted through interactive television is not practical or prudent because of a health pandemic or an emergency declared under chapter 12 of the Minnesota Statutes.
- All members of the governing body participating in the meeting can hear each other, and can hear all discussion and testimony.
- Members of the public present at the regular meeting location can hear all discussion, testimony, and votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the health pandemic or emergency declaration.

- At least one member of the governing body, chief legal counsel or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the health pandemic or emergency declaration.
- All votes are conducted by roll call so that each member's vote on each issue can be identified and recorded.

Minn. Stat. § 13D.021, subd. 2. Each member of the governing body participating in a meeting by telephone or other electronic means is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

Minn. Stat. § 13D.021, subd. 3. If telephone or another electronic means is used to conduct a meeting, to the extent practical, the governing body shall allow a person to monitor the meeting electronically from a remote location. The governing body may require the person making a connection to pay for the documented, additional cost incurred as a result of the additional connection.

Minn. Stat. § 13D.021, subd. 4;
Minn. Stat. § 13D.04. If telephone or another electronic means is used to conduct a regular, special, or emergency meeting, the public body shall provide notice of the regular meeting location, of the fact that some members may participate by telephone or other electronic means, and, if practical, of the option of connecting to the meeting remotely. The timing and method of providing notice is the same as other regular, special or emergency meetings held under the open meeting law.

G. Emergency meetings

Minn. Stat. § 13D.04, subd. 3;
IPAD 06-027; (Department of Administration opinion advising that the Breezy Point City Council improperly held an emergency meeting to consider complaints about the city's building inspector); *Slipy v. Rach*, No C5-06-3574 (9th Jud. Dist. June 8, 2007); (after the Department of Administration issued its advisory opinion, the trial court held that the city council's decision to hold the emergency meeting complied with the open meeting law).

An emergency meeting is a special meeting called by the council due to circumstances that, in its judgment, require immediate council consideration. The procedure for notifying councilmembers of emergency meetings is the same as that for special meetings. The public notice requirements, however, are somewhat different. The council must make good faith efforts to provide notice of the emergency meeting to all media that have filed a written request for notice. Notice must be by telephone or by any other method used to notify councilmembers. The notice must include the subject of the meeting. A published or posted notice is not necessary.

Minn. Stat. § 13D.04, subd. 3(f). If matters not directly related to the emergency are discussed or acted upon at an emergency meeting, the minutes of the meeting must include a specific description of them.

H. Days and times when meetings cannot be held

[Minn. Stat. § 645.44, subd. 5.](#)

State law defines a set of public holidays when no public business can be transacted except to deal with emergencies. The transaction of public business includes conducting public meetings. The public holidays are: New Year's Day (Jan. 1); Martin Luther King's Birthday (the third Monday in January); Washington's and Lincoln's Birthday (the third Monday in February); Memorial Day (the last Monday in May); Independence Day (July 4); Labor Day (the first Monday in September); Christopher Columbus Day (the second Monday in October); Veterans Day (Nov. 11); Thanksgiving Day (the fourth Thursday in November); and Christmas Day (Dec. 25). All cities have the option, however, of deciding whether Christopher Columbus Day and the Friday after Thanksgiving shall be holidays. If these days are not designated as holidays, public business may be conducted on them. If a holiday falls on a Saturday, the preceding Friday is considered to be a holiday. If a holiday falls on a Sunday, the next Monday is considered to be a holiday.

[Minn. Stat. § 645.15.](#)

State law does not prohibit meetings on weekends. However, state law regulating how time is computed for the purpose of giving any required notice provides that if the last day of the notice falls on either a Saturday or a Sunday, that day cannot be counted. Thus, if notice for a special meeting to be held on a Saturday or Sunday is required, the third day of that notice would need to be provided on the preceding Friday.

[Minn. Stat. § 204C.03; Minn. Stat. § 202A.19](#) (Repealed, 1981 c 29 art 7 s 39).

Minnesota election law provides that meetings are prohibited between 6 p.m. and 8 p.m. on any election day, including a local general or special election. Thus, if a school district is holding a special election on a particular day, no other unit of government totally or partially within the school district may hold a meeting between 6 p.m. and 8 p.m. Meetings are also prohibited after 6 p.m. on the day of a major political precinct caucus.

II. Meeting procedures

A. Quorum

[Minn. Stat. § 412.191, subd. 1.](#)

To transact city business in a statutory city, state law requires a quorum (majority) of the councilmembers be present. This minimum may include, but does not have to include the mayor, or, in Standard Plan cities, the clerk. Charter cities, however, may provide that a different number of councilmembers constitutes a quorum.

[Minn. Stat. § 645.08\(5\).](#)

For most other public bodies, a majority of its qualified members constitutes a quorum.

B. Open meeting law

1. Purpose of the open meeting law

St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools, 332 N.W.2d 1 (Minn. 1983).

The open meeting law requires that meetings of public bodies must generally be open to the public. It serves three vital purposes:

- Prohibits actions from being taken at a secret meeting where the interested public cannot be fully informed of the decisions of public bodies or detect improper influences.
- Ensures the public's right to be informed.
- Gives the public an opportunity to present its views.

2. Groups governed by the open meeting law

Minn. Stat. § 13D.01, subd. 1; Minn. Stat. § 465.719, subd. 9; *Southern Minnesota Municipal Power Agency v. Boyne*, 578 N.W.2d 362 (Minn. 1998).

Under the Minnesota open meeting law, all city council meetings and executive sessions must be open to the public, with only a few exceptions. The open meeting law also requires meetings of any committee, subcommittee, board, department, or commission of a public body to be open to the public. The governing bodies of local public pension plans, housing and redevelopment authorities, economic development authorities, and city-created corporations are subject to the open meeting law. The Minnesota Supreme Court has held, however, that the governing body of a municipal power agency, created under Minn. Stat. §§ 453.51-453.62, is not subject to the open meeting law because the Legislature has granted these agencies authority to conduct their affairs as private corporations.

3. Gatherings governed by the open meeting law

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983); *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983).

The open meeting law does not define the term “meeting.” The Minnesota Supreme Court, however, has ruled that under the open meeting law, meetings are gatherings where a quorum or more of the council or other governing body or of a committee, board, department or commission of the city council or other governing body are present, and at which the members intentionally discuss, decide or receive information as a group on issues relating to the official business of that body.

As a result, the open meeting law does not generally apply in situations where less than a quorum of the council is involved. However, serial meetings in groups of less than a quorum that are held in order to avoid the requirements of the open meeting law may be found to violate the law, depending on the specific facts.

a. Interviews

Mankato Free Press v. City of North Mankato, 563 N.W.2d 291 (Minn. Ct. App. 1997).

The Minnesota Court of Appeals considered a situation where individual councilmembers conducted separate interviews of candidates for a city position. The district court had found that no “meeting” of the council had occurred because there was never a quorum of the council present during the interviews. The court of appeals sent the decision back to the district court for a determination of whether the councilmembers had conducted the interview process in a serial fashion to avoid the requirements of the open meeting law.

Mankato Free Press v. City of North Mankato, No. C9-98-677 (Minn. Ct. App. Dec. 15, 1998) (unpublished decision).

On remand, the district court found that the individual interviews were not done to avoid open-meeting-law requirements. This decision was also appealed, and the court of appeals affirmed the district court’s decision. Cities that want to use this type of interview process with job applicants should first consult their city attorney.

b. Informational meetings

St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools, 332 N.W.2d 1 (Minn. 1983).

The Minnesota Supreme Court has held that informational seminars about school-board business, which the entire board attends, must be noticed and open to the public. As a result, it appears that any scheduled gatherings of a quorum of a public body must have proper notice and be open, whether or not the public body takes or contemplates taking action at that gathering. This includes meetings where members receive information that may influence later decisions, but excludes chance or social gatherings. A quorum of members of a public body, however, cannot discuss or receive information on official business in any setting under the guise of a private social gathering.

Thuma v. Kroschel, 506 N.W.2d 14 (Minn. Ct. App. 1993); A.G. Op. 63a-5 (Aug. 28, 1996).

Under certain circumstances, it may be possible for a quorum of the council to attend a meeting of another public body without violating the open meeting law even though notice of a special council meeting is not provided. For example, when persons constituting a quorum of a city council attended a meeting of the city’s planning commission, the Minnesota Court of Appeals ruled that there was a violation of the open meeting law—not because of the councilmembers’ attendance at the meeting—but because the councilmembers conducted public business in conjunction with that meeting. Based on this decision, the attorney general has advised that mere attendance by additional councilmembers at a meeting of a council committee, held in compliance with the open meeting law, would not constitute a special council meeting requiring separate notice. The attorney general advised, however, that the additional councilmembers should not participate in committee discussions or deliberations absent a separate notice.

Compare *St. Cloud Newspapers, Inc. v. Dist. 742 Community Schools*, 332 N.W.2d 1 (Minn. 1983); with A.G. Op. 63a-5 (Feb. 5, 1975).

It is not clear whether the participation of a city council in a training program sponsored by the League of Minnesota Cities to develop various skills would be defined as a meeting under the open meeting law. The determining factor may be whether the program includes discussions of specific matters relating to an individual city’s business.

Moberg v. Indep. Sch. Dist. No. 281, 336 N.W.2d 510 (Minn. 1983); See LMC Information Memo, *Meetings of City Councils*, for more information.

LMCIT risk management memo, *Electronic Communications Between Councilmembers*; IPAD 09-020.

Minn. Stat. § 13D.05, subd. 1(d).

Minn. Stat. § 13D.01, subd. 3; Minn. Stat. § 13D.04, subd. 5; See *The Free Press v. County of Blue Earth*, 677 N.W.2d 471 (Minn. Ct. App. 2004); (holding that the county's statement that it was closing a meeting under the attorney-client privilege to discuss "pending litigation" did not satisfy the requirement of describing the subject to be discussed at the closed meeting).

Minn. Stat. § 13D.03, subd. 1 (b).

c. Technology

It is not entirely clear how the open meeting law applies to technology, such as e-mail or telephone calls. Although the law does not specifically address the use of e-mail and other technology, it is possible that any form of communication between councilmembers or members of other public bodies could violate the open meeting law under certain circumstances.

As a result, city councils and other public bodies should not use e-mail, telephone calls, and other technology to communicate back and forth with other members of the public body when both of the following circumstances exist:

- When a quorum of the council or public body will be contacted regarding the same matter.
- When city businesses is being discussed.

4. Open meeting exceptions

The open meeting law is designed to favor public access. Therefore, the few exceptions that do exist are carefully limited to avoid abuse.

All closed meetings, except those closed as permitted by the attorney-client privilege, must be electronically recorded at the expense of the public body. Unless otherwise provided by law, the recordings must be preserved for at least three years after the date of the meeting.

Before closing a meeting under any of the following exceptions, the public body must state, on the record, the specific grounds that permit the meeting to be closed and describe the subject to be discussed. The same notice requirements that apply to open meetings also apply to closed meetings. For example, if a closed meeting takes place at a regular meeting, the notice requirements for a regular meeting apply. Likewise, if a closed meeting takes place as a special meeting or as an emergency meeting, the notice requirements for a special meeting or an emergency meeting would apply.

a. Labor negotiations

The city council may, by majority vote in a public meeting, decide to hold a closed meeting to consider its strategy for labor negotiations, including negotiation strategies or developments, or discussion of labor-negotiation proposals. The council must announce the time and place of the closed meeting at the public meeting.

Minn. Stat. § 13D.03, subds. 1 (d), 2.

After the closed meeting, a written record of all members of the city council and all other people present must be available to the public. The council must tape-record the proceedings at city expense, and preserve the tape for two years after signing the contract. The tape-recording must be available to the public after all labor contracts are signed for the current budget period.

Minn. Stat. § 13D.03, subd. 3.

If someone claims the council conducted public business other than labor negotiations at the closed meeting, a court must privately review the recording of the meeting. If the court finds the law was not violated, the action must be dismissed and the recording sealed and preserved. If the court determines a violation of the open meeting law may exist, the recording may be introduced at trial in its entirety, subject to any protective orders requested by either party and deemed appropriate by the court.

b. Not-public data

Minn. Stat. § 13D.05, subd. 2.

The general rule is that meetings cannot be closed to discuss data that are not public under the Minnesota Government Data Practices Act. A meeting must be closed, however, if certain not-public data is discussed.

For example, any portion of a meeting must be closed if expressly required by law or if any of the following types of not-public data are discussed:

- Data that would identify victims or reporters of criminal sexual conduct, domestic abuse, or maltreatment of minors or vulnerable adults.
- Active investigative data created by a law-enforcement agency, or internal-affairs data relating to allegations of law-enforcement-personnel misconduct.
- Educational, health, medical, welfare, or mental-health data that are not public data.
- An individual's medical records governed by Minn. Stat. §§ 144.291 – 144.298.

Minn. Stat. §§ 144.291 -298.

Minn. Stat. § 13D.05, subd. 1(d).

A closed meeting held to discuss any of the not-public data listed above must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

Minn. Stat. § 13D.05, subd. 1 (b), (c).

Other not-public data may be discussed at an open meeting without liability or penalty if the disclosure relates to a matter within the scope of the public body's authority, and it is reasonably necessary to conduct the business or agenda item before the public body. The public body, however, should make reasonable efforts to protect the data from disclosure. Data discussed at an open meeting retains its original classification; however, a record of the meeting shall be public.

Minn. Stat. § 13D.05, subs. 1(d), 2 (b).

c. Misconduct allegations or charges

A public body must close one or more meetings for “preliminary consideration” of allegations or charges of misconduct against an individual subject to its authority. If the members conclude discipline of any nature may be warranted, further meetings or hearings relating to the specific charges or allegations that are held after that conclusion is reached must be open. This type of meeting must be open at the request of the individual who is the subject of the meeting. This type of meeting must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

Minn. Stat. § 13D.05, subs. 1(d), 3 (a); See "Employee Discipline and the Open Meeting Law," *Minnesota Cities*, Sept. 1997 for more information.

d. Performance evaluations

A public body may close a meeting to evaluate the performance of an individual who is subject to its authority. The public body must identify the individual to be evaluated prior to closing the meeting. At its next open meeting, the public body must summarize its conclusions regarding the evaluation. This type of meeting must be open at the request of the individual who is the subject of the meeting. If this type of meeting is closed, it must be electronically recorded, and the recording must be preserved for at least three years after the meeting.

Minn. Stat. § 13D.05, subd. 3 (b);

Brainerd Daily Dispatch, LLC v. Dehen, 693 N.W.2d 435 (Minn. Ct. App. 2005); *Prior Lake American v. Mader*, 642 N.W.2d 729 (Minn. 2002); *Northwest Publications, Inc. v. City of St. Paul*, 435 N.W.2d 64 (Minn. Ct. App. 1989); *Minneapolis Star & Tribune v. Housing and Redevelopment Authority in and for the City of Minneapolis*, 251 N.W.2d 620 (Minn. 1976).

e. Attorney-client privilege

A meeting may be closed if permitted by the attorney-client privilege. Meetings between a governmental body and its attorney to discuss active or threatened litigation may only be closed, under the attorney-client privilege, when a balancing of the purposes served by the attorney-client privilege against those served by the open meeting law dictates the need for absolute confidentiality. The need for absolute confidentiality should relate to litigation strategy, and will usually arise only after a substantive decision on the underlying matter has already been made. This privilege may not be abused to suppress public observations of the decision-making process, and does not include situations where the council will be receiving general legal opinions and advice on the strengths and weaknesses of a proposed underlying action that may give rise to future litigation.

Minn. Stat. § 13D.05, subd. 3 (c).

f. Purchase or sale of real or personal property

A public body may close a meeting to:

See Minn. Stat. § 13.44, subd. 3.

- Determine the asking price for real or personal property to be sold by the public body.
- Review confidential or protected nonpublic appraisal data.
- Develop or consider offers or counteroffers for the purchase or sale of real or personal property.

Minn. Stat. § 13D.05, subd. 3 (c); *Vik v. Wild Rice Watershed Dist.*, No. A09-1841 (Minn. Ct. App. Aug. 10, 2010) (unpublished decision) (holding that this exception authorizes closing a meeting to discuss the development or consideration of a property transaction and is not limited to the discussion of specific terms of advanced negotiations).

Before holding a closed meeting under this exception, the public body must identify on the record the particular real or personal property that is the subject of the closed meeting. The closed meeting must be tape-recorded. The recording must be preserved for eight years, and must be made available to the public after all real or personal property discussed at the meeting has been purchased or sold, or after the public body has abandoned the purchase or sale. The real or personal property that is being discussed must be identified on the tape. A list of members and all other persons present at the closed meeting must be made available to the public after the closed meeting. The actual purchase or sale of the real or personal property must be approved at an open meeting, and the purchase or sale price is public data.

g. Security reports

Minn. Stat. § 13D.05, subd. 3 (d).

Meetings may be closed to receive security briefings and reports, to discuss issues related to security systems, to discuss emergency-response procedures, and to discuss security deficiencies in or recommendations regarding public services, infrastructure, and facilities, if disclosure of the information would pose a danger to public safety or compromise security procedures or responses. Financial issues related to security matters must be discussed and all related financial decisions must be made at an open meeting. Before closing a meeting under this exception, the public body must when describing the subject to be discussed, refer to the facilities, systems, procedures, services or infrastructures to be considered during the closed meeting. The closed meeting must be tape-recorded, and the recording must be preserved for at least four years.

5. Penalties

Minn. Stat. § 13D.06, subd. 1;

Claude v. Collins, 518 N.W.2d 836 (Minn. 1994).

Any person who intentionally violates the open meeting law is subject to personal liability in the form of a civil penalty of up to \$300 for a single occurrence. The public body may not pay the penalty. A court may take into account a councilmember's time and experience in office to determine the amount of the civil penalty.

Minn. Stat. § 13D.06, subd. 2.

An action to enforce this penalty may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located.

Minn. Stat. § 13D.06, subd. 4; See *Open Meeting Law Defense Coverage*, LMCIT risk management memo, for information about insurance coverage for open-meeting-law violations.

The court may also award reasonable costs, disbursements, and attorney fees of up to \$13,000 to any party in an action alleging a violation of the open meeting law. The court may award costs and attorney fees to a defendant only if the action is found to be frivolous and without merit. A public body may pay any costs, disbursements, or attorney fees incurred by or awarded against any of its members.

Minn. Stat. § 13D.06, subd. 4.

If a party prevails in a lawsuit under the open meeting law, an award of reasonable attorney fees is mandatory if the court determines that the public body was the subject of a prior written advisory opinion from the commissioner of the Department of Administration, and the court finds that the opinion is directly related to the lawsuit and that the public body did not act in conformity with the opinion. A court is required to give deference to the advisory opinion.

Minn. Stat. § 13D.06, subd. 4 (d); *Coalwell v. Murray*, No. C6-95-2436 (Minn. Ct. App. Aug 6, 1996) (unpublished decision).

No monetary penalties or attorney fees may be awarded against a member of a public body unless the court finds there was intent to violate the open meeting law.

Minn. Stat. § 13D.06, subd. 3 (a); *Brown v. Cannon Falls Township*, 723 N.W.2d 31 (Minn. Ct. App. 2006).

If a person is found to have intentionally violated the open meeting law in three or more separate actions involving the same governing body, that person must forfeit any further right to serve on the governing body or in any other capacity with the public body for a period of time equal to the term of office the person was serving.

Minn. Stat. § 13D.06, subd. 3 (b).

If a court finds a separate, third violation that is unrelated to the previous violations, it must declare the position vacant and notify the appointing authority or clerk of the governing body. As soon as practicable, the appointing authority or governing body shall fill the position as in the case of any other vacancy.

Minn. Const. art. VIII, § 5; *Jacobsen v. Nagel*, 255 Minn. 300, 96 N.W.2d 569 (Minn. 1959).

Under the Minnesota Constitution, the Legislature may provide for the removal of public officials for malfeasance or nonfeasance. To constitute malfeasance or nonfeasance, a public official's conduct must affect the performance of official duties and must relate to something of a substantial nature directly affecting the rights and interests of the public.

Jacobsen v. Nagel, 255 Minn. 300, 96 N.W.2d 569 (Minn. 1959); *Claude v. Collins*, 518 N.W.2d 836 (Minn. 1994).

“Malfeasance” refers to evil conduct or an illegal deed. “Nonfeasance” is described as neglect or refusal, without sufficient excuse, to perform what is a public officer's legal duty to perform. More likely than not, a violation of the open meeting law would be in the nature of nonfeasance. Although good faith does not nullify an open-meeting-law violation, good faith is relevant in determining whether a violation amounts to nonfeasance.

Sullivan v. Credit River Township, 299 Minn. 170, 217 N.W.2d 502 (Minn. 1974); *In re D & A Truck Line, Inc.*, 524 N.W.2d 1 (Minn. Ct. App. 1994); *Lac Qui Parle-Yellow Bank Watershed Dist. v. Wollschlager*, No. C6-96-1023 (Minn. Ct. App. Nov. 12, 1996) (unpublished decision).

Minnesota courts have generally refused to invalidate actions taken at an improperly closed meeting.

C. Citizen involvement

Minn. Stat. § 13D.01, subd. 6.

Any person may observe council meetings. In fact, the council should encourage citizen attendance to help raise awareness of the city's problems and help create support for programs suggested by the council. Citizens must be able to hear the discussion at a meeting, and must be able to determine who votes for or against a motion. One copy of the agenda and all materials made available to the council should be made available to the audience unless doing so would violate the Minnesota Government Data Practices Act.

Although anyone can attend council meetings, citizens cannot speak or otherwise participate in any discussions unless the mayor or the presiding officer recognizes them for this purpose. The decision to recognize speakers is usually up to the presiding officer, but the council can overrule this decision. The council can, through a motion, decide to hear one or more speakers from the audience.

Participation in council meetings can be intimidating for the average citizen. Councils should make sure citizens are invited to participate when appropriate and listened to with courtesy. Individual councilmembers should not argue with citizens. Citizens attend council meetings to give information for the council to consider. Discussions or debates between individual councilmembers and citizens during council meetings is inappropriate and may reflect badly on the decision-making process.

D. Recording by citizens

A.G. Op. 63a-5 (Dec. 4, 1972).

The public may make an audio or videotape of an open meeting if doing so does not have a significantly adverse impact on the order of the meeting. The city council may not prohibit dissemination or broadcast of the tape.

E. Accessibility

Minn. Stat. § 363A.12, subd. 1;
42 U.S.C. §§ 12101-12213.

Both the meeting and the meeting room must be accessible. To ensure accessibility, the meeting should be located in a room that all people, including people with mobility impairments, will be able to access. A city may also need to make a sign-language interpreter available and make written materials available in large print, Braille, or audiocassette for people with sight or hearing impairments.

F. Maintaining order

Minn. Stat. § 412.191, subd. 2;
State v. Occhino, 572 N.W.2d
 316 (Minn. Ct. App. 1997).

Although meetings must be open to the public, individuals who are noisy or unruly do not have the right to remain in council chambers. When individuals abuse their right to be present in the council chamber, the mayor, as presiding officer (subject to being overruled by the council), should order their removal from the room. If the presiding officer fails to act, the council may, by motion, issue such an order. The council has authority to preserve order at its meetings. The council can use necessary force, including use of the marshal or police, to carry out the mandate. If a person is excluded from a meeting, the council should provide an opportunity for the excluded person to give his or her interpretation of the exclusion to a designated city staff member to satisfy any due-process concerns.

If the entire audience becomes so disorderly that it is impossible to conduct a meeting, the mayor should declare the meeting continued to some other time and place. The council may also move for adjournment. No matter how disorderly a meeting may be, it is a legal meeting and any action the council takes in proper form is valid. The council cannot issue contempt citations against individuals whose disorderly conduct disrupts or interferes with the transaction of city business.

G. Rules of procedure

Minn. Stat. § 412.191, subd. 2.

The city council has the power to regulate its own procedure. While many councils operate without written rules or regulations, written rules facilitate the conduct of city business and reduce the risk of mishandling important matters.

See LMC Information Memo, *Meetings of City Councils*, for suggested bylaws and other rules of procedure.

Council bylaws usually cover issues like the place and time of regular council meetings, the order of business, parliamentary rules governing council procedures, minutes, and standing and special committees.

1. Agendas

The bylaws should establish an order of business and a process for placing items on an agenda. Many councils have found the following order of business convenient:

- Call to order
- Roll call
- Approval of minutes from previous meeting
- Consent agenda
- Petitions, requests, and complaints
- Reports of officers, boards, and committees

- Reports from staff and administrative officers
- Ordinances and resolutions
- Presentation of claims (The authorization for paying city claims and bills are often included in the consent agenda.)
- Unfinished business
- New business
- Miscellaneous announcements
- Adjournment

2. Consent agenda

By resolution or through bylaws, a council may establish a consent agenda containing routine, non-controversial items that need little or no deliberation. The clerk or the person responsible for placing items on the agenda prepares the consent agenda. By a majority or higher vote, the council can approve all actions on the consent agenda with one vote. If a councilmember objects to an item being placed on the consent agenda, it should be removed and acted on as a separate agenda item.

3. Tips for shortening meetings

In addition to the consent agenda, councils may consider the following suggestions to shorten meetings.

Council bylaws may set a closing date for placing items on the agenda. For example, the clerk must receive all requests to include items on the agenda five days before the meeting. This is especially important if councilmembers need to review written material before the meeting. The council might make an exception in special situations. The council should set a definite time for adjournment and observe this rule.

At some time during the meeting, often at the beginning, many city councils establish a specific time when citizens can present concerns to the council. In such an open forum, the mayor or presiding officer should provide a limited time for each person who wishes to speak. No action should be taken on any of the issues raised. Rather, if appropriate, the issues should be placed on the agenda of a future council meeting.

When the council is going to discuss a major public issue, the bylaws or the council, by resolution, may provide a limited, specific amount of time for each side to express its views. The council may also follow this procedure for all items on the agenda.

H. Parliamentary procedure

Parliamentary procedure is a system of rules that aid in transacting business. The rules are designed to preserve order, expedite business, and protect the rights of those involved in making decisions. The mayor, as presiding officer, is responsible for guarding against abuse of the procedures. The effective use of parliamentary procedures is the joint responsibility of the mayor and all councilmembers.

Parliamentary rules can be very simple or very complex. The complexity of rules should vary in direct ratio to the size of the group. As the number of people in the group increases, the complexity of the rules should increase. Accordingly, the rules for city councils should be simple. Any attempt to introduce a high degree of formality into the proceedings of a city council will probably reduce its ability to operate effectively.

Minn. Stat. § 412.191, subd. 2; (authorizing the city council to regulate its own procedure).

The rules of parliamentary procedure apply to council proceedings only if the council formally adopts such rules in its bylaws. The *Roberts Rules of Order, Newly Revised* is designed for meetings of large bodies. Rather than adopt these rules as a formal procedure to always follow, a council can agree to informally follow the rules while conducting meetings. An informal application of the rules, together with the common sense of councilmembers, may be the only guidelines many councils need in order to conduct their business in an orderly manner. If a controversial discussion is about to occur, the mayor or a councilmember could move to adopt more formal rules for that particular discussion.

The following discussion introduces a few rules of parliamentary procedure that can simplify the work of the council. The rules are contained in *The New Roberts Rules of Order, Revised*. The council can adopt them by inserting the following clause in the bylaws: “In all points not covered by these rules, the council shall be governed in its procedure by *The New Roberts Rules of Order, Revised* (or some other similar code of parliamentary procedure).”

1. Motions

See LMC Information Memo, *Meetings of City Councils* for more information.

The council transacts business through motions made by councilmembers. These motions are seconded, at times, and subsequently passed or rejected by council vote. Each motion has different rules. For example, councils can debate some motions while they must vote on others immediately. Some motions require a simple majority for passage; others need a two-thirds majority.

These are the typical steps to make and act on a motion:

- A member of the council addresses the presiding officer.
- The presiding officer recognizes the member.

- The councilmember states his or her motion. (Usually in the following form: “I move . . . text of the motion.”) A motion should always be in positive, rather than negative, terms. For example, if the motion is to deny X a permit, and the council defeats the motion, there may be some confusion as to whether or not X has been granted a permit. Even if the consensus of the council is to deny the permit, the motion should be to grant the permit and the council should then vote it down. The councilmember making a motion does not need to favor it or vote for it. The councilmember may wish to put the issue before the council so a decision can be made.
- If necessary, another councilmember then seconds the motion by saying: “I second the motion.” (Seconds are not needed for meetings of small bodies like city councils unless required in the bylaws.) Neither making a motion nor seconding a motion places it before the council. Only the presiding officer can place the motion before the council by stating the motion.
- The presiding officer repeats the motion or states the question to the council. (When the presiding officer has stated the question, the motion is pending, and it is then open to debate.)
- A discussion follows, if the motion can be debated.
- A councilmember may make subsidiary motions in the same form as the original motion.
- The council votes on the original motion or on any of the subsidiary motions.
- The presiding officer announces the result of the vote on each motion immediately after the vote count is complete.
- A councilmember may not make a second main motion while the council is discussing the first one.
- Any councilmember may, however, make a privileged motion even if a main motion is currently before the council. A privileged motion is one to adjourn, to recess, or to ask a question of privilege—such as to restate the motion or ask for order. In this case, a vote on the privileged motion precedes the one on the main motion.

2. Role of the presiding officer

In any group or assembly, the presiding officer has an extra measure of power. As the chair of the meeting, the presiding officer is responsible for guiding the group toward the conclusion of pending business in good time, while also giving major issues enough consideration. To accomplish this, the presiding officer has two special powers:

- The first power is to interpret and apply the rules of procedure. The presiding officer must decide whether motions are proper and in order, whether the body should grant questions of special privilege, and what procedure is proper in any given instance. The presiding officer should maintain order and expel disorderly individuals from the meeting. The presiding officer does not have complete freedom in exercising this authority. Any member of the council may appeal the decision of the chair. To do this, a councilmember must say, “I appeal the decision of the chair,” immediately after the chair announces the decision. (Recognition from the presiding officer is not necessary when making an appeal.) The appeal must be seconded, is debatable, and cannot be amended. After the debate, the assembly votes on the chair’s decision. A majority of “yes” votes upholds the decision of the presiding officer and a majority of “no” votes overrules the decision. A tie vote sustains the ruling. The presiding officer may vote to uphold his or her own ruling. If no one appeals a ruling as soon as the presiding officer makes it, it becomes the rule of the council.
- The presiding officer’s second power is to recognize speakers. The presiding officer may not, however, refuse to receive a motion after recognizing the maker, nor refuse to call for a vote on any motion that has been properly made and seconded. The power to recognize speakers still gives the presiding officer considerable influence over the course of the discussion and, consequently, over the eventual decision on any matter. When the council invites comments from the audience, the presiding officer continues to recognize speakers.

In statutory cities, the mayor, who is the presiding officer, plays a dual role. The mayor presides, makes and seconds motions, and votes on all questions before the council. The mayor usually steps down from the position as chair in order to make a motion. To do this, the mayor turns over the duties of presiding officer to a councilmember. The mayor may then make a motion, and should not assume the duties as presiding officer until the council has taken a final vote or postponed the motion until another time.

3. Special motions

Several motions deserve special consideration. They include the following:

a. The motion to reconsider

This motion enables a council to set aside a vote it previously took, and to reconsider the matter as though it had not voted on the issue. If the council uses *Roberts Rules of Order, Newly Revised*, only a person who originally voted on the prevailing side may move to reconsider. Otherwise, any member may make the motion by saying, “I move to reconsider . . . stating the motion to be reconsidered . . .” The council may debate the motion. If the council passes the motion to reconsider, it must then reconsider the original motion and take another vote. If the council defeats a motion to reconsider, no further action is necessary.

b. A motion to postpone indefinitely

There is an important difference between the motion to postpone indefinitely and the motion to postpone temporarily. The motion to postpone temporarily is more commonly called a motion to “lay on the table” or “to table.” The motion to postpone temporarily postpones consideration of the motion until some undetermined, future time. The council may consider a tabled motion whenever a majority of the members decide to do so. A motion to postpone indefinitely, however, is the equivalent to a negative vote on the main motion. An affirmative vote on it may be reconsidered, but not a negative vote. A motion to permanently suppress any future consideration of an issue is not binding on a future council.

c. A motion to limit debate

A council may limit debate by placing a reasonable time limit on it, such as a limit of 15 minutes to consider a particular motion; or limiting the number of people who may speak for and against a certain motion, such as a limit of three speakers in favor and three speakers opposed.

d. The motion to amend

Councilmembers may offer amendments to a main motion at any time. In addition, it is possible to amend an amendment currently under consideration. Beyond this, councilmembers can offer no further amendments. When a member has made a motion to amend, the vote on the amendment must precede the vote on the original motion. After the council has accepted or rejected the amendment, another vote on the original motion is necessary.

e. The motion to substitute

This is a motion to replace one motion with another on the same subject. A councilmember may move to substitute a main motion or an amendment to a main motion. One form for making a substitute motion is to say, “I wish to introduce the following substitute motion . . . present the substitute motion . . .” When a substitute motion is before the council, the council must decide which of the two motions, the original motion or the substitute motion, to consider. The council must vote on the question. A “yes” vote favors considering the substitute motion. A “no” vote favors considering the original motion. The council must then discuss and vote on the selected motion.

I. Voting procedures

State law does not regulate the process of council voting. The council may use whatever procedures it prefers, subject to charter provisions in home rule charter cities. The council's bylaws can include voting rules.

Minn. Stat. § 13D.01, subd. 4.

Otherwise, the council may use voice voting or standing voting unless a councilmember calls for voting by ballot. The bylaws can also set the order in which councilmembers vote. Whether the vote is unanimous or not, the minutes must record the name of each councilmember present and his or her vote. Occasionally councils may vote by ballot, such as when eliminating candidates for a city position, until only two options remain. While the law allows for voting by ballot, the procedure must ensure each councilmember's vote is recorded in the minutes and is open for public inspection.

J. Role of the mayor and clerk

Minn. Stat. § 412.02, subd. 2a.

Mayors and Standard Plan city clerks have the same powers as councilmembers to make, second, and vote on motions. The mayor does not have a veto, and the mayor generally may not vote twice in order to break a tie. If, however, there is a tie vote in filling a vacancy in elective office, the mayor must break the tie by making the appointment. The mayor presides at council meetings, and the clerk keeps the minutes.

In Plan A or Plan B statutory cities, the clerk attends council meetings and records the minutes but may not make, second, or vote on motions. In addition, unless the council extends the privilege, the clerk lacks the right to participate in discussions.

K. Minutes of council meetings

Minn. Stat. § 412.151, subd. 1.

The council must keep a full and accurate record of its actions at every council meeting. In statutory cities, the clerk records the council proceedings in a minute book. In the clerk's absence, the council should delegate the duty of taking minutes for that meeting.

The clerk determines the actual wording of the minutes, unless the council adopts a standard form by motion or specifically directs the clerk to change the wording. The minutes should be written in language the average citizen understands. Reference to numbers of ordinances, resolutions, and other matters should include a brief description of their subject matter.

A.G. Op. 470-c (Feb. 18, 1959).

If the council finds a mistake in the minutes of the previous meeting, the clerk should correct the minutes. If the clerk declines, the council can order the change by motion and a vote. The clerk must then make the change and show in the minutes that the change was made by order of the council.

Once the council has formally approved the minutes of any meeting, they should not be changed under any circumstance. The council can dispense with the reading of the minutes if all councilmembers have received them prior to the meeting.

Minn. Stat. § 412.221, subd. 1;
Minn. Stat. § 15.17, subd. 1.

The council must provide books and stationery for keeping minutes. State law requires all cities to keep minutes on a physical medium that is of a quality that will ensure permanent records.

Minn. Stat. § 412.151, subd. 1.

Because minutes would likely be considered official papers of the city, they should be signed by the clerk. Although not required by law, in many cities the mayor also signs the minutes after they are approved by the council. If the minute book includes only a clipping from the published proceedings, the clerk should sign the clipping even though the signatures of the clerk and mayor are already printed on the clipping. Minute books are public records and must be available for public view at any reasonable time.

1. Publication of council minutes

Minn. Stat. § 412.191, subd. 3;
Minn. Stat. § 331A.01, subd. 10;
Minn. Stat. § 331A.08, subd. 3.

After every regular or special meeting, statutory cities with populations over 1,000 (according to the latest federal Census) must publish the official council proceedings or a summary of the official minutes. The summary must include action on motions, resolutions, ordinances, and other official proceedings. The summary must state that the full text of the summary is available for public inspection at a designated location or by standard or electronic mail. As an alternative to publication, the city may mail, at city expense, a copy of the proceedings to any resident upon request. Publication of the council minutes must generally occur within 30 days of the meeting. If the governing body of a political subdivision conducts a regular meeting not more than once every 30 days, however, the governing body need not publish the meeting minutes until 10 days after they have been approved by the governing body. Cities with a population of less than 1,000 are not required to publish the council proceedings but may choose to do so. The publication requirement in state law does not cover home rule charter cities; therefore, charter cities should consult their charter to determine whether it has a publication requirement.

2. Content of council minutes

Minn. Stat. § 13D.01, subd. 4;
Minn. Stat. § 412.191, subd. 3;
Minn. Stat. § 331A.01, subd. 6.

The clerk must include the following information in the minutes:

- The members of the public body who are present.
- The members who make or second motions.
- Roll-call vote on motions.
- Subject matter of proposed resolutions or ordinances.
- Whether the resolutions or ordinances are defeated or adopted.

Minn. Stat. § 412.151, subd. 1.

See *Statement of Position, Meeting Minutes*, Office of the State Auditor.

- The votes of each councilmember, including the mayor.

Ordinances, resolutions, and claims considered by the council do not need to be fully detailed in the minutes if they appear in other permanent records kept by the clerk and can be accurately identified by the description given in the minutes.

The Office of the State Auditor has recommended that meeting minutes include the following information in addition to the information required by state statute.

- Type of meeting (regular, special, emergency, etc.)
- Type of group meeting (whether the meeting is a meeting of the governing body or committee, for example).
- Date and place the meeting was held.
- Time the meeting was called to order.
- Approval of minutes of the previous meeting, with any corrections.
- Identity of parties to whom contracts were awarded.
- Abstentions from voting due to a conflict and the member's name and reason for abstention.
- Reasons the governing body awarded a particular contract to a bidder other than the lowest bidder.
- Granting of variances and special use permits.
- Approval of hourly rates paid for services provided, mileage rates, meal-reimbursement amounts, and per-diem amounts.
- Listing of all bills allowed or approved for payment, noting the recipient, purpose, and amount.
- List of all transfers of funds.
- Appointments of representatives to committees or outside organizations.
- Reports of the officers.
- Authorizations and directions to invest excess funds, information on investment redemptions and maturities.
- Time the meeting concluded.

3. Making an adequate record

It is very important to make an adequate record of council decisions and of the factual information on which councilmembers base their decisions. Minutes are the primary record of the decision-making process and are critical if council actions become subject to judicial review.

Council actions are generally classified as either legislative or administrative in nature. The establishment of general policies and procedures is legislative action and is subject to limited judicial review. Courts typically will not substitute their judgment for a council's judgment on these topics.

Administrative or quasi-judicial actions involve the application of a general policy to a specific person or situation. Administrative actions are subject to greater judicial scrutiny, and will be set aside if they are arbitrary, unreasonable or capricious. Therefore, it is important for the council to develop an accurate record and findings.

Metro 500, Inc. v. City of Brooklyn Park, 297 Minn. 294, 211 N.W.2d 358 (Minn. 1973);
Inland Constr. Co. v. City of Bloomington, 292 Minn. 374, 195 N.W.2d 588 (Minn. 1972);
Bank of America, FSB v. City of St. Paul, No. C7-97-1073 (Minn. Ct. App. Feb. 17, 1998) (unpublished decision);

See [Handbook, Chapter 14](#).

For example, in order for a court to meaningfully review council actions, the minutes must clearly and precisely state the council's finding of facts and how those facts led to the council's decision. Findings of fact serve not only to improve the decision-making process, but also aid in judicial review. The findings are part of the record. When a court reviews council proceedings, it will rely on the records the city actually kept and not on the records the city might have maintained.

4. Parts of the record

When the city council or other public body holds a hearing, the record usually consists of two separate parts: the transcript, which preserves testimony, and the final order or determination. Following is a sample final-order outline for a conditional use permit. The elements of the order reflect the steps taken by a hearing body in arriving at a decision:

- A caption or title, such as, "In the matter of Ms. X's application for a conditional use permit."
- A preamble that summarizes the council's actions at the hearing and states the purpose of the application.
- Findings of fact (individually numbered).
- Conclusions or reasons.
- A decision.
- An opinion (if any).
- A copy of the transcript, tape recording or, at minimum, detailed minutes that include all objections and rulings on them (if any).

When a council prepares precise findings of relevant facts, the result is a well-reasoned decision. When a council can demonstrate its conclusions are consistent with all the facts in the record, its decision is likely to be upheld if judicially challenged. The record should also demonstrate compliance with all constitutional requirements, as well as with all procedural requirements. Often, due-process deficiencies, such as lack of notice, provide grounds for appeal.

III. Motions, resolutions, and ordinances

A. Passing motions, resolutions, and ordinances

Any councilmember, including the mayor, may introduce an ordinance or resolution. When ordinances or resolutions are before the council, the council may act upon them at once, refer them to a committee for study and recommendation, postpone consideration to some future time, or take any of the other subsidiary or privileged motion actions. After the council has completed all consideration and discussion of the matter, the presiding officer should read the ordinance or resolution and call for a vote.

If the council decides to refer the matter to a committee, the committee may conduct an investigation and recommend passage of the ordinance or resolution in its original form or in an amended form, or it may reject the ordinance or resolution. Debate on the ordinance or resolution may take place at the time of its introduction, while a committee is considering it, and after the committee has reported its findings and recommendations.

See “Counting the Votes of Council Actions Parts I and II,” *Minnesota Cities* (May 2006, p. 19; June-July, p. 19) for more information;

Minn. Stat. § 412.191, subd. 4;
Minn. Stat. § 412.851.

Minn. Stat. § 412.191, subd. 4;

Minn. Stat. § 462.357, subd. 2b.

Most resolutions and procedural motions of the council must receive a majority of the votes cast in order to be adopted. To illustrate: if two members of the council vote in favor of a resolution, one votes against it, and two abstain from voting, the resolution passes. State law requires some resolutions to be adopted by more than a majority of those voting on the resolution. For example, a resolution to approve summary publication of an ordinance requires a four-fifths vote of the members of the council. And a four-fifths vote of the members of the council is required to vacate a street.

Ordinances, on the other hand, must be enacted by “a majority vote of all the members of the council,” except where a larger number is required by law. Therefore, on a five-person council, an ordinance would need at least three favorable votes to pass. State law requires a larger number in some circumstances. For example, a two-thirds vote is required to change the classification of land in a zoning district from residential to commercial or industrial.

B. Differences between motions, resolutions, and ordinances

1. Motions

A motion is a matter of parliamentary procedure. Motions generally are made orally and may introduce ordinances and resolutions, amend them, and take any other action.

2. Resolutions

Lindahl v. Indep. Sch. Dist. No. 306, 270 Minn. 164, 133 N.W.2d 23 (Minn. 1965).

Councils should use resolutions for any action of a temporary, routine, or administrative nature. For example, resolutions should be used to approve contracts and may be helpful to record findings of fact in connection with planning and zoning decisions. Courts may view motions that are approved and recorded to be the equivalent of resolutions. If the council has any doubt as to whether a resolution or an ordinance is necessary to take a particular action, it is generally best to proceed as if the action requires an ordinance.

LMC Sample Resolution.

In its traditional form a resolution begins with a “whereas” clause or clauses explaining the reason for the action, followed by the substance of the resolution beginning with “Therefore, be it resolved” or some similar phrase distinguishing the action from “The council ordains” enacting clause of an ordinance. In more recent practice, the preamble is omitted and the material setting out the reason for the action is given as a separately numbered section or sections of the body of the resolution.

3. Ordinances

See, *Hanson v. City of Granite Falls*, 529 N.W.2d 485 (Minn. Ct. App. 1995).

Any council enactment that regulates people or property and provides a penalty if violated should be adopted in the form of an ordinance. As a result, the council must pass, in ordinance form, all police regulations for public health, morals, economic well-being, welfare, and safety. Ordinance regulations should be of general application within the city, and of a permanent and continuing nature.

Minn. Stat. § 609.0332; Minn. Stat. § 609.034; (increased the maximum fine to \$1,000 (misdemeanors) and \$300 (petty misdemeanors));

State v. Weltzin, 618 N.W.2d 600 (Minn. Ct. App. 2000).

Violations of an ordinance may be specified in the ordinance to be either a misdemeanor or a petty misdemeanor. State law establishes the maximum penalty for each violation. The maximum penalty for a misdemeanor is a \$1,000 fine or imprisonment for up to 90 days, or both. The maximum penalty for a petty misdemeanor is a \$300 fine. If an ordinance does not provide for the penalty of imprisonment, individuals prosecuted for its violation are not entitled to a jury trial.

State law requires city councils to adopt ordinances to take certain actions, including the following:

Minn. Stat. § 412.022, subd. 1.

Minn. Stat. § 412.02, subd. 6.

Minn. Stat. § 412.221, subd. 6.

Minn. Stat. § 412.221, subd. 8.

- Establish a four-year term for mayor.
- Combine the office of clerk and treasurer.
- Regulate the use of streets and other public grounds to prevent encumbrances or obstructions, and to require the owners or occupants of buildings and the owners of vacant lots to remove any snow, ice, dirt or rubbish from sidewalks, and to assess the cost of removal against the owners.
- Regulate the setting out and protection of trees, shrubs, and flowers in the city or upon its property.

- Minn. Stat. § 412.221, subd. 11. • Regulate the use of wells, cisterns, reservoirs, waterworks, and other means of water supply.
- Minn. Stat. § 412.221, subd. 12. • Regulate the location, construction, and use of piers, docks, wharves, and boat houses on navigable waters, and to maintain public docks and warehouses.
- Minn. Stat. § 412.221, subd. 14. • Regulate tourist camps and automobile parking facilities.
- Minn. Stat. § 412.221, subd. 16. • Establish a hospital board and authorize it to establish a separate fund in the city treasury.
- Minn. Stat. § 412.221, subd. 17. • Prevent, control, or extinguish fires.
- Minn. Stat. § 412.221, subd. 18. • Name or rename streets and public places, number and renumber the lots and blocks of the city, and make and record a consolidated plat of the city.
- Minn. Stat. § 412.221, subd. 19;
Minn. Stat. § 330.025. • License and regulate transient merchants, dealers, hawkers, peddlers, solicitors, and canvassers. (Cities can no longer license auctioneers.)
- Minn. Stat. § 412.221, subd. 20. • License taxis and automobile rental agencies.
- Minn. Stat. § 412.221, subd. 21. • Regulate animals, including the keeping of animals, running of animals at large, and impounding of animals.
- Minn. Stat. § 412.221, subd. 22. • Establish various health regulations, including establishing a board of health.
- Minn. Stat. § 412.221, subds.
23, 24. • Regulate nuisances, and noise and disorder.
- Minn. Stat. § 412.221, subd. 25. • Regulate amusements.
- Minn. Stat. § 412.221, subd. 26. • Restrain vice.
- Minn. Stat. § 412.221, subd. 27. • Regulate public dances.
- Minn. Stat. § 412.221, subd. 28;
Minn. Stat. § 326B.121. • Regulate the construction of buildings. (The city may only adopt regulations found in the state building code.)
- Minn. Stat. § 412.221, subd. 30. • License and regulate restaurants.
- Minn. Stat. § 412.221, subd. 31. • Require sewer connections.
- Minn. Stat. § 412.221, subd. 32. • Provide for the governance and good order of the city; the prevention of vice; the prevention of crime; the protection of public and private property; the benefit of residence; trade and commerce; and the promotion of health, safety, order, convenience, and the general welfare.
- Minn. Stat. § 412.331. • Create a utility commission.
- Minn. Stat. § 412.501. • Create a park board if the city's population is more than 1,000.
- Minn. Stat. § 415.11. • Set the salaries for mayor and councilmembers.

Minn. Stat. § 462.354; Minn. Stat. § 462.357; Minn. Stat. § 462.358.

Minn. Stat. § 462.353, subsd. 4, 4a.

- Adopt zoning and land-use controls, including establishing a board of adjustment and appeals and a planning commission.
- Establish planning and zoning fees. (Cities that collect an annual cumulative total of \$5,000 or less, however, may simply refer to a fee schedule in their planning and zoning ordinances. The fee schedule itself may be adopted by ordinance or by resolution following public notice and hearing.)

C. Ordinances

Minn. Stat. § 412.191, subd. 4; A.G. Op. 4720 (July 31, 1959); Minn. Stat. § 412.221, subd. 33.

Only the city council has the power to enact ordinances. In almost all instances, ordinances do not need voter approval. The statutes do not authorize a council to seek voter consent to a proposed ordinance or even to ask for an advisory opinion on its desirability. In home rule charter cities, the charter may provide for voter approval of or advisory elections on particular ordinances.

Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 143 N.W.2d 813 (Minn. 1966);

City of Birchwood Village v. Simes, 576 N.W.2d 458 (Minn. Ct. App. 1998); *Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App. 2002).

City councils can only deal with subjects that the Legislature has expressly authorized them to act on or that directly relate to a statutory grant of authority. In some areas, statutory cities may enact ordinances on subjects state law already regulates, as long as the ordinances are consistent with state law. But the city's regulation of an area, including those areas where authority may be generally granted in the statutory city code, may be pre-empted if state law has so extensively regulated a particular area of law that it has become solely a matter of state concern.

32 Dunnell Minn. Digest *Municipal Corporations* §§ 5.00-5.12 (4th ed. 1996).

Press v. City of Minneapolis, 553 N.W.2d 80 (Minn. Ct. App. 1996); *State v. Becker*, 351 N.W.2d 923 (Minn. 1984); *State v. Northwest Poultry & Egg Co.*, 203 Minn. 438, 281 N.W. 753 (Minn. 1938); *State v. Suess*, 236 Minn. 174, 52 N.W.2d 409 (Minn. 1952); *State v. Hayes*, C0-01-241 (Minn. Ct. App. Nov. 6, 2001) (unpublished decision).

Holt v. City of Sauk Rapids, 559 N.W.2d 444 (Minn. Ct. App. 1997); *Cascade Motor Hotel, Inc. v. City of Duluth*, 348 N.W.2d 84 (Minn. 1984);

See *City of Eveleth v. Town of Fayal*, C2-00-1882 (Minn. Ct. App. June 5, 2001) (unpublished decision).

See cases cited above.

In addition, councils must adhere to the following general requirements when enacting ordinances:

- An ordinance must not be unconstitutionally vague. Ordinances must be reasonably certain in their terms and set forth objective standards that provide adequate notice of what is required or prohibited.
- Ordinances must be consistent with the constitution and statutes of the United States and Minnesota. (A city ordinance is presumed constitutional so long as it is substantially related to health, safety, or the general welfare. It also must be reasonable; that is, it must be fair, general, and impartial in operation.)
- Ordinances must not limit or deny any common-law or constitutional rights.

- Ordinance provisions must not constitute an unreasonable restraint of trade.

See [Handbook, Chapter 18. *Lorshbough v. Township of Buzzle*, 258 N.W.2d 96 \(Minn. 1977\); *Pelican Lake Property Owners Ass'n v. County of Crow Wing*, Nos. C5-98-1549, C3-98-1940 \(Minn. Ct. App. Aug. 17, 1999\) \(unpublished decision\);](#)

[Schultz v. Frank](#), No. C1-00-285 (Minn. Ct. App. Aug 1, 2000) (unpublished decision); [State v. Howard](#), 360 N.W.2d 637 (Minn. Ct. App. 1985).

When adopting an ordinance, city officials should be aware that the city must follow any procedures established in the ordinance and that the city might be liable for not enforcing its ordinance. However, if the language of the ordinance does not make its enforcement mandatory, the city may have discretion not to enforce it. Cities should not adopt or retain an ordinance they do not intend to enforce. The council can adopt an ordinance to respond to a pre-existing problem or nuisance, and the city may generally prosecute a person who violates an ordinance after it has been adopted even if the person began the activity prior to the existence of the ordinance.

1. Form, content, and adoption of ordinances

See “[Tips for Writing City Ordinances](#),” *Minnesota Cities*, Jan.-Feb. 2011.

Because ordinances have the force and effect of law, their form is important. While the law does not require an attorney to draft ordinances, those who do draft ordinances should have a sound understanding of the law. The city should consult an attorney to help prepare its ordinances or to review them before they are adopted.

[LMC Sample Ordinance](#);
[Minn. Stat. § 412.191, subd. 4.](#)

Ordinances must meet certain requirements and follow a certain form. Charter cities should also look to their own charter provisions for requirements about ordinance enactment. The procedural requirements for the adoption of ordinances in statutory cities are found in state law that provides in part that all ordinances must be:

- Approved by a majority of all members of the council, except where a larger number is required by law.
- Signed by the mayor and attested by the clerk.
- Published once in the official newspaper. There is an exception that allows for summary publication under certain circumstances.

See [Part III-C- 3, *Publication of ordinances*](#).

a. Title

Every ordinance should have a title that briefly yet adequately describes its contents. The phrases: “repealing ordinances inconsistent herewith” and “providing penalties for the violation thereof” should not be part of the title.

b. Number

Each ordinance should have an identifying number as part of its title.

c. Findings and purpose

An ordinance should provide an explanation or findings of fact stating the reasons and authority for adopting the ordinance and describing its purpose.

d. Enacting clause

Minn. Stat. § 412.191, subd. 4.

All ordinances, after a suitable title, should begin substantially in this form: “The City Council of _____ ordains. . .”

e. Body

The text of the ordinance should be written in clear and brief terms. If definitions are helpful, they should be contained in one beginning section. The sections should be short to make subsequent amendments easier and cheaper. All sections and subsections should have a number and an identifying word or short title.

f. Repeal

If prior ordinances are to be repealed, a section to this effect should be included. Each ordinance to be repealed should be specifically referred to by number, title, and adoption date.

g. Penalty

Minn. Stat. § 412.231;

Minn. Stat. § 169.89, subd. 2;

Minn. Stat. § 609.02, subds. 3,

4a; Minn. Stat. § 609.0332;

Minn. Stat. § 609.034 .

This section is for enforcement purposes. Cities may impose maximum penalties for misdemeanors of a \$1,000 fine or 90 days in jail, or both. In addition, the costs of prosecution may be added. The maximum penalty for a petty misdemeanor is a fine of \$300. Certain traffic offenses may only be prosecuted as petty misdemeanors.

h. Closing

This should read: “Passed by the *(name of city)* Council this *(date)* day of *(month)*, *(year)*.” If the council wants an effective date later than the date of publication, this section should state the effective date.

i. Maps

A.G. Op. 477-b-34 (Sept. 20, 1962); A.G. Op. 59-a-9 (April 13, 1957).

If the ordinance refers to maps and they are an integral part of the ordinance, they must be included in the published ordinance. Because it is expensive to publish maps, a city may choose to omit all reference to the map in the ordinance and rely instead on word descriptions. The city then could prepare a separate, unofficial map.

j. Deliberation

The council should discuss the ordinance according to the council’s rules before passing it, even though failing to abide by these rules probably would not invalidate an ordinance if it meets statutory requirements. The statutes do not specify that an ordinance in a statutory city must have a certain number of readings, nor do they require the council to consider it at more than one meeting. Unless the council has rules to the contrary, it may pass an ordinance at the same meeting at which it is introduced.

k. Passage

Minn. Stat. § 412.191, subd. 4.

Except where the statutes require a larger majority, ordinances in statutory cities must receive a majority vote of all the members of the council to pass. This means, in effect, if the council has five members, at least three councilmembers must vote in favor of an ordinance. Both the clerk and the mayor in Standard Plan cities have the power to vote on ordinances. The mayor has no veto power.

l. Attestation

Minn. Stat. § 412.191, subd. 4;
Minn. Stat. § 599.13; *City of Akeley v. Nelson*, No. C4-02-915 (Minn. Ct. App. Nov. 25, 2003) (unpublished decision);

Union Pub. Serv. Co. v. Village of Minneota, 212 Minn. 92, 2 N.W.2d 555 (Minn. 1942).

After the council passes an ordinance, the mayor and the clerk must sign it. The clerk should also affix the city seal to it. If either the mayor or clerk refuses to sign the ordinance, a court order can require them to do so if the court finds that the ordinance is legal.

m. Effective date

Uniform Public Service Co. v. Village of Minneota, 212 Minn. 92, 2 N.W.2d 555 (Minn. 1942).

Unless otherwise specified within the ordinance, an ordinance becomes effective after its publication in the official newspaper. Before an ordinance takes effect, it may be revoked or repealed by the city council by motion, resolution, or ordinance.

2. Ordinance book

Minn. Stat. § 412.151, subd. 1;
Minn. Stat. § 412.191, subd. 4.

Each statutory city must maintain an ordinance book containing copies of all ordinances passed by the council. Every ordinance must be recorded in the ordinance book within 20 days of its publication.

The ordinance book is a public record and is evidence in court. If the clerk uses printed copies of the ordinance clipped from the newspaper, a printer's affidavit should be attached to each ordinance in the book.

The city should have a numbering system adequate for indexing its ordinances. In most small cities where there are few ordinances, chronological order is satisfactory. When the number of ordinances is large or when the city is recodifying its ordinances, a more complicated system of decimal numbers might be advisable.

3. Publication of ordinances

The following publication requirements apply to statutory cities.

Minn. Stat. § 412.191, subd. 4; Minn. Stat. § 331A.02; Minn. Stat. § 331A.04; *See* LMC Information Memo, *Newspaper Publication* for more information.

Every ordinance must be published once in the city's official newspaper. To qualify as an official newspaper, the newspaper must be a legal newspaper under state statute, and the council must have designated it as the city's official newspaper. Cities usually publish ordinances separately. If the city publishes them in full as part of the minutes, the publication meets all statutory requirements.

Minn. Stat. § 331A.05, subd. 2(c); A.G. Op. 277b-4 (Feb. 11, 1986).

An ordinance must be published within 45 days after being passed. Failure to publish within 45 days, however, will not necessarily invalidate the ordinance.

Minn. Stat. § 412.191, subd. 4.

A statutory city council may publish a summary of a lengthy ordinance. Publishing the title and summary shall be deemed to fulfill all legal publication requirements as completely as if the entire ordinance had been published. In order to do this, the city council must do the following:

- The council must determine that publication of the title and a summary of the ordinance would clearly inform the public of the intent and effect of the ordinance.
- The council must approve summary publication by a four-fifths vote of its members.
- The title and summary must conform to Minn. Stat. § 331A.01, subd. 10.
- The summary must include notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the office of the city clerk and at any other location designated by the council or by standard or electronic mail.
- The council must approve the text of the summary prior to its publication, and determine that it clearly informs the public of the intent and effect of the ordinance.
- A copy of the entire text of the ordinance must be posted in the community library or, if no library exists, in any other public location designated by the council.
- The text of the summary must be published in a font type no smaller than brevier or eight-point type.
- Proof of the publication must be attached to and filed with the ordinance.

See Minn. Stat. § 331A.01, subd. 10.

It is advisable to use summary-publication authority in cases where the public interest in doing so is clear, as in the case of a lengthy and complex zoning ordinance where the length of the actual ordinance obscures its content, and where maps and descriptions of procedures can clarify the meaning. Another example might be an annexation ordinance containing legal property descriptions where a summary identifying the property by using popularly understood location points like a street or watercourse line would better inform the public of its purpose and intent.

W.H. Barber Co. v. City of Minneapolis, 227 Minn. 77, 34 N.W.2d 710 (Minn. 1948).

Errors in the publication of an ordinance may affect its validity. If the error is minor so that the correct meaning is clear from the context, the error has no effect upon the ordinance's validity. When the error is more substantial, however, the ordinance provision containing the error is ineffective and void.

Minn. Stat. § 331A.05, subd. 6.

In home rule charter cities, the charter can impose additional or special requirements for the publication of ordinances.

4. Recording

Minn. Stat. § 462.36.

A certified copy of every ordinance, resolution, map, or regulation relating to subdivisions, conditional use permits, and official maps must be filed with the county recorder. Failure to record an ordinance, resolution, map, regulation, variance or order shall not affect its validity or enforceability.

5. Adoption by reference

Minn. Stat. § 471.62.

Statutory and charter cities can reduce costs for publication when adopting certain complicated regulatory codes in ordinance form by using the process of adoption by reference. In effect, cities can adopt certain regulations by passing and publishing an ordinance that identifies the statute or other rule by name. Cities may only adopt regulations by reference on subjects about which they have authority to legislate.

Minn. Stat. § 471.62.

Cities may adopt the following by reference:

- Minnesota statutes.
- State agency administrative rules or regulations.
- The state building code and the uniform fire code.
- Codes (or parts of codes) prepared for general distribution in printed form as a standard or model by any governmental, trade, or professional association on the subject of building construction (limited to the state building code), plumbing, electrical wiring, flammable liquids, sanitary provisions, public health, safety or welfare.
- Compilations or regulations or standards prepared by regional and county planning agencies on the subject of planning, zoning, subdivision regulation, and housing regulation.

Minn. Stat. § 471.62

All other statutory publication requirements apply to the ordinance that incorporates another statute, rule, ordinance, or code by reference. In addition, prior to publication or posting, at least one copy of the incorporated statute, rule, ordinance, or code must be marked as the official copy and filed in the clerk's office for public use and examination. The clerk must furnish a copy of any incorporated ordinance or code to any person upon request. The clerk may levy a charge sufficient to cover the cost of providing the copy.

A.G. Op. 59-a-9 (July 18, 1967);

A.G. Op. 59-a-9 (March 27, 1956).

Codes, statutes, rules, regulations, and ordinances the council adopts by reference remain effective in their original form until changed or repealed by the council. The city, when adopting the code by reference, most likely cannot stipulate that any future revisions by the issuing agency will be automatically incorporated by the city. If the city wishes to incorporate changes made by the issuing agency, the best practice would be for the city to pass an amending ordinance.

6. Alteration of ordinances

a. Amendment

The council must follow the same procedures for amending an ordinance as those followed for passing an ordinance. After the amendment is passed by a majority of all members of the council, it must be attested to, published, and included in the ordinance book. In addition, the form of the amendment should be like new ordinances with respect to title, enacting clause, body, closing, and signatures. The council cannot change an ordinance by resolution. Instead, it must pass an amending ordinance.

LMC Sample Amending Ordinance.

If the ordinance is short or if the changes are numerous, the council will usually re-pass the entire ordinance in its amended form, repealing the old ordinance in a separate section. An optional form would be to title the new ordinance as an amendment, and then recite the entire ordinance as it would read after amendment.

If the ordinance to be amended is so long that the cost of publishing it in its entirety would be prohibitive, the council may pass an amending ordinance that sets forth only the sections that will change. The council may include several amendments to the same ordinance in different sections of the same amending ordinance. The council should label an amending ordinance as such, and should state the ordinance and sections in the proposed changes.

The council should avoid the practice of amending a single word or picking out a single sentence from a paragraph. This practice frequently leads to confusion and the possible invalidation of an entire section of an ordinance. A better practice is to reprint the section or subsection in full as it would read after amendment.

If the council wishes to re-number its present ordinances, it may pass a re-numbering ordinance. The city must publish the re-numbering ordinance, but it does not have to include the text of the old ordinances.

b. Repeal

A city may repeal an ordinance only by passing another ordinance stating the title, number, subject, and date of the ordinance being repealed. The ordinance must explicitly state it is repealing the ordinance. To repeal an ordinance, the council must follow the same requirements for adopting ordinances. The council can repeal any number of ordinances in a single repealing ordinance.

Frequently, when a council passes a new ordinance or revises an ordinance, the new ordinance will contain provisions that are inconsistent with or replace similar provisions in an existing ordinance. Some cities insert a provision in the new ordinance repealing any or all ordinances or portions of ordinances inconsistent herewith. Such a clause is a waste of time and print. A better practice is to repeal, by name and number, any inconsistent provisions of former ordinances. If this is impractical, it is best to say nothing about the repeal of inconsistent ordinance provisions since the new ordinance automatically supersedes all inconsistent provisions in existing ordinances.

7. Codification of ordinances

a. Purposes of codification

Citizens have a right to know what their government requires of them. This is a fundamental, due-process right in our legal system. If a citizen is to know the law on a particular matter, he or she must first know where to find it.

If a citizen is interested in knowing the city's current law on a particular matter, where does the search begin? In the book covering the minutes for the last 65 years? In the clerk's files? In the basement of city hall?

Depending on the current state of affairs in the particular city, the answer to any or all of these questions could be "yes."

In assessing the need for codification, a city should begin by asking the following questions: What condition are the ordinances in? Are they organized in one place? Are they properly indexed? Are they cross-referenced? Are they up-to-date? Are they internally consistent? Are they in compliance with state and federal laws? Are they complete?

A codification of city ordinances allows city officials to respond affirmatively to all of these questions. A proper codification project encompasses all of the following:

- Identification of conflicting ordinances, and repeal or re-drafting of inconsistent or unclear ordinance provisions.
- Removal of archaic and unconstitutional ordinances.
- Development of a system that facilitates access to the city's laws and provides for continuous updating.
- Development of comprehensive indexing and cross-referencing.
- Review of the entire body of city ordinances for omissions.
- Organization of city ordinances into an easy-to-use reference book known as the city code.

Actual codes vary from the very simple to the very complex, depending partly on the size, age, and functions of the city. The simplest codes are compilations of all the ordinances currently in effect in the city, including the original title, number, enacting clauses, and concluding clause and signatures for each ordinance. Others codes re-number the ordinances to fit a subject-matter classification. Some other codes include new material adopted for the first time; in fact, in many instances, the whole code is adopted as new ordinance material even though much comes from existing ordinances in the same or slightly altered form.

A well-drafted city code helps a city operate efficiently and effectively. Ordinances are grouped together by subject, not by the chronological order in which they were passed. This eliminates the need to sort through stacks of loose ordinances to find a regulation on a particular subject.

Cities have a number of options for completing a codification of ordinances. Occasionally, the city attorney or city clerk will do the codification, but in many cases competing demands on their time make it difficult for them to undertake the project. Cities can also hire private consulting firms that specialize in charter revision and ordinance codification.

The League of Minnesota Cities, in consultation with its codification consultant, American Legal Publishing Corporation, provides codification services to cities. Most Minnesota cities that have codes use the League's service. The service is designed to provide each city with a customized city code that meets the needs of that particular city. The League, in consultation with American Legal Publishing Corporation, provides the following services as part of its codification service:

For more information about [Codification](#) contact Duke Addicks, LMC Special Counsel at 800-925-1122 or 651-281-1221.

- Sorting, integrating, and organizing all current ordinances.
- Reviewing all ordinances and making suggestions about bringing them into compliance with current state and federal laws.
- Simplifying and using gender-neutral language.
- Suggesting new ordinances.
- Numbering all sections to allow the easy insertion of future amendments.
- Submitting a full-text draft for city review and approval.
- Delivering multiple copies of the final code with a detailed table of contents and complete index. Options are available for electronic editions of the code with full text search capacity and Internet support of the city code with links to the city's designated web site and to the League's web site.
- Updating existing codes by incorporating new ordinances into the code.

For more information about the [Basic Code](#) contact Duke Addicks, LMC Special Counsel at (800) 925-1122 or (651) 281-1221.

The League also has available for purchase a basic city code for Minnesota cities, which can be customized by the League's codification service to meet the needs of individual cities.

b. Codification procedures

[Minn. Stat. § 415.02.](#)

The city council has authority to codify any general or special laws, ordinances, resolutions, rules, and bylaws in force in the city.

[Minn. Stat. § 412.191, subd. 4;](#)

[LMC Sample Ordinance Adopting a City Code.](#)

An ordinance adopting a city code must be approved at a meeting of the city council. For statutory cities, an ordinance adopting the city code must be passed by a majority vote of all the members of the council, unless it includes material that must be adopted by a larger number. If your code, for example, amends 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, a two-thirds majority vote of all members of the city council is required to adopt that portion of the code.

[Minn. Stat. § 462.357, subd. 3;](#)

[LMC Sample Notice of Hearing.](#)

Whether a notice of hearing regarding adoption of a city code is required to be given to certain persons or published depends on the contents of the code. Published notice is generally not required for statutory cities to adopt a code unless the code contains a zoning ordinance or amendments to a zoning ordinance, or if the code includes a new ordinance or major revisions to an existing ordinance, which, if adopted as a separate ordinance or as an amendment to a separate ordinance, would require published notice. Some city charters require a notice of hearing regarding adoption of a code to be published.

[Minn. Stat. § 462.357, subd. 3;](#)

[Minn. Stat. § 461.19.](#)

Mailed, written notice is required in at least two circumstances. First, if a code contains an amendment from a previous ordinance that changes zoning-district boundaries affecting an area of five acres or less, written mailed notice must be given to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates at least 10 days before the day of the hearing. Second, if the code contains amendments to a previous ordinance relating to the sale of tobacco, or if it adopts the League's model tobacco ordinance, written notice must be mailed to all licensed tobacco retailers in the city at least 30 days before the meeting at which the ordinance or amendments to the ordinance will be considered.

[Minn. Stat. § 412.191, subd. 4.](#)

Once the ordinance adopting the code has been passed, the ordinance must be published in the manner required by law for statutory cities or by the city charter if applicable. For statutory cities, the ordinance takes effect on the date of publication unless otherwise specified in the ordinance.

In some codes, provision is made for all fees to be adopted in a fee schedule adopted by a new ordinance that is not codified. This makes it possible to amend the fee schedule periodically without the need to make changes in the code.

Minn. Stat. § 340A.408, subd. 3a.

Notice of hearing on the ordinance establishing a fee schedule need not be given if the fees in the schedule are the same as they were under the ordinances that are being codified. If the fee increases are to be included in the ordinance establishing or amending the fee schedule, written notice of the hearing should be mailed at least 30 days before the hearing at which the ordinance is to be considered, to all persons who hold business licenses in the city whose license fees are to be increased. This is required for liquor-license fees, and it is a good idea for other types of business-license fees as well.

Minn. Stat. § 415.021.

The hearing on the ordinance adopting the fee schedule can be held at the same time as the hearing on the adoption of the code. If not held at that time, it should be held soon after the hearing on the ordinance adopting the code. The ordinance adopting the code should also provide that until the fee schedule is adopted, existing fees continue until they are amended.

Minn. Stat. § 415.02; Minn. Stat. § 599.13.

The city may print and publish a code in book, pamphlet, or newspaper form. Newspaper publication is not necessary if the city prints a substantial number of copies of the code for general distribution to the public. A copy of any ordinances adopted by the city must be furnished to the county law library or its designated depository. A city, upon request, shall be reimbursed a reasonable charge by the county library for a copy furnished.

A city council may declare, by ordinance, that the codification is prima facie evidence of the city's law. After three years, the compilation and publication of any codification book or pamphlet is conclusive proof of the regularity of the ordinances' adoption and publication.

8. Prosecution responsibilities

Minn. Stat. § 412.231;
Minn. Stat. § 609.02, subds. 3, 4a; Minn. Stat. § 609.034;
Minn. Stat. § 609.0332.

The city council has the power to declare the violation of any ordinance to be a crime and to prescribe penalties. The maximum penalty for a misdemeanor is a fine of \$1,000 or imprisonment for 90 days, or both. The maximum penalty for a petty misdemeanor is a fine of \$300.

Minn. Stat. § 412.861, subd. 1;
Minn. Stat. § 484.87, subd. 3.

All prosecutions for ordinance violations are brought in the name of the city upon complaint and warrant as in other criminal cases. The city may hire an attorney, including the county attorney, for this purpose.

Minn. Stat. § 412.861, subd. 1.

If the accused is arrested without a warrant, a written complaint must be made. The accused must then plead guilty or not guilty, and a warrant shall be issued and served by either the sheriff or a police officer. The city may have the sheriff or a city police officer serve an ordinance violator with a warrant for the arrest. City police officers, however, cannot serve criminal warrants outside the city limits.

Minn. Stat. § 412.861, subd. 2.

The complaint must describe the violated ordinance at least by section and number or chapter. When the complaint describes ordinances in this manner, the court considers them general laws that do not need proof in evidence.

Minn. Stat. § 484.87 subd. 2;
Minn. Stat. § 388.051, subd. 2.

In Hennepin and Ramsey counties, the attorney for the city in which the violation is alleged to have occurred prosecutes all violations of state laws (except as provided below and in Minn. Stat. § 388.051, subd. 2), including violations which are gross misdemeanors, and violations of municipal charter provisions, ordinances, rules, and regulations.

Minn. Stat. § 484.87 subd. 2.

In Hennepin and Ramsey counties, the county attorney prosecutes criminal violations if either of the following occurs:

Minn. Stat. § 484.87 subd. 2.

- The county attorney is specifically designated by law as the prosecutor for the particular violation charged.

Minn. Stat. § 484.87 subd. 2.

- The alleged violation is of state law and is alleged to have occurred in a city whose population according to the most recent federal decennial census is less than 2,500 and whose governing body has accepted prosecution by the county attorney under this statute by majority vote, and if the defendant is cited or arrested by a member of the staff of the sheriff of Hennepin County or by a member of the State Patrol. A city seeking to use the county attorney under this statute, shall notify the county board at least 60 days prior to the adoption of the board's annual budget.

Minn. Stat. § 484.87 subd. 2;
Minn. Stat. § 388.051, subd. 2.

In Anoka, Carver, Dakota, Scott, and Washington counties, violations of state law that are petty misdemeanors, misdemeanors or gross misdemeanors (except as provided in Minn. Stat. § 388.051, subd. 2) must be prosecuted by the attorney for the city where the violation is alleged to have occurred. The city may enter into an agreement with the county board and the county attorney to provide prosecution services for any criminal offense. All violations of a city ordinance, charter provision, rule, or regulation must be prosecuted by the attorney for the city that promulgated it or by the county attorney with whom the city has contracted to prosecute these matters.

Minn. Stat. § 484.87, subd. 3;
Minn. Stat. § 609.52; Minn.
Stat. § 609.535; Minn. Stat. §
609.595; Minn. Stat. § 609.631;
Minn. Stat. § 609.821.

In all counties except Hennepin, Ramsey, Anoka, Carver, Dakota, Scott, and Washington counties, violations of state law that are petty misdemeanors or misdemeanors must be prosecuted by the attorney of the city where the violation is alleged to have occurred, if the city has a population greater than 600. If a city has a population of 600 or less, it may, by council resolution and with the approval of the board of county commissioners, give the duty to the county attorney. In cities of the first, second, and third class, gross misdemeanor violations of sections 609.52, 609.535, 609.595, 609.631, and 609.821 must be prosecuted by the attorney of the city where the violation is alleged to have occurred. The city may enter into an agreement with the county board and the county attorney to provide prosecution services for any criminal offense. All violations of a municipal ordinance, charter provision, rule, or regulation must be prosecuted by the attorney for the city that promulgated it, regardless of its population, or by the county attorney with whom the city has contracted to prosecute these matters.

Minn. Stat. § 484.90, subd. 6.

In all cases prosecuted in district court by an attorney for a city for violations of state statute, or of an ordinance, or charter provision, rule or regulation of a city (except for cases prosecuted in Hennepin County and Ramsey County), the court administrator pays fines and penalties to the state treasury and it is generally distributed as follows: (1) 100 percent of all fines or penalties for parking violations for which complaints and warrants have not been issued to the treasurer of the city or town in which the offense was committed; and (2) two-thirds of all other fines to the treasurer of the city or town in which the offense was committed and one-third credited to the state general fund.

There is an exception to this division of fines and penalties under the state law relating to fines and forfeited bail money from state patrol traffic arrests. In these cases, the division of fines is as follows:

Minn. Stat. § 299D.03, subd. 5 (a).

- If the arrest occurs within a city and the city attorney prosecutes the offense and the defendant pleads not guilty, one-third of the money goes to the city, one-third to the state's general fund, and one-third is distributed as designated by state law between the Minnesota grade crossing safety account and the state trunk highway fund.

Minn. Stat. § 299D.03, subd. 5 (a).

- In all other cases, three-eighths of the money goes to the state's general fund, five-eighths is distributed as designated by state law between the Minnesota grade crossing safety account and the state trunk highway fund, and none to the city.

IV. Local approval of special laws

Minn. Const. art. XII, § 2;
Minn. Stat. § 645.021.

Under the Minnesota Constitution, any law that affects a single unit of local government or a group of such units must name the unit or units. Also, the law generally does not take effect until a majority of the city council passes a resolution approving it. Unless otherwise required by the special law, the usual procedural requirements apply to resolutions. Publication is not necessary.

Local approval is necessary except for the following cases:

Minn. Stat. § 645.023, subd. 1.

- A law enabling one or more local government units to exercise authority not granted by general law.

Minn. Stat. § 645.023, subd. 1.

- A law bringing a local government unit within the general law by repealing a special law, by removing an exception to the applicability of a general statutory provision, by extending the applicability of a general statutory provision, or by reclassifying local government units.

Minn. Stat. § 645.023, subd. 1.

- A law that applies to a single unit or a group of units with a population of more than one million people.

Minn. Stat. § 645.021, subd. 3.

When local action is necessary to approve the special law, the city must file a certificate of approval with the secretary of state. The secretary of state usually furnishes the city with certificate forms when the city receives notice of the passage of the special law. The local unit must approve the special law by the first day of the next regular session of the legislature in order for it to take effect.

Minn. Stat. § 645.02.

Special laws take effect the day after the city files the certificate of approval unless the special law provides otherwise.

A model resolution form is printed below:

A. Model resolution approving a special law

Resolution approving Laws of Minnesota, *(year)*, Ch. *(Chapter number and section, if applicable)*.

WHEREAS, Laws of Minnesota *(year)*, Ch. *(chapter number and section)*, entitled "An Act" requires approval by a majority of the city council before it becomes effective.

BE IT RESOLVED by the city council of *(city)*, that Minn. Laws *(year)*, Ch. *(chapter number and section)*, is hereby approved. Adopted by the council this *(date)* day of *(month)*, *(year)*.

Mayor

City Clerk

Official seal

V. How this chapter applies to home rule charter cities

Several sections of this chapter may be useful to charter cities.

The section on types of council meetings generally only applies to statutory cities, although the sections discussing meetings held by interactive television, telephone or electronic meetings, and emergency meetings apply to all cities. The portions that discuss the open meeting law apply to all cities. The sections on agendas, parliamentary procedures, and making an adequate record apply to all cities, except that in some charter cities, mayors may not be members of the council, may not vote except in the case of a tie, and may have veto power.

The section on motions, resolutions, and ordinances generally applies only to statutory cities. Home rule charter cities may have different requirements in their charters.

The section on local approval of special laws, applies to all cities. Under the provisions of this law, charters could not be amended by special law without local approval except for the specific, limited instances.

ORDINANCE NO: 2010-254

**AN ORDINANCE AMENDING THE
CORCORAN CITY CHARTER**

The Corcoran City Council ordains as follows:

Section 1. Purpose.

By adopting this Ordinance the Corcoran City Council is amending the existing Charter. The amendments are not a change in substance, but are grammatical and reorganizational in nature and to make the Charter gender neutral. Section 7 is added to incorporate State law relating to the process of amending the Charter.

Section 2. The amendment to the Corcoran City Charter is as follows:

Chapter 1 - Name and Boundaries

Section 1.01 Name and boundaries. The City of Corcoran, Hennepin County, Minnesota shall be a Municipal Corporation under that name and with the same boundaries as now are or hereafter established.

Chapter 2 - Charter

Section 2.01 Interpretation and authority. This charter is drafted in recognition of M.S. 410.33. Unless modified by the specific language of this Charter, or to the extent this Charter is silent, Minnesota Statutes Chapter 410 and statutory city law shall prevail.

Section 2.02 City to succeed to rights and obligations of former city. The City shall succeed to all property, rights, and privileges, and shall be subject to all legal obligations of the City before adoption of the charter.

Section 2.03 Existing ordinances continued. All ordinances and regulations of the City in force when this charter takes effect and not inconsistent with this charter are continued in full force and effect until amended or repealed.

Section 2.04 Pending condemnations, improvements and assessments. Any condemnation, improvements and assessments collection proceeding in progress when this charter takes effect shall be continued, and collected as if this charter had not been adopted.

Section 2.05 Ordinances to make charter effective. The City Council shall by ordinance, resolution, or other appropriate action take such steps as may be necessary to make effective the provisions of this Charter.

Chapter 3 - Initiative

Section 3.01 The People of Corcoran reserve the power, in accordance of this Chapter, to initiate and adopt any ordinance, except an ordinance appropriating money or authorizing the levy of taxes or affecting salaries of City officers or employees, and to require such an ordinance when not passed by the City Council to be referred to the electorate for approval or disapproval.

Section 3.02 Any five eligible voters may form themselves into a sponsoring committee for the initiation of any ordinance permitted under Section 3.01. Before circulating any petition the sponsoring committee shall file a certified copy of the proposed ordinance with the City Clerk together with each of the sponsoring committee members' names and addresses. The sponsoring committee shall also attach a certified copy of the proposed ordinance to each of the petition signature papers herein described, together with each of their names and addresses as sponsors thereof.

Section 3.03 Adoption of an ordinance under this Chapter shall be initiated by a petition complying with the requirements of this Chapter, Minnesota Statutes Section 410.12, subd. 2, and signed by registered voters of the City equal in number to 10% of the total registered voters in the City at the time of the last regular election. Once the petition is found by the City Clerk to comply with the form and signature requirements specified in Sections 3.02 and 3.03, the ordinance shall be submitted to the City Council for consideration as described in Section 3.04.

Section 3.04 If the Council passes the proposed ordinance with amendments and a majority of the sponsoring committee do not disapprove the amended form by a statement filed with the City Clerk within 10 days of its passage by the Council, the ordinance need not be submitted to the electorate. If the Council fails to enact the ordinance in the form proposed by the sponsoring committee, or in an amended form not disapproved by the sponsoring committee, within 60 days after the final determination of sufficiency of the petition, the ordinance shall be placed on the ballot at the next election occurring in the City. If no election is to occur within 120 days after the filing of the petition, the Council shall call a special election on the ordinance to be held within such period. If a majority of those voting on the ordinance vote in its favor, it shall become effective 30 days after adoption, unless the ordinance specifies a later effective date.

Chapter 4 - Referendum

Section 4.01 Any ordinance, adoption of which by initiative would be permitted under Chapter 3, may be subjected to referendum by a petition pursuant to this Chapter 4.

Section 4.02 If, prior to the date when an ordinance capable of referendum takes effect, a petition signed by registered voters of the City equal to 10% of the total number of registered voters at the last regular municipal election immediately preceding the filing of the petition, is filed with the City Clerk requesting that any such ordinance be repealed or be submitted to vote of the electorate, upon a finding by the City Clerk that the petition complies with the form and signature requirements specified in Sections 3.02 and 4.02, the ordinance shall immediately be suspended in its operation. An emergency ordinance shall not be suspended by the filing of a petition under this Chapter but shall otherwise be subject to the referendum process herein. The City Council shall thereupon reconsider the ordinance at its next regular meeting and by a majority vote either repeal or reaffirm the ordinance as enacted. In the latter case, the City Council shall immediately order a special election to be held thereon, or submit the ordinance for referendum at the next regular municipal election, pending which the ordinance shall remain

suspended. If a majority of the electorate voting thereon vote against the ordinance, it shall be repealed. If a majority of the electorate voting thereon approve the ordinance, it shall become operative immediately, or on the date therein specified.

Chapter 5 - Recall

Section 5.01 Consideration by the electorate of the recall of any elected officer of the city may be initiated by petition signed by registered voters of the City in number equal to 10% of the total registered voters at the time of the last regular election.. The petition shall provide at the head of each signature page, or attached thereto, a recall certificate stating the name of the officer whose removal is sought, in not more than 250 words the grounds for recall, which shall be malfeasance, misfeasance or nonfeasance in office, and the intention of the sponsoring committee to bring about the officer's recall. If, following circulation, the petition or amended petition is found by the City Clerk to comply with the form and signature requirements of this Chapter, the City Clerk shall transmit the petition to the City Council without delay, and shall officially notify the person sought to be recalled of the sufficiency of the petition and the pending action. The City Council shall at its next meeting, by resolution, provide for the holding of a special recall election within 90 days after such meeting, except if any other election is to occur within such 90 day period after such meeting, the City Council may in its discretion provide for the holding of the recall at such other election. The City Council shall enter into the record of its proceedings, if offered, the written answer of the official concerned, in not more than 500 words, in justification of his or her conduct in office.

Section 5.02 Five registered voters may form themselves into a sponsoring committee for the recall of any elected official. Before circulating any recall petition the sponsoring committee shall file a certified copy of the proposed recall petition with the City Clerk, together with the names and addresses of each member of the sponsoring committee. The recall petition filed with the City Clerk shall comply with the form requirements stated in Section 5.01.

Section 5.03 The results of the recall election shall be certified at the City Council meeting between the 3rd and the 10th day after an election and shall be effective immediately upon such certification.

Chapter 6 – Conflict of Interest

Section 6.01 Incompatible offices. No member of the council or mayor may hold any paid municipal office or employment under the City other than that to which elected, and until one year after the expiration of his or her term as mayor or council person, no former member or mayor shall be appointed to any paid appointive office or hired for employment under the City, which office or position of employment was created or the emoluments of which were increased during his or her term as a council person or mayor.

Chapter 7 – Charter Amendment

Section 7.01 This Charter may be amended only in conformity with Minn. Stats. Chapter 410 and by following one of the alternative statutory methods of amendment described in this Chapter.

Section 7.02 Amendment by Petition. The Charter Commission shall propose amendments to the charter upon the petition of registered voters equal in number to five percent of the total votes

cast at the last previous state general election in the City. All petitions circulated with respect to the proposed amendment shall be uniform in character and shall have attached the full text of the proposed amendment. However, in the case of a proposed amendment containing more than 1,000 words, a true and correct copy of the amendment may be filed with the City Clerk and the petition shall then contain a summary of not less than 50, nor more than 300 words setting forth the nature and substance of the proposed amendment. The summary, together with a copy of the proposed amendment, shall first be submitted to the charter commission for its approval as to form and substance. The summary shall contain a statement of the objects and purposes of the proposed amendment, an outline of any proposed new scheme or framework of government, and shall be sufficient to inform the petition signers of the change in government sought by the proposed amendment. The Charter Commission shall within ten days after submission return the summary to the petition sponsors with such modifications as the Commission may deem necessary in order that the summary may fairly comply with the requirements herein.

Section 7.03 Petitions. There shall appear on each petition the names and addresses of five registered voters, and on each petition paper the same five names and addresses, who, as the sponsoring committee, shall be regarded as responsible for the circulation and filing of the petition. The petition signatures and circulators' affidavits shall comply with the requirements of Minnesota Statutes Section 410.12, subd. 2. All petition papers shall be filed as one instrument with the City Clerk. Within ten days of filing the City Clerk shall determine and certify to the City Council whether the petition is properly attested and signed by a sufficient number of registered voters. If the City Clerk determines that the petition is insufficient, the City Clerk will set forth in the certification the particulars of such insufficiency and so notify the sponsoring committee. A petition may be amended at any time within ten days after the City Clerk's certificate of insufficiency by filing additional papers signed and filed as provided in the case of an original petition. The City Clerk shall within five days certify the sufficiency or insufficiency of such amendment. If the City Clerk determines that the amended petition remains insufficient, the City Clerk shall so certify, notify the sponsoring committee of such findings, and no further action shall be taken on the insufficient petition. A finding of insufficiency shall not prejudice the filing of a new petition for the same purpose.

Section 7.04 Election. Amendments shall be submitted to the electorate at a general or special election. If a simple majority of the votes cast on the amendment are in favor of its adoption, the amendment shall take effect in 30 days from the date of the election or at such other time as fixed in the amendment.

Section 7.05 Amendment by Ordinance. Charter amendments may be proposed or enacted by ordinance in accordance with subsections 7.05(a) or 7.05(b).

Section 7.05(a) The City Council may propose Charter amendments to the electorate by ordinance. Any ordinance proposing an amendment shall be submitted to the Charter Commission for review. The Charter Commission shall review the proposed amendment within 60 days, subject to statutory extension, and shall promptly notify the City Council of the Charter Commission's approval, rejection, or recommended substitute amendment. Upon receipt of the Charter Commission's response, the City Council may submit to the electorate for approval, in accordance with Section 7.04, either the City Council's original proposed amendment or the Charter Commission's recommended substitute amendment.

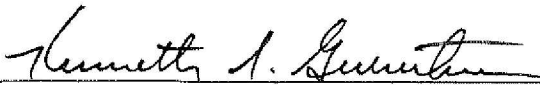
Section 7.05(b) The City Council may enact a Charter amendment upon a recommendation of the Charter Commission. Within one month of receiving a Charter Commission recommendation, the City Council shall cause to be published a notice of public hearing on the proposal containing

the text of the proposed amendment. The City Council must hold the public hearing on the proposed charter amendment at least two (2) weeks, but not more than one (1) month after the notice is published. The City Council must vote on the proposed amendment within one month following the public hearing. The amendment is enacted by ordinance if it receives the affirmative vote of all members of the City Council. An ordinance enacted under this Section 7.05(b) shall not become effective sooner than 90 days after enactment and subsequent publication. Within 60 days after enactment and publication, a petition requesting a referendum on the ordinance may be filed with the City Clerk. The petition shall be signed by a number of registered voters equal to two percent of the total votes cast in the last state general election as certified in the official canvassed results and, except as to the number of signatures required by this Section 7.05(b), the petition shall conform with the requirements of Sections 7.02 and 7.03. If a sufficient petition is filed within the required time period, the amendment will not become effective until submitted to and approved by the electorate in accordance with Section 7.04.

Section 7.06 Amendment by Charter Commission Action. A new or revised charter may be adopted in the manner provided by Minn. Stats. §§410.07, 410.10, and 410.11 for the original adoption of a home rule charter.

Section 3. This Ordinance will be effective 90 days after its passages and publication

Passed by the Council of the City of Corcoran, Hennepin County, Minnesota, this 26th day of August, 2010.



Mayor

ATTEST:



Clerk

SUMMARY ORDINANCE RELATING TO AMENDMENT
OF THE CORCORAN CITY CHARTER

The Corcoran City Council ordains as follows:

Section 1. **Purpose.**

This Ordinance is for the purpose of summarizing the Charter amendments recently adopted by the Corcoran City Council. The amendments are not a change in substance, but are grammatical and reorganizational in nature and intended to make the Charter gender neutral.

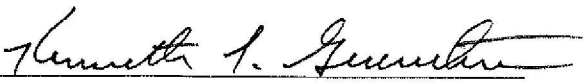
Section 2. The amendments to the Corcoran City Charter generally do the following:

Section 2.01. Reorganize the Charter and make it grammatically correct and make the Charter gender neutral.

Section 2.02. Chapter 7 of the amended Charter is a restatement of state law and is designed to make use of the Charter.

Section 3. This Ordinance will be effective 90 days after its passages and publication.

Passed by the Council of the City of Corcoran, Hennepin County, Minnesota this 26th day of August, 2010.



Mayor

ATTEST:



Clerk

CHAPTER 33: ELECTRONIC COMMUNICATIONS RESOURCES

33.01 INTRODUCTION

The City of Corcoran provides employees with access to and use of a variety of electronic communications resources. These resources are provided to employees in an effort to allow them to be more efficient, productive and have access to information that is necessary for them to carry out their responsibilities as an employee of the City. Use of the City's electronic communications resources in violation of the electronic communications resources ordinance may lead to discipline, up to and including termination of employment.

33.02 SCOPE OF COVERAGE

Application -- This ordinance applies to all employees (regular, full-time, seasonal, part-time, temporary), contractors, volunteers, interns, employees of other local or state unit of government working with the City of Corcoran, elected officials, and other individuals who have been granted access to and use of the City's electronic communications resources.

33.03 DEFINITIONS

ELECTRONIC COMMUNICATIONS RESOURCES are all equipment and software that retain, transmit, copy, modify, analyze or process information in any form. Electronic communications resources include, but are not limited to, the City's telephone system, answering machine, desktop and laptop computers, printers, scanners, modems, facsimile (fax) machines, databases, electronic mail (e-mail) systems and files, pagers, Internet access, Internet browsers, computer applications, utilities and operating systems.

The ***INTERNET*** is a system comprised of, but not limited to, several services which may include the World Wide Web (www), Gopher, FTP, Email, Internet relay chat and Telnet, and which is generally reached by City employees via the City's computer system.

ONLINE SERVICES include, but are not limited to, any computer network or bulletin board, whether commercial or private, which can be reached via the City's computer system or via modem. Services which are covered under this definition include, but are not limited to, CompuServe, America Online, MSN, Yahoo!, and any bulletin board systems, local or otherwise.

33.04 USE OF CITY'S ELECTRONIC COMMUNICATIONS RESOURCES

1. Business Use -- The City's electronic communications resources are City property and intended for City business. These resources are not to be used for employee personal gain or to support or advocate for non-city related business or purposes. All use of City electronic communication resources is subject to management access pursuant to this ordinance.

Incidental and occasional personal use of electronic communications resources is permitted if it does not interfere with the use of equipment for City purposes and is not excessive, or does not unduly interfere with an employee's work time, job activities, or the job activities of other employees. Such use and any messages or data created or accessed will be treated no differently from other messages or data. If the City's electronic communications resources are used for personal use, the employee assumes personal responsibility for the additional cost of any such personal use and will pay any cost incurred for such use (for example: telephone long distance charges or cellular phone time charges). The City reserves the right to reduce or eliminate any personal uses by an employee on a case-by-case basis, or take disciplinary action as needed or required.

2. Unacceptable Use – Unacceptable uses of the City's electronic communications resources include, but are not limited to, the following:
 - a. To transmit threatening, abusive, obscene, offensive, lewd, profane or harassing material or communications.
 - b. To transmit, receive, access, upload, download, or distribute obscene, pornographic, abusive, or sexually explicit materials or language or any material which suggests any lewd or lascivious act.
 - c. Disruption of network services, such as distributing computer viruses.
 - d. Sending messages likely to result in the loss of recipients' work or systems, and any other types of use that could cause congestion of the computer system, or otherwise interfere with the work of others.
 - e. Use of someone else's identity and/or password for access to information without proper authorization.
 - f. Misrepresenting one's identity or affiliation in any communications.
 - g. Attempt to evade, disable, or otherwise bypass password or other security provisions of systems on the computer.
 - h. Reproduction or distribution of copyrighted materials without proper authorization.
 - i. For commercial ventures, personal gains, religious or political causes, or other non-job-related solicitations.
 - j. To engage in any form of gambling via communications resources.
 - k. To advocate or access information advocating any type of unlawful violence, vandalism, or illegal activity.
 - l. To secure access to any form of City electronic communications resources without the authorization of the Administrator or designee.
 - m. Any use of City electronic communications resources for messages that are, or could reasonably be considered, offensive to another on the basis of race, sex, age, sexual orientation, religious or political beliefs, national origin, marital status, public assistance status or disability.
3. Privacy -- The City reserves the right, as is reasonably necessary, to search, review, audit, intercept, or access any employee's use of electronic communications resources. All materials created, developed, composed, sent or received using City electronic resources will remain the property of the City of Corcoran.

The use of electronic mail is not private. Messages sent via e-mail are subject to monitoring, interception, and forwarding, which is beyond the control of the person sending the message. Although e-mail messages may appear to the user to have been deleted, the message or the data that it contained may nevertheless continue to exist on the computer system in which the e-mail system operates. Stored e-mail messages and other computerized data are discoverable documents, which may be exchanged in litigation. The content of e-mail messages may subject the sender to civil liability, discipline and criminal sanctions.

Users should be aware that even though they may have a confidential password to access e-mail, this does not suggest that the e-mail is the property right of the employee. The City retains the right to and shall maintain the ability to, access any employee's e-mail or other electronic data on devices. An employee assigned a computer access account is responsible for all usage of that resource. Users should not share their passwords with anyone other than their supervisor and must take all reasonable precautions for password protection and maintenance.

The contents of electronic data sent by, between, and/or to individuals covered by this ordinance may be disclosed within or outside the City without the permission of the individual at any time for any purpose deemed necessary by the City, subject to any limitations imposed by law, including but not limited to, the Minnesota Government Data Practices Act. Under the Minnesota Government Data Practices Act, the public has broad access to government records. Government records include data that is in the possession of the government "regardless of its physical form, storage media, or conditions of use." Electronic data, including e-mail messages, is treated as government records subject to data practices requests.

Employees who resign, are terminated, laid off, suspended, or otherwise cease (permanently or temporarily) their employment with the City of Corcoran have no right to the contents of their e-mail messages and shall not be allowed access to the computer system. Supervisors may access an employee's e-mail if employees are on leave of absence, vacation or otherwise absent, or at any other time that the supervisor deems necessary for the City's business purposes.

4. Security Measures -- The user must scan application executables (.exe) or data files from all outside sources, including the Internet, with anti-virus software before first use.

Supervisors may review the usage of the City's electronic communications resources and the City's access to the Internet or Online services by employees they supervise to determine whether there have been any breaches of security, violations of City policy or ordinances, or other violation of duty on the part of the employee. The City, at its discretion, may also use computer programs that monitor the usage of the City's electronic communications resources and the City's access to the Internet and other online services, for purposes of assuring system security and compliance with City policies.

33.05 SOFTWARE USE

Only software purchased by or licensed to the City can be installed on City computers. The use of this software must be in compliance with the license agreement and cannot be copied to multiple computers, unless so permitted by the licensor. Employee-owned software, shareware, or freeware can only be installed on City computers with prior authorization of the City Administrator.

33.06 INTERNET USE

1. Business Use – The City of Corcoran provides certain employees with access to and use of the Internet if necessary for business purposes. All of the provisions of this ordinance apply to Internet use. Internet resources are provided to employees in an effort to allow them to be more efficient, productive, and to have access to information that is necessary for them to carry out their responsibilities as an employee of the City. Employees are expected and required to use the Internet in a manner consistent with their position and work responsibilities with the City.
2. Access – Approval by the City Administrator is required to acquire access to the Internet and/or Online services.
3. Monitoring Use – Employees should be aware that it is possible to track Internet sites visited by a particular workstation. The City reserves the rights to access, monitor, and disclose all Internet and online services for any purpose not specifically prohibited by statute or regulation. The City retains the right to keep, retrieve, and monitor all access to Internet or online service activity. Restrictions may be placed on use of the Internet or online services to protect the City and its resources. Inappropriate use of the City's Internet resources may result in discipline up to and including discharge of employment.

33.07 LAPTOP/PORTABLE COMPUTER USE

It is the responsibility of the employee using the City's laptop computer or other portable equipment to keep the equipment in a safe environment, protected to the extent possible from theft or damage. All data collected, stored, processed, or disseminated by City employees on portable computer equipment owned by the City is governed by the Data Practices Act. Additional software or programs may not be loaded on portable computers without prior authorization from the City Administrator or designee. Any copying of software on portable computers for personal use is prohibited. Any non-business use of portable computers is prohibited. Any use of portable computers by unauthorized persons is prohibited. Employees must immediately notify the Administrator if portable computers are damaged or stolen.

33.08 COMPUTER USE

Computers are provided to employees to be used as tools to help perform their job responsibilities. This equipment belongs to the City and has the same restrictions as set forth in

Section F above for laptop and portable computers.

33.09 PURCHASING

Purchasing of data processing hardware and software shall be processed through the City Administrator for review based on need and appropriateness, procurement of quotations, and processing for approval by the City Council, with all such purchases subject to the City's purchasing policy.

33.10 TELEPHONE AND FAX MACHINE USAGE

In addition to the provisions above, the following policies apply:

1. Business use – The City's telephone system and equipment are designed for City business use.
2. Personal calls – The City does understand that employees occasionally need to use the City phone system to make or receive personal phone calls. The employee should attempt to make personal phone calls during non-working hours (breaks or lunch). Excessive use of the City phone system for personal calls is prohibited and may lead to disciplinary action.
3. Long distance personal phone calls – Employees who find it necessary to make a personal long distance call must reimburse the City for the call within 60 days of making the call. It is the employee's responsibility to notify the Administrator or designee of the date and time of the call and request cost information of any personal long distance calls made, as necessary.
4. Personal use of fax machines – Employees shall reimburse the City at the designated rate set for the use of fax machines. Reimbursement shall be made at the time of use.

33.11 PENALTIES

Any violation of this ordinance may be disciplined in accordance with the City of Corcoran Personnel ordinance and/or other applicable rules. Violations may be grounds for dismissal. Violations of this ordinance may be referred for criminal prosecution if there is cause to believe the activity complained of constitutes a crime.

Floodplain Management Frequently Asked Questions

(Questions and answers obtained from various FEMA and MnDNR sources.)

FLOOD INSURANCE

1. What is flood insurance?

Flood insurance is an important consideration when buying floodplain property. A person should be aware of the NFIP, which provides flood insurance coverage for structures and their contents, in communities participating in the NFIP. Under this program, federally insured or regulated institutions must require flood insurance policies on all new loans for structures in mapped 100-year floodplain areas recognized by the FEMA. A person can find out if a piece of property is located in the floodplain by checking with the local building or zoning officials (ask for the FIRM or the "Flood Hazard Boundary Map" furnished by FEMA).

2. Why Do I Have To Purchase Flood Insurance?

Lenders typically require flood insurance in order to finance/refinance a loan for a house/building, or it is a requirement for federal disaster aid.

3. Who can purchase flood insurance?

A person can purchase flood insurance if their house/building is in any community (city, township, county) that participates in the NFIP regardless of whether or not they live in a mapped floodplain.

4. Where can I buy flood insurance?

Flood Insurance can be written by any licensed property and casualty insurance agent.

5. How much does flood insurance cost?

Flood insurance premiums are rated on various factors including: location of the building within the floodplain; the building's lowest floor elevation (including basement) relative to the 100-year or BFE and policy value. The average premium nationwide for a homeowner's policy is approximately \$300.00. The premium is more expensive for structures located in the 100-year floodplain that pre-date a community's floodplain ordinance and are not properly elevated or protected against flood damage.

6. My bank is requiring that I purchase flood insurance. I don't agree that my structure is located in a floodplain, or I don't believe that its lowest floor is below the BFE. What can I do to appeal the decision?

A lending institution must require that flood insurance be purchased as a condition of any federally insured loan when a building is mapped in the 100-year floodplain. The property owner may benefit in such a case by having a determination of the elevation of the lowest adjacent grade/lowest floor of the structure in relation to the BFE prepared by a licensed surveyor. The property owner may file a LOMA or LOMR with FEMA to appeal any floodplain determination. Any information demonstrating the property owner's case will assist with an appeal.

7. What is flood proofing?

Flood proofing includes a variety of construction methods, such as watertight doors, windows, walls, and bulkheads, which can be used to prevent flood waters from entering a structure. This method of flood protection, called "dry" flood proofing is not a sure deterrent to flooding and is used only in very special circumstances where it may not be possible to place the building or accessory structure on fill. Local floodplain regulations restrict dry flood proofing to non-residential structures. New residential basements are prohibited unless the community has been granted a residential basement exemption from FEMA. "Wet" flood proofing, which involves intentional internal flooding of areas constructed of flood resistant materials, may be allowed for minor additions to structures and certain accessory structures that constitute a minimal investment. Furthermore, state and federal floodplain management standards require **all** flood proofed structures to be designed and certified by a registered architect or engineer.

8. What are flood zones?

Flood zones are land areas identified by the FEMA. Each flood zone describes that land area in terms of its risk of flooding. Everyone lives in a flood zone—it's just a question of whether you live in a low, moderate, or high risk area.

9. What is a FIRM and how do I use it?

A FIRM is a map created by the NFIP for floodplain management and insurance purposes. A FIRM will generally show a community's base flood elevations, flood zones, and floodplain boundaries. As a property owner/renter, you can use this map to get a reliable indication of what flood zone you're in. However, maps are constantly being updated due to changes in geography, construction and mitigation activities, and meteorological events. Therefore, for a truly accurate determination, contact your insurance agent or company, or your community floodplain manager.

10. What is an SFHA?

Land areas that are at high risk for flooding are called Special Flood Hazard Areas (SFHAs), or floodplains. These areas are indicated on FIRMs. *A home located within an SFHA has a 26 percent chance of suffering flood damage during the term of a 30-year mortgage.*

11. What is an elevation certificate?

The Elevation Certificate is an important administrative tool of the NFIP. It is to be used to provide the elevation information necessary to ensure compliance with community floodplain management ordinances, to determine the proper insurance premium rate, and to support a request for a LOMA or LOMR-F.

The Elevation Certificate is required to properly rate post-FIRM buildings, which are buildings constructed after publication of the FIRM, located in specific flood insurance zones. The Elevation Certificate is not required for pre-FIRM buildings unless the building is being rated under the optional post-FIRM flood insurance rules.

12. Can FIRMs be changed?

FIRMs, and subsequently flood insurance requirements, may be changed using an application process through FEMA. *If FEMA approves one of the applications listed below, the lender may still require flood insurance.* The applications are designed to assist requesters (community officials, individual property owners, and others) in gathering the information FEMA needs to determine whether property (parcels of land or structures) is likely to be flooded during the flood event that has a 1-percent-annual-chance of being equaled or exceeded in any given year (base flood). Lands that are at risk of being inundated by the base flood are called SFHAs.

Application Option	Description/Purpose
LOMA	A letter from FEMA stating that an existing structure or parcel of land that has not been elevated by fill (natural grade) would not be inundated by the base flood.
CLOMA	A letter from FEMA stating that a proposed structure that is not to be elevated by fill (natural grade) would not be inundated by the base flood if built as proposed.
LOMR-F	A letter from FEMA stating that an existing structure or parcel of land that has been elevated by fill would not be inundated by the base flood.
CLOMR-F	A letter from FEMA stating that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed.

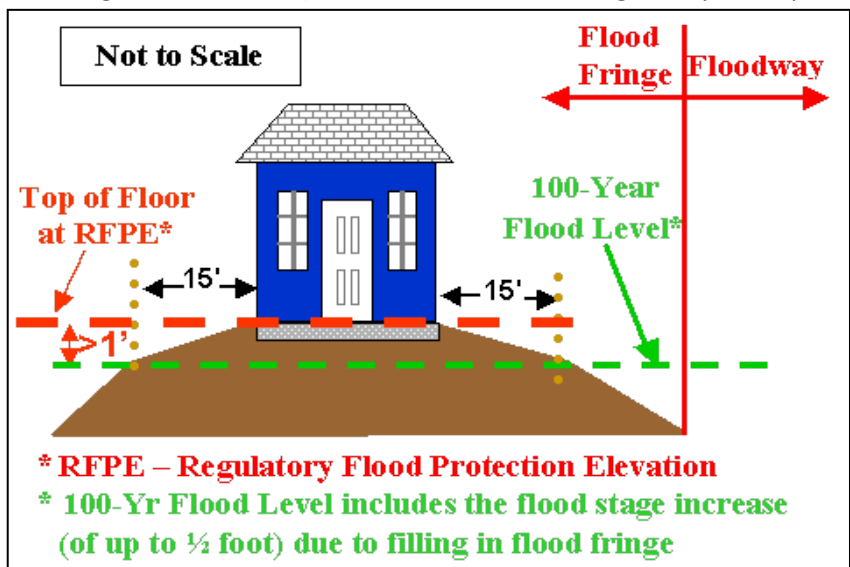
13. At what elevation do I build my house?

In general, the highest of the elevations required by City, FEMA, and MnDNR regulations.

City: Most local ordinances adopt MnDNR requirements as described below. Some communities have chosen to be more restrictive, however. Consult local ordinance requirements.

FEMA: The lowest adjacent grade outside of the structure must be above the 100-year flood level.

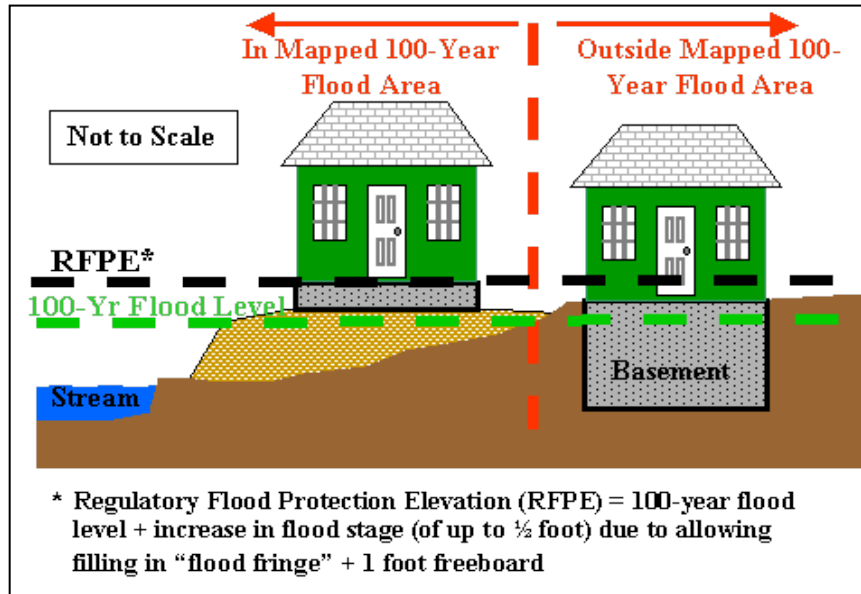
MnDNR: The lowest floor elevation (including the basement) must be above the regulatory floodplain elevation (RFPE). The RFPE refers to an elevation 1 foot above the 100-year flood plus any stage increase due to the designation of flood fringe areas. The elevation of the lowest floor of a dwelling must be at or above the flood protection elevation. Local regulations will also require the top of the access road elevations to be within 2 feet of the flood protection elevation. Fill must be provided at the perimeter of the structure at the 100-year flood level



(including stage increase due to filling in flood fringe) or higher and extend at least 15 feet in all directions.

14. Does Being Outside the Shaded Area (100-Year Floodplain on FEMA Maps) or Elevated to the 100-year Flood Level Mean You Won't Get Flooded?

NO, high water levels from an adjacent stream, river or lake can increase groundwater levels leading to basement seepage and flooding.



Common Abbreviations

- FEMA**...Federal Emergency Management Agency
- NFIP**.....National Flood Insurance Program
- FIRM**....Flood Insurance Rate Map
- SFHA**....Special Flood Hazard Area
- BFE**.....Base Flood Elevation
- LOMC**...Letter of Map Change
- LOMA**...Letter of Map Amendment
- LOMR**...Letter of Map Revision
- RFPE**.....Regulatory Floodplain Elevation

FLOODPLAIN TERMINOLOGY

15. What is Floodplain Management?

Floodplain management is the operation of a community program of corrective and preventative measures for reducing flood damage. These measures take a variety of forms and generally include requirements for zoning, subdivision or building, and special-purpose floodplain ordinances.

A community's agreement to adopt and enforce floodplain management ordinances, particularly with respect to new construction, is an important element in making flood insurance available to home and business owners. Currently over 20,100 communities voluntarily adopt and enforce local floodplain management ordinances that provide flood loss reduction building standards for new and existing development.

16. What is a floodplain...and what should a person know about buying property within it?

Under state law, the floodplain is considered to be the land adjoining lakes and rivers that is covered by the "100-year" or "regional" flood. This flood is considered to be a flood that has a 1 percent chance of occurring in any given year. Floods of this magnitude occurred throughout the state in 1965, 1969, 1997 and 2001, and in various parts of the state in 1972, 1975, 1978, 1979, 1987 and 1993. Using sophisticated engineering and meteorological techniques, it is possible to estimate to an acceptable degree of accuracy the magnitude of such a flood along those rivers where long-term flood records have been kept. Various government agencies conduct these studies, and as they become available, local communities are required by state law to adopt this technical data in their floodplain zoning ordinances.

The natural floodplain is an important part of our water system. It affects storm runoff, water quality, vegetative diversity, wildlife habitat, and aesthetic qualities of our rivers and lakes. Any alteration of the floodplain should be carefully evaluated. A person's intended use should be appropriate to the site selected. The following information about floodplains and local zoning codes deals with restrictions on developing in or near floodplains. However, remember that the least amount of alteration to the natural system is usually the most ecologically sound development decision.

If a person is buying or already owns property on a river shoreline in a community that has adopted floodplain zoning, they should consider the following points: floodway location, flood fringe location, flood protection elevation, flood proofing, and flood insurance.

17. How can I find the most current and historical flood maps?

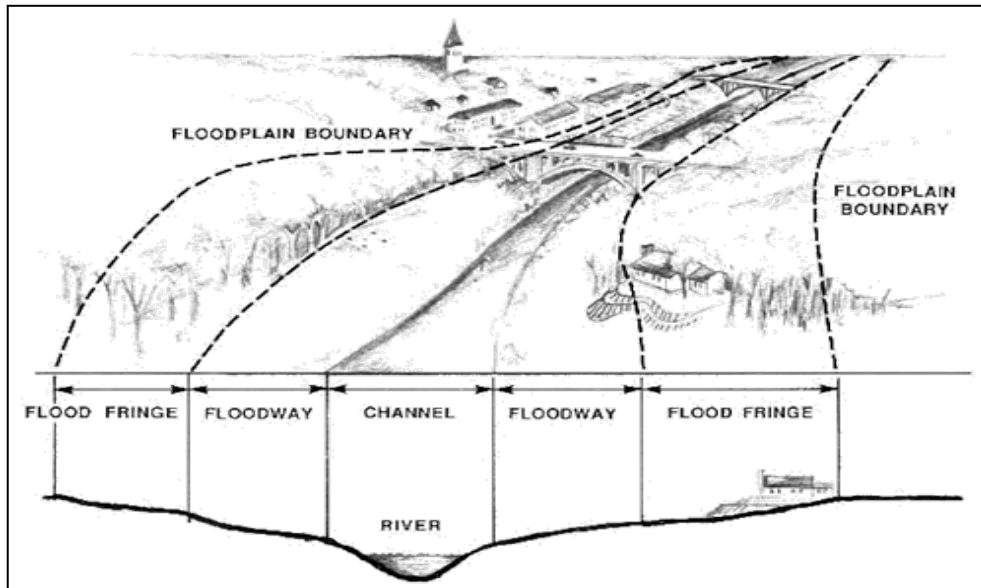
The FEMA Map Service Center contains links to historic and current floodplain maps (<http://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1&userType=G>).

18. What is the floodway?

The floodway is the land immediately adjoining the river channel that is the natural conduit for flood waters. The floodway must remain open in order to allow flood waters to pass. When the floodway is obstructed by buildings, structures, or debris, flood waters will be dammed up and will flood even greater areas. Large portions of the floodplain store and later release flood waters, which reduce river flood stages. Many communities have delineated the boundary of the floodway and flood fringe on zoning maps. If the property a person owns or is interested in buying lies within this mapped floodway, they will not be permitted to construct a dwelling or other enclosed structure, place fill material, or obstruct flood flows in any other way. Since this area must be left open to pass flood waters, only open space uses, such as farm land, residential yards or gardens, golf courses, parks, playgrounds, or parking areas, are normally allowed in the floodway.

19. What is the flood fringe?

The flood fringe is the remainder of the floodplain lying outside of the floodway. This area is generally covered by shallow, slow moving flood waters. Development is normally allowed in the flood fringe provided that residential buildings are placed on fill so that the lowest floor, including the basement, is above the RFPE. In communities that have not delineated separate floodway and flood fringe areas on their zoning map, a permit applicant will likely be asked to provide certain engineering information before they could build a structure in the floodplain. An engineer/surveyor will have to evaluate the proposed building site and furnish local officials with the necessary data to determine the property's flood protection elevation and whether the proposed structure is in the floodway. Professional services and special construction methods can be a substantial expense so a person should always check with the local zoning official before they buy property in a floodplain.



DNR Contacts

www.floodsmart.gov

<http://www.fema.gov/business/nfip/index.shtm>

http://www.dnr.state.mn.us/waters/watermgmt_section/floodplain/index.html

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