

May 2, 2025

**VIA EFILING ONLY**

Andrea Barker  
Minnesota Department of Transportation  
395 John Ireland Blvd  
Saint Paul, MN 55155  
[andrea.barker@state.mn.us](mailto:andrea.barker@state.mn.us)

**Re: In the Matter of Proposed Rules Relating to Airport Zoning  
Standards; R-04655  
OAH 24-9037-40397; Revisor R-04655**

Dear Andrea Barker:

Enclosed herewith and served upon you is the **ORDER ON REVIEW OF PROPOSED RULES PURSUANT TO MINN. STAT. § 14.26** in the above-entitled matter. The Administrative Law Judge has determined there are no negative findings in these rules.

The Office of Administrative Hearings has closed this file and is returning the rule record so that the Minnesota Department of Transportation can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365. Please ensure that the agency's signed order adopting the rules is filed with our office. The Office of Administrative Hearings will request the finalized rules from the Revisor's office following receipt of that order. Our office will then file the adopted rules with the Secretary of State, who will forward one copy to the Revisor of Statutes, one copy to the Governor, and one to the agency for its rulemaking record. The Minnesota Department of Transportation will then receive from the Revisor's office three copies of the Notice of Adoption of the rules.

The Minnesota Department of Transportation's next step is to arrange for publication of the Notice of Adoption in the State Register. Two copies of the Notice of Adoption provided by the Revisor's office should be submitted to the State Register for publication. A permanent rule without a hearing does not become effective until five working days after a Notice of Adoption is published in the State Register in accordance with Minn. Stat. § 14.27.

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If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, [william.t.moore@state.mn.us](mailto:william.t.moore@state.mn.us) or via facsimile at (651) 539-0310.

Sincerely,

  
CARA HUNTER  
Legal Assistant

Enclosure

cc: Legislative Coordinating Commission  
Revisor of Statutes

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules  
Relating to State Airport Zoning  
Standards

**ORDER ON REVIEW OF  
PROPOSED RULES  
PURSUANT TO  
MINN. STAT. § 14.26**

This matter came on before Assistant Chief Administrative Law Judge Kristien R. E. Butler upon request of the Minnesota Department of Transportation (Department) for a review of the proposed adoption of rules without a public hearing pursuant to Minn. Stat. § 14.26 (2024). On April 28, 2025, Department filed the documents required pursuant to Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2023).

Following review, **IT IS HEREBY DETERMINED:**

1. Department has the statutory authority to adopt the rule.
2. Department has fulfilled all procedural requirements of Minn. Stat. §§ 14.14 (2024), Minn. R. 1400.2310, and all other procedural requirements of statute and rule.
3. The rulemaking record demonstrates the proposed rules are needed and reasonable.

Based upon the record, including submitted comments, and for the reasons explained in the accompanying Memorandum, the Judge now hereby issues the following:

**ORDER**

The proposed rule parts are **APPROVED**.

Dated: May 2, 2025

A handwritten signature in black ink, appearing to read 'Kristien Butler', written over a horizontal line.

KRISTIEN R. E. BUTLER  
Assistant Chief Administrative Law Judge

## NOTICE

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rules. The Agency may then adopt the final rules or modify or withdraw its proposed rules. If the Agency makes any changes in the rules, it must submit the rules to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of final rules, the Agency must submit a copy of the Order Adopting Rules to the Chief Administrative Law Judge. After the rules' adoption, the OAH will file certified copies of the rules with the Secretary of State. At that time, the Agency must give notice to all persons who requested to be informed when the rules are adopted and filed with the Secretary of State.

## MEMORANDUM

### I. Standard of Review

Department submitted the proposed rules for a legal review pursuant to Minn. Stat. § 14.26. When conducting the review, the Judge must consider whether the agency has the authority to adopt the rules, whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules, and whether the rules as modified are substantially different from the rules as originally proposed.

The accompanying rules identify several circumstances under which a proposed rule must be disapproved by the Judge.<sup>1</sup> These include:

- situations in which the rule exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law;
- when the rule was not adopted in compliance with procedural requirements, unless the Judge finds that the error was harmless in nature and should be disregarded;
- if the rule is not rationally related to the agency's objectives or the agency has not demonstrated the need for and reasonableness of the rule; and
- if the rule is substantially different than the rule as originally proposed, and the agency did not comply with the required procedures on Minn. Stat. § 1400.2110 (2023);
- if the rule is unconstitutional<sup>2</sup> or illegal;

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<sup>1</sup> Minn. R. 1400.2100 (2023).

<sup>2</sup> In order to be constitutional, a rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies. See *Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N. W.2d 763, 768 (Minn. 1980).

- when the rule improperly delegates the agency's powers to another entity;
- when the proposal does not fall within the statutory definition of a "rule"; or
- when the proposal is subject to Minn. Stat. § 14.25, subd. 2 (2024), and the notice that hearing requests have been withdrawn and written responses to it show that the withdrawal is inconsistent with Minn. Stat. § 14.001(2), (4), and (5) (2024).

After a thorough review of the record, the Judge finds that none of these circumstances exist in the present matter.

## **II. Documents Submitted for Review**

As is required by Minn. R. 1400.2310 (2023), Department submitted the following documents for review:

- the Request for Comments as was published in the *State Register*, Volume 46, Number 17;
- the proposed rules, including the State Revisor's approval;
- the Statement of Need and Reasonableness (SONAR);
- the Notice of Intent to Adopt Rules as was mailed and published in the *State Register*, Volume 49, Number 27;
- the Certificate of Mailing and Accuracy verifying the mailing of the Notice of Intent to Adopt Rules;
- the Certificate of Giving Additional Notice pursuant to the previously approved Additional Notice plan;
- the Legislative Reference Library transmittal verification;
- the received comments and the responses to those comments;
- the proposed rules to be adopted; and
- the Order adopting the proposed rules.

Department also submitted its correspondence with the Governor's Office relating to the proposed rules, the notice it sent out to State legislators, and its consultation communication with Minnesota Management and Budget.

### **III. Analysis**

The role of the Judge in this matter is solely to determine if the rules as proposed meet all legal requirements of law and rule. As previously stated, the Judge finds that they do.

Department seeks to implement modification of the rules in question based on legislative changes to Minn. Stat. § 360 (2024) enacted by the Minnesota Legislature. Department received comments from one (1) entity in response to its Request for Comments and no valid requests for a public hearing. Department provided considered and thoughtful responses to said comments; Department further modified its proposed rules based on the received comments. Pursuant to Minn. Stat. § 14.05, subd. 2 (2024), the Judge finds this modification is not substantially different from what was initially proposed in Department's Dual Notice.

Accordingly, the proposed rule parts are approved.

**K. R. E. B.**