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RISK MANAGEMENT INFORMATION

LAND USE ORDINANCE MISTAKES

Minnesota cities spend millions of dollars on land use claims each year. To help avoid land use problems, make sure your city is starting out on solid ground with consistent and legal ordinances.

Cities should periodically review zoning and subdivision ordinances to ensure they are consistent with recent laws, court decisions, staff interpretations, unwritten city policies (practices), comprehensive plans, and other community goals. The legal foundation for city land use ordinances in Minnesota is the Municipal Planning Act (*Minnesota Statutes,* sections 462.351 - .365), which was passed by the state Legislature in 1965 and authorizes cities to adopt land use ordinances. The Act has been amended many times over the years. The purpose of the Act is to provide municipalities with the necessary powers and a uniform procedure for conducting and implementing municipal planning.

City leaders should make sure their zoning and subdivision ordinances are consistent with the Municipal Planning Act and other state and federal laws. Review ordinances periodically, and consult the city attorney about any changes that may be needed. There are a few common mistakes to look out for.

Time limits

In 1995, Minnesota joined about two dozen states in adopting an "automatic approval" statute (*Minnesota Statutes*, section 15.99). Often referred to as the "60-day rule," the statute provides that a municipality must approve or deny a written request related to zoning within 60 days, or it is deemed approved. It's important to note that the final decision of the city council must be made within those 60 days – not advisory or appealable decisions made by planning commissions or other bodies. Some city zoning ordinances have built-in time limits for acting on requests that exceed the timeline permitted by the 60-day rule. Timelines should either not be included in land use ordinances or should be changed to conform to the 60-day rule.

More Information

Learn more about the 60-day rule in:

- *The 60-Day Rule: Minnesota's Automatic Approval Statute*

Voting thresholds

In 2001, the Legislature changed the Municipal Planning Act requirements regarding the vote of the city council necessary to adopt or amend a zoning ordinance. The prior law was that a supermajority (two-thirds) vote of the council was needed to adopt or amend a zoning ordinance.

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

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The statute was changed so that a simple majority of the council is all that is required with one exception – a two-thirds vote of the council is required to change the zoning classification of a district from residential to either commercial or industrial. City land use ordinance provisions that have other supermajority requirements are probably not consistent with state law and should be removed.

Land use fees

Several times in the last 10 years, the Legislature has amended and added provisions to the Municipal Planning Act concerning land use fees. Land use fee provisions and practices under old zoning ordinances may not meet the standards laid out in current state law. Under current law, a city may prescribe fees sufficient to defray the costs incurred in reviewing, investigating, and administering a land use application. These fees must be fair, reasonable, proportionate, and have a nexus to the actual cost of the service.

Land use fees generally must be established by ordinance. All cities collecting land use fees are required to adopt management and accounting procedures to ensure that fees are maintained and used only for the purpose for which they are collected. Cities should review, evaluate, and adapt their land use fees on an annual basis to make sure the fees are fair, reasonable, and proportionate to the cost of the service.

The Legislature has also amended provisions in the state subdivision statute concerning so-called park dedication fees. Among other things, park dedication fees must be placed in a special fund to be used only for acquisition or improvement, and not for ongoing operation or maintenance, of parks and recreational facilities.

More Information

Learn more about the statutory requirements regarding park dedication fees in:

- *Subdivisions, Plats, and Development Agreements*

Nonconformities

Nonconformities are uses, structures, or lots that do not comply with the current zoning ordinance. Legal nonconformities are those that were legal when the zoning ordinance or amendment was adopted. Legal nonconformities generally have a statutory right to continue.

In 2004, the Legislature expanded the continuance rights of legal nonconformities to include repair, replacement, restoration, maintenance, or improvement, but not expansion. The 2004 legislation also altered the so-called 50 percent rule – which provided that continuance rights could be lost if the nonconformity is destroyed by fire or other peril to the extent of greater than 50 percent of its market value – by creating an exception to the rule if a building permit is applied for within 180 days of the property damage.

Some city zoning ordinances may have provisions to phase out nonconformities over time through a process called amortization. But in 2001, the Legislature prohibited amortization, except for adult uses.

Variance standard

Many zoning ordinances were drafted with provisions for granting variances that may differ from the standard provided in the Municipal Planning Act. Under the Act, variances are permitted departures from strict enforcement of the zoning ordinance as applied to a particular piece of property if the enforcement would cause the owner "practical difficulties." Practical difficulties is the legal standard set forth in *Minnesota Statutes*, section 462.357, subdivision 6. (In 2011, the legislature changed the name of the state standard from undue hardship to practical difficulties.) Minnesota cities must apply the state statutory practical difficulties standard when considering applications for variances.

The state statute specifically defines practical difficulties to mean that (1) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance, (2) the plight of the landowner is due to circumstances unique to the property not created by the landowner, and (3) the variance, if granted, will not alter the essential character of the locality. The statute provides that economic considerations alone shall not constitute practical difficulties. State statute further provides variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan.

Conditional uses

Conditional uses are specific land uses designated in a zoning ordinance as allowed in a zoning district so long as certain standards provided in the city's ordinance are met. Conditional use permits (CUPs) are authorized under *Minnesota Statutes*, section 462.3595.

The statute provides that the standards and criteria provided in the ordinance shall include both general requirements for all conditional uses, and insofar as practicable, requirements specific to each designated conditional use. If a particular use is not designated by ordinance as a conditional use, then arguably the city has no authority to issue a CUP. Many city zoning ordinances could do a better job of meeting the statutory requirement of detailing general and specific standards and criteria for designated conditional uses.

Reasonable conditions relating to the ordinance standards may be attached to a CUP based upon factual evidence contained in public record. State statute provides that a CUP remains in effect as long as the conditions are observed. The attorney general has found that time limits, such as sunset provisions or automatic annual review, are not consistent with state law, explaining that cities may not enact or enforce provisions that allow a city to terminate CUPs without regard to whether the conditions agreed upon are observed. If a city wishes to place time constraints on particular uses, then the appropriate zoning tool is an interim use permit, rather than a CUP.

Manufactured homes

Many cities have ordinances that conflict with state law concerning the location of manufactured homes on residential lots. The Municipal Planning Act provides that no city zoning regulation may prohibit manufactured homes that are built in conformance with the manufactured home building code and comply with all other zoning ordinances. Cities can apply architectural and

aesthetic requirements to manufactured homes only if the same requirements also apply to all other single-family homes in the zoning district.

Cities cannot require a manufactured home that complies with the manufactured home building code to comply with any other building, plumbing, heating, or electrical code, or any construction standards. In contrast, manufactured or "mobile" homes that do not comply with the manufactured home building code are not covered by the state statutory protections and may be restricted or prohibited within a city. Homes built before July 1, 1972, most likely do not comply with the code. Existing noncompliant mobile homes may have continuance rights as legal nonconformities.

Many cities also have ordinances that are inconsistent with state law and rules concerning manufactured home parks. Under the Municipal Planning Act, a manufactured home park is by law a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Manufactured home parks are licensed by the State Department of Health, and cities are prohibited from licensing manufactured home parks. In their zoning ordinances, cities should establish CUP standards for manufactured home parks that are consistent with the state licensing rules.

There are many other ways in which a city land use ordinance may improperly deviate from state law. This list is by no means exhaustive, but it can be used by cities as a tool to get started in reviewing and updating land use ordinances. Cities should work closely with their city attorney, zoning administrator, and planning commission to review land use ordinances for consistency with current law or practice.

Your League Resource

LMCIT offers land use consultations, training, and information to members. Contact Jed Burkett, Loss Control Land Use Attorney, at (651) 281-1247 or jburkett@lmc.org, or visit the land use section of the League's website.

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