



Establishing Local Government Policies and Ordinances for EAWs

The Environmental Quality Board (EQB) draws together the Governor's Office, five citizens and the heads of 9 state agencies in order to develop policy, create long-range plans and review proposed projects that would significantly influence Minnesota's environment. The Board staff is housed in the State and Community Services Division of the Department of Administration.

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This document is not intended as a substitute for Environmental Quality Board rules and should be used in conjunction with the rule provision parts 4410.1000 to 4410.1700. Copies of the rules are available from Minnesota's Bookstore, www.minnesotasbookstore.com, 651-297-3000 or 800-657-3757, or at the Revisor of Statutes homepage at www.revisor.leg.state.mn.us. Further information about the environmental review process is available in the Guide to Minnesota Environmental Review Rules, also located on the EQB website. Upon request, this document will be made available in an alternate format, such as Braille, large print or audiotape. For TTY, contact Minnesota Relay Service at 800-282-5077 and ask for the Minnesota Environmental Quality Board.

Updates and corrections to this document and all its accompanying links, forms, or examples will be posted on the EQB homepage at <http://www.eqb.state.mn.us/review.html>.

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Establishing Local Government Policies and Ordinances for EAWs

Objectives

By the end of this document you will:

- Learn the two key procedural areas in which the environmental review rules are silent or in which local governments may prefer more decision-making authority based on local ordinance.
- Understand the issues local government staff should consider when implementing environmental review ordinances.
- Know which Minnesota communities have environmental review ordinances and where to find their ordinance language on the web.

Introduction

Across the State of Minnesota, local governments have enacted ordinances (laws) that complement the purpose and scope of the environmental review program. While the environmental review rules provide a great deal of information regarding process requirements and procedures, there are procedural elements for which the rules are silent. There are also areas in which local governments may prefer more decision-making authority in environmental review matters.

Two of these key areas of concern include:

Fees for EAWs – While the rules provide specific details regarding fees and costs for preparing Environmental Impact Statements (EISs), they do not outline similar procedures for preparing EAWs. It is important that local governments establish procedures and fees for preparing and reviewing EAWs and utilize their local ordinances to support these procedures.

Mitigation of impacts – The EAW was designed as an information-gathering tool only. Project proposers completing EAWs are not required by the EAW process to mitigate the environmental impacts of a project. As local governments recognize that the mitigation of environmental impacts is just as important as knowing about them, some have adopted ordinances that allow their governing authority to put conditions/modifications into local permits when a project is undergoing environmental review. Any required mitigation measures in these instances are then based on local permitting, not the environmental review rules.

In order to accommodate these issues and concerns, local governments in Minnesota have established a variety of solutions that meet their needs. While the EQB does not endorse or recommend any of the specific ordinances or solutions provided on the pages that follow, local government staff may find sample ordinance language that is consistent with the environmental review rules as well as their community's goals, values and planning procedures. The EQB recommends that local governments consult with an attorney before adopting new environmental review procedures, policies or ordinances.

When implementing new ordinances, keep in mind:

1. An ordinance cannot be unconstitutionally vague. Ordinances must be reasonably certain in their terms, and set forth objective standards that provide adequate notice of what is required or prohibited.
2. Ordinances must be consistent with the constitution and statutes of the United States and Minnesota. An ordinance is presumed constitutional so long as it is substantially related to health, safety, morality or the general welfare. It also must be reasonable, that is, it must be fair, general, and impartial in operation.
3. Ordinances must not limit or deny any common law or constitutional rights.
4. Ordinance provisions must not constitute an unreasonable restraint of trade.

– From the *League of Minnesota Cities Handbook*

Issues to Consider When Implementing Environmental Review Local Ordinances and Policies

A list of issues to consider when establishing environmental review policies and ordinances is provided below, along with sample ordinance language. Links to local governments with environmental review ordinances are provided in Appendix A.

Hiring/Using Consultants

According to the environmental review rules, project proposers must prepare the data portions of the EAW and submit this information to the RGU. The RGU is then responsible for analyzing the submission and adding supplemental material to the EAW if necessary. A preferred arrangement for local governments that lack adequate staffing or expertise to prepare the EAW is to retain a consultant to perform the work.

In the early stages of the process, it is important to determine



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how consultants will be used and who they will be working for because a variety of arrangements can be established. Many local government RGUs retain a consultant because they want the consultant working on behalf of the RGU and pursuing its interests. Other local governments may instead allow the project proposer to hire the consultant. If RGUs pursue this second strategy, it may be wise to create an ordinance giving the RGU the right to exercise approval authority over the consultant hired by the project proposer.

Regardless of how the consulting relationship is established, RGUs must remember that they are ultimately responsible for the accuracy and completeness of the information provided in the EAW.

Document Preparation and Review Fees

Since some RGUs have their own staff people perform the analysis and write the EAW, structuring fees for environmental review depends upon who is actually doing the work. If the RGU's consultant will be doing the work, RGUs want to ensure the project proposer will reimburse the RGU for all consulting fees. If someone on the RGU's staff will be preparing the EAW, however, the RGU should establish an hourly rate for services, establish rates for all extra costs (copying, mileage, etc.), and otherwise ensure that the project proposer will reimburse the RGU for any portion of the analysis (ex: traffic analysis) that is performed by another organization/firm.

It is common for the RGU's planning, engineering and/or environmental services staff to also review the EAW and make sure all of the information is correct. In these circumstances, local government RGUs establish an application fee or an hourly rate for staff time for reviewing and revising the document. Some local government RGUs also charge an hourly rate when preparing the response to public comments. Since smaller local governments may not have the staffing to perform any of these activities, some choose to hire a consultant to complete all the required work and then charge these costs back to the project proposer.

Example from the City of Oakdale:

"The applicant for a permit for any action for which an Environmental Assessment Worksheet (EAW) is required either by State law or rules or by the City Council, shall pay all costs of preparation and review of the EAW, and, upon the request of and in the manner prescribed by the City Administrator, or representative, shall prepare a draft EAW and supply all information necessary to adequately complete that document."

Payment Procedures

Some local governments establish an escrow agreement with the project proposer at the beginning of the environmental review process. This helps ensure that consulting costs will be paid for as they are incurred. As EAW preparation costs can be quite large, an escrow agreement of at least \$5,000 is common. Some local governments state that all fees and consulting costs must be paid by the proposer before the EAW or permitting decisions are made. This ensures that the RGU has some leverage in receiving a complete and timely payment for costs and services.

Example from the City of Hopkins:

"No permit for an action for which an EAW or an EIS is required shall be issued until all costs of preparation and review which are to be paid by the applicant are paid, and all information required is supplied in adequate detail and until the environmental review process has been completed as provided in this article, and pursuant to any written agreements entered into by the applicant for the permit or permits and the City Council under the provision of subdivision 5".

Example from the City of Oakdale:

Sec. 16-14. Deposit Required. The owner shall deposit with the city in escrow an amount, as determined by the City Administrator, necessary to cover the total costs associated with the proposed development prior to the performance of any such services by the city's regular staff or consultants. However, if a proposed development and the related consultant review is anticipated to span a period of time in excess of ninety (90) days, the owner will only be expected to deposit a sum, as determined by the City Administrator, necessary for the city to pay all costs for said ninety (90) days. The owner will then be expected to maintain the escrow fund at a balance equal to the original amount deposited. Any escrow shall be held in a special escrow account and shall be credited to the said subdivider, owner, or developer. Staff time and legal expenses incurred by the City of Oakdale in plat approval, office and field checking, setting grade and drainage requirements, general supervision, staking, inspection, installation and cost of traffic control and street signs, drafting as-built drawings and all other city staff and consultant services performed in the processing of said improvements and developments, administrative and legal expenses in examining title to the property being developed shall be charged to the aforementioned account and shall be credited to the City of Oakdale.



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Division of Work and Responsibilities

Staff Duties/Responsibilities – It is sometimes difficult for RGUs to outline which staff members are responsible for specific environmental review tasks. By devising a list of standard responsibilities and procedures, and then including these procedures in local ordinances, local government RGUs can ensure that environmental review is carried out completely, efficiently and consistently for each project.

Role of Special Committees and Planning Commissions

– Some local governments have created special committees to comment and offer assistance on environmental issues, while other local governments may have the planning commission review an EAW before it is brought before the governing body. Utilizing special committees and planning commissions can be beneficial because they may alert the RGU to special issues that would otherwise have been missed. But local governments must be careful to follow the deadlines established in the environmental review rules. If utilizing a special committee creates significant delays in the process, the project proposer may have grounds to object.

Application Procedures

Example from Itasca County:

SUBDIVISION 1 - The County Zoning officer shall be the person responsible for the administration of the Environmental Review Program, this ordinance, and the rules adopted by reference by this ordinance.

SUBDIVISION 2 - The County Zoning Officer shall be responsible for determining whether an action for which a permit is required is an action for which an EAW is mandatory under 6MCAR 3.038 and/or an EIS is mandatory under 6MCAR 3.039. The County Zoning Officer shall also determine those proposed actions for which an optional EAW may be required under the provisions of the ordinance and shall notify the Planning Commission and the County Board of these proposed actions. The Planning Commission may consult with the Environmental Council.

SUBDIVISION 3 - All EAW's and EIS's shall be prepared under the supervision of the County Zoning Officer, reviewed by the Planning Commission, in consultation with the Environmental Council, and reviewed and approved by the County Board.

SUBDIVISION 4 - When reviewing an EAW or EIS, the County Zoning Officer, and the Planning Commission, in consultation with the Environmental Council, may suggest design alterations which would lessen the environmental impact of the action. The County Board may require these design alterations to be made as a condition for issuing the permit when it finds that the design alterations are necessary to lessen the environmental impact of the action.

SUBDIVISION 5 - After an EAW is prepared, the Environmental Council shall make their recommendations to the Planning Commission. The Planning Commission shall decide and recommend to the County Board whether or not it should require the preparation of an EIS. The County Board shall require an EIS when it finds under 6MCAR 3.028 or 3.029 that an action is major and has potential for significant environmental effects.

Several local governments have designed their own “Application for Environmental Review.” This helps to facilitate the approval process because there is less ambiguity in deciding when the project proposer is actually finished with the data portions of the EAW. If the project proposer is required to pay a fee and complete an application when submitting data, they may be more likely to ensure they give all the necessary information to the RGU on the first attempt.

Incomplete Information Submittals

Some project proposers, especially those going through envi-

Example from the City of Plymouth:

“If the Zoning Administrator determines that an EAW shall be prepared, the proposer of the project shall submit an “Application for Environmental Review” along with the completed data portions of the EAW. The applicant shall agree in writing, as a part of the application, to reimburse the City prior to the issuance of any permits for all reasonable costs, including legal and consultants’ fees, incurred in preparation and review of the EAW.”

ronmental review the first time, do not submit all of the necessary information when needed. The project proposer might then become frustrated because the process is taking longer to complete. Clearly stating the local government’s response to incomplete information/applications, especially by including specific deadlines (as long these deadlines are not in conflict with the environmental review rules), helps keep both RGU and the project proposer on track.

Permit Conditions

As previously stated, the EAW rules do not provide RGUs with the authority or ability to place certain conditions on a

Example from the City of Plymouth:

“Pursuant to Minnesota Rules 4410.1400, the Zoning Administrator shall promptly review the submittal for completeness and accuracy. If the Zoning Administrator determines that the submittal is incomplete, the submittal shall be returned to the proposer for completion of the missing data. If the Zoning Administrator determines that the submittal is complete, the proposer shall be notified of the acceptance of the submittal within five days. The Zoning Administrator shall have 30 days from notification to add supplementary material to the EAW, if necessary, and to approve the EAW for distribution.”

project’s approval. Because the mitigation of environmental impacts is an important issue for many local governments, some adopt ordinances that allow their board/council to put conditions into local permits when a project has undergone environmental review.



Neighboring Property Owner Notification/ Participation

Environmental review can often provide a vehicle for hearing

Example from the City of Bloomington:

“In issuing any permits or granting any other required approvals for a project subject to review under this ordinance, the City Council shall consider the analysis and the comments received on it. The City Council shall, whenever practicable and consistent with other laws, require that mitigation measures identified in the analysis be incorporated in the project’s design and construction.”

and addressing citizen comments. But it is less useful when it occurs at the end of the process or when neighbors are unaware of the project proposal. Some local governments, in an attempt to ensure early and collaborative public participation, have procedures that require notification and participation procedures beyond what is required in the environmental review rules. Examples of these procedures include requiring the notification of neighboring property owner(s) about any project in which an EAW is completed and requiring the project proposer to draft a public participation plan for environmental review projects.

Review

- Local governments have enacted ordinances to complement the purpose and scope of the environmental review program.

Example from the City of Plymouth:

(1) Upon completion of the EAW for distribution, the Zoning Administrator shall provide mailed notice of the availability of the EAW and date of the meeting at which the Planning Commission will consider the matter to all property owners within at least seven hundred and fifty (750) feet of the boundaries of the property which is the subject of the EAW. Said notice shall be mailed at minimum ten (10) days before the date of the Planning Commission meeting during which the EAW will be considered. (Amended by Ord. No. 2001-06, 02/13/01)

(2) Failure of a property owner to receive notice shall not invalidate any such proceedings as set forth within this Chapter.

- While the rules go into specific details regarding fees and costs for preparing an EIS, they do not outline similar procedures for an EAW. In addition, project proposers completing an EAW are not required by the EAW process to mitigate the environmental impacts of a project.
- Local governments should consider the following issues when establishing environmental review policies and ordinances:
 - ✓ Hiring/Using Consultants
 - ✓ Document Preparation and Review Fees
 - ✓ Payment Procedures
 - ✓ Division of Work and Responsibilities
 - ✓ Application Procedures
 - ✓ Incomplete Information Submittals
 - ✓ Permit Conditions
 - ✓ Neighboring Property Owner Notification



Appendix A

The following is a list of links to ordinances that Minnesota local governments have implemented, and that are designed to complement the state environmental review rules. While the EQB does not endorse or recommend any specific ordinances or ordinance language, local government staff may find ordinances they can implement that are consistent with the environmental review rules, as well as their community's goals, values, and planning procedures. The EQB recommends that all local government staff consult with an attorney before adopting new environmental review procedures or ordinances.

It is common for links to specific ordinances to change over time, and so while a link to the environmental review related ordinance has been provided, a link to the local government's main web page is also listed. If at some time one of the links is inaccurate or no longer functional, interested parties should contact the local government directly to find out more information about its environmental review procedures and ordinances.

Canosia Township

Specific ordinance related to environmental review:

<http://www.cpinternet.com/~canosia/ZONE111804.pdf>

Main web page:

<http://www.cpinternet.com/~canosia/>

City of Bloomington

Specific ordinance related to environmental review:

http://www.ci.bloomington.mn.us/code/Code16_5.html

Main web page:

<http://www.ci.bloomington.mn.us/>

City of Hopkins

Specific ordinance related to environmental review:

<http://www.hopkinsmn.com/cityhall/ordpol/05/510.html>

Main web page:

<http://www.hopkinsmn.com/>

City of Oakdale

Specific ordinance related to environmental review:

<http://www.ci.oakdale.mn.us/Code%20Chapter%2016.htm>

Main web page:

<http://www.ci.oakdale.mn.us/>

City of Plymouth

Specific ordinance related to environmental review:

http://www2.ci.plymouth.mn.us/pls/cop/docs/FOLDER/CITY_GOV/CG_ZONE/ZONING_TOC/21040-ENVIRONMENTAL_REVIEW.PDF

Main web page:

<http://www2.ci.plymouth.mn.us/>

Itasca County

Specific ordinance related to environmental review:

<http://www.co.itasca.mn.us/Admin/Policy%20Manual/Environmental.pdf>

Main web page:

<http://www.co.itasca.mn.us/>