

“60-Day Rule” Deadline for Certain Agency Actions

What is the “60-day rule”?

In 1995, the legislature enacted [Minnesota Statutes, section 15.99](#), commonly referred to as “the 60-day rule.” The 60-day rule requires governmental entities to approve or deny a written request for certain actions within 60 days or the request is approved. More specifically, “failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time that it denies the request.”

Who does it apply to?

The law applies to the following, all defined as “agencies”:

- a department, agency, board, commission, or other group in the executive branch of state government
- a statutory or home rule charter city, county, town, or school district
- any metropolitan agency or regional entity
- any other political subdivision of the state

What requests does it apply to?

It applies to “a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action.” It also includes an application to a heritage-preservation commission for a certificate of appropriateness. *500 LLC v. City of Minneapolis*, 837 N.W.2d 287 (Minn. 2013). A “request” is a written application on a form provided by the agency, if a form exists. A request not on an agency’s form must include all information required by the agency and identify clearly on the first page the specific permit, license, or other governmental approval being sought.

The law does not apply to building permit requests. *Advantage Capital Mgmt. v. City of Northfield*, 664 N.W.2d 421 (Minn. App. 2003). The law also does not apply to the city or town subdivision regulation review process, review of local comprehensive plans by the Metropolitan Council, or the plat review process in [Minnesota Statutes, chapter 505](#).

When does the time begin to run?

The 60 days begins to run when the agency receives a complete application. If an application needs to be amended, the 60 days begins again upon receipt of a complete amended application. *Tollefson Dev. Co. v. City of Elk River*, 665 N.W.2d 554 (Minn. App. 2003). The application fee, if any, is one of the items that must be paid before an application is complete. The agency has 15 business days after receiving any part of an application to inform an applicant in writing that the application is missing some required element. If more than one state agency in the executive branch must approve or deny the application, the 60 days begins to run when the first agency receives the complete application, and it is up to that agency to make sure all other agencies get copies of the application. If an agency grants a conditional approval, the agency may revoke or rescind its approval

without missing the 60-day deadline if the applicant fails to satisfy the conditions.

Are extensions allowed?

An agency may extend the review period by up to 60 days if it provides the applicant written notice of and reasons for the extension before the end of the initial 60 days. The notice of extension must be made after the complete application is submitted and the initial 60 days has begun to run. An agency does not have to have extenuating circumstances to extend the review time; it is enough that the agency needs more time. *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 313-314 (Minn. 2001). The law also takes into account other proceedings or federal law requirements that may delay the beginning of the 60-day period. *E.g., Allen v. City of Mendota Heights*, 694 N.W.2d 799 (Minn. App. 2005) (environmental review initiated by a citizens' petition under Minnesota Environmental Policy Act). An applicant may request an extension of time in writing. An interim ordinance (moratorium) does not extend the time for agency action as to an application filed before the effective date of the interim ordinance.

How does an agency approve a request?

A request can be approved by the agency in its customary manner or by failing to deny the request within the 60-day period. An agency can only approve a request to the extent of its authority under other law. *Breza v. City of Minnetrista*, 725 N.W.2d 106 (Minn. 2006).

How does an agency deny a request?

If an agency other than one with a multimember governing body denies a request, it must state in writing the reasons for the denial at the time it denies the request. A multimember governing body may deny a request by adopting a resolution or motion to deny the request, or failing to adopt a resolution or motion to approve a request. The governing body must provide its reason for denial on the record at the time of the vote on the resolution or motion. It must also provide a written statement of reasons for the denial to the applicant before the expiration of the time allowed for a decision. The written statement must be consistent with the reasons stated at the time of the decision.

While failure to approve or deny a request results in approval, failure to timely provide the applicant with a written statement of the reasons for denial does not result in automatic approval. *Johnson v. Cook County*, 786 N.W.2d 291, 295-96 (Minn. 2010), citing *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W. 2d 536 (Minn. 2007) (en banc) (describing the difference between “directory” and “mandatory” requirements in statute, determining that the requirement to provide an applicant with a copy of the written reasons for denial was directory and because city had stated reason for denial on the record within the time allowed, the failure to provide a written statement did not result in automatic approval). “[A] statute may contain a requirement but provide no consequence for noncompliance, in which case we regard the statute as directory, not mandatory.” *Hans Hagen Homes, Inc.*, 728 N.W.2d at 541-42.

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