



## Legislation Details (With Text)

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**Title:** Clarifying the City Council's sole authority to review appeals from the Zoning Code.

**Sponsors:** Jane L. Prince, Dai Thao, Nelsie Yang

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**Attachments:** 1. Published City Attorney Opinion RES 21-632 05132021

Date	Ver.	Action By	Action	Result
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Clarifying the City Council's sole authority to review appeals from the Zoning Code.

WHEREAS, pursuant to well established Minnesota case law, “municipalities have no inherent power to zone except as conferred by statute or implied as necessary in aid of those powers which are expressly conferred by statute,” *Country Joe v. City of Eagan*, 560 N.W.2d 681 (Minn. 1997); and

WHEREAS, the delegation of power for municipal zoning and planning arises from the Municipal Planning Act, codified at Minn. Stat. §§ 462.351-.365; and

WHEREAS, pursuant to the Policy Statement in Minn. State. § 462.351, “[i]t is the purpose of sections 462.351 to 462.364 to provide municipalities in a single body of law, with the necessary powers and uniform procedures for adequately conducting and implementing municipal planning”; and

WHEREAS, pursuant to Minn. Stat. § 462.354, Subd. 2, Minnesota confers to a city the power to engage in zoning and planning, but to do so, the state also requires a city to “provide by ordinance” a “board of appeals and adjustments” to adjudicate disputes arising from the city’s zoning and planning; and

WHEREAS, pursuant to Minn. Stat. § 462.354, and 462.357 subdivision 6, and 462.359 subdivision 4, the purpose and power of this board is “[t]o hear and decide appeals” relating to a city’s enforcement of zoning ordinances, requests for variances, and land use or zoning permits; and

WHEREAS, pursuant to Saint Paul Leg. Code § 61.702, the role of this board, empowered to hear zoning appeals, is held by the Saint Paul City Council, who “shall have the power to hear and decide appeals” and “shall render a decision on the appeal”; and

WHEREAS, pursuant to Minn. Stat. § 462.354, Minnesota law expressly states that the decisions of the “board of appeals and adjustments”, here the Saint Paul City Council, are “final subject to judicial review”; and

WHEREAS, pursuant to Saint Paul Leg. Code § 61.704, in exercising its zoning appeals powers, the City Council may reverse, affirm, or modify the decision appealed from, and “[d]ecisions of the City Council on all

matters within its jurisdiction shall be final subject only to judicial review by a court”; and

WHEREAS, pursuant to Minn. Stat. § 462.361, Minnesota law again expressly states that zoning decisions are subject to judicial review; and

WHEREAS, the Saint Paul City Charter section 6.08, while providing the mayor with the power to veto ordinance or resolutions of legislative acts, such power relating to zoning appeals is preempted by Minn. § 462.351, and 462.354, and 462.357 subdivision 6, and 462.359 subdivision 4, which expressly enumerates the power “to hear and decide appeals” to be held by the “board of appeals and adjustments”, here the Saint Paul City Council; and

WHEREAS, the Saint Paul City Charter section 6.08 mayoral veto power does not grant the Mayor the power to grant immunity to certain individuals from violations of the zoning code, or to in any way waive the city’s zoning ordinances to certain individuals; and

WHEREAS, decisions regarding appeals under the zoning code are quasi-judicial decisions, requiring the City Council to hear testimony and make findings based on evidence presented to it regarding whether the applicant complies or violates the zoning code; and

WHEREAS, pursuant to Minn. § 462.351, and 462.354, Saint Paul Leg. Code § 61.702 and 61.704, it was the City Council which conducted the quasi-judicial proceeding, in which the Mayor played no role; and

WHEREAS, pursuant to Minn. Stat. § 15.99, the City of Saint Paul is required to approve or deny within 60 days a written request relating to zoning; and

WHEREAS, pursuant to Minn. Stat. § 462.354, Subd. 2, “[t]he board shall provide for a record of its proceedings which shall include the minutes of its meetings, its findings, and the action taken on each matter heard by it, including the final order” and “[t]he board shall within reasonable time make its order deciding the matter and shall serve a copy of such order upon the appellant or petitioner by mail”; and

WHEREAS, on February 5, 2021, the Saint Paul Planning Commission denied a site plan application by Alatus for its Lexington Station Apartments development, and pursuant to § 61.702(a) of the Zoning Code, Alatus appealed to the City Council as APC 21-1; and

WHEREAS, the City Council made its final decision on APC 21-1 at its April 7, 2021 meeting, denying Alatus’ appeal and upholding the Saint Paul Planning Commission’s denial; and

WHEREAS, the City Council’s final decision on APC 21-1 at its April 7, 2021 meeting is contained in the public record, including in the meeting minutes, the video transcript, and articulated specific reasons for the City Council’s decision including findings; and

WHEREAS, at the April 7, 2021 meeting, the City Council discussed the Minn. Stat. § 15.99 time limitation which required them to make a decision by April 17, 2021, and because of this deadline the City Council decided to vote without delay; and

WHEREAS, on April 14, 2021 the City Council memorialized its April 7, 2021 final decision on APC 21-1 through adoption of a resolution, RES 21-632; and

WHEREAS, Mayor Carter provided a letter to the City Council dated April 14, 2021, claiming to exercise his veto of RES 21-632 under section 6.08 of the City Charter; and

WHEREAS, in a press statement Mayor Carter indicated his intent that Alatus’ site plan application for its Lexington Station Apartments development be approved, through a claimed procedural fault, in that his veto

caused a failure by the City to deny Alatus' application within the time period mandated by statute; and

WHEREAS, the reasons set out by the Mayor for his veto failed to address any of the requirements for site plan approval under the zoning code; now therefore be it

RESOLVED, that Mayor Carter's letter dated April 14, 2021, and purported veto, seeks to create an absurd result, not contemplated by Minn. Stat. § 462.354, 462.361, 15.99, Leg. Code § 61.702, and City Charter section 6.08, wherein the mayoral veto was utilized to invalidate the quasi-judicial role of the Council in a matter of zoning appeals, employing a manufactured delay of timely agency action, as the authority for a grant of approval of the subject request.

RESOLVED, that the Mayor cannot grant immunity to Alatus for violations of the zoning code; and be it further

RESOLVED, that the Mayor has no veto power regarding the City Council's review of appeals from the zoning code; and be it further

RESOLVED, that the City Council has sole authority, as expressed under state and municipal law, to review appeals from the zoning code; and be it further

RESOLVED, that Mayor Carter's letter dated April 14, 2021, and purported veto, was ultra vires, has no authority to nullify the City Council's final decision on APC 21-1 at its April 7, 2021 meeting, failed to address any of the requirements for site plan approval under the zoning code, was arbitrary and capricious, has no effect, and cannot revive Alatus' twice denied site plan application; and be it further

RESOLVED, that the City Council's final decision on APC 21-1 on April 7, 2021 constituted a final action, satisfying the substantive requirements of Minn. Stat. § 462.354, and the timely decision required by Minn. Stat. § 15.99; and be it further

RESOLVED, that the only remedy for an appellant to challenge the City Council's decision on a zoning appeal, is to seek judicial review in the district court; and be it further

RESOLVED, that the City Council shall, within reasonable time, send to Alatus by mail, a letter Order stating its decision on APC 21-1 from the April 7, 2021 meeting, upholding the decision of the Planning Commission to deny the site plan, based upon the findings read into the public record by Councilmember Dai Thao; and be it further

RESOLVED, that no building permits may be issued to Alatus for the Lexington Station Apartments development, until a site plan application has been approved; and be it finally

RESOLVED, that the City Attorney is directed to take all actions necessary to uphold the actions of the Planning Commission and City Council in denying the Alatus site plan application for the Lexington Station Apartments development.