

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 235

(SENATE AUTHORS: DRAHEIM)

DATE
01/12/2023

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Introduction and first reading
Referred to State and Local Government and Veterans

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to local and metropolitan government; modifying provisions related to
1.3 local land use and building permits for the Legalizing Affordable Housing Act;
1.4 amending Minnesota Statutes 2022, sections 15.99, subdivisions 1, 2; 326B.106,
1.5 by adding a subdivision; 326B.153, by adding a subdivision; 462.352, subdivision
1.6 5; 462.357, subdivision 1; 462.358, subdivision 2b; proposing coding for new law
1.7 in Minnesota Statutes, chapter 462.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 **ARTICLE 1**
1.10 **PLANNING AND ZONING**

1.11 Section 1. Minnesota Statutes 2022, section 462.352, subdivision 5, is amended to read:

1.12 Subd. 5. **Comprehensive municipal plan.** (a) "Comprehensive municipal plan" means
1.13 a compilation of policy statements, goals, standards, and maps for guiding the physical,
1.14 social and economic development, both private and public, of the municipality and its
1.15 environs, and may include, but is not limited to, the following: statements of policies, goals,
1.16 standards, a land use plan, including proposed densities for development, a community
1.17 facilities plan, a transportation plan, and recommendations for plan execution. A
1.18 comprehensive plan represents the planning agency's recommendations for the future
1.19 development of the community.

1.20 (b) As part of the comprehensive municipal plan, municipalities are encouraged to enact
1.21 public policy to facilitate the development of unsubsidized affordable housing. These policies
1.22 may include but are not limited to the municipal plan authorizing smaller lot sizes for
1.23 single-family homes, allowing the construction of two-family homes through townhouses

2.1 on lots that would otherwise be zoned exclusively for single-family homes, and allowing
 2.2 for mixed-use development.

2.3 **ARTICLE 2**

2.4 **LIMITING REGULATIONS ON RESIDENTIAL DEVELOPMENT**

2.5 Section 1. Minnesota Statutes 2022, section 326B.106, is amended by adding a subdivision
 2.6 to read:

2.7 Subd. 1a. **Payback requirement; residential energy code.** Notwithstanding subdivision
 2.8 1, paragraph (d), the commissioner may not adopt a new residential energy code or
 2.9 amendments to an existing residential energy code unless the commissioner has determined
 2.10 that any increased cost to residential construction or remodeling per unit due to
 2.11 implementation of the proposed changes will be offset within five years by savings resulting
 2.12 from the change. This subdivision does not apply to residential energy code changes
 2.13 necessary to protect the immediate health, safety, and welfare of the public.

2.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.15 Sec. 2. Minnesota Statutes 2022, section 462.357, subdivision 1, is amended to read:

2.16 Subdivision 1. **Authority for zoning.** For the purpose of promoting the public health,
 2.17 safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's
 2.18 surface, in the air space above the surface, and in subsurface areas, the location, height,
 2.19 width, bulk, type of foundation, number of stories, size of buildings and other structures,
 2.20 the percentage of lot which may be occupied, the size of yards and other open spaces, the
 2.21 density and distribution of population, the uses of buildings and structures for trade, industry,
 2.22 residence, recreation, public activities, or other purposes, and the uses of land for trade,
 2.23 industry, residence, recreation, agriculture, forestry, soil conservation, water supply
 2.24 conservation, conservation of shorelands, as defined in sections 103F.201 to 103F.221,
 2.25 access to direct sunlight for solar energy systems as defined in section 216C.06, flood control
 2.26 or other purposes, and may establish standards and procedures regulating such uses. To
 2.27 accomplish these purposes, official controls may include provision for purchase of
 2.28 development rights by the governing body in the form of conservation easements under
 2.29 chapter 84C in areas where the governing body considers preservation desirable and the
 2.30 transfer of development rights from those areas to areas the governing body considers more
 2.31 appropriate for development. No regulation may prohibit earth sheltered construction as
 2.32 defined in section 216C.06, subdivision 14, relocated residential buildings, ~~or~~ manufactured
 2.33 homes built in conformance with sections 327.31 to 327.35, or modular buildings for

3.1 residential use built in conformance with Minnesota Rules, chapter 1361, that comply with
 3.2 all other zoning ordinances promulgated pursuant to this section. The regulations may divide
 3.3 the surface, above surface, and subsurface areas of the municipality into districts or zones
 3.4 of suitable numbers, shape, and area. The regulations shall be uniform for each class or kind
 3.5 of buildings, structures, or land and for each class or kind of use throughout such district,
 3.6 but the regulations in one district may differ from those in other districts. The ordinance
 3.7 embodying these regulations shall be known as the zoning ordinance and shall consist of
 3.8 text and maps. A city may by ordinance extend the application of its zoning regulations to
 3.9 unincorporated territory located within two miles of its limits in any direction, but not in a
 3.10 county or town which has adopted zoning regulations; provided that where two or more
 3.11 noncontiguous municipalities have boundaries less than four miles apart, each is authorized
 3.12 to control the zoning of land on its side of a line equidistant between the two noncontiguous
 3.13 municipalities unless a town or county in the affected area has adopted zoning regulations.
 3.14 Any city may thereafter enforce such regulations in the area to the same extent as if such
 3.15 property were situated within its corporate limits, until the county or town board adopts a
 3.16 comprehensive zoning regulation which includes the area.

3.17 Sec. 3. **[462.3575] LIMITING REGULATIONS ON RESIDENTIAL**
 3.18 **DEVELOPMENT.**

3.19 Subdivision 1. **Application.** This section applies to official controls adopted under
 3.20 sections 462.357, 462.358, and 462.3595.

3.21 Subd. 2. **Planned unit development.** (a) A municipality shall not require a planned unit
 3.22 development agreement in lieu of a proposed residential development if the proposed
 3.23 residential development complies with the existing city zoning ordinances or subdivision
 3.24 regulation, or qualifies as a conditional use.

3.25 (b) A planned unit development agreement must be made available to the public by
 3.26 posting the agreement on the website of the municipality at least seven days prior to the
 3.27 governing body's review of the agreement. If the municipality does not have a website, a
 3.28 copy of the planned unit development agreement must be available for review at the city
 3.29 hall building of the municipality. If the agreement is approved by the governing body, the
 3.30 agreement cannot be modified unless all parties to the agreement concur.

3.31 Subd. 3. **Limitation on aesthetic mandates.** A municipality shall not condition approval
 3.32 of a building permit, subdivision development, or planned unit development on the use of
 3.33 specific materials, design, or other aesthetic conditions that are not required by the State
 3.34 Building Code under chapter 326B.

4.1 Subd. 4. **Limitation on square footage.** A municipality shall not impose a minimum
 4.2 square footage requirement.

4.3 Subd. 5. **Exception.** This section shall not apply to a proposed residential development
 4.4 that is to be developed by the municipality itself.

4.5 Sec. 4. **RESIDENTIAL BUILDING CODE.**

4.6 Notwithstanding Minnesota Statutes, section 326B.106, subdivision 1, paragraph (c),
 4.7 the commissioner of labor and industry may not adopt a new residential building code or
 4.8 amendments to the existing residential building code prior to January 1, 2026, unless
 4.9 approved by law. This section shall not apply to building code changes necessary to protect
 4.10 the immediate health, safety, and welfare of the public.

4.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.12 **ARTICLE 3**

4.13 **MUNICIPAL DEDICATION FEES**

4.14 Section 1. Minnesota Statutes 2022, section 462.358, subdivision 2b, is amended to read:

4.15 Subd. 2b. **Dedication.** (a) The regulations may require that a reasonable portion of the
 4.16 buildable land, as defined by municipal ordinance, of any proposed subdivision be dedicated
 4.17 to the public or preserved for public use as streets, roads, sewers, electric, gas, and water
 4.18 facilities, stormwater drainage and holding areas or ponds and similar utilities and
 4.19 improvements, parks, recreational facilities as defined in section 471.191, playgrounds,
 4.20 trails, wetlands, or open space. The requirement must be imposed by ordinance or under
 4.21 the procedures established in section 462.353, subdivision 4a.

4.22 (b) If a municipality adopts the ordinance or proceeds under section 462.353, subdivision
 4.23 4a, as required by paragraph (a), the municipality must adopt a capital improvement budget
 4.24 and have a parks and open space plan or have a parks, trails, and open space component in
 4.25 its comprehensive plan subject to the terms and conditions in this paragraph and paragraphs
 4.26 (c) to (i).

4.27 (c) The municipality may choose to accept a cash fee as set by ordinance from the
 4.28 applicant for some or all of the new lots created in the subdivision, based on the average
 4.29 fair market value of the unplatted land for which park fees have not already been paid that
 4.30 is, no later than at the time of final approval or under the city's adopted comprehensive plan,
 4.31 to be served by municipal sanitary sewer and water service or community septic and private
 4.32 well as authorized by state law. For purposes of redevelopment on developed land, the

5.1 municipality may choose to accept a cash fee based on fair market value of the land no later
5.2 than the time of final approval. "Fair market value" means the value of the land as determined
5.3 by the municipality annually based on tax valuation or other relevant data. If the
5.4 municipality's calculation of valuation is objected to by the applicant, then the value shall
5.5 be as negotiated between the municipality and the applicant, or based on the market value
5.6 as determined by the municipality based on an independent appraisal of land in a same or
5.7 similar land use category.

5.8 (d) In establishing the portion to be dedicated or preserved or the cash fee, the regulations
5.9 shall give due consideration to the open space, recreational, or common areas and facilities
5.10 open to the public that the applicant proposes to reserve for the subdivision.

5.11 (e) The municipality must reasonably determine that it will need to acquire that portion
5.12 of land for the purposes stated in this subdivision as a result of approval of the subdivision.

5.13 (f) Cash payments received must be placed by the municipality in a special fund to be
5.14 used only for the purposes for which the money was obtained. The municipality must
5.15 maintain records detailing the purposes for which the money was obtained and the manner
5.16 in which the municipality spent the money to further those purposes. The municipality must
5.17 make the records readily available to the applicant upon request.

5.18 (g) Cash payments received must be used only for the acquisition and development or
5.19 improvement of parks, recreational facilities, playgrounds, trails, wetlands, or open space
5.20 based on the approved park systems plan. Cash payments must not be used for ongoing
5.21 operation or maintenance of parks, recreational facilities, playgrounds, trails, wetlands, or
5.22 open space. The municipality must maintain records demonstrating the manner in which
5.23 the municipality used each cash payment.

5.24 (h) The municipality must not deny the approval of a subdivision based solely on an
5.25 inadequate supply of parks, open spaces, trails, or recreational facilities within the
5.26 municipality.

5.27 (i) Previously subdivided property from which a park dedication has been received,
5.28 being resubdivided with the same number of lots, is exempt from park dedication
5.29 requirements. If, as a result of resubdividing the property, the number of lots is increased,
5.30 then the park dedication or per-lot cash fee must apply only to the net increase of lots.

6.1 **ARTICLE 4**6.2 **BUILDING PERMIT DEADLINES**

6.3 Section 1. Minnesota Statutes 2022, section 15.99, subdivision 1, is amended to read:

6.4 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms shall
6.5 have the meanings given.

6.6 (b) "Agency" means a department, agency, board, commission, or other group in the
6.7 executive branch of state government; a statutory or home rule charter city, county, town,
6.8 or school district; any metropolitan agency or regional entity; and any other political
6.9 subdivision of the state.

6.10 (c) "Request" means a written application for a building permit or a written application
6.11 related to zoning, septic systems, watershed district review, soil and water conservation
6.12 district review, or the expansion of the metropolitan urban service area, for a permit, license,
6.13 or other governmental approval of an action. A request must be submitted in writing to the
6.14 agency on an application form provided by the agency, if one exists. The agency may reject
6.15 as incomplete a request not on a form of the agency if the request does not include
6.16 information required by the agency. A request not on a form of the agency must clearly
6.17 identify on the first page the specific permit, license, or other governmental approval being
6.18 sought. No request shall be deemed made if not in compliance with this paragraph.

6.19 (d) "Applicant" means a person submitting a request under this section. An applicant
6.20 may designate a person to act on the applicant's behalf regarding a request under this section
6.21 and any action taken by or notice given to the applicant's designee related to the request
6.22 shall be deemed taken by or given to the applicant.

6.23 Sec. 2. Minnesota Statutes 2022, section 15.99, subdivision 2, is amended to read:

6.24 Subd. 2. **Deadline for response.** (a) Except as otherwise provided in this section, section
6.25 462.358, subdivision 3b, or 473.175, or chapter 505, and notwithstanding any other law to
6.26 the contrary, an agency must approve or deny within 60 days a written request for a building
6.27 permit or a written request relating to zoning, septic systems, watershed district review, soil
6.28 and water conservation district review, or expansion of the metropolitan urban service area
6.29 for a permit, license, or other governmental approval of an action. Failure of an agency to
6.30 deny a request within 60 days is approval of the request. If an agency denies the request, it
6.31 must state in writing the reasons for the denial at the time that it denies the request.

6.32 (b) When a vote on a resolution or properly made motion to approve a request fails for
6.33 any reason, the failure shall constitute a denial of the request provided that those voting

7.1 against the motion state on the record the reasons why they oppose the request. A denial of
7.2 a request because of a failure to approve a resolution or motion does not preclude an
7.3 immediate submission of a same or similar request.

7.4 (c) Except as provided in paragraph (b), if an agency, other than a multimember governing
7.5 body, denies the request, it must state in writing the reasons for the denial at the time that
7.6 it denies the request. If a multimember governing body denies a request, it must state the
7.7 reasons for denial on the record and provide the applicant in writing a statement of the
7.8 reasons for the denial. If the written statement is not adopted at the same time as the denial,
7.9 it must be adopted at the next meeting following the denial of the request but before the
7.10 expiration of the time allowed for making a decision under this section. The written statement
7.11 must be consistent with the reasons stated in the record at the time of the denial. The written
7.12 statement must be provided to the applicant upon adoption.

7.13 ARTICLE 5

7.14 BUILDING PERMIT FEES

7.15 Section 1. Minnesota Statutes 2022, section 326B.153, is amended by adding a subdivision
7.16 to read:

7.17 Subd. 5. Valuation. The commissioner shall establish a cost per square foot valuation
7.18 of new one- and two-family, townhouse, and accessory utility buildings for the purpose of
7.19 setting building permit fees by municipalities.