PUBLIC HEARINGS

§ 152.525 GENERALLY.

The procedures for holding a public hearing whenever it is required under the provisions of this chapter or other law shall be as follows.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.526 SETTING OF HEARINGS.

For all requests brought before the Zoning Board of Appeals and Adjustments or the Planning Commission for which a public hearing is required by this chapter, or other law, the body in charge of conducting the hearing shall select a reasonable time and place for the public hearing on the request.

M.S. CH. 15, § 15.99

15.99 Time deadline for agency action.
Subd. 1. Definition. For the purposes of this section, "agency" means a department, agency, board, commission, or other group in the executive branch of state government; a statutory or home rule charter city, county, town, or school district; any metropolitan agency or regional entity; and any other political subdivision of the state.
Subd. 2. Deadline for response. Except as otherwise provided in this section and notwithstanding and other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time it denies the request.
Subd. 3. Application; extensions.
a) The time limit in Subdivision 2 begins upon the agency's receipt of a written request containing all information required by law or by a previously adopted rule, ordinance, or policy of the agency. If an agency receives a written request that does not contain all required information, the 60-day limit starts over only if the agency sends notice within ten (10) business days of receipt of the request telling the requester what information is missing.
b) If an action relating to zoning, septic systems, or expansion of the metropolitan urban area requires the approval of more than one (1) state agency in the executive branch, the 60-day period in subdivision 2 begins to run for all executive branch agencies on the day a request containing all required information is received by one (1) state agency. The agency receiving the request must forward copies to other state agencies whose approval is required.
c) An agency response meets the 60-day time limit if the agency can document that the response was sent within 60 days of receipt of the written request.
d) The time limit in subdivision 2 is extended if a state statute, federal law, or court order requires a process to occur before the agency acts on the request, and the time periods prescribed in the state statute, federal law, or court order make impossible to act on the request within 60 days. In cases described in this paragraph, the deadline is extended to 60 days after completion of the last process required in the applicable statute, law, or order. Final approval of an agency receiving a request is not considered a process for purposes of this paragraph. The time limit in subdivision 2 is extended if: 1) a request submitted to a state agency requires prior approval of a federal agency; or 2) an application submitted to a city, county, town, school district, metropolitan or regional entity, or other political subdivision requires prior approval of a state or federal agency. In cases

described in this paragraph, the deadline for agency action is extended to 60 days after the required prior approval is granted.

An agency may extend the time limit in subdivision 2 before the end of the initial 60-day period by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.

(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.527 NOTICE OF HEARINGS.

(A) Notice of public hearings shall be given not more than 30 days and not less than ten days before the hearing by publication at least once in the official newspaper of the city. The notice shall include the time and place of the hearing, a description of the contents of the request to be heard and its purpose, and the address or location of the property to which the request applies.

(B) In addition to the published notice, a separate notice by mail shall be required for all property owners affected and within a distance of 350 feet from the boundaries of the area, where a request concerning amendment to zoning district boundaries for areas of five acres or less will be the subject of the hearing. The notices shall be sent by the office of the City Administrator and addresses taken from current city records, or those of the County Auditor, shall be deemed sufficient for the notification.

(C) A copy of the list of the owners and addresses to which the notice was sent shall be attested to by the City Administrator, and shall be made a part of the records of the proceedings. The failure to give mailed notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this requirement has been made.

(D) In addition to any other notice provided for herein, when the matter to be heard involves amendment to zoning district boundaries, a sign shall be placed upon the premises proposed to be rezoned for at least the length of time prior to hearing that published notice is given, stating substantially:

THIS PROPERTY PROPOSED TO BE REZONED FROM _____ DISTRICT TO _____ DISTRICT.

_____ Hearing Date

(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.528 CONDUCT OF HEARING.

(A) Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney.

(B) Applications for variances or conditional uses and the owner or owners of property in or within 1,000 feet of property under consideration for a rezoning action by amendment to this chapter, shall have the following rights in addition to any others they possess by law:

(1) The right to have subpoenas issued;

(2) The right to cross-examine all adverse witnesses; and

(3) The right to present witnesses on their own behalf.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.529 ADMINISTRATIVE PROCEDURES AND RECORDINGS AT PUBLIC HEARINGS.

The body responsible for the hearing shall designate one from among the membership or ex-officio membership to record all pertinent data and comments at the hearing for later preparation as a written public record. The written record shall be filed with the City Administrator within a reasonable period of time, but in no event, later than 30 days from the date of hearing. The hearing shall be conducted in an orderly manner according to rules of procedure established or accepted by the city. The Chairperson or Acting Chairperson of the responsible body shall conduct the hearing and shall require that all participants furnish name, address and position of interest prior to comment on the subject under consideration during the hearing.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.530 CONTINUANCE; DETERMINATION.

The responsible body may close the hearing or schedule a date, time and place for a continuance of the same, subject to the requirements of the matter under consideration. Following closure, the responsible body shall meet to make the appropriate determination which shall be prepared and filed as a written public record in the office of the City Administrator. In no event shall the determination be made later than ten days from the date of the hearing and the written record of the same filed not later than 30 days from the date of hearing.

M.S. § 462.357, SUBD. 3.

No zoning ordinance or amendments thereto shall be adopted until a public hearing has been held thereon by the planning agency or by the governing body. A notice of the time, place, and purpose of the hearing shall 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 shall be mailed at least ten days before the day of hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.
(Ord. 125, 2nd Series, passed 12-15-2003)

CONDITIONAL USE PERMITS

§ 152.545 AUTHORITY.

The Council may, after review and recommendation by the Planning Commission, grant a conditional use permit authorizing the development of uses listed as conditional uses in each of the zoning districts in this chapter or as otherwise enumerated in this section.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.546 FINDINGS.

(A) No conditional use permit shall be granted unless the Planning Commission finds the following criteria have been met by a development proposal.

(B) The Planning Commission may attach other conditions to the permit as it may deem necessary:

(1) The proposed use is not in conflict with the comprehensive plan;

(2) The proposed use is not in conflict with the stated intent of the zoning district in which it is to be located;

(3) The proposed use will not unreasonably harm the public health, safety and welfare, create a nuisance, or create unreasonable congestion injurious to nearby properties;

(4) The proposed use does not interfere with the creation of a beneficial environment within its own property boundaries and on adjoining properties;

(5) The proposed use will not interfere with the provision of a reasonable economic benefit to the community; and

(6) The provisions for interrelationship between the proposed development and contiguous and non-contiguous adjacent properties will not adversely affect pedestrian and vehicular movement and will not adversely affect the buffering of the service facilities and parking areas.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.547 COMPLIANCE.

Any use permitted under the terms of any conditional use permit shall be established and conducted in conformity to the terms of each permit.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.548 REVIEW.

A periodic review of the permit and its conditions shall be maintained. The permit shall be issued for a particular use on a specific parcel and not for a particular person or firm.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.549 REVOCATION.

A violation of any condition set forth in a conditional use permit shall be a violation of this chapter and may be terminated after an appropriate revocation hearing is held.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.550 DISCONTINUANCE.

A conditional use permit shall become void one year after being granted by the City Council unless used.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.551 PROCEDURE.

(A) (1) An application for a conditional use permit shall be submitted to the Zoning Administrator. A non-refundable application fee, as established from time to time by the Council to cover administrative costs and costs of the hearing, shall accompany each application.

(2) The Planning Commission or the Council may require any reasonable information they deem necessary.

(B) Upon receipt in proper form of the application and other required material, a public hearing shall be held.

(1) A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the city at least ten days prior to the day of the hearing.

(2) A similar notice shall 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 conditional use permit relates.

(3) A copy of the notice and a list of the owners and addresses to which the notice was sent shall be made a part of the records of the proceedings.

(4) The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings; provided, a bona fide attempt to comply with this section has been made.

(C) Within 30 days after the conclusion of the public hearing, the Planning Commission shall transmit to the Council a written report containing its recommendations concerning the proposed conditional use. The report shall be accompanied by findings of fact specifying the reasons for the recommendation. In any case when a conditional use permit is sought for the purpose of establishing a planned unit development, the report of the Planning Commission shall contain specific findings as:

(1) To the degree of compliance of the proposed development with the standards applicable to planned developments; and

(2) To the degree to which the proposed development advances the purposes for which planned developments may be approved.

(D) (1) Except in the case of an application for a conditional use permit to establish a planned unit development district, the Council shall, within 30 days of the receipt of the report of the Planning Commission, grant or deny the conditional use or refer the matter back to the Planning Commission for further consideration.

(2) The Council shall not grant a conditional use unless it finds the standards of this section have been satisfied. Any proposed conditional use (including application for a planned unit development district) which fails to receive the approval of the majority of the members of the Planning Commission voting upon it shall not be passed except by a favorable vote of two-thirds of all of the elected members of the Council.

(E) The following is taken from M.S. § 462.3595.

STATE STATUTE NUMBER 462.3595.

Subd. 1. Authority. The governing body may by ordinance designate certain types of developments, including planned unit developments, and certain land development activities as conditional uses under zoning regulations. Conditional uses may be approved by the governing body or other designated authority by a showing by the applicant that the standards and criteria stated in the ordinance will be satisfied. The standards and criteria shall include both general requirements for all conditional uses, and insofar as practicable, requirements specific to each designated conditional use.
Subd. 2. Public Hearings. Public hearings on the granting of conditional use permits shall be held in the manner provided in section 462.357, subdivision 3.
Subd. 3. Duration. A conditional use permit shall remain in effect as long as the conditions agreed upon are observed, but nothing in this section shall prevent the municipality from enacting or amending official controls to change the status of conditional uses.
Subd. 4. Filing of Permit. A certified copy of any conditional use permit shall be filed with the county recorder or registrar of titles of the county or counties in which the municipality is located for record. The conditional use permit shall include the legal description of the property included.

(Ord. 125, 2nd Series, passed 12-15-2003)

VARIANCES AND APPEALS

§ 152.565 VARIANCES.

(A) The City Council serving as the Board of Adjustments and Appeals shall, after receiving the written reports and recommendations of the Planning Commission and the city staff, make a finding of fact and decide upon requests for a variance by approving or denying the same, in part or in whole, where it is alleged by the applicant that practical difficulties exist in the reasonable use of a specific parcel of property. Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan. The Planning Commission shall hold a public hearing and, based upon a report and recommendation by the city staff, shall have the power to advise and recommend conditions related to the variance regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in the interest of the intent and purpose of this chapter.

(B) A variance may be permitted if all of the following requirements are met:

(1) The landowner (applicant) proposes to use the property in a reasonable manner;

(2) The applicant has established that there are practical difficulties, as defined by state statute, in complying with the ordinance;

(3) The unique circumstances of the property were not created by the landowner;

(4) The variance is in harmony with the general purposes and intent of this subchapter;

(5) The variance is consistent with the comprehensive plan; and

(6) The variance will not alter the essential character of the locality.

(C) The Board of Adjustments may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance. (Ord. 135, 2nd Series, passed 7-5-2011)

§ 152.566 VARIANCES; PRACTICAL DIFFICULTIES.

The City Council serving as the Board of Adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on non-conformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical

difficulties in complying with the official control. ***PRACTICAL DIFFICULTIES***, as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in M.S. § 216C.06, Subd. 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The Board of Adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
(Ord. 135, 2nd Series, passed 7-5-2011)

§ 152.567 APPEALS.

The City Council serving as the Board of Adjustments and Appeals shall have the authority to hear and decide appeals from any order, requirement, decision, grant or refusal made by the Zoning Administrator in the administration of this subchapter. However, the appeal shall be filed not later than 90 days after the applicant has received a written notice from the Zoning Administrator or the appeal shall be considered void.
(Ord. 135, 2nd Series, passed 7-5-2011)

§ 152.568 APPEALS AND ADJUSTMENTS.

(A) Appeals to the Board of Appeals and Adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by this chapter.

(B) The Board of Appeals and Adjustments has the following powers with respect to this chapter:

(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; and

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on non-conformities.

(C) (1) Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with this chapter.

(2) ***PRACTICAL DIFFICULTIES***, as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by this chapter; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.

(3) Variances shall be granted for earth sheltered construction as defined in M.S. § 216C.06, Subd. 14, when in harmony with this chapter. The Board of Appeals and Adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The Board or governing body as the case may be, may permit as a variance the temporary use of a one-family dwelling as a two-family dwelling. The Board or governing body as the case may be may impose conditions in the granting of variances.

(4) A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
(Ord. 135, 2nd Series, passed 7-5-2011)

AMENDMENTS

§ 152.580 GENERALLY.

Any action to amend the provisions of this chapter shall be governed by the following.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.581 AUTHORITY.

This chapter and the zoning district map may be amended from time to time by ordinance duly enacted by the Council; provided, however, that, no amendment shall be enacted, except in accordance with the procedures of this subchapter.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.582 INITIATION.

Proposed changes or amendments may be initiated by the Council, by the Planning Commission or by any one or more owners of real estate within the city limits.
(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.583 PROCEDURE.

(A) When any proposed change or amendment is initiated by the Council, it shall transmit its proposal to the Planning Commission for a study and report thereon.

(B) When any proposed change or amendment is initiated by affected property owners, an application for the amendment, addressed to the Council, shall be filed in triplicate with the Zoning Administrator. No fee shall be charged unless the application relates to a zoning district amendment, which fee shall cover administrative costs and accompany the application. The application shall be filed at least three weeks prior to the requested date of the public hearing on the proposed amendment. The application shall be in a form and contain information as shall be prescribed from time to time by the Planning Commission, but shall, in all instances, contain the following information:

(1) The applicant's name and address;

(2) The precise wording of any proposed amendment to the text of this chapter; and

(3) In the event that the proposed amendment would change the zoning district of any property:

(a) A legal description and street address of the property proposed to be reclassified;

(b) The name and address of the owners of the property;

(c) The present zoning district and existing uses of the property proposed to be reclassified;

(d) The area of the property proposed to be reclassified, stated in square feet or acres, or fraction thereof; and

(e) A map, drawn to scale, clearly showing the property proposed to be reclassified and its present zoning classification and existing uses.

(C) A public hearing shall be set, advertised and conducted by the Planning Commission in accordance with this chapter.

(D) Within 30 days following the conclusion of the public hearing, the Planning Commission shall transmit to the Council its recommendation in the form of a written report.

(E) Within 30 days of the receipt of the report of the Planning Commission, the Council shall refuse, or, by ordinance duly enacted, adopt the proposed amendment.

(F) In any case where a written protest against the proposed amendment signed by the owners of 20% of the frontage proposed to be altered, or by the owners of 20% of the frontage directly opposite

the frontage proposed to be altered, is filed with the City Administrator before the adoption of any amendment, the proposed amendment shall not be passed, except by a favorable vote of two-thirds of the Council.

(G) In any situation where a written report specifying a recommendation regarding the proposed amendment has not been transmitted to the Council within 30 days from the date of the public hearing, the Council may act on the proposal without a report from the Planning Commission.

(H) M.S. § 462.36, as amended from time to time, requires that all ordinances, resolutions, maps, variances and regulations under certain statutory provisions be filed with the County Recorder or registrar of Titles.

STATE STATUTE 462.357, SUBD. 5.
Amendments; certain cities of the first class. The provisions of this subdivision apply to 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 of a property located in a city of the first class, except a city of the first class in which a different process is provided through the operation of the city's home rule charter. In a city to which this subdivision applies, amendments to a zoning ordinance shall be made in conformance with this section but only after there shall have been filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situated within 100 feet of the total contiguous descriptions of real estate held by the same owner or any party purchasing any such contiguous property within one year preceding the request, and after the affirmative vote in favor thereof by a majority of the members of the governing body of any such city. The governing body of such city may, by a two-thirds vote of its members, after hearing, adopt a new zoning ordinance without such written consent whenever the Planning Commission or planning board of such city shall have made a survey of the whole area of the city or of an area of not less than 40 acres, within which the new ordinance or the amendments or alterations of the existing ordinance would take effect when adopted, and shall have considered whether the number of descriptions of real estate affected by such changes and alterations renders the obtaining of such written consent impractical, and such Planning Commission or planning board shall report in writing as to whether in its opinion the proposals of the governing body in any case are reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use, and shall have conducted a public hearing on such proposed ordinance, changes or alterations, of which hearing published notice shall have been given in a daily newspaper of general circulation at least once each week for three successive weeks prior to such hearing, which notice shall state the time, place and purpose of such hearing, and shall have reported to the governing body of the city its findings and recommendations in writing.

(Ord. 125, 2nd Series, passed 12-15-2003)

§ 152.999 PENALTY.

Every person who violates a section, division, paragraph or provision of this chapter when he or she performs an act thereby prohibited or declared unlawful, or fails to act when the failure is thereby prohibited or declared unlawful and, upon conviction thereof, shall be punished as for a misdemeanor, except as otherwise stated in specific provisions hereof and shall be fined as required by law and additional costs levied for the cost of prosecution.

(Ord. 125, 2nd Series, passed 12-15-2003)