

CHAPTER 113—S.F.No. 1302

An act relating to metropolitan government; modifying various provisions governing the Metropolitan Council; modifying comprehensive plan provisions; modifying provisions governing metropolitan livable communities fund; authorizing the creation of a nonprofit organization; authorizing the use of funds to establish the foundation; requiring a report; authorizing fund transfers; amending Minnesota Statutes 2006, sections 15.99, subdivision 2; 473.175; 473.851; 473.852, subdivision 1; 473.854; 473.856; 473.857, subdivision 2; 473.858; 473.859, subdivision 1; 473.866; 473.867, subdivisions 1, 2; 473.869; 473.871; repealing Minnesota Statutes 2006, sections 473.1455; 473.247; 473.868.

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

Section 1. Minnesota Statutes 2006, section 15.99, subdivision 2, is amended to read:

Subd. 2. **Deadline for response.** (a) Except as otherwise provided in this section, section 462.358, subdivision 3b, or 473.175, or chapter 505, and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, 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 that it denies the request.

(b) When a vote on a resolution or properly made motion to approve a request fails for any reason, the failure shall constitute a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request. A denial of a request because of a failure to approve a resolution or motion does not preclude an immediate submission of a same or similar request.

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

Sec. 2. Minnesota Statutes 2006, section 473.175, is amended to read:

473.175 REVIEW OF COMPREHENSIVE PLANS.

Subdivision 1. **For compatibility, conformity.** The council shall review the comprehensive plans of local governmental units, prepared and submitted pursuant to ~~Laws 1976, chapter 127, sections 1 to 23~~ 473.851 to 473.871, to determine their compatibility with each other and conformity with metropolitan system plans. The council shall review and comment on the apparent consistency of the comprehensive plans with adopted plans of the council. The council may require a local governmental unit to modify any comprehensive plan or part thereof if, upon the adoption of findings and a resolution, the council concludes that the plan is more likely than not to have a substantial impact on or contain a substantial departure from metropolitan system plans. A local unit of government may challenge a council action under this subdivision by following the procedures set forth in section 473.866.

Subd. 2. **120-day limit, ~~hearing.~~** Within 120 days following receipt of a comprehensive plan of a local governmental unit, unless a time extension is mutually agreed to, the council shall return to the local governmental unit a statement containing its comments and, by resolution, its decision, if any, to require modifications to assure conformance with the metropolitan system plans.

No action shall be taken by any local governmental unit to place any such comprehensive plan or part thereof into effect until the council has returned the statement to the unit and until the local governmental unit has incorporated any modifications in the plan required by a final decision, order, or judgment made pursuant to section 473.866. ~~Promptly after submission, the council shall notify each city, town, county, or special district which may be affected by the plans submitted, of the general nature of the plans, the date of submission, and the identity of the submitting unit. Political subdivisions contiguous to or within the submitting unit shall be notified in all cases. Within 30 days after receipt of such notice any governmental unit or district so notified or the local governmental unit submitting the plan may request the council to conduct a hearing at which the submitting unit and any other governmental unit or subdivision may present its views. The council may attempt to mediate and resolve differences of opinion which exist among the participants in the hearing with respect to the plans submitted.~~ If within 120 days, unless a time extension is mutually agreed to, the council fails to complete its written statement the plans shall be deemed approved and may be placed into effect. Any amendment to a plan subsequent to the council's review shall be submitted to and acted upon by the council in the same manner as the original plan. The written statement of the council shall be filed with the plan of the local government unit at all places where the plan is required by law to be kept on file.

Subd. 3. **Enforcement to get conforming plan.** If a local governmental unit fails to adopt a comprehensive plan in accordance with ~~Laws 1976, chapter 127, sections 1 to 23~~ 473.851 to 473.871 or if the council after a public hearing by resolution finds that a plan substantially departs from metropolitan system plans and that the local governmental unit has not adopted a plan with modifications required pursuant to section 473.866 within nine months following a final decision, order, or judgment made pursuant to section 473.866, the council may commence civil proceedings to enforce the provisions of ~~Laws 1976, chapter 127, sections 1 to 23~~ 473.851 to 473.871 by appropriate legal action in the district court where the local governmental unit is located.

Sec. 3. Minnesota Statutes 2006, section 473.851, is amended to read:

473.851 LEGISLATIVE FINDINGS AND PURPOSE.

The legislature finds and declares that the local governmental units within the metropolitan area are interdependent, that the growth and patterns of urbanization within the area create the need for additional state, metropolitan and local public services and facilities and increase the danger of air and water pollution and water shortages, and that developments in one local governmental unit may affect the provision of regional capital improvements for sewers, transportation, airports, water supply, and regional recreation open space. Since problems of urbanization and development transcend local governmental boundaries, there is a need for the adoption of coordinated plans, programs and controls by all local governmental units in order to protect the health, safety and welfare of the residents of the metropolitan area and to ensure coordinated, orderly and economic development. Therefore, it is the purpose of sections 462.355, ~~subdivision 4~~, 473.175, and 473.851 to 473.871 to (1) establish requirements and procedures to accomplish comprehensive local planning with land use controls consistent with planned, orderly and staged development and the metropolitan system plans, and (2) to provide assistance to local governmental units within the metropolitan area for the preparation of plans and official controls appropriate for their areas and consistent with metropolitan system plans.

Sec. 4. Minnesota Statutes 2006, section 473.852, subdivision 1, is amended to read:

Subdivision 1. **Terms.** As used in sections 462.355, ~~subdivision 4~~, 473.175, and 473.851 to 473.871, the following terms shall have the meanings given them.

Sec. 5. Minnesota Statutes 2006, section 473.854, is amended to read:

473.854 GUIDELINES.

The council shall prepare and adopt guidelines and procedures relating to the requirements and provisions of sections 462.355, ~~subdivision 4~~, 473.175, and 473.851 to 473.871 which will provide assistance to local governmental units in accomplishing the provisions of sections 462.355, ~~subdivision 4~~, 473.175, and 473.851 to 473.871.

Sec. 6. Minnesota Statutes 2006, section 473.856, is amended to read:

473.856 METROPOLITAN SYSTEM STATEMENTS; AMENDMENTS.

~~Local governmental units shall consider in their initial comprehensive plans submitted to the council any amendments or modifications to metropolitan system plans which were made by the council and transmitted prior to January 1, 1978. Thereafter, The council shall prepare and transmit to each affected local governmental unit a metropolitan system statement when the council updates or revises its comprehensive development guide for the metropolitan area in conjunction with the decennial review required under section 473.864, subdivision 2, and when the council amends or modifies a metropolitan system plan. The statement shall contain information relating to the unit and appropriate surrounding territory that the council determines necessary for the unit to consider in reviewing the unit's comprehensive plan. The statement may include:~~

(1) the timing, character, function, location, projected capacity, and conditions on use for existing or planned metropolitan public facilities, as specified in metropolitan system plans, and for state and federal public facilities to the extent known to the council; and

(2) the population, employment, and household projections which have been used by the council as a basis for its metropolitan system plans.

Within nine months after receiving a system statement for an amendment to a metropolitan system plan, and within three years after receiving a system statement issued in conjunction with the decennial review required under section 473.864, subdivision 2, each affected local governmental unit shall review its comprehensive plan to determine if an amendment is necessary to ensure continued conformity with metropolitan system plans. If an amendment is necessary, the governmental unit shall prepare the amendment and submit it to the council for review pursuant to sections 462.355, ~~subdivision 4,~~ 473.175, and 473.851 to 473.871.

Sec. 7. Minnesota Statutes 2006, section 473.857, subdivision 2, is amended to read:

Subd. 2. **Within 60 days; report.** A hearing shall be conducted within 60 days after the request, provided that the advisory committee or the administrative law judge shall consolidate hearings on related requests. The 60-day period within which the hearing shall be conducted may be extended or suspended by mutual agreement of the council and the local governmental unit. The hearing shall not consider the need for or reasonableness of the metropolitan system plans or parts thereof. The hearing shall afford all interested persons an opportunity to testify and present evidence. The advisory committee or administrative law judge may employ the appropriate technical and professional services of the office of dispute resolution for the purpose of evaluating disputes of fact. The proceedings shall not be deemed a contested case. Within 30 days after the hearing, the advisory committee or hearing examiner the administrative law judge shall report to the council respecting the proposed amendments to the system statements. The report shall contain findings of fact, conclusions, and recommendations and shall apportion the costs of the proceedings among the parties.

Sec. 8. Minnesota Statutes 2006, section 473.858, is amended to read:

473.858 COMPREHENSIVE PLANS; LOCAL GOVERNMENTAL UNITS.

Subdivision 1. **No conflicting zoning, fiscal device, official control.** Within nine months following the receipt of a metropolitan system statement for an amendment to a metropolitan system plan and within three years following the receipt of ~~the~~ a metropolitan system statement issued in conjunction with the decennial review required under section 473.864, subdivision 2, every local governmental unit shall have ~~prepared a reviewed~~ and, if necessary, amended its comprehensive plan in accordance with sections 462.355; ~~subdivision 4,~~ 473.175, and 473.851 to 473.871 and the applicable planning statute and shall have submitted the plan to the Metropolitan Council for review pursuant to section 473.175. The provisions of sections 462.355; ~~subdivision 4,~~ 473.175, and 473.851 to 473.871 shall supersede the provisions of the applicable planning statute wherever a conflict may exist. If the comprehensive municipal plan is in conflict with the zoning ordinance, the zoning ordinance shall be brought into conformance with the plan by local government units in conjunction with the review and, if necessary, amendment of its comprehensive plan required under section 473.864, subdivision 2. After August 1, 1995, a local government unit shall not adopt any fiscal device or official control which is in conflict with its comprehensive plan, including any amendments to the plan, or which permits activity in conflict with metropolitan system plans, as defined by section 473.852, subdivision 8. The comprehensive plan shall 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 comprehensive plan. For purposes of this section, a fiscal device or official control shall not be considered to be in conflict

with a local government unit's comprehensive plan or to permit an activity in conflict with metropolitan system plans if such fiscal device or official control is adopted to ensure the planned, orderly, and staged development of urbanization or redevelopment areas designated in the comprehensive plan pursuant to section 473.859, subdivision 5.

Subd. 2. **Adjacent review, comment.** Local governmental units shall submit their proposed plans to adjacent governmental units, affected special districts lying in whole or in part within the metropolitan area, and affected school districts for review and comment at least six months prior to submission of the plan to the council and shall submit copies to them on the submission of the plan to the council. For minor plan amendments, the council may prescribe a shorter review and comment period, or may waive the review and comment period if the minor plan amendments involve lands that are not contiguous to other local governmental units.

Subd. 3. **When to council.** The plans shall be submitted to the council following approval recommendation by the planning commission agency of the unit and after consideration but before final approval by the governing body of the unit.

Subd. 4. **Status of old, new programs, plans, controls.** Comprehensive plans, capital improvement programs, sewer policy plans and official controls of local governmental units adopted prior to the requirements of sections 462.355, ~~subdivision 4,~~ 473.175, and 473.851 to 473.871 shall remain in force and effect until amended, repealed or superseded by plans or controls adopted pursuant to sections 462.355, ~~subdivision 4,~~ 473.175, and 473.851 to 473.871. Existing comprehensive plans, capital improvement programs, sewer policy plans, and official controls may be amended and new capital improvement programs and official controls may be prepared and adopted prior to the submission to the council of comprehensive plans required by sections 462.355; ~~subdivision 4,~~ 473.175, and 473.851 to 473.871.

Sec. 9. Minnesota Statutes 2006, section 473.859, subdivision 1, is amended to read:

Subdivision 1. **Contents.** The comprehensive plan shall contain objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all lands and waters within the jurisdiction of the local governmental unit through 1990 and may extend through any year thereafter which is evenly divisible by five. Each plan shall specify expected industrial and commercial development, planned population distribution, and local public facility capacities upon which the plan is based. Each plan shall contain a discussion of the use of the public facilities specified in the metropolitan system statement and the effect of the plan on adjacent local governmental units and affected school districts. Existing plans and official controls may be used in whole or in part following modification, as necessary, to satisfy the requirements of sections 462.355, ~~subdivision 4,~~ 473.175, and 473.851 to 473.871. Each plan may contain an intergovernmental coordination element that describes how its planned land uses and urban services affect other communities, adjacent local government units, the region, and the state, and that includes guidelines for joint planning and decision making with other communities, school districts, and other jurisdictions for siting public schools, building public facilities, and sharing public services.

Each plan may contain an economic development element that identifies types of mixed use development, expansion facilities for businesses, and methods for developing a balanced and stable economic base.

The comprehensive plan may contain any additional matter which may be included in a comprehensive plan of the local governmental unit pursuant to the applicable planning statute.

Sec. 10. Minnesota Statutes 2006, section 473.866, is amended to read:

473.866 CONTESTED CASES; ADMINISTRATIVE AND JUDICIAL REVIEW.

The council's decision to require modification under section 473.175 may be contested by the affected local governmental unit. The unit shall have 60 days within which to request a hearing on the council's decision to require modification. If within 60 days the unit has not requested a hearing, the council shall make its final decision with respect to the required modifications. If an affected unit requests a hearing, the request for hearing shall be granted, and the hearing shall be conducted within 60 days by the state Office of Administrative Hearings in the manner provided by chapter 14 for contested cases. The 60-day period within which the hearing shall be conducted may be extended by mutual agreement of the council and the affected local governmental unit. The subject of the hearing shall not extend to questions concerning the need for or reasonableness of the metropolitan system plans or any part thereof. In the report of the administrative law judge the costs of the hearing shall be apportioned among the parties to the proceeding. Within 30 days after the receipt of the report the council shall, by resolution containing findings of fact and conclusions, make a final decision with respect to the required modifications of the comprehensive plan. Any party to the proceeding aggrieved by the decision of the council may appeal to the court in the manner provided in chapter 14 for contested cases. The record on appeal shall consist of: (1) the administrative law judge's record and report, and (2) the findings, conclusions and final decision of the council. The scope of review shall be that of section 14.69, provided that: (1) the court shall not give preference to either the administrative law judge's record and report or the findings, conclusions and final decision of the council, and (2) the decision of the court shall be based upon a preponderance of the evidence as contained in the record on appeal. The costs of the appeal shall be apportioned by the court.

Sec. 11. Minnesota Statutes 2006, section 473.867, subdivision 1, is amended to read:

Subdivision 1. **Advisory materials, models, assistance.** The council shall prepare and provide advisory materials, model plan provisions and official controls, and on the request of a local governmental unit may provide assistance, to accomplish the purposes of sections 462.355, ~~subdivision 4~~, 473.175, and 473.851 to 473.871. The council may also provide specific technical and legal assistance in connection with the preparation, adoption and defense of plans, programs, and controls.

Sec. 12. Minnesota Statutes 2006, section 473.867, subdivision 2, is amended to read:

Subd. 2. **Planning assistance fund.** The council ~~shall~~ may establish a planning assistance fund as a separate bookkeeping account in its general fund for the purpose of making grants and loans to local governmental units under this section. The council shall adopt uniform procedures for the award, disbursement and repayment of grants and loans.

Sec. 13. Minnesota Statutes 2006, section 473.869, is amended to read:

473.869 EXTENSION.

A local governmental unit may by resolution request that the council extend the time for fulfilling the requirements of sections 462.355, subdivision ~~4~~ 1a, 473.175, and 473.851 to 473.871. A request for extension shall be accompanied by a description of the activities previously undertaken by a local governmental unit in fulfillment of the requirements of sections 462.355, ~~subdivision 4~~, 473.175, and 473.851 to 473.871, and an explanation of the reasons necessitating and justifying the request. Upon a finding of exceptional circumstances or undue hardship, the council may, in its discretion, grant by resolution a request for extension and may attach reasonable requirements or conditions to the extension.

Sec. 14. Minnesota Statutes 2006, section 473.871, is amended to read:

473.871 NEW MUNICIPAL SEWER SYSTEMS.

Notwithstanding the provisions of sections 462.355, ~~subdivision 4~~, 473.175, and 473.851 to 473.871 the council shall have no authority under this chapter to require a local governmental unit to construct a new sewer system.

Sec. 15. **NONPROFIT FOUNDATION.**

Subdivision 1. **Nonprofit foundation may be established.** Under Minnesota Statutes, section 465.717, subdivision 1, the Metropolitan Council established by Minnesota Statutes, section 473.123, may incorporate, create, or otherwise establish a foundation. The purpose of the foundation shall be to help acquire or finance the acquisition of lands and other assets for public recreation and open space within the metropolitan area defined in Minnesota Statutes, section 473.121, subdivision 2, in order to preserve and develop regional parks and related facilities. The foundation shall be a private nonprofit organization and tax exempt under appropriate federal and state laws. The foundation may accept gifts, donations, money, property, and other assets and may transfer, donate, or otherwise provide such gifts, donations, money, property, and other assets consistent with its dedicated purpose. The foundation is subject to the application of other laws provisions of Minnesota Statutes, section 465.719, subdivision 9.

Subd. 2. **Formation; board of directors; employees.** The foundation's initial board of directors must include business leaders, representatives of civic and nonprofit organizations, and at least one representative from each of the following: the Metropolitan Council, the Metropolitan Parks and Open Space Commission, the Department of Natural Resources, and conservation and parks and trails advocacy organizations like the Trust for Public Land and the Parks and Trails Council of Minnesota. The members of the initial board must not be compensated by the foundation for their services but may be reimbursed for reasonable expenses incurred in connection with their duties as board members. Persons employed by the foundation are not public employees and must not participate in retirement, deferred compensation, insurance, or other plans that apply to public employees generally.

Subd. 3. **Advisory committee.** The foundation may appoint an advisory committee to help establish the foundation. The advisory committee should include one or more representatives of the following: the regional park implementing agencies within the metropolitan area, the National Park Service, the United States Fish and Wildlife Service, the Metropolitan Council, the Department of Natural Resources, existing public park organizations, and other organizations as the foundation deems appropriate. Advisory committee members shall not be compensated for their membership on the advisory

committee but may be reimbursed for reasonable expenses incurred in connection with their duties as advisory committee members. The advisory committee may be dissolved by the foundation when the foundation determines the advisory committee's work is complete.

Sec. 16. **METROPOLITAN COUNCIL ASSISTANCE.**

The Metropolitan Council may provide from its general fund up to \$500,000 to help create and establish the foundation. Until the foundation is established and functioning, the council may provide, from the funding made available under this section, office space and administrative support. The council may accept gifts, donations, money, property, and other assets for purposes consistent with the foundation's purposes and shall, when the foundation is established and functioning, transfer such gifts, donations, money, property, and other assets to the foundation. The use of council funds and resources for these purposes is a public purpose.

Sec. 17. **REPORT.**

On or before January 15, 2009, the council shall prepare and submit to the chairs of the legislative committees and divisions with jurisdiction over metropolitan and local government, a report on the creation and establishment of the foundation, including a description of the public and private funds and resources used to help create and establish the foundation.

Sec. 18. **ONETIME TRANSFER.**

Notwithstanding Minnesota Statutes, section 473.253, in 2007 the council may transfer to the planning assistance fund provided in Minnesota Statutes, section 473.867, subdivision 2, up to \$1,000,000 of the amount levied by the council under Minnesota Statutes, section 473.253, subdivision 1, for taxes payable in 2007. The council shall use the amount transferred to the planning assistance fund for grants or loans to local governments under section 473.867.

Sec. 19. **APPLICATION.**

This act applies in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

Sec. 20. **REPEALER.**

Minnesota Statutes 2006, sections 473.1455; 473.247; and 473.868, are repealed.

Sec. 21. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

Presented to the governor May 21, 2007

Signed by the governor May 23, 2007, 3:06 p.m.