

ORDINANCE NO. 2021-26

AN ORDINANCE AMENDING STANDARDS RELATED TO ENVIRONMENTAL REVIEW PROCEDURES AND FEES, THEREBY AMENDING CHAPTERS 15, 19, 21 AND 22 OF THE CITY CODE

The City Council of the City of Bloomington, Minnesota ordains:

Section 1. That Chapters, 15, 19, 21 and 22 of the City Code are hereby amended by deleting those words that are contained in brackets [] with ~~striketrough~~ text and adding those words that are underlined, to read as follows:

CHAPTER 15: BUILDINGS AND STRUCTURES

ARTICLE XI: RESERVED ~~[GENERIC STUDY FEES]~~

~~§ 15.219 PURPOSE.~~

~~—The creation of development districts within the city facilitates commercial, industrial and retail development, resulting in increased employment and an enlarged tax base. It is recognized that comprehensive development within such districts may have regional impact on the environment, transportation, housing and utilities. As a consequence, generic studies of these elements may be required as a precondition to development within such districts. It is found that generic studies will benefit the proposers of such developments. The purpose of this Article XI is to defray costs incurred by the city in the preparation, review and implementation of development-related generic studies.~~

~~§ 15.220 DEFINITIONS.~~

~~—The following words and terms, when used in this Article XI, shall have the following meanings, unless the context clearly indicates otherwise.~~

~~—**APC.** Air Pollution Control Rules of the State Pollution Control Agency.~~

~~—**AUAR or ALTERNATIVE URBAN AREAWIDE REVIEW.** A type of environmental assessment to determine impacts on the environment over a defined area to address substantially the same issues as the EAW and EIS process as defined in M.S. § 4410.3610.~~

~~—**DEVELOPMENT DISTRICT.**~~

~~—(a) An industrial development district as defined in M.S. § 469.058, as it may be amended from time to time;~~

~~—(b) A redevelopment project or housing project as described in MS. §§ 469.001 through 469.047, as it may be amended from time to time;~~

~~—(c) An economic development district as described in M.S. §§ 469.090 to 469.1082, as it may be amended from time to time;~~

~~—(d) A municipal development district as described in M.S. § 469.124 through M.S. § 469.134, as it may be amended from time to time;~~

~~—(e) A redevelopment tax increment district defined in M.S. § 469.174, subd. 10, as it may be amended from time to time;~~

~~—(f) An economic development tax increment district as defined in M.S. § 469.174, subd. 12, as it may be amended from time to time;~~

- (g) A housing tax increment district as defined in M.S. § 469.174, subd. 11, as it may be amended from time to time; or
- (h) A development district as defined in M.S. § 469.059 as it may be amended from time to time.
- ~~**EAW or ENVIRONMENTAL ASSESSMENT WORKSHEET.**~~ A document designed to set out the basic facts necessary to determine whether an EIS is required.
- ~~**EIS or ENVIRONMENTAL IMPACT STATEMENT.**~~ A detailed written statement as required by M.S. § 116D.04, subd. 2a, as it may be amended from time to time, or federal law.
- ~~**GENERIC STUDY.**~~ A detailed analysis of the impact anticipated development will have on environmental, transportation, housing or utility requirements within development districts.
- ~~**GENERIC STUDY COSTS.**~~ The total cost of expenditures incurred by the city in preparing and distributing the study, including costs for collection and analysis of technical data; the costs of staff time including direct salary and fringe benefits; the cost of consultants; costs of printing and distributing study documents; and costs of public hearings or meetings held in conjunction with the study.
- ~~**ISSUING AUTHORITY.**~~ The City Manager or his or her designated representative.
- ~~**MCAR.**~~ Minnesota Code of Agency Rules.
- ~~**PERSON.**~~ Includes a corporation, firm, partnership, association, organization or any other group acting as a unit, a natural person, receiver, trustee, assignee, agent or other legal representative of the foregoing, and any other entity.
- ~~**PROJECT.**~~ A proposed facility for commercial, industrial, retail, institutional, office, recreational, educational, entertainment, residential, transportation or parking use or any combination of uses thereof to be located within a development district. PROJECT does not include proposed single-family housing, duplexes, remodeling of existing facilities or minor additions to existing facilities.
- ~~**PROPOSER.**~~ A person that proposes to undertake a project.

~~§ 15.221 APPLICABILITY.~~

- The provisions of this Article XI shall apply to the following projects:
- (a) A project subject to the requirements of an EAW or EIS pursuant to 6 MCAR SS 3.025, 3.028, 3.029, 3.038, 3.039, 3.040 or federal law which has a total estimated cost, as determined by a city plan check engineer, of at least \$1,000,000 and which benefits from a generic environmental impact study;
- (b) A project which benefits from a generic study and is required to obtain an indirect source permit from the Minnesota Pollution Control Agency pursuant to APC 19; or
- (c) A project which benefits from the transportation, housing or utility components of a generic study.

~~§ 15.222 FEE REQUIRED.~~

- (a) The proposer of a project described in § 15.221 shall pay the city a generic study fee in an amount to be determined pursuant to § 15.223 of this code.
- (b) All generic study fees shall be placed in the General Fund of the city.
- (c) No building permit shall be granted for construction of a project subject to this Article XI unless the proposer has paid the generic study fee.

~~§ 15.223 AMOUNT OF FEE.~~

- The amount of the generic study fee shall be computed as follows:
- (a) The building permit fee for a project shall be calculated in accordance with § 15.183 of this code.

- ~~—(b) The issuing authority shall determine the estimated generic study costs and what percentage of the generic study costs are to be allocated for the environmental, transportation, housing and utility components.~~
- ~~—(c) The issuing authority shall then determine the percentage of the generic study costs that shall be applied to a project.~~
- ~~—(d) The issuing authority shall then estimate the total building permit fees in the development district during the period for which the costs of the study are to be recovered.~~
- ~~—(e) The issuing authority shall then determine the generic study costs as a percent of the amount computed in subsection (d) above.~~
- ~~—(f) The generic study fee for a project shall be the product of the computations in subsections (a), (c) and (e) above.~~

~~§ 15.224 AMENDMENTS.~~

~~—This Article XI shall be amended as required to incorporate generic study fee schedules for each development district prior to the imposition of generic study fees.~~

~~§ 15.225 APPEAL.~~

~~—A proposer shall have the right to appeal the decision of the issuing authority regarding the generic study fee to the City Council. An appeal shall be made within ten days after notification of such decision. The Council shall either affirm, modify or overrule the decision and shall state the reasons for such action.~~

~~§ 15.226 SOUTH LOOP.~~

~~—To support the AUAR, transportation, and environmental district studies, the fee is 65% of the building permit fee for projects benefitting from the studies.]~~

CHAPTER 19: ZONING

ARTICLE I: GENERAL PROVISIONS

DIVISION B: DEFINITIONS

§ 19.03 DEFINITIONS.

The following words and terms when used in Chapters 19 and 21 shall have the following meanings unless the context clearly indicates otherwise.

AUAR or ALTERNATIVE URBAN AREAWIDE REVIEW. An alternative form of environmental review to determine impacts within a defined area as detailed in Minnesota Rules 4410.3610. The content and format of an AUAR is similar to that of an EAW, but provides for a level of analysis comparable to that of an EIS.

EAW or ENVIRONMENTAL ASSESSMENT WORKSHEET. A brief document designed to assess the environmental effects and set out the basic facts necessary to determine whether an EIS is required for a proposed project or to initiate the scoping process for an EIS.

EIS or ENVIRONMENTAL IMPACT STATEMENT. A detailed written statement as required by M.S. § 116D.04, subdivision 2a used to evaluate proposed projects which have the potential for significant environmental effects.

EQB or ENVIRONMENTAL QUALITY BOARD. Formed by Minnesota Statute 116C, the Minnesota Environmental Quality Board (EQB), is composed of state agency leaders and citizens from around the state for the purpose of providing leadership and coordination on environmental issues. The EQB functions as the coordinating body for Minnesota's Environmental Review Program.

MANDATORY ENVIRONMENTAL REVIEW. A formal review and assessment of the potential environmental impacts of a development project that meets mandatory thresholds for review pursuant to M.S. § 116D and Minnesota Administrative Rules, Chapter 4410, Environmental Review. Mandatory environmental reviews are subject to the requirements in Chapter 21, Article V, Division F: Environmental Review.

MITIGATION. Mitigation includes:

- (a) Avoiding impacts altogether by not undertaking a certain project or parts of a projects;
- (b) Minimizing impacts by limiting the degree of magnitude of a project;
- (c) Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating impacts over time by preservation and maintenance operations during the life of the project;
- (e) Compensating for impacts by replacing or providing substitute resources or environments; or
- (f) Reducing or avoiding impacts by implementation of pollution prevention measures.

RGU or RESPONSIBLE GOVERNMENT UNIT. The governmental organization that must oversee the preparation and analysis of environmental review documents. The RGU can be any state agency or any local (county, city, township) or special purpose unit (watershed district, SWCD, etc.) of government in the state. The RGU is the governmental unit determined to have the greatest authority to approve or disapprove a project.

CHAPTER 21: ZONING AND LAND DEVELOPMENT

ARTICLE V: ADMINISTRATION AND NONCONFORMITY

DIVISION A: APPROVALS AND PERMITS

§ 21.501.01 FINAL SITE AND BUILDING PLANS.

(d) *Findings.* The following findings must be made prior to approval of final site and building plans or revisions to final site and building plans:

- (1) The proposed development is not in conflict with the Comprehensive Plan;
- (2) The proposed development is not in conflict with any adopted district plan for the area;
- (3) The proposed development is not in conflict with city code provisions or state law; and
- (4) The proposed development will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.

(f) *Content.* Final site and building plan applications must include the following information, unless exempted by the Planning Manager:

(7) Any mandatory environmental review. Preparation and review of required documentation for any development project subject to mandatory environmental review as described in Chapter 21, Article V, Division F must be completed prior to any official action being taken by the city to approve the proposed development. Review of a development application may occur concurrent with a mandatory environmental review provided the required environmental review documentation is submitted with the development application.

§ 21.501.02 PRELIMINARY DEVELOPMENT PLANS.

(d) *Findings.* The following findings must be made prior to the approval of new preliminary development plans or revisions to previously approved preliminary development plans:

- (1) The proposed development is not in conflict with the Comprehensive Plan;
- (2) The proposed development is not in conflict with any adopted district plan for the area;
- (3) The proposed development is not in conflict with state law and [A] all deviations from city code requirements are in the public interest and within the parameters allowed under the Planned Development Overlay Zoning District or have previously received variance approval;
- (4) Each phase of the proposed development is of sufficient size, composition and arrangement that its construction, marketing and operation is feasible as a complete unit without dependence upon any subsequent unit;
- (5) The proposed development will not create an excessive burden on parks, schools, streets, and other public facilities and utilities which serve or are proposed to serve the planned development; and
- (6) The proposed development will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.

(f) *Content.* Preliminary development plan applications must include the following information, unless exempted by the Planning Manager:

(6) Any mandatory environmental review. Preparation and review of required documentation for any development project subject to mandatory environmental review as described in Chapter 21, Article V, Division F must be completed prior to any official action being taken by the city to approve the proposed development. Review of a development application may occur concurrent with a mandatory environmental review provided the required environmental review documentation is submitted with the development application.

§ 21.501.03 FINAL DEVELOPMENT PLANS.

(e) *Findings.* The following findings must be made prior to the approval of new final development plans or revisions to previously approved final development plans:

- (1) The proposed development is not in conflict with the Comprehensive Plan;
- (2) The proposed development is not in conflict with any adopted district plan for the area;
- (3) The proposed development is not in conflict with the approved preliminary development plan for the site;
- (4) The proposed development is not in conflict with state law and [A] all deviations from city code requirements are in the public interest and within the parameters allowed under the Planned Development Overlay Zoning District or have previously received variance approval;
- (5) The proposed development is of sufficient size, composition and arrangement that its construction, marketing and operation is feasible as a complete unit without dependence upon any subsequent unit;
- (6) The proposed development will not create an excessive burden on parks, schools, streets, and other public facilities and utilities which serve or are proposed to serve the planned development; and
- (7) The proposed development will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.

(g) *Content.* Final development plan applications must include the following information, unless exempted by the Planning Manager:

(7) Any mandatory environmental review. Preparation and review of required documentation for any development project subject to mandatory environmental review as described in Chapter 21, Article V, Division F must be completed prior to any official action being taken by the city to approve the proposed development. Review of a development application may occur concurrent with a mandatory environmental review provided the required environmental review documentation is submitted with the development application.

§ 21.501.04 CONDITIONAL USE PERMITS.

(e) *Findings.* The following findings must be made prior to the approval of a conditional use permit:

- (1) The proposed use is not in conflict with the Comprehensive Plan;
- (2) The proposed use is not in conflict with any adopted district plan for the area;

- (3) The proposed use is not in conflict with city code provisions or state law;
- (4) The proposed use will not create an excessive burden on parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the planned development; and
- (5) The proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare.

(j) Content. Conditional use permit applications must include the following information, unless exempted by the Planning Manager:

(7) Any mandatory environmental review. Preparation and review of required documentation for any development project subject to mandatory environmental review as described in Chapter 21, Article V, Division F must be completed prior to any official action being taken by the city to approve the proposed development. Review of a development application may occur concurrent with a mandatory environmental review provided the required environmental review documentation is submitted with the development application.

§ 21.501.05 INTERIM USE PERMITS.

(e) *Findings.* The following findings must be made prior to the approval of an interim use permit:

- (1) The proposed use will not delay permanent development of the site;
- (2) The proposed use will not adversely impact implementation of the Comprehensive Plan or adopted district plan for the area;
- (3) The proposed development is not in conflict with state law and [7] the proposed use will not be in conflict with any provisions of the city code on an ongoing basis;
- (4) The proposed use will not be injurious to the surrounding neighborhood or otherwise harm the public health, safety and welfare;
- (5) The date or event that will terminate the use has been identified with certainty; and
- (6) The property on which the use is situated has no open enforcement orders and there are no nuisance characteristics associated with the property or its current use.

(i) Content. Interim use permit applications must include the following information, unless exempted by the Planning Manager:

(7) Any mandatory environmental review. Preparation and review of required documentation for any development project subject to mandatory environmental review as described in Chapter 21, Article V, Division F must be completed prior to any official action being taken by the city to approve the proposed development. Review of a development application may occur concurrent with a mandatory environmental review provided the required environmental review documentation is submitted with the development application.

DIVISION B: APPLICATION PROCESSES AND FEES

§ 21.502.01 APPLICATION PROCESSES AND FEES.

(a) Purpose. This section outlines various application processes and fees.

(c) *Application processes and fees.*

Application Process	Review and Decision Making Authority					Notice		Fee
	DRC	ST	HE	PC	CC	N	Mail	
Environmental Reviews								
Environmental assessment worksheet – discretionary		R			DM			No fee
Environmental assessment worksheet – mandatory		R			DM			[\$1,660] \$2,400
Environmental impact statement		R			DM			\$6,620
<u>Alternative environmental review</u>		<u>R</u>			<u>DM</u>			Reference § 21.506.05(i)

(h) *Escrow for special studies and mandatory environmental review.*

(1) Where special studies are needed by the city to conduct a land use application review or prepare a mandated environmental assessment, an escrow agreement between the applicant and the city requiring a cash escrow deposit to cover costs for the special studies, must be executed. The executed escrow agreement and cash escrow deposit to cover costs must be supplied by the applicant prior to the submission of the land use application to the city. Special studies may include traffic, environmental, wetland, utility or other studies undertaken by the city itself or by outside consultant services, under the direction of the city, and paid for by the applicant.

(2) The requirement for an applicant to pay costs to the city for special studies for the review of a development application would be determined by the city, after the city has prepared a special studies impact determination.

(3) If after commencement of special studies, it is determined additional funds are needed to complete the special studies, funds must be supplied by the applicant into the escrow account prior to submission of the application to the city.

(4) Unexpended escrow funds will be returned to the applicant after final City Council action.

[DIVISION F: GENERAL PROVISIONS]

~~§ 21.506.01 CONFLICTING PROVISIONS.~~

~~—In the event that the provisions of this Article V are inconsistent with one another or if the provisions of this Article V conflict with provisions found in other adopted regulations of the city, the more restrictive provision will control. When the provisions of this Article V impose a greater restriction than imposed by any easement, covenant, deed restriction or private agreement, the provisions of this Article V control.~~
(Ord. 2009-1, passed 1-26-2009)

~~§ 21.506.02 SEVERABILITY.~~

~~—If any division, section, subsection, sentence, clause or phrase of this Article V is for any reason held to be invalid, such decision does not affect the validity of the remaining portion of this Article V. The City Council hereby declares that it would have adopted the ordinance in each division, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more divisions, sections, subsections, sentences, clauses or phrases be declared invalid.]~~

DIVISION F: ENVIRONMENTAL REVIEW

§ 21.506.01 PURPOSE

- (a) Purpose – Identify and evaluate the magnitude of potential environmental impacts; consider alternatives to the proposed project; and explore methods for reducing adverse environmental effects through mitigation.
- (b) Findings and Intent
 - (1) Mandatory environmental reviews are required and discretionary environmental reviews are allowed by Minnesota Rules Chapter 4410 for proposed projects deemed to pose adverse environmental impacts due to their size or characteristics.
 - (2) Environmental review is not meant to approve or deny a project, but acts as a source of information to guide other city approvals and permitting decisions.
- (c) Adoption of Procedures
 - (1) M.S. §116D, Environmental Policy and Minnesota Rules Chapter 4410 are hereby adopted, together with the provisions of this division, as the environmental review procedures that the City of Bloomington will follow in implementing the Environmental Review Program and any rules adopted thereunder by the Minnesota Environmental Quality board.

§ 21.506.02 GENERAL PROVISIONS

- (a) The Director of Community Development or designee will review proposed development projects to determine if an Environmental Assessment Worksheet (EAW), Environmental Impact Statement (EIS), or an update to an existing Alternative Urban Areawide Review (AUAR) is required pursuant to Minnesota Rules Chapter 4410.
- (b) The city may order preparation of a discretionary EAW for a proposed development project that does not meet the mandatory thresholds for an EAW or EIS review, if it determines that due to its nature or location the project may have the potential for significant environmental effects, provided the project is not exempted pursuant to Minnesota Rules, part 4410.4600. Such an order must be formalized in a resolution approved by the City Council, including findings that clearly describe the potential environmental effects.
- (c) If an EAW, EIS, or an AUAR update is required or ordered for a proposed development project, the city may not take official action to approve the project, grant a permit, or begin the project until environmental review, as required herein, is completed. The city may commence review of the project concurrent with preparation and review of required environmental documentation.
- (d) In accordance with M.S. § 15.99 Subd. 3(d), agency action time limits are extended to 60 days after completion of the last process required pursuant to Minnesota Rules Chapter 4410.

- (e) The Community Development Director will determine whether the necessary environmental documentation is complete prior to publishing notice in the EQB Monitor and distributing the draft for review and comment.

§ 21.506.03 ENVIRONMENTAL ASSESSMENT WORKSHEETS (EAW)

- (a) Preparation of an EAW is mandatory for those projects that meet or exceed the EAW thresholds contained in Minnesota Rules 4410.4300 or the EIS thresholds in Minnesota Rules 4410.4400, as may be amended.
- (b) A discretionary EAW may be required when it is determined that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects. The City Council may require the preparation of a discretionary EAW if it is suspected that a development project may have the potential for significant environmental impact.
- (c) If the Community Development Director determines that an EAW must be prepared, it is at the city's sole discretion to determine the EAW preparation process. The city may choose to prepare the EAW; select a consultant to perform the work; or may allow the applicant to prepare the EAW. The city must review and approve any consultant selected by the applicant. The city may return an incomplete EAW submittal to the applicant, edit the EAW as necessary or request additional information from the applicant until the city accepts the EAW submittal as complete in writing.
- (d) All EAWs must be prepared under the direction of the Community Development Director and must be reviewed and acted upon by the City Council via resolution.
- (e) In addition to the application fee outlined in § 21.502.01(c), the applicant is responsible for all fees associated with the preparation of the EAW including legal and consultant's fees. If the city is preparing the EAW or has selected a consultant to prepare the EAW on the city's behalf, the applicant must agree in writing to provide an escrow to pay for the environmental review in accordance with the requirements of § 21.502.01(h).
- (f) The City Council must require an EIS when it finds that a project has the potential for significant environmental effects under Minnesota Rules 4410.1700.
- (g) When reviewing an EAW, the Community Development Director may suggest design alterations and/or mitigation measures that would lessen the environmental effects of the proposed project. The City Council may require that these design alterations and/or mitigation measures, whenever feasible and consistent with other laws, be incorporated as conditions of approval or request these changes to be incorporated into the site plan to lessen the environmental effects of the proposed project.
- (h) Exemptions – Minnesota Rules, part 4410.4600 identifies certain projects that cannot undergo environmental review and are thus exempt.

§ 21.506.04 ENVIRONMENTAL IMPACT STATEMENTS (EIS)

- (a) EIS documents must be required, prepared, reviewed, financed and determined adequate in accordance with Minnesota Rules 4410.
- (b) Supplementing EIS – under certain circumstances, pursuant to Minnesota Rules 4410.3000, the city may order a supplement to a completed EIS before a development project may be initiated.
- (c) If the Community Development Director or City Council determines that an EIS must be prepared, it is at the city's sole discretion to determine the EIS preparation process. The city may choose to prepare the EIS; select a consultant to perform the work; or may allow the applicant to prepare the EIS. The city must review and approve any consultant selected by the applicant. The city may return an incomplete EIS submittal to the applicant, edit the EIS

as necessary or request additional information from the applicant until the city accepts the EIS submittal as complete in writing.

- (d) All EISs must be prepared under the direction of the Community Development Director and must be reviewed and acted upon by the City Council via resolution.
- (e) In addition to the application fee outlined in § 21.502.01(c), the applicant is responsible for all fees associated with the preparation of the EIS including legal and consultant's fees. If the city is preparing the EIS or has selected a consultant to prepare the EIS on the city's behalf, the applicant must agree in writing to provide an escrow to pay for the environmental review in accordance with the requirements of § 21.502.01(h).
- (f) When reviewing an EIS, the Community Development Director may suggest design alterations and/or mitigation measures that would lessen the environmental effects of the proposed project. The City Council may require that these design alterations and/or mitigation measures, whenever feasible and consistent with other laws, be incorporated as conditions of approval or request these changes to be incorporated into the site plan to lessen the environmental effects of the proposed project.

§ 21.506.05 ALTERNATIVE URBAN AREAWIDE REVIEW (AUAR)

- (a) An AUAR may be used as an alternative review document to review the anticipated cumulative environmental effects of residential, commercial, and industrial development and associated infrastructure in a particular area following the guidelines in Minnesota Rules 4410.3610.
- (b) Preparation –The City Council will adopt a resolution ordering review that specifies the geographic boundaries of the study area where the AUAR will apply and specifies the anticipated nature, location, and intensity of development and associated infrastructure within those boundaries.
- (c) The city is responsible for preparing an AUAR and/or subsequent updates and/or selecting the consultant(s) to prepare needed technical studies and related work. All AUARs must be prepared and reviewed under the direction of the Community Development Director according to the procedures and requirements of Minnesota Rules 4410.3610.
- (d) The final AUAR or subsequent updates, must be adopted in accordance with Minnesota Rules 4410.3610. The City Council will make a determination of the AUAR adequacy via resolution and submit evidence of adoption of the AUAR and mitigation plan to the EQB staff and all agencies that requested notification.
- (e) The mitigation plan, developed as part of the AUAR, must be adopted through (e) above. If any projects and associated infrastructure within the defined geographic area of the AUAR exceed the impacts assumed in the AUAR or do not comply with the plan for mitigation, the environmental review document and mitigation plan must be updated to be consistent with the project.
- (f) Upon adoption of the AUAR and mitigation plan, residential, commercial, warehouse, and light industrial projects and associated infrastructure located within the study area that are consistent with the assumptions in the AUAR and comply with the mitigation plan are exempt from review under Minnesota Rules parts 4410.1100, 4410.1200 through 4410.1700, and 4410.2100 through 4410.2800.
- (g) Update Circumstances – In accordance with Minnesota Rules 4410.3610, subd 7, to remain valid as a substitute form of environmental review, the AUAR and mitigation plan must be updated every five (5) years until all the development in the study area has been approved, or if any of the following circumstances apply:
 - (1) A comprehensive plan amendment is proposed that would allow an increase in development over the levels assumed in the AUAR.

- (2) Total development within the area would exceed the maximum levels assumed in the AUAR.
- (3) Development within any subarea delineated in the AUAR would exceed the maximum levels assumed for that subarea.
- (4) A substantial change is proposed in public facilities intended to service development in the area that may result in increased adverse impacts on the environment.
- (5) Development or construction of public facilities will occur on a schedule other than that assumed in the AUAR and Mitigation Plan so as to substantially increase the likelihood or magnitude of potential adverse environmental impacts or to substantially postpone the implementation of identified mitigation measures.
- (6) New information demonstrates that important assumptions or background conditions used in the analysis presented in the environmental analysis document are substantially in error and that environmental impacts have consequently been substantially underestimated.
- (7) The city determines that other substantial changes have occurred that may affect the potential for, or magnitude of, adverse environmental impacts.
- (h) Payment Procedures.
 - (1) Alternative Environmental Review in South Loop. The applicant for a permit or development application located in the area covered by the South Loop Alternative Urban Areawide Review (AUAR) is required to pay a fee to assist in covering the costs of preparation and review of studies or completion of work contributing to or directly related to potential development impacts in the AUAR study area as described herein.
 - (A) AUAR updates may involve completion of various technical studies to identify and mitigate the impacts of forecast development. Technical studies may be prepared in conjunction with an AUAR update or during the interim period between required updates. Technical studies and other work may include assessments of traffic, utilities, environmental hazards, natural and cultural resources, air quality, noise, or other studies undertaken by the city itself or by outside consultant services under direction of the city.
 - (B) In order to defray costs incurred by the city in the preparation and review of an AUAR, AUAR Update, or South Loop technical study, a fee will be collected with any building permit for development proposals located within the boundaries of an AUAR study area where the proposed project adds at least 5,000 square feet of new floor area.
 - (C) The amount of the fee is 65% of the building permit fee for the project calculated in accordance with § 15.183 of this code.
 - (D) Fees will be placed in a Special Revenue Fund to be used for such technical studies and related work.

§ 21.506.06 COMPLIANCE AND ENFORCEMENT

- (a) Prohibition on Official Action - Pursuant to Minnesota Rules, part 4410.3100, the city may not make final decisions or issue permits that allow activities related to land development, alteration, or disturbance for any proposed development project subject to the environmental review requirements in this article, until:
 - (1) A petition for an EAW is dismissed;
 - (2) A negative declaration on the need for an EIS is issued;
 - (3) An EIS is determined adequate; or
 - (4) A variance is granted by the EQB in accordance with (c) below; or
 - (5) Emergency action is needed in accordance with (d) below.

For purposes of this article, official actions may include decisions related to preliminary and final plats, conditional use permits, preliminary or final development plans, final site and building plans, project related zoning amendments, fabrication of structures, granting of financial subsidies, and other similar development related activities. It does not include land surveying or mapping.

(b) Concurrent review – The city may issue notice of, and receive public comments on, a proposed development project or permit prior to completion of environmental review.

(c) Variance – Construction may begin on a project prior to completion of the environmental review process if the applicant applies for and is granted a variance from the EQB pursuant to Minnesota Rules part 4410.3100, subp. 4 to 7.

(d) Emergency action – In the rare situation when immediate action is essential to avoid or eliminate an imminent threat to the public health or safety or serious threat to natural resources, a proposed project may be undertaken without the environmental review that would otherwise be required by Minnesota State Statutes and Minnesota Rules. The city or applicant must demonstrate to the EQB chair, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chair to proceed.

DIVISION G: RESERVED

DIVISION H: GENERAL PROVISIONS

§ 21.507.01 CONFLICTING PROVISIONS.

In the event that the provisions of this Article V are inconsistent with one another or if the provisions of this Article V conflict with provisions found in other adopted regulations of the city, the more restrictive provision will control. When the provisions of this Article V impose a greater restriction than imposed by any easement, covenant, deed restriction or private agreement, the provisions of this Article V control.

§ 21.507.02 SEVERABILITY.

If any division, section, subsection, sentence, clause or phrase of this Article V is for any reason held to be invalid, such decision does not affect the validity of the remaining portion of this Article V. The City Council hereby declares that it would have adopted the ordinance in each division, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more divisions, sections, subsections, sentences, clauses or phrases be declared invalid.

CHAPTER 22: SUBDIVISION AND PLATTING

DIVISION C: PROCESS

§ 22.05 PRELIMINARY PLATS.

- (d) Findings. The following findings must be made prior to approval of a preliminary plat:
- (1) The plat is not in conflict with the Comprehensive Plan;

- (2) The plat is not in conflict with any adopted district plan for the area;
- (3) The plat is not in conflict with city code provisions or state law;
- (4) The plat does not conflict with existing easements;
- (5) There is adequate public infrastructure (roads, utilities, storm water systems, emergency services, schools and the like) to support the additional development potential created by the plat;
- (6) The plat design mitigates potential negative impacts on the environment, including, but not limited to, topography; steep slopes; trees; vegetation; naturally occurring lakes, ponds, rivers and streams; susceptibility of the site to erosion, sedimentation or flooding; drainage; and storm water storage needs;
- (7) The plat will not be detrimental to the public health, safety or welfare; and
- (8) The plat is not in conflict with an approved development plan or plat.

Passed and adopted this 30th day of August, 2021.

/s/ Tim Busse

Mayor

ATTEST:

/s/ Matt Brillhart

Secretary to the Council

APPROVED:

/s/ Melissa J. Manderschied

City Attorney