



INFORMATION MEMO

Subdivision Guide for Cities

Learn the framework of municipal subdivision regulation. Find guidance on subdivision ordinance drafting, adoption, administration and enforcement. This memo covers development agreements, platting, 60-day rule and 120-day rule plus shoreland management and subdivision ordinances. It addresses city costs, interim ordinances (moratoriums) variances, park dedication and much more.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 1a, 2a.](#)

[Minn. Stat. § 462.358, subd. 2a.](#)

I. The purpose of subdivision regulations

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

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

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

A. Ensuring safe and functional communities

Subdivision standards keep communities safe and functional in many ways. Some typical examples include:

- Preventing the flooding of basements by requiring the subdivider to grade appropriately for the subdivision and install curbs, gutters, and stormwater facilities.
- Preventing car accidents by requiring the subdivider to provide for streets of an appropriate width and design for expected levels of traffic circulation.
- Keeping pedestrians safe by requiring the installation of sidewalks, street lights, and trails.
- Preventing cracked foundations, soil erosion and soil loss, and washed-out streets by requiring the developer to perform soil suitability tests.

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

B. Ensuring enjoyable and livable communities

Subdivision standards keep communities enjoyable and livable in many ways. Some typical examples include:

- Requiring lots to be a suitable size for the houses built upon them and for the provision of yards and side yards that avoid crowding and afford privacy.
- Requiring that streets and facilities in new areas harmonize with and complement existing features.
- Requiring the subdivider to provide parks, trails, and other public places for the enjoyment of residents.
- Requiring the subdivider to meet design standards that create a harmonious and aesthetically pleasing subdivision.

C. Preserve and protect vital natural resources.

Subdivision standards help the city preserve and protect vital natural resources. Some typical examples include:

- Requiring the preservation of trees, woodlands, and significant vegetation during the time of construction, and replanting after construction.
- Setting standards for the location, size, and sealing of wells, septic tanks water and/or sewer systems to avoid pollution problems.
- Preserving and encouraging green and open space by setting standards for lot layout, such as requiring cluster developments.
- Requiring preservation of important wetlands during the grading and construction process.
- Requiring erosion and sediment control during construction, and regulating grading of the development to minimize the potential for soil loss.

For each development built within a city on bare ground there are many possibilities for how the product will look and interact with the surrounding city environs. A 20-acre development can be subdivided a myriad of ways—to feature tightly clustered town homes surrounded by open space; 20 houses on one-acre lots on a straight grid pattern; or a middle ground of 10 houses, featuring cul-de-sacs and a shared park. Street patterns within the same 20 acres may also vary greatly, providing for cul-de-sacs and winding lanes, or broad heavy volume streets connected by feeder streets and alleys.

If a city does not adopt subdivision regulations, the city's authority to control the development of the community is limited at best. Without city subdivision regulations, developers do not have any constraints on the subdivision of land and location of streets and utilities in their developments.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 10.](#) [Minn. Stat. § 473.121, subd. 2.](#) [Minn. Stat. § 473.865.](#) [Minn. Stat. § 473.859, subd. 4.](#)

Section III-C-2 *Metropolitan Council requirements and Metropolitan Planning Act.*

[Minn. Stat. § 462.352, subd. 12.](#)

[Minn. Stat. § 462.352, subd. 12 \(1\).](#)

[Minn. Stat. § 462.352, subd. 12 \(2\).](#)

[Minn. Stat. § 462.352, subd. 12 \(3\).](#) [Minn. Stat. § 462.352, subd. 12.](#)

In these situations, developers may be tempted to maximize their potential profits at the expense of quality. For example, they may do this by creating too many small lots for sale, developing streets that are cheaper but too narrow and unsafe, and even building homes on inappropriate soils where flooding or erosion may occur.

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

It is important to note, however, that state law does not require cities outside the metropolitan area to adopt subdivision regulations. Metropolitan cities, which includes all cities in the counties of Anoka, Carver, Dakota (excluding the city of Northfield and Cannon Falls), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington, must adopt subdivision regulations under the Metropolitan Land Planning Act.

II. Applicability of city subdivision regulations

Generally, city subdivision regulations will apply to most land divisions a city encounters. The subdivision regulations govern all separations of “areas, parcels, or tracts of land” under single ownership into two or more “parcels, tracts, or lots.” The subdivision regulations may even apply to long-term leasehold interests, when the lease agreement necessitates the creation of streets or alleys for residential, commercial, industrial, or mixed use.

A. Certain types of subdivisions exempted by state statute

A few divisions of land are not subject to a city’s subdivision authority. The following are excepted under state statute:

- Separations where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses.
- Separations where all the resulting parcels, tracts, lots, or interests will be five acres or larger in size for commercial and industrial uses.
- Cemetery lots.
- Court ordered divisions or adjustments.
- Lot consolidation, since subdivision refers only to separation of land.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 1a.](#)

[A.G. Op. 59A-32, \(Nov. 4, 1977\).](#)

[A.G. Op. 59a-32, \(Dec. 1, 1972\).](#)

[Minn. Stat. § 462.36, subd. 3.](#)

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

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

[Section III-C-2 *Metropolitan Council requirements and the Metropolitan Land Planning Act*.](#)

A developer may still choose to submit these types of divisions to the city's regulatory subdivision process. However, it appears cities are without authority to require them do so. As a result, the city attorney should be consulted on these applications.

B. Extra-territorial application

When neighboring towns have not adopted their own subdivision regulations, a city can extend the application of its subdivision regulations to unincorporated territory (a town) located within two miles of its limits in any direction. These regulations would supersede any county subdivision regulations. A city cannot extend its subdivision regulations into a neighboring incorporated city if the neighboring city has adopted subdivision regulations. When two cities that do not share a common border have boundaries less than four miles apart, each city is authorized to control the subdivision of land an equal distance from its boundaries within this area. The city must pass a resolution if it opts to extend the application of its subdivision regulations.

When a city opts to extend its subdivision regulations beyond its borders, the city must file copies of all resolutions approving subdivisions in the extra-territorial area with the clerk of the affected town.

C. Interactions with and differences from the city's zoning ordinance

Much like a zoning ordinance, a city subdivision ordinance can be a powerful tool to help cities implement their comprehensive plan. Subdivision ordinances may cover similar topics and are often confused with zoning regulations. However, there are important differences between zoning regulation and subdivision regulation. Ideally, a city will have both in place, though this is not required by state statute for cities outside of the metropolitan area.

Subdivision and zoning ordinances are similar in that they seek to regulate private use of land. Zoning regulations and subdivision regulations may both impose regulations as to lot size, location and improvements. Subdivision is different from the more familiar zoning in that it does the following:

- Typically regulates projects that are larger in scope, contemplating eventual multiple owners of the newly created lots.
- Is usually imposed at the initial development phase of a project, whereas zoning is applicable through the development phase of a subdivision and through the life of the completed subdivision.

RELEVANT LINKS:

[Minn. Stat. §§ 462.351 to 462.365.](#)

[Minn. Stat. § 462.353, subd. 3.](#)

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

[Minn. Stat. § 462.358, subd. 2a. Minn. Stat. § 462.353, subd. 4.](#)

[Section V-A-2-b *Reimbursement for city review costs.*](#)

[Minn. Stat. § 462.358, subd. 3b. Section V *Subdivision ordinance administration.*](#)

III. Drafting a subdivision ordinance

Subdivision regulations can only be imposed by a local ordinance adopted in accordance with the Municipal Planning Act.

A. Appropriations and expenditures

Cities may use any funds not dedicated by law to other purposes for funding the drafting of a subdivision ordinance. Cities may accept grants and gifts to finance planning and land use activities and may contract with federal and state agencies or other public and private agencies for drafting assistance.

B. Typical subdivision ordinance provisions and concepts

Subdivision regulations vary widely from city to city, depending on the development goals and plans of the city. For example, one city may value preservation of agricultural space, while another city values the creation of affordable housing. One city may prefer “cluster” developments, while another prefers large single-owner, one-acre lots. These different values will be reflected in the subdivision regulations the city develops. Despite this, subdivision ordinances have many commonalities related to structure and form. This section discusses some common features of subdivision ordinances.

1. Definitions

A definition section is essential to any subdivision ordinance. Terms and concepts that may be reasonably subject to more than one interpretation should be explicitly defined in this section. Graphics may also be included to further clarify difficult concepts.

2. Reimbursement for city review costs

City review of a proposed subdivision application may involve significant staff time as well as consulting services of planners, attorneys, engineers, and other professionals. Cities are authorized to seek reimbursement for the city’s costs for review, approval, and inspection of a project.

3. Preliminary/final plat approval process

Cities must establish a process for review of subdivision applications in the ordinance. Most cities have a two-part process involving preliminary approval and final approval. However, state law does permit cities to combine these two approval processes.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 3a.](#)

[Minn. Stat. § 505.01, subd. 3\(f\).](#) Section V- I *Platting requirements.*

[Minn. Stat. § 462.358, subd. 6.](#)

Section V-G *Variances.*

[Minn. Stat. § 462.358, subd. 2b\(a\).](#)

Section VII *Land dedication for public facilities.*

[Minn. Stat. § 462.358, subd. 2b\(c\).](#) Section VII-A *Cash payment in lieu of land dedication.*

[Minn. Stat. § 462.358, subd. 2a.](#) Section VI *Public improvement requirements.*

Section VI-B *Development agreements.*

4. Platting

A plat is a scale drawing of one or more parcels of land that shows the location and boundaries of the parcels' lots, blocks, parks, road, and other significant features. Cities may require that all subdivision of land be platted and must require the platting of larger subdivisions.

5. Variances

Like zoning, cities may issue variances from their subdivision ordinance. Cities may issue variances where an unusual hardship related to the land exists. If a city wishes to allow variances, the process and criteria must be established in the local ordinance. State statute does not set a standard for issuing variances.

6. Design guidelines

Design guidelines in a subdivision ordinance allow a city to set community standards for issues such as street lighting, street design and width, drainage, and lot sizes and arrangement.

7. Land dedication

Cities may by ordinance require that developers dedicate a reasonable portion of land within the development to public use for such things as streets, utilities, drainage, and parks and recreational facilities.

a. Park dedication fees

In lieu of dedication of land for park, recreational, and open space purposes, cities may require developers to pay to the city cash fees. The city must use the cash fees only to acquire recreational, park, or open space land off-site from the development. The fees cannot be used for ongoing maintenance.

8. Required improvements and development agreements

Cities may condition approval of a subdivision upon the developer's agreement to construct and provide needed public improvements such as streets, utilities, and similar improvements. This agreement should be formalized in a written development agreement.

9. Environmental concerns and natural resource protection

Many cities utilize their subdivision ordinance to preserve trees, soils, wetlands, and other natural features during the development process.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 3b.](#)

[Minn. Stat. § 505.03, subd. 1.](#)

Section V-H *Minor subdivisions.*

[Minn. Stat. §§ 462.351 to 462.365.](#)
[Hubbard Broadcasting, Inc. v. City of Afton](#), 323 N.W.2d 757, (Minn. 1982). [DI MA Corp. v. City of St. Cloud](#), 562 N.W.2d 312 (Minn. Ct. App. 1997.). [Nordmarken v. City of Richfield](#), 641 N.W.2d 343 (Minn. Ct. App. 2002).

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

[Minn. Stat. § 462.358, subd. 2a.](#)

[Minn. Stat. § 462.358, subd. 1a.](#)

[Minn. Stat. § 462.358, subd. 3a.](#)

Where development requires the removal of natural features, cities may require replacement or other mitigation.

10. Minor subdivisions

State statute allows cities to adopt ordinance provisions that consolidate the preliminary and final plat approval process. Sometimes this is referred to as a “minor subdivision.” State statute also allows cities to approve subdivisions without requiring the expense of a formal plat, in instances where the subdivision of land results in less than five lots that are more than 2 ½ acres in size. This is also sometimes called a “minor subdivision.” Cities may opt to do one or both in their ordinance.

C. Legal standards in drafting subdivision ordinances

City subdivision ordinances may differ greatly from city to city to reflect the concerns and development goals of the city. However, all city subdivision ordinances must conform to legal standards in state and federal statute. In addition, cities’ ordinances must be consistent with state and federal court rulings.

1. Municipal Planning Act

All city subdivision authority is granted to cities by and subject to the Municipal Planning Act. Ordinances may vary from city to city, but all must comply with both the substantive and procedural requirements contained in the Municipal Planning Act.

In addition, cities, including home rule charter cities, cannot adopt local ordinances that contradict the explicit provisions of the Municipal Planning Act.

The Municipal Planning Act contains numerous directives to cities on drafting a subdivision ordinance. These include but are not limited to the following requirements:

- The subdivision regulations must be consistent with the city’s official map and zoning ordinance.
- The subdivision ordinance may provide for different types or classes of subdivisions, but the regulations within each type or class must be uniform.

RELEVANT LINKS:

Section V-I *Platting requirements*.
[Minn. Stat. § 462.358, subd. 3a.](#)
Section V-I *Platting requirements*.
[Minn. Stat. § 462.358, subd. 3b.](#)
Section V-A *Process for adoption*.

[Minn. Stat. § 462.358, subd. 2b, 2c.](#)

[Minn. Stat. § 473.121, subd. 2.](#)

[Minn. Stat. § 473.865.](#)
[Minn. Stat. § 473.859, subd. 4.](#)
[Metropolitan Council.](#)
[Metropolitan Council Local Planning Handbook.](#)

[Minn. Stat. § 103F.121.](#)
[Minn. R. 6120.5000 et al.](#)
[Floodplain Management Ordinances MN DNR sample](#)
[MN DNR Floodplain Management.](#)

[Minn. Stat. § 103F.335.](#)
[MN DNR: Wild and Scenic Rivers Program.](#)

- The subdivision ordinance must require plats for subdivisions that create five or more lots that are 2 ½ acres or less in size.
- All plats must conform to the technical requirements found in Minn. Stat. ch. 505.
- The subdivision ordinance must require that a complete subdivision application for a preliminary plat be approved or disapproved within 120 days, unless the city and the applicant have agreed to an extension.

In addition, land dedication requirements are subject to numerous additional directives as discussed in section VI of this memo.

2. Metropolitan Council requirements and the Metropolitan Land Planning Act

Metropolitan cities are subject to the Metropolitan Land Planning Act. Metropolitan cities include all cities in the counties of Anoka, Carver, Dakota (excluding the city of Northfield and Cannon Falls), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington. The Act requires metropolitan cities to submit copies of their subdivision ordinances to the Metropolitan Council for information purposes within 30 days following adoption. A metropolitan city may not adopt a subdivision ordinance that conflicts with the metropolitan system plans.

3. State law provisions related to natural resource protection and floodplains

In cities that contain certain natural resources such as lakes and rivers, or are located in a floodplain, the subdivision ordinance must also conform to the following state standards:

- Floodplain requirements: State law sets minimum requirements and standards for development in flood plains. City subdivision ordinances must be consistent with state standards to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.
- Wild and scenic rivers development requirements: Cities with shoreland located within the Minnesota Wild and Scenic Rivers System are subject to additional state law restrictions when developing a subdivision ordinance. Subdivision ordinances in these cities must comply with minimum state standards set by the commissioner of Natural Resources.

RELEVANT LINKS:

[Minn. Stat. § 103F.221.](#)
[Minn. R. 6120.2500 – 3900.](#)

[Shoreland Management Model Ordinance MN DNR model.](#)

[Shoreland Management Program, MN DNR.](#)

[Minn. Stat. § 462.355, subd. 1.](#)

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

[LMCIT Land Use Loss Control.](#)

[Minn. Stat. § 462.352, subd. 14.](#) [Minn. Stat. § 462.358, subd. 1a.](#)

[Minn. Stat. § 462.352, subd. 14.](#)

[Minn. Stat. § 462.358, subd. 1a.](#)

- Shoreland development requirements: For cities that contain shoreland, state regulations control the use and development of shorelands. City shoreland subdivision regulations must be at least as restrictive as state standards and are subject to the review of the commissioner of Natural Resources.
- President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land. When adopting or amending a subdivision ordinance, some cities must consider restricting new residential, commercial, and industrial development in a manner consistent with the Act’s goal of preserving land from development sprawl. Cities are not required to adopt subdivision practices consistent with the T. Roosevelt Memorial Preservation Act, but must demonstrate that their decision process considered the Act’s stated goals, probably as findings of fact. (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.)

D. Obtaining technical assistance in ordinance drafting

City subdivision is regulated by numerous diverse state and federal laws and court cases. As a result, cities should retain the assistance of an experienced planner and attorney when drafting subdivision ordinances. Cities may also contact the League of Minnesota Cities Insurance Trust (LMCIT) for assistance. Resources are posted on the League website, and LMCIT land use attorneys are also available to provide customized information and training to member cities.

IV. Subdivision ordinance adoption and amendment

Cities must adopt and amend subdivision regulations in ordinance form.

A. Process for adoption

Unlike with zoning regulations, cities are not required to hold a public hearing or provide published or mailed notice prior to adopting or amending their subdivision regulations.

RELEVANT LINKS:

Handbook, *Meetings, motions, resolutions and ordinances*.

Section VII *Land dedication for public facilities*.

Minn. Stat. § 462.358, subd. 2b(b).

Minn. Stat. § 462.358, subd. 3b.

LMC information memo, *Planning Commission Guide*.

Handbook, *Meetings, motions, resolutions and ordinances*. LMC information memo, *Newspaper Publication*.

Minn. Stat. § 412.191, subd. 4. Minn. Stat. § 331A.01, subd. 10.

Minn. Stat. § 331A.05, subd. 6.

Minn. Stat. § 462.36, subd. 1.

Pawn America Minnesota, LLC v. City of St Louis Park, 787 N.W.2d 565 (Minn. 2010).

Minn. Stat. § 462.355, subd. 4.

Minn. Stat. 237.163, subd. 2.

State statute does not specify any particular or extraordinary voting requirements for subdivision ordinance adoption or amendment. As a result, an ordinance may be adopted and amended by a majority vote of the council. Cities should follow their regular publication requirements.

If the subdivision regulations require dedication of buildable land for streets, sewers, parks, utilities, recreational facilities, playgrounds, trails, wetlands, or open space, the city must first have in place a capital improvement budget and a parks and open space plan. The parks and open space plan may be a component of the city comprehensive plan.

State law does not require planning commission review of subdivision ordinances and ordinance amendments prior to their adoption. However, the city may adopt a policy requiring planning commission review if it prefers.

B. Publication

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

In home rule charter cities, the charter can impose additional or special requirements for the publication of ordinances.

C. Filing with county recorder

A certified copy of a subdivision ordinance or ordinance amendment must be filed with the county recorder.

D. Interim ordinances (moratoria)

Adoption of an interim ordinance (more commonly known as a moratorium) may aid cities in the zoning ordinance amendment process, by allowing a city to study an issue without the pressure of time generated by pending applications. Statutory or charter cities, unless contraindicated by the charter, may use a moratorium, as allowed by law, to protect the planning process, particularly when formal studies may be needed on an issue. Cities must follow the procedures established in state statute to initiate a moratorium and should work with their city attorney to make sure the moratorium is not otherwise prohibited by law.

For example, with respect to managing telecommunications right-of-way users, the law prohibits cities from establishing a moratorium with respect to filing, receiving, processing, issuing or approving applications for right-of-way or small wireless facility permits.

RELEVANT LINKS:

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

Woodbury Place Partners v. Woodbury, 492 N.W.2d 258 (Minn. Ct. App. 1993). *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002).

Minn. Stat. § 462.355, subd. 4(a).

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

1. Applicability

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

According to the Minnesota Court of Appeals, the use of an interim ordinance prohibiting or limiting land use generally is not compensable if a valid purpose for the interim regulation exists. In evaluating whether an interim ordinance created a temporary taking, in the nature of a regulatory taking, courts will look to the parcel as whole.

The law does not set forth a bright-line rule for regulatory takings; rather, evaluation occurs on a case-by-case basis.

2. Procedure for adoption of an interim ordinance

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

- Conducts studies on the issue.
- Authorizes conducting a study.
- If a statutory or home rule charter city seeks to regulate, restrict, or prohibit a housing proposal and the ordinance has been approved by a majority vote of all members of the city council.
- Holds or schedules a hearing to consider adoption or amendment of a comprehensive plan or other official controls, including the zoning code, subdivision controls, site plan regulations, sanitary codes, building codes, and official maps.
- Annexes new territory into the city for which plans or controls have not been adopted.

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted. No notice or hearing is generally necessary before an interim ordinance is enacted.

3. Limited public hearing requirements

A hearing is generally not necessary before enactment of an interim ordinance. However, a public hearing must be held if the proposed interim ordinance regulates, restricts or prohibits livestock production (feedlots).

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 4.](#)

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

[Minn. Stat. § 462.355, subd. 4\(c\)\(3\).](#)

[Minn. Stat. § 462.355, subd. 4\(c\)\(1\).](#)

[Minn. Stat. § 462.355, subd. 4\(c\)\(2\).](#)

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

In such case, the notice of the hearing must be published at least ten days prior to the hearing in a newspaper of general circulation in the city.

Before adopting an interim ordinance related to a housing proposal, the city council must hold a public hearing after providing written notice to any person who has submitted a housing proposal, has a pending housing proposal, or has provided a written request to be notified of interim ordinances related to housing proposals. The written notice must be provided at least three business days before the public hearing. Notice also must be posted on the city's official website, if the city has an official website. The date of the public hearing shall be the earlier of the next regularly scheduled city council meeting after the notice period or within 10 days of the notice. The activities to be restricted by the proposed interim ordinance may not be undertaken before the public hearing.

4. Procedure for interim ordinance extension

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

- Complete and adopt a comprehensive plan in cities that did not have a comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.
- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city's official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.
- Complete "any other process" required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.
- Review an area that is affected by a city's master plan for a municipal airport. This allows for an additional period of 18 months.

The required public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published in the official newspaper at least 10 days before the hearing.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 3b.](#)

[Section III-B-4.120 day rule: preliminary plat review.](#)

[Section IV-B-4 Procedure for interim ordinance extension.](#)

[Minn. Stat. § 462.358, subd. 3b.](#)

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

V. Subdivision ordinance administration

A. The application process: overview

The application review process involves many steps, from submission of an initial application on the appropriate city form, to staff review, until ultimate city council acceptance or denial.

Timelines are a critical component of the application process. A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension.

If no action is taken within 120 days, the application will be deemed approved after this time period. Similarly, final plats must be approved in 60 days from the date of application for the final plat.

1. Application forms and required materials

The city subdivision ordinance must include the city requirements for the content of applications submitted to the city. For example, the city ordinance should require that all applications for approval be submitted on an official city form and require that application include scale drawings or graphics, legal descriptions, plats and surveys, and all information needed by the city to evaluate the application.

2. City staff and the structure for review

Because subdivision applications must be approved within a relatively short time period, it is important that the city have an organized system for reviewing and processing subdivision applications. Generally, this system is composed of staff, city consultants (such as city engineers and attorneys), and city officials, who ensure that subdivision applications are reviewed and answered in a timely manner, and that subdivision ordinance provisions are enforced. Cities may wish to develop forms and checklists to ensure subdivision applications receive the appropriate review and report from city staff and consultants.

a. Planning commission review

State law does not require that subdivision applications be submitted to the city planning commission for review.

However, cities may delegate review authority to the planning commission in city ordinance; but statutory cities may not delegate final approval or disapproval to the planning commission. Final approvals or disapprovals can only be granted by the city council. Charter cities may delegate this authority if their charter specifically provides for this.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 2a.](#)

[Minn. Stat. § 505.03, subd. 3.](#)

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

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

b. Reimbursement for city review costs

City review of a proposed subdivision application may involve significant staff time as well as consulting services of planners, attorneys, engineers, and other professionals. Cities are authorized to seek reimbursement for the city's costs for review, approval, and inspection of a project. Cities must authorize reimbursement in their subdivision ordinance.

For outside consulting services, such as an attorney or engineer, cities must charge a subdivision applicant at the same rate as the city itself is billed. Cities cannot attach an additional premium to consultant rates. When billing for city staff time, cities must bill applicants at an established rate.

For subdivision applications for projects of any size, cities should require that an applicant provide the city with escrowed, or set aside, cash in an amount likely to cover the city's costs for reviewing, approving, and inspecting a project. In the alternative, cities may require some other type of security—such as a letter of credit—in an amount sufficient to guarantee coverage of the city's review costs. These requirements should also be stated in the subdivision ordinance.

(1) Verification of plats and surveys

When a city requires a plat to be submitted along with a subdivision application, cities have additional authority to seek reimbursement for city review costs. Cities are authorized to employ qualified persons, such as a surveyor, to check and verify surveys and plats and to determine the suitability of the plat from the standpoint of community planning. Cities may require the applicant to reimburse the city for such services. When the city uses a city employee to perform these reviews, the city may charge for these services based upon the employee's regular wage.

(2) Fee requirements: accounting/management

All cities are required to adopt management and accounting procedures to ensure fees are maintained and used only for the purpose for which they are collected.

(3) Fee ordinances and fee schedules

Generally, cities must adopt fees by ordinance. However, there is a statutory exception to this general requirement.

Cities that collect an annual cumulative total of \$5,000 or less of land use fees may adopt a fee schedule by ordinance or by resolution after holding a public hearing. Notice must be published at least 10 days before the public hearing.

RELEVANT LINKS:

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

[Minn. Stat. § 462.358, subd. 3b.](#)

[Minn. Stat. § 462.358, subd. 3b.](#) [Minn. Stat. § 505.03, subd. 1.](#)

Section V-H Minor subdivisions.

Cities that collect an annual cumulative total in excess of \$5,000 of land use fees may also adopt a fee schedule if they wish, but they may only do so by ordinance, after following the same notice and hearing procedures.

Jan. 1 is set by statute as the standard effective date for changes to fee ordinances. A city may set a different effective date, but the new fee ordinance must not apply to a project if its application for final approval was submitted before the ordinance was adopted.

(4) Fee disputes

If a dispute arises over a specific fee imposed by a city related to a specific application, the applicant may appeal the fee to district court. The applicant must provide notice to the city of the appeal by certified letter and place the disputed fee in an escrow account.

After notice and deposit, the application must be processed as if the fee had been paid. The appeal must be brought within 60 days after approval of the application and deposit of the fee into escrow.

B. Preliminary plat review

The city subdivision ordinance must establish the process for review of applications. Cities have discretion in determining the process that they would like to use. However, the subdivision statute generally requires cities to follow a two-step process in the administration of city subdivision regulations. First, the landowner applies for preliminary plat approval, and then subsequently for final plat approval. Cities may also opt to consolidate these two reviews or provide for administrative review of plats that delineate existing parcels and minor subdivisions. However, the two-step process is the most widely used process.

Generally, for preliminary plat approval, the applicant will submit to the city a plat and various concept drawings as required by city ordinance. Some cities require applicants to meet with staff for a “pre-application” review, prior to the filing of the preliminary plat application. This internal review allows staff to inform applicants of the city’s expectations and ordinance requirements.

Note: a city has the most discretion in evaluating the application against its ordinance requirements during the preliminary approval stage. This is the time to impose conditions and address any concerns the application may generate.

The term “preliminary approval” can be misleading, since it implies that the review is cursory or limited in scope. This is not the case in the subdivision context.

RELEVANT LINKS:

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

Minn. Stat. § 462.358, subd. 2a.

Minn. Stat. § 462.358, subd. 3b.

Section VI-B *Development agreements*.

Minn. Stat. § 462.358, subd. 3b.

Minn. Stat. § 462.358, subd. 3b. LMC information memo, *Zoning Guide for Cities*, Section V-C-2-b Conducting a public hearing.

Minn. Stat. § 462.358, subd. 3b.

Minn. Stat. § 15.99.

Calm Waters, LLC v. Kanabec County Bd. of Com'rs, 756 N.W.2d 716 (Minn. 2008)..

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

1. Conditional approval: Preliminary plats

A city may approve a preliminary plat along with conditions that must be satisfied for final plat approval. Conditions for how the final subdivision design will meet ordinance provisions often are quite specific. For example:

- Requiring the developer to reduce the number of lots and provide for a greater wetland buffer in the final plat.
- Requiring the developer to add sidewalks and develop a trail plan in consultation with city staff.
- If any public improvements are to be installed by the developer, requiring a development agreement between the city and the applicant.

Conditional approvals related to required public improvements and development agreements are discussed in more detail subsequently.

2. Partial approval: Preliminary plats

Cities may also provide for partial approval of a preliminary plat application. For example, where a proposed subdivision includes multiple phases or is otherwise large in scope, the city may grant preliminary approval to some parts of an application, but deny others.

3. Public hearing requirements: Preliminary plats

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

4. 120-Day Rule: Preliminary plats

A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension. If no action is taken, the application will be deemed approved after 120 days.

(Note that this 120-day period differs from the usual 60-Day Rule. By its terms, the 60-Day Rule found at Minn. Stat. § 15.99 does not apply to city subdivisions). The city should document all extensions in writing.

RELEVANT LINKS:

Section IV-C *Filing with county recorder.*

[Minn. Stat. § 505.03, subd. 2\(a\).](#)

[Calm Waters, LLC v. Kanabec County Bd. of Com'rs](#), 756 N.W.2d 716 (Minn. 2008). [Minn. Stat. § 15.99, subd. 2\(a\).](#)

[Minn. Stat. § 505.03, subd. 2\(b\).](#)

[Minn. Stat. § 505.03, subd. 2\(b\), \(c\).](#)

If the city does not act on an application within 120 days, the applicant may demand a certificate of approval from the city. Following receipt of the certificate, the applicant may request final approval by the city.

5. Review of preliminary plats bordering trunk highways, county and state roads, or highways

a. Trunk highways

State law mandates special procedures for when a city receives a preliminary plat application for land that:

- Abuts an existing or established trunk highway or state rail property.
- Abuts a proposed trunk highway or state rail property that has been designated by a centerline order filed with the county clerk.

The city must refer these applications to the commissioner of the Minnesota Department of Transportation (MnDOT) for written comments and recommendations.

Plats must be submitted to MnDOT at least 30 days prior to the city taking final action on the preliminary plat application. After receiving a plat application for the city, MnDOT has 30 days to respond. The city may not take action on the preliminary plat until comments have been received or 30 days have elapsed.

The statute requiring the referral to MnDOT does not provide for tolling of the 120-Day Rule, while MnDOT considers the application. The general tolling provisions of the 60-Day Rule for issues related to zoning do not apply. As a result, the city must complete its review of the preliminary application, including any MnDOT review, within 120 days, unless an extension is agreed to by the applicant.

b. County roads, highways, and state-aid highways

Similar requirements exist for when a preliminary plat includes land that borders an existing or proposed county road, highway, or county state-aid highway. These plats must be submitted to the county engineer for review within five days of receipt by the city for written comments and findings.

The county engineer has 30 days to provide written comments on the plat. The city may not take final action on the preliminary plat until comments have been received or 30 days have elapsed.

The county engineer's review must be limited to commenting on factors related to the county's officially adopted guidelines for such reviews.

RELEVANT LINKS:

Calm Waters, LLC v. Kanabec County Bd. of Com'rs, 756 N.W.2d 716 (Minn., 2008). Minn. Stat. § 15.99, subd. 2(a).

Minn. Stat. § 505.03, subd. 2(b).

Minn. Stat. § 505.03, subd. 2(d).

When the county engineer has submitted comments, the city must notify the county of its eventual final approval of a preliminary plat within 10 days of such approval. Along with this notice, the city must submit a statement that explains the city's response to the county engineer's written concerns. Where the preliminary plat was not amended or changed to address the county engineer's concerns, state law requires further consultation between the two entities. Prior to approval of the final plat, representatives of the city and county must meet to discuss their differences and agree on whether changes to the plat are appropriate prior to final approval. In situations where this conference is necessary, the city should make county approval a formal condition to final plat approval.

The statute requiring the referral to county engineer does not provide for tolling of the 120-Day Rule, while the county considers the application. In addition, the general tolling provisions of the 60-Day Rule for issues related to zoning do not apply, because the 60-Day Rule statute specifically excepts from its provisions municipal decisions on subdivisions subject to the 120-day requirement. As a result, the city must complete its review of the preliminary application, including any county review, within 120 days, unless an extension is agreed to by the applicant.

c. Trunk highways, county roads, and highways

When a preliminary plat abuts a trunk highway or state rail property and includes county roads, the city must follow both processes detailed above and submit a copy of the application to both MnDOT and the county engineer.

d. Required information for submission to MnDOT and the county engineer

Submissions to MnDOT or the county engineer must include both a legible preliminary drawing or print of the proposed preliminary plat and an attached written statement describing:

- The outlet for and means of disposal of surface waters from the platted area.
- The land use designation or zoning category of the proposed platted area.
- The locations of ingress and egress to the proposed platted area.
- A preliminary site plan for the proposed platted area, with dimensions to scale, authenticated by a registered engineer or land surveyor, showing the existing or proposed state highway, county road, or county highway and all existing and proposed rights-of-way, easements, general lot layouts, and lot dimensions.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 3b. *Semler Const., Inc. v. City of Hanover* 667 N.W.2d 457 \(Minn. Ct. App. 2003\). *Jordan Real Estate Services, Inc. v. City of Gaylord* No. A08-0294 \(Minn. Ct. App. 2009\) \(unpublished\).](#)

[Minn. Stat. § 462.358, subd. 3b.](#)

[State, by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 \(Minn. 1978\). *Henning v. Village of Prior Lake*, 435 N.W.2d 627 \(Minn. Ct. App., 1989\). *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503 \(Minn., 1983\).](#)

When a subdivision application is finally approved and recorded, the city must file with the plat, in the office of the county recorder or registrar of titles, a certificate or other evidence showing submission of the preliminary plat to the commissioner or county highway engineer as required by law.

C. Final plat review

After preliminary plat approval, state statute allows the applicant to seek final approval. The final plat application must demonstrate conformance with the conditions and requirements of preliminary approval and conformance with city regulations and state and federal law (where applicable).

1. Public hearing requirements: Final plats

Unlike preliminary plat approval, there is no required public hearing on the final plat.

2. 60-Day Rule: Final plats

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

D. Standard of review for preliminary and final plats

When drafting and adopting a subdivision ordinance, cities have a lot of discretion in choosing their language and setting design standards. When drafting and adopting a subdivision ordinance, the city is said to be utilizing its legislative (or law-making) authority. When using its legislative authority, the only limits on the city's authority is that action must be constitutional, rational, and in some way related to protecting the health, safety, and welfare of the public. This is known as the "rational basis standard" and it is generally a relatively easy standard for cities to meet.

In contrast, when administering an existing subdivision ordinance by reviewing a preliminary or final plat application, the city's discretion is much more limited. Generally, when reviewing a subdivision application, the city is no longer acting in its legislative capacity. When reviewing subdivision applications, the city is said to be exercising a quasi-judicial (judge-like) function.

RELEVANT LINKS:

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

Kottschade v. City of Rochester, 537 N.W.2d 301 (Minn. Ct. App. 1995).

LMC information memos, *Taking the Mystery Out of Findings of Fact*.

Minn. Stat. § 462.358, subd. 3c.

Rather than legislating for the broad population as a whole, the city is making a quasi-judicial determination about an individual subdivision application regarding whether the application meets the standards of the city ordinance.

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

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

In quasi-judicial situations, due process and equal protection are the main reasons for the more stringent scrutiny. Due process and equal protection under the law demand that similar applicants must be treated uniformly by the city.

The best process for ensuring similar treatment among applicants is to establish standards in the ordinance and to provide that if standards are met, the subdivision application must be granted. An application may generally only be denied for failure to meet the standards in city ordinances.

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

E. Importance of documentation of city decisions on applications

City decisions on subdivision applications, just like zoning decisions, may result in a lawsuit challenging the city's approval or denial of the application. Documentation of the city's basis for denials and approvals is essential to defending the city's decision in a court of law.

F. Effect of Approval

For a period of one year after approval of a preliminary plat and two years after final approval of a plat, amendments to the city's comprehensive plan and official controls cannot alter or affect the approved development's:

- Use.
- Development density.
- Lot size.

RELEVANT LINKS:

[Semler Const., Inc. v. City of Hanover](#), 667 N.W.2d 457 (Minn. Ct. App. 2003).

[Henning v. Village of Prior Lake](#), 435 N.W.2d 627 (Minn. Ct. App. 1989).

Section IV-D *Interim ordinances*.

[Minn. Stat. § 462.358, subd. 6](#).

[VanLandschoot v. City of Mendota Heights](#), 336 N.W.2d 503 (Minn.1983).

[Minn. Stat. § 462.358, subd. 3b](#), [Minn. Stat. § 505.03, subd. 1](#).

- Lot layout.
- Dedications or platting required or permitted by the approved plat.

Cities and developers may mutually agree to alterations within these time periods. Cities may also agree by resolution or written agreement to extend these one- and two-year timelines for planned and staged developments. Once a city has agreed to an extension, it may not unilaterally revoke the extension. Cities may place conditions on such extensions.

Where a subdivision has been granted preliminary approval, but final approval has not been applied for in one year, or where final approval is granted, but the development is not completed within two years, the city may request that a developer submit a new subdivision application. Cities may not request a new application in the following situations:

- Substantial development and investment have occurred in reliance on the approved preliminary or final plat.
- The developer will suffer substantial financial damage as a result of the requirement to submit a new application.

In these instances, a city may still require the developer to submit to any applicable conditions and requirements as a prerequisite to an extension.

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

G. Variances

Cities may grant variances from their subdivision ordinance requirements, where the regulations would create an unusual hardship on the land. To grant variances, cities must first adopt a procedure for granting variances, with detailed standards in the city subdivision ordinance. State law does not explicitly set standards for granting variances.

H. Minor subdivisions

State statute allows cities to adopt ordinance provisions that consolidate the preliminary and final plat approval process. Sometimes this is referred to as a “minor subdivision.” State statute also allows cities to approve subdivisions without requiring the expense of a formal plat in instances where the subdivision of land results in less than five lots that are more than 2 ½ acres in size.

Cities may opt to do one or both in their ordinance, and establish procedures for each.

RELEVANT LINKS:

[Minn. Stat. § 505.03, Minn. Stat. § 505.021, subd. 9 \(b\).](#)

[Minn. Stat. § 462.358, subd. 13.](#)

[Minn. Stat. § 505.01, subd. 3\(f\).](#)

[Minn. Stat. § 462.358, subd. 3a.](#)

[Minn. Stat. § 505.03, subd. 1.](#)

[Minn. Stat. § 505.03, subd. 1.](#)

[Minn. Stat. § 505.03, subd. 1.](#)

[Minn. Stat. § 505.021, subd. 9.](#)

[Minn. Stat. § 505.021, subd. 7.](#)

Normally all plats are subject to city council review. In addition, normally, all plats are required to contain certification of council approval. However, when a city offers a “minor subdivision” option, it may designate by resolution or ordinance a local official, such as the city clerk or zoning administrator, to approve plats administratively without full council review. Some cities choose this option for increasing the ease and speed of city administration related to minor subdivisions.

I. Platting requirements

A plat is a scale drawing of one or more parcels of land that shows the location and boundaries of the parcels’ lots, blocks, parks, roads, and other significant features.

City ordinance must require that all subdivisions creating five or more parcels that are 2 ½ acres or less in size be platted. In addition, the city can also choose to require that all subdivisions of land creating lots or parcels be platted, regardless of number or size.

Even if the city has adopted subdivision regulations, all plats in cities with populations over 5,000 must be presented to the city council for approval. Home rule charter cities may delegate this review to a municipal officer or body other than the city council.

When a plat only depicts a minor subdivision, as defined in city ordinance, or depicts only existing parcels, the city may appoint a city official, such as the city clerk or administrator, to approve such plats.

Plats must comply with many technical requirements found in Minn. Stat. ch. 505. Among other things chapter 505 requires:

- Plats must be certified by a land surveyor who both surveyed the land being platted and prepared the plat or supervised preparation of the plat.
- All easements to be dedicated on the plat shall be depicted on the plat with purpose, identification, and sufficient mathematical data to locate the boundaries of the easements. Easements created on the plat shall be limited to drainage easements, public ways, and utility easements. Drainage and utility easement boundaries shall be shown as dashed lines. Temporary easements, building setback information, and building floor elevations shall not be shown on a plat.
- Plats must contain a plat name that does not duplicate or is not like any other plat name within the county.
- Plats must be signed by all fee owners, contract for deed vendees, and mortgage holders of record.

In addition, plats must meet various technical requirements related to paper size, scale, and delineation of land features.

RELEVANT LINKS:

[Minn. Stat. § 505.03, subd. 3.](#)

[Minn. Stat. § 462.353, subd. 5.](#)

[Minn. Stat. § 505.04.](#)

[Minn. Stat. § 462.36, subd. 3.](#)
[Minn. Stat. § 462.358, subd. 1a.](#)

Section II-B, *Extra-territorial application.*

[Minn. Stat. § 462.358, subd. 2a.](#)

1. Verification of plats and surveys

When a city requires a plat to be submitted along with a subdivision application, cities have additional authority to seek reimbursement for city review costs. Cities are authorized to employ qualified persons, such as a surveyor, to check and verify surveys and plats and to determine the suitability of the plat from the standpoint of community planning.

Cities may require the applicant to reimburse the city for such services. When the city uses a city employee to perform these reviews, the city may charge for these services based upon the employee's regular wage.

J. Certification of taxes paid

Cities may require, as part of their subdivision ordinance, that an applicant certify that there are no delinquent taxes, special assessments, penalties, interest, or municipal utility fees due on any parcel of land included in the subdivision application. In addition, cities may condition approval of a subdivision upon payment of all moneys due.

K. Recording and filing of approved plats

1. County recorder

Once approved, all final plats must be certified as approved by the city and recorded with the county recorder.

2. Neighboring communities

Copies of resolutions approving subdivision plats within a city, but contiguous with another city or town must be filed with the governing body of the contiguous city or town.

When a city has opted to enforce its subdivision regulations extra-territorially within a town, it must file copies of approved subdivisions in the regulated area with the neighboring town.

VI. Public improvement requirements

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

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

RELEVANT LINKS:

Section VI – B *Development agreements.*

[Harstad v. City of Woodbury](#),
916 N.W.2d 540 (Minn.
2018).

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

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

A statutory city cannot condition approval on the payment of cash fee to the city to be used by the city for the future construction of public improvements. Such a cash fee is not considered a cash deposit or other financial security.

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

Cities may prefer to install improvements on their own because it gives the city direct control and supervision of a public improvement project, rather than simply inspecting the work of a third-party developer. However, there are some risks to this approach that should be considered by the city.

Specifically, when a city installs significant public improvements in a new development, it typically expects to recoup its costs through special assessments from buyers of the subdivided parcels in the development once the project is completed. However, the city might experience unexpected delays in cost recovery from assessments if circumstances change as follows:

- Public improvements are installed, but the developer does not finish the project (likely due to insolvency or other financial issues).
- Public improvements are installed and the project is completed, however, the subdivided lots do not sell and sit empty (due to market factors on a nationwide or local scale).

Attempts to recover the city's costs in these types of scenarios may result in legal fees and other unexpected administrative costs for the city. In addition, if the city financed the public improvements through bonds, the city's bond rating may be affected while the special assessments remain unpaid and the bonds are outstanding.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 2a.](#)

Cities that require the developer to install improvements may still exercise a high degree of control over the installation and construction of the public improvements. Working with the city attorney, financial advisors or bond counsel, cities may:

- Develop detailed specifications for each type of improvement required by the city.
- Hire professional engineers to review and inspect each phase of installation or construction of a required public improvement (these costs can be recouped from the developer).
- Require the developer to provide the city with a cash deposit, bond, letter of credit, or other financial security that will allow the city to finish or fix a failed or flawed public improvement with cash on hand (rather than needing to bond or use city reserves).
- Require the developer to enter into a development agreement that includes quality controls and addresses any unique issues related to the particular public improvement project.
- Require completion of all needed public improvements prior to the issuance of any building permits for construction on parcels within the development.

Because cities may exercise such a high degree of control over public improvements installed by a developer, there is limited risk for the city in requiring the developer to construct and install public improvements.

A. Release and return of financial securities

As discussed, the city may require a subdivision applicant to provide some type of financial security for reimbursing the city for its costs related to review, approval, and inspection of a specific project. There is a specific statutory process regulating the release and return of developer financial securities.

A developer who has completed a project for which there are still outstanding financial securities may request that its security be released and returned by sending a certified letter to the city.

When the city receives a letter requesting release, the city must provide one of the following:

- release and return to the applicant any outstanding financial securities within 30 days; or
- provide notice to the developer, within seven days of receipt of the certified letter, that all required conditions for approval have not been met, and provide a list of the specific conditions which have not been completed.

RELEVANT LINKS:

[Minn. Stat. § 462.358.](#)

[Harstad v. City of Woodbury,](#)
916 N.W.2d 540 (Minn.
2018).

If the city does not release and return the securities within 30 days, or provide notice of the reasons why the security is not being released, state statute requires the city to pay any interest accrued on the security to the applicant.

B. Development agreements

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

Written development agreements are the city's most important tool to enforce the expectations of the city's subdivision regulations. State law does not dictate the contents of a development agreement. However, a statutory city's authority to enter into development agreements does not include the ability to require the payment of cash fee to the city for the future construction of public improvements.

Since a development agreement implicates important legal rights for the city, these contracts are typically drafted with the advice and assistance of the city attorney. Development agreements are usually recorded with the county after execution (signing). A typical development agreement typically includes the following:

- Contains a detailed legal description of the property governed by the development agreement.
- Sets specifications and plans related to any required infrastructure improvements (for example, streets and roads to be installed in the development).
- Sets timelines and deadlines related to any required infrastructure improvements.
- Provides for city access to the development site and require all necessary inspections.
- Details the city's requirements for financial securities related to any infrastructure improvements.
- Sets procedure for city final inspection and acceptance of required infrastructure improvements.
- Sets expectations for erosion control, grading, and environmental/tree preservation during development and construction.
- Requires the developer to clean up and remove dirt and debris from the development upon completion of the development.
- Requires payment of park and trail dedication fees and sewer/water access charges.

RELEVANT LINKS:

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

- Provides legal descriptions for any dedicated land and require the exchange of deeds or granting of easements as necessary.
- Requires the developer to warrant work related to public infrastructure for a period of years after the development. This usually includes streets and utilities, but may also include sod, plantings, play equipment, and required tree plantings.
- Requires the developer to maintain liability insurance in an appropriate amount during the development and construction period.
- Requires the developer to hold the city harmless and indemnify the city from all third-party claims related to the development.
- Sets provisions for dealing with any potential default by the developer under the agreement. For example, allowing the city to step in and complete all agreed-to improvements, using money from a letter of credit or other financial security.
- Prohibits the issuance of building permits or occupation of any structures within a development until all public infrastructure is completed and accepted by the city.

A development agreement prepared by the city attorney is often the most efficient and best method to ensure that the city's regulations are followed by a developer.

In addition, a development agreement can provide the city with a measure of protection against the threat of developer insolvency or bankruptcy. Finally, a well written agreement (with attention to issues of financial security) can protect the city from developers who fail to complete public improvements or abide by city requirements.

VII. Land dedication for public facilities

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

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

RELEVANT LINKS:

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

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

Minn. Stat. § 462.358, subd. 2b (d).

See Appendix A: Sample park dedication methodology.

Minn. Stat. § 505.01, subd. 2. Minn. Stat. § 505.01, subd. 1.

Minn. Stat. § 462.358, subd. 2b (i).

Minn. Stat. § 462.358, subd. 2b(c).

Prior to adopting dedication requirements in a subdivision ordinance, the city must first adopt a capital improvement budget and adopt a parks and open space plan. The plan may be a component of the city comprehensive plan.

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

- The city reasonably needs to acquire the specific portion of land for reasons permitted by state statute (e.g. streets, parks, utilities) because of approval of the subdivision (this is sometimes referred to as a nexus requirement).
- The need created by the subdivision is roughly proportional to the city's dedication requirement. For example, in a five-house subdivision, it may be reasonable to require dedication of park land for a small, local swing-set park. It may not be reasonable to require the same small subdivision to dedicate multiple acres for a community park serving hundreds of city residents.

The city must also give due consideration to whether the need for the dedicated land has not already been offset or obviated by other actions of the developer in setting aside for public use other open space, recreational, common areas, or other facilities within the development.

A dedication of land to the public is usually reflected on the plat document or in an easement or other deed document. When park land is dedicated to the public, the dedication conveys complete ownership to the city (known as "fee title"). Land for streets, roads, alleys, trails, and other public ways dedicated to the public conveys an easement only to the city for the dedicated purposes. Land dedicated for all other uses is conveyed to the city "in trust" for the dedicated use.

Land which has been previously subdivided and from which a park dedication has been received, is exempted by state statute from further dedication requirements if a re-subdivision creates the same number of lots. Where new lots are created, a park dedication fee may be applied only to the net increase in lots.

A. Cash payments in lieu of land dedication

In lieu of land dedication for parks, recreational facilities, playgrounds, trails, wetlands, or open space, cities may require a developer to pay "cash fees" i.e., an equivalent value of money, commonly referred to as "park dedication

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 2b\(d\).](#)

[Minn. Stat. § 462.358, subd. 2b\(c\).](#)

[Section VII-A-2 *Fee schedules.*](#)

[Minn. Stat. § 462.353, subd. 4a.](#)

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

fees” and/or “trail fees” (cumulatively referred to as park dedication fees in the rest of this memo). Park dedication fees excuse a developer from a local land dedication for park and recreational purposes, but still allow the city to purchase and acquire new off-site facilities to serve needs created by the subdivision.

When a city establishes and imposes a park dedication fee, in lieu of land dedications, it must still comply with all the requirements discussed above for land dedications related to procedure, nexus, and proportionality.

In collecting park dedication fees, the city must give due consideration the park and recreational facilities that the applicant already proposes to incorporate into the development for public use. For example, if the proposed development already includes park and trail facilities for residents, it may be more difficult to justify an additional cash fee.

1. Setting park dedication fees

Park dedication fees must be established by ordinance or a fee schedule that meets the requirements of state statute. Fees must be set based upon the average fair market value of land within the area:

- That is unplatted.
- For which park fees have not been paid.
- That is to be served at the time of final approval or will be served under the city’s comprehensive plan by city sanitary sewer and water.

“Fair market value” means the value of the land as determined by the municipality annually based on tax valuation or other relevant data. If the applicant objects to the city’s calculation of valuation, then the value must be as negotiated between the city and the applicant, or based on the market value as determined by the city based on an independent appraisal of land in a same or similar land use category.

Cities may wish to retain the services of a land appraiser or some other professional to help them determine the appropriate rate for their park dedication fees.

2. Fee schedules

Park dedication fees may generally be imposed only by ordinance. However, cities that collect less than \$5,000 per year in land use and development fees (this includes all subdivision and zoning fees) may use a fee schedule adopted by city resolution.

Prior to adoption of the resolution, the city must hold a public hearing on the fee schedule with 10 days published notice. Cities that collect over \$5,000 in land use fees per year may also use a fee schedule.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 2b \(f\), \(g\).](#)

[Minn. Stat. § 462.353, subd. 4 \(d\). Minn. Stat. § 462.358, subd. 2c\(b\).](#)

[Minn. Stat. § 462.358, subd. 2c\(c\).](#)

[Minn. Stat. § 462.361.](#)

[Minn. Stat. § 462.358, subd. 4a.](#)

However, the fee schedule must be adopted in ordinance form, following a public hearing for which there has been 10 days published notice.

3. Fee accounting and disputes

Park dedication fees must be placed in a special, segregated fund. Park dedication fees can only be used for the acquisition, development, and improvement of parks, recreational facilities, playgrounds, trails, wetland, and open space based upon the city-approved park systems plan. Park dedication fees cannot be used for the city operational or maintenance costs, such as lawn mowing or garbage pick-up.

a. Fee disputes

Cities may not condition approval of a subdivision application upon a waiver of applicant rights to challenge city fees in a law suit.

An applicant who disputes a park dedication fee, may request that the application be processed as if the fee had been paid. An applicant who disputes a fee, but still wishes to have the application processed must do all the following:

- Provide written notice to the city of his or her dispute over the city's fee.
- Place in escrow for the city the disputed fee amount.
- File an appeal in court of the city's fee using the procedures specified in statute within 60 days of the approval/denial of the application.

If an applicant does not appeal the fee by filing suit in a court of law within 60 days following approval/denial or if the applicant appeals but does not prevail in his or her request to have the fee overturned, the fee held in the escrow account must be paid to the city.

VIII. Subdivision ordinance enforcement

Cities have numerous strong tools to enforce the requirements of their subdivision ordinances. Some of these tools are discussed here.

A. Sellers and buyers disclosure requirements

Whenever a landowner seeks to convey land (through a metes and bounds description or in reference to a plat) that has not previously been filed or recorded, state law requires the seller to make certain disclosures to protect buyers from illegal subdivisions.

If the newly recorded land is the result of a subdivision, the seller must attach one of the following to the instrument of conveyance:

RELEVANT LINKS:

Section VIII-B-2 *City option to grant waivers.*

[Minn. Stat. § 462.358, subd. 4b.](#)

[A.G. Op. 373-B-9 \(Feb. 1, 1977\).](#)

[Minn. Stat. § 462.358, subd. 4b \(d\), \(e\).](#)

- A recordable certification by the clerk of the municipality that the city's subdivision regulations do not apply, or that the subdivision has been approved by the governing body, or that the restrictions on the division of taxes and filing and recording have been waived by resolution of the governing body of the municipality.
- A statement which names and identifies the location of the appropriate municipal offices and advises the grantee that municipal subdivision and zoning regulations may restrict the use or restrict or prohibit the development of the parcel, or construction on it, and that the division of taxes and the filing or recording of the conveyance may be prohibited without prior recordable certification of approval, non-applicability, or waiver from the municipality.

A buyer who purchases illegally subdivided land may bring a lawsuit against the seller alleging misrepresentation of or the failure to disclose material facts under this statute.

A buyer with a successful lawsuit may be awarded damages, reasonable costs and fees (including attorney fees), and punitive damages up to five percent of the purchase price of the land.

B. Restrictions on filing and recording conveyances

In a city that has adopted and recorded subdivision regulations with the county recorder, no conveyance of land to which the regulations are applicable may be filed or recorded if the conveyance does not demonstrate conformance to the regulations. A few exceptions to this law apply to:

- Some transactions entered before 1945, but not previously recorded.
- Single parcels of commercial or industrial land of not less than five acres and having a width of not less than 300 feet where the conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width.
- Single parcels of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet where the conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.

1. Enforcement

Any owner or agent of the owner of land who conveys a lot or parcel in violation of this state law may be required to pay to the city a penalty of not less than \$100 for each lot or parcel so conveyed. In addition, the city may ask a court to stop or prevent the conveyance or may recover the penalty by filing suit in court.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 4b \(c\).](#)

[Minn. Stat. § 462.358, subd. 2a.](#)

[Minn. Stat. § 462.362.](#)

[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.](#)
Handbook, [Meetings, motions, resolutions and ordinances.](#)

2. City option to grant waivers

Cities may opt to waive enforcement of this statute in instances where the city determines that enforcing this prohibition on recording will create an unnecessary hardship, and failure to comply does not interfere with the purpose of the subdivision regulations. The city may waive this statute by adoption of a resolution, and the conveyance may then be filed or recorded.

C. Civil remedies

City ordinance provisions may allow the city to deny issuance of permits and approvals for any tracts, lots, or parcels for which subdivision approval has not been obtained. This provision applies not only to subdivision permits, but building, occupancy, and zoning permits as well.

A city may also enforce its subdivision ordinance by requesting an injunction (a court order requiring someone to stop an activity or type of conduct) or other appropriate remedy from the court.

D. Criminal remedies

Cities may provide for criminal penalties for violation of the city subdivision 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.

Appendix A: Sample Park Dedication Methodology

(This is a sample of one methodology; a city is not required to take it into account.)

Step 1.

The city should conduct a parks study to generally determine what it would like to see in the community regarding parks, recreation, trails, and open space. That study should consider whether current facilities are sufficient to meet the needs of current residents. If there is a deficiency, the city should calculate what additional expenditures would be necessary to meet that city's desired parks plan.

Step 2.

The city should calculate the total amount of city parks, recreation, trails and open space, plus any additional amount to meet current, but unmet park goals.

Step 3.

The city should evaluate usage of city parks, recreation, trails, and open space with a goal of estimating the percentage of facilities that exist to serve residential landowners and percentage that exists to serve the needs of commercial development. In arriving at these percentages, it is helpful to consider the use of park facilities by businesses and their workers and the use by sports teams that may be sponsored by businesses. From this analysis, the city will be able to identify the percentage of its parks needs that should be met by residential development and what percentage should be met by commercial/industrial development.

Step 4.

The city then will use the results of step 2 and step 3 to calculate parkland acreage, per resident or per employee. The following examples may be helpful:

Per Capita Residential Share/Per Capita Commercial Share

Existing Park Lane and Trail Acreage
300 acres

Residential Share
 $90\% \times 300 = 270 \text{ Acres}$

Per Capita Residential Share
 $270 \text{ acres} / 15,000 \text{ residents (population)} = .018 \text{ acres per Resident}$

Commercial Share
 $10\% \times 300 = 30 \text{ acres}$

Per Capita Commercial Share

30 acres/1000 employees in city = .03 acres per Employee

Step 5.

Establish park dedications by ordinance. The amount of land to be dedicated as part of residential subdivision or plat will be equal to the per acre residential share (determined in Step 4) times the number of residents expected in the development or subdivision. To arrive at an amount in lieu of land dedication, take the per acre value of undeveloped land times the amount of land the city could have required to be dedicated.

Step 6.

To calculate the amount to be dedicated as part of a commercial development, multiply the per acre commercial share (determined in Step 4) by the number of employees expected in the development. To arrive at a cash payment in lieu of land dedication, take the per acre value of undeveloped commercial land times the amount of land the city could have required to be dedicated.

Step 7.

Make provisions in your ordinance to provide that these are the maximum amounts the city can charge and give the council discretion to vary from these requirements as a result of unique attributes of the development or to account for parks or open space that may already be included the development. (Note: The city is not required to take any of these considerations into account when arriving at the park dedication amount.)