

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

10-051-0

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO JEFFREY B. SMITH AND PETER S. LAMBERT A CONCURRENT USE PERMIT FOR OFF STREET PARKING AREA INTO THE RIGHT-OF-WAY OF THE WEST SKYLINE PARKWAY ADJACENT TO PROPERTIES LOCATED AT 610 AND 618 WEST SKYLINE PARKWAY.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations, and restrictions hereinafter set forth, permission is granted to Jeffrey B. Smith and Peter S. Lambert and their successors in interests, referred to herein as the permittees, to construct, occupy and maintain an off street parking area referred to herein as the private improvements, upon or within the following described areas of the public easement and to temporarily occupy such easement for such purpose: the southerly 15 feet of the right-of-way of West Skyline Parkway, adjoining Lot 102 and Lot 104, Block 74, Duluth Proper Third Division, as shown in Public Document No. _____.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittees shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance and a certificate of insurance approved as to form by the city attorney evidencing that the permittees have in force policies of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within the public easement occupied pursuant to this ordinance whether said activities are performed by the permittees or their employees, agents or contractors; and

- (c) The insurance policy shall be approved by the city attorney; and
- (d) The policy shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and
- (e) The city of Duluth shall be named as an additional insured; and
- (f) The certificate shall also reference this ordinance by its ordinance number.

Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Permittees shall cause a current version of the required insurance certificate to be filed with the city clerk while the permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittees for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittees 30 days written notice delivered via electronic transmission, facsimile transmission or standard United States Postal Service mail delivery to the last known electronic address, facsimile number, or mailing address of the permittees shall be sufficient notice of termination.

Upon termination permittees shall cause all private improvements to be removed by the deadline provided in the termination notice. Permittees shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of

any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittees agree to save harmless and defend and indemnify the city of Duluth against any claims or demand which may arise against the city of Duluth by reason of the existence of the private improvements, or any act or omission of the permittees, its employees, agents, and assigns. The permittees agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city is engaged in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittees agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittees shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittees shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2, above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided

in Section 3, above shall be sufficient notice of termination. Upon termination, permittees shall remove the private improvements as provided in Section 3, above.

Section 8. The permittees shall observe the following additional conditions:

(a) Permittee's use of the public easement shall be limited to the designated area shown on page III C 7 of the January 12, 2010, staff report to the planning commission, FN 10004 (Public Document No. _____); and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way to interfere with or damage any portion of any public improvements, or other public utilities now or to be hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file acceptance of this ordinance as specified in Section 2 within 30 days after this ordinance takes effect; or

(b) The failure by the permittees to file the required insurance certificate as specified in Section 2 within 14 days after this ordinance takes effect; or

(c) The failure of the permittees to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

Approved as to form:

Attorney

PC KD:eu 9/17/2010

STATEMENT OF PURPOSE: This ordinance approves a concurrent use permit request for a privately owned off street parking for two adjacent single family residences (610 and 618 West Skyline Parkway) by the construction of a 26' by 22' retaining wall filled with compacted limestone and topped by a concrete pad and safety railings. A portion (26' x 14') of the retaining wall and concrete pad will extend into the public right-of-way of West Skyline Parkway. On January 12, 2010, August 10, 2010, the city planning commission held a public hearing on the proposal and voted 8-0 to recommend that the city council approve this concurrent use permit.

Petition received: December 1, 2009

This request is not subject to the action deadline mandate of Minnesota statutes 15.99.

(FN10004)