



Frequently Asked Questions about the Metropolitan Council Policy Restricting LCA Grants for Projects Using Eminent Domain

On January 25, 2006, the Metropolitan Council's governing body adopted a policy that restricted local governments from using Metropolitan Livable Communities Act (LCA) grant funding for projects that used eminent domain authority for "economic development" purposes. During the 2006 legislative session new eminent domain law was enacted. Effective May 20, 2006, governmental units may use eminent domain only for a "public use or public purpose" as that term is defined by the new state law. The legislation can be viewed at: <http://ros.leg.mn/bin/bldbill.php?bill=S2750.5.html&session=ls84>

Except for certain tax increment, tax abatement and other types of projects that are exempt from the restrictions contained in the new law, the new eminent domain law is more restrictive than the Council's January 25 policy and addresses the property protection issues identified by the Council when the Council adopted its LCA eminent domain policy. On June 28, 2006, the Council adopted a revised policy that is consistent with the statutory definitions and restrictions contained in Minnesota's new eminent domain law. The following guidelines, in Q&A format, are intended to help LCA applicants and grantees understand the relationship between the Metropolitan Council's eminent domain policy and the new eminent domain law.

Q: What is the purpose of the Metropolitan Council's policies restricting the use of LCA grants for projects using eminent domain authority if there is a state law imposing the same limitations?

A: The Council adopted its January 25, 2006, policy prior to state legislative action to "protect the private property rights of citizens of the metropolitan region, to discourage the use of eminent domain for the benefit of one private entity to the detriment of another and to help ensure scarce public funds are used for purposes that primarily benefit the general public." The Council's June 28, 2006, revised policy emphasizes the Council's fiscal responsibility to ensure that scarce LCA resources derived from regional tax levies support projects whose primary purpose is a "public use."

Q: Can the Metropolitan Council place this type of restriction on LCA grant funds?

A: Yes. The Council is responsible for administering the Metropolitan Livable Communities Fund and the individual accounts that compose the fund. The Metropolitan Livable Communities Act requires the Council to "establish criteria for uses of the fund," and the Legislature expressly authorized the Council to "establish guidelines governing who may apply for a grant or loan from the fund."

Q: To what applicant projects do the Metropolitan Council's eminent domain policies apply?

A: The policy adopted by the Council on January 25, 2006 still applies to LCA grant applications, LCA grant awards and LCA grant agreements made on or after January 25, 2006, and before June 28, 2006. The Council's original policy was prospective and applied only if a notice of petition was served or private property associated with a project was acquired for economic development purposes through eminent domain proceedings on or after January 25, 2006.

The revised policy adopted by the Council on June 28, 2006, applies to LCA grant applications, LCA grant awards and LCA grant agreements made on or after June 28, 2006. Projects that involve takings by eminent domain actions are eligible for LCA grant funds if those takings comply with Minnesota's new eminent domain law. However, if a notice of petition was served in connection with an applicant's project between January 25, 2006 and May 20, 2006 when the new law became effective, the project is not eligible for LCA funding unless the project either would have been eligible under the Council's January 25, 2006, policy or the project qualifies for an exemption under Minnesota Statutes section 117.012, subdivision 3 or 2006 Minnesota Laws chapter 214, section 22, clauses (b) through (e).

Q: Will the Metropolitan Council's policies apply to LCA grants awarded prior to January 25, 2006 and LCA grant agreements executed prior to January 25, 2006?

A: No. The Council's policies do not apply retroactively to past LCA grant awards or existing LCA grant agreements. The policies apply to grants awarded and grant agreements executed after January 25, 2006 and on or after June 28, 2006, respectively. The Council's standard LCA grant agreements have been revised so they are consistent with the policies, each of which states that Metropolitan Council LCA grant agreements must include a provision requiring the forfeiture and repayment of all Council LCA grant funds received in connection with a project award in the event that eminent domain authority is exercised in violation of the Council's policies or in violation of Minnesota Statutes chapter 117 or other laws authorizing the exercise of the power of eminent domain.

Q: Does "forfeiture and repayment in full of all Council LCA grant funds" mean a grantee will be required to repay all LCA grant funding the grantee received in the past if the grantee exercises eminent domain in violation of the Metropolitan Council's policy?

A: No. Several grantees (cities, counties and "development authorities") have been awarded more than one LCA grant since the Metropolitan Livable Communities Act was enacted in 1995. Some grantees have been awarded more than one LCA grant for the same project. The policy applies to the particular project for which the Council awarded LCA funding. If, subsequent to an LCA grant awarded after January 25, 2006, a grantee exercised eminent domain authority for "economic development" purposes in connection with the project for which that LCA grant was awarded or if a court determines a taking associated with the project was not for a public use or public purpose or was unlawful, the grantee will be required to repay the entire amount of the LCA grant made to the grantee in that particular award.

Q: How does the Metropolitan Council define “public use or public purpose”?

A: The Council’s June 28, 2006, policy is consistent with the new eminent domain law and defines “public use or public purpose” as:

- (1) the possession, occupation, ownership, and enjoyment of the land by the general public or by public agencies;
- (2) the creation or functioning of a “public service corporation” as that term is defined in Minnesota Statutes section 117.025, subdivision 10; or
- (3) mitigation of a “blighted area” as that term is defined in Minnesota Statutes section 117.025, subdivision 6, remediation of an “environmentally contaminated area” as that term is defined in Minnesota Statutes section 117.025, subdivision 8, reduction of “abandoned property” as that term is defined in Minnesota Statutes section 117.025, subdivision 5, or removal of a “public nuisance” as that term is defined in Minnesota Statutes section 117.025.

All words, terms and phrases as defined and used in Minnesota Statutes chapter 117 apply to the implementation and interpretation of the policy. All projects for which eminent domain may be used under Minnesota Statutes chapter 117 and all projects that qualify for an exemption under Minnesota Statutes chapter 117 are eligible for LCA grant funding. The Council’s policies can be found online at:

<http://www.metrocouncil.org/services/livcomm/EminentDomainPolicy.htm>

Q: Do the Metropolitan Council’s policies apply to all economic development projects?

A: No. The policy only applies to economic development projects for which all or some of the private property associated with those projects was taken through eminent domain proceedings without the consent of the owner. A local economic development project is eligible for LCA funding if no private property was acquired through eminent domain proceedings, or if the project qualifies under the exceptions described in the policies. Minnesota’s new eminent domain law essentially does not permit governmental units to use eminent domain for “economic development” purposes.

Q: Do the policies apply to an entire project, or just that portion of the project for which an applicant seeks LCA funding?

A: The policies apply to the entire project, even if an applicant only seeks LCA funding for some component of the project. Applicants should not artificially define or limit the scope of a “project” to avoid application of the policy.

Q: How will the Metropolitan Council implement its new policy?

A: The Council's eminent domain policy requires all grant applicants to certify their compliance with the policy. The grant application process includes a certification form that applicants must complete and submit with their applications. The Council's policy also states: "[P]rior to the receipt of Metropolitan LCA grant dollars, an Applicant shall again certify, in writing, its compliance with this Policy...." LCA reimbursement request forms will include a certification section that must be signed by every grantee seeking reimbursement for any grant awarded after January 25, 2006. In addition, Livable Communities staff are available to answer questions about the Council's eminent domain policy.