

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

09-030-0

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 50-35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-35 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 50-35. Enumerated.

The following are the special uses for which the city council may issue a special permit, as provided in Section 50-32:

(a) Airport, landing field or landing strip for all forms of aircraft, auto race track and drag strip;

(b) Amusement park, but not within 300 feet of any R district;

(c) Beauty salon in an R district, subject to the following restrictions and conditions:

(1) Such use shall be incidental and subordinate to the principal residential use conducted within a dwelling and not in an accessory building;

(2) At least 120 square feet but not more than 1/4 of the floor area of one story of the building shall be devoted solely to such use and to no other use;

(3) Only one person shall work in the beauty salon and such person shall reside on the premises;

(4) There shall be no separate entrance to the beauty salon from the front of the building, and the applicant shall provide evidence of inspection and compliance with all applicable fire and building codes;

(5) No signs or displays advertising the salon shall be permitted on the premises;

(6) At least two off street parking spaces shall be available on the premises for use by patrons of the salon, such parking space requirement to be in addition to the parking space requirements otherwise applicable to the premises;

(7) Applicant shall, prior to issuance of a special use permit pursuant to this Section, provide proof that applicant has all required licenses for operation of a beauty salon;

(8) Notice and publication as required by Section 50-32.2 of this Code shall, in the case of permits under this paragraph, include mailed notice to all property owners and occupants of property within 200 feet of the building;

(9) No permit shall be granted pursuant to this paragraph if a beauty salon already exists within 1,000 feet of the premises;

(d) The city council recognizes that bed and breakfasts are an asset to the community and help the preservation of historic homes and neighborhoods and help the economy of the region as small businesses. Bed and breakfast inns and country inns; in districts where they are permitted as special uses and only as provided herein;

(1) This special use permit shall be granted only to those properties, which meet or exceed the criteria outlined herein. A bed and breakfast inn must be a residential building that has no greater impact on the uses of the public areas or infrastructure or natural resources of the neighborhood than, or be apparent to an observer to be other than, the existing property used as a fully occupied private home with house guests. The principal building must appear outwardly to be a single family dwelling, giving no appearance of a business use other than allowed signs.

No permit shall be considered or issued for a bed and breakfast facility located closer than 450 feet to an existing bed and breakfast facility. This limitation may be waived by the city council for properties which are locally designated heritage preservation landmarks;

(2) An application for this special use permit shall include the following:

- (A) A site plan as defined in Section 50-1.60;
- (B) A landscape plan as defined in Section 50-1.40;
- (C) A set of detailed floor plans indicating the traditional uses of all rooms and the intended uses in the bed and breakfast operation;
- (D) Sign drawings showing location, dimensions and detail;
- (E) For a waiver of the 450 foot separation, a copy of the resolution designating the properties as a heritage preservation landmark;

(3) Bed and breakfast inns and country inns may be granted special use permits subject to the following standards and conditions:

- (A) The property must be comprised of a minimum of 0.6 acre;
- (B) The main residential building must contain a minimum of 1,500 square feet of area on the first floor;
- (C) For an inn, the proprietor shall be the owner and occupant of the property;

(D) Off street parking for the uses of the property shall be provided on site as required in Section 50-26. Scattered off site parking shall not be allowed;

(E) All parking areas shall be hard-surfaced and visually screened by vegetation and/or fencing (consistent with the architecture of the structure) as required by the city in order to maintain the apparent single family use of the property;

(F) Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In bed and breakfast country inns, allowed under this Section, dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in bed and breakfast inns, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For profit events on the premises which involve a total number of participants in excess of the approved dining area seating capacity shall be limited to: six days per year and shall be restricted to the period of October 15 through June 15;

(G) Any construction to restore buildings to historic condition, any construction of new buildings and any exterior alterations to the building must be authorized by the city council through this special use permit process;

(H) There shall be a limitation on the number of guest rooms permitted based on the size of the building, building code or fire code;

(I) Total signage on the property shall not exceed 12 square feet in size. Such signage shall complement the architecture of the structure;

(J) Guests' stays shall be limited to 21 consecutive days;

(K) A bed and breakfast establishment must comply with all building and fire code requirements. Inspections shall be conducted before special use permits or licenses are issued;

(L) The owner/operator shall present inspection reports from the city fire marshal and St. Louis County health department to the city clerk prior to the issuance of any licenses;

(M) Such other conditions deemed necessary by the planning commission and/or city council to ensure the use complies with the purpose of this Subsection;

(e) Cemetery, crematorium or mausoleum;

(f) Child care facility. A state licensed residential facility for care and treatment of children located within 100 feet of an existing state licensed residential program that has an administrative organization and structure approved under state law for providing shelter, food, training, treatment and other aspects of care of not more than six children, and is an extension of an existing facility licensed under state law.

Any such facility shall meet all other state licensing requirements for such facilities, be contiguous to or located not more than 100 feet from the existing licensed facility charged with operation of the facility, and must not present any external image other than that of a single family residence;

(g) Circus or carnival grounds, but not within 300 feet of any R district;

(h) Clinic of less than 10,000 square feet in floor area;

(I) Commercial, recreational or amusement development for temporary or seasonal periods;

(j) Commercial rooming house, but only in those districts where permitted as special use;

(k) Commercial services and recreational uses in the IP industrial park district, as further defined in Section 50-123 of this Chapter;

(l) Day care facility, but only in those districts where permitted as a special use;

(m) Elderly congregate housing facility, but only in those districts where permitted as a special use;

(n) Marina;

(o) Mini storage facilities; subject to compliance with the following criteria:

(1) Located in a S zone;

(2) On a parcel not less than 7-1/2 acres in size with no less than 500 feet of frontage on a publicly maintained right-of-way;

(3) Development shall not increase the peak stormwater runoff from the site from its existing condition based upon a storm of 100 year frequency and 24 hour duration (5.25 inches of rainfall);

(4) Signage shall be limited to one 40 square foot illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;

(5) There shall be maintained a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;

(6) There shall be a minimum structure setback of 100 feet from any property line;

(7) Storage area unit shall not exceed a 12 foot wall height and a floor area of 300 square feet;

(8) Lighting shall be limited so as not to illuminate beyond property lines;

(p) Office building of a civic, religious or charitable organization, conducting activities primarily by mail and not handling merchandise or rendering services on the premises, but only within the R-4 district;

(q) Petroleum soil treatment;

(1) Petroleum soil treatment in the form of land treatment (soil farming) shall be located in S-suburban zones and shall comply with the following criteria:

(A) That the pollution control agency (PCA) shall have reported to the planning department regarding the individual site and the possibility of any problems relative to issuance of PCA authorization for use of the site;

(B) The natural topography, drainage character, vegetation and use of the site shall not be altered beyond site preparation required for any listed permitted land use within the S-suburban zone. Specifically:

1. No vegetation shall be cut or removed from within state required setbacks except as required for installation of temporary roads;

2. Vegetation removal shall be minimal. Vegetation greater than six inches caliper shall not be removed except as determined necessary to accommodate minimal equipment clearances, and there shall be minimal preparation of the soil on

the treatment area. Such preparation shall minimize disturbance of the topsoil and does not preclude the return of the site to listed permitted S-suburban zone land uses;

(C) All treatment areas must be planted to pasture grasses during treatment and replanted to the original vegetation after the treatment process has been completed;

(D) No sites shall be located within wetland, shore land or flood zones as defined by Chapter 51 of the Code;

(E) That the applicant shall maintain the treatment site in strict compliance with all conditions of this permit and associated state or federal permits;

(2) Petroleum soil treatments using biodegradation such as composting or aerobic treatment cells or other technologies as may be developed and approved by the PCA from time to time, shall be only permitted in M-1 and M-2 zones, and shall be subject to the standards (A), (B), (D) and (E) cited above;

(r) Power transmission line, review and approval to be provided for separately in each of two steps:

(1) A general corridor special use permit;

(2) A final design special use permit, under the following conditions and procedures:

(A) Submittal information for general corridor special use permits. In addition to other information required by the special use permit process, the applicant shall provide the following information with applications for general corridors:

1. A statement demonstrating the need for the proposed line;

2. Drawings showing the approximate location of a preferred route (having a width of less than 1,000

feet) and at least one alternative route. Included within each route shall be an intended center line and subject site and adjacent area information, the form of which shall be determined by the planning commission on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views. Drawings shall also indicate proposed general types, heights and ranges of spacing of supporting structures and related equipment such as pumping stations, although the specific type of line shall not be approved until the final design review;

3. A statement identifying potential locations of conflict such as adjacent scenic and residential areas and describing general proposed methods of dealing with such conflicts;

4. A statement addressing each applicable standard of Section 50-35(r)(4) below in regard to the preferred route and alternative routes;

(3) Submittal information for final design special use permits. In addition to information otherwise required by the special use permit process, the applicant shall provide the following for final design special use permits:

(A) Plans and profiles, the form of which shall be determined by the planning commission, showing the exact location of the center line and the exact location and design of supporting structures and related equipment as proposed by the applicant. Alternative potential designs of supporting structures shall also be presented;

(B) A landscaping plan and subject site and adjacent area information on existing topography, land uses, soils,

vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views in a form which shall be determined by the city planning commission;

(C) A statement addressing each applicable standard of Section 50-35(r)(4) below;

(4) Standards for approval. No special use permit shall be granted unless the following standards and conditions are met in addition to normal requirements of the special use permit process:

(A) For general corridor special use permits:

1. The public need for the route and facility as specifically proposed shall be demonstrated;

2. Where possible, lines shall avoid existing and potential urban density residential neighborhoods;

3. The applicant shall provide an evaluation of the future needs for additional transmission lines in the same general area as the proposed route and the advisability of utilizing structures capable of expansion of transmission capacity through multiple circuiting or design modification;

(B) For final design special use permits:

1. Where it is determined that a proposal would unduly harm adjacent property or property values, it shall be determined that no other feasible alternative to the proposal exists. Such consideration of alternatives shall include the underground placement of the line. Any consideration of feasibility of such underground lines shall include economic, technological or land characteristic factors. Economic considerations alone shall not render underground placement not feasible;

2. All structures shall be located and designed in such a way that they are compatible with surrounding land uses, scenic views and existing transmission structures with regard to height, scale, material, color and design;

3. Lines shall meet or exceed the National Electric Safety Code;

4. Electro-magnetic noise and interference with radio and television reception, as well as audible hum outside the line right-of-way, shall be minimized;

5. The cleared portion of the right-of-way shall be kept to a minimum and where vegetation will be removed, new vegetation consisting of native grasses, shrubs and low growing trees shall be planted and maintained. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements;

(C) For both general corridor and final design special use permits. The following standards shall apply in addition to those required above under general corridor and final design special use permits:

1. When routing transmission lines, the following shall be avoided unless no reasonable alternative exists: slopes of 20 percent grade or greater; intrusions into scenic areas such as streams, open water, valleys, overviews, ridge crests and high points; wetlands; forests, by running along the fringe rather than through the forests, and by utilizing open areas in order to minimize cutting, although leaving a strip at the outside for screening purposes; soils susceptible to erosion which would create sedimentation and pollution problems; areas of unstable soils which would be subject to extensive slippages; areas with high water

tables, especially if construction requires excavation; open space recreation areas, including parks, golf courses, etc.; long views of lines parallel to highways and trails; airports; and parkways;

2. Routes shall utilize or parallel existing railroads and highway rights-of-way if possible. If such highway rights-of-way are developed the line and structures shall be sufficiently set back and screened in order to minimize view of the line and structures from the highway;

(5) Alteration of final design special use permit. Once the final design special use permit is issued, the applicant may change the height and location of structures for engineering purposes provided no structure height is increased or decreased by more than 20 percent of its approved height or moved more than 25 feet from its approved location. Should it be necessary to alter the height or location more than the amounts set forth herein, applicant must obtain the approval of the city planning commission after the commission has conducted its normal public hearing and notice procedures. The decision of the planning commission on any alterations shall be final unless appealed to the city council within ten days;

(s) Privately operated community building or recreation field;

(t) Any public or government owned or leased building not permitted in a particular district; provided that such permit shall run for a full period of the lease and that both lease and permit shall run for not less than ten years from date of permit;

(u) Radio or television broadcasting tower or station;

(v) Residential care facility, only in those districts where permitted as a special use;

(w) Residential rooming house, only in those districts where permitted as a special use;

(x) Riding stable;

(y) Solid waste disposal facility;

(1) Special use permits for solid waste disposal facilities and yard waste compost facilities shall be granted only under certain circumstances and under certain conditions;

(2) An application for this special use permit shall include the following:

(A) A complete legal description of the property and the specific site within the property description;

(B) A site plan as defined in Section 50-1.64;

(C) A landscape plan as defined in Section 50-1.65.7;

(D) A detailed plan schedule for excavation, grading, dumping, filling, covering, landscaping and closure of the facility;

(E) Engineering certification, signed by the project engineer, which must certify (with any exceptions listed) that the design for construction is in accordance with standards as set out in these regulations and state statutes and rules relating to the specific type of requested facility;

(F) Signage plans showing location, dimensions and detail;

(G) Drainage plan that provides for diversion of surface water around and away from the disposal area and does not increase the rate of runoff, from the predevelopment condition, from the site onto adjoining properties;

(H) Ground water monitoring plan as and if required by state statutes or rules;

(I) A detailed dust control plan for the facility and for roadways in and leading to and from the facility;

(3) Standards and conditions. Solid waste disposal facilities and yard waste composting facilities may be granted special use permits in S, M-1 and M-2 zones subject to the following:

(A) Setbacks, in M-2 zones, all aspects of the solid waste disposal operation shall be setback from all property lines a minimum of 150 feet. In S and M-1 zones the setback shall be 300 feet from all properties zoned other than M-2. Such setbacks shall be bermed and/or landscaped so as to be visually screened from adjacent properties and roadways. Natural vegetation shall be retained in such setbacks where practical. All aspects of yard waste composting facilities shall be set back 100 feet from all property lines;

(B) Licensing for all solid waste disposal operations and facilities as well as yard waste composting facilities shall comply with all state and Western Lake Superior Sanitary District requirements in accordance with Minnesota Statutes and agency rules;

(C) Solid waste disposal facilities for industrial waste shall only be allowed in M-2 zones. Such facilities shall be approved in the special use permit only for specified types of industrial waste;

(D) Solid waste disposal facilities for construction debris shall only be allowed in M-2 zones;

(E) Facilities for composting of yard waste shall not accept materials other than yard waste;

(F) No solid waste disposal facilities, except composting facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as these are defined in Chapter 51 of this Code;

(G) All filled areas shall be covered and vegetated in accordance with an approved schedule for filling, covering and vegetating. Further, there shall be an approved plan as part of the special use permit for the vegetation and dust control of stockpiled cover material;

(H) There shall be no burning of materials;

(I) Facility locations shall have direct access to an arterial street and shall not access through a neighborhood. Increased traffic generated by the facility shall not have an adverse effect on the neighborhood. All roads leading to and from and within facilities located in S and M-1 zones shall be constructed with an approved, as part of the special use permit, dust free material;

(J) All vehicles transporting materials to or from the facility shall be covered;

(K) For sites in S and M-1 zones, there shall be no dumping or operations outside of buildings, nor delivery or removal of materials to or from the site occurring between the hours of 10:00 p.m. and 7:00 a.m.;

(L) Except for yard waste composting facilities there shall be no processing (separating or sorting) of materials outside of covered structures;

(M) Noise emanating from a building in which dumping, separating or other processing of material is performed shall not exceed 55db at any property line which abuts property zoned other than M-2;

(N) In S and M-1 zones there shall be no exterior lighting permitted except to provide security for buildings and parking areas. Where such lighting is permitted it shall be directed so no light source is visible from any property line;

(O) Compliance funding: in the absence of other compliance funding required by state permitting agencies, there shall be a bond, letter of credit or other security (including an account to accept deposits of tipping fees) acceptable to the city, prior to the issuance of a permit to ensure compliance with the terms of the permit and to ensure proper closure of the facility. Such bond, letter of credit or other surety shall provide for the amount of the closure costs estimated and certified by the project engineer for each phase of operation and final closure;

(z) Strobe lights, as defined in Section 10-36 of this Code, may be used on radio and television broadcasting towers exceeding 400 feet in height located in that area of the city commonly known as the tower farm within Section 28, Township 50, Range 14, subject to the following restrictions and conditions:

(1) Strobe lights may be used only when the north sky illumination on a vertical surface at the base of the tower is greater than five footcandles. Red obstruction lights must be used at all other times;

(2) Strobe installations shall be shielded so as not to be visible from ground elevation for a radius of two miles from the antenna base;

(3) Strobe installations will be allowed only on towers which are required by federal aviation administration regulations to be painted orange and white;

(aa) Drive-in theater in the S suburban district;

(bb) Tourist or trailer camp; provided, that such tourist or trailer camp shall comply with the applicable provisions of this Code and the laws of the state;

(cc) Essential municipal or public utility use, facility or building, other than a business office or production facility; provided that such use, facility or building shall be located in a S district only if its specific function requires that it be so located in order to serve the immediate neighborhood, as opposed to serving a major portion of the community. Provided, that a substation which serves more than the immediate neighborhood may be granted a special use permit in S districts if such substation is located in such a manner that it is visually screened from adjacent properties and is located on a site of at least five acres;

(dd) Veterinarian or animal hospital; provided, that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, which are ordinarily permitted in the house and kept for company or pleasure) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a sound-proof building with adequate ventilation;

(ee) Wind energy conversion systems. Wind energy conservation systems (WECS) shall be permitted, provided; tower height shall not exceed 200 feet; that existing or future uses permitted within adjacent properties are not adversely effected by noise, electronic signal interference or safety conditions; that satisfactory visual screen buffers be provided at the edges of the

property to mitigate aesthetic impacts upon the neighborhood if located within "R" districts; and that WECS be set back from all property lines a distance equal to or greater than the tower height as measured from the base of the tower unless it can be demonstrated that tower failure would not damage adjacent public or private interests;

(ff) Personal wireless communications service towers. These towers shall include all towers and poles over 50 feet high used to provide "personal wireless services" as defined in 47 USCS §332(c)(7)(C)(I), including those commonly known as cellular telephone towers or personal communications services (PCS) towers. The following standards shall apply to the considerations of special use permits for these towers:

(1) No permit decision shall unreasonably discriminate among providers of functionally equivalent services;

(2) No permit decision shall have the effect of prohibiting personal wireless services in an area;

(3) No permit decision shall be based on the environmental effects of radio frequency emissions if the proposed tower complies with all applicable federal communications commission regulations;

(4) Any decision to deny a permit for these towers must be made in writing and supported by substantial evidence contained in a written record;

(5) The construction of new towers shall, where possible, be avoided when there are existing high buildings or other structures in the area that can reasonably be used to house the telecommunications facilities;

(6) Whenever possible, new towers shall be built in zones for manufacturing or commercial uses as opposed to zones for residential uses;

(7) New towers shall, where possible, be constructed to accommodate multiple telecommunications users and thus minimize the proliferation of the towers, if such multiple use capacity can be attained using reasonable height limitations;

(8) New towers shall, where reasonably possible, be designed to blend into the proposed site so as to minimize its visual impact on the surrounding area;

(9) Telecommunications facilities and equipment used in conjunction with the tower shall not create unacceptable noise levels for the surrounding area;

(10) New towers shall comply with all applicable laws, including, but not limited to, the state building code and federal communications and aeronautics statutes, rules and regulations;

(gg) Tennis courts and sports courts.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved as to form:

Attorney

PC CF:tmf 5/15/2009

STATEMENT OF PURPOSE: This amendment allows for tennis courts and sports courts as a special use permit.

On May 12, 2009, the planning commission held a public hearing on this amendment and voted 13 yeas, 0 nays, and 0 abstentions to recommend that city council approve this amendment to allow for tennis courts and sports courts as a special use permit.

Petition received: March 26, 2009

Action deadline: There is no action deadline for this ordinance.