

**PART IV**  
**REGULATORY AND DEVELOPMENT FUNCTIONS OF CITIES**

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**CHAPTER 14: COMPREHENSIVE PLANNING, LAND USE AND  
CITY-OWNED LAND**

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# Chapter 14

## Comprehensive planning, land use, and city-owned land

This chapter discusses the two basic methods of city land use control—land use ordinances, such as zoning and subdivision regulations, and city land acquisition—through dedication, negotiation, and eminent domain.

### I. City land use regulation

#### A. Introduction

[Minn. Stat. § 462.351.](#)

Cities are granted the authority to regulate land use by the Municipal Planning Act. Cities outside the seven-county metro area are not required to regulate land use. For those cities engaged in land use regulation, the Municipal Planning Act provides the framework and road map that all cities must follow.

Cities regulate land use through three basic tools:

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

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

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

- The comprehensive plan.
- The zoning ordinance.
- The subdivision ordinance.

Cities are not required to adopt all three tools when engaged in municipal planning. However, it is important to note that each tool serves a separate and essential purpose.

These planning, zoning, and subdivision tools harmonize and interact in important ways to protect and promote the sound development of the city. First, the comprehensive plan helps the city look to the future, as it guides current development in administering its zoning ordinance and subdivision ordinance. The city subdivision ordinance regulates the division of land into smaller lots and the creation of blocks and neighborhoods with safe streets, appropriate environmental features, and character. Finally, the city zoning ordinance regulates the use and density of city zones for commercial, residential, and industrial purposes, both segregating and combing uses where appropriate to prevent congestion, environmental contamination, and other negative human health hazards.

## B. Comprehensive planning and planning commissions

### 1. Purpose of comprehensive planning

See LMC Information memo, *Planning Commission Guide*;

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.

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 land, 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. A comprehensive plan also may include a:

Minn. Stat. § 462.352, subd. 8.

Minn. Stat. § 462.352, subd. 7.

Minn. Stat. § 462.352, subd. 8.

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

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 or subdivision ordinance also affords the city additional legal protections, if a particular ordinance provision is challenged in court. Zoning and subdivision ordinances must be reasonable and have a rational basis. Comprehensive plans assist a city in articulating the basis for its legislative 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 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 or subdivision ordinance, the ordinances should be adopted in conjunction with extensive, written finding of facts, stating the policy reasons that necessitate the ordinance's adoption.

## 2. Procedure for adopting a 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;

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

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

### c. All cities: public hearing requirements

Minn. Stat. § 462.355, subd. 2;  
See LMC information memo, *Newspaper Publication in Cities*;

See LMCIT risk management memo, *Public Hearings*.

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 10 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.

### 3. Procedure for amending a comprehensive plan

See Section I-B-2 *Adopting the Comprehensive Plan*;

Minn. Stat. § 462.355, subd. 3;

See LMCIT risk management memo *Public Hearings*.

Minn. Stat. § 473.175;  
Metropolitan Council.

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

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

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 the city council.

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 revision of the plan, and is not bound by planning commission recommendations.

### 4. The 60-Day Rule and comprehensive plan amendments

See Section I-D-3 on *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).

Cities generally have only 60 days to approve or deny a written request relating to zoning, including applications to amend the comprehensive plan that are not initiated by the city council or city planning commission. 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.

## 5. Planning commissions

Model ordinance *Creating a Planning Commission*;

Minn. Stat. § 462.355, subd. 1;

Minn. Stat. § 462.355, subd. 2.

See LMC Information memo, *Planning Commission Guide*.

Cities may provide for a planning commission by adopting an ordinance establishing the commission, its features, powers and duties. Once created, the planning commission can play an important role in city land use regulation. The planning commission is vested by state statute with the duty of preparing and maintaining the city comprehensive plan. However, the city council also may propose the comprehensive municipal plan and amendments to the plan by a resolution submitted to the planning commission. When this occurs, the council may not adopt the recommended language until it has received a report from the planning commission or 60 days have elapsed.

State statutes prescribe several other mandatory duties for the city planning commission. 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 in the LMC governing and managing memo *Planning Commission Guide*.

## C. Subdivision regulations

### 1. The purpose of subdivision regulations

Minn. Stat. § 462.358, subd. 1(a), 2(a);

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

See LMCIT risk management memo, *Subdivisions, plats and development agreements*.

Minn. Stat. § 462.358, subd. 2(a).

Cities may regulate the subdivision of land through a subdivision ordinance. Developers who seek to subdivide larger tracts of land into smaller parcels for development and/or sale must follow the city's subdivision regulations. These regulations specify the standards of the city related to size, location, grading, and improvement of:

- Lots.
- Structures.
- Public areas, trails, walkways, and parks.
- Streets and street lighting.
- Installations necessary for water, sewer, electricity, gas, and other utilities.

Subdivision regulations allow cities to ensure that a new development or redevelopment meets the standards of the city for a safe, functional, and enjoyable community. Importantly subdivision regulations can help the city preserve and protect vital natural resources.

If a city does not adopt subdivision regulations, the city's authority to control the development of the community is limited at best. Without city subdivision regulations, developers do not have any constraint on the subdivision of land and the location of streets and utilities in their developments. In these situations, developers may be tempted to maximize their potential profits at the expense of quality. For example, they may create too many small lots for sale, develop cheaper streets that are too narrow and unsafe, or build homes on inappropriate soils where flooding or erosion may occur.

When there are problems with a completed development, there is a potential that the city will need to step in and correct issues that affect the health, safety, and welfare of residents. When a city must repair or replace streets, infrastructure, and utility lines, these costs are often passed along to homeowners through special assessments, potentially creating financial hardship for the homeowners in the subdivision.

Minn. Stat. § 462.358, subd. 10;  
Minn. Stat. §§ 473.121, subd. 2;  
Minn. Stat. § 473.865; Minn.  
Stat. § 473.859 subd. 4.

It is important to note, however, that state law does not require cities outside the metropolitan area to adopt subdivision regulations. Metropolitan cities must adopt subdivision regulations under and in conformance with the Metropolitan Land Planning Act.

## 2. Procedure for adopting and amending subdivision regulations

Minn. Stat. §§ 462.351-.365;  
Minn. Stat. § 462.352, subd. 14;  
Minn. Stat. § 462.358, subd.  
1(a).

Subdivision regulations can only be imposed by a local ordinance adopted in accordance with the Municipal Planning Act. Unlike with zoning regulations, cities are not required to hold a public hearing or provide published or mailed notice prior to adopting or amending their subdivision regulations.

Minn. Stat. § 462.358, subd.  
2(b).

An ordinance may be adopted and amended by a simple majority vote of the council. Cities should follow their regular publication requirements. If the subdivision regulations require dedication of buildable land for streets, sewers, parks, utilities, recreational facilities, playgrounds, trails, wetlands, or open space, the city must first have in place either: (1) a capital improvement budget *and* a parks and open space plan; or (2) a parks and open space plan as a component of its comprehensive plan.

See LMC information memo,  
*Newspaper Publication in  
Cities*;  
See [Handbook, Chapter 7](#).

In statutory cities, ordinances and ordinance amendments must be published once in the city's official newspaper. A statutory city may also choose to publish a summary of lengthy ordinances, provided that certain legal requirements are met.

### 3. Administering a subdivision ordinance

#### a. Process for review

Minn. Stat. § 462.358, subd. 3(b);

Minn. Stat. § 505.03, subd. 1.

The city subdivision ordinance must establish the process for review of applications. Generally, subdivision application approval is a two-part process. First, the landowner applies for preliminary plat approval, and subsequently, for final plat approval. Cities may also opt to consolidate these two reviews and/or provide for administrative review of plats that delineate existing parcels and minor subdivisions. However, the two-step process is the most widely used process. Each approval process has its own mandatory timeline for approval.

#### b. 120 Days: Timelines for preliminary plat approval

*Semler Const., Inc. v. City of Hanover*, 667 N.W.2d 457 (Minn. Ct. App., 2003); *Jordan Real Estate Services, Inc. v. City of Gaylord*, No. A08-0294, (Minn. Ct. App. April 14, 2009) (unpublished decision);

See LMCIT resource *Sample Resolution Denying a Preliminary Plat: City of Shakopee*;

LMCIT risk management memo, *Necessity of Adequate Findings - Reasons to Support Municipal Land Use Decisions*.

Minn. Stat. § 462.358, subd. 3(b);

*Calm Waters, LLC v. Kanabec County Bd. of Com'rs*, 756 N.W.2d 716 (Minn., 2008) (applies 60-Day Rule tolling only to county review of subdivisions).

The preliminary plat approval stage establishes the nature, design, and scope of a development project. It sets the conditions or guidelines, in large part, under which final plat approval can be obtained. After a plat is preliminarily approved, changes should generally be limited to meeting requirements imposed as a condition of approval and/or to meeting legal requirements under city ordinance and state or federal law (where applicable). As a result, the “preliminary” title can be misleading—this is the most important phase of the approval process.

A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension. If no action is taken, the application will be deemed approved after this time period. (Note that this 120-day period differs from the usual 60-Day Rule. The 60 Day Rule at Minn. Stat § 15.99 by its terms does not apply to city subdivision regulations). The city should document all extensions in writing. If the city does not act on an application within 120 days, the applicant may demand a certificate of approval from the city. Following receipt of the certificate, the applicant may request final approval by the city as discussed below.

Minn. Stat. § 462.358, subd. 3(b);

LMCIT risk management memo, *Public Hearings*.

The city must hold a public hearing on all subdivision applications prior to preliminary approval, following publication of notice at least 10 days before the hearing.



### c. 60 Days: Timelines for final plat approval

Minn. Stat. § 462.358, subd. 3(b);

*Semler Const., Inc. v. City of Hanover*, 667 N.W.2d 457 (Minn. Ct. App., 2003); *Jordan Real Estate Services, Inc. v. City of Gaylord*, No. A08-0294, (Minn. Ct. App. April 14, 2009) (unpublished decision).

After preliminary plat approval, state statute allows the applicant to seek final approval. The final plat application must demonstrate conformance with the conditions and requirements of preliminary approval and conformance with city regulations and state and federal law (where applicable). Unlike preliminary plat approval, there is no required public hearing on the final plat.

Minn. Stat. § 462.358, subd. 3(b).

Once an applicant has requested final approval, the city must approve or disapprove of the application in 60 days. If the municipality fails to act within 60 days, the final plat application may automatically be deemed approved.

## 4. Dedication requirements and park dedication fees

Minn. Stat. § 462.358, subd. 2(b); *Collis v. City of Bloomington* 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976); *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App., 1986); *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App., 1995).

A subdivision ordinance may require a subdivision applicant to dedicate a reasonable portion of land within the development to the public to address infrastructure needs created by the development. Cities may require dedication of land to the public for numerous uses, including:

- Streets, roads, and alleys.
- Water, sewer, and similar facilities.
- Gas, electric, and similar facilities.
- Storm water drainage and hold areas or ponds.
- Parks, recreational facilities, and playgrounds.
- Trails and sidewalks.
- Wetlands and wetland preservation.
- Open space.

When the city requires land to be dedicated within a specific subdivision, it must determine that:

Minn. Stat. § 462.358, subd. 2(b) (e);

Minn. Stat. § 462.358, subd. 2(c);

*Collis v. City of Bloomington* 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976); *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App., 1986); *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App., 1995).

Minn. Stat. § 462.358, subd. 2(c);

*Collis v. City of Bloomington* 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976); *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App., 1986); *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App., 1995).

Minn. Stat. § 462.358, subd. 2(b)(d).

Minn. Stat. § 462.358, subd. 2(b)(c);

See LMC information memo, *Subdivision Guide for Cities*; See LMCIT risk management memo, *Establishing Building and Development Fees*.

Minn. Stat. § 462.358, subd. 2(b)(c);

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

Minn. Stat. § 462.358, subd. 2(a);

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

- The city reasonably needs to acquire the specific portion of land for reasons permitted by state statute (e.g., streets, parks, utilities) as a result of approval of the subdivision (this is sometimes referred to as a nexus requirement).
- The need created by the subdivision is roughly proportional to the city's dedication requirement. For example, in a five-house subdivision, it may be reasonable to require dedication of park land for a small, local swing set park. It may not be reasonable to require the same small subdivision to dedicate multiple acres for a community park serving hundreds of city residents.
- The need for the dedicated land has not already been offset or obviated by other actions of the developer in setting aside for public use other open space, recreational, or common areas, or other facilities within the development.

In lieu of land dedication for parks, recreational facilities, playgrounds, trails, wetlands, or open space, cities may require a developer to pay “cash fees” commonly referred to as “park dedication fees” and/or “trail fees” (cumulatively referred to as park dedication fees in the rest of this memo) Park dedication fees excuse a developer from a local land dedication for park and recreational purposes, but still allow the city to purchase and acquire new, off-site facilities to serve needs created by the subdivision. When a city establishes and imposes a park dedication fee, in lieu of land dedications, it must still comply with all of the requirements discussed above for land dedications related to procedure, nexus, and proportionality.

State statute requires cities to follow a specific formula for setting park dedication fees. Cities may wish to retain the services of a land appraiser, or some other professional, to help them determine the appropriate rate for their park dedication fees.

## 5. Required public improvements and development agreements

### a. Required public improvements

The city subdivision ordinance may condition approval of an application upon the construction and installation of needed public improvements for the subdivision such as:

- Drainage facilities.
- Streets.
- Electric, gas, sewer, water, and similar utilities.

The city may require that the developer install the improvements to the city's specifications as detailed in the subdivision ordinance. For example, the city may wish to specify the width and composition of any streets installed by the developer. In addition, in order to ensure that the improvements are installed correctly and completely, the city may condition approval upon both of the following conditions:

- Providing a cash deposit, certified check, irrevocable letter of credit, bond, or some other type of financial security in an amount sufficient to ensure that the required improvements will be completed as specified.
- The signing of a development agreement between the city and the developer, which may be enforced by legal and equitable remedies in a court.

Cities are not required to condition approval upon developer installation of needed improvements. Cities may also install the improvement themselves. Often these cities recoup the cost through special assessments on the newly subdivided parcels.

## **b. Development agreements**

[Minn. Stat. § 462.358](#);

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

The subdivision ordinance may provide that the city condition approval of an application on any requirements reasonably related to the city's regulations. These requirements may be reduced to a written contract known as a development agreement. Once executed, a development agreement may be enforced by all legal and equitable remedies in a court of law.

Written development agreements are the city's most important tool to enforce the expectations of the city's subdivision regulations. State law does not dictate the contents of a development agreement. Since a development agreement implicates important legal rights for the city, these contracts are typically drafted with the advice and assistance of the city attorney. Development agreements are usually recorded with the county after execution (signing).

# **D. Zoning regulation**

## **1. The purpose of zoning regulation**

[Minn. Stat. § 462.351](#);

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

See also LMCIT risk management memo, [Zoning Decisions](#).

Zoning allows a city to control the development of land within the community—the type of structures that are built, the density of structures, and the uses to which the land is put. Zoning seeks to segregate and combine (where appropriate) residential, commercial, and industrial uses in order to promote the best use of land for the health and welfare of the city's residents.

Minn. Stat. § 462.357, subd. 1.

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 uses, certain types of commercial uses, 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.

Minn. Stat. § 462.357, subd. 1.

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.

## 2. Procedure to adopt and amend a zoning ordinance

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

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 establishes a uniform and comprehensive procedure for adopting or amending and implementing a zoning ordinance. Zoning regulations can only be imposed by a local ordinance.

### a. Public hearing requirements

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.

### i. Notice and hearing

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

A notice of the time, place, and purpose of the hearing must be published in the official newspaper of the municipality at least 10 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 10 days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies. 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.

## b. Publication

Minn. Stat. § 412.191, subd. 4;  
Minn. Stat. § 331A.02; Minn. Stat. § 331A.04;

See Handbook, Chapter 7.

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

## 3. Administering a zoning ordinance

### a. The 60-Day Rule: Strict timelines for review

See LMC information memo, *Zoning Guide for Cities* for more information on the 60-Day Rule;

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

See also LMCIT risk management memo, *Necessity of Adequate Findings - Reasons to Support Municipal Land Use Decisions*.

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.”

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).

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.

### i. The scope of the rule

Minn. Stat. § 15.99, subd. 1(c);

Minn. Stat. § 15.99, subd. 2(a);  
Minn. Stat. § 462.358, subd. 3(b);

*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.

## ii. 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 documents 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 his or her 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.

## iii. Denials

Minn. Stat. § 15.99, subd. 2(a);

Minn. Stat. § 15.99, subd. 2(c);

*Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536 (Minn. 2007); *Johnson v Cook County*, No. 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.

## iv. 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 all of the following to 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 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 or an environmental impact statement 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, *Forms to Help Cities Comply with the 60-Day Rule*.

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. Uses and conditional uses**

*Stodola v. City of Orono*, No. C2-93-2445 (Minn. Ct. App. 1994) (unpublished decision).

A key feature of zoning ordinances is to divide areas of the city into districts and then list the permitted and conditional uses. Permitted uses are those that the zoning ordinance allows outright. It is generally arbitrary and unlawful to deny a permit for a permitted use unless the zoning of the property is subsequently changed to prohibit that use.



Minn. Stat. § 462.3595;

See LMCIT risk management memo *Conditional Use FAQ*;

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

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

See LMCIT risk management memos, *Land Use: The Neighbor Factor*” and *Conditional Use Permits: Frequently Asked Questions*;

*Trisko v. City of Waite Park*, 566 N.W.2d 349 (Minn. Ct. App. 1997).

Conditional uses are those activities that the zoning ordinance permits if certain conditions set forth in the city ordinance are met. The city must grant the conditional use permit (CUP) if the applicant satisfies all the conditions. Conditional uses remain in effect indefinitely as long as the use complies with the conditions. Once issued, a CUP’s conditions may not be unilaterally altered by the city, unless a violation of the CUP has occurred.

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. Neighborhood opposition alone to a CUP does not authorize the rejection of an application for a CUP.

### c. Variances

Variances have been the subject of dramatic litigation for the past couple years, giving cities good reason to worry about granting them. However, thanks to legislation passed this year, the ability of cities to safely grant variances has been restored.

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is permission from the city for a departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits), but may not be used to allow a *use* that is prohibited in the particular zoning district. Essentially, a variance allows the landowner to break a dimensional zoning rule 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.

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” Whether the applicant would be caused practical difficulties is determined by the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only 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.

The practical difficulties test—which is similar to the previous statutory test for “undue hardship”—consists of the following three criteria.

- The property owner proposes to use the property in a reasonable manner, but one which is not allowed by the city’s zoning ordinance.



- The landowner’s situation is due to circumstances unique to the property not caused by the landowner. Uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone “do not constitute 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.

If a variance applicant can demonstrate the practical difficulties test is met, that the variance would be in harmony with the general purposes and intent of the zoning ordinance, and that the variance is consistent with the comprehensive plan, the city may grant the variance.

#### **d. Legal nonconformities predating the adoption of the zoning ordinance**

Minn. Stat. § 462.357, subd. 1(c);

See LMC information memo *Zoning Guide for Cities* for more information on nonconformities;

See LMCIT risk management memo *Land Use Nonconformities: Frequently Asked Questions*.

Minn. Stat. § 462.357, subd. 1(e).

Legal nonconformities are those uses, structures, or lots that legally existed prior to the creation of a zoning district or adoption of a specific zoning regulation 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.

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 one of the following is true:

- 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 market value, 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.

Minn. Stat. § 462.357, subd. 1(e)(c).

Nonconforming shoreland lots have additional protections under state law. In addition, cities can 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.

## II. Enforcement of zoning and subdivision regulations

See LMC information memo, *Zoning Guide for Cities* and *Subdivision Guide for Cities*; 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.

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).

*State v. Dorn*, 1999 WL 153792, C6-98-2001 (Minn. Ct. App. Mar. 23, 1999).

Cities may provide for criminal penalties for violation of a land use 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.

In many instances, criminal sanctions will not cure a land use violation. Where the city desires removal of building or use that violates the zoning or subdivision 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 land use ordinances.

A land use ordinance may provide that each day the violation exists constitutes a separate offense. Multiple citations are consistent with public policy because it would be unjust to allow individuals to pay the fine for the original charge and finish a building project without abiding by the appropriate codes and ordinances.

## III. Making a record and judicial review

*Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988);

See LMCIT risk management memos and materials: *Necessity of Adequate Findings - Reasons to Support Municipal Land Use Decisions*; *Sample Findings of Fact: City of Burnsville*; *Sample Resolution to Approve a Conditional Use Permit City of Shakopee*; *Sample Resolution Denying a Preliminary Plat: City of Shakopee*.

*Pelican Lake Prop. Owners Ass'n v. County of Crow Wing*, 1999 WL 618232, C5-98-1549 (Minn. Ct. App. Aug. 17, 1999);

See LMCIT risk management memos, *Land Use Claims: Ten Tips*, *Land Use Cook Book: It's Not All Cookie Cutter*; *Land Use Defense Coverage*.

To avoid or minimize the costly expenses of litigation related to land use activities and land use applications, cities should always keep an accurate record of meetings, including any evidence presented; make findings of fact contemporaneously with any actions taken; and provide an opportunity for interested parties to speak. It is recommended that cities base findings of fact on the record and discuss the legal standards imposed by the city's ordinances.

A city that does not follow the procedures in its own land use ordinances or fails to document the basis for decisions risks having its decisions reversed by a court.

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

*Trisko v. City of Waite Park*, 566 N.W.2d 349 (Minn. Ct. App. 1997);

See LMCIT risk management memo, *Land Use Claims: Ten Tips*.

Minn. Stat. § 462.361;

*Stansell v. City of Northfield*, 618 N.W.2d 814 (Minn. Ct. App. 2000).

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

*BECA of Alexandria LLP v. County of Douglas ex rel Bd. of Comm'rs*, 607 N.W.2d 459 (Minn. Ct. App. 2000);

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

*Hurre v. County of Sherburne*, 594 N.W.2d 246, (Minn. Ct. App. 1999);

Minn. Stat. § 15.99;

*R.A. Putnam & Assocs. v. City of Mendota Heights*, 510 N.W.2d 264 (Minn. Ct. App. 1994);

*C.R. Invs., Inc. v. Village of Shoreview*, 304 N.W.2d 320 (Minn. 1981);

*Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981) (holding limited by *Swanson v.*

*City of Bloomington*, 421 N.W.2d 307 (Minn. 1988));

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

*Kreuz v. St. Louis County Planning & Zoning Comm'n*, 1996 WL 469486, C8-96-150 (Minn. Ct. App. Aug. 20, 1996).

Councils should avoid making a decision on a land use issue based on citizen opposition alone. A decision-making body cannot use vague and speculative opinions and unsubstantiated concerns from citizens as the basis for a decision. However, expert testimony supporting the citizens' point of view may not be necessary if there is a factual basis for the opposition.

District court review of a city's land use decisions is available, but an exhaustion of the remedies provided by ordinance is first required. A person suing to challenge a city's land use decision must allege specific injuries as to how the action adversely affects the person's property rights or personal interests.

The general standard for review in all land use decisions is whether the council's action was reasonable and rationally based. If the city neglects to state reasons for an action taken on the record, the city's action may be presumed to be arbitrary and unreasonable. Similarly, if the record contains no findings by the council, the burden of proof shifts to the city to show its actions were reasonable.

Denials and findings of fact made within a reasonable time of a decision are sufficient. For example, in complex matters a council may ask the city attorney to draft findings of for the council to adopt at a subsequent council meeting when a council denies a land use application. Findings must be legally sufficient and factually supported.

Note: It is of the utmost importance that the city issue denials and adopt findings within the 60-day time limit as required by state law.

When explicit written findings are made—as to the basis and reasons for a decision—the courts respect the broad discretion cities have to make routine municipal decisions and will likely determine the decision is not arbitrary and capricious.

## IV. Interim ordinances: Moratorium

Minn. Stat. § 462.355, subd. 4;

See LMC information memos, *Zoning Guide for Cities* or *Subdivision Guide for Cities*.

Adoption of an interim ordinance (more commonly known as a moratorium) may aid cities in adopting and amending their land use ordinances, 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, which include the adoption of an ordinance and conduct of a study.

Minn. Stat. § 462.355, subd. 4(c);

*Semler Const., Inc. v. City of Hanover*, 667 N.W.2d 457 (Minn. Ct. 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);

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

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.

## V. Real estate acquisitions, sales, and other dispositions

Minn. Stat. § 412.211;

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

Statutory cities are authorized to acquire real property within or outside their corporate limits by purchase, gift, devise, condemnation, lease, dedication, or otherwise. The law permitting the conveyance of tax-forfeited land to a city may also be used to acquire land. .

Minn. Stat. § 412.211.

Statutory cities are free to hold, manage, control, sell, convey, lease, or otherwise dispose of real and personal property as required by the city's interest.

Minn. Stat. § 465.035.

With the council's authorization, no consideration is required when a city conveys land for the public use to another public corporation, any governmental subdivision, or the Minnesota Armory Building Commission.

A.G. Op. 469-A-15 (May 15, 1967);

Generally, a city council can decide to buy or sell property without seeking permission. The statutes do not require the council to submit the question to voters unless bonds are issued to purchase property. If a city has a comprehensive plan however, it must usually notify the planning commission of the intent to purchase or sell land, and allow 45 days for comment from the planning commission.

Minn. Stat. § 462.356, subd. 2;

Minn. Stat. § 412.221, subd. 2.

## A. Vacating easements, streets, and roads

### 1. Vacation by cities

Minn. Stat. § 462.358, subd. 7;  
Minn. Stat. § 412.851;

LMC information memo,  
*Vacation of City Streets*.

When it is in the public interest to do so, cities may abandon ownership or control over all or any part of land set aside, dedicated, or used as streets or alleys. State law sets the exclusive process for a statutory city to abandon a street, road, alley, or public way.

Minn. Stat. § 412.851.

In statutory cities, the resolution ordering the vacation must pass by a four-fifths vote of all the members of the council. (This means there must be four affirmative votes on a five member council.)

Minn. Stat. § 462.358, subd. 7.

A statutory city may also vacate any publicly-owned utility easement or boulevard reserve in the same way streets or alleys are vacated by the type of city involved.

The steps for a statutory city to vacate a street or alley are as follows:

- The council may initiate the action by resolution, or a majority of property owners who abut the land to be vacated may petition for this action. Such petitions probably need signatures from a majority of landowners and from the owners of at least 50 percent of the land area.
- The council must hold a public hearing on the proposal, following two weeks published and posted notice. The city must provide written notice to each affected property owner at least 10 days before the hearing.
- If the road to be vacated abuts or terminates on, or is adjacent to any public water, the city must send written notice of the petition or resolution to vacate to the commissioner of Natural Resources, by certified mail, 60 days before the date of the public hearing. In addition, the council or its designee must meet with the commissioner of Natural Resources at least 15 days before the public hearing. The commissioner will evaluate the proposed vacation according to state law, and will advise the council as to that evaluation.

Minn. Stat. § 412.851.

Minn. Stat. § 164.07, subd.2.

A.G. Op. 59-A-53 (Jan. 13, 1977);

Minn. Stat. § 160.29.

When a city lawfully vacates a street, the owner of the abutting property holds title to the land in the former street (presumably to the centerline) free of easements either in favor of the public or owners of other property abutting on the street. Cities may specify the extent to which a proposed vacation affects existing utility easements, including the right to maintain and continue utility easements.

*In re Hull*, 163 Minn. 439, 204 N.W. 534 (1925).

An abutting property owner who suffers “peculiar damages” (lack of access) from the vacation of the street may be entitled to compensation. However, a property owner probably will not prevail on a claim for money against a city if the only complaint is that the person must travel further or over a poorer road due to a street vacation.

## 2. Vacation by courts

Minn. Stat. § 505.14;  
*In re Verbick*, 607 N.W.2d 148  
 (Minn. Ct. App. 2000);  
 LMC information memo,  
*Vacation of City Streets*.

For streets in private and in certain platted territories, there is also a district court procedure for vacation. The street may be vacated only if it is useless for its original purpose. The courts broadly construe the terms “useless” and “purpose.” Merely showing the street is not presently used is insufficient to show uselessness. Before a court may grant an application, the mayor of the city must receive personal notification of the application at least 10 days before the court intends to hear the application. If the road to be vacated abuts or terminates on, or is adjacent to any public water, the commissioner of Natural Resources must be notified well in advance and has a right to intervene in the court proceedings.

## B. Establishing streets, roads, and cartways

### 1. City streets and roads

See LMC information memo  
*Acquisition and Maintenance of  
 City Streets*;

*Bengtson v. Village of Marine  
 on St. Croix*, 246 N.W.2d 582  
 (Minn 1976); *In re Maintenance  
 of Road Areas Shown on Plat of  
 Suburban Estates*, 250 N.W.2d  
 827 (Minn., 1977); A.G. Op.  
 377-A-4 (August 31, 1959);  
 A.G. Op. 396-G-4 (Sept  
 10, 1957); A.G. Op. 377-A-4  
 (June 17, 1957); A.G. Op. 396-  
 G (July 28, 1955); A.G. Op.  
 396-G-1 (August 22, 1949);  
 A.G. Op. 396-G-7, (June 19,  
 1946).

The decision to acquire, construct, and open a city street is vested solely with the city council. With the exception of a newer law related to cartways for inaccessible properties discussed below, in statutory cities there is no method, via petition or otherwise, by which a citizen or group of citizens can directly compel a city to acquire or construct a street.

The decision to acquire or construct a street is a legislative decision of the city council. This means that as long as the city’s reasoning is neither arbitrary, capricious, nor based upon an erroneous reading of the law, the courts will not overrule the city’s decision on the issue. The city alone may choose the best time to open, occupy, and use city streets.

Mere notation of a street on an accepted and recorded plat will not require the city to open a street. Instead, the plat simply reserves the dedicated land for future use.

See LMC information memo,  
*Acquisition and Maintenance of  
 City Streets*.”

Cities may acquire land for streets in a variety of ways including outright purchase through negotiation, dedication (on a plat or otherwise), eminent domain, and other statutory processes.

## 2. Cartways

Minn. Stat. § 435.37; Minn. Stat. § 164.07.

Cities *must* establish a road in certain situations. A property owner who has limited access to their land may petition the city council to connect the land to a public road. If the petition fits the following criteria, the city council *must* establish a cartway (a road or driveway) connecting the petitioner’s land to a public road:

- The tract of land is five acres or more.
- The owner has no access except over a navigable waterway or over the land of others.
- The current access is less than two rods in width.

The city council may select an alternative route to the one proposed by the applicant for the cartway in some situations. Generally, the petitioner must pay all costs associated with establishing and maintaining the cartway, including paying any “damages” to adjacent landowners whose property will be used for the new cartway.

## C. Eminent domain

### 1. Background

Minn. Stat. § 465.01;  
Minn. Stat. § 117.012;  
Minn. Stat. ch. 117.

All cities have the authority to take (or condemn) private property for public use as long as they pay the landowner reasonable compensation. Essentially, this is a way to require that an owner sell his or her land to a city. This procedure requires a formal court action, and a city must pay an owner for the value of the land or the damages to the land - if the city is taking only part of the private property, such as for an easement.

*Kelo et al v. City of New London, et al.*, 545 U.S. 469, 125 S. Ct. 2655 (2005).

In the 2005 case, *Kelo v. City of New London, Conn.*, the United States Supreme Court held that taking property for economic development is a valid public purpose and that if a city seeks to exercise its power of eminent domain for economic development purposes, it should do so in conjunction with a well thought out economic development plan.

#### a. Public use and public purpose

Minn. Stat. ch. 117.

In response to the *Kelo* decision, the 2006 Minnesota Legislature passed extensive legislation restricting a city’s power of eminent domain and increasing compensation to owners.

See also, *Regents of the Univ. of Minn. v. Chicago & N.W. Transp. Co.*, 552 N.W.2d 578 (Minn. Ct. App. 1996).

The law preempts all other condemnation procedures for charter and statutory cities (except for drainage, town roads and watershed districts). It narrows the definition of “public use” and “public purpose” to:

- The possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies.



- The creation or functioning of a public service corporation (for example, a municipal or private utility).
- The mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of public nuisances.

In contrast, the public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose.

[Minn. Stat. § 117.025, subd. 6.](#)

Cities may still use condemnation to alleviate a blighted area; however “blighted area” is now more narrowly defined as an area in urban use where half of the buildings are structurally substandard.

[Minn. Stat. § 117.025, subd. 7.](#)

To be considered “structurally substandard,” a building must meet all of the following criteria:

- The building has been inspected and cited for enforceable housing, maintenance, or building code violations.
- The building code violations involve specific structural aspects of the building (e.g., roof, support walls and beams, foundation, internal utilities).
- The cited violations have not been remedied after two notices to cure noncompliance.
- The cost to cure the violations is more than 50 percent of the assessor’s taxable market value for the building (excluding land value).

The law gives local government the authority to seek an administrative search warrant to enter and inspect a building if there is a reasonable suspicion that all of the following are true:

- The property violates a specific section of a housing maintenance or building code.
- The violation is ongoing.
- The owner denies the local government access to the property.
- Cities may use recent fire or police inspections, housing inspections, and exterior indications of deterioration as evidence to support their suspicions that a building is structurally substandard.

[Minn. Stat. § 117.027, subs. 1, 2.](#)

The law prohibits taking non-structurally substandard buildings and uncontaminated parcels unless there is no other reasonable way to remedy blight or contamination in the area—and all possible steps are taken to minimize the taking of such buildings or lands.

[Minn. Stat. § 117.027;](#)  
[Minnesota’s New Eminent Domain Law.](#)

The law also specifically defines other terms (owner, environmentally contaminated areas, abandoned property and public nuisance). Additional resources are available on these legal terms as well as the legal standards a city must meet when condemning private property.



[Minn. Stat. § 117.041, subd. 3.](#) To establish findings related to blight and contamination, the city may need to conduct geotechnical investigation. State statute permits a city to enter private property prior to commencing eminent domain proceedings in order to investigate, survey, and test the site and subsurface conditions. Prior to this entry, the city must provide the landowner at least 10 days advance notice. If the landowner refuses entry, the city must obtain a court order to enter the property.

## **b. Procedural changes**

All land acquisitions must follow the process the state uses to take land for transportation purposes—and the law also modifies those processes, including but not limited to:

- Requiring exchange of appraisals.
- Requiring timely exchange of specific documents between the parties.

[Minn. Stat. § 117.0412.](#) The law includes a requirement for a public hearing before a city can condemn property to mitigate a blighted area, remediate an environmentally contaminated area, reduce abandoned property, or remove a public nuisance. In concert with the hearing requirements are notice requirements. The law requires that cities make specific findings as to public costs, if any, and public purposes during the process.

[Minn. Stat. § 117.226.](#) If a city determines that property acquired through eminent domain is no longer needed for a public purpose, the city must offer to sell the property back to the person it was acquired from at the original price or the current fair market value, whichever is lowest. (The Minnesota Department of Transportation is exempt from this “right of first refusal” requirement.)

## **c. Relocation costs**

*In re Wren*, 699 N.W.2d 758 (Minn. 2005) distinguished by *Instant Testing Co. v. Community Security Bank*, 715 N.W.2d 124 (Minn. Ct. App. 2006).

Both state and federal law protect property owners and tenants who are required to move because of eminent domain proceedings; cities, or condemning authorities, must pay relocation costs for the people who must move. In some limited circumstances, owner-occupants may waive relocation benefits.

[42 U.S.C.A. § 4601-4655.](#) If a city receives federal funding for a project that involves the use of eminent domain, federal law requires that the city pay certain benefits to people who must move from their homes, farms, or businesses as a result of the project.

[Minn. Stat. § 117.52, subd. 1\(a\).](#) Minnesota law also requires payment of relocation benefits when eminent domain is used, even if no federal funding is involved. The nature and amount of these benefits is the same as if federal funds were involved. The maximum that a city must pay to a relocated business is \$50,000 of eligible expenses.

[Minn. Stat. § 117.52, subd. 4.](#) If a person must relocate but does not accept the city’s relocation offer, the state law now requires that a city must seek resolution using state contested case procedures and an administrative law judge.

### d. Court and compensation costs

[Minn. Stat. § 117.031.](#)

If a person challenges a city’s condemnation proceeding or amount in court, and prevails, the court may – and in some situations must – pay the person’s court costs and attorney’s fees.

[Minn. Stat. § 117.186.](#)

State law contains numerous provisions relating to compensation for losses, including but not limited to:

- Going concern compensation.
- Minimum compensation.
- Acceptance of replacement properties.
- Loss of a nonconforming use.
- Loss of driveway access.

The use of eminent domain is controversial and complex. A city council considering the use of eminent domain should consult with the city attorney well before using this tool for land acquisition.

## VI. The “takings” issue

### A. The general law

[U. S. Const. Amend. V;](#)

[Minn. Const. art. I § 3;](#)

[Lucas v. South Carolina Coastal Council](#), 505 U.S. 1003, 112 S. Ct. 2886 (1992).

Both the U.S. Constitution and the Minnesota Constitution forbid the taking of private property for public use without just compensation. Traditional “takings” prevent the government from physically occupying private property without just compensation. The U.S. Supreme Court has also decided that government regulation (without physical occupation) of a property may, in some circumstances, also give rise to a claim that a taking has occurred. Zoning and land use regulations on property may be considered takings if the regulation goes too far.

In determining whether a regulation goes too far, the United States Supreme Court has recognized two distinct classes of regulatory takings:

[Lucas v. South Carolina Coastal Council](#), 505 U.S. 1003, 112 S. Ct. 2886 (1992).

[Penn Cent. Transp. Co. v. City of New York](#), 438 U.S. 104, 98 S. Ct. 2646 (1978);

[Wensmann Realty, Inc. v. City of Eagan](#), 734 N.W.2d 623 (Minn. 2007).

- Categorical takings, in which the regulation denies all economically beneficial or productive use of land.
- Case-specific regulatory takings, which involve consideration of the economic impact of the regulation, the interference with reasonable investment-backed expectations, and the character of the regulation.

*McShane v. City of Faribault*, 292 N.W.2d 253 (Minn. 1980);  
*DeCook v. Rochester Intl. Airport Joint Zoning Board*, 796 N.W.2d 299 (Minn. 2011);  
*Olsen v. City of Ironton*, No. C599945 (Minn. Ct. App. Apr. 17, 2001) (unpublished decision).

*Alevizos v. Metropolitan Airports Comm'n*, 298 Minn. 471, 216 N.W.2d 651 (1974);

*Grossman Invs. v. State by Humphrey*, 571 N.W.2d 47 (Minn. Ct. App. 1997);

Minn. Stat. ch. 117.

*Northern States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485 (Minn. 2004);

*Johnson v. City of Minneapolis*, 667 N.W.2d 109 (Minn. 2003);

See Part XII of this chapter for more on eminent domain.

42 U.S.C. § 1983.

*Kottschade v. City of Rochester*, 319 F.3d 1038 (8<sup>th</sup> Cir. 2003).

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

Handbook, Chapter 4.

The Minnesota Supreme Court has recognized a third class of takings that may occur when the government adopts a land use regulation designed to benefit a specific public or governmental enterprise. If the regulation is enacted for the benefit of a government enterprise (airport zoning, for example), the government must compensate the landowners whose property has suffered a substantial and measurable decline in market value as a result of the regulations.

When the government has taken property without formally using its eminent domain powers, the property owner has a cause of action for inverse condemnation under the eminent domain laws.

Inverse condemnation is an action against a governmental defendant to recover the value of property that has been taken in fact by the government defendant, even though no formal exercise of the statutory power of eminent domain has been attempted by the taking agency.

Money damages may also be available under a claim that the taking violates a person's constitutional rights.

Before bringing a takings clause claim in federal court, a property owner must first attempt to obtain just compensation through inverse condemnation procedures available in state courts.

## VII. How this chapter applies to home rule charter cities

The Municipal Planning Act and the Metropolitan Land Planning Act occupy the field of the process by which municipal land use laws are finally approved or disapproved, and pre-empt the power of referendum reserved in a city's home rule charter. For the most part, Minnesota land use law governs home rule charter cities just as it does statutory cities.

Some charters contain provisions for the acquisition and disposition of real property as well as the opening and vacation of city streets. As a result, best practice suggests charter cities seek legal advice as to real property transactions and street opening and vacation.