

# Legalizing Affordable Housing Act



**Minnesota  
House of  
Representatives**

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# Flaming Hoops

OPINION EXCHANGE

## Twin Cities housing: The 'flaming hoops' separating builders and cities

How the past brought us to where we are, and how the present will fail to get us to where we need to be.

By STEVE ELKINS | FEBRUARY 14, 2020 — 5:45PM



ILLUSTRATION BY MARTIN GEE FOR THE STAR TRIBUNE

A consensus seems to exist that we're not building enough housing in the Twin Cities, especially the relatively affordable housing we need for a workforce that will keep our economy growing.

By the Metropolitan Council's estimates, the average of 9,500 housing units we've been building per year over the past decade is 30% less than the 14,000 units per year we need to keep up with demand. The affordable housing picture is worse; we're building just one-fifth of what's needed.

- Basic Premise:

Because Cities are not allowed to assess cost-based development impact fees to recover their infrastructure costs, directly, they use a variety of fees and zoning restrictions to slow development and recover their costs, indirectly.

*Cities will not increase property taxes on existing taxpayers to fund new housing development that existing residents don't even want.*

# Guiding Principals

- New Development should “Pay its own way” (But no more!)
  - Existing taxpayers should not have to pay the infrastructure costs for new residents
  - Cities should not use the development process as a “profit center”
- The Zoning process for new homes should be “By Right”
  - The building “entitlement process” must be streamlined to reduce risk and speed the “time to market”.
- The reformed process must result in a housing pipeline which provides enough new and relatively affordable workforce housing to provide shelter to every family in our growing population.

# Current Legal Framework

- Minnesota is a “Dillon’s Rule” State
  - Cities have the authorities granted to them by the State
- The zoning and planning authorities granted to Cities are described in two chapters of State law:
  - 462 (Statewide Zoning and Planning)
  - 473 (Metropolitan Land Planning Act)
- These chapters of State law were last reformed in 1995
  - Zoning was subordinated to the Comprehensive Plan
    - The Comp Plan is like the “Constitution” and the Zoning is like the “Laws”
    - There is no legal basis for the notion that the Comp Plan is for the future while the zoning is the now.
  - The Livable Communities program was established in the Metro area

# Article 1: Impact Fees

- Impact Fees are used in 29 other states to insure that new development “pays its own way”.
- A district of benefitting properties is established which is assessed to pay for specific infrastructure improvements that are needed to support new development on those properties.
  - The funds are segregated and must be used to fund specific improvements that are described in the City’s comprehensive Plan and Capital Improvement Program.
  - Unused funds must be refunded

# Article 2: Street Impact Fees

- Similar to Impact Fees but intended for use in redeveloping areas
- A district of benefitting properties is established which is assessed based upon traffic counts to pay for specific infrastructure improvements that are needed to upgrade existing streets.
  - The funds are segregated and must be used to fund specific improvements that are described in the City's comprehensive Plan and Capital Improvement Program.
  - Unused funds must be refunded

# Article 3: Zoning Reforms

- These changes reinstate the intent of the 1995 Reforms
- A definition of zoning conformity is provided.
  - Zoning uses and densities must be aligned with those in the comp plan
  - Specification of commercial uses may be more specific in the zoning
  - Zoning fills in the detailed performance standards designed to protect the public health, safety and welfare.
- Non-conformities between the Comp Plan and zoning must be resolved by conforming the Zoning to the Comp Plan upon receipt of a development application (and not vice-versa)
- Retroactive development moratoria would not be allowed.
- Only properties that have been both guided and zoned for multi-family housing count towards a Metro city's Livable Communities program affordable housing goals.

# Article 4: Zoning Limitations

- These provisions outlaw zoning practices used to prevent the development of relatively affordable housing
- Modular apartment construction must be allowed
- Duplexes and Accessory Dwelling Units (ADUs) must be allowed *as long as all existing zoning performance standards applicable to single family homes are observed (setbacks, impervious surface coverage,...)*
- *Planned Unit Development Agreements may not be unilaterally required by a city if a proposed development is consistent with the comprehensive plan and zoning. Mutually voluntary PUDs are still allowed.*
- Mandated use of exterior building materials from a list of expensive options may not be required.
- Minimum square footages may not be required for homes or garages.



# Article 5: Land Dedication Guidelines

- Park Dedication Fees are limited to the customary 10 percent of the value of the development and may be paid in cash, land or park facilities. Undevelopable wetlands don't count towards the 10 percent.
- Arterial Street right of way dedications may not exceed the amount of land required under MNDOT State Aid Design guidelines
- Local residential street right of way may not exceed the amount of land needed to build a 32' wide street plus associated sidewalks and utilities (typically this would be about 56' of total right of way.)
- Records must be kept to show how cash dedications are spent.

# Article 6: Metro Development Density

- In the Metro region **only**, and **only** for land that is becoming available for residential development **for the first time** ...
- Cities must allow housing developers to build homes on lots as small as 1/8 of an acre **if they see a market for such housing**.
  - Most of the region's existing starter home stock in the cities and inner ring suburbs was built on lots of this size.

# Article 7: Sewer Availability Connection Charges

- In the Metro region only, the charge to connect a new home to the regional sewer system would be based upon an assumed density of at least 4 units per acre (the average density assumed when planning regional sewer capacity).
- Rationale: The cost of extending a regional sewer line to a development is the same if there is one unit on an acre of land or four units on that same acre of land. Why should regional taxpayers be subsidizing low density development?

# Article 9: Building Permit Fees

- The Dept of Labor & Industry would establish a consistent methodology for estimating construction value based upon cost per square foot for purposes of assessing building permit fees for residential construction as recommended by its Construction Code Council's Technical Advisory Group.

# Article 10: Energy Cost Disclosure

- Home sellers must disclose the home's energy efficiency data to prospective buyers through the home listing.
  - The last 12 months of home energy usage (if available)
  - The HERS rating of the home (if available)
- Utilities must provide the usage data to the home seller or their agent upon request.

# Recap: What the draft bill does NOT require

- Things that the draft bill does not do:
  - It does not abolish the Planned Unit Development Process
    - It does require mutual agreement between the city and the developer to enter into the PUD process for a housing development that is code-compliant.
  - It does not require cities to only permit affordable housing to be built
    - It does limit cities from prohibiting the construction of affordable homes
    - The market should decide what gets built
  - It does not establish a new requirement that zoning is subordinate to the comp plan
    - This has been required since 1995
    - It does provide clarity around this existing requirement
  - The Duplex and ADU provision does not override existing zoning performance standards
    - Existing setback, height and impervious surface coverage standards must be met

# Next Steps: Staged and Orderly Development

- The temporal dimension of the planning and development process, to ensure “planned, orderly and staged development” is not adequately addressed in State Law.
- Without an identified funding source for the infrastructure needed to make land available for new housing development, city Capital Improvement Programs (CIPs) are often just project “wish lists” with no meaningful time frames attached to them.



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# Thank You

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