

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

12-0627R

RESOLUTION REQUESTING THE MAYOR AND CITY ADMINISTRATION REMOVE ANY SIGNAGE DESIGNATING A FREE SPEECH ZONE (FIRST AMENDMENT AREA) IN BAYFRONT FESTIVAL PARK AND TERMINATE ANY ENFORCEMENT THEREOF.

BY COUNCILORS STAUBER AND KRAUSE:

WHEREAS, the City Charter specifies that the city council is the legislative branch and has the authority to make rules and laws to govern the city including what is permitted of citizens and what is restricted; and

WHEREAS, the Charter specifies that the mayor is responsible for the administration of city affairs; and

WHEREAS, city administration recently adopted the Bayfront Park - Bayfront Festival Park First Amendment Zone Policy that designated as area near Bayfront Park as a "First Amendment Zone" (the Zone) and has enforced the Zone by dispatching Duluth police officers into Bayfront Park to enforce the Zone; and

WHEREAS, the council is responsible for establishing zoning, special use permits, and variances, and the council did not approve any "First Amendment Zone," nor was the council consulted on the issue, nor was the process of using city boards and commissions to make recommendations used, nor was the public involved in the process, the usual method for council actions; and

WHEREAS, such actions in other communities have frequently been very controversial, divisive and often litigated after lawfully passed by the legislative branch; and

WHEREAS, neither the mayor or staff have explained to the council or the public what the signs mean, what area is being designated, what violators will be in violation of, nor what the penalty would be, nor produced any written material to the same, nor explained what speech is not lawful in this public park; and

WHEREAS, since November of 2011, the city has been involved in federal litigation alleging that it has acted in violation of the First Amendment to the United States Constitution, often referred to as our "freedom of speech"; and

WHEREAS, on October 8, 2012, the council approved a new agreement between the city and Bentleyville, and the council was not informed of the potential impact the new contract could have on Bentleyville's ability to limit the time, place and manner of speech at that event.

THEREFORE, BE IT RESOLVED, the council does hereby request the mayor and city administration immediately remove the Zone signage and cease enforcement of the Zone;

FURTHER RESOLVED, that if city administration wants to designate an area as a Zone, it should follow the process as set out in the City Charter and City Code;

FURTHER RESOLVED, the council hereby requests that in the future city administration make a greater effort to keep the council informed when there are changes of significance to contracts the council is asked to approve, such as this change to the Bentleyville contract, at a minimum to be addressed in the "statement of purpose" of a resolution.

Approved as to form:



Attorney

CCREQ/ATTY GBJ:cjk 12/7/2012

STATEMENT OF PURPOSE: The council was not aware of, nor part of the establishment of a "Free Speech Zone" at Bayfront and since this would require council action and none was taken, the council is requesting city administration remove any signage and end enforcement of this zone.

# Bayfront Park/Bayfront Festival Park

## First Amendment Zone Policy

### WHAT IS BAYFRONT PARK/BAYFRONT FESTIVAL PARK?

The area known as the Bayfront Park or Bayfront Festival Park (“Park”) consists of public land owned in part by the city of Duluth (City) and in part by the Duluth Economic Development Authority. The Park has not been dedicated for park purposes. The City’s Department of Administration-Division of Parks and Recreation is responsible for the management of the Park. The Duluth Entertainment and Convention Center Authority acts as the rental manager for the City.

### AREAS WITHIN THE PARK.

The Park is divided into several distinct areas.

- **Bayfront Event Bowl.** This area includes the large, grassy bowl area adjacent to the main stage and the Lois M. Palucci Music Pavilion.
- **Bayfront Park Plaza:** This area consists of the Railroad Street side of the park up to the end of the wide brick walkway (before the Event Bowl, music pavilion, and stage). This area includes the Entry Plaza and the Courtyard Walkway.
- **Bayfront Family Center:** Bayfront Family Center is the building at the front entrance to the park that is used as the warming shack during ice skating season.
- **Playfront:** This area consists of a large playground.
- **Parking Lots:** Parking lots A and B are immediately adjacent to the area described above.

### What Is The First Amendment Zone?

The First Amendment Zone (Zone) is a large, flat area located within the Park. It is available to the public free of charge. This area is available for the purpose of engaging in expressive activity protected by the First Amendment to the United States Constitution.

## **Where is the Zone?**

The Zone is located in the large parking area B which is the primary lot within the Park used by persons attending events and is advantageously positioned adjacent to the parking lot's patron access entry to the Event Bowl. This area is relatively flat and protected from the winds coming off St. Louis Bay and Lake Superior.

## **When is Use of the Zone Required?**

Individuals wishing to engage in expressive activity protected by the First Amendment within the Park are required to confine their activity to the Zone during those times when event permits have been issued for events occurring at the Event Bowl or the Bayfront Park Plaza. Use of the Zone is not required when permission to engage in the expressive activity has been granted by the permit holder.

The following expressive activities are excluded from this requirement:

- The wearing of clothing containing messages.
- Conversation between willing participants conducted at a conversational volume. Conversational volume does not include shouting, yelling or projecting one's voice at a volume designed to be heard by persons located more than four feet from the speaker. This does not authorize the use of "fighting words". The use of "fighting words" may constitute disorderly conduct.

*Expressive activities may be conducted on public sidewalks during permitted events but individuals must comply with all federal, state and city ordinances. The internal walkways and paths of the Park are not public sidewalks.*

## **What Activities Are Prohibited Within the Zone?**

- No person may violate federal, state and local regulations/ordinances, including but not limited to the following city ordinances:

No person shall distribute flyers, cards or other printed written materials which contain a commercial message or advertising without first receiving written permission from the manager of Parks and Recreation, 218-730-4309 or [kbergen@duluthmn.gov](mailto:kbergen@duluthmn.gov) . *Duluth City Code Section 35-5.*

No person shall use sound amplification devices. *Duluth City Code Section 34-24.*

- Tents or other temporary structures are prohibited.
- Fires or other heat sources are prohibited. This restriction does not prohibit the use of such items as gel hand/feet warmers or battery operated heat vests or other types of clothing using heat generating technology that is integrated into the clothing design.
- The use of musical instruments, or the broadcast of sound or images by audio, video, television, electronic device or radio equipment is prohibited.
- The use of a box/soap box is prohibited.
- The use of a podium is prohibited.
- The use of any object to elevate a person or object is prohibited.
- The use of a sign larger than 2 feet x 3 feet is prohibited.
- Sandwich boards and stakes are prohibited.