

MELCHERT • HUBERT • SJODIN, PLLP

MEMORANDUM

DATE: October 14, 2019

TO: Lane Braaten, Community Development Director

FROM: Mike Melchert, City Attorney

RE: Proposed Amendment to Zoning Ordinance – Voting Requirements

The City's ordinance addressing zoning amendments is inconsistent with Minnesota Statutes. The City should amend its ordinance to conform it to the statutory provisions.

Background

Cities are granted authority to enforce zoning regulations by the Minnesota legislature through state statute. When the Minnesota Statutes set forth specific requirements regarding zoning, municipal ordinances should generally conform to the state law. Because the legislature is constantly amending the Minnesota Statutes, inconsistencies between Minnesota zoning law and the City's zoning ordinances arise from time to time.

Section 900.12, Subd. 6, of the Waconia City Code governs amendments to the zoning ordinances. Section 900.12, Subd. 6.E.3., states that amendments changing the boundaries of any district or changing the regulations of *any* existing district shall require an affirmative vote of *two-thirds* of the City Council. This is more restrictive than current state law, which provides that zoning ordinances and amendments are adopted by a *majority* vote of all the members of the council except where a larger number is required by law (Minn. Stat. §412.191, Subd. 4). Therefore, on a five-member council, an ordinance would only need three favorable votes to pass. The one exception under Minnesota law is that a *two-thirds vote* of all the members of the City Council is required to change the classification of land in a zoning district *from residential to commercial or industrial* (Minn. Stat. § 462.357, Subd. 2(b)).

Also, Section 900.12, Subd. 6.E.2., currently states that the City Council must act within 45 days of receiving a recommendation of the Planning Commission. This requirement is no longer found in Minnesota law, so I recommend deleting it to conform the City's ordinance to state law.

Proposed Amendments of §900.12, Subd. 6

Given the above, I recommend amending §900.12, Subd. 6.E., of the Waconia City Code as follows (revisions shown with redlining):

E. Action by the Planning Commission and the City Council shall be as follows:

1. Within sixty (60) days after the date of receipt of the petition by the Zoning Administrator, and following a public hearing, the Planning Commission shall make a written report to the City Council stating its findings and recommendations unless the applicant, in writing, requests an extension of time.
- ~~2. The City Council shall act upon the application within forty-five days after receiving the recommendation of the Planning Commission.~~
2. Amendments to Section 900 of the Waconia City Code require a majority vote of all members of the City Council, except as provided in Subd. E.3. below.
3. Amendments changing ~~the boundaries of any district all~~ or ~~changing part of the regulations of any~~ existing classification of a zoning district ~~shall from residential to either commercial or industrial~~ require ~~an affirmative~~ a two-thirds majority vote of ~~2/3~~ all members of the City Council.