

**City of Grant
Planning Commission Agenda
August 20, 2012**

A Planning Commission Meeting of the City of Grant will be called to order at 7:00 p.m. on Monday, August 20, 2012, in the Grant Town Hall for the purpose of conducting the business hereafter listed, and all accepted additions thereto.

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Approval of Agenda**
4. **Approval of Minutes, July 16, 2012**
5. **Public Comment**
6. **New Business**
 - A. **LMC Duties of a Planning Commission**
 - B. **City Charter and Charter Commission Benefits, John Smith**
7. **Old Business**
 - A. **Complaint Protocol and Communications Process**
 - B. **May 21, 2012 Meeting Minutes**
8. **Commissioner Reports**
9. **Set Agenda, September 17, 2012 Planning Commission Meeting**
10. **Adjournment**

PLANNING COMMISSION MEETING MINUTES

CITY OF GRANT

July 16, 2012

Present: Terry Derosier, Loren Sederstrom, Becky Siekmeier, Larry Lanoux, Bill David, Bob Tufty and Mark Wojcik

Absent: None

Staff Present: City Clerk, Kim Points

1. **CALL TO ORDER**

Chair Derosier called the meeting to order at 7:07 p.m.

2. **PLEDGE OF ALLEGIANCE**

3. **APPROVAL OF AGENDA**

Commissioner Lanoux added a slide show prior to public comment.

Commissioner Wojcik revised item 7A, Minutes, May 21, 2012 and item 7B, Grading Permits.

MOTION by Commissioner Sederstrom to approve the agenda as amended. Commissioner Tufty seconded the motion. MOTION carried unanimously.

4. **APPROVAL OF MINUTES, JUNE 25, 2012**

Spelling and typographical errors were corrected.

MOTION by Commissioner Sederstrom to approve the June 25, 2012 Minutes, as amended. Commissioner Lanoux seconded the motion. MOTION carried unanimously with Commissioner David abstaining.

4A. **SLIDE SHOW**

Commissioner Wojcik referred to the slide presentation pointing out some of the great things that happen within Grant such as the tractor parade that is held annually. Commissioner Lanoux put together a float that is a replica of Town Hall for Manitou Days.

Commissioner Lanoux continued stating they have had a lot of fun and a lot of citizens helped with the float. They have participated in several parades and are meant to promote the Tractor Parade that will be held within Grant in September. He thanked the Gausthause as well as all the sponsors that contribute to the parade. He challenged

neighborhoods within the City to build their own float for the parade and also encouraged everyone to participate.

5. **PUBLIC COMMENT**

Commissioner Sederstrom came forward and read a letter from Mr. Warren Johnson, 7688 Jamaca, stating it is a formal written complaint at the School District site. Mr. Johnson is requesting a meeting with the City and expects immediate response.

Mr. Wally Anderson, 80th Street, came forward and recommended participation in the parade noting it is a lot of fun. He referred to the grading permit discussion stating the average citizen of Grant should be allowed some leeway for redoing driveways. He stated he does not believe that would be an infringement on wetlands and the City should not have fees for everything.

Mr. John Smith, 67th Lane, came forward and referred to the complaint protocol that is on the agenda this evening. He stated another aspect of that is being able to express concerns to the City Council. Public comment is totally not effective and is now down to two minutes. The City needs a formalized platform to voice concerns to the City body and get a response. The idea of living out in Grant to be left alone is old fashioned. The City needs a better way for citizens to communicate.

Mr. Bob Englehart, Joliet Avenue, came forward and asked about the siren. It was placed on state property and wondered when it will be moved. He stated he heard it has not even been paid for yet.

Chair Derosier advised some comments made during public comment the Planning Commission cannot do anything about but they can listen and forward concerns to the City Council.

6. **NEW BUSINESS**

There was no new business.

7. **OLD BUSINESS**

A. Minutes, May 21, 2012

Commissioner Wojcik advised he did not get a packet so he did not see the revisions to the minutes. He did go to the City office and make some revisions that included a statement that all watershed districts were willing to participate in the grading permit process. The original draft minutes did not clearly capture that.

Chair Derosier referred to page 2 and corrected the spelling of Mr. Kyle Axtell.

MOTION by Commissioner Siekmeier to approve the May 21, 2012 Minutes, as amended. Commissioner Tufty seconded the motion.

Commissioner Lanoux stated a lot of people should have been at that meeting and they were not. He stated they should not go by memory and does not think the minutes should be approved. A better job needs to be done with getting staff to the meetings.

Commissioner Wojcik stated that after revisions, he believes things important to the meeting were captured.

MOTION failed with Commissioners Lanoux, David, Wojcik and Sederstrom voting nay.

The May 21, 2012 Planning Commission meeting minutes were not approved.

B. Grading Permits -- Chair Derosier advised the grading permit process has been discussed previously and he does hope the Planning Commission can get through this tonight.

Mr. Kyle Axtell, Rice Creek Watershed District, came forward and advised he cannot speak for other watershed districts. He provided the background of the Rice Creek Watershed District noting it is 186 square miles and is one of the largest. He advised the district does have a permitting process that includes storm water management erosion control and floodplain encroachments. They are also the LGU within the City of Grant. Any grading impacts of one acre or more that that does create impervious surface triggers a storm water erosion control permit. The City of Hugo implements their rules within a portion of the District's area and they did take over as LGU. The District is open to doing that with any City provided they have the staff and ordinances are adopted to enable that process. Permit applications are available at the office and there is a different level of fees which is dependent upon the type of project. The City of Hugo completely took over for the District so they do not see or review the actual permits but conduct an annual audit.

Mr. Axtell continued advising he could envision the District and the City working together with erosion control issues but that would have to go to the Board for discussion. He noted there is an escrow required when projects require storm water management and/or wetlands. The minimum is \$1500. The District does not work with any cities that they had to take over the permitting process for.

Commissioner Lanoux asked if the District has any liability as the City of Grant is within their district and they provided a permit to the school.

Mr. Axtell stated the review process is not prescriptive. The School District approached them with a plan and that plan was approved. He deferred to the PCA and State regarding any violations. He advised his understanding is that the site and been approved and is safe. He noted the District has no rules relating to ground water.

City Engineer Olson reviewed the current permit process, fees and escrow requirements as well as other community's fees. He advised that historically, staff has not required a

grading permit for paving/graveling a driveway. He reviewed the staff report providing three options for the City 1) keep permit process the same; 2) allow for a minor/major permit; and 3) a joint City/Watershed District permit. He stated the City could look into the potential of bonding in lieu of escrows for projects.

City Planner Hornby advised the permit process varies widely from City to City and Watershed Districts tend to look at larger issues. The City looks are local smaller projects and has to look at the current ordinances for compliance. It is common for a City to be the LGU for some Districts. Other agencies will be the LGU but here will be a fee for that service. There is the potential to have just one erosion control fee but it will be at a higher cost.

Mr. Jack Kramer, Building Inspector, came forward and stated he does not get involved with grading permits unless there is a zoning complaint. His duties within the City relate to building permits and zoning compliance. If he sees something that may trigger a grading permit he refers the resident to the City Engineer and/or Watershed District.

City Engineer Olson advised site grading would require a grading permit but a rebuilt would not because they are not site grading. Fifty cubic yards is typically the standard for grading permits because of drainage patters. THE PCA is concerned with disturbed areas. The City of Grant is unique as it is within four Districts. Getting all the Districts on board with one permit process would be a long detailed process but could be possible. He advised moving forward with a major and minor permit process has potential within the City of Grant.

Building Inspector Kramer added it may be beneficial to send contractors and residents to the Watershed District for a permit prior to coming to the City.

City Engineer Olson noted escrow dollars are put into a separate account for restoration. Average permit costs for staff time is approximately \$300. What staff looks at is how drainage is affected. The amount of time to review a project or permit is the same whether it is 50 cubic yards being moved or 1,000 cubic yards.

Chair Derosier reviewed a handout relating to a breakdown of a basic grading permit, minor grading permit and major grading permit.

City Engineer Olson explained how the minor/major permitting process would work. He noted a fee in the amount of \$100 could work but the Engineer would not get involved or review permits unless the Building Inspector makes that request.

Building Inspector Kramer advised he could take care of the minor grading permits with the City Engineer as a resource depending upon the project. He stated he could do take care of it for the \$100 fee. Depending on the project, there may be a pre-inspection, final inspection and an inspection during the project.

Commissioner Siekmeier stated the current building inspector may have the expertise to take care of minor grading permits relating to wetland issues but a future building inspector may not have that expertise.

City Engineer Olson advised if the City does move forward with a minor and major permit process, the escrow amount would just be dependent upon how much risk the City is willing to take.

The Planning Commission went through the chart provided by Chair Derosier and made revisions with the intent of making a recommendation to the City Council. The revisions included 1) minor grading: permit fee \$150; no escrow and a staff level review; 2) major grading: standard farming/tilling practices are excluded and escrow could be cash or letter of credit from a bank.

MOTION by Chair Derosier to recommend approval of the revised grading permit process to the City Council. Commissioner Sederstrom seconded the motion.

Commissioner Siekmeier made a friendly amendment to include the tracking of expenses to make sure City costs are covered. Chair Derosier agreed to the friendly amendment. MOTION carried unanimously.

Chair Derosier requested the updated draft for City Council be submitted to him for review prior to going to the City Council.

C. Complaint Protocol – Chair Derosier reviewed the draft that was sent to the City Council as well as the proposed changes from the Planning Commission. He advised he draft another document that incorporated the revisions and would like to go through it for discussion.

City Engineer Olson noted there are many times that other agencies contact staff directly regarding complaints. Those complaints can be forwarded to the City.

Building Inspector Kramer added that public entities do contact staff directly quite often.

The Planning Commission reviewed the draft document and made revisions noting the final draft document would be presented to the Council at the next meeting.

Chair Derosier clarified that the draft document is a policy. It is called the City of Grant Complain Policy.

MOTION by Commissioner Siekmeier to recommend approval of the Complaint Policy as amended. Commissioner Sederstrom seconded the motion.

Commissioner Lanoux requested the entire document be laid out on one sheet noting that did not happen at the Council meeting.

Motion carried unanimously.

8. **COMMISSIONER REPORTS**

There were no reports from Commissioner's.

9. **SET AGENDA, AUGUST 20, 2012 PLANNING COMMISSION MEETING**

The next Planning Commission Meeting is scheduled for Monday, August 20, 2012, 7:00 p.m.

Agenda items will include LMC Duties of the Planning Commission and Charter Commission Benefits, per Mr. John Smith.

10. **ADJOURNMENT**

MOTION by Commissioner Sederstrom to adjourn the meeting at 9:43 p.m.
Commissioner Siekmeier seconded the motion. Motion carried unanimously.

Respectfully submitted,

Kim Points
City Clerk

DRAFT



GOVERNING & MANAGING INFORMATION

Planning Commission Guide

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145 UNIVERSITY AVE. WEST
ST. PAUL, MN 55103-2044

PHONE: (651) 281-1200
TOLL FREE: (800) 925-1122
FAX: (651) 281-1299
WEB: WWW.LMC.ORG

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I. Creation of a city planning commission

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

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

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

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

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

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

Minn. Stat. § 462.354

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

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

- Size or number of planning commission members.
- Terms of members.
- Organization and structure.
- Powers and duties.

A. Size or number of members

State statute does not specify how many commissioners a planning commission should have. As a result, the city ordinance should establish a reasonable number that reflects the needs of the city. An odd number is preferred to avoid tie-vote situations. Generally, cities appoint between five and nine individuals to serve as commission members.

Some considerations in choosing the number of commissioners include:

- Costs to the city in terms of salary (if a salary is paid).
- Availability of community members to serve or potential difficulty in recruiting members to serve full terms.

B. Terms of members

State statute does not set the length of terms for commission members, or impose limits on the number of successive terms that commission members may serve. As a result, city ordinance should establish the length of terms for commission members.

Model Planning Commission Ordinance

Some considerations in choosing the length of commission terms include:

- The substantial length of time necessary to conduct studies, draft, and adopt a comprehensive plan.
- The extensive body of knowledge that commission members must master to be effective planning commissioners.

These two considerations generally favor a longer, four-year term (rather than a two-year term), since rapid turnover of planning commissioners may hinder the city's efficiency in adopting, implementing, and enforcing its comprehensive plan.

Cities establishing a new planning commission for the first time, may wish to provide staggered terms initially. For example, one term may be for one year, another for two years, and another for three years, etc., with successors serving full four-year terms. Staggering terms in this manner will help ensure long-range continuity for the planning commission, and prevent a situation where all commission seats are vacant at once. This ensures that the planning commission is not without veteran members every four years.

Cities may establish consecutive term limits in their ordinance for commission members if desired. In addition, the city may wish to establish ordinance provisions for the removal of commission members, should it become necessary.

C. Organization and structure

See Section IV Planning Agency Meetings

See Model Planning Commission Policy on Order and Procedure

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

D. Powers and duties

Minn. Stat. § 462.354.
See Section III, *Role of the
Planning Agency*

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

II. Appointment of city planning commission members

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

Minn. Stat. § 462.354.

The city council may choose to designate itself as the city's planning commission by ordinance. However, most cities choose to establish a planning commission as a separate advisory body. This approach reduces the overall workload of council, promotes citizen involvement, and allows commissioners to specialize in developing their body of knowledge concerning municipal planning.

B. Authority to appoint commissioners

State statute does not establish a process for the appointment of planning commissioners. As a result, the city ordinance or charter provisions should specify who has the authority to appoint commission members. Generally, appointing authority is vested in the city council as a whole. In the alternative, cities may vest appointment power in the mayor exclusively, or may vest in the mayor the power to appoint commissioners, subject to council approval.

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

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

Sample Advertisement

- The advertisement period for open positions.

Sample City Application Forms

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

Sample Interview Questions

- An interview process prior to appointment.

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

C. Residency requirements

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

D. Councilmembers and city staff serving on the planning commission

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

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

1. Full voting members

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

2. Non-voting members

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

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

3. City staff on planning commission

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

E. Compensation

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

F. Conflicts of interest

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

See LMC information memo, *Official Conflict of Interest: Part IV Conflict of Interest in Non-Contractual Situations*;

56 Am. Jur. 2d Municipal Corporations § 142; *Lenz v. Coon Creek Watershed*, Dist., 278 Minn. 1, 153 NW 2d 209 (1967); *Township Bd. Of Lake Valley Township v Lewis*, 305 Minn. 488, 234 N.W. 2d 815 (1975)

G. Removal of planning commission members

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

III. Powers and duties of the planning commission

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

A. Preparing and recommending a comprehensive plan

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

1. Purpose of comprehensive planning

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

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

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

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

Minn. Stat. § 462.351

Minn. Stat. § 462.352, subd 5

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

Sample Bethel Comprehensive Plan, City Population 502

Sample Chisago City Comprehensive Plan, City Population 4,307

Sample Minnetonka Comprehensive Plan, City Population 51,519

Minn. Stat. § 462.352, subd 8

Minn. Stat. § 462.352, subd 7

Minn. Stat. § 462.352, subd 8

Minn. Stat. § 462.352, subd 9

- **Capital Improvement Program.**

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

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

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

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

2. Preparing the comprehensive plan

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

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

Minn. Stat. § 462.353, subd 2

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

a. Consultants and public input

i. Professional planners

Minn. Stat. § 462.353, subd 3

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

Local Planning Assistance Agency
Advice on Hiring a Planner

See LMC information memo,
*Competitive Bid Requirements in
Cities*

American Institute of Certified
Planners

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

ii. Other consultants

Minn. Stat. § 462.355 subd 1

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

Minn. Stat. § 462.355, subd 1

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

Minn. Stat. § 462.353, subd 2

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

b. Public input

Minn. Stat. § 462.355, subd 2

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

Sample Newsletter Article on
Comprehensive Planning

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

Minn. Stat. § 462.357, subd. 1h;
Minn. Stat. § 462.355, subd. 1,
Minn. Stat. § 103G.005, subd. 10b

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

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

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

Minn. Stat. § 462.355

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

Minn. Stat. § 462.357

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

3. Recommending the comprehensive plan to council

Minn. Stat. § 462.355, subd 2

Once a comprehensive plan is drafted, the planning commission may submit the plan (or a portion of the plan) with its recommendation for adoption to the city council. Upon receipt of the recommended plan, the council may accept the plan, reject the plan, or recommend revisions to the planning commission.

Minn. Stat. § 462.354

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

4. Adopting the comprehensive plan

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

Minn. Stat. § 473.858, subd. 2.

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

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

Minn. Stat. § 473.175

Metropolitan Council

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

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

Minn. Stat. § 462.355, subd. 2
See LMC information memo
Newspaper Publication

c. All cities: public hearing requirements

Prior to adoption of a comprehensive plan, the planning commission must hold at least one public hearing. A notice of the time, place, and purpose of the hearing must be published once in the official newspaper of the municipality at least ten days before the day of the hearing.

Minn. Stat. § 462.355, subd. 3

d. Vote requirements

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

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

Minn. Stat. § 462. 356, subd 1

B. Implementing the plan

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

Minn. Stat. § 462. 356 subd 1

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

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

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

See Handbook, Chapter 14

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

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

C. Role in periodic review of the comprehensive plan

Minn. Stat. § 462.355, subd 1

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

Minn. Stat. § 462.355, subd 1a

Minn. Stat. § 473.121, subd 2

Minn. Stat. § 473.864, subd 2

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

D. Role in amending the comprehensive plan

Minn. Stat. § 462.355, subd 3

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

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

1. Procedure for amending a comprehensive plan

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

Minn. Stat. § 462.355, subd 3

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

Minn. Stat. § 473.175

Metropolitan Council

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

Minn. Stat. § 462.355, subd. 3

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

E. Role in purchase and sale of real property

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

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

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

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

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

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

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

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

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

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

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

F. Role in capital improvements program

Minn. Stat. § 462.356, subd 2

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

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

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

The term capital improvement is not defined by this statute. However, other statutes define a capital improvement as:

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

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

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

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

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

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

G. Role in zoning ordinance adoption and amendment

1. Zoning ordinance adoption

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

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

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

Minn. Stat. § 462.357 subd 2

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

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

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

Minn. Stat. § 462.357 subd 3

LMC information memo,
Newspaper Publication

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

See LMC information memo,
Zoning Guide for Cities

The drafting and adoption of a city zoning ordinance is covered in detail in the LMC information memo, *Zoning Guide for Cities*.

2. Zoning ordinance amendment

Minn. Stat. § 462.357 subd 4

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

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

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

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

Minn. Stat. § 462.357 subd 3

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

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

Minn. Stat. § 462.357 subd 5

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

H. Conditional use permits

Minn. Stat. § 462.3595

See LMC information memo, *Zoning Guide for Cities*

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

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

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

I. Role in adoption of an official map

Minn. Stat. § 462.359 subd 2

See Handbook, Chapter 11

Minn. Stat. § 462.352, subd 7, 8

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

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

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

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

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

J. Board of zoning adjustment and appeals

Minn. Stat. § 462.354 subd 2

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

Minn. Stat. § 462.357 subd 6 (1)

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

Minn. Stat. § 462.357 subd 6 (2)

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

Minn. Stat. § 462.359 subd 4

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

Minn. Stat. § 462.354 subd 2

- Such other duties as the city council may direct.

Minn. Stat. § 462.354 subd 2

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

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

Minn. Stat. § 462.354 subd 2

The ordinance creating the BZA should specify at minimum:

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

Minn. Stat. § 462.354 subd 2

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

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

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

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

K. Role in review of subdivision applications

Minn. Stat. § 462.358 subd 3(b)

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

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

Planning commissions charged with reviewing subdivision applications must follow fairly strict legal standards for their review. Specifically, the city must follow the requirements of the subdivision ordinance it has adopted. If a subdivision application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial must all relate to the applicant’s failure to meet standards established in the ordinance. The standard of review for subdivision applications is discussed in depth in the LMCIT risk management memo *Subdivisions, Plats, and Development Agreements.*

IV. Planning commission meetings

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

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

A. Open Meeting Law

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

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

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

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

Minn. Stat. § 13D.01, subd. 1.

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

Minn. Stat. § 13D.01, subd. 6.

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

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

B. The 60-Day Rule

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

Minn. Stat. § 15.99

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

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

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

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

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

1. Scope of the rule

Minn. Stat. § 15.99, subd. 1(c).

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

Minn. Stat. § 15.99, subd. 2(a).

Minn. Stat. § 462.358, subd. 3b.

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

2. Applications

Minn. Stat. § 15.99, subd. 1(c).

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

Minn. Stat. § 15.99, subd. 3(a).

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

Minn. Stat. § 15.99, subd. 3(c).

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

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

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

3. Denials

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

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

Minn. Stat. § 15.99, subd. 2(b).

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

4. Extensions

Minn. Stat. § 15.99, subd. 3(f).

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

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

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

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

Minn. Stat. § 15.99, subd. 3(g).

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

Minn. Stat. § 15.99, subd. 3(g).

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

Minn. Stat. § 15.99, subd. 3(d), (e).

Minn. Stat. ch. 116D.

Minn. R. ch. 4410.

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

Minn. Stat. § 15.99, subd. 2(a), (e).

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

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

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

C. Commission policies on order and meeting structure

See LMC *Model Planning Commission Rules of Procedure*

See LMC information memo, *Meetings of City Councils*

See LMCIT risk management memo, *Public Hearings*.

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

The policy should establish procedures related to:

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

D. Minutes and official records

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

1. Minutes and records

See Handbook, Chapter 27
Minn. Stat. § 15.17, subs. 1, 2.

See LMC information memo,
Meetings of City Councils for more
information on minutes.

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

See LMC information memo,
Zoning Guide, Section V-C-2

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

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

2. Findings of fact

See LMCIT risk management
memos, *Land Use Findings of Fact*
Necessity of Adequate Findings:
Reasons to Support Municipal
Land Use Decisions; Zoning
Decisions

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

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

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

See Sample Findings of Fact, City of Burnsville

LMCIT risk management memos, *Land Use Findings of Fact and Necessity of Adequate Findings: Reasons to Support Municipal Land Use Decisions*

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

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

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

3. Records retention requirements

Minn. Stat. § 15.17.

Minn. Stat. § 138.225.

Minn. Stat. §§ 138.161-.21.

A.G. Op. 851F (Feb. 5, 1973).

See Handbook, Chapter 27.

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

See LMCIT risk management memos, *The Necessity of Adequate Findings: Reasons to Support Municipal Land Use Decisions, Land Use Findings of Fact: Elected Officials as Policymakers and Zoning Decisions*

Sample Findings of Fact: City of Burnsville

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

V. Changing the structure or abolishing the planning commission

A. Abolishing the planning commission

Minn. Stat. § 462.354 subd 1

Minn. Stat. § 410.12

See Handbook, Chapter 4

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

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

Minn. Stat. § 462.355 subd 3

- Reviewing amendments to the comprehensive plan.

Minn. Stat. § 462.356 subd 2

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

Minn. Stat. § 462.357 subd 4

- Reviewing zoning ordinance amendments.

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

B. Modifying the planning agency

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

Minn. Stat. § 410.12

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

VI. Joint or multijurisdictional planning

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

A. Community-Based planning

Minn. Stat. § 462.3535 subd 1, 2

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

Minn. Stat. § 462.3535 subd. 4.

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

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

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

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

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

Minn. Stat. § 462.3585.

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

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

Once established, the board is authorized to:

Minn. Stat. § 462.3585.

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

Minn. Stat. § 462.3585; Minn. Stat. § 462.354 subd 1

- Create a planning agency.

Minn. Stat. § 462.3585; Minn. Stat. § 462.354 subd 2

- Create a BZA.

Minn. Stat. § 462.3585; Minn. Stat. § 462.355

- Adopt a comprehensive plan.

Minn. Stat. § 462.3585; Minn. Stat. § 462.355 subd 4

- Adopt interim ordinances.

Minn. Stat. § 462.3585; Minn. Stat. § 462.357

- Adopt zoning ordinances.

Minn. Stat. § 462.3585; Minn. Stat. § 462.358

- Adopt subdivision regulations.

Minn. Stat. § 462.3585; Minn. Stat. § 462.359

- Adopt an official map.

Minn. Stat. § 462.3585; Minn. Stat. § 462.3595

- Provide for and issue conditional use permits.

Minn. Stat. § 462.3585; Minn. Stat. § 462.362

- Enforce official controls and prescribe penalties for violations.

Minn. Stat. § 462.3585.

- Adopt and enforce the State Fire Code.

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

Minn. Stat. § 462.358, subd 1a

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

C. Regional planning boards

Minn. Stat. § 462.371

See Handbook, Chapter 17

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

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

Minn. Stat. § 462.372

The joint powers agreement creating a regional planning agency should:

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

Minn. Stat. § 462.373, subd 1

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

Minn. Stat. § 462.373, subd. 2.

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

Minn. Stat. § 462.374

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

Minn. Stat. § 462.375

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

D. Regional development commissions and comprehensive planning activities

Minn. Stat. § 462.383

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

Minn. Stat. § 462.385.

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

Northwest Development Commission.

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

Headwaters Regional Development Commission.

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

Arrowhead Regional Development Commission

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

West Central Initiative

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

Region Five Development Commission

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

Mid-Minnesota Development Commission

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

Upper Minnesota Valley Regional Development Commission

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

East Central Regional Development Commission

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

Southwest Regional Development Commission

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

Region Nine Development Commission

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

Metropolitan Council

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

Minn. Stat. § 462.39 subds 4, 5

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

Minn. Stat. § 462.391 subd. 1a.

VII. Training and resources for planning commission members

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

LMCIT Land Use Resources

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

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

Government Training Services

- Government Training Services (GTS)

American Planning Association

- The American Planning Association

PART I
FORM AND STRUCTURE OF THE MINNESOTA CITY

CHAPTER 4: THE HOME RULE CHARTER CITY

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Chapter 4

The home rule charter city

Minnesota's two basic types of cities are home rule charter cities (operating under a local charter) and statutory cities (operating under the statutory city code).

This chapter will examine the organization and general powers of the home rule charter city. The following topics will be discussed:

- I. Distinction between home rule cities and statutory cities
- II. The home rule charter
- III. General powers of a home rule charter city
- IV. Conflict between state laws and home rule charters
- V. How charter cities should use the Handbook

I. Distinction between home rule cities and statutory cities

The major difference between home rule cities and statutory cities in Minnesota is the kind of enabling legislation from which they gain their authority. Statutory cities derive their powers from Chapter 412 of Minnesota Statutes. Home rule cities obtain their powers from a home rule charter. The distinction between home rule cities and statutory cities is one of organization and powers, and is not based on differences in population, size, location or any other physical feature.

Minn. Const. art. XII, § 4.
Minn. Stat. §§ 410.04-410.33.

The Minnesota Constitution permits the Legislature to establish home rule charter cities, counties, and other units of local government. State law enacted under this constitutional authority authorizes cities to adopt home rule charters.

Home rule charter cities can exercise any powers in their locally adopted charters as long as they do not conflict with state laws. Conversely, charter provisions can specifically restrict the powers of a city. Consequently, voters in home rule cities have more control over their city's powers.

Minn. Stat. § 410.33.
Minn. Stat. ch. 412.

State law provides that if a charter is silent on a matter that is addressed for statutory cities by Chapter 412 or other general law, and general law does not prohibit the city charter from addressing the matter or expressly provide that a city charter prevails over general law on the matter, then the home rule charter city can apply the general law on the matter.

Any city may adopt a home rule charter. Of the 853 cities in the state, 107 now operate under a voter-approved home rule charter.

A. Advantages of a home rule charter

The home rule charter form of city government has advantages as well as disadvantages. Briefly, the advantages of home rule include the following:

- Every home rule charter city may have the form of government and the range of local powers and functions desired by city residents. Residents of the city draft the charter locally. The electors of the city adopt it. Changes that are needed in the local government can occur locally instead of waiting to propose a new law when the Legislature is in session.
- The entire home rule process educates the voters of the city. Some voters work on charter commissions. All voters must learn about the charter and amendments since they usually may vote on proposed changes.
- A city charter may cover many functions and procedures, or it may be as simple as the statutory city form of government. Subject to state law, a home rule city, unlike a statutory city, has the power to make changes to fit its own needs by amending its charter. If state law is silent on a subject, local citizens may assume powers for their city by including those powers in their charter. Likewise, citizens may include limitations that are more stringent than those in the general state laws. For example, several home rule charters contain tax and debt limitations.
- The cost of government under a city charter need not be greater or less than the cost of the statutory city form of government.
- A charter may provide for initiative and referendum, recall, and election of council members by wards.

B. Disadvantages of a home rule charter

Disadvantages of home rule charters may include the following:

- The experiences of other cities concerning the application of a charter or of the statutory city law are of little direct help to the home rule charter city. For example, the Supreme Court or the attorney general can give a ruling concerning a statutory city that, in most instances, will be equally applicable to all other statutory cities in the state. Rulings affecting a home rule charter usually concern only those cities that have very similar charter provisions.
- Poor local drafting of the charter may be a problem. A city can minimize this potential difficulty by using model charters and relying on competent professional advice.

See League research
memo *A Model Charter
for Minnesota Cities*
(100a.5).

A city should have only a few elective offices so voters will be able to intelligently cast their ballots. The charter should never ask voters to elect non-policy-making administrative officers. The city should have only a single body elected by voters to legislate and determine policies for the city. This single legislative body, the city council, should be composed of between five and nine members. Council members should hold office for fairly long terms, up to four years, in order to gain experience. State law mandates that most council terms be four years, although a two-year mayoral term is allowed.

If possible, the city should centralize responsibility for administration in one person: a chief administrative officer. All advisory boards should report directly to the city council.

D. Adopting and amending a home rule charter

See League research memo *A Model Charter for Minnesota Cities* (100a.5).

See League website for further information on the Charter Assistance Service

One of the principle virtues of the home rule charter is that it allows each city to tailor its charter to its own individual needs and desires. Cities are encouraged to contact the League of Minnesota Cities Charter Assistance Program for model and sample charters, research memos, and advice that will assist in drafting, amending or adopting a charter.

E. The charter commission

Minn. Stat. § 410.05, subd. 1.

There are three ways to appoint a charter commission:

- First, the district court, acting through the chief judge of the district in which the city lies, may appoint a charter commission. The court will probably not do this, however, until city residents or local civic organizations express some interest in the matter.
- Second, the court must make the appointment if it receives a petition signed by voters who constitute at least 10 percent of the number of voters who voted at the last city election. Smaller cities may find it easier to get the necessary number of signatures.
- Third, the council of any city may, by resolution, request the appointment of a charter commission. This action would require the district court to appoint commission members.

1. Appointment of commission members

Minn. Stat. § 410.05, subd. 1.

The district court usually makes charter commission appointments. The only statutory qualification for members of charter commissions is that they be qualified voters of the city. Commission members may hold some other public office or employment except for a judicial office. City council members may serve on charter commissions. However, the city's charter may provide that members of the governing body cannot serve on the charter commission. Charter commission members may serve unlimited successive terms.

3. Functions of a charter commission

Minn. Stat. § 410.05, subd. 5.

Minn. Stat. § 410.05, subd. 4.

Minn. Stat. § 410.12, subd. 1.

Unless the charter commission of a statutory city determines that a home rule charter is not necessary or desirable and discharges itself by a vote of three-fourths of its members, the city is never legally without a charter commission. The commission's function is to continue to study the local charter and government. The commission is required by law to meet at least once each calendar year. In addition, the commission must meet upon presentation of a petition signed by at least 10 percent of registered voters, according to the last annual city election, or by resolution of a majority of the city council. Further, the commission must specifically convene to propose charter amendments upon presentation of a petition of at least 5 percent of the number of votes cast at the last state general election in the city.

Minn. Stat. § 410.12, subd. 1.

If voters reject the first charter proposed by a commission, the commission may continue to submit proposals until the voters finally adopt one. Thereafter, the commission may submit new charters or amendments to the old charter, whenever it sees fit.

The charter commission is like a standing constitutional convention. It has the power to propose charter changes at any time. If the city's charter does not work or proves to be faulty in operation, it is the commission's duty to propose improvements. It should, therefore, meet at regular intervals at least twice a year, and keep its organization intact should any emergency arise.

4. Drafting the charter

Minn. Stat. § 410.05, subd. 2.

Within 30 days after its appointment, the charter commission must make rules, including quorum requirements, on its operations and procedures. The commission must file an annual report of its activities with the chief judge on or before Dec. 31 of each year, and must send a copy of the report to the city clerk.

Minn. Stat. § 410.07.

In a city without a home rule charter, the new charter commission must deliver to the city clerk as soon as practicable, a report that states a home rule charter is not necessary or desirable, or the draft of a proposed charter. A majority of the members of the commission must sign the report or the charter draft.

Minn. Stat. § 410.06.

Drafting a city charter is a complex and difficult job that requires special skill. A charter commission may, subject to the dollar limitations contained in the law, employ an attorney and other personnel to assist in drafting a charter. Before getting too far along in the process, a charter commission should seek advice on what should be included in a charter and should also submit a draft to an impartial expert for final review.

Minn. Stat. § 410.10,
subds. 1, 2.

The charter commission may recall its proposed charter at any time before the council has fixed a date for the election. The council may authorize the commission to recall the charter at any time prior to its first publication. The notice of election must include the complete charter. The notice must be published once a week for two successive weeks in the official newspaper and may also be published in any other legal newspaper in the city. In First Class cities, the publication must be made in a newspaper having a regular paid circulation of at least 25,000 copies.

a. The charter campaign

Charter commission members have differed in their views of the role of the charter commission and its members in the charter campaign. The law does not give the commission any responsibility after the charter has left the commission, nor does it set any restrictions. Some charter commissions have served as the principal sponsoring organization for the charter. Commission members have been responsible for publicity and have made public speeches on the charter's behalf.

In other cities, the commission as a whole has not been involved in the campaign, but sometimes individual members have participated. Because the statutes do not address the subject, what commission members do will depend on their perception of an appropriate role. Surely no other group is likely to know more about what the charter contains and why, and none is likely to be more interested in the outcome of the charter election.

No outsider can give much advice on how to campaign for adoption of the charter. Local conditions and the kind of opposition that might develop will determine the necessary community response. Overconfidence, however, frequently results in the defeat of a charter. The opposition is usually vocal and well organized. It is no easy task, especially at a general election, to get the necessary majority to vote in favor of the charter. Frankness and honesty about the contents of the charter can help to disarm opposition. Throughout its entire proceedings, the commission should inform the public of its actions.

A.G. Op. 442-A-20 (Jul. 18, 1927); A. G. Op. 442-A-20 (Jul. 10, 1952); A. G. Op. 476-B-2 (Apr. 29, 1954).

Charter commissions should keep in mind that expenditure of public funds to promote a particular election outcome may be questionable. While efforts to inform voters about the charter and to encourage voters to cast their ballot seem reasonable, a "vote yes" campaign brochure is more questionable. Campaign efforts by commission members in their role as private citizens seem acceptable, provided they do not claim to speak for the entire commission.

The officials elected and appointed under the charter may take control of the city's records, money, and property at any time specified by the charter. The charter may provide that until an election of officers occurs, the officers under the old charter will continue to function. When the new charter becomes fully operational, the re-organized city corporation is in all respects the legal successor of the corporation organized under the old charter or state law. Existing, consistent ordinances and contracts continue until the council changes them or they expire by their terms.

F. Amendments to the charter

Minn. Stat. § 410.12.

Amendments may originate in one of five ways:

The charter commission may propose amendments at any time.

A.G. Op. 59a-11 (Dec. 30, 1981).

Davies v. City of Minneapolis, 316 N.W.2d 498 (Minn. 1981);
Haumant v. Griffin, 699 N.W.2d 774 (Minn.App., 2005).

Minn. Stat. § 204B.071.

A number of registered voters, equal to 5 percent of the total votes cast at the last state general election in the city, may sign and file a petition with the charter commission. This percentage of voters cannot be changed by a provision in a charter. The petition must state the proposed amendment to the charter. The commission must submit the petition to popular vote. The amendment goes to the city clerk, who notifies the council. The council then provides for the election under the same rules that apply to a new charter. The council may not refuse to submit or change the amendment as long as it is constitutional. A city council does not need to submit an unconstitutional charter amendment or an amendment that violates state or federal law to the voters. The secretary of state is required to develop rules governing the manner in which petitions required for any election in this state are circulated, signed, filed, and inspected. The secretary of state shall provide samples of petition forms for use by election officials.

Minn. Stat. § 410.12, subd. 5.

The city council may propose an amendment by ordinance subject to charter commission review. The council submits the ordinance proposing an amendment to the commission, which has 60 days for review. If the commission formally requests an extension, the council may extend this review period by an additional 90 days. After the review period, the commission returns the amendment or its own substitute amendment to the council. The council submits to the voters either the amendment it originally proposed or the commission's substitute amendment.

2. New or revised charter

Any city having a home rule charter may adopt a new or revised charter in the same manner as an original charter. If a new or completely revised charter is to go to the voters, the preparation of the ballot and other procedures are substantially the same as for the original charter.

G. Abandoning a home rule charter

Minn. Const. art. XII, § 5.

Minn. Stat. § 410.30.

Any home rule city may abandon its charter and become a statutory city. Since the state was formed, only three cities—Jordan, Isanti, and Sauk Centre, all since 1989—have abandoned their charter form of government. These three cities are all now Plan A statutory cities. A city may abandon its charter by presenting a proposal, adopting it, and having it become effective in the same manner as a charter amendment. Accordingly, abandonment would require the approval of 51 percent of those voting on the question.

The proposal must include a schedule containing necessary provisions for transition to the statutory city form of government in order to place the city on a regular election schedule as soon as practicable. The proposal may provide for continuation of specified provisions of the home rule charter for an interim period, and must specify the plan under which the city will operate as a statutory city.

III. General powers of a home rule charter city

Concerning the form of government of a home rule charter city see Minn. Stat. § 410.16 and Handbook Chapter 1.

See League research memo *A Model Charter for Minnesota Cities* (100a.5) Chpt. 1, sec. 1.02; and National Civic League's *Model City Charter, Eighth Edition* (2003) Art. 1, sec. 1.01.

Park v. City of Duluth, 134 Minn. 296, 159 N.W. 627 (1916); *State v. City of Duluth*, 134 Minn. 355, 159 N.W. 792 (1916); *City of Duluth v. Cerveney*, 218 Minn. 551, 16 N.W.2d 779 (1944).

A city charter should deal only with the fundamentals of the governmental organization of the city, leaving the council free to exercise a broad grant of authority by ordinance. Modern charters contain provisions that claim for the city all powers that the home rule provision of the Constitution permits a city to assume. Older charters contain a long list of specific grants giving various powers to the city. The strong statements of intent found in League and National Civic League model charters should be adequate to ensure that the omnibus grant gives the city all municipal power it might receive through more specific grants.

Minnesota Supreme Court decisions generally have given a liberal construction to all-powers grants in city charters. In addition to powers granted by the charter, various state statutes may give additional powers to a city and regulate certain activities. For example, authority for planning, police civil service commissions, and municipal forest maintenance is included in laws dealing specifically with these subjects.

2. Finance

See Handbook Chapter 21 on Budgeting and Chapter 22 on the Property Tax Levy.

The charter may, but does not need to, require a budget system. However, current truth-in-taxation laws require all cities to prepare a budget. The charter may regulate the payment of claims. The charter also may limit or broaden the purposes for which the city may spend money beyond the limits set for statutory cities. For example, a charter could allow appropriations to private agencies performing work of a public nature, while statutory cities probably could not. The law limits statutory cities in their issuance of warrants in anticipation of the collection of taxes. A charter may broaden or curtail this authority.

Minn. Stat. § 410.325.

See Handbook Part VI.

Both statutory and home rule charter cities may use a system of anticipation certificates. A charter may lower the debt limit applicable to cities, but it may not raise the limit. A charter can restrict the purposes for which the city may issue bonds, and it can make the procedure easier or more difficult. The charter may authorize the city to borrow money directly from banks and other lending institutions, rather than issuing bonds or certificates.

3. Utility regulation

See Handbook, Chapter 12.

Minn. Stat. § 410.09.

The Minnesota Public Utilities Commission and the Department of Commerce regulate the service and rates of private gas, electric and telephone utilities. Charters may require gas and electric franchises and may adopt regulations, including requirements for a gross earnings tax or similar fees. Strict limitations on the use of franchises, taxation, and fees for the use of public rights-of-way exist, whether or not a city has a charter.

4. Municipal utilities

Minn. Stat. § 412.321.

Statutory cities may establish electric, gas, light, and power utilities only after a vote by the people—regardless of the method of financing. A charter may provide for acquisition without a vote or may require a different majority from the majority necessary in statutory cities. A charter may give the right of condemnation without a time limit. A charter may also allow the city to use surplus utility funds to support general funds.

5. Ordinance procedure

Minn. Stat. § 412.191, subd. 4.

Minn. Stat. § 410.20.

Statutory cities may pass an ordinance on a single reading at the same meeting that the ordinance first comes before the council. The ordinance must be published in full or in summary form in the local newspaper. Statutory cities may, but do not need to, require several readings and a lapse of time between readings. Charters may or may not provide for publication, and they may impose other restrictions on the ordinance process.

9. Special assessments

See Handbook Chapter 25.

Minn. Const. art. X, § 1;
Minn. Stat. ch. 429.

Minn. Stat. § 429.111.

Minn. Stat. § 429.021,
subd. 3.

Minn. Const. art. X, § 1.

Both statutory and home rule cities may finance almost any type of local public improvement by special assessments against benefited property under a uniform constitutional and statutory procedure. While most home rule cities follow state law, a city charter may provide a different procedure or authorize the council to adopt a different procedure and may require the city to use that method exclusively. A charter city, however, must conform to certain requirements of state law. The charter can require the city to use general funds or service charges rather than special assessments for local improvements. Any special assessments used must comply with the constitutional requirement that the amount of the special assessments cannot exceed the increased market value of the property as a result of the benefit due to the local improvement.

*Curiskis v. City of
Minneapolis*, 729 N.W.2d
655 (Minn.App.,2007).

Some charters with special assessment provisions that differ from state law authorize the city council to choose between utilizing the charter provisions or state law when imposing special assessments. A recent case has validated such charter provisions. However, when a city elects to use its charter provisions for a special assessment project, the charter provisions must be followed throughout the entire project. The city cannot later elect to use the state law provisions for the same special assessment project. Likewise, the city cannot commence a special assessment project under the procedure in state law and then later elect to utilize the charter procedure.

10. Real estate

See Handbook Chapters 14
and 23.

Charter and statutory cities may acquire real estate that is needed for public purposes and the council can dispose of it when it is no longer needed. State law does not require bids and approval of the voters, but a charter may impose such restrictions.

11. Elections

Minn. Stat. § 205.02, subd.
2.

Minn. Stat. § 205.07, subd.
1.

*Minneapolis Term Limits
Coalition v. Keefe*, 535
N.W.2d 306 (Minn. 1995).

Minn. Stat. § 410.16.

State statutes regulate many phases of election procedure, but others are open to city regulation through the charter. State law fixes the date of city elections in both statutory and home rule cities for the first Tuesday after the first Monday in November in even or odd years. A charter may not impose term limits.

The charter may use proportional representation as a method of election and may set up different nomination procedures from those in statutory cities. The charter may provide for ward representation, which is generally not available to statutory cities.

B. Delegation of powers

A.G. Op. 624a-3 (June 28, 1999); A.G. Op. 1001-a (Sept. 15, 1950).

Muhring v. School District No 31, 244 Minn. 432, 28 N.W.2d 655 (1947); *Minneapolis Gas and Light Co. v. City of Minneapolis*, 36 Minn. 159, 30 N.W. 450 (1886).

Absent specific statutory or charter authority, the council of a charter city may not delegate its powers and duties calling for the exercise of judgment and discretion to other persons or bodies. Specific language must exist in the charter authorizing any delegation of these powers.

IV. Conflict between state laws and home rule charters

Harmonizing general statutory language and charter provisions dealing with the same subject is often difficult. Cities can resolve potential conflicts between state laws and charter provisions through the following process:

A. General rule

Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002); *Sinclair Oil Corp. v. City of St. Paul*, 2002 WL 1902920 (Minn. Ct. App. 2002); *Columbia Heights Relief Ass'n v. City of Columbia Heights*, 305 Minn. 399, 233 N.W.2d 760 (1975).

The general rule is that when a charter provision is in conflict with the state statutes, the statutory provision prevails and the charter provision is ineffective to the extent it conflicts with the state policy.

B. Identifying a conflict

When state law is silent on an issue covered by charter and the issue is one that the Legislature has the power to delegate to a city, the assumption is that there is no conflict with state policy. On the other hand, when a charter provision and state law deal with the same issue, the possibility for conflict occurs. Rather than requesting an attorney general's opinion or having a court resolve the possible conflict, a city council can, by resolution, rely on the opinion of its attorney as to whether a conflict exists. In making this decision, the attorney should consider the following points:

Mangold Midwest Co. v. Vill. of Richfield, 274 Minn. 347, 143 N.W.2d 813 (1966); *State v. Kuhlman*, 729 N.W.2d 577 (Minn., 2006); *State v. Burns*, A05-2554 (Minn. Ct.App., 2007) (unpublished decision)

- Is there a court case or attorney general's opinion that deals with the same or similar provisions? If so, the city must follow the court ruling. Even though attorney general opinions are only advisory, the city should seriously consider the reasoning behind such an opinion. The LMC *Handbook* attempts to identify all court decisions and attorney general opinions that deal with charter and state law conflicts in order to assist charter city officials in determining what state laws apply to their city.

CITY of GRANT COMPLAINT POLICY

1. COMPLAINT- a written letter from an individual or group stating that they have a complaint or that they are making the City of Grant aware of a situation must be submitted to the Clerk at the City of Grant offices through hand delivery, postal mail or e-mail. This letter must include complainants name, address and phone number and must be signed. No verbal complaints will be accepted ~~unless complainant does so at a Grant City Council meeting or Grant Planning Commission meeting.~~ Staff may also report complaints internally.
2. INSPECTION: (City strives to complete inspection within ~~Five Days~~)
Appropriate staff visits the property if needed, to conduct an inspection to verify that there is an actual violation. If there is a violation, notification is given.
3. NOTIFICATION: (City strives to complete notification within ~~Five Days~~)
The Grant City staff contacts the people or entities involved in the complaint or situation and explains the problem and how to resolve it. This first contact will be attempted by telephone if the phone numbers are available and followed up with a letter by postal mail to the property owner and the other parties involved including the tenant if applicable. The owner/tenant will be given ~~a 10 day~~ correction window to resolve the violation.
4. RE-INSPECTION: (City attempts to complete re-inspection within ~~Five Days~~)
After the expiration of the ~~10 day~~ correction window, City staff will re-inspect the property. If the violation is resolved, the case is closed the owner/tenant will be informed that another complaint within a year may result in a citation or other action. If violation still exists, final notice will be given.
5. FINAL NOTICE: The property owner /tenant will again be notified of the problem and what must be done to resolve it. First by telephone if available and followed up with a postal letter. The owner/tenant is given another ~~10 days to~~ resolve it before the City takes action.
6. CITY ACTION: If the violation remains unresolved after the second ~~10 day~~ period, the City may initiate the legal process.
7. REOCCURANCE : If substantially the same violation happens again within one year, the City of Grant will take appropriate actions as directed by the Grant City Council.

not

Notes from discussion relating to complaint process:

- 1) Question on how other agency complaints are handled with City of Grant
- 2) Who makes the phone calls and who get paid to do that
- 3) Inspection times should not include number of days due to boxing the City in.
- 4) Take out the "five" days; Complaints should not come directly through the City at a PC meeting or Council meeting.
- 5) Prefer written complaints as opposed to coming to meetings
- 6) Clarification on what "staff may also report" means
- 7) Would be beneficial to look at different types of complaints
- 8) Change verbiage on last line to reflect "the City of Grant may take . . ."

PLANNING COMMISSION MEETING MINUTES

CITY OF GRANT

May 21, 2012

Present: Terry Derosier, Loren Sederstrom, Becky Siekmeier, Larry Lanoux, Bill David, Bob Tufty and Mark Wojcik

Absent: None

Staff Present: City Clerk, Kim Points

1. **CALL TO ORDER**

Chair Derosier called the meeting to order at 7:08 p.m.

2. **PLEDGE OF ALLEGIANCE**

3. **APPROVAL OF AGENDA**

Commissioner Lanoux moved Item 6A, Discussion of Grading Permit Process, City of Grant, Watershed Districts and Building Inspector to Item 7A noting it is old business.

The agenda was approved as amended.

4. **APPROVAL OF MINUTES, APRIL 23, 2012**

MOTION by Commissioner Siekmeier to approve the April 23, 2012 Minutes, as presented. Commissioner Wojcik seconded the motion. **MOTION** carried unanimously.

5. **PUBLIC COMMENT**

MOTION by Commissioner Lanoux to allow public comment to opened up after every agenda item. Commissioner Sederstrom seconded the motion.

Chair Derosier made a friendly amendment to include that it is up to the discretion of the Chair. Commissioner Lanoux and Sederstrom agreed to the friendly amendment.

Mr. Bob Englehart, Joliet Avenue, came forward and asked that the Planning Commission take into consideration that he wanted to talk at one of the previous meeting and the Chair would not let him. The Planning Commission should listen to the citizens.

MOTION carried with Commissioner Tufty voting nay.

6. **NEW BUSINESS**

There was no new business.

7. **OLD BUSINESS**

A. Discussion of Grading Permit Process, City of Grant, Watershed Districts and Building Inspector

Ms. Karen Kill, Administrator for Brown's Creek, came forward and stated she is not sure what kind of information the Planning Commission is looking for.

Commissioner Wojcik advised he attended a meeting of the Brown's Creek Watershed District to learn more about the grading permit process. He stated that the City is looking at their process and there may be an opportunity to streamline the entire process.

Ms. Kill provided the background relating to grading permits noting the concern for Brown's Creek is erosion and moving 50 cubic yards or more is the trigger for a permit. Any amount less than that is handled administratively. She reviewed the current fees for permits and deposits relating to site visits, inspections, etc. She explained the erosion control permits in detail noting all their rules are posted on their website. She advised that adding to an existing gravel driveway does not trigger a permit from Brown's Creek and she also believes there are opportunities to streamline the procedure as it is currently done in the City of Hugo.

Mr. Kyle Axdahl, Rice Creek Watershed District, came forward and advised erosion control permits can be triggered by itself or due to other rules or guidelines. He stated the fee schedule is on the website. The City of Hugo has accepted all the rules of the watershed and they administer all erosion control permits for the watershed district. He noted the minimum fee is \$1,000 for one acre and residential has a flat fee of \$150-\$250.00.

Mr. John Hanson, Valley Branch Watershed District, came forward and provided the background noting there are fourteen different communities within their district. The top permits include erosion control and impervious surface. For residents the fee is typically waived but the fee is based on the project itself.

Mr. Jim Shaver, Carnelian-Marine Watershed District, came forward and distributed the fee schedule and district rules. He noted the rules are similar to Brown's Creek as they were modeled after them.

Mr. Jack Kramer, Building Inspector, came forward and stated he always tells developers and contractors to contact the watershed district. It is beneficial if they go to the watershed district before coming to the City for permitting. He indicated that a resident could go to their specific watershed district to take care of those requirements and then he could review the plan and could determine if additional escrow is necessary.

MOTION by Commissioner Siekmeier to compare the City's ordinance to the Watershed Districts rules to get an understanding and see if the process can be simplified. Commissioner Tufty seconded the motion.

Commissioner Lanoux stated he believes the issue should be tabled until both the City Engineer and City Planner are present.

Commissioner Siekmeier and Commissioner Tufty withdrew the motion and the second.

MOTION by Commissioner Lanoux to table the grading permit discussion until the City Planner and City Engineer are present at the June meeting. Commission Wojcik seconded the motion. Motion carried unanimously.

Ai. Complaint Protocol and Communication Process – Chair Derosier advised the packet that went out was fairly large and asked that the Planning Commission focus on recent complaints. He inquired about the current complaint process.

Commissioner Lanoux advised the State Electrical Inspector emailed the City regarding his electrical license. He stated he did not receive a phone call from the City Clerk. He provided the background of this incident noting a phone call would have been sufficient. Because he did not receive a phone call he filed a Freedom of Information Act that has cost the City a lot of money.

Chair Derosier stated he would like to discuss the incident and then put it to rest.

Commissioner David stated the City received a phone call from the League of Minnesota Cities. The complaint was not documented so he inquired as to how it got to the City Attorney.

Commissioner Wojcik stated there are issues within the City that need certain protocol. The scope of those issues needs to be broadened and a specific protocol needs to be followed at all times.

Commissioner David stated he had the understanding that all complaints need to be documented. Acting on a complaint based on only a phone call is wrong. Tax dollars are being spent on this. What the City Clerk did regarding the League of Minnesota Cities incident is very wrong and he does not want to see it happen again.

Commissioner Sederstrom stated there is no direction at all from the Mayor. An outline of how to deal with these things is needed.

Commissioner Tufty stated there is a huge difference between citizen complaints and the two issues with Mr. Lanoux.

Commissioner Lanoux stated that at the January Council meeting he could have picked up his toys and gone home. But he did not do that, he is still volunteering within the City and citizen participation is very important.

Chair Derosier went through the complaint model that was included in the packets. Suggested revisions to the documents were made.

Mr. Jack Kramer, Building Inspector and Zoning Enforcement, came forward and explained the current complaint process advising it works very well.

Commissioner Wojcik whether it is a simple dog barking issue or an issue with a resident's electrical license there needs to be a policy broad enough to give direction to the City Clerk and the City Inspector so as to avoid unnecessary actions and letters taken by the City's legal counsel that could be handled with a phone call to the resident involved to alert them to the issue and help out more regarding the issue.

MOTION by Commissioner Lanoux that the City of Grant will have a written complaint policy in place to follow of who, what, where and when and applied equally to all citizens and it will start with a phone call. Commissioner Sederstrom seconded the motion and added a friendly amendment that the complaint policy will apply to all complaints and situations. Commissioner Lanoux agreed to the amendment.

Commissioner Siekmeier stated written policy is a great idea but complaints need to be separated from situations as they are very different.

MOTION carried with Commissioners Siekmeier, Tufty and Derosier voting nay.

Chair Derosier directed staff to draft a written complaint/situation policy for the Planning Commission to review at the June meeting.

B. City Job Descriptions – MOTION by Chair Derosier to table the City Job Descriptions item to the June meeting. Commissioner Sederstrom seconded the motion.

Commissioner Lanoux added a friendly amendment to include that the Planning Commission look at the advantages and disadvantages of having a City Administrator who has more authority to take care of things in between Council meetings.

Chair Derosier did not accept the friendly amendment to the motion stating the Planning Commission is just starting the process of looking at job descriptions.

MOTION carried unanimously.

7. COMMISSIONER REPORTS

Commissioner Lanoux stated he spoke to the City Engineer after the road tour was completed. Many roads are beyond repair within the City and sealcoating will not help. He stated he would have liked to attend the road tour but did not get enough notice.

Chair Derosier thanked Mr. Glenn Larson for his many years of service on the Planning Commission.

8. SET AGENDA, JUNE 18, 2012 PLANNING COMMISSION MEETING

The next Planning Commission Meeting is scheduled for Monday, June 18, 2012, 7:00 p.m.

Agenda items will include Grading Permits, Complaint Process and Job Descriptions.

9. **ADJOURNMENT**

MOTION by Commissioner Sederstrom to adjourn the meeting at 9:43 p.m. Commissioner Siekmeier seconded the motion. Motion carried unanimously.

Respectfully submitted,

Kim Points
City Clerk

3/18/12



Memorandum

To: *City of Grant Planning Commission
Kim Points, City of Grant*

From: *Paul Hornby, PE, Interim City Planner
WSB & Associates, Inc.*

Date: *August 14, 2012*

Re: *August Staff Report - Planning & Zoning*

A. **Agenda Items**

i. **Staff Report/Commission Update:**

- a. **Professional Planning Services:** The City Council unanimously selected WSB & Associates, Inc. to perform City planning and zoning services at the August 7, 2012, meeting. Breanne Rothstein is the WSB Planner proposed for the City and selected by the Council. Breanne and Paul will work on transition of planning responsibilities for the next Planning Commission and Council meetings.
- b. **Sprint CUP Application:** A CUP application was received from Crown Castle representing Sprint for proposed modifications to the monopole antenna located at the Cedar Ridge site. The existing CUP does allow for the proposed modifications which do not increase the intensity of the use of the site. However, we have responded to the applicant that there are several items that are required by Ordinance that will need to be submitted to the City for review and consideration of approval. Since the proposed modification is allowed by the existing CUP, this item would not need to go through the Planning Commission, unless the Council would prefer the Planning Commission review prior to the Council action.
- i. *Crown Castle is to submit the requested documentation for planning review prior to the next Council Meeting. The information needs to be submitted to planning staff by August 15, 2012.*
- c. **Harmony Horse Farm CUP Application:** A CUP application has been received from Harmony Horse Farm at Victoria Station. The applicant is requesting approval for the use of existing apartments on the property, in the horse barn. We anticipate this item will be discussed at the August 20, 2012, meeting of the Planning Commission.

i. The Applicant has informed the City by email notice that their application to amend the CUP is withdrawn. The City Clerk received the email on Friday August 10, 2012.

d. Mass Vegetative Site Clearing at Masterman Lake: Staff received a complaint that a lot was clear-cut on Masterman Lake. The City Ordinance does not allow for the clear cutting of vegetation. Conditional Use Permit is available for commercial production purposes only.

i. There is an active building permit for this property and construction has begun. The land owner has not submitted a plan for site restoration, but has some erosion control measures installed. The building permit should be "red-tagged" until the owner, builder, staff and Council have arrived at an acceptable restoration plan. Brown's Creek Watershed District has also been informed about this site clearing by resident complaint.

If you have any questions, please contact me at 651-286-8453.