



## INFORMATION MEMO

# Railroads and Cities

*This memo explains how cities can address concerns such as safety, train horns, quiet zones, crossing safety, and train speed when a railroad runs through city limits. Learn about regulating railroad property for taxation, special assessments and maintenance. Find out which federal and state agencies regulate railroads and their roles in responding to railroad emergencies like a crash, or hazardous materials release.*

### RELEVANT LINKS:

49 C.F.R. § 1201.1 – 1. See Information about [Minnesota's Railroads](#).

The [FRA](#) can be contacted at 1-800-724-5040.

The [STB](#) can be contacted at (202) 565-1500.

## I. Types of railroads

Many different types of railroads operate within Minnesota. Railroads are classified as Class I, Class II or Class III, with Class I railroads having the larger operating revenues. The Surface Transportation Board (STB) determines the classification of each railroad based upon its annual operating revenues. These classifications are used for accounting and reporting standards. Regional and short-line railroads are lighter density lines that have been spun off by a Class I carrier.

## II. Railroad regulatory agencies

The railroad industry is regulated at various levels. Although primarily controlled at the federal level, the state also has jurisdiction in some situations. Local regulation is more limited.

### A. Federal

Many federal regulatory agencies regulate railroad equipment and operations. The following agencies are among those that commonly regulate railroads:

- Federal Railroad Administration (FRA). The FRA regulates rail safety in five disciplines, including tracks, signal and train control, operating practices, mechanical equipment, and hazardous materials. The FRA is part of the U.S. Department of Transportation.
- Surface Transportation Board (STB). The STB has jurisdiction over many different areas. The important ones relating to railroads include railroad rate and service issues, rail restructurings (such as mergers and line sales, construction, and abandonment), and some related labor issues.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

## RELEVANT LINKS:

The [FHWA](#) can be contacted at (651) 291-6100.

The [NTSB](#) can be contacted at (630) 377-8177 or (202) 314-6000.

The [EPA](#) can be reached at 1-800-621-8431.

Contact [MnDOT](#) at (612) 296-3000 or (800) 657-3774.

The [MPCA](#) can be contacted at (651) 296-6300 or 800-657-3864.

See Part IV - A - *Train horns*.

- Federal Highway Administration (FHWA). The FHWA maintains several highway safety programs and funds to improve railway-crossing safety. This office is primarily responsible for administering federal funds to help with these costs. The agency is part of the U.S. Department of Transportation.
- National Transportation Safety Board (NTSB). The NTSB is responsible for independent accident investigation in several areas. With regard to railroads, the NTSB investigates accidents in which there is a fatality or substantial property damage or accidents that involve a passenger train. It also investigates highway accidents, including railroad crossing accidents.
- Environmental Protection Agency (EPA). The EPA enforces air, water, and noise standards. The air and water standards are of general application to other industries, but the noise standards are specific to railroad equipment and operations.

## B. State

The following state agencies are also involved in regulating railroads:

- Office of Freight, Railroads and Waterways (OFRW). This office deals with a number of railroad areas, including track repair and removal, accident reports, railroad/traffic signals, grade crossing safety, signs, signals, and surfaces, among others. This office is part of the Minnesota Department of Transportation (MnDOT) and also part of the Office of Freight and Commercial Vehicle Operations (OFCVO).
- Minnesota Pollution Control Agency (MPCA). The MPCA enforces clean air, ground, and water rules. Although it doesn't enforce noise regulations, it does measure noise levels for compliance with federal standards.

## C. Local regulation

Regulation at the local level is generally rather limited. However, cities currently appear to have some ability to regulate the following areas:

Use of locomotive horns. A federal rule published Dec. 18, 2003, and effective Dec. 18, 2004, pre-empts state or local government regulations as to the use of locomotive horns. However, a city can maintain a qualified existing quiet zone or establish a new quiet zone by following all the complex procedures set out in this federal train rule. A quiet zone is a section of a rail line that contains one or more consecutive public crossings at which locomotive horns are not routinely sounded.

## RELEVANT LINKS:

See Part VIII - D - *Special assessments* and E - *Maintenance of railroad property*.

See Part VII - C - *Property taxes*.

See Part VII - F - *Zoning*.

[Minn. Stat. § 219.40, subd. 1.](#)  
Also see Part III - B - 7 - *Dangerous crossings—how to proceed*.

[Minn. Stat. § 219.16.](#)

[49 C.F.R. § 234.5.](#)

- **Special assessments.** Cities can use special assessments to collect the costs of improvements that will benefit railroad property. The amount assessed may not exceed the increase in the market value of the property as a result of the improvement. The cost of nuisance abatement may also be collected using special assessments.
- **Property taxes.** Cities can collect property taxes from railroad property, but the valuation of the property is done by the state in most circumstances.
- **Zoning.** Cities can enforce their zoning regulations against some types of property owned by railroads. Generally, a city cannot use its zoning regulations to prohibit property being used for railroad operating purposes, but other non-operating property may be made to comply with local zoning regulations.

## III. Railroad crossings

Railroads cross other public rights-of-way in different fashions. The most common is the grade crossing, where the railroad and the highway/street share an intersection at the same level. In addition to this type of crossing, there are overpasses (where the railroad passes above the street or highway) and underpasses (where the railroad passes beneath the street or highway). This memo only addresses public crossings, although the information may also apply to private rail crossings.

### A. Bridges and tunnels

If a grade crossing is found to be hazardous, the commissioner of MnDOT may order several remedies. Two of these options are to separate the grade and provide either an underpass (tunnel) or an overpass (bridge) for the tracks. The commissioner of MnDOT will also determine the cost of installing and maintaining such structures. The cost is usually divided between the railroad authority and the road authority (city, town or county).

### B. Grade crossings

According to MnDOT, there are 4,200 public rail crossings and 3,254 private rail crossings in Minnesota. State statute defines a “grade crossing” as the intersection of a public highway and the tracks of a railroad on the same plane or level. This definition does not include street railways within a city’s limits.

Federal regulation defines a “highway-rail grade crossing” as a location where a public highway, road, street or private roadway crosses one or more railroad tracks at grade. This definition also includes sidewalks and pathways that cross railroad tracks.

**RELEVANT LINKS:**

[Sternitzke v. Donahue's Jewelers](#), 83 N.W.2d 96 (1957). [Donalk v. Moses](#), 94 N.W.2d 255 (1959). [Kopveiler v. Northern Pac. Ry. Co.](#), 160 N.W.2d 142 (Minn. 1968).

[Minn. Stat. § 219.072.](#)  
[Minn. R. § 8830.2700.](#)

[Minn. Stat. § 219.073.](#)

[Minn. Stat. § 219.08.](#)

[23 C.F.R. § 646.210 \(b\).](#)

[23 C.F.R. § 646.210 \(a\).](#)

Cities retain the primary duty and responsibility with respect to the maintenance and repair of public sidewalks in the right of way adjacent to a highway-rail grade crossing. A city should adopt a policy for street and sidewalk maintenance, inspection, and repair and follow their policy.

### **1. New grade crossings**

The commissioner of MnDOT must approve all new grade crossings. The city and the railroad can agree to the new crossing and then seek approval from the commissioner. If the city and the railroad cannot agree, either can file a petition with the commissioner to decide on any of the following matters:

- Whether a new crossing is needed.
- Where the new crossing should be located.
- The type of warning devices required.

The petition must set forth the facts and submit the matter to the commissioner for determination. The commissioner will give reasonable notice to hold a hearing and issue an order determining the matters submitted.

If the commissioner approves the new grade crossing, he or she may also direct that the costs be divided between the railroad company and the city as the parties may agree. If the city and the railroad do not agree on the division of costs, the commissioner may determine the amount on the basis of benefit to each.

MnDOT is seeking to reduce the number of grade crossings in the state. Because of this, it may be difficult for cities to get approval of a new grade crossing.

### **2. Changes of grade**

State law also sets requirements for grade crossing changes. When a railroad company changes or raises the grade of its tracks at a crossing, it must also grade the approaches on each side in order to make the approach and crossing of the tracks safe for vehicles.

### **3. Grade crossing improvements**

The Federal Highway Administration (FHWA) has adopted a regulation providing that federal aid projects for grade crossing improvements do not require railroads to share in the cost of improvements.

The regulation also states that state laws requiring railroads to share in the cost of work for the elimination of hazards at railroad crossings do not apply to federal aid projects.

**RELEVANT LINKS:**

[Minn. Stat. § 219.071, subds. 1, 2.](#)

[Minn. Stat. § 219.073.](#)

[Minn. Stat. § 219.074.](#)

[Minn. Stat. § 219.06.](#)

[Minn. Stat. §§ 219.17 -20.](#)  
[Minn. Stat. § 219.26.](#)  
[Minn. Stat. § 219.30.](#)

[Minn. Stat. § 219.20.](#)

[Minn. Stat. § 219.24.](#)

See Part IV-A *Train Horns 1.*  
*Federal Train Horn Rule.*

#### **4. Maintenance/upgrades**

It is the responsibility of the railroad (both the owner and the lessee) to keep a grade crossing surface safe and passable for vehicles in a manner consistent with federal track safety standards.

If a grade crossing surface needs improvement, repair or maintenance, the work may be paid jointly by the railroad company, its lessee, the road authority, and available state and federal funds.

#### **5. Closing crossings**

In recent years, MnDOT has sought to reduce the number of grade crossings in Minnesota.

Public bodies and railroad companies may agree to the vacation, relocation, consolidation or separation of grades at grade crossings. If they cannot agree on the relocation, manner of construction, or a reasonable division of expenses, either may file a petition with MnDOT, which will hold a hearing to make a determination.

#### **6. Crossing signs and signals**

State statute requires that a railroad company must maintain a proper and conspicuous sign wherever its lines cross a public road. If a railroad fails to do this, it must pay \$10 for each day it fails to meet the requirement. The money must be paid to the municipality with authority over the public road the railroad crosses.

MnDOT regulates railroad warning signs and crossing stop signs. Municipalities must get permission from MnDOT in order to install a new sign or to remove an existing sign. It is a crime to remove, damage or destroy any railroad sign or device without permission from MnDOT.

A stop sign is required at each grade crossing if necessary for the reasonable protection of life and property. The commissioner of MnDOT determines whether conditions exist that make it necessary for people to stop before the crossing. A city may submit a petition to the commissioner if it would like a stop sign installed at a crossing.

The MnDOT commissioner also has the power to determine if safety issues warrant the railroad installing additional devices or signals. However, the public authority responsible for safety and maintenance of the roadway that crosses the railroad tracks may install additional or alternative safety measures to maintain an existing quiet zone or establish a new quiet zone subject to the federal train horn rule. Local authorities must notify all involved well before installing additional or alternative safety measures at a grade crossing.

**RELEVANT LINKS:**

[Minn. Stat. § 219.19.](#)

[49 U.S.C.A. § 20504.](#)  
[49 U.S.C.A. § 20134 \(b\).](#)  
[49 C.F.R. § 234.1-234.6.](#)

[Minn. Stat. § 219.14.](#)

[Minn. Stat. § 219.39.](#)

Also see Part VIII - B –  
*Liability.*

The MnDOT commissioner may designate additional warning sign requirements if necessary for the protection of life and property. If an additional warning sign is required, the road authority pays the cost and maintenance of the sign.

The U.S. Dept. of Transportation regulates signal systems to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings. The regulation is done through the Surface Transportation Board (STB) and the Federal Railroad Administration (FRA).

## **7. Dangerous crossings—how to proceed**

The commissioner of MnDOT may investigate and determine whether a railroad crossing over a street or public highway is dangerous to life and property. If the crossing is found to be dangerous, the commissioner may order the crossing protected in any reasonable manner, including requiring the railroad to separate the grades.

City councils, county boards, township boards, and railroad companies may submit petitions asking the commissioner to determine if a railroad crossing a street or highway appears to be dangerous to life and property. The petition must give reasons for the allegation. Upon receiving the petition, the commissioner must investigate the matters contained in the complaint and, when necessary, initiate a hearing.

## **IV. Safety**

Safety is an important issue to railroads, public roadway authorities, and the general public. In 2014, the state Legislature enacted new laws designed to strengthen railroad safety and improve disaster response readiness due to a dramatic increase of trains carrying petroleum products through Minnesota. Also important for ensuring safety are sight lines, obstructions to view and traffic, and maintenance of the crossing and its signs and signals.

### **A. State rail safety regulations**

The 2014 law requires new safety-related initiatives from railroads, the state departments of Public Safety and Transportation, and the Minnesota Pollution Control Agency. A number of these new safety initiatives focus on helping cities prepare and understand the risks associated with railroads. City councils, staff, local fire departments, and emergency managers need to know about these new regulations.

## RELEVANT LINKS:

[Minn. Stat. § 115E.01, subd. 11d.](#)

Minnesota Pollution Control Agency: [Minnesota Spill Bill requirements for railroad companies.](#)

[Minn. Stat. § 115E.042.](#)

On the line: Public Safety Risk Management: [Railroad 101: Train Wreck.](#)

[Minn. Stat. § 115E.042, subd. 4.](#)

## 1. Railroad responsibilities

New 2014 law amends state law nicknamed “the Spill Bill.” (The Spill Bill deals with possible spills or discharges from railroads). The new requirements apply to any railroad operating “unit trains” in the state. A “unit train” is defined as a train with more than 25 tanker railcars carrying oil or hazardous substance cargo. A person who owns or operates railroad cars (rolling stock) transporting a unit train must comply with the following requirements:

- Offer training to each fire department having jurisdiction along the route of unit trains. Initial training must be offered to each fire department by June 30, 2016, and refresher training must be offered to each fire department at least once every three years thereafter.
- The training must address the general hazards of oil and hazardous substances; techniques to assess hazards to the environment and to the safety of responders and the public; factors an incident commander must consider in determining whether to attempt to suppress a fire or to evacuate the public and emergency responders from an area; and other strategies for initial response by local emergency responders. The training must include suggested protocol or practices for local responders to safely accomplish these tasks.
- The railroads are encouraged to develop mutual aid and cooperative agreements with each other and other industries, and with local emergency response organizations.
- Beginning June 30, 2015, each railroad must communicate at least annually with each county or city emergency manager, and a senior fire department officer of each fire department having jurisdiction along the route of a unit train, to ensure coordination of emergency response activities between the railroad and local responders.
- By June 30, 2015, a railroad must submit a prevention and response plan to the MPCA. By June 30 of every third year following a plan submission under this subdivision, a railroad must update and resubmit the prevention and response plan to the MPCA.

Effective July 1, 2015, to protect the public’s safety, railroads subject to this law must be able to do the following:

- Within one hour, provide a qualified person to advise the local incident commander.
- Within three hours, provide a qualified person on-site to advise the incident commander and direct the railroad’s response.
- Within three hours, provide air-monitoring equipment with a qualified operator on-site to determine threats to the responder and to public safety.

**RELEVANT LINKS:**

[Minn. Stat. § 115E.042, subd. 4.](#)

Minnesota Dept. of Public Safety: [New Minnesota Rail Safety Regulation.](#)

[Minn. Stat. § 115E.08, subd. 3b.](#)  
See also, Sec. C 2 *Hazardous material shipment*, below.

MnDOT: [Report on the Improvements to Highway-Rail Grade Crossings and Rail Safety.](#) December 2014.  
[Minn. Stat. § 219.015, subd. 1.](#)

Effective July 1, 2015, railroads subject to this law must, within eight hours of confirmation of a discharge, be capable of delivering and deploying containment boom, boats, oil recovery equipment, trained staff, and all other materials needed to provide the following:

- On-site containment and recovery of a volume of oil equal to 10 percent of the calculated worst-case discharge at any location along the route.
- Protection of listed sensitive areas and potable water intakes within one mile of a discharge site and within eight hours of water travel time downstream in any river or stream that the right-of-way intersects.

Within 60 hours of confirmation of a discharge, a railroad must be capable of delivering and deploying additional containment boom, boats, oil recovery equipment, trained staff, and all other materials needed to provide containment and recovery of a worst-case discharge and to protect listed sensitive areas and potable water intakes at any location along the route.

**2. Department of Public Safety responsibilities**

The law now requires that the Department of Public Safety carry out the following public safety protection activities to prepare for possible railroad spills or discharges:

- Assist local emergency managers and fire officials to understand the hazards of oil and hazardous substances, as well as general strategies for hazard identification, initial isolation, and other actions necessary to ensure public safety.
- Facilitate cooperation between railroads, pipeline companies, county and city emergency managers, and other public safety organizations.
- Assist local units of government to incorporate railroad and pipeline hazard and response information into local emergency operations plans.

**3. Department of Transportation**

The 2014 Legislature ordered the commissioner of Transportation to conduct a study on highway-rail grade crossing improvement for oil and other hazardous materials transported by rail, and on rail safety. The new law also requires that MnDOT hire more state rail safety inspectors within certain timeframes.

**4. Pollution Control Agency**

The Minnesota Pollution Control Agency must take steps to be prepared for railroad spills or discharges. Focusing on what affects cities, this includes, but is not limited to the following steps:



## RELEVANT LINKS:

[Minn. Stat. § 115E.08, subd. 3a.](#)

[Minn. Stat. § 115E.01, subd. 6a.](#)  
Handbook, *Public Safety and Emergency Management*.  
Federal Emergency Management Agency (FEMA): [National Incident Management System](#).

To request state assistance or to report a petroleum or hazardous materials spill, contact the [Minnesota Duty Officer](#) at: 800-422-0798 or 651-649-5451  
These are 24-hours emergency response phone numbers.

[49 C.F.R. Parts 100 to 185.](#)

[Minn. Stat. § 299A.55, subd. 3.](#)

Assisting local emergency managers and fire officials in understanding the hazards of oil and hazardous substances, as well as general strategies for containment and environmental protection.

The new law also designates and defines an “incident commander” as the official at the site of a spill or discharge who has the responsibility for operations at the site, as established following National Incident Management System guidelines.

## B. Railroad emergencies

Railroad emergencies are usually very serious. Injuries are often severe, property damage great, and other dangers can erupt such as fires or chemical spills. During such emergencies, local public safety departments will likely be called upon to respond.

## C. Hazardous material shipments

The U.S. Department of Transportation is responsible for regulating hazardous materials, substances, and waste. The Environmental Protection Agency (EPA) also regulates hazardous substances and waste. For example, labeling of cars, placement of cars within a train, and train speed are regulated at the federal level.

### 1. Training and risks

In 2014 amendments to state law dealing with railway safety and shipment of oil and other hazardous materials includes funding for the following activities affecting cities:

- Firefighter training needs.
- Community risk from discharge incidents or spills.
- Geographic balance.
- Recommendations from the Fire Service Advisory Committee.

### 2. Use of funds

The following are permissible uses of funds:

- Training costs, which may include, but are not limited to, training curriculum, trainers, trainee overtime salary, other personnel overtime salary, and tuition.

## RELEVANT LINKS:

[Minn. Stat. § 219.384, subd. 1.](#)

[Minn. Stat. § 219.384, subd. 1.](#)

[Minn. Stat. § 219.384, subd. 2.](#)

[49 U.S.C.A. § 20134 \(b\).](#)  
[49 C.F.R. § 234.1-234.6.](#) See discussion in previous section.

[Minn. Stat. § 219.383, subd. 3.](#)

- Costs of gear and equipment related to hazardous materials readiness, response, and management, which may include, but are not limited to, original purchase, maintenance, and replacement.
- Supplies related to the above.
- Emergency preparedness planning and coordination.

These funds are administered by the Department of Public Safety.

## D. Sight lines/view

Railroads are generally responsible for keeping obstructions from blocking the view of motorists or pedestrians who will cross their tracks at railroad crossings.

The governing body of a municipality may require the removal of an obstruction to a railroad right-of-way in order to provide an adequate view of oncoming trains at a railroad crossing. Removal of such obstructions may be required of any of the following:

- The railroad company.
- The road authority.
- An abutting property owner.

The municipality must give written notice that the obstruction interferes with the safety of the public traveling across the railroad crossing.

If the obstruction is not removed within 30 days after the written notice, a fine may be imposed. The amount of the fine is \$50 for each day the situation remains uncorrected, and may be recovered in a civil court action.

## 1. Signals

The U.S. Department of Transportation has adopted regulations to ensure safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings. The state also regulates the installation of signs and signals at grade crossings.

## 2. Traffic obstruction

A railroad is prohibited from allowing a standing train, car, engine or other railroad equipment to block a grade crossing for longer than 10 minutes. This prohibition does not apply in First Class cities that regulate street obstruction by ordinance.

## V. Noise

Residents who live near railroad right-of-ways sometimes complain about noise and vibration from railroads.

## RELEVANT LINKS:

See Part IV - *Federal Regulations*.  
[Minn. Stat. § 219.166](#)  
preempted by [49 C.F.R. § 222.7](#).

U.S. Dept. of Transportation:  
Federal Railroad  
Administration: [Train Horn  
Rule and Quiet Zones](#).

[49 C.F.R. § 222](#).

[49 C.F.R. § 222.5](#).

[49 C.F.R. § 222](#)  
[Appendix C Guide to  
Establishing Quiet Zones](#).

FRA Region 4 Contact:  
Phone: 312-353-6203  
Hotline: 800-724-5040.  
[49 C.F.R. § 222.39](#).

Federal or state laws pre-empt local control of these issues. However, the train horn rule, discussed in the next section, now provides an opportunity for cities to mitigate the effects of train horn noise by establishing new “quiet zones.”

The rule also details actions communities with pre-existing “whistle bans” can take to preserve the quiet.

## A. Train horns

Train horns are warning devices used to signal railroad employees and others. They are used to warn the public that a train is approaching a crossing. They are also used to tell railroad employees what the engineer is about to do (stop, back up, pull forward, etc.). Engineers blow their locomotive horns at all public crossings unless a city has passed an ordinance to prohibit the practice. The train horn rule, a federal rule, published Dec. 18, 2003, and effective Dec. 18, 2004, pre-empts city ordinances that prohibit the sounding of locomotive horns unless the city has met the rule’s extensive criteria to either maintain an existing quiet zone or establish a new quiet zone.

### 1. The train horn rule and quiet zones

The federal train horn rule requires that locomotive horns be sounded at virtually all public, highway/rail at-grade crossings in the United States. The rule contains additional provisions that set a maximum sound level for locomotive horns and limits sound directed to the side.

The rule does not apply to the use of locomotive horns on:

- A railroad that exclusively operates freight trains on track that is not part of the general railroad system of transportation.
- Passenger railroads that operate at a maximum speed of 15 miles per hour and only on track that is not part of the general railroad system of transportation.
- Rapid transit operation within an urban area that is not connected to the general railroad system of transportation.

The basic premise of the train horn rule is to permit quiet zones only if overall safety is equivalent to crossings where train horns are sounded. The two types of quiet zones allowed under the rule are new quiet zones or pre-rule quiet zones. Some information on each type of quiet zone is provided below. However, cities must work with the city attorney and the FRA to ensure that a particular quiet zone complies with the detailed requirements of the rule.

**RELEVANT LINKS:**

[49 C.F.R. § 222, Appendix C.](#)

[49 C.F.R. § 222, Appendix A and B.](#)

[Quiet Zone Calculator.](#)

See “*Pre-rule quiet zones*” discussion in next section.

**a. New quiet zone**

In order for a quiet zone to be qualified under this rule, the lack of the train horn must not present a significant risk with respect to loss of life or serious personal injury, or the significant risk must have been compensated for by other means.

The rule provides four basic ways in which a quiet zone may be established.

- One or more supplemental safety measures as identified in the rule are installed at each public crossing in the quiet zone.
- The quiet zone risk index is equal to, or less than, the nationwide significant risk threshold without implementation of additional safety measures at any crossings in the quiet zone.
- Additional safety measures are implemented at selected crossings resulting in the quiet zone risk index being reduced to a level equal to, or less than, the nationwide significant risk threshold.
- Additional safety measures are taken at selected crossings resulting in the quiet zone risk index being reduced to at least the level of risk that would exist if train horns were sounded at every public crossing in the quiet zone.

The supplementary and alternative safety measures, which a local government most likely will have to pay for, must comply with extensive requirements of Appendix A and B of the rule.

The FRA has created the “Quiet Zone Calculator,” a web-based tool that allows local jurisdictions to research the feasibility of creating a quiet zone in their community that complies with FRA’s train horn rule. City planners, traffic engineers, and other transportation professionals are the anticipated users of the calculator.

The Quiet Zone Calculator allows users to access the FRA-maintained national grade crossing inventory and FRA highway-rail grade crossing accident records, select a series of crossings, test proposed safety implementation plans that are in compliance with the horn rule, and generate summary reports. The user will be able to create multiple scenarios for new quiet zones as well as for zones that already have a whistle ban.

The calculator will determine the risk level for the proposed quiet zone corridor. The risk level will then be evaluated to determine whether quiet zone criteria have been met. If not, supplemental safety measures can be applied to reduce the risk until the criteria have been met.

## RELEVANT LINKS:

[49 C.F.R. § 222, Appendix C Guide to Establishing Quiet Zones.](#)

See Pre-Rule Quiet Zones: [Qualifying for Automatic Approval.](#)

[Quiet Zone Calculator.](#)

[49 C.F.R. § 222.41\(b\) \(2\).](#)

### **b. Pre-rule quiet zones**

A pre-rule quiet zone is a quiet zone that contains one or more consecutive grade crossings subject to a whistle ban that has been actively enforced or observed as of Oct. 9, 1996, and Dec. 18, 2003.

The rule treats pre-rule quiet zones slightly differently than new quiet zones. This is a reflection of the fact that some communities have restricted train horns sounding in their jurisdiction for quite some time and wish to continue that restriction.

According to the FRA, there are a number of cities in Minnesota with existing whistle bans that may qualify as a pre-rule quiet zone. Cities with an existing whistle ban that wish to maintain the whistle ban as a pre-rule quiet zone, should work with the city attorney to meet the extensive requirements for a pre-rule quiet zone.

The rule provides that an existing whistle ban may qualify for automatic FRA approval as a pre-rule quiet zone in one of three ways:

- By installing a supplemental safety measure (SSM) at each public crossing in the quiet zone.
- By having a quiet zone risk index that is equal to or less than the national significant risk threshold.
- By having a quiet zone risk index that is equal to or less than twice then the national significant risk threshold, and ensuring there have been no relevant collisions at any of the public crossings during the past five years.

Ultimately, the FRA's Quiet Zone Calculator must be used to determine whether an existing whistle ban qualifies for automatic approval under the rule. The calculator will allow the user to identify the crossings that are in the whistle ban. The user will then be able to update the relevant data elements for each crossing so that the actual conditions are used in the risk calculations. This is the only way to actually determine an existing whistle ban's status under the rule.

Train horns will not sound in existing whistle ban areas if the city states an intention to the FRA and others to maintain a pre-rule quiet zone and do whatever is required within five years of publication. Again, cities must consult legal counsel to ensure all the legal requirements of the rule are met for either a new quiet zone or a pre-rule quiet zone.

Pre-rule quiet zones that do not meet the requirements for automatic approval, must meet the same requirements as new quiet zones as discussed above.

**RELEVANT LINKS:**

[49 C.F.R. § 222.23.](#)

[49 C.F.R. § 210.3 \(b\) \(3\).](#)

[49 C.F.R. § 229.129.](#)

[Minn. Stat. § 219.567](#)  
probably pre-empted by [49 C.F.R. § 222.7.](#)

[49 C.F.R. § 210.3.](#)

In other words, risk must be reduced through the use of supplemental or alternative safety measures so that the quiet zone risk index for the quiet zone has been reduced to either the risk level that would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level equal to or less than the nationwide significant risk threshold. In general, pre-rule quiet zones had to meet these requirements by Dec. 18, 2008.

It is important to note that even in a quiet zone, a train horn may be sounded in an emergency situation, at the sole discretion of a locomotive engineer, to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains if such action is appropriate in order to prevent imminent injury, death or property damage.

Several federal regulations set maximum noise levels for certain railroad equipment. Although many operations and equipment are regulated and have maximum noise levels, horns that are operated as warning devices are generally exempt from these limits.

Audible warning devices on trains must meet minimum sound level requirements. Federal regulation requires each lead locomotive to be equipped with an audible warning device that produces a minimum sound level of 96 dBA at 100 feet forward of the locomotive in its direction of travel.

## **2. State regulation of train horns**

State law, probably pre-empted by the federal train horn rule, says it is a misdemeanor for an engineer driving a train to fail to do the following:

- Ring or sound the bell at least 80 rods (440 yards or 1,320 feet) from the intersection.
- Continue to ring or sound the bell at intervals until the train has completely crossed the road or street.

## **B. Other train noise**

Not only noise from train horns can disturb residents. The noise from railroad operations has also been an issue in some communities. This has included such things as engine noise and switching and car coupling operations.

### **1. Federal regulation**

Federal statutes and regulations set standards for railroad noise. The following type of operations and equipment have maximum noise levels that cannot be exceeded:

**RELEVANT LINKS:**

[42 U.S.C.A. § 4916.](#)  
[49 C.F.R. § 229.121.](#)  
[40 C.F.R. § 201.11.](#)  
[40 C.F.R. § 201.12.](#)  
[40 C.F.R. § 201.15.](#)  
[49 C.F.R. § Pt. 210, App. A.](#)

[49 C.F.R. § 210.11.](#)

[42 U.S.C.A. § 4916 \(c\).](#)

- Noise emission.
- Locomotive cab noise.
- Stationary operations of locomotives.
- Moving operations of locomotives.
- Car coupling operations.
- General railroad noise standards.

The Federal Railroad Administration (FRA) may grant a waiver of compliance with any FRA noise regulation if it is in the public interest and consistent with railroad noise abatement and safety. The waiver may be subject to any condition the administrator deems necessary.

## **2. State regulation**

State noise regulations are generally not enforced against railroads. However, the MPCA measures noise from railroads to determine compliance with federal standards.

## **3. Local regulation**

No state or political subdivision may adopt or enforce any noise emission standards for the operation of railroad equipment unless the standard is identical to the Environmental Protection Agency (EPA) regulation. A state or political subdivision may still establish and enforce regulations on noise and the operation or movement of any product if the EPA administrator and the U.S. Secretary of Transportation agree that both of the following situations exist:

- The local regulation is necessitated by special local conditions.
- The local regulation is not in conflict with any of the federal regulations.

## **C. Scheduling**

The number of trains that travel per day and the times they are scheduled to travel is generally not regulated at the state or federal levels. Scheduling is established by individual railroads. Cities are unlikely to be able to regulate this area, as it would probably be seen as a restriction of interstate commerce.

## **VI. Speed**

Although both the state and federal government regulate train speed, the majority of this regulation occurs at the federal level. Only crossing speeds are regulated by the state.

## RELEVANT LINKS:

*In the Matter of the Speed Limit for the Union Pacific Railroad through the City of Shakopee*, 610 N.W.2d 677 (Minn. App. 2000).

*Duluth, Winnipeg & Pac. Ry. Co. v. City of Orr*, 529 F.3d 794, 798 (8th Cir. 2008).

Minn. Stat. § 219.383, subd. 1, 2.

*Fritz v. First Division of St. P. & P.R. Co.*, 22 Minn. 404 (1876).

Federal law provides maximum speed limits for trains based upon the contents of the train and the classification of the track. The commissioner of MnDOT sets safe speed limits for trains with regard to crossings. Local regulation of train speed is probably pre-empted by these federal and state agencies.

In February 1999, a city petitioned the commissioner of MnDOT to impose a speed limit of 10 miles-per-hour for trains operating on a railroad line that went along a city street. The city felt the segment of track is unique because it runs down the middle of the street. As a result, a large number of grade crossings and pedestrian and vehicle traffic make the area particularly unsafe.

The railroad filed opposition to the city's petition, and a contested case hearing was held before an administrative law judge (ALJ) in April 1999. The ALJ issued a written recommendation agreeing with the city's position. Consistent with this recommendation, the commissioner issued an order setting a 10 miles-per-hour speed limit along the track until the railroad and the city could improve the safety and warning mechanisms and reduce visual clutter in the area.

The railroad appealed the ALJ's decision, arguing that the commissioner's authority to impose railroad speed limits is completely pre-empted by federal regulations. The Minnesota Court of Appeals disagreed, however. It held that the commissioner's authority is not pre-empted by federal law. Later cases have declined to follow the Shakopee case, noting the situation there was essentially a local safety hazard unique to the city.

### A. Grade crossing speeds

State statute allows a city council or a railroad to petition the commissioner of MnDOT to consider setting a reasonable speed limit for trains that cross public highways or streets in the city. The commissioner may hold a public hearing before setting a speed for the operation of an engine or train.

Despite the existence of this statute, some feel the federal regulation of track speed pre-empts state authority to regulate in this area.

An early Minnesota Supreme Court decision held that a city ordinance that set a speed limit for trains meant that a railroad company was negligent for an accident that occurred when the train was exceeding the speed limit. It is quite possible such an ordinance could be pre-empted at the state or federal levels today, given the date of this case (1876).

Many cities have sought voluntary compliance with railroads due to special circumstances, such as railroad tracks that are near schools, etc.



## RELEVANT LINKS:

[49 C.F.R. § 213.9 \(b\).](#)  
[49 C.F.R. § 213.9 \(b\).](#)

[49 C.F.R. § 236.0 \(c\), \(d\).](#)

Contact the [FRA](#) for further details on hazardous material shipments. Also see Part IV - C *Hazardous material shipments*.

[49 U.S.C.A. § 20143.](#)  
*Burlington Northern R. Co. v. State of Minnesota*, 882 F.2d 1349.

[49 U.S.C.A. § 20148.](#)  
[49 U.S.C.A. § 20142.](#)

## B. Track speeds

The construction and design of railroad tracks are also important with regard to the maximum speed a train can travel. Track speeds based upon the track construction and design are regulated at the federal level. Regulations require that tracks meet certain standards in order to be designated as a certain class of track. The class of a track determines at what maximum speed trains can travel along it.

This memo does not discuss the classes of tracks or detailed structural requirements of each class of track. For further information regarding track classifications, cities should contact the FRA.

## C. Signal systems

The types of signal systems a railroad has can also affect the speed that a train may travel. The FRA requires that certain block signal systems be in place before a train can travel at speeds greater than 59 mph (passenger trains) or 49 mph (freight trains) on the appropriate class of track. Special signal systems are required to exceed 79 mph.

Signal systems are tested by MnDOT to ensure the signal will allow enough warning time given the speed that trains will travel on it. If the signal does not allow adequate warning, MnDOT requires it be replaced with one that will.

## D. Contents of train

As noted above in the discussion of track classes, there are different speeds for trains depending upon their content. Freight and passenger trains are allowed to travel at different maximum speeds on the same stretch of track. There are sometimes additional restrictions for trains carrying hazardous materials.

## VII. Railroad equipment

Both state and federal statutes contain requirements for railroad equipment. As such, cities are unlikely to be able to regulate in this area. The following areas are regulated by state and federal law or regulation:

- Locomotive engines and visibility.
- Train length. Federal regulation pre-empts state law or regulations in this area. The U.S. Supreme Court found that states could not enforce statutes that limit the number of cars a train could have. It was found to be a restriction of interstate commerce and was held unconstitutional.
- Visibility of railroad cars.
- Tracks.

RELEVANT LINKS:

[Hofman Oil Co., Inc. v. City of Princeton](#), No. C9-01-819 (Minn. Ct. App. Jan. 2, 2002) (unpublished decision).

[Minn. Stat. § 222.27](#).

[Minn. Stat. § 222.26](#).

[Minn. Stat. § 117.38-.41](#).

[49 U.S.C.A. § 10903](#).

## VIII. Railroad property

This section deals with railroad real estate in the following areas:

- Acquisition and disposal of railroad property.
- Condemnation of railroad property by cities.
- Property taxes.
- Special assessments.
- Maintenance of railroad property.
- Zoning.

### A. Acquisition and disposal of railroad property

Depending upon how a specific piece of land has been acquired by a railroad, there may be restrictions on the use of that land or the ability of the railroad to sell, lease or abandon the land. It may be important for a city to understand these restrictions if it is seeking to buy railroad property.

For example, a railroad must offer private leaseholders the “right of first refusal” or the first opportunity to purchase real property within a right-of-way that is either being abandoned or offered for sale.

Railroads acquire real property in a number of different ways. Some land may have been part of a federal land grant that was given to many railroads by Congress during the 1860s. Some railroad charters may mention specific portions of land and contain limits on its use or sale. Other land may have been acquired by purchase or eminent domain.

Railroad corporations have the power to acquire land by purchase or eminent domain. This applies to any land that is needed for roadways, spur and side tracks, rights-of-way, depot grounds, yards, grounds for gravel pits, machine shops, warehouses, elevators, depots, station houses, and all other structures necessary for the use and operation of the road.

A municipality and a railroad may agree upon the manner, terms, and conditions under which a municipal right-of-way may be used or occupied by the railroad. A railroad may use condemnation to acquire property over other public rights-of-way.

Sometimes the United States government, the state of Minnesota, or another government authority authorizes the change of a public watercourse (such as a stream, river, harbor, etc.). In such a situation, a railroad may acquire property using eminent domain if it is interested in the change of the watercourse for the purpose of enlarging or improving their property.

Federal statute requires that a railroad must file an application with the Surface Transportation Board before it can abandon any part of a line.

## RELEVANT LINKS:

[LMCIT Contract Review Service.](#)

[League of Minnesota Cities Insurance Trust.](#) 800-925-1122 or 651-281-1200.

[BNSF Railroad: Permits/Real Estate.](#)

## B. Railroad right-of-way and city work

Cities occasionally need to do work within the railroad right-of-way, for example, installing or repairing water or sewer lines beneath the tracks, or installing or maintaining grade crossings. Railroads typically have many guidelines and requirements that must be met before they will allow any work or construction around their railroad tracks. In very general terms, the railroads' concerns are to make sure the work done by the city or the city's contractor is completed in a safe manner and doesn't damage or interfere with railroad operations.

Railroads also want to know that reasonable insurance and other protections are in place to protect the railroad against potential liability or property damage from the project.

### 1. Railroad requirements

The best practice is for a city to contact the railroad and find out what they will require for the project well before the construction contract is let and before the city releases the bid specifications for the project. Then, the city knows what the railroad will require and can include them in the specifications and the contract. Cities may also contact the League Contract Review Service for guidance when contracting with railroads.

### 2. LMCIT Insurance

Specific insurance requirements may differ depending on the railroad and the type and scope of the project. In most cases though, the railroad will be looking for the following:

- **City Coverage:** In most cases, the railroad will require the city to meet insurance requirements as a condition of allowing the city to work within the right-of-way. The city will also need to provide a certificate of insurance to the railroad, showing that the required coverages are in place.
- **Limits:** Check for coverage limits on a per-occurrence basis. Most railroads have standard requirements that they request on all projects, but those requirements are usually negotiable. Railroads often require liability limits in excess of a city LMCIT liability coverage. However, most railroads will agree to reduce the liability limits to match city coverages. If higher limits are required, contact your LMCIT underwriter. LMCIT can generally provide a "laser" endorsement that increases the city's liability coverage limits only for claims arising under this specific contract.
- **Additional insured:** The railroad will usually require that they be named as an additional insured on the city's liability insurance.

## RELEVANT LINKS:

- **Primary coverage:** The railroad may also require that the city's coverage be "primary and non-contributory." LMCIT liability coverage is automatically primary for any party that has been added as an additional insured, so no endorsement is needed in order to meet this requirement.
- **Waiver of subrogation:** The railroad may also require a "waiver of subrogation" endorsement on the city's liability coverage. The city's underwriter can endorse the city's coverage to waive subrogation for an additional insured.
- **Railroad contractual liability:** The railroad's insurance requirements may also include a requirement that the "railroad exclusion" be deleted, or may refer to a required ISO endorsement CG 24 17. Standard commercial general liability (CGL) policies exclude coverage for construction or demolition operations within 50 feet of a railroad. Unlike standard CGL policies, the LMCIT liability coverage does not exclude work near railroad rights-of-way, so no special endorsement is needed for railroad projects. Since the LMCIT coverage is unusual in this respect and to avoid any confusion, LMCIT will note on the certificate of insurance that it does not have this exclusion.
- **Workers' compensation:** The railroad will often also require the city to have work comp coverage, and may require the city to endorse that coverage to waive subrogation against the railroad. The Workers Compensation Reinsurance Association requires that LMCIT get their prior approval on a case-by-case basis before issuing a waiver of subrogation endorsement.
- **Railroad Protective Insurance:** The railroad may also require purchase of a "railroad protective" insurance policy. As the name suggests, "railroad protective" insurance is a liability policy that is purchased by the city or by the contractor to protect the railroad from liability claims arising from the project. Often railroads themselves have standard arrangements in place under which the city or contractor can simply purchase the railroad protective insurance. If so, it can be an attractive option for the city or contractor for two reasons. The railroad has already pre-approved the coverage form and the cost is typically modest.
- **Contractor Insurance:** The railroad may also require the contractor doing the project have liability insurance that meets the railroad's specifications. But even if the railroad doesn't require this, it's in the city's interest to require the contractor to have the appropriate insurance. This should be reflected in the project bid specifications and contract.

### 3. Other risk

In addition to the insurance requirements, the agreement (sometimes called a permit or license) allowing the city and contractor to work within the right-of-way may also require the city and contractor to defend and indemnify the

**RELEVANT LINKS:**

[LMCIT Contract Review Service.](#)

[Minn. Stat. § 117.57.](#)

[Minn. Stat. § 117.57, subd. 1\(1\).](#)

[Minn. Stat. § 117.57, subd. 1\(2\).](#)

[Minn. Stat. § 117.57, subd. 1\(3\).](#)

railroad for any claims or damages arising from the work. In effect, this gives the railroad additional protection against potential claims the contractor’s insurance, city coverage, and the railroad protective insurance policy may not cover.

From the city’s standpoint, a very broad defense and indemnification agreement in the railroad’s favor could represent a risk of liability that wouldn’t be covered by the city’s LMCIT liability coverage. In case of a very large claim, the city could still be liable to reimburse the railroad for amounts in excess of the city’s coverage limit.

The city could also be liable to reimburse the railroad for claims that are excluded under the city’s liability coverage—certain pollution claims, for example. But unless the railroad is willing to amend those provisions, the city may have no choice but to accept those risks in order to be able to do the project.

Thus, it’s important that the city seek city attorney review of the contracts between the city and the railroad and between the contractor and the city. This helps to make certain that insurance provisions all fit together, and that the relevant insurance requirements are met. In practice, cities often agree to the unfavorable liability provisions to get the railroad’s approval. In addition, cities may submit the contract to the LMCIT Contract Review Service for guidance on the insurance and liability provisions. There is no charge to member cities for this service.

### **C. Condemnation of railroad property by cities**

The only state statute that specifically addresses condemnation of railroad property is found in the economic development chapter and deals with the clean-up of contaminated railroad property. The railroad property must meet all of the following criteria under this statute in order to use this authority:

It must not be a line of track that is required to be abandoned under federal law unless the abandonment has been approved.

It must not be currently used for any of the following:

- Switching.
- Loading or unloading.
- Classification activities.

(Note: Storage, maintenance, and repair activities are not included in the above activities).

The land to be taken must contain pollution or the threatened release of pollution.

## RELEVANT LINKS:

[Minn. Stat. § 117.57, subd. 1\(4\).](#)

[Minn. Stat. § 270.81, subd. 2.](#)  
[Minn. R. § 8106.0600.](#)

[Minn. Stat. §§ 270.80-87.](#)

[Minn. Stat. § 270.81, subd. 3.](#)

[49 U.S.C.A. § 11501.](#)

[Minn. Stat. § 270.82.](#)  
[Minn. R. § 8106.0300, subp. 1.](#)

[Minnesota Dept. of Revenue](#)  
651-556-3000.

[LMC information memo,](#)  
[Special Assessment Toolkit.](#)

The authority must intend to develop the property, and have a plan for its cleanup and development within five years to maximize its market value.

There are additional restrictions on the use of eminent domain and railroad property. Consultation with the city attorney is best practice if a city wants to consider use of eminent domain to acquire railroad property.

## D. Property taxes

Cities may levy property taxes against property that is owned by railroads. Property that is not used for railroad operating purposes is valued and taxed by local taxing jurisdictions in the same manner as other properties.

This means the local assessor determines the classification and market value of railroad non-operating property for property taxation purposes.

The taxing procedure for railroad operating property, however, is done differently. The market value of property used for railroad purposes is annually determined by the Department of Revenue using a complex formula. The values are then apportioned to local jurisdictions and certified to each respective county after an equalization formula has been applied. At this point, the local taxing jurisdictions proceed in the same manner as for other commercial and industrial properties that are being taxed.

The Department of Revenue determines if particular property owned by a railroad is classified as operating property or non-operating property.

Federal statute prohibits discriminating against railroad operating property when determining the market value of the land for taxing purposes. This means railroad transportation property may not be assessed at a higher ratio to true market value than the ratio of other commercial and industrial property in the same jurisdiction.

All railroad companies operating in Minnesota are required to file an annual report with the Department of Revenue. The information on this report is used for railroad property tax purposes. Cities really become involved only after the value of the railroad property has been determined by the state and certified to the county auditor. The taxing procedure is the same as for other properties the city taxes. For further information on railroad property taxes, contact the Department of Revenue, Property Tax Division.

## E. Special assessments

Cities are apparently able to levy special assessments against railroad property for the cost of improvements that benefit those properties. Notice must be given to the railroad in the same way that notice is given to owners of other property.

## RELEVANT LINKS:

[Minn. Stat. § 429.061, subd. 4.](#)

[A.G. Op. 408c \(Oct. 8, 1962\).](#)

[A.G. Op. 624-D-10 \(Jun. 14, 1950\)](#) and [A.G. Op. 624-d-10 \(Aug. 24, 1950\).](#)

*In re Improvement of Superior Street, Duluth*, 172 Minn. 554 (1927). *Minnesota Transfer Ry. Co. v. St. Paul*, 165 Minn. 8 (1925); *State v. Great Northern Ry. Co.*, 165 Minn. 22 (1925). *City of Owatonna v. Chicago, R. I. & P. R. Co.*, 450 F.2d 87 (8th Cir.) (1971).

See also Part VIII. E *Maintenance of railroad property.*

As with any special assessments, the assessment amount cannot exceed the increase in market value of the property as a result of the improvement. Due to the complexity of laws governing railroads and special assessments, best practice suggests consulting with the city attorney about this topic. (For more information, see the League research memo that discusses special assessment procedures in more detail).

### 1. Supporting statutes, decisions, and opinions

Federal statutes do not address special assessments and railroad property. Since the federal statutes are silent, state and local regulation apparently are not pre-empted. The state special assessment statutes address the ability of municipalities to recover unpaid special assessments from railroad rights-of-way.

A lawsuit may be brought by the municipality to enforce the collection of the indebtedness, unless a different method of collection is provided for by any contract between the railroad right-of-way owner and the municipality.

It may be a challenge for cities to determine the market value of the land as well as the increase in market value of the land due to the improvement. Valuation of railroad land is discussed in another section of this memo.

In a 1962 opinion, the attorney general concluded that a city could specially assess property owned by a railroad company for a street, curb, and gutter project.

In two different earlier opinions, the attorney general's conclusion was similar, finding that the cost of a water main could be assessed to railroad property if the property was benefited by the improvement.

In several early court decisions, the Minnesota Supreme Court found that railroad property could be specially assessed for the cost of improvements that benefited the property. However, the assessment must not exceed the particular benefit to the specific property.

### 2. Example of a city assessment policy

The practice in a larger Minnesota city is not to assess railroad operating property for the cost of improvements that benefit the property. Although the city has the power to levy special assessments for improvements on railroad right-of-way property, it chooses not to levy assessments against this type of property for the following reasons:

RELEVANT LINKS:

LMC information memo,  
[Public Nuisances.](#)

[Soo Line R. Co. v. City of Minneapolis](#), 625 N.W.2d 834, 839 (Minn. Ct. App. 2001).

### 3. The difficulty in establishing the value of the property.

The difficulty in establishing the value of the improvement to the property.

Even though the city does not specially assess railroad right-of-way property, it will assess property that is not being used as a right-of-way. This generally includes excess property or property that the railroad might lease for non-railroad use. However, the city will specially assess all railroad properties for nuisance abatement, regardless of whether it is used as a railroad right-of-way.

Under this city's policy, when the railroad objects to a special assessment amount for an improvement, the city reaches a compromise with the railroad regarding the amount. This compromise appears to be similar to the practice that many cities follow when handling objections to special assessment amounts from other landowners who object to their assessment amounts.

The city has found this approach to be less expensive and time-consuming than going to court to recover an unpaid assessment.

### F. Maintenance of railroad property

Occasionally, railroad property can fall into disrepair or become a dumping ground for appliances or garbage. These conditions can become serious threats to public health. Cities may address these situations by enforcing nuisance ordinances, and provide for making unpaid service charges to abate nuisances a special assessment against the property.

### G. Zoning

Cities may be able to enforce some aspects of their zoning regulations on land owned by railroads. If land is owned by a railroad and used for non-railroad purposes, all zoning regulations are likely applicable.

No federal or state statutes specifically address the zoning of railroad property. However, in one Minnesota case, the Court of Appeals affirmed the City of Minneapolis' zoning related action on railroad property. The City designated a railroad roundhouse as heritage preservation property. The Court declined to find that federal law (the Interstate Commerce Commission Termination Act) preempted the City's designation. Quoting the Court, "Because the heritage-preservation designation of the roundhouse does not presently interfere with railway operations, we decline to determine the preemptive effect of the Interstate Commerce Commission Termination Act. Because the city followed the proper procedures for designating the roundhouse for heritage preservation and because the designation is supported by substantial evidence, we affirm."



**RELEVANT LINKS:**

[City of Auburn v. US Government](#), 154 F. 3d 1025 (Ct. App. 9th Circuit 1998).

[A.G. Op. 59-a-32](#) (Jan. 28, 1952).

[A.G. Op. 817f](#) (Oct. 2, 1944).

[A.G. Op. 817f](#) (Oct. 2, 1944).

In 1997, the Surface Transportation Board (STB) was asked to deal with a local zoning matter. The issue considered was whether state and local environmental, building, and land use permits could be required for an upgrade of a section of a railroad line.

In this agency decision, the STB held it had exclusive authority over the construction and operation of rail lines that are part of the interstate rail network. The STB also concluded that if such additional local regulation was allowed, it would be burdensome for the railroad and would serve to restrict interstate commerce. As a result, the power to authorize or deny the construction of railroad lines using a local permit process was not allowed.

The Minnesota attorney general has addressed railroad and zoning issues in a few, rather dated opinions. In a 1952 opinion, a person was considering constructing a warehouse on a portion of the railroad right-of-way. The city asked if it had the right to zone the use of property on a railroad right-of-way.

The attorney general concluded that nothing in the state zoning statutes or the state statutes on railroad right-of-ways would exempt railroad property from a city's zoning ordinance. However, no mention of federal laws are made in this opinion.

In a 1944 opinion, the attorney general considered whether a city's zoning ordinance could prevent the building of a railroad track. The facts in this situation were that a railroad might acquire playground property in a residential district using eminent domain. The city asked if the condemnation of the land could be stopped either because the land had been dedicated for park purposes or because it was zoned for residential use.

The opinion declared that the railroad could not acquire a public playground for right-of-way use unless the use was consistent with its use as a playground. Whether or not the use was consistent was a fact determination that may need to be determined in court. The attorney general also found that the city's zoning ordinance could not prevent condemnation of right-of-way through a residential district.

Given the conclusions of the court decisions from other states and the STB decision, it would seem unlikely a city could use zoning regulations to prohibit construction or use of railroad operating property. However, such construction can likely be made to meet regulation standards such as the Americans with Disabilities Act accessibility guidelines, the state building and fire codes, and local setback and other design standards.

Property used for non-railroad purposes may be considered proprietary and thus be subjected to local zoning controls, including regulations that prohibit certain construction and use.

## RELEVANT LINKS:

Federal Register [Vol. 68, No. 243](#) Thursday, December 18, 2003 p. 70607.

[Smrt v. Duluth, Winnipeg & Pac. Ry.](#), 265 N.W.2d 815 (Minn. 1978).

*State ex rel. City of Fairmont v. Chicago, St. P., M & O Ry. Co.*, 148 Minn. 91 (1921).

*Chicago, M & St. P. Ry. Co. v. LeRoy*, 124 Minn. 107 (1914).  
[A.G. Op. 369-K \(May 5, 1933\)](#).

City councils should consult with their city attorneys before attempting to enforce zoning regulations on any railroad properties.

## IX. Liability

It is not easy to determine who is responsible for an incident involving a railroad. Such conclusions are not usually made until considering all the factors that contributed to an accident. However, the following generalizations may be made based upon decisions of the courts over the years:

### A. Collisions

- **Railroads.** Railroads are often found liable for collisions if the crossing or tracks have not been properly maintained. They are also responsible for the actions of their engineers or employees for errors or speeding. Note: The federal train horn rule is intended to remove liability from the railroads for failure to sound the horn at highway-rail crossings within a quiet zone.
- **Victims.** Victims of train collisions sometimes are responsible for the accident if they have trespassed or ignored signals or warnings.
- **Cities.** Cities may be subject to claims for quiet zones and other types of regulation. Cities also have a general responsibility to maintain their streets and sidewalks, including those that approach railroad crossings. However, discretionary immunity may protect a city from liability exposure if reasons for the council's decisions are well documented in the council meeting minutes.

Liability for a collision must be determined on a case-by-case basis. It is possible that defective equipment or hazardous weather conditions could also be factors that can contribute to an accident.

### B. Grade crossing surfaces

Several Minnesota court decisions have indicated that railroads have a duty to maintain grade crossing surfaces. The Minnesota Supreme Court found that whether the railroad's failure to maintain its grade crossing surface was more negligent for an accident than a motor vehicle driver's inattention was a decision for the jury.

In a 1921 decision, the same court found that a city could compel a railroad company to pave its crossing at the railroad's own expense.

Likewise, the cost of expanding a new city street across a railroad company's tracks was properly imposed upon the railroad. The Minnesota attorney general has also concluded that a railroad must maintain the part of a town road that crosses a railroad right-of-way.

## RELEVANT LINKS:

*Bryant v. Northern Pac. Ry. Co.*, 221 Minn. 577 (1946);  
*Bray v. Chicago, R.I. & P.R. Co.*, 232 N.W.2d 97 (Minn. 1975).

*Munkel v. Chicago, M., St. P. & P.R. Co.*, 202 Minn. 264 (1938) dist.by *Seekins v. Duluth, M. & I. R. Ry. Co.*, 258 Minn. 180 (1960).

[Minn. Stat. § 219.06.](#)  
[Minn. R. § 8830.0800.](#)  
[Minn. R. 8830.0600.](#)  
[Minn. R. 8830.0900.](#)

[Minn. Stat. § 219.761.](#)

[Minn. Stat. § 219.761, subd. 2.](#)

*Young v. Wlazik*, 262 N.W.2d 300 (Minn. 1977) (overruled on other grounds by *Perkins v. Nat. RR. Passenger Corp.*, 289 N.W.2d 462 (Minn. 1979) dist. by *Olmscheid v. Paterson*, 440 N.W.2d 124 (Minn. Ct. App. 1989).

## C. Obstructed views

Railroads have been held responsible for accidents that occurred because of obstructions that kept motorists from seeing approaching trains. In one situation, trees and weeds had been allowed to grow on a railroad right-of-way and blocked a motorist's view of a crossing. The Minnesota Supreme Court found the railroad had a duty to correct the dangerous condition of the crossing. A similar decision was reached in a 1975 decision where evidence showed that proper view was obstructed by a railroad's signal house.

A railroad may be found negligent if conditions obstructing or interfering with the view of the train on the crossing are caused in whole or in part by the railroad's acts or omissions.

## D. Signs

Both railroads and cities share responsibility to warn of a crossing. Railroads must maintain a sign at all railroad crossings. Public road authorities, including cities, are responsible for advanced warning signs that are off the railroad right-of-way. The road authority is also responsible for pavement markings.

## E. Fires

All railroads operating in Minnesota are liable for all reasonable expenses to put out fires caused as a result of their railroads. If a local fire department extinguishes a fire, it can receive reimbursement from the railroad by submitting a claim to the railroad within 60 days after the first full day after the fire was extinguished. The claim must include the following information:

- The basis for the claim.
- The time, date, and place of the claim.
- The circumstances of the claim.
- The itemized cost incurred for the claim.

## F. City discretionary immunity

Cities should remember they may have discretionary immunity from liability for many decisions or actions involving railroad crossings. In one situation, a city decided not to close a street that led to a hazardous railroad crossing. The Minnesota Supreme Court found that the city's decision involved a "legislative judgment balancing the risks and convenience the crossing presents," and concluded that the decision was protected by discretionary immunity.

**RELEVANT LINKS:**

[McEwen v. Burlington Northern R. Co.](#), 494 N.W.2d 313 (Minn. App. 1993).

Office of Freight and Commercial Vehicle Operation: [Minnesota Freight Railroad Map](#), December 2014.

In a 1993 decision, the Minnesota Court of Appeals held that the state was protected by discretionary immunity for its decision not to upgrade a railroad crossing. The state had considered financial constraints, limited funding, and safety considerations in making its decision not to upgrade the crossing.

Keeping good records will help protect the city from lawsuits regarding its legislative decisions. City councils should document the reasons for any decisions they make regarding railroad issues. For example, a city might document why a street or sidewalk repair near a grade crossing may be undertaken at a later date rather than immediately.

## **X. Conclusion**

Minnesota has 4,444 route miles of railroads serviced by 20 railroad companies. Railroads provide important connections for markets and people within and beyond state borders. Understanding the many laws and regulations governing railroads and rail safety in Minnesota helps cities work with local railroads, and state and federal governments to ensure safe railroad operations.