

Planning and Zoning 101

Learn the basics of why and how cities engage in land use planning and regulation, and why local officials should take time to carefully and conscientiously create land use laws. Tools discussed include comprehensive land use plans and zoning ordinances. Find a graphic illustrating levels of city council discretion to decide at various stages in these processes.

RELEVANT LINKS:

I. Land use regulation

City governments provide many important services, but one function stands apart in its impact on future generations—the authority to engage in planning and zoning of the community. Comprehensive plans and zoning ordinances adopted and enforced by current officials affect the future layout and landscape of a city for many years to come. Whether it is the development or preservation of open space, or the redevelopment and revival of existing properties, what a community will look like dozens of years from now depends on decisions made today.

City planning and zoning took root in the early 20th century as a way to minimize conflicts between incompatible land uses and to plan more coherent development. People increasingly were living in built-up urbanized areas, and were suffering health impacts, including reduced life span, related to density and industrialization. In order to promote better health, safety and welfare, cities began regulating the use, size and location of structures on the land through zoning ordinances, and developing future plans for harmonious and healthy land use patterns.

II. Conflicts and lawsuits

People tend to feel strongly about land use in most communities, and it often goes both ways. Private property owners may feel they should be able to use their land as they see fit, without government telling them what they can and cannot do and where they can and cannot build.

On the other hand, residents may feel equally strongly about what others are doing nearby, to the extent that it may injure or disturb the peace and quiet of their neighborhood—hardly anyone wants to live next door to a major industrial operation for example.

RELEVANT LINKS:

Euclid v. Ambler, 272 U.S. 365, 47 S. Ct. 114, 71, (1926).

Conflicts often lead to litigation, and land use regulation is no different. It was through litigation that the U.S. Supreme Court first upheld the constitutionality of zoning in the seminal 1926 decision, *Euclid v. Ambler*. And lawsuits continue to this day. The League of Minnesota Cities Insurance Trust (LMCIT) provides a unique land use insurance coverage that defends cities in land use lawsuits even when there is not a claim for damages. LMCIT members spend almost \$3 million a year defending these lawsuits.

III. Making versus applying law

Land use litigation is costly, and often puts city officials in the difficult position of dealing with controversies that may displease people, no matter the outcome. City officials can help themselves through these controversies by educating themselves about land use regulation authority, and the process and procedures necessary to exercise it. An important consideration is how much authority the city has over any given land use decision. A city has much broader authority when creating its land use plans and ordinances than it does when administering the same. Consequently, it is important for a city official to be aware of what authority the city is acting under whenever making a particular decision.

When creating, adopting and amending land use plans and zoning ordinances, a city is making law by exercising so-called “legislative” authority. The council sits as a body of elected representatives to make plans and laws (ordinances) for the entire community to advance health, safety, and welfare. When acting legislatively, the council has broad discretion and will be afforded considerable deference by any reviewing court. In contrast, when applying existing plans and laws, a city council is exercising so-called “quasi-judicial” authority. The limited task is to determine the facts associated with a particular request, and then apply those facts to the relevant law. A city council has less discretion when acting quasi-judicially, and a reviewing court will examine whether the city council applied rules already in place to the facts before it.

It can be helpful to visualize this as a “pyramid of discretion” that shows cities have greater discretion when making land use decisions at the base of the triangle, and less as decision-making moves up the pyramid. Discretion is greatest when officials are creating local laws and the least when officials are administering those laws.

See Appendix A: Pyramid of discretion.

RELEVANT LINKS:

Minn. Stat. § 462.351.
Minn. Stat. § 462.352,
subd.5.

Learn more about planning
commissions in LMC
information memo, *Planning
Commission Guide*.

Land use disputes tend to arise most often when a city is applying laws, rather than when making law. But a city usually has less ability to address the root of the dispute when applying the law, than it would when making the law in the first instance. When acting legislatively, a city council can engage in far-ranging policy discussion, and sort through competing views about what plans and laws would be in the best interest of the city. Although not everyone may be on board with the outcome, the more public participation in the law-making stage, the better the understanding among the public of why the city has a particular plan or law in place.

IV. The comprehensive plan

A comprehensive plan is document that sets forth a vision and the goals for the future of the city. State law defines a comprehensive plan as a compilation of policies, goals, standards and maps for guiding the physical, social and economic development, both public and private, of the municipality and its environment. The purpose is to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities.

The comprehensive plan provides the overall foundation for all land use regulation in city. 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, a city planning commission or department is tasked with the creation of the city's comprehensive plan.

Planning is a professional field that encompasses a broad array of skills and techniques. In developing comprehensive plans, many cities use educated, certified land use professionals. But at its core, planning is a relatively straightforward three-step process:

- First, a community takes stock of where it is today.
- Second, the community generates a shared vision and goals for what the city will be like in the future.
- Third, but certainly not least, the city develops a set of specific strategies to achieve that vision over time.

There are many reasons cities create and adopt comprehensive plans. The planning process helps communities identify issues before they arise, stay ahead of trends in land use development and redevelopment, and anticipate and navigate change in populations and land use patterns.

RELEVANT LINKS:

A comprehensive plan also protects and makes the most out of public investment by ensuring that development coincides with investments in infrastructure. A comprehensive plan protects and promotes the value of private property. Finally, a comprehensive plan provides legal justification for a community's land-use decisions and ordinances.

The comprehensive plan itself can contain many different elements, and importantly, is not limited in scope to land use.

The land use plan lays out desired timing, location, design and density for future development, redevelopment, or preservation. In addition to a specific land use plan, comprehensive plans typically include plans for:

- Public or community facilities,
- Parks and open space,
- Housing,
- Natural resources,
- Transportation, and
- Infrastructure.

Most comprehensive plans include a variety of maps, including a land use plan map that indicates how the plan guides the future land use in different areas of the community.

Minn. Stat. § 462.355, subd.
2.

State law provides certain processes that cities must follow for comprehensive plan adoption and amendment. 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, and at least 10 days before the day of the hearing. 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.

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.

RELEVANT LINKS:

Minn. Stat. § 473.175.

Minn. Stat. § 473.175, subd. 3.

Minn. Stat. § 462.355, subd. 1a.

Minn. Stat. § 462.356, subd. 1.

Minn. Stat. § 462.357.

For more on zoning see LMC information memo, *Zoning Guide for Cities*.

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. 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.

Adopting and amending a comprehensive plan should be a dynamic public process with an eye towards implementation. Public participation ensures broad and ongoing support, brings a variety of information and perspectives, and instills a sense of community ownership in the plan. Once adopted, the city should actively consult the plan, periodically review it for consistency with current policies and practices, and recommend amendments whenever necessary. State law provides that comprehensive plans should be implemented through zoning and subdivision regulations, as well as coordination of public improvements and city services, and a capital improvements program.

V. The zoning ordinance

State law authorizes a city zoning ordinance as a tool to implement a comprehensive plan. Zoning is a method of establishing a land use pattern by regulating the way land is used by landowners. A zoning ordinance has area standards that regulate the size and location of buildings and structures in the city. Comprised of text and a map, most zoning ordinances also typically divide a city into various zoning districts, and set standards regulating uses in each district.

"Area standards" are rules that constrain the size and location of building and other structures. These typically include rules about building location and size, including height, width and bulk; and the percentage of lot space that may be occupied, and required yards or open spaces. Other standards might be performance standards such as related to density, parking or lighting.

Most zoning ordinances use a map to divide the community into zoning districts that establish similar compatible land uses. By creating zoning districts that separate uses, the city assures that adequate space is provide for each and that transition areas of buffers exist between distinct and incompatible uses. Examples may include, but are not limited to residential, commercial, industrial and agricultural. Larger cites will often have districts of varying density or intensity, such as single-family residential and multi-family residential, or light industrial and heavy industrial.

RELEVANT LINKS:

Minn. Stat. §§ 462.357, subd.
2 – 5.

For each district, a zoning ordinance typically sets forth uses that are allowed in each district and the performance standards that must be met. The allowed uses often are set forth in lists or use tables. Allowed uses typically include permitted uses, accessory uses and conditional uses.

- A permitted use is generally the principal use of the land or building, and is allowed without a public hearing.
- An accessory use is an allowed use located on the same lot, subordinate or accessory to permitted use.
- A conditional use is a use that is allowed after a public hearing only if the landowner meets the general and specific standards as set forth in the zoning ordinance. The more specific and clear the standards set forth in the ordinance, the easier it will be to administer.

State law mandates a procedure for the adoption or amendment of zoning ordinances. The process includes:

- A public hearing must be held by the council or the planning commission (if one exists) before the city adopts or amends a zoning ordinance.
- A notice of the time, place and purpose of the hearing must be published in the official newspaper of the municipality at least 10 days prior to the day of the hearing. In addition, if an amendment to a zoning ordinance involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least 10 days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies.
- Zoning ordinances must be adopted by a majority vote of all of the members of the council.

An important component of the zoning ordinance is the zoning ordinance map which assigns zoning districts to given parcels in the community. When the city changes the zoning district designation of a parcel from one zoning district to another, the process is termed rezoning, and must be done after a public hearing. Rezoning is an amendment to the actual zoning ordinance and the procedures for amendments to the zoning ordinance apply.

Minn. Stat. § 462.357, subd.
2.

State law, however, has a two-tiered voting requirement for rezoning of residential property. When property is rezoned from residential to commercial or industrial, a two-thirds majority of all members of the city council is required. For other rezoning decisions, a simple majority vote of all members is all that is required. Rezoning should be consistent with the comprehensive plan land use plan map.

RELEVANT LINKS:

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League of Minnesota Cities –
Land Use Services.

VI. Results of careful planning

Keeping city plans and ordinances current can save money and headaches. Whether disagreements about the vision for future of city, or disputes between neighboring property owners, land use conflicts eventually confront most city officials. In creating comprehensive plans and adopting zoning ordinances, cities can proactively engage the public to create grounds rules for all.

Planning and zoning a community is a substantial undertaking that deserves thoughtful consideration. The more effort a city puts in at the front end by in adopting and amending plans and ordinances, the easier it will be to administer. Plans and ordinances adopted years ago may not be consistent with current vision, particularly in an economic downturn. A capital improvement program, in particular, should be regularly revisited for consistency with current conditions.

VII. Further assistance

LMCIT offers land use consultations, training and information to members. Contact the League's Loss Control Land Use Attorney for assistance. You can also learn more about land use issues in the land use section of the League's website.

Appendix A: The pyramid of discretion

The pyramid framework illustrates how much discretion the city has to make land use decisions based on the role it is playing.

