



**CITY OF NEWPORT  
PLANNING COMMISSION WORKSHOP MEETING  
NEWPORT CITY HALL  
FEBRUARY 12, 2015 – 6:00 P.M.**

Chairperson:		City Administrator:	Deb Hill
Vice-Chair:	Anthony Mahmood	Executive Analyst:	Renee Eisenbeisz
Commissioner:	Matt Prestegaard	Planner:	Sherri Buss
Commissioner:	Kevin Haley	Council Liaison:	Tom Ingemann
Commissioner:	Marvin Taylor		
Commissioner:	David Tweeten		

**AGENDA**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. OVERVIEW OF PLANNING COMMISSION ROLE AND UPCOMING TASKS**
- 4. ADJOURNMENT**



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## Memorandum

<b>To:</b>	Newport Planning Commission	<b>Reference:</b>	Planning Commission Workshop February 12, 2015
<b>Copies To:</b>	Deb Hill, City Administrator		
	Renee Eisenbeisz, Executive Analyst		
		<b>Project No.:</b>	15743.000
<b>From:</b>	Sherri Buss, RLA AICP, City Planner	<b>Routing:</b>	
<b>Date:</b>	February 2, 2015		

The Planning Commission meeting on February 12 will include a workshop to discuss the role of the Planning Commission and some upcoming activities. This will provide an opportunity for new and continuing Commission members to get acquainted with each other, the Commission’s role, and work that is likely to come to the Commission in the next year or two.

I am the City’s consulting Planner, and am sending this memo and the attached information to you as background for the discussion on February 12. City staff including Deb Hill and Renee Eisenbeisz will also attend the meeting. Please review this memo and the attached information to prepare for the discussion.

### Planning Commission Role

The attached Section 225 of the City’s Administrative Code discusses the Newport Planning Commission’s composition, organization, and duties. Several sections in the City’s Zoning Ordinance also specify the Planning Commission’s roles in reviewing zoning applications. The Commission is responsible for the tasks identified in the City’s ordinance, and other tasks as assigned by the Council. The Commission makes recommendations to the Council, and the Council makes final decisions.

The Planning Commission’s role includes:

- Develops the draft Comprehensive Plan, and completes reviews and recommends updates/amendments to the plan
- Develops the City’s Zoning Ordinance, and recommends updates/amendments to the ordinance
- Reviews Conditional Use Permit applications
- Reviews Subdivision applications
- Reviews Variance applications
- Holds public hearings on the Comprehensive Plan, Zoning Ordinance, amendments, and zoning applications

The information from the League of Minnesota Cities, attached (2 documents), provides good background on the typical roles of Planning Commissions, issues such as conflicts of interest, and specific information on the types of applications that are reviewed by the Commission.

The Commission has staff support from City staff and the City's consulting Planner and Engineer. For most applications or issues, staff will develop a background report, draft ordinances, and other materials for the Commission to use as a starting point for discussions.

## **Upcoming Planning Commission Tasks**

### *Next Comprehensive Plan Update*

One of the Planning Commission's key roles is to develop the City's Comprehensive Plan. The current plan (Newport's 2030 Comprehensive Plan) was adopted in 2010. The next plan will be developed between 2016 and 2018, and will cover the time period to 2040.

The Twin Cities Regional Planning Agency, the Metropolitan Council, guides the Comprehensive Plan process and will approve the City's Comprehensive Plan if it is consistent with regional plans and policies. The Metro Council is currently updating its plans for the regional systems through 2040 (Transportation, Parks, Airports, Sewer and Water Systems), and will complete this work by the end of 2015. The Metro Council will also provide information to each community about the specific issues it needs to address in its Comprehensive Plan update.

Newport can begin working on its Comprehensive Plan update for the 2040 plan in 2016, and needs to complete a draft by the end of 2018. The city will submit the draft to the Metro Council for review. After any issues are addressed, the final plan will be adopted by both the Metro Council and the City Council (by the end of 2020).

### *Mississippi River Corridor Critical Area (MRCCA) Rules and Ordinance Update*

The Minnesota DNR is currently updating the state regulations for the Mississippi River Critical Area. The regulations will address aspects of land use, zoning, and construction within the Critical Area. The rules require that each city within the Critical Area update its zoning ordinance and Comprehensive Plan to be consistent with the rules. Approximately ½ of Newport west of Highway 61 is included in the Critical Area (the area is identified on the zoning map attached).

DNR expects to publish its proposed rules early in 2015, and adopt the new rules later in 2015. The City has already provided comments on the early drafts of the rules, and the DNR addressed many of the issues of concern to the City. The City will have one year after it receives notification that the DNR has adopted the new rules to update its plans and ordinances to be consistent with the rules. The Planning Commission is likely to have significant work in 2016 to update the Comp Plan and Zoning Ordinance based on the new Critical Area rules.

### *Application Reviews*

The Planning Commission will continue to review any applications for conditional use permits, variances, rezoning, and subdivisions from local landowners. The Commission may also initiate reviews and amendments to the zoning ordinance, or respond to Council or citizen requests for changes to the ordinance.



**Section 225 – Planning Commission**

**225.01 Commission Established.** The City of Newport Planning Commission is established with the powers and duties given it by this section.

**225.02 Composition.** The City of Newport Planning Commission shall consist of five (5) members appointed by the Council. The membership shall be comprised of those persons currently appointed to the office of Planning Commission. The term of the office of current members shall be according to conditions under which they were originally appointed. As each term expires, the new term shall be for three (3) years. Vacancies during the term shall be filled by the Council for the unexpired portion of the term. A member may be removed at any time by a four (4/5ths) vote of the City Council. No person appointed to represent the residents shall continue to serve on the Commission once that member has taken residence outside of the corporate limits of Newport. A resignation shall be submitted to the Council in this instance.

**225.03 Organization, Meetings, etc.** The Commission shall elect a chairperson from among its appointed members for a term of one (1) year; and the Commission may create and fill such other offices of the Commission as it may determine.

The Commission shall hold at least one regular meeting each month. This meeting shall be open to the public. The Commission may hold special meetings as determined by the Commission. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions and findings, which shall be a public record.

Meetings may be cancelled by the call of the Chair with reasonable cause and notification.

Three (3) consecutive unexcused absences from commission meetings shall be deemed to constitute a resignation. The Chairperson shall report such absences to the Council who shall make an appointment to fill the vacancy for the unexpired portion of the term.

**225.04 Duties and Functions.** The duties of the Commission shall be as follows:

1. To be the Planning Agency of the City in accordance with Minnesota Statutes, Section 462.354 and to exercise those powers and duties assigned to it by Minnesota Statutes, Section 462.351 to 462.364, the Municipal Planning Act.
2. To conduct activities in accordance with duties assigned in the City Code, Council adopted procedures and resolution, and Minnesota Statutes.
3. Prepare an outline of types of procedure necessary to make the City Comprehensive Plan effective.
4. Review the Comprehensive Plan every two years or when requested to do so by the City Council, making recommendations for updating.
5. Prepare a zoning code for the City which shall be reviewed every two years, alternating with Item 4 above, or when requested to do so by the City Council, making recommendations for updating.

**225.05 Compensation of Commission and Officers.** The members of the Planning Commission shall be paid the current compensation for each meeting attended. Any future compensation amount shall be determined by Council resolution.



## INFORMATION MEMO

# Planning Commission Guide

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

### RELEVANT LINKS:

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

See MN Planning “*Under Construction: Tools and Techniques for Local Planning.*”

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

[Minn. Stat. § 462.354.](#)

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

## I. Creation of a city planning commission

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

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

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

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

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

## RELEVANT LINKS:

[LMC Model Planning Commission Ordinance.](#)

- 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.

## RELEVANT LINKS:

See Section IV- *Planning Agency Meetings*.

See LMC Model [Planning Commission Policy on Rules and Procedure](#).

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

[Minn. Stat. § 462.354](#).

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**

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**

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**

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.

## RELEVANT LINKS:

[Sample Advertisement.](#)  
[Sample City Application Forms.](#)  
[Sample Interview Questions.](#)

[LMC information memo, Residency Requirements for City Boards and Commissions.](#)

### **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:

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

### **C. Residency requirements**

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

## RELEVANT LINKS:

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

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

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

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

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

#### **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.

## RELEVANT LINKS:

See LMC information memo, [Official Conflict of Interest](#). Part IV *Conflict of Interest in Non-Contractual Situations*. 56 Am. Jur. 2d Municipal Corporations § 142. [Lenz v. Coon Creek Watershed, Dist.](#), 278 Minn. 1, 153 NW 2d 209 (1967). [Township Bd. Of Lake Valley Township v Lewis](#), 305 Minn. 488, 234 N.W. 2d 815 (1975).

[Minn. Stat. § 462.351](#).  
[Minn. Stat. § 462.352, subd 5](#).  
See MN Planning "[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.

## F. Conflicts of interest

When appointing planning commissioners, cities should be aware that appointed officials are subject to the same concerns related to conflict of interest as city councilmembers. In the appointment process, the city council should attempt to discern if potential conflicts of interest exist. Particularly, conflicts where it is obvious that the potential appointee's own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter.

## G. Removal of planning commission members

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

## RELEVANT LINKS:

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

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

- 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.
- Capital Improvement Program.

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

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

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

## RELEVANT LINKS:

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

[Minn. Stat. § 462.353, subd. 2.](#)

[Minn. Stat. § 462.353, subd. 3.](#)

[Local Planning Assistance Agency Advice on Hiring at Planner.](#)

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

[Minn. Stat. § 462.355, subd. 1.](#)

[Minn. Stat. § 462.355, subd. 1.](#)

[Minn. Stat. § 462.353, subd. 2.](#)

## 2. Preparing the comprehensive plan

State statute vests authority for preparing the comprehensive plan in the planning commission. However, the city council also may propose the comprehensive municipal plan and amendments to the plan by a resolution submitted to the planning commission. When this occurs, the council may not adopt the recommended language until it has received a report from the planning commission or 60 days have elapsed. The plan may be prepared and adopted in sections, each of which relates to a major subject of the plan, or to a major geographical section of the municipality.

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

### a. Consultants and public input

#### (1) Professional planners

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

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

#### (2) Other consultants

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

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

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

## RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 2.](#)

[Sample: Newsletter Article on Comprehensive Planning.](#)

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

[Minn. Stat. § 462.355.](#)

[Minn. Stat. § 462.357.](#)

### **b. Public input**

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

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

Non-metropolitan cities located in certain 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.

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.

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

## RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 2.](#)

[Minn. Stat. § 462.354.](#)

[Minn. Stat. § 473.858, subd. 2.](#)

[Minn. Stat. § 473.175.](#)

[Metropolitan Council.](#)

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

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

[Minn. Stat. § 462.355, subd. 3.](#)

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

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

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

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

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

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

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

#### **c. 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**

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.

## RELEVANT LINKS:

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

[Minn. Stat. § 462.356, subd 1.](#)

[Minn. Stat. § 462.356, subd 1.](#)

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

LMC information memo *Zoning Decisions*.

See [Handbook, Chapter 14](#).

LMC information memo, *Subdivisions, Plats and Development Agreements*. See [Handbook, Chapter 14](#).

[Minn. Stat. § 462.355, subd 1.](#)

[Minn. Stat. § 462.355, subd. 1a.](#) [Minn. Stat. § 473.121, subd. 2.](#) [Minn. Stat. § 473.864, subd. 2.](#)

[Minn. Stat. § 462.355, subd. 3.](#)

## B. Implementing the plan

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

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

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

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

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

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

Cities within the seven-county 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

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.

## RELEVANT LINKS:

See Section III-A-4 *Adopting the Comprehensive Plan*.  
Minn. Stat. § 462.355, subd. 3.

Minn. Stat. § 473.175.  
Metropolitan Council.

Minn. Stat. § 462.355, subd. 3.

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

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

### 1. Procedure for amending a comprehensive plan

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

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

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

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

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

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

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

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

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.

## RELEVANT LINKS:

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

Minn. Stat. § 462.356, subd. 2.

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

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

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

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

## F. Role in capital improvements program

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

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

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

The term capital improvement is not defined within the comprehensive planning statute. However, other statutes define a capital improvement as “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.

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.

**RELEVANT LINKS:**

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

[Minn. Stat. § 462.357, subd 2 \(c\).](#)  
For more information see LMC information memo, [Zoning Decisions](#).

[Minn. Stat. § 462.357, subd. 2.](#)

[A.G. Op. 59-A-32 \(Jan. 25, 2002\).](#)

[Minn. Stat. § 462.357, subd 3.](#)

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

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

## **G. Role in zoning ordinance adoption and amendment**

### **1. Zoning ordinance adoption**

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.

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

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

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

The drafting and adoption of a city zoning ordinance is covered in detail in the LMC Information Memo, [Zoning Guide for Cities](#).

## RELEVANT LINKS:

[Minn. Stat. § 462.357, subd 4.](#)

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

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

[Minn. Stat. § 462.357, subd 3.](#)

[Minn. Stat. § 462.357, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 5.](#)

## 2. Zoning ordinance amendment

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

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

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

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

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

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

## RELEVANT LINKS:

[Minn. Stat. § 462.3595.](#)

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

See LMC information memos [Zoning Guide for Cities;](#) [FAQs on Conditional Uses;](#) [Zoning Decisions.](#)

[Minn. Stat. § 462.359, subd. 2.](#)  
See [Handbook, Chapter 11.](#)  
[Minn. Stat. § 462.352, subd. 7, 8.](#)

See LMC information memo, [Purchase and Sale of Real Property.](#)

## H. Conditional use permits

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

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

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

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

## I. Role in adoption of an official map

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

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

Official maps do not give a city any right to acquire the areas reserved on the map without 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.

## RELEVANT LINKS:

[Minn. Stat. § 462.354, subd. 2.](#)

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

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

[Minn. Stat. § 462.354, subd. 2.](#)

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

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

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

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

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

The ordinance creating the BZA should specify at minimum:

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

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

## RELEVANT LINKS:

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

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

See [Handbook, Chapter 11](#). See also LMC information memo, [Subdivisions, Plats, and Development Agreements](#).

See LMC information memo [Subdivisions, Plats, and Development Agreements](#).

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

See LMC information memo, [Meetings of City Councils](#). [Minn. Stat. § 13D.01](#).

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

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

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

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

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

## **IV. Planning commission meetings**

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

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

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

**RELEVANT LINKS:**

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

[Minn. Stat. § 13D.01, subd. 1.](#)

[Minn. Stat. § 13D.01, subd. 6.](#)

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

For more information on the 60-Day Rule see the LMC information memo, [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).

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

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

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

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

**B. The 60-Day Rule**

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

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

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

## RELEVANT LINKS:

[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 \(Minn. Ct. App. 2003\).](#)

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

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

## 1. Scope of the rule

The rule applies to a “request related to zoning.” The courts have been rather expansive in their interpretation of the phrase “related to zoning.” It is useful to look at the precise wording of the statute to see it covers much more than just requests “related to zoning.”

“Except as otherwise provided in this section, section 462.358 subd. 3b, or 473.175, or chapter 505, and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action.”

The language covers requests for rezonings, conditional use permits and variances. Courts have also found the law applies to requests for sign permits, wetlands determination review, and road permits.

In short, almost all requests affecting the use of land have been treated as subject to the law. Subdivision and plat approvals are an exception, since those processes are subject to their own timeframes. The law also does not apply to applications for building permits. Building permits are issued pursuant to the State Building Code to regulate the construction process, they do not regulate the use of land that may occur in a particular zoning district. Therefore, they are not “related to zoning.”

## 2. Applications

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.

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.

## RELEVANT LINKS:

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

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

[Minn. Stat. § 15.99, subd. 2\(a\).](#)  
[Minn. Stat. § 15.99, subd. 2\(c\).](#)  
[Hans Hagen Homes v City of Minnetrista](#), 728 NW 2d 536 (Minn. 2007). [Johnson v Cook County](#), 786 N.W.2d 291 (Minn. 2010).

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

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

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.

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

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.

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

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.

## RELEVANT LINKS:

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

Minn. Stat. § 15.99, subd. 3(g).

Minn. Stat. § 15.99, subd. 3(g).

Minn. Stat. § 15.99, subd. 3(d), (e).

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

Minn. Stat. § 15.99, subd. 2(a), (e).

See LMC information memo, *The 60 Day Rule: Minnesota's Automatic Approval Statute*.

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.

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.

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.

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.

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

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

## RELEVANT LINKS:

See LMC [Model Planning Commission Policy on Rules and Procedure](#).

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

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

See [Handbook, Chapter 27](#).  
Minn. Stat. § 15.17, subs. 1, 2.

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

## C. Commission policies on order and meeting structure

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

The policy should establish procedures related to:

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

## D. Minutes and official records

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

### 1. Minutes and records

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

## RELEVANT LINKS:

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

LMC information memo  
[Taking the Mystery out of Findings of Fact.](#)

See [Sample: Findings of Fact, City of Burnsville.](#)  
LMC information memos:  
[Taking the Mystery out of Findings of Fact; Zoning Decisions.](#)

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

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

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

Minnesota case law and statutory law demand that the reasons for a city's decision on a land use case be articulated in the official record. Written findings of fact, or "reasons," and conclusions of law are required whenever an application is denied. In addition, written findings of fact and conclusions of law are strongly recommended whenever a decision or recommendation related to a land use decision is made.

Findings of fact and creating accurate records are discussed at length in the LMC Information Memo "Zoning Guide for Cities."

## RELEVANT LINKS:

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

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

[Minn. Stat. § 462.354, subd. 1.](#)

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

[Minn. Stat. § 462.355, subd. 3.](#)  
[Minn. Stat. § 462.356, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 4.](#)

“Counting the Votes on Council Actions, [Part 1](#) and [Part 2](#),” [Minnesota Cities \(May and June-July 2006, p. 19\).](#)  
[Minn. Stat. § 410.12.](#)

### 3. Records retention requirements

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.

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

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

### A. Abolishing the planning commission

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

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

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

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

### B. Modifying the planning agency

Planning commissions created by city ordinance may be modified by an ordinance amendment (for example, to change 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.

**RELEVANT LINKS:**

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

[Minn. Stat. § 462.3535, subd. 4.](#)

[Minn. Stat. § 462.3585.](#)

## **VI. Joint or multijurisdictional planning**

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

### **A. Community-Based planning**

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

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

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

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

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

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

If a city has 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.

## RELEVANT LINKS:

[Minn. Stat. § 462.3585.](#)

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

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

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

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

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

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

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

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

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

[Minn. Stat. § 462.3585.](#)

[Minn. Stat. § 462.358, subd. 1a.](#)

[Minn. Stat. § 462.371.](#)  
See [Handbook, Chapter 17.](#)  
See LMC information memo [Liability Coverage for Joint Powers Agreements.](#)

[Minn. Stat. § 462.372.](#)

Once established, the board is authorized to:

- Serve as the governing body and board of appeals and adjustments within the two-mile area.
- Create a planning agency.
- Create a BZA.
- Adopt a comprehensive plan.
- Adopt interim ordinances.
- Adopt zoning ordinances.
- Adopt subdivision regulations.
- Adopt an official map.
- Provide for and issue conditional use permits.
- Enforce official controls and prescribe penalties for violations.
- Adopt and enforce the State Fire Code.

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

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

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

The joint powers agreement creating a regional planning agency should:

- Establish a board composed of members selected from the governing bodies of the participating governmental units.
- Set the number of board members.

## RELEVANT LINKS:

[Minn. Stat. § 462.373, subd. 1.](#)

[Minn. Stat. § 462.373, subd. 2.](#)

[Minn. Stat. § 462.374.](#)

[Minn. Stat. § 462.375.](#)

[Minn. Stat. § 462.383.](#)

[Minn. Stat. § 462.385.](#)

[Northwest Development Commission.](#)

[Headwaters Regional Development Commission.](#)

[Arrowhead Regional Development Commission.](#)

[West Central Initiative.](#)

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

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

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

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

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

## **D. Regional development commissions and comprehensive planning activities**

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

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

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

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

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

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

## RELEVANT LINKS:

[Region Five Development Commission.](#)

[Mid-Minnesota Development Commission.](#)

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

[East Central Regional Development Commission.](#)

[Southwest Regional Development Commission.](#)

[Region Nine Development Commission.](#)

[Metropolitan Council.](#)

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

[Minn. Stat. § 462.391, subd. 1a.](#)

[LMCIT Land Use Resources.](#)

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

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

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

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

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

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

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

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

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

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

## VII. Training and resources for planning commission members

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

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

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

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

## RELEVANT LINKS:

See LMC information memo, *Zoning Guide for Cities*.  
See LMC information memos, *Land Use: The Neighbor Factor*” and *Land Use Conditional Use Permits. Trisko v. City of Waite Park*, 566 N.W.2d 349 (Minn. Ct. App. 1997).

Minn. Stat. § 462.357, subd. 6.

See LMC information memo *Zoning Guide for Cities* for more information on variances.  
See LMC information memo *Land Use Variances*.

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 in 2011, 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.

**RELEVANT LINKS:**

Minn. Stat. § 462.357, subd. 1e.  
See LMC information memo *Zoning Guide for Cities* for more information on nonconformities.  
See LMC information memo *Land Use Nonconformities*.

Minn. Stat. § 462.357, subd. 1(e).

*Ortell v. City of Nowthen*, 814 NW 2d 40 (Minn. Ct. App. 2012).

- 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**

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.

## RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 1e(c),(d)-(j).

See LMC information memos, *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*, No. C6-98-2001 (Minn. Ct. App. Mar. 23, 1999)(unpublished decision).

*Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988).  
See LMC information memos and materials: *Taking the Mystery Out of Findings of Fact*. Sample Findings of Fact: City of Burnsville.

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

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 a 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.

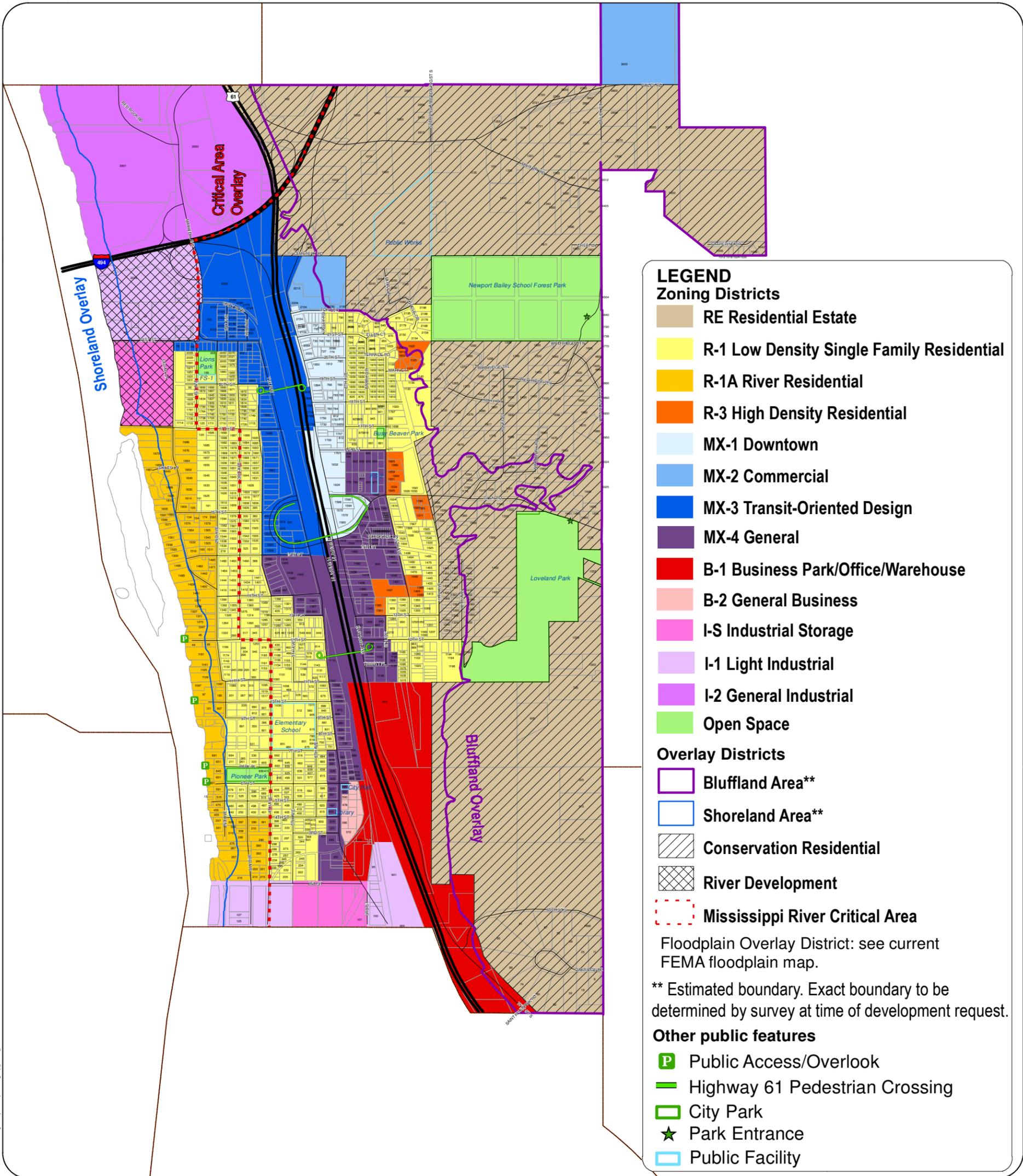
A land use ordinance may provide that each day the violation exists constitutes a separate offense. Multiple citations are consistent with public policy because it would be unjust to allow individuals to pay the fine for the original charge and finish a building project without abiding by the appropriate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

## III. Making a record and judicial review

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.



# City of Newport Zoning Map



### LEGEND

#### Zoning Districts

- RE Residential Estate
- R-1 Low Density Single Family Residential
- R-1A River Residential
- R-3 High Density Residential
- MX-1 Downtown
- MX-2 Commercial
- MX-3 Transit-Oriented Design
- MX-4 General
- B-1 Business Park/Office/Warehouse
- B-2 General Business
- I-S Industrial Storage
- I-1 Light Industrial
- I-2 General Industrial
- Open Space

#### Overlay Districts

- Bluffland Area\*\*
- Shoreland Area\*\*
- Conservation Residential
- River Development
- Mississippi River Critical Area

Floodplain Overlay District: see current FEMA floodplain map.

\*\* Estimated boundary. Exact boundary to be determined by survey at time of development request.

#### Other public features

- P Public Access/Overlook
- Highway 61 Pedestrian Crossing
- City Park
- ★ Park Entrance
- Public Facility

Data sources: City of Newport, Washington County, Metropolitan Council  
 Zoning Map Adopted June 20, 2013  
 Map printed July 16, 2014



2,000  
 Feet  
 1 inch = 500 feet

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# NEWPORT PLANNING & ZONING COMMISSION POLICY GUIDE



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## SECTION 1. SUMMARY OVERVIEW

The Planning and Zoning Commission of the City of Newport, Minnesota provides an open forum opportunity for citizen input and administrative review to guide in the creation, interpretation, and enforcement of local zoning ordinances and land use regulations under its jurisdiction. Minnesota State Statutes vest the local Planning Commission with certain mandatory duties. In addition, State Statute allows the City Council to prescribe additional duties in local ordinances. In most instances, unless noted in statute or ordinance, the Planning Commission serves in an advisory capacity only and makes summary recommendations to the City Council for final review and approval.

The Planning Commission recommends enforcement of, or changes to, zoning regulations and ordinances, and assists in the preparation of a Comprehensive Land Use Plan for the City. The Comprehensive Land Use Plan is an expression of the community's vision for the future and a strategic map to reach that vision. Comprehensive land use planning, on a 10-year cycle, is mandatory for cities inside the seven- county metropolitan area. This Comprehensive Land Use Plan 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. A Comprehensive Land Use Plan is an effective public policy document that can help a community:

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

## SECTION 2. PURPOSE

The purpose of this document is to outline the planning policy, define general duties, provide an operational set of governance procedures, and to establish a basic code of conduct for the Planning Commission of the City of Newport, Minnesota.

## SECTION 3. POLICY

It shall be the policy of the City of Newport to appoint Planning Commissioners and to operate and maintain a Planning Commission review board in order to discharge the City's normal duties and responsibilities in accordance with Minnesota Statutes and City Ordinances.

#### **SECTION 4. ADOPTION OF POLICY, WORK PROCEDURE & REPORT OF ACTIVITIES**

The Planning Commission, subject to City Council approval, shall adopt this policy and governance procedures, as outlined in this document, to be undertaken in its normal work activities within the exercise of its delegated powers and the performance of its official duties. Subject to City Council approval, this policy may be revised from time to time. Periodic reports of the Planning Commission's activities, meeting minutes, public hearings, resolutions, and recommendations shall be regularly submitted by the City's Administrative staff to the City Council for its review and disposition.

#### **SECTION 5. ANNUAL POLICY REVIEW**

Upon adoption, this policy shall be reviewed annually by the Planning Commission, and provided to newly appointed Commission members at the start of their respective terms. After policy approval, any changes or amendments agreed to by a supermajority vote of the Planning Commission shall be recommended to the City Council for adoption. In addition, the City Council may review this policy and adopt amendments as needed.

#### **SECTION 6. PLANNING COMMISSION, APPOINTMENT OF MEMBERS**

The Planning Commission shall consist of five (5) voting members appointed by City Council. The City Council shall review applications when vacancies exist and appoint Planning Commission members for a term of three (3) years, to be staggered in their terms of appointment.

- A. Positions for the Planning Commission shall be appropriately posted on the City's main website, City Hall's public bulletin board, or in other customary City official communication publications.
- B. The City Council shall review all applications for the Planning Commission and make appointments in accordance with its procedures.
- C. All Planning Commission members shall be residents of the City at the time of their appointment and during their tenure on the Commission.
- D. Planning Commission members who change their primary residence out of the boundaries of the City limits during their appointment term, or can no longer perform their official duties, shall suitably notify the Planning Commission and the City Council of such disqualification and must relinquish their position on the Planning Commission.
- E. Three consecutive unexcused absences from Commission meetings shall be deemed to constitute a resignation. The Chairperson shall report such absences to the City Council, which will make an appointment to fill the vacancy for the unexpired portion of the term.
- F. Planning Commission members are not bound by term limits, and upon request and good standing may, at the discretion of City Council, be appointed to serve in consecutive Commission terms.

#### **SECTION 7. ELECTION OF PLANNING COMMISSION OFFICERS**

Officers of the Planning Commission shall consist of a Chairperson and a Vice-Chairperson duly elected by the Planning Commission at the first meeting of the year. The terms for the Chairperson and Vice-Chairperson are one calendar year in length. Once the Vice-Chairperson has fulfilled his / her one-year term, he / she will then become Chairperson and the Commission shall make nominations for, and appoint, a new Vice-Chairperson.

## **SECTION 8. DUTIES OF PLANNING COMMISSION MEMBERS**

The Planning Commission members make up the governance body of the Commission. The duties and powers of the Planning Commission members shall be as follows:

### **A. Chairperson (Chair):**

1. To preside at all meetings of the Planning Commission.
2. To call special meetings of the Planning Commission in accordance with this policy guide.
3. To sign documents of the Planning Commission.
4. To see that all actions of the Planning Commission are properly taken.
5. To cancel or postpone any regularly scheduled meetings, as appropriate.
6. To invoke a reasonable time limit for speakers during any public hearing in the interest of maintaining focus and the effective use of time.
7. To provide for the selection of spokespersons to represent groups of persons with common interests during public meetings and hearings.
8. To order an end to disorderly conduct and direct law enforcement to remove disorderly persons from Planning Commission meetings or hearings.
9. To schedule a second official public hearing meeting or other continued meeting, in the event that a meeting or public hearing cannot be concluded by a reasonable hour in the judgment of the Chairperson.
10. The Chairperson has the responsibility to facilitate discussion by the Planning Commission. This may occur in a variety of ways, including:
  - a. Interpret and apply rules of procedure.
  - b. Decide whether motions are properly made.
  - c. Decide whether motions are in order.
  - d. Decide whether questions of special privilege ought to be granted.
  - e. Decide when to recognize speakers.
  - f. Call for motions or recommend motions.
  - g. Enforce speaking procedures.

### **B. Vice-Chairperson (Vice-Chair):**

During the absence, disability, or disqualification of the Chairperson, the Vice-Chairperson shall exercise or perform all the duties, and be subject to all the responsibilities, of the Chairperson.

### **C. Planning Commission Members:**

1. The general duties of the Planning Commission members are, but are not limited to:
  - a. Read the agenda to familiarize themselves with the business before the Commission meeting.
  - b. Make motions and calling (parliamentary) questions.
  - c. Ask clarifying questions.
  - d. Recommend policies and procedures.
  - e. Serve on special committees.
  - f. Fill in as temporary Chairperson or Vice-Chairperson.
  - g. Vote on agenda items, procedures, or resolutions before the Commission.
2. The Planning Commission members are expected to be impartial and apply the zoning ordinances and land use regulations equally among petitioners and applicants.

3. All members are expected to attend all called Planning Commission meetings or to give notice to the Chairperson in advance of any planned absences.
4. All members are to refrain from all activities that suggest favoritism or improprieties.
- D. Secretarial duties to be delegated to City's Administrative staff:
  1. To give or serve all notices required by law or by this policy guide
  2. To prepare the agenda for all meetings of the Planning Commission
  3. To inform the Planning Commission of correspondence relating to business of the Commission and to attend to such correspondence
  4. To be custodian of Planning Commission records
  5. To handle funds allocated to the Planning Commission in accordance with its directives, the law, and City regulations
  6. To take the minutes of all meetings of the Planning Commission for typing and filing into the appropriate minute book by City Staff
  7. To provide a record of minutes, recommendations, and resolutions to the City Council

### **SECTION 9. COMMISSION VACANCIES**

If a vacancy occurs among the members of this Planning Commission by any reason of death, resignation, disqualification, disability, or otherwise, notice of such vacancy shall be given to the City Council by the acting Chairperson or Vice-Chairperson of the Planning Commission.

- A. Resignations shall be made in writing to the Acting Planning Commission Chairperson and the City Council, stating the effective date of the resignation.
- B. Vacancies for Planning Commission members shall be appropriately posted on the City's main website, City Hall's public bulletin board, or in other customary City official communication publications.
- C. City staff shall then see that new appointments are made within a reasonable time by the City Council.

### **SECTION 10. REGULAR MONTHLY MEETINGS**

Regular monthly meetings of the Planning Commission shall be held at the Newport City Hall or other officially designated location at 6:00 PM on the second (2<sup>nd</sup>) Thursday of each month. At such meetings, the Planning Commission may consider all matters properly brought before the Planning Commission.

- A. Notifications for Planning Commission meetings shall be appropriately posted on the City's main website, City Hall's public bulletin board, or in other customary City official communication publications.
- B. A regular meeting may be cancelled or rescheduled by the Planning Commission at any prior meeting by the Acting Chairperson as long as there is no major business or public hearing scheduled before the Commission for that upcoming meeting.
- C. Any regular meeting falling upon a holiday shall be cancelled if not rescheduled.

**SECTION 11. MEETINGS AND THE OPEN MEETING LAW**

In accordance with the Minnesota Open Meeting Law, all official meetings of the Planning Commission shall be open to the general public for review and participation.

- A. An "official" Planning Commission meeting is any gathering, or simultaneous communication (via e-mail, telephone, or otherwise), between a quorum of Commission members for the purpose of considering the public business of the Planning Commission.
- B. Informal gatherings and communications, such as site visits, conference telephone calls, and electronic messages, may constitute an official meeting without proper public notification.
- C. The Planning Commission may exclude the public from its meeting only in certain very limited cases identified in the Minnesota Open Meeting Law.

**SECTION 12. SPECIAL MEETINGS**

Special meetings of the Planning Commission may be called by the Chairperson or Mayor, whom shall designate the time, place, and purpose of the meeting. Notice of special meetings must conform to the Minnesota Open Meeting Law.

- A. Written notice (by U.S. mail) of special meetings thereof shall be delivered to all Planning Commission members not less than three (3) days in advance of the special meeting except in the case of an emergency.
- B. An emergency meeting may be called by telephone at less than three days notice, but not less than one day notice (24 hours) by the Mayor only.
- C. Notice of all emergency meetings must be immediately posted on the City's website or City Hall's bulletin board as a minimum.

**SECTION 13. MEETING QUORUM**

In order for any Planning Commission meeting to be called to order, a quorum of three (3) Commission members must be present. During the course of a meeting, at least three (3) members must be present to consider and take action on any matter before the Commission.

In the absence of the Chairperson and Vice-Chairperson, the remaining members shall elect a Temporary Chairperson for the purpose of that respective meeting.

**SECTION 14. RULES OF PROCEDURE FOR PLANNING COMMISSION MEETINGS**

All meetings of the Planning Commission shall be conducted in accordance with the following Rules of Order. Any rule of order not covered by these meeting rules shall be governed by the most recent published edition of Robert's Rule of Order of Standard Parliamentary Procedure.

- A. Any resolution or motion, except a motion to adjourn, postpone, reconsider, table, or call the previous question, shall be reduced to writing if requested by the Chairperson.
- B. Any resolution or motion may be withdrawn at any time before action is taken on it.
- C. When a question is under debate, no other motion shall be entertained except a motion to: table, call for the question, act on the question, postpone, refer to committee, or amend. Motions shall take precedence in that order and the first two (table, call to question) shall be without debate.

- D. All motions shall be carried by a simple majority vote of the members present, except call for a motion to call the question, which must be carried by a two-third vote of the members present.
- E. Any member of the Commission may call for a roll call vote on any issue.
- F. Only members recognized by the Chairperson can make motions.
- G. Speaking without recognition of the Chairperson shall be cause for another member to call "point of order" and the member speaking out of turn must relinquish the floor.
- H. "Call for the question" or "previous question" is a motion and must be seconded. It is not debatable and must be voted upon immediately. A two-thirds majority is necessary to call the previous question. If the two-thirds majority is given, the motion or question on the floor must be immediately put to a vote without debate except for a motion to table.
- I. "Question" is not a motion but only an indication to the Chairperson that the person making statement is ready to have the motion or question put to a vote.
- J. The Chairperson may direct that a motion be divided into two or more separate parts that can be voted on separately, if this is requested by a Planning Commissioner.
- K. Members must limit their remarks to the subject matter being discussed and shall not be repetitious. The speaking order shall be at the discretion of the Chairperson; however, all members shall be allowed to speak in their turn. Each member, while speaking, shall avoid all personal, indecorous, or sarcastic language.
- L. These rules shall not be repealed, waived, or amended except by a simple majority vote of the Commission.
- M. Any member may appeal to the City Planning Commission as a whole from a ruling of the Chairperson. If the appeal is seconded, the appealing member may speak first on the reason for his/her appeal. General discussion can then take place on the appeal before a vote. The appeal shall be sustained if it is approved by a simple majority of the members present.
- N. If a motion is unnecessary, unsuitable for consideration, and/or proposed at an inopportune time for the purpose of delaying or embarrassing others, the Chairperson may rule the motion out of order on her/his own initiative.

## **SECTION 15. REGULAR PROCEEDINGS**

- A. At any meeting of the Planning Commission, the following shall be the regular order of business:
  - 1. Call to Order
  - 2. Roll Call of Meeting Participants
  - 3. Approval of the Minutes of the Preceding Meeting(s)
  - 4. Appointments with Commission
  - 5. Staff Reports and Other Business
  - 6. Committee Reports/City Council Actions
  - 7. Adjournment
- B. The order of business may be varied by the Chairperson, but no public hearings shall be held at an earlier time or place than specified in the notice of hearing.
- C. The following procedures will normally be observed for matters before the Planning Commission, except for public hearings, which follow the procedures detailed in Section 19. However, they may be rearranged by the Chairperson for individual items if necessary for the expeditious conduct of business:

1. City staff presents report and makes recommendation (if any).
  2. The Planning Commission may ask questions regarding the staff presentation and report (if any).
  3. Proponents of the agenda item may make a presentation (if any).
  4. Any opponents may make presentations (if any).
  5. Applicant may make rebuttal of any points not previously covered (if any).
  6. Planning Commission may ask any questions it may have of the proponents, opponents, or staff (if any), and then takes a vote.
- D. Each formal action of the Planning Commission required by law, rules, regulations, or policy shall be embodied in a formal vote duly entered in full upon the meeting minutes after an affirmative vote as provided in Section 5 hereof and may be accompanied by written findings of fact.
- E. Unless agreed to by a 2/3 vote of the Planning Commission, no agenda items shall be taken up at a Planning Commission meeting after 10:00 PM.

#### **SECTION 16. MEETING AGENDA AND RULES FOR SUBMISSION**

- A. Purpose. The Agenda of the Planning Commission meeting is required and serves two important functions. First, it focuses Planning Commission deliberations by determining what matters will be considered at the meeting, when each matter will be considered, and the context in which each matter will be considered. Second, it serves as the public's only guide to what will be considered at the meeting, how the matter be dealt with, who will participate in the discussion, and when public comment may be made. The Agenda should be prepared so as to best achieve these functions.
- B. Deadlines. The Agenda shall be prepared by City Administrative staff and shall be closed at noon five business days (5) prior to the meeting date.
- C. Submissions. Any Planning Commission member can place an item on the Agenda by instructing the City staff responsible for agenda preparation. No item shall be placed on the Agenda unless the item is expressed in such a way as to clearly show the subject matter involved.
- D. Delivery of Agenda to Members. At least three (3) calendar days before the day of the meeting, City staff shall provide each Commission member a meeting Agenda and all materials related to items on the Agenda (e.g., petitions, applications, plans, staff report, written comments received).
- E. Agenda Additions During Regular Meetings. Additional items may be added to the Agenda at a Planning Commission meeting subject to approval by a simple majority vote of the members present. The additional Agenda items may be discussed, but no action may be taken if any member objects.
1. If a new item of business proposed to be added to the Agenda requires staff review (such as conditional use permits (CUPs), ordinance amendments, preliminary subdivision plans, and subdivision review procedures and guidelines), involves quasi-judicial procedures (such as a request for a hardship variance from Subdivision or Zoning Ordinance standards), or involves substantive matters of potential public interest (such as the Comprehensive Land Use Plan, or other major policies), the Commission may add the item to the Agenda only for purposes of referring it to the staff or a Commission committee, or scheduling it for consideration at a later public meeting (as appropriate).

- F. Discussions Limited to Agenda. The Commission may not discuss the substance of any matter or take any final action on any item except at a meeting where the item is included on the distributed or properly amended Agenda.
- G. Order and Form of the Agenda. The Agenda organization shall generally conform to preceding Section 15. In addition, the Agenda shall generally organize matters to be addressed at the meeting so as to best promote opportunities for effective public input and the timely and efficient performance of Planning Commission responsibilities. Items of business likely to attract the attendance of many interested persons (such as those involving notice to adjoining property owners and those involving other public notice) should generally be placed early on the Agenda, thereby, minimizing the time citizens must wait for consideration of the item that brought them to the meeting. The Agenda should identify (by name and/or role/and or resolution number) the leading agenda participants at each step of the Planning Commission's review and indicate the step at which interested persons will have the opportunity to comment on the item.

### **SECTION 17. VOTING AND RECOMMENDATIONS**

At all meetings of the Planning Commission, each Commission member attending, with the exception of the City Council liaison member, shall be entitled to cast one vote on matters before the Planning Commission.

- A. Votes shall be cast by open voice vote, except when a roll call vote has been approved. When a roll call vote is taken, each Planning Commission member has up to one minute to cast their vote or abstain from voting.
- B. In the event that any Planning Commission member shall have a conflict of interest, as determined by either self-disclosure or on advice from the City Attorney, concerning a matter then before the Planning Commission, he/she shall disclose his/her interest and be disqualified from voting upon the matter only, and the staff administrative secretary shall so record in the minutes that no vote was cast by such member.
- C. The affirmative vote of a simple majority of members in attendance shall be necessary for the adoption of any resolution or other voting matter, unless specifically required by a 2/3 vote.
- D. The results of any vote tally shall be recorded by the City Administrative staff, listing those voting Aye and those voting Nay.
- E. All final recommendations shall be sent to the City Council by means of written meeting minutes, and shall include in the record the division of votes on each recommendation or resolution.

### **SECTION 18. MEETING MINUTES**

- A. Purpose. The minutes of the Planning Commission's meetings represent the official record of the Commission's deliberations and actions. As such, they record the Planning Commission's vote on actions and the reasons for the vote. The minutes also communicate background on the Planning Commission's recommendations to the City Council, provide perspective on issues, and provide a historical record of Commission proceedings. Furthermore, State law requires the Commission to keep full and accurate minutes of all official meetings, and requires that those minutes be retained and be available for public inspection by any person subject to the State Public Records Law and the City records retention schedule.

- B. Duties of Staff Preparing Minutes. City Administrative staff shall prepare minutes of all Planning Commission meetings. The meeting minutes shall state:
1. Which members were present and absent, and whether absent members were excused or not excused.
  2. A summary of staff and committee reports and recommendations, applicants' presentations, public comments, and the Planning Commission's discussion on each item.
  3. The content of each principal motion before the Planning Commission, the identity of the person who made and seconded the motion, and the record of the vote on the motion (identifying the vote count and, unless the vote was unanimous, the names of those voting for or against the motion). If the motion called for or recommended adoption of an ordinance or resolution, or the acceptance of a report, the minutes shall also include a copy of the ordinance, resolution, or report.

## **SECTION 19. PUBLIC HEARINGS**

- A. A public hearing is a noticed, official hearing, the express and limited purpose of which is to provide an equitable opportunity for the public to speak on matters before the Planning Commission.
- B. For certain matters considered by the Planning Commission, a requirement that the Planning Commission conduct a public hearing is prescribed by State Statute, the City's Municipal Code of Ordinances, or by City policy. The Planning Commission, however, may elect to conduct a public hearing that is not specifically required, if the Planning Commission determines that due to the unique nature of the matter, a hearing is advisable.
- C. The Planning Commission may neither deliberate nor take a substantive vote during a public hearing, but may ask questions of speakers for the sake of clarification.
- D. The Planning Commission, upon resuming their regular meeting after the close of the public hearing, may take action upon the matter discussed at the public hearing.
- E. Conduct of Persons Before the Planning Commission:
1. During all public hearings required by State law or City ordinance, members of the public shall be given reasonable opportunity to speak. In order to promote meeting efficiency, the Chairperson may discourage duplicative testimony and may place reasonable time limits on the amount of time that individuals have to speak. Comments should be addressed to the item before the Planning Commission. Where a comment is irrelevant, inflammatory, disruptive or prejudicial, the Chairperson may instruct the Planning Commission to "disregard" the comment, which nevertheless remains in the public record.
  2. During all regular and special meetings of the Planning Commission, the public may be present, but shall remain silent unless specifically invited by the Chairperson to provide comment.
  3. During all proceedings, members of the public have the obligation to remain in civil order. Any conduct which interferes with reasonable rights of another to provide comment, or which interferes with the proper execution of Commission affairs, may be ruled by the Chairperson as "out-of-order" and the offending person directed to remain silent. Once, having been so directed, if a person persists in disruptive conduct, the Chairperson may order the person to leave the Planning Commission meeting or hearing. Where the person fails to comply with an order to leave, the Chairperson may then call upon civil authority to

physically remove the individual from the chamber for the duration of the hearing or deliberation on that item.

4. The Chairperson of the Planning Commission may impose additional limits or rules upon members of the public as permitted by Section 15.

F. Additional Rules of Procedure for Public Hearings:

1. Public Hearing Format. Public hearings shall be conducted in the following manner:

- a. The Chairperson calls the public hearing to order and declares the time of opening.
- b. It is the intent of the Planning Commission to open all public hearings at the predetermined and published time. From a practical standpoint, not all hearings can be opened at their designated time. The Chairperson may delay the start of a hearing until the business at hand is acted upon, in any manner, by the Planning Commission. However, in no circumstances can a hearing be opened prior to the predetermined and published time.
- c. The Chairperson or his/her delegate reads from the hearing notice, the details on the hearing sufficient to provide the public a general understanding of the purpose and procedures for the hearing, and the fact that the hearing is their exclusive or primary opportunity to provide input to the City on the subject.
- d. Staff and/or a consultant may make a presentation or report on the subject matter for the hearing.
- e. The applicant (if any) may make a presentation or report on the subject matter for the hearing.
- f. The Chairperson asks Planning Commission members if they have questions of the staff or consultant, if any.
- g. The Chairperson requests a motion and second to open the public hearing.
- h. The Chairperson announces that input will be received from the citizens, requesting that each speaker provide a name and address, noting any applicable time limits for comment from individual members of the public, any other applicable rules, and explaining the procedure for enforcement of such rules.
- i. After members of the public have spoken, the Chairperson requests a motion to:
  - i. Close the public hearing, and the Planning Commission votes on the motion. Once the vote is taken, the hearing is closed for the record.
  - ii. Continue a public hearing. If the Planning Commission votes to continue the hearing, the Chairperson shall, in consultation with City staff, select and announce a time and date certain for the continued public hearing. No additional publication or notice requirements are needed if a hearing is continued to a later date. However, no public hearing may be continued more than once without re-notice and publishing the time, date, and location of the hearing.
- j. The Planning Commission addresses the subject matter through deliberation, questions to citizens and staff, and reactions and statement of position on the subject.
- k. If the public hearing has been closed, the Planning Commission may take action on the application before them. The Commission may formulate a recommendation which outlines the parameters under which an approval would be granted. The reasons and conditions shall be stated in the motion or resolution for approval or denial.

- I. Continuation of an action may occur in the event insufficient information is present to make a decision. The Planning Commission shall delineate the missing information before continuing the item.

**SECTION 20. COMMITTEES**

- A. The Chairperson may appoint ad hoc committees unless the City Council shall otherwise direct. The Chairperson shall be an additional voting member of all committees. The Chairperson may appoint a Planning Commission member to chair each ad hoc committee.
- B. All committees shall report back to the Planning Commission with recommendations.
- C. Nothing in the foregoing shall be construed as waiving the ability of the Planning Commission at any time to increase or curtail the duties of any committee and/or to direct or control its actions.

**SECTION 21. AMENDMENTS**

This policy on general governance, rules of procedure, and duties and responsibilities may be amended at any meeting of the Planning Commission provided that notice of said proposed amendment is given to each member in writing at least five (5) days prior to said meeting. All amendments are subject to City Council review and approval before they take effect.