

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Tuesday, May 28, 2013, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Fosle, Gardner, Hartman, Julsrud, Krause, Krug, Larson, Stauber and President Boyle – 9

Absent: None – 0

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The minutes of the council meeting held on April 22, 2013, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

13-0528-01 John and Linda Van Etta, et al. (five signatures), petition for overlay and local improvements of Plum Street. -- Assessor

13-0528-02 The following communications regarding the proposed ordinance related to the reclassification to Mixed Use-Commercial the properties located at the 2100 block of London Road (13-027-O): (a) David Holappa; (b) Joseph Kleiman. -- Received

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REPORTS FROM OTHER OFFICERS

13-0528-03 Acting assessor letter of sufficiency regarding petition to pave Plum Street, from Ninth Avenue East to Skywood Lane. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

13-0528-20 Alcohol, gambling and tobacco commission minutes of: (a) August 1; (b) September 5; (c) October 3; (d) November 7; (e) December 5, 2012, meetings. -- Received

13-0528-04 Duluth airport authority minutes of April 16, 2013, meeting. -- Received

13-0528-05 Duluth human rights commission minutes of April 10, 2013, meeting. -- Received

13-0528-06 Spirit Mountain recreation area authority minutes of: (a) March 21; (b) April 18, 2013, meetings. -- Received

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At this time, 7:02 p.m., the public hearing on a proposed City Charter amendment to the legal description for the city of Duluth began. No one appeared who wished to be heard and the hearing was declared closed.

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At this time, 7:03 p.m., the public hearing on a proposed City Charter amendment relating to political activities of city employees began. No one appeared who wished to be heard and the hearing was declared closed.

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At this time, 7:04 p.m., the public hearing on a proposed City Charter amendment removing the city assessor reference began. No one appeared who wished to be heard and the hearing was declared closed.

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At this time, 7:05 p.m., the public hearing on a proposed City Charter amendment to the stated dollar amount for the failure to comply liability of franchises began. No one appeared

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who wished to be heard and the hearing was declared closed.

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At this time, 7:06 p.m. the regular order of business was resumed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlafer commented on what he felt was a high salary for the former University of Minnesota-Duluth (UMD) chancellor and the difficulty that students have in paying tuition.

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Karen Lewis suggested that the city consider the input from taxi drivers, bus drivers, police and pizza delivery drivers because they know what streets are in the worst condition. She also suggested turning the one way streets to two way so traffic movement would not be impaired when problems exist and building wheelchair accesses where they do not allow water on to the sidewalks and properties.

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Tyler Nord expressed support for the revitalization of the Kozy Bar location for housing, noting the need for collaboration with all the parties involved. He cited the merits of urban rooftop gardening and that there is adequate housing space, including storage, at this location.

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RESOLUTION TABLED

Councilor Stauber moved to remove Resolution 13-0237, of intent to create street improvement board and to establish certain procedures pertaining to street improvements and funding, from the table, which motion was seconded and unanimously carried.

Councilor Stauber then moved to suspend the rules to consider Ordinance 13-031 at this time, which motion was seconded and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was introduced for the second time:

BY COUNCILOR STAUBER

13-031 - AN ORDINANCE ESTABLISHING A STREET IMPROVEMENT TRUST (SIT) FUND, PROVIDING FOR THE CREATION OF A CITY-WIDE STREET IMPROVEMENT PROGRAM AND CONDITIONALLY AUTHORIZING TRANSFERS OF FUNDS TO THE SIT FUND.

Councilor Stauber moved to remove the resolution and ordinance from the agenda, due to the support from the administration for a street improvement task force, which motion was seconded and unanimously carried.

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MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or non-controversial and were enacted by one unanimous motion.)

President Boyle moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the assessment roll levied for reassessment of a canceled razing (#5272 - Fund 110) at the following location is set forth below:

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Plat 2620 Parcel 01690 - total assessable: \$5.699

The total assessable amount is \$5,699 and this assessment roll is hereby confirmed.

Resolution 13-0265 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the budget for the fiscal year May 1, 2013, to April 30, 2014, in the amount of \$5,804,694 as set out in the budget on file with the city clerk as Public Document No. 13-0528-07, for the Spirit Mountain recreation area authority is hereby approved.

Resolution 13-0279 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute the renewal of the contract with Duluth Ready Mix, Inc., the third year of a three-year contract, for the purchase and delivery of 5,500 tons of washed sand during fiscal year 2013 for use by the street maintenance division in accordance with the vendor's original bid of \$10 per ton for a total of \$55,000 plus \$3,781.25 sales tax, for a combined total of \$58,781.25, terms net 30, FOB destination, payable from General Fund 110, Department/Agency 121 (public administration), Division 1217 (maintenance operations), Cost Center 2140 (street maintenance), Object 5223-02 (salt and sand sand).

RESOLVED FURTHER, that 5,500 tons will be delivered to the following Duluth locations: 2,500 tons to 1123 Mesaba Avenue, 2,500 tons to 105 North 40th Avenue West, and 500 tons to 2407 Commonwealth Avenue.

Resolution 13-0263 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the city council accepts Laws of Minnesota 2013, Chapter 42, Section 15 [S.F. No. 541] authorizing the city to issue an annual intoxicating liquor license or annual 3.2 malt liquor license for the concession at Wheeler Field.

Resolution 13-0264 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to accept a grant contract, a copy of which is on file in the office of the city clerk as Public Document No. 13-0528-08, from the Minnesota department of labor and industry occupational safety and health consultation division, in the amount up to \$5,252, said funds to be deposited in Fund 510-500-1900-4220-02, and to commit a local match up to \$5,252 from fund 510-500-1945-5241, for the purpose of purchasing safety equipment.

Resolution 13-0289 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation described in (d) below; and

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(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that the unimproved right-of-way is useless for all purposes; and

(c) The city planning commission, at its Tuesday, May 14, 2013, regular meeting, recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the following described platted road easement described below and as described and depicted on Public Document No. 13-0528-09:

LEGAL DESCRIPTION OF THE ALLEY TO BE VACATED:

The platted 20 foot alley lying between Industrial Avenue and 86th Avenue West located in Block 3 of the plat of RIVERSIDE, on file or of record in the office of the county recorder, St. Louis County, Minnesota.

Reserving an easement for utility purposes over, under and across the above-described alley;

(e) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 13-0528-09 showing the platted easement to be vacated.

Resolution 13-0267 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that:

(a) The city council hereby grants Gerard and Norma Downes an interim use permit to operate a vacation dwelling unit located at 1004 South Lake Avenue and as described by the following:

Lot 179, Upper Duluth, Lake Avenue (PID 010-4380-00900); and

(b) Minnesota Statutes Section 462.3597 authorizes the city to issue an interim use permit that allows a use to exist until a specified date or until an amendment to this chapter authorizes or prohibits that use; and

(c) The city council finds that a time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use at this location; and

(d) The interim use permit shall remain in effect for up to six years following the effective date of this resolution, or until there is a change in ownership of the property, whichever occurs first; and

(e) Pursuant to Section 50-20.3.V and Section 50-37.10 of the Duluth City Code, 1959, as amended, the applicant applied for an interim use permit and the application was duly referred to the city planning commission (PL13-063); the commission gave due notice of public hearing and considered the application during a public hearing occurring on May 14, 2013; and

(f) The city planning commission, at their regular meeting on May 14, 2013, considered the application's consistency with the use specific standards for vacation dwelling units and the criteria for granting interim use permits and voted to recommend approval of an interim use permit for a vacation dwelling unit subject to the conditions listed below; and

FURTHER RESOLVED, that an interim use permit for the subject property, is approved subject to the following conditions:

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(a) The applicant must disclose to all guests in writing the location of the nearest legal access to the Lake Superior beach; and

(b) The applicant must disclose to all guests in writing that quiet hours shall be observed between the hours of 10:00 p.m. and 8:00 a.m.; and

(c) The applicant adhere to the terms and conditions listed in the interim use permit document and any modifications to the document that may be deemed necessary by the land use supervisor provided that no such administrative approval shall constitute a variance from the provisions of Chapter 50.

Resolution 13-0271 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 13-0528-10, with Duluth Teachers Credit Union for the repair work to its building located at 11 West Second Street damaged as a result of the June 2012 flood event, in an amount not to exceed \$15,048, payable from Fund 235-020-5434 (Duluth recovery loan program fund, planning, grants and awards), contingent upon receipt by the city of a Minnesota Investment Fund Grant – 2012 Disaster Recovery Program from the Minnesota department of employment and economic development (DEED) pursuant to Grant DRLF-12-0002-V-FY13 (the “MIF grant”).

Resolution 13-0272 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 13-0528-11, with Grandma’s, Inc., in an amount not to exceed \$198,019, payable from Fund 235-020-5434 (Duluth recovery loan program fund, planning, grants and awards), contingent upon receipt by the city of a Minnesota Investment Fund Grant – 2012 Disaster Recovery Program from the Minnesota department of employment and economic development (DEED) pursuant to Grant DRLF-12-0002-V-FY13 (the “MIF grant”).

FURTHER RESOLVED, that the city hereby accepts a personal guaranty provided by Michael J. Paulucci (“guarantor”), in favor of the city guaranteeing to the city the repayment obligation of the city to DEED for a total amount of the loan; said guaranty included in the public document.

Resolution 13-0273 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 13-0527-12, with Whole Foods Co-op, Inc., for the repair work to its parking lot and structural retaining wall damaged as a result of the June 2012 flood event, in an amount not to exceed \$293,190, payable from Fund 235-020-5434 (Duluth recovery loan program fund, planning, grants and awards), contingent upon receipt by the city of a Minnesota Investment Fund Grant – 2012 Disaster Recovery Program from the Minnesota department of

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employment and economic development (DEED) pursuant to Grant DRLF-12-0002-V-FY13 (the "MIF grant").

Resolution 13-0274 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that:

(a) The city council hereby grants Nancy Nilsen/Riverside Retreat, LLC, an interim use permit to operate a vacation dwelling unit located at 10 Industrial Avenue and as described by the following:

Lot 5, Block 3, Riverside Division (PID 010-3970-00260); and

(b) Minnesota Statutes Section 462.3597 authorizes the city to issue an interim use permit that allows a use to exist until a specified date or until an amendment to this chapter authorizes or prohibits that use; and

(c) The city council finds that a time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use at this location; and

(d) The interim use permit shall remain in effect for up to six years following the effective date of this resolution, or until there is a change in ownership of the property, whichever occurs first; and

(e) Pursuant to Section 50-20.3.V and Section 50-37.10 of the Duluth City Code, 1959, as amended, the applicant applied for an interim use permit and the application was duly referred to the city planning commission (PL13-064); the commission gave due notice of public hearing and considered the application during a public hearing occurring on May 14, 2013; and

(f) The city planning commission, at their regular meeting on May 14, 2013, considered the application's consistency with the use specific standards for vacation dwelling units and the criteria for granting interim use permits and voted to recommend approval of an interim use permit for a vacation dwelling unit subject to the conditions listed below; and

FURTHER RESOLVED, that an interim use permit for the subject property, is approved subject to the following conditions:

(a) The interim use permit shall not be effective until the city council approves the vacation of the alley adjacent to the property; and

(b) The applicant adhere to the terms and conditions listed in the interim use permit document and any modifications to the document that may be deemed necessary by the land use supervisor provided that no such administrative approval shall constitute a variance from the provisions of Chapter 50.

Resolution 13-0275 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that:

(a) The city council hereby grants Matthew Evingson an interim use permit to operate a vacation dwelling unit located at 13402 West Third Street (State Highway 23) and as described by the following:

East 10 feet of Lot 17 and all of Lot 19, Fond du Lac, Third Street (PID 010-1610-00090, 010-1610-00100); and

(b) Minnesota Statutes Section 462.3597 authorizes the city to issue an interim use permit that allows a use to exist until a specified date or until an amendment to this chapter authorizes or prohibits that use; and

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(c) The city council finds that a time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use at this location; and

(d) The interim use permit shall remain in effect for up to six years following the effective date of this resolution, or until there is a change in ownership of the property, whichever occurs first; and

(e) Pursuant to Section 50-20.3.V and Section 50-37.10 of the Duluth City Code, 1959, as amended, the applicant applied for an interim use permit and the application was duly referred to the city planning commission (PL13-065); the commission gave due notice of public hearing and considered the application during a public hearing occurring on May 14, 2013; and

(f) The city planning commission, at their regular meeting on May 14, 2013, considered the application's consistency with the use specific standards for vacation dwelling units and the criteria for granting interim use permits and voted to recommend approval of an interim use permit for a vacation dwelling unit subject to the conditions listed below; and

FURTHER RESOLVED, that an interim use permit for the subject property, is approved subject to the following conditions:

(a) The interim use permit shall not be effective until an operational permit has been granted by the fire department and a lodging license has been granted by the state department of health; and

(b) The required driveway and parking improvements shall be completed by September 30, 2013 or the interim use permit shall be suspended until such improvements are made; and

(c) The applicant adhere to the terms and conditions listed in the interim use permit document and any modifications to the document that may be deemed necessary by the land use supervisor provided that no such administrative approval shall constitute a variance from the provisions of Chapter 50.

Resolution 13-0276 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the city council approves settlement in the amount of \$290,000 of all claims or causes of actions asserted by Lauren M. Nash in that matter venued in the district court of Minnesota, sixth judicial district and identified as Lauren M. Nash v. City of Duluth, File No. 69DU-CV-12-2281 and further authorizes the proper city officials to take all actions necessary to conclude this matter on a full, final and complete basis; payment to be made from the Self Insurance Fund 0610.

Resolution 13-0277 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an amendments to City Contract Nos. 21203, 21204, 21205 and 21262 with the Minnesota state public facilities authority extending the terms thereof to December 31, 2013.

Resolution 13-0262 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to acquire from James G. Sundstrom and Gail A. Sundstrom a street easement as described on Public

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Document No. 13-0528-13(a) and a utility easement as described on Public Document No. 13-0528-13(b), said documents being on file in the office of the city clerk, over property in the vicinity of Central Avenue and Columbia Street in the total amount of \$1,500, payable from Fund 110-500-1930-2300-5441 (general fund, public works and utilities, engineering, transportation engineering, other services and charges).

Resolution 13-0266 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that by Resolution of Intent 13-0042 and Amending Resolution of Intent 13-0092 the council did request the administration to prepare plans and specifications for the construction of approximately 250 feet of sanitary sewer in Lawn Street beginning at North Boundary Avenue and extending easterly.

FURTHER RESOLVED, that said work be done by contract and that the estimated total cost of said improvement, as estimated by the city engineer, is \$64,500, with \$52,000 payable from Sanitary Sewer Fund 530, Department 500 (public works and utilities), Division 1905 (capital), Object 5535 (non-capital improvements), City Project 1151; and of these costs, \$52,000 will be assessed to benefitting properties. The remaining \$12,500 will be payable from Water Fund 510, Department 500 (public works and utilities), Division 1905 (capital), Object 5535 (non-capital improvements).

FURTHER RESOLVED, that assessments shall be levied upon lands benefitting per the preliminary assessment roll and may be paid in 15 annual installments at the municipal bond index fund rate plus 1.50 percent.

FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 61 of the City Charter, and that said improvement be hereby ordered.

Resolution 13-0268 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to acquire from the persons specified below utility easements as described on Public Document No. 13-0528-14 on file in the office of the city clerk, over property adjacent to Lakeside Court in the total amount of \$3,734.40, payable from Fund 530, Department 500, Division 1905, Object 5535 (sanitary sewer fund, public works and utilities, capital, non-capital improvements); Project No. 1150:

Name	Description	Amount
	LAKESIDE COURT	
Jana I. Ulland	Lot 1, Block 2	\$1,001.40
Kaylor R. & Karen Pagenkopf Teig	Lot 2, Block 2	\$ 911
Charles H. & Mary Ann Howard	Lot 3, Block 2	\$ 911
Jeannine Marie Brodin	Lot 4, Block 2	\$ 911

Resolution 13-0269 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that Contract 21793 with Watters and Sons Excavating, LLC for removal of a flood damaged bridge and construction of a box culvert at Greene Street over Keene Creek be amended for an increase in the amount of \$70,000 for a new total of \$272,827. This increase is payable from Disaster Recovery Fund 225, Department 125 (finance), Division 1803 (roads and bridges), Object 5403 (street repair and maintenance), City Project No. 1128, S.A.P. 118-080-044, Flood Site No. 135.

Resolution 13-0281 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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WHEREAS, in December 2011, the city entered into a software license agreement with GoodPointe Technology, Inc., for its ICON Pavement Management System and database development;

WHEREAS, the city is now ready for the consultant to move on to the next phase of adding information to the database;

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with GoodPointe Technology, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 13-0528-15, for a pavement condition survey to include Task 1.1 ASTM PCI Survey, Task 1.3 Roughness (IRI) Data, and Task 1.4 Rutting Data, for an amount not to exceed \$115,000, payable from Capital Equipment Fund 250, Department/Agency 015 (public administration), Division 2013 (fiscal year), Object 5580 (capital equipment), Project No. CE250-E1314.

Resolution 13-0283 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. EMW-2012-FO-06474 from the U.S. department of homeland security, federal emergency management agency, assistance to firefighters grant program, operations and safety program, a copy of which is on file in the office of the city clerk as Public Document No. 13-0528-16, in the amount of \$129,120, said funds to be deposited in Fund 210 (special projects fund), Agency 030 (finance), Organization 3184 (direct federal grants), Revenue Source 4209-01 (capital equipment), for the purpose of purchasing 90 fire nozzles, 132 EMS jackets and 105 pairs of fire boots to replace obsolete equipment, and committing \$32,280 as the city's local share cost of said grant, said sum to be paid from the city's Fund 250 (capital equipment fund), 015-Administrative Services, Fiscal Year 2012, 5580.

Resolution 13-0258 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 13-0528-17, with the Cloquet Area Fire District for the cooperative provision of emergency

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fire suppression and other emergency services by the parties in the other party's jurisdiction upon request.

Resolution 13-0261 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the city council hereby approves the Memorial Park Master Plan and authorizes implementation of the plan as funding becomes available.

Resolution 13-0229 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to execute a temporary access agreement substantially in the form as filed with the city clerk as Public Document No. 13-0528-18 with the Minnesota department of natural resources (MnDNR) granting the DNR access across city property to Radio Tower Bay for removal of wood waste from the bay and enhance fish and wildlife habitats in support of the St. Louis River Remedial Action Plan, at no cost to the city.

Resolution 13-0270 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to accept a Minnesota cross country trail assistance program grant, a copy of which is on file in the office of the city clerk as Public Document No. 13-0528-19, with the Minnesota department of natural resources for the maintenance of the Duluth cross country trails for the 2013-2014 season in the amount of \$25,820; said funds to be deposited in the General Fund-110, Public Administration-121, Maintenance Operations/Buildings and Grounds-1217-2150, Ski Trail Reimbursement-4225.

Resolution 13-0278 was unanimously adopted.

Approved May 28, 2013

DON NESS, Mayor

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The following resolutions were also considered:

Resolution 13-0282, by councilors Gardner and Krug, amending Resolution 12 0608, adopting license, permit, fine, penalty and other charges for 2013, by adding a license fee for synthetic drug establishments, was introduced for discussion.

Councilor Gardner moved to suspend the rules for speakers, which motion was seconded and unanimously carried.

Karen Lewis expressed concern that there be a clear, specific and accurate definition of the natural drugs that these prohibited drugs are replacing.

David Ross, executive director of the Duluth Area Chamber of Commerce, spoke on behalf of the Duluth Area Chamber of Commerce Board of Directors, supporting this initiative.

Jim Carlson, CEO of the Last Place On Earth establishment, noted that he has always felt that his products are legal and that by licensing his establishment, the city will be conceding that he was correct about his products as being legal. He continued to comment at length about his establishment being singled out, where other locations in the region selling the same type of product are not being prosecuted as he is being prosecuted and other issues.

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Councilor Gardner moved table the resolution until final consideration of the companion ordinances, which motion was seconded and unanimously carried.

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Resolution 13-0280, authorizing an agreement with LHB for surveying services for future street and utility improvements on Superior Street in Downtown Duluth, was introduced by Councilor Julsrud for discussion.

Councilors Krause and Fosle expressed the following concerns that: it has been supposedly expressed that funding for the Miller Hill Mall cut through for residential traffic and other areas was not available and now this expenditure comes forward; there needs to be a future, long term road planning process; there were extensive plans done when Superior Street was done 30 years ago that should be available and adequate and, with the new management contract, there is likely to be a changeover to hot and cold water from the steam district, and thus, with this likely change, it will be unfair for all taxpayers to be paying the cost for the total street project.

Resolution 13-0280 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with LHB to provide the topographic services required to design, prepare plans and specifications and provide construction engineering services for the reconstruction of Superior Street in Downtown Duluth. LHB has submitted a proposal for surveying services for this project and was rated the top-ranked firm. The cost of said survey services is estimated at \$48,910. The working fund will be Permanent Improvement Fund 411. \$9,782 will be payable from Permanent Improvement Fund 411, Department 038 (special assessment), Object 5530 (improvements other than buildings); \$9,782 will be payable from Sanitary Sewer Fund 530, Department 500 (public works and utilities), Organization 1905 (capital), Object 5536 (utility infrastructure replacement); \$9782 will be payable from Water Fund 510, Department 500 (public works and utilities), Organization 1905 (capital), Object 5536 (utility infrastructure replacement); and \$9,782 will be payable from Stormwater Fund 535, Department 500 (public works and utilities), Organization 1905 (capital), Object 5533 (capital improvements - revenue); City Project No. 0923TR.

Resolution 13-0280 was adopted upon the following vote:

Yeas: Councilors Gardner, Hartman, Julsrud, Krug, Larson, Stauber and President Boyle -- 7

Nays: Councilors Fosle and Krause -- 2

Approved May 28, 2013

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCES TABLED

INTRODUCED BY COUNCILOR STAUBER

13-027 (10224) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM MIXED USE-BUSINESS (MU-B) AND MIXED USE-NEIGHBORHOOD (MU-N) TO MIXED USE-COMMERCIAL (MU-C), FOR PROPERTIES LOCATED AT THE 2100 BLOCK OF LONDON ROAD (LONDON ACQUISITION, LLC).

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Councilor Stauber moved to consider Ordinance 13-029 at this time, which motion was seconded and unanimously carried.

INTRODUCED BY COUNCILOR STAUBER

13-029(a) (10225) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING DIMENSIONAL STANDARDS, PERMITTED AND SPECIAL USES, USE SPECIFIC STANDARDS, THE HISTORIC PRESERVATION COMMISSION AND DEFINITIONS.

Councilor Stauber moved to remove the ordinance from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to hear a speaker on the ordinances, which motion was seconded and unanimously carried.

Dan Maddy, representing the parties associated with Ordinance 13-027, expressed concerns that the proposed amendments would change some height limits and that the 45 foot limit for commercial businesses does not get any lower.

Councilor discussed at length aspects of the height restriction.

Councilor Stauber moved to split the ordinance into an "(a)," which would include everything except the Mixed Use-Neighborhood, Commercial, Business and Waterfront, and a "(b)" would only include the Mixed Use-Neighborhood, Commercial, Business And Waterfront, which motion is seconded and unanimously carried.

Councilor Stauber moved passage of the (a) version of the ordinance and the same was adopted upon a unanimous vote.

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Councilor Gardner moved to amend the (b) version of the ordinance as follows:

(a) In the Mixed Use-Neighborhood Table 50-15.2-1, add the minimum width of side yard category of "general, unless listed below" and add the structure setback at "5 feet";

(b) In the Mixed Use-Neighborhood Table 50-15.2-1, Mixed Use-Commercial Table 50-15.3-1, Mixed Use-Business Park Table 50-15.5-1 and Mixed Use-Waterfront Table 50-15.6-1:

(1) In the R-1 maximum height of building, residential or mixed use category, delete "400" and replace with "500";

(2) In the R-2 maximum height of building, residential or mixed use category, delete "300" and replace with "500";

which motion was seconded and discussed at length.

Councilor Stauber moved to amend the (b) version of the ordinance as follows:

(a) In the Mixed Use-Neighborhood Table 50-15.2-1, add the minimum width of side yard category of "general, unless listed below" and add the structure setback at "5 feet";

(b) In the Mixed Use-Neighborhood Table 50-15.2-1, Mixed Use-Commercial Table 50-15.3-1, Mixed Use-Business Park Table 50-15.5-1 and Mixed Use-Waterfront Table 50-15.6-1:

(1) In the R-1 maximum height of building, residential or mixed use category:

(A) Delete "400" and replace with "1,000";

(B) Under "Structure Height," delete "35" and replace with "30";

(2) In the R-2 maximum height of building, residential or mixed use category:

(A) Delete "300" and replace with "750";

(B) Under "Structure Height," delete "50" and replace with "45";

which motion was seconded and discussed at length.

Councilor Gardner's amendment was carried unanimously.

Councilor Stauber's amendment failed unanimously.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

[EDITOR'S NOTE: Because of the amendment, the ordinance was considered as a first reading.]

- - -

At this time, Councilor Stauber moved to remove Ordinance 13-027 from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to hear a speaker on the ordinance, which motion was seconded and unanimously carried.

Nick Patronas expressed support for this development which will improve that location and increase sales and property taxes.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The following entitled ordinances were read for the first time:

BY COUNCILORS GARDNER AND KRUG

13-038 - AN ORDINANCE AMENDING THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING CHAPTER 28, ADDING A NEW ARTICLE VIII PROHIBITING CONSUMPTION OF PRODUCTS LABELED NOT FOR HUMAN CONSUMPTION.

- - -

BY COUNCILORS GARDNER AND KRUG

13-039 - AN ORDINANCE AMENDING THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING CHAPTER 5 ADDING A NEW ARTICLE VII REGARDING SYNTHETIC DRUG ESTABLISHMENTS.

- - -

INTRODUCED BY COUNCILOR STAUBER

13-037 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM MIXED USE BUSINESS (MU-B) TO MIXED USE NEIGHBORHOOD (MU-N) FOR PROPERTIES LOCATED AT 4502 EAST SUPERIOR STREET (GREG KLEIN).

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY PRESIDENT BOYLE

13-032 (10226) - AN ORDINANCE AMENDING CHAPTER I, SECTION 1, OF THE CITY CHARTER AMENDING THE LEGAL DESCRIPTION FOR THE CITY OF DULUTH.

President Boyle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY PRESIDENT BOYLE

13-033 (10227) - AN ORDINANCE AMENDING CHAPTER IV, SECTION 21, OF THE CITY CHARTER RELATING TO POLITICAL ACTIVITIES OF CITY EMPLOYEES.

President Boyle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY PRESIDENT BOYLE

13-034 (10228) - AN ORDINANCE AMENDING CHAPTER IV, SECTION 23, OF THE CITY CHARTER REMOVING CITY ASSESSOR REFERENCE.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

President Boyle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY PRESIDENT BOYLE

13-035 (10229) - AN ORDINANCE AMENDING CHAPTER XI, SECTION 84, OF THE CITY CHARTER AMENDING THE STATED DOLLAR AMOUNT FOR FAILURE TO COMPLY LIABILITY.

President Boyle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 8:28 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10224

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM MIXED USE-BUSINESS (MU-B) AND MIXED USE-NEIGHBORHOOD (MU-N) TO MIXED USE-COMMERCIAL (MU-C), FOR PROPERTIES LOCATED AT THE 2100 BLOCK OF LONDON ROAD (LONDON ACQUISITION, LLC).

The city of Duluth does ordain:

Section 1. That the 2.4 acres of the subject properties located at the 2100 block of London Road, and as more particularly described in Exhibit A and by the following:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7) and Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Block Twenty-five (25), ENDION DIVISION OF DULUTH, EXCEPT that part of Lot One (1), Block Twenty-five (25), ENDION DIVISION OF DULUTH, which lies southwesterly of the line described as: beginning at a point on the northwesterly line of Lot One (1), distant 30 feet northwesterly of the most westerly corner thereof; thence run southeasterly to a point on the southeasterly line of said Lot One (1), distant 30 feet northeasterly of the most southerly corner thereof and there terminating;

And:

That part of the North 1/2 of South Street, as dedicated on the recorded plat of ENDION DIVISION OF DULUTH, lying Easterly of the Southerly extension of the Westerly line of Lot 15, Block 25, said ENDION DIVISION OF DULUTH, and lying Westerly of the Southerly extension of the Easterly line of Block 25, said ENDION DIVISION OF DULUTH; be reclassified from MU-B and MU-N to MU-C, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

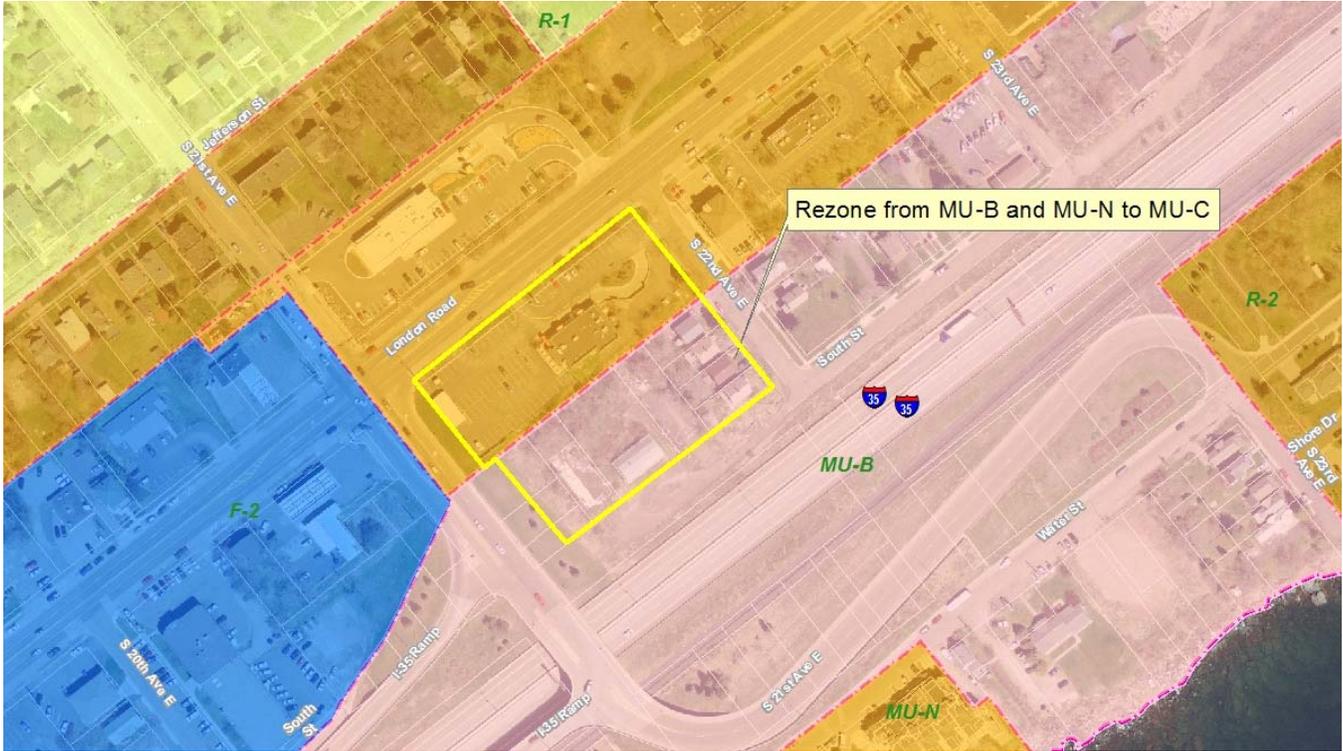


Exhibit A

(Ref. File No. 13-035)

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 29, 2013)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Fosle, Gardner, Hartman, Julsrud, Krause, Krug, Larson, Stauber and President Boyle -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed May 28, 2013
Approved May 28, 2013
DON NESS, Mayor

- - -

ORDINANCE NO. 10225

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING DIMENSIONAL STANDARDS, PERMITTED AND SPECIAL USES, USE SPECIFIC STANDARDS, THE HISTORIC PRESERVATION COMMISSION, AND DEFINITIONS.

The city of Duluth does ordain:

Section 1. That Section 50-14.5 of Chapter 50 be amended as follows:

50-14.5 Residential-Traditional (R-1).

A. Purpose.

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The R-1 district is established to accommodate traditional neighborhoods of single-family detached residences, duplexes and townhouses on moderately sized lots. This district is intended to be used primarily in established neighborhoods. Many of the dimensional standards in this district require development and redevelopment to be consistent with development patterns, building scale, and building location of nearby areas. Uses are allowed as shown in Table 50-19.8;

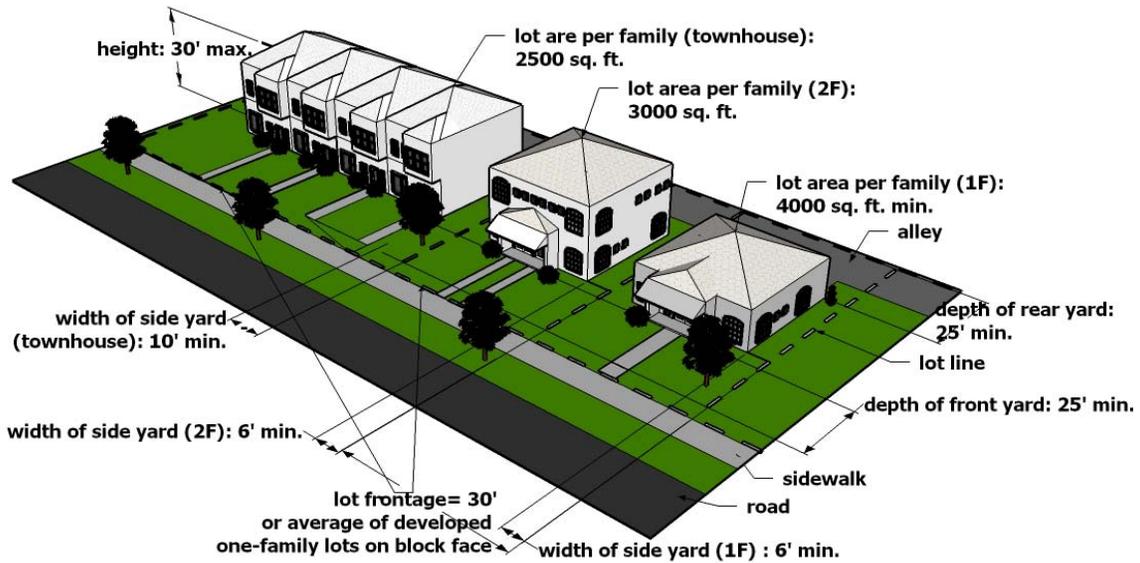
TABLE 50-14.5-1 R-1 DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area per family (One-family) [1]		The <u>smaller</u> of 4,000-sq. ft. or average of developed 1-family lots on the block face
Minimum lot area per family (Two-family) [1]		The <u>smaller</u> of 3,000 sq. ft. or average of developed 2-family lots on the block face
Minimum lot area per family (Townhouse) [1]		2,500 sq. ft.
Minimum lot frontage (one-family, two-family, and townhouses) [1]		The <u>smaller</u> of <u>40</u> ft. or average of developed lots with similar uses on the block face
STRUCTURE SETBACKS		
Minimum depth of front yard		The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard (one- and two-family)	General	6 ft.
	Lots with less than 50 ft. frontage and garage	Combined width of side yards must be at least 12 ft.
Minimum width of side yard (Townhouse)		10 ft. if adjacent to another lot
		25 ft. if adjacent to platted street
Corner Lot: width of front side yard	Dwelling	15 ft.
	Detached accessory building	20 ft.
	Permitted non-residential building	25 ft.
Minimum depth of rear yard		25 ft.
STRUCTURE HEIGHT		
Maximum height of building		30 ft.
[1] Determined using "Lots on the Block Face" definition. <u>When doing this calculation, exclude the subject lot from the average.</u> Section 50.21 <i>Dimensional standards</i> contains additional regulations applicable to this district.		

B. Example.

R-1 Example Building Forms



C. Illustration.



Section 2. That Section 50-17.4 of Chapter 50 be amended as follows:

50-17.4 Park and Open Space District (P-1).

A. Purpose.

The P-1 district is intended to protect and reserve lands for recreational, scenic and natural resource uses. It is intended to be applied to publicly owned land but may be applied to private property with the landowner's written consent. Both passive recreational (e.g., walking paths, picnic tables) and active recreational (e.g., playgrounds, ball fields, tennis courts) uses may be permitted, as shown in Table 50-19.8. Small-scale buildings, structures and development (e.g., parking) that are incidental to and supportive of an approved use may also be permitted. All uses and structures shall be compatible in scale, design and impact with the natural features and character of the land;

B. Example.

**TABLE 50-17.4-1:
P-1 DISTRICT DIMENSIONAL STANDARDS**

LOT STANDARDS	
Minimum lot area	0 sq. ft.
Minimum lot frontage	0 ft.
STRUCTURE SETBACKS	
Minimum depth of front yard	25 ft.
Minimum width of side yard	25 ft.
Minimum depth of rear yard	25 ft.
STRUCTURE HEIGHT	
Maximum height of building	30 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

P-1 Example Pictures



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Section 3. That Section 50-18.3 of Chapter 50 be amended as follows:

50-18.3 Historic Resources Overlay (HR-O).

A. Purpose.

The purpose of this Section 50-18.3 is to preserve, protect and promote any areas, places, buildings, structures, lands, districts and other objects having a special historical, community or aesthetic interest or value. The Historic Resources Overlay:

1. Safeguards the heritage of the city by preserving properties that reflect elements of the city's cultural, social, economic, political, engineering, visual or architectural history;
2. Protects and enhances the city's appeal and attraction to residents, visitors and tourists, while enhancing its economic viability through the protection and promotion of its unique character as related to its history and heritage;
3. Enhances the visual and aesthetic character, diversity and interest of the city;
4. Fosters civic pride in the beauty and notable accomplishments of the past;
5. Promotes the preservation and continued use of historic properties for the education and general welfare of the people of the city;

B. Designation of historic resources.

1. Through the process for designating historic resources in Section 50-37.8, or its predecessor ordinance previously codified as Chapter 28A of the City Code, the heritage preservation commission has designated:
 - (a) Two historic preservation districts: the Duluth Civic Center Historic District, and the Duluth State Normal School Historic District, whose boundaries are shown on Exhibits 50-18.3-1 and 50-18.3-2; and
 - (b) Those designated historic preservation landmarks on file with the secretary of the planning commission;
2. The heritage preservation commission and planning commission may from time to time recommend, and the council may approve, additional historic preservation districts or landmarks pursuant to Section 50-37.8;

C. Review of construction/demolition activities.

Within those designated historic preservation districts shown on Exhibit 50-18.3-1 and those historic preservation landmarks on file with the secretary of the planning commission:

1. Construction and demolition activities, including all street and utility activities shall be approved pursuant to Section 50-37.14;
2. The issuance of city permits to do any of the following shall be approved pursuant to Section 50-37.14:
 - (a) Remodel, repair or alter in any manner that will change the exterior appearance;
 - (b) New construction, including parking facilities;
 - (c) Move a building;
 - (d) Change the nature or appearance of a designated historic preservation landmark or district, including landscape features;
 - (e) Demolition in whole or in part;

D. Emergency repair.

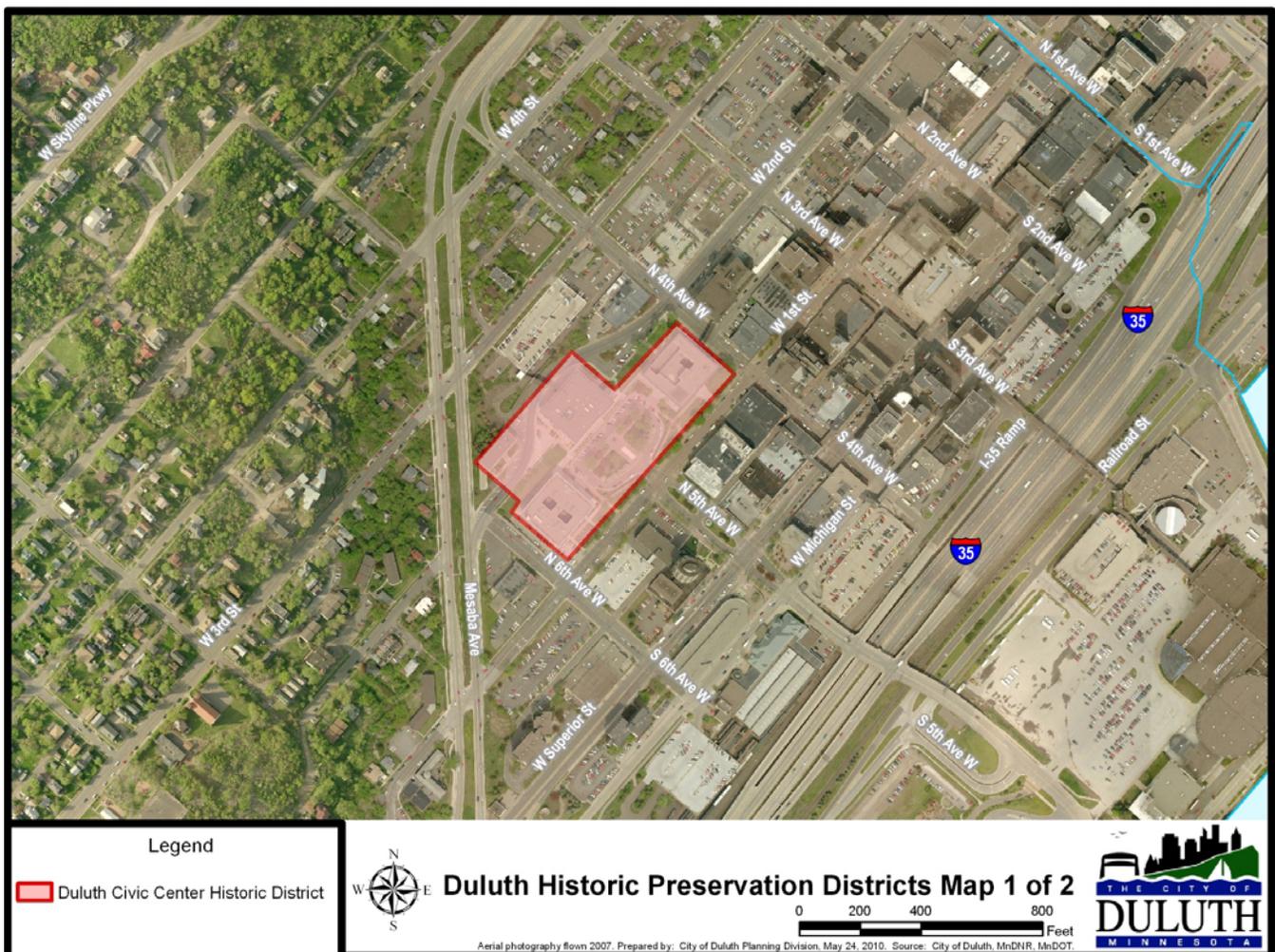
In emergency situations where immediate repair is needed to protect the safety of the structure and its inhabitants, the building official may approve the repair of only those

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

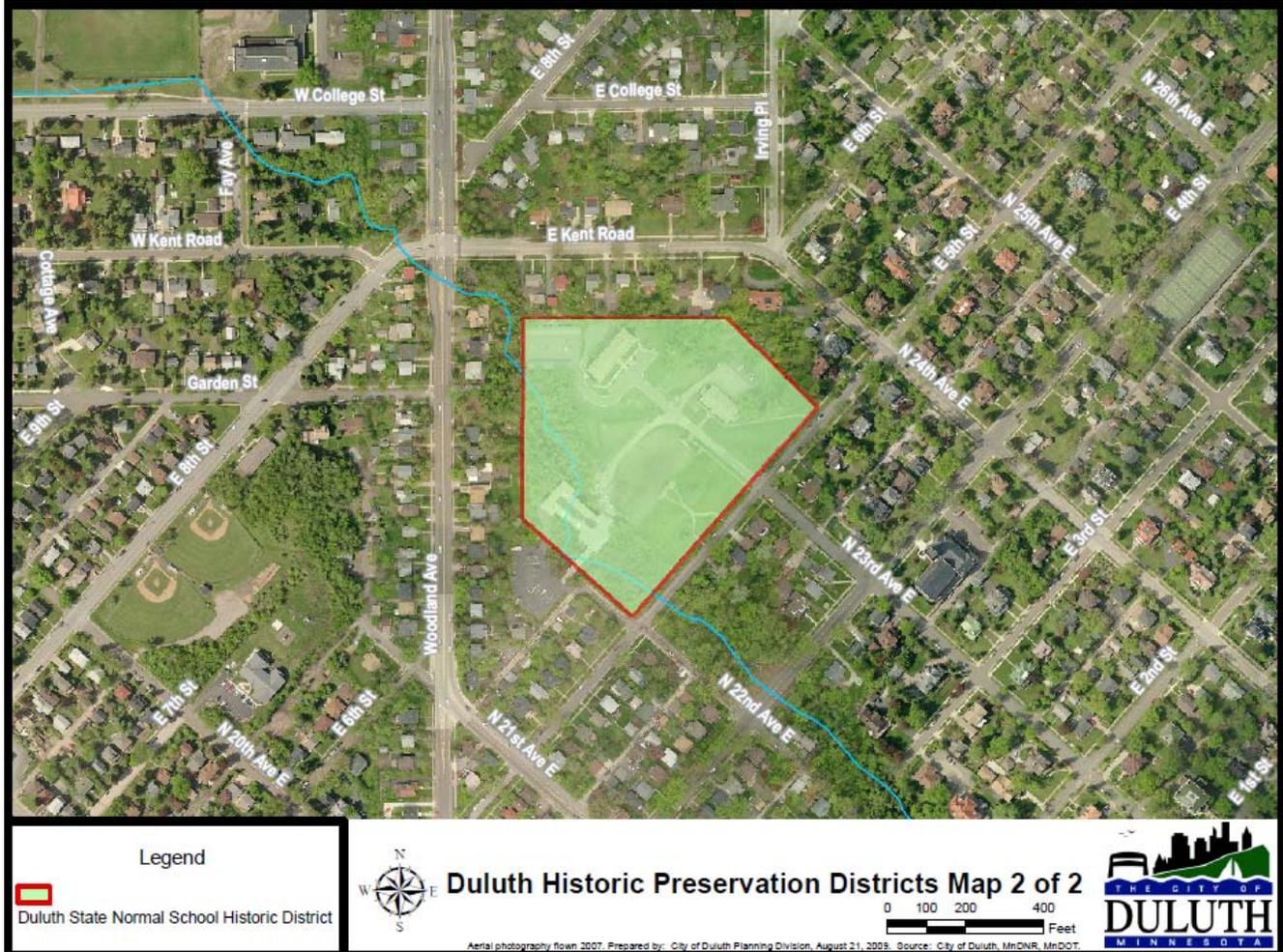
items needed to ensure safety. Such repairs shall be limited to those necessary to correct the safety emergency. In the case of a permit issued pursuant to this subsection D, the building official shall require that the repairs be made in conformance with the U.S. secretary of interior's recommended standards for historic preservation projects and adopted historic preservation guidelines for the landmark or district to the extent possible. In addition, the building official shall immediately notify the heritage preservation commission of the action and specify the facts or conditions constituting the emergency situation;

E. Building code enforcement.

This Section 50-18.3 is also intended to encourage the sensitive rehabilitation, restoration, stabilization and preservation of historic buildings throughout the city. These rehabilitation and preservation efforts should provide for the upgrading and maintenance of the safety features of the building or structure to provide a practical level of safety to the public and surrounding properties. While ensuring this increased level of public safety, the enforcement authorities are encouraged to be open to acceptable alternative solutions and alternative compliance concepts, where practical, that will permit the continued use of existing buildings and structures without creating overly restrictive financial burdens on owners or occupants. Nothing in this Section shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any building or structure.



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Section 4. That Section 50-19.8 of Chapter 50 be amended as follows:

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TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story Only

A = Accessory Use

S = Special Use or Interim Use

I = Interim Use Only

Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	MU-P	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																									
RESIDENTIAL USES																									
Household Living																									
Dwelling, one-family	P	P	P	P	P	P	P					P	U	U	U	U	U	P	U	U	U				
Dwelling, two-family				P	P	P	P					P	U	U	U	U	U	P	U	U	U				50-20.1.A
Dwelling, townhouse				S	P	P	P				P	P													50-20.1.B
Dwelling, multi-family					P		P	P	P		P	P	U	P	U	P	P	P	U	P	P				50-20.1.C
Dwelling, live-work							P	P	P		P	P	P	P	P	P	P	P		P	P				
Group Living																									
Co-housing facility				S	S	P	P					P													
Residential care facility/assisted living (6 or fewer)		P	P	P	P	P	P					P	U	P	U	P	P	U	U	P	P				50-20.1.D
Residential care facility/assisted living (7 or more)				S	P		P	P	P		P	P	U	P	U	P	P	U	U	P	P				50-20.1.D
Rooming house					S		P	P	P		P	P	U	P	U	P	P	U	U	P	P				50-20.1.E
PUBLIC, INSTITUTIONAL AND CIVIC USES																									
Community and Cultural Facilities																									
Bus or rail transit station							P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Cemetery or mausoleum	S	S	S	S	S	P	S	S	S	S														S	
Club or lodge (private)					S	P	P	P	P		P	P	P	P	P	P	P	P	P	P				S	50-20.2.A
Government building or public safety facility		P	P	S	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	P	S	S	S	
Museum, library or art gallery				S	S	P	P	P		S	P	P	P	P	P	P	P	P	P	P	P			S	
Park, playground or forest reserve	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P			P	
Religious assembly, small (less than 50,000 sq. ft.)		P	P	S	P	P	P	P	P	S	P	P	P	P	P	P	P	P	P						50-20.2.C

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story Only

A = Accessory Use

S = Special Use or Interim Use

I = Interim Use Only

Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards		
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	MU-P	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1	
LAND USE CATEGORY																										
Religious assembly, large (50,000 sq. ft. or more)		S	S	S	S	P	P	P	P	S	P	P	P	P	P	P	P	P	P							50-20.2.C
Educational Facilities																										
Business, art or vocational school							P	P	P	P	P	P	P	P	P	P	P	P	P							
School, elementary		P	P	P	P	P	P	P			P	U	P	U	P	P	U	U	U						50-20.2.D	
School, middle or high		S	S	S	S	P	S	S			P	U	P	U	P	P	U	U	U						50-20.2.D	
University or college						I			P		P			U	P	P	U	U	U							
Health Care Facilities																										
Hospital									P																	
Medical or dental clinic					S	P	P	P	P	P	P	P	P	P	P	P	P	P	P						50-20.2.B	
Nursing home					P	P	P	P	P		P		P		P											
Other institutional support uses not listed in this table									P																	
COMMERCIAL USES																										
Agriculture and Animal-Related																										
Agriculture, general	P	P																							50-20.3.B	
Agriculture, urban		P	P	P	P	P					P															
Kennel	S	S					S	S	P		P															
Riding stable	S	S	S			P				S														S		
Veterinarian or animal hospital	S	S			P	P	P	P	P	P	P		P		P	P									50-20.3.U	
Food, Beverage and Indoor Entertainment																										
Adult entertainment establishment																						P				50-20.3.A
Convention or event center								P		P	P	P				P	P		P	P	P				50-20.3.H	
Indoor entertainment facility								P		P	P	P		P		P	P		P	P	P					

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

TABLE 50-19.8: USE TABLE

P = Permitted Use U = Upper Story Only

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

A = Accessory Use

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

S = Special Use or Interim Use

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

I = Interim Use Only

Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards		
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	MU-P	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1	
LAND USE CATEGORY																										
Restaurant, (no drive-in/drive-through, less than 5,000 sq. ft.)					S	P	S	P	P	P	P	P	P	P	P	P	P	P	P	P	P					50-20.3.P
Restaurant, (no drive-in/drive-through, 5,000 sq. ft. or more)						P		P	P	P	P	P	P	P	P	P	P	P	P	P	P					50-20.3.P
Restaurant, with drive-in/drive-through								P		P		P		P		P										50-20.3.Q
Theater							S	P			P	P		P		P	P		P	P	P					
Lodging																										
Hotel or motel							S	P	P	P	P	P		P		P	P		P	P	P					
Bed and breakfast				S	P	P	P	P	P	P	P	P		P		P		P								50-20.3.F
Seasonal camp or cabin	P	P				P					P													S		50.20.3.S
Vacation dwelling unit		I	I	I	I	I											I									50-20.3.V
Offices																										
Bank						I	S	P	P	P	S	P	P	P	P	P	P	P	P	P	P					50-20.3.E
Office				S	P		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P					50-20.3.M
Data center							S	P	P	P	S	P	U	U	U	U	U	U	U	U	U	P				
Outdoor Recreation & Entertainment																										
Golf course		S	S			P																			P	
Marina or yacht club											P												S	S		
Tourist or trailer camp	S	S	S								S													S		50.20.3.T
Other outdoor entertainment or recreation use not listed		S						S		S	S															50.20.3.N
Personal Services																										
Business park support activities										P	P															
Preschool		S	S	S	P	P	P	P	P		P	P	P	P	P	P	P	P	S	P	S					
Daycare facility, small (14 or fewer)	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P					50-20.3.I

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story Only

A = Accessory Use

S = Special Use or Interim Use

I = Interim Use Only

Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards		
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	MU-P	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1	
LAND USE CATEGORY																										
Daycare facility, large (15 or more)		S	S	S	S	P	P	P	P		P	P	P	P	P	P	P	S	P	S						50-20.3.I
Funeral home or crematorium					S		S	P	P	P	P		P	P	P	P	P					P				
Mini-storage facility										P												P	P			50-20.3.L
Personal service and repair, <u>small</u> (less than 10,000 sq. ft.)						P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P					
Personal service and repair, <u>large</u> (10,000 sq. ft. or more)						I	S	P	P	P	P		P		P		P		P			P				
Retail Sales																										
Adult bookstore																						P				Chapter 5
Building materials sales								S		P	P															50-20.3.G
Garden material sales		S						P			P					P										
Grocery store, <u>small</u> (less than 15,000 sq. ft.)						P	P	P			P	P		P		P	P	P	P	P						50-20.3.K
Grocery store, <u>large</u> (15,000 sq. ft. or more)								P				P														50-20.3.K
Retail store not listed, <u>small</u> (less than 15,000 sq. ft.)					S	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P					50-20.3.R
Retail store not listed, <u>large</u> (15,000 sq. ft. or more)								P				P	P		P	P		P	P							50-20.3.R
Vehicle-Related																										
Automobile and light vehicle repair and service							S	P		P		P		P		P	P	P				P				50-20.3.C
Automobile and light vehicle sales, rental, or storage								P		P												P				50-20.3.D
Filling station					S	P	<u>S</u>	P		P	P	P		P		P	P	P				P	P			50-20.3.J
Parking lot or parking structure (primary use)						I		P	P	P	P	P	S	S	S	S	S	S	S	S	S	P	P			50.20.3.O
Truck or heavy vehicle sales, rental, repair or storage										P												P				

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TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use U = Upper Story Only

A = Accessory Use

S = Special Use or Interim Use

I = Interim Use Only

Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards		
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	MU-P	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1	
LAND USE CATEGORY																										
INDUSTRIAL USES																										
Industrial Service																										
Contractor's shop and storage yard										P		P					P					P	P			50-20.4.B
Dry cleaning or laundry plant										P												P				
Research laboratories										P	P	P										P	P			
Industrial services										P												P	P			
Manufacturing and Mining																										
Manufacturing, light										P	P	P					P					P				50-20.4.F
Manufacturing, heavy																						P				
Manufacturing, hazardous or special																						S				50-20.4.G
Mining, extraction and storage																						S	S			50-20.4.H
Water-dependent manufacturing, light or heavy																							P			
Transportation-Related																										
Airport and related facilities	S																					P				50-20.4.A
Railroad yard or shipyard and related facilities																						P	P			
Truck freight or transfer terminal											P											P	P			
Utilities																										
Electric power or heat generation plant																						P	P			
Electric power transmission line or substation	S	S	S	S	S	P	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S		50-20.4.C
Major utility or wireless telecommunication facility	S	S	S	S	S	P	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S			50-20.4.E
Radio or television broadcasting tower		S								S												S	S			50.20.4.I
Solar, geothermal or biomass power facility (primary use)		S				P	S	S	P		P											P	S			

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Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards		
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	MU-P	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1	
LAND USE CATEGORY																										
Water or sewer pumping stations/reservoirs	S	S	S	S	S	P	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S		
Water or sewer treatment facilities																						P	P			
Wind power facility (primary use)		S							S	S												P	S		50-20.4.M	
Waste and Salvage																										
Junk and salvage services																						S	S		50.20.4.D	
Recycling collection point (primary use)								S	S	S												P	P			
Solid waste disposal or processing facility		S								S												S	S		50-20.4.J	
Wholesale Distribution and Storage																										
Storage warehouse										P							P					P			50.20.4.K	
Wholesaling										P							P					P			50-20.4.L	
Bulk storage not listed elsewhere																						P				
Water-dependent bulk storage or wholesaling not listed elsewhere																							P			
ACCESSORY USES																										
Accessory agriculture roadside stand	A	A																						A	50.20.5.A	
Accessory bed and breakfast	A	A	A	A	A	A	A		A		A														50-20.5.B	
Accessory boat dock, residential	A	A	A	A	A	A	A	A	A		A														50-20.5.C	
Accessory caretaker quarters										A												A	A	A		
Accessory communications tower for private use	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Accessory day care facility	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A					
Accessory dwelling unit	A	A	A	A	A	A	A																		50-20.5.D	
Accessory heliport	A								A		A											A			50-25.5.E	
Accessory home occupation	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A	A	A	A					50-20.5.F	

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NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

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Zone District Name	Residential						Mixed Use						Form						Special			Use-Specific Standards			
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	MU-P	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9		I-G	I-W	P-1
LAND USE CATEGORY																									
Accessory recycling collection point					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Accessory sidewalk dining area					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A				50-20.5.G
Accessory solar or geothermal power equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.H
Accessory uses and structures not listed elsewhere	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.I
Accessory vacation dwelling unit		I	I	I	I	I	I									I									50-20.5.L
Accessory wind power equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.J
Minor utilities and accessory wireless antennas attached to existing structures	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.K
TEMPORARY USES																									
Temporary construction office or yard	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Temporary event or sales	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Temporary moveable storage container	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		50-20.6.A
Temporary real estate sales office				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A					
Temporary use not listed in this table	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

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Section 5. That Section 50-20.2 of Chapter 50 be amended as follows:

50-20.2 Public, institutional and civic uses.

A. Club or lodge (private).

1. In the P-1 and R-2 district, the club or lodge shall be operated by a not-for-profit civic, cultural or educational organization, and the primary activity cannot be any service that is customarily carried on as a business;
2. In the RR-1 district, any such buildings shall occupy not more than ten percent of the total area of the lot and shall be set back from all yard lines a distance of not less than two feet for each foot of building height;
3. In the RR-1, RR-2 and R-1 zone districts, the sum of all structures on the lot shall be not more than 50,000 square feet;
4. In the R-1 and R-2 zone districts, each property boundary with a lot occupied by a residential use shall be buffered with a dense urban screen;

B. Medical or dental clinic.

1. In the residential districts, the clinic shall occupy 10,000 square feet or less in total floor area;
2. In the MU-N district, the clinic shall occupy 20,000 square feet or less in total floor area;

C. Religious assembly.

1. In the RR-1 district, any such buildings shall occupy not more than ten percent of the total area of the lot and shall be set back from all yard lines a distance of not less than two feet for each foot of building height;
2. In the RR-1, RR-2 and R-2 zone districts, the sum of all structures on the lot shall not exceed 50,000 square feet without a special use permit. A special use permit is required for all religious assemblies in the R-1 zone districts;
3. In the R-1 and R-2 zone districts, each property boundary with a lot occupied by a residential use shall be buffered with a dense urban screen;

D. School, elementary, middle or high.

1. In the RR-1, RR-2 and R-1 districts, the school shall have a curriculum similar to that ordinarily given in public schools and having no rooms regularly used for housing or sleeping purposes, except staff quarters, when located on the premises for the school;
2. In the RR-1, RR-2, R-1, R-2, MU-N and MU-C districts, any such building shall be located not less than 40 feet from any side or rear lot line;
3. Notwithstanding any lower maximum height stated in Article II, in all zone districts except the form districts, the maximum height for this use shall be 45 feet.

Section 6. That Section 50-20.3 of Chapter 50 be amended as follows:

50-20.3 Commercial uses.

A. Adult entertainment establishment.

All adult entertainment establishments shall comply with MSA 617.242 and Chapter 5 of this Code;

B. Agriculture, general.

1. No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or

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- creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 feet from any lot line;
2. All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 feet from any lot line;
- C. Automobile and light vehicle repair and service.
1. No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;
 2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;
 3. All areas for outdoor storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property;
- D. Automobile or light vehicle sales, rental or storage.
In the MU-C district, the use is permitted when located at least 100 feet from any R district;
- E. Bank.
1. In the MU-N district, banks are limited to no more than two drive-through windows and one drive-through lane for ATM services on the premises;
 2. Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;
 3. Banks in the R-P, F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities;
- F. Bed and breakfast.
This is a primary use of land, and the owner need not reside in the use. The use shall:
1. Have no more than 12 habitable units;
 2. If located in a residential zone district, the use shall appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
 3. If located in a residential zone district, the use shall have no greater impact on surrounding public areas or infrastructure or natural resources than a fully occupied private home with house guests;
 4. Be located on a lot or tract containing a minimum of 0.6 acre;
 5. Contain a minimum of 1,500 square feet of area on the first floor of the main building;
 6. 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 a bed and breakfast, 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 that 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;
 7. Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;

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8. Shall limit each guest stay to a maximum of 21 consecutive days;
- G. Building materials sales.
1. Outdoor storage is limited to ten percent of the parcel's land area, and shall not be permitted in any required front yard area;
 2. Each such area shall be screened from view from any ground floor window or door on any adjacent property, and from all adjacent rights-of-way, by an opaque fence or wall between six feet and eight feet in height. The fence may exceed eight feet in height where the difference in grade between the property line or right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area;
 3. A landscaped earth berm may be used instead or in combination with a required fence or wall;
- H. Convention center.
A convention center may not exceed 50,000 square feet if it is within 500 feet of a multi-family use, or 15,000 square feet if it is within 500 feet of a one or two family use;
- I. Daycare facility, small and large.
In the RR-1 and RR-2 districts this use and related parking facilities and structures other than driveways are limited to no more than 20 percent of the lot or parcel area;
- J. Filling station.
1. No displays or storage of merchandise, parts or refuse may be located closer than ten feet from any public right-of-way;
 2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;
- K. Grocery store, small and large.
1. Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas;
 2. Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock;
- L. Mini-storage facility.
This use shall comply with the following standards:
1. The use shall be contained within an enclosed building or buildings;
 2. If the use abuts a residential zone district on any property line, building architecture shall employ sloped roofs and shall display wall relief features and colors commonly found in residential construction;
 3. The use shall be designed so that doors to individual storage units do not face any abutting street frontage;
 4. At least 50 percent of the wall surface area of any wall facing an abutting public street shall be faced with brick or split-block materials. Exposed concrete masonry unit (CMU) construction is not permitted on those facades;
 5. Hours of public access to mini-storage units abutting one or more residential zone districts shall be restricted to the period from 6:00 a.m. to 10:00 p.m.;
 6. Signage shall be limited to one 40 square feet 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;

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7. In the RR-1 district, there shall be a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;
 8. In the R districts a dense urban screen shall be installed along all side and rear property lines;
- M. Office.
1. In the MU-I district, offices are limited to those in support of the permitted institutional uses in the district; general offices unrelated to the activities of those institutions are not permitted;
 2. In the MU-B district, offices are limited to those in support of the permitted industrial uses in that zone district; general offices unrelated to the activities of those institutions are not permitted;
 3. In the F-6 district, offices may not have drive-through facilities.
- N. Other outdoor entertainment or recreation use not listed.
1. No circus ground, carnival ground, event ground, or amusement park shall be approved within 300 feet of an R-C, RR-2 or R district;
- O. Parking lot or parking structure (primary use).
1. In the MU-C district, any parking structure shall be located at least 50 feet from any RC, RR or R district;
 2. In F-1, F-2, F-3, F-4, F-6, F-8 and F-9 districts, only parking lots are allowed as primary uses. In F 7, only parking structures are allowed as primary uses. In F 5, parking lots and parking structures are allowed as primary uses;
- P. Restaurant (no drive-in/ drive-through).
In the R-2 and MU-N district, no use shall exceed 5,000 square feet in gross floor area;
- Q. Restaurant (with drive-in/drive-through).
Drive through lanes must be located at least 25 feet from the boundary of any RR or R district and impacts along the boundary with those districts shall be buffered through the use of a dense urban screen;
- R. Retail sales, small and large.
1. Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas;
 2. Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock;
 3. Retail stores are limited to one drive-through window;
 4. Any drive-through lane that is located between a retail store and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open part 10:00 p.m.;
- S. Seasonal camp or cabin.
1. In the R-C and RR-1 districts, buildings shall be located not less than 200 feet from any R district;
 2. In the R-C district, the design of the site shall preserve the rural character by:
 - (a) Separating each camp or cabin site by at least 50 feet, measured from the closest points on each tent or cabin area;
 - (b) Preserving all natural vegetation not required to be removed for access roads, trails or public safety;

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- (c) Using gravel or pervious paving, rather than impervious materials, for all access road and driveways serving fewer than 25 camp or cabin sites;

T. Tourist or trailer camp.

When located in a flood plain, this use is limited to trailers without foundations that can be easily moved should flooding occur;

U. Veterinarian or animal hospital.

1. In the R-C and RR-1 districts, this use is permitted provided that service is limited to large livestock/large animal care and any building or enclosure so used shall be located not less than 100 feet from any lot line;
2. In the R-2, R-P, MU-N and MU-C districts, this use is permitted provided that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, that are ordinarily permitted in the house for company) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a soundproof building with adequate ventilation;

V. Vacation dwelling unit.

1. The minimum rental period shall as follows:
 - (a) For properties zoned RR-1, RR-2, R-1 and R-P the minimum rental period shall not be less than two nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than five nights;
 - (b) For properties zoned R-2, MU-N and F-5 the minimum rental period shall not be less than two nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than three nights;
2. The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two;
3. Off street parking shall be provided at the following rate:
 - (a) 1-2 bedroom unit, one space;
 - (b) 3-4 bedroom unit, two spaces;
 - (c) 5+ bedroom unit, three spaces;
4. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, on or off the street;
5. The property owner must obtain all licenses and permits from the city of Duluth and state of Minnesota required for guest occupancy on the property for three to 21 days;
6. The property owner must provide required documents and adhere to additional requirements listed in the city of Duluth's UDC application manual related to the keeping of a guest record, designating and disclosing a local contact, property use rules, taxation, and interim use permit violations procedures;
7. The interim use permit shall expire upon change in ownership of the property or in six years, whichever occurs first.

Section 7. That Section 50-20.5 of Chapter 50 be amended as follows:

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50-20.5. Accessory uses.

A. Accessory agriculture roadside stand.

Only one stand offering for sale farm products produced on the premises is permitted provided that such stand does not exceed an area of 200 square feet and that it is located not nearer than 25 feet to any street or highway;

B. Accessory bed and breakfast.

The owner and operator of an accessory bed and breakfast shall be required to live in the establishment. In addition, the use shall:

1. Have no more than five habitable units;
2. Appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
3. Have no greater impact on surrounding public areas, infrastructure or natural resources than a fully occupied private home with house guests;
4. Be located on a lot or tract containing a minimum of 0.6 acre;
5. Contain a minimum of 1,500 square feet of area on the first floor of the main building;
6. Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, 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 that 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;
7. Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;
8. Shall limit each guest stay to a maximum of 21 consecutive days;
9. May be subject to other conditions deemed necessary by the city to ensure the use complies with the purpose of this subsection;

C. Accessory boat dock, residential.

This use shall comply with the following standards:

1. Dockage of boats owned and primarily used by a resident of the property is a permitted accessory use to the primary residential use and shall not be limited in number;
2. If there is a residential structure on the property and the property has frontage on an improved street, the owner of the residential structure may rent out boat dockage to a maximum of two boats owned by others. If the property does not have frontage on an improved street, the owner of the residential structure may not rent dockage space to others. Boat dockage use on a property that is not residentially developed is permitted as a principal use provided that the use is limited to one boat for each lot or group of contiguous lots in the same ownership, and the boat is owned and primarily used by the owner of the property;
3. For each new rental boat dock space created or made legal after April 14, 1974, one off street parking space shall be provided in addition to all other off street parking spaces required by other legal uses of the property, such spaces to be constructed in accordance with Section 50-24;

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4. At the request of the building official, the owner of property shall provide boat registration or other documentary evidence to prove compliance with these standards;
5. No buildings other than residential or residential accessory structures, no winter storage of boats other than those owned by a resident of the property in question, no repair facilities, fuel sales, food or refreshment sales, rentals of boats, boat or parts sales or displays or other commercial uses shall be permitted;

D. Accessory dwelling unit.

An accessory dwelling unit may be created within, or detached from, any one-family dwelling, as a subordinate use, in those districts shown in Table 50-19.8, provided the following standards are met:

1. Only one accessory dwelling unit may be created per lot;
2. No variances shall be granted for an accessory dwelling unit;
3. Only the property owner, which shall include title holders and contract purchasers, may apply for an accessory dwelling unit;
4. One off-street parking space shall be provided in addition to off-street parking that is required for the primary dwelling;
5. Accessory dwelling units shall contain no more than 800 square feet of floor space and shall be consistent in character and design with the primary dwelling;
6. If a separate outside entrance is necessary for an accessory dwelling unit located within the primary dwelling, that entrance must be located either on the rear or side of the building;

E. Accessory heliport.

1. All accessory heliports shall have and maintain in effect at all times all required permits and approvals, if any, for the facility and operation required by the FAA, and shall design and maintain the facility and conduct operations in compliance with those permits and approvals;
2. In the R-C and I-G districts, this use shall be permitted only when it is accessory to an airport as a primary use;

F. Accessory home occupation.

All home occupations not listed separately in Table 50-19.8 must comply with the following standards:

1. The use must be conducted entirely in the residence or accessory buildings and not on outdoor portions of the lot;
2. No business involving retail sales of goods from the premises is permitted;
3. No person not a member of the family residing on the premises shall work on the premises;
4. Not more than 25 percent of the floor area of one story of the dwelling shall be devoted to such home occupation and not more than 50 percent of an accessory structure may be devoted to such home occupation;
5. The home occupation shall not require external alterations that would change the residential character of the property;
6. No display pertaining to such occupation shall be visible from the street;
7. The use of the property for a home occupation shall not result in the number of client appointments at the property in excess of two appointments per hour and appointments shall be limited to the hours of 8

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- a.m. to 7 p.m. and not more than four clients shall be on site at the same time;
8. No equipment shall be used that creates offensive noise, vibration, sound, smoke, dust, odors, heat, glare, X ray or electrical disturbance to radio or television or that otherwise constitutes a nuisance;
 9. All home occupations that require a license from the state shall maintain a valid license at all times and shall operate in compliance with the terms of that license and all applicable regulations of the state at all times;
 10. No motor vehicle repair is permitted as an accessory home occupation and repair of motor vehicles not registered to the owner or leaseholder of the property is prohibited regardless of whether the repair is being made for compensation;

G. Accessory sidewalk dining area.

In all districts, this use requires approval of a sidewalk use permit pursuant to Section 50-37.12;

H. Accessory solar or geothermal power equipment.

In all districts, other than building integrated solar collection systems, solar collection systems shall comply with the following requirements:

1. Ground-mounted solar system.
 - (a) Solar collectors shall not be located in the front yard between the principal structure and the public right-of-way;
 - (b) Solar collectors shall be located a minimum of six feet from all property lines and other structures;
 - (c) Solar collector areas in any residential district shall not exceed the greater of one-half the footprint of the principal structure or 600 square feet, whichever is greater. The size of solar collector areas in all districts except residential districts shall not exceed one-half of the footprint of the principal structure;
 - (d) Free-standing or ground-mounted solar installations shall not exceed 20 feet in height, when the system is oriented at its maximum design pitch;
2. Roof-mounted or wall-mounted solar system.
 - (a) A solar collection system shall be located a minimum of six feet from all property lines and other structures except the structure on which it is mounted;
 - (b) Notwithstanding the height limitations of the zoning district, building-mounted solar energy systems shall not extend higher than three feet above the ridge level of a roof on a structure with a gable, hip or gambrel roof and shall not extend higher than ten feet above the surface of the roof when installed on a flat or shed roof;
 - (c) The solar collector surface and mounting devices for building-mounted solar energy systems shall be set back not less than one foot from the exterior perimeter of a roof for every one foot that the system extends above the parapet wall or roof surface, if no parapet wall exists, on which the system is mounted. Solar energy systems that extend less than three feet above the roof surface shall be exempt from this provision;

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(d) A solar collection system may be located on an accessory structure;

3. Solar easements.

A property owner who has installed or intends to install a solar collection system shall be responsible for negotiating with other property owners in the vicinity for any necessary solar easement and shall record the easement with the county recorder. If no such easement is negotiated and recorded, the owner of the solar collector shall have no right to prevent the construction of structures permitted by this Chapter on nearby properties on grounds that the construction would cast shadows on the solar collection system;

I. Accessory uses or structures not listed elsewhere.

1. In any residential district, any accessory building that is erected prior to the construction of the principal building shall comply with the following conditions:

(a) The construction of the principal building shall be completed and the certificate of occupancy for such principal use issued within two years of issuance of the building permit for the accessory building;

(b) Prior to issuance of a building permit for such accessory use, a building demolition bond shall be approved by the city and in an amount sufficient to demolish such accessory structure be filed with the building official;

(c) The owner shall execute a license, in a form approved by the city, authorizing the city to enter upon the real property for the purpose of demolishing such accessory structure in the event a principal structure is not completed as required by this Section.

2. In the RR-2 district, business shall not be conducted from a garage;

3. In the R-2 district, accessory building includes a storage garage on a lot occupied by a multi-family dwelling, townhouse or rooming house;

4. In the MU-N district, accessory buildings shall be subject to the following restrictions:

(a) Except for truckload or trailer-load retail sales lasting less than 30 days, no accessory use shall be conducted in or out of a trailer or truck;

(b) Storage of trailers and trucks or storage of goods within trailers and trucks shall not be a permitted accessory use unless (i) the primary use of the lot is a parking lot, parking garage, or filling station, or (ii) the truck or trailer is used on a regular basis for deliveries or the hauling of supplies to or from a business;

5. In the MU-C, MU-I and MU-W districts, accessory buildings shall be erected at the same time or after the construction of the principal building and subject to the following restrictions:

(a) Except for truckload or trailer-load retail sales lasting less than 30 days, no accessory use shall be conducted in or out of a trailer or truck;

(b) The storage of trailers and trucks or the storage of goods within trailers and trucks shall not be a permitted use unless (i) the primary use of the lot is a parking lot, parking garage, filling station, automobile or light vehicle sales or service, or automobile or light

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vehicle storage, or (ii) the truck or trailer is used on a regular basis for deliveries or the handling of supplies to or from a business;

6. In the MU-B, I-G, and I-W districts, accessory buildings shall be erected at the same time or after the construction of the building for the principal use;
7. An accessory building may observe an equal or greater distance to the front property line as provided by a principal structure if the accessory building provides the front and side yards required for dwelling in that district as per Article II and Section 50-20;

J. Accessory wind power equipment.

In all districts, accessory wind power systems shall comply with the following requirements:

1. The base of the tower shall be set back from all property lines, public rights-of-way, and public utility lines a distance equal to the total extended height. A tower may be allowed closer to a property line than its total extended height if the abutting property owner(s) grants written permission and the installation poses no interference with public utility lines or public road and rail right-of-ways;
2. Towers that are 50 feet or less in height are permitted by right. Towers exceeding 50 feet in height require approval of a special use permit, provided that in no case shall tower height exceed 130 feet;
3. Notwithstanding the provisions of subsection 2 above, no wind power facility shall be taller than 75 feet within any migratory bird flight path;
4. Sound produced by the turbine under normal operating conditions, as measured at the property line of any adjacent property improved with a dwelling unit at the time of the issuance of the zoning certificate, shall not exceed 55 dba for any period of time. The 55 dba sound level may be exceeded during short-term events out of the owner's control such as utility outages or severe wind storms;
5. The turbine and tower shall remain painted or finished in the color that was originally applied by the manufacturer;
6. The blade tip or vane of any small wind energy system shall have a minimum ground clearance of 15 feet as measured at the lowest point of the arc of the blades;
7. No sign that is visible from any public street shall be permitted on the generator, tower, building or other structure associated with a small wind energy system other than the manufacturer's or installer's identification and appropriate warning signs;
8. No illumination of the turbine or tower shall be allowed unless required by the FAA;
9. Any climbing feet pegs or rungs below 12 feet of a freestanding tower shall be removed to prevent unauthorized climbing. For lattice or guyed towers, sheets of metal or wood or similar barriers shall be fastened to the bottom tower section such that it cannot readily be climbed;
10. No part of this use may project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection;
11. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent

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to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement;

K. Minor utilities and accessory wireless antennas attached to existing structures. The following standards apply to accessory wireless antennas that are attached to existing structures and to minor utilities regardless of whether they are attached to an existing structure:

1. A special use permit is required to allow any antenna to exceed 150 feet in height;
2. All building-mounted antennas shall meet or exceed current standards and regulations of the FAA, FCC and any other state or federal agency with the authority to regulate communications antennae and support structures;
3. The size, design and location of each attached antenna shall reduce visibility from surrounding buildings and from the public rights-of-way adjoining the property to the greatest extent feasible;
4. Building-mounted antennas or disguised antenna support structures shall be of a color identical to or closely compatible with the surface to which they are mounted;
5. Except when a support structure for a building-mounted antenna is an otherwise lawfully permitted sign, the placement of advertising on antennae is prohibited;

L. Accessory vacation dwelling unit.

An accessory vacation dwelling unit may be created within, or detached from, any one-family dwelling or vacation dwelling unit in those districts shown where allowed by Table 50-19.8, provided these standards are met:

1. Only one accessory vacation dwelling unit may be created per lot;
2. No variances shall be granted for an accessory vacation dwelling unit;
3. An accessory vacation dwelling unit shall contain no more than 800 square feet of floor area and shall be consistent in character and design with the primary dwelling;
4. If a separate outside entrance is necessary for an accessory vacation dwelling unit located within the primary building, that entrance must be located either on the rear or side of the building;
5. The minimum rental period shall as follows:
 - (a) For properties zoned RR-1, RR-2, R-1 and R-P the minimum rental period shall not be less than two nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than five nights;
 - (b) For properties zoned R-2, MU-N and F-5 the minimum rental period shall not be less than two nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than three nights;
6. The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two;
7. Off-street parking shall be provided at the following rate:
 - (a) 1-2 bedroom unit, one space;
 - (b) 3-4 bedroom unit, two spaces;
 - (c) 5+ bedroom unit, three spaces;

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8. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, on or off the street;
9. The property owner must obtain all licenses and permits from the city of Duluth and State of Minnesota required for guest occupancy on the property for three to 21 days;
10. The property owner must provide required documents and adhere to additional requirements listed in the city of Duluth's UDC application manual related to the keeping of a guest record, designating and disclosing a local contact, property use rules, taxation, and interim use permit violations procedures;
11. The interim use permit shall expire upon change in ownership of the property or in six years, whichever occurs first.

Section 8. That Section 50-21.2 of Chapter 50 be amended as follows:

50-21.2 Special dimensional standards.

A. Lot without municipal sewer.

Lot areas for properties not provided with municipal sewer shall be at least two acres in size or the minimum lot area for the zone district, whichever is larger, and shall be subject to county ordinances and standards regulating individual sewage treatment systems. Lots with large wetlands or shallow bedrock may be required to be larger than two acres, and shall be determined on a case-by-case basis based on the area needed to fit a sewage treatment system on the site. Lots smaller than two acres may be allowed in areas zoned R-P based on soil and site conditions;

B. Front yards on double frontage lots.

On lots having double frontage and where the first and second frontages are on opposite lot lines, the required front yard shall be provided on the frontage that is the generally established frontage on the block, as determined by the building official;

C. Side yards.

1. Dwelling units above commercial uses.

In all residential and mixed use districts, where dwelling units are erected above commercial establishments, no residential side yard is required, except for any side yard required for the commercial building on the side of a lot adjoining a residential district. In form districts, no side yard is required even if the lot adjoins a residential district;

2. Attached and multi-family dwellings.

For the purpose of side yard regulations, a two-family dwelling, townhouse, or multi-family dwelling shall be considered as one building occupying one lot;

3. Driveways.

Where no garage facilities are provided and the alley is not developed for access at the time the dwelling is constructed in an R-1 or R-2 district, there shall be provided one side yard of a minimum of nine feet for a driveway and the other side yard shall have a minimum width of five feet;

D. Rear yards.

An accessory structure cannot exceed 20 feet in height, and may not occupy more than 30 percent of the rear yard area. All accessory structures on a lot may not occupy more than 60 percent of the rear yard area;

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E. Street improvements to lot frontage.

Except as provided in Section 50-37.1.L, for lots developed with an existing legally constructed principle structure, the street frontage requirements contained in Article 2 need not be met when the landowner proposes an expansion of the existing legally constructed structure or a new principle structure if the landowner provides evidence of a perpetual easement to access the property from an improved street of a distance not greater than 150 feet, and such access shall be improved to meet Fire Code standards.

1. The street frontage shall be improved to the most current standards on file in the office of the city engineer and shall be designed for the road classification within the zone in which the property is located;
2. The street shall be improved across the entire frontage of the lot proposed to be developed and all other contiguous property owned by the owner of the subject lot;
3. Any street improvement that results in a dead-end street that is greater than 150 feet in length shall require construction of a turn-around for emergency and maintenance vehicles approved by the city fire marshal.

Section 9. That Section 50-36.3 of Chapter 50 be amended as follows:

50-36.3 Heritage preservation commission.

A. Creation.

Pursuant to Minnesota Statute 471.193, there is hereby created and established a city of Duluth heritage preservation commission, hereinafter called the "commission." The commission shall have the responsibility of recommending to the city council the adoption of ordinances designating areas, places, building structures, works of art or other objects having special historical, cultural or architectural interest for the community as historical preservation landmarks or districts;

B. Membership and terms.

The commission shall consist of seven voting members, all of whom are to be citizens of the city, five of whom will be appointed by the mayor with the approval of the council; one will be appointed by the county historical society, and one will be appointed by the planning commission. Members shall be persons who have demonstrated an interest in the historical, cultural or architectural development of the city or who own property within a historic preservation district. At least two of the five members appointed by the mayor shall be preservation-related professionals;

Appointments shall be for a term of three years. In the event of a vacancy, the vacancy for the unexpired term shall be filled in the same manner as the appointment was originally made. Members shall serve without compensation and shall continue to hold office until their successors have been appointed and confirmed;

C. Powers.

The heritage preservation commission shall have the following powers:

1. Recommendation of historic preservation sites and districts to the city council;
2. Approve, approve with conditions or deny applications for historic construction and demolition permits pursuant to Section 50 37.14;
3. Recommend historic preservation guidelines specific to a landmark or district;
4. Make an annual report to the state historic preservation officer by October 31 of each year;
5. Conduct continuing survey of all areas, places, buildings, structures or similar objects in the city that the commission, on the basis of information available or

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- presented to it, has reason to believe are or will be eligible for designation as historic preservation landmarks or districts;
6. Work for the continuing education of the citizens of the city with respect to the historic and architectural heritage of the city and keep current and public an official list of designated historic preservation landmarks and districts;
 7. The commission may retain the services, on a permanent or part-time basis, of technical experts and other persons as may be required to perform the commission's duties;
 8. The commission shall have authority to solicit gifts and contributions to be made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purpose of historic preservation;
 9. The commission may recommend to the planning commission and council that certain properties eligible for designation as historic preservation landmarks or districts be acquired by gift, by negotiation or other legal means;
 10. Upon final designation of a historic preservation landmark or district, adopt historic preservation guidelines specific to the landmark or district. Such guidelines shall detail allowable architectural and/or site modifications, essential features to be retained and any other criteria by which future proposals for modifications shall be judged. The United States secretary of the interior standards for treatment of historic properties shall be among the standards used to create such a program. These guidelines are intended to provide assurance to owners of properties within historic preservation landmarks or districts that any permit review process will be based on clear and objective standards rather than the taste of individual commission members;
 11. The commission may nominate a historic preservation landmark or district to the national register of historic places, but only with the consent of the council.

Section 10. That Section 50-37.8 of Chapter 50 be amended as follows:

50-37.8 Historic resource designation.

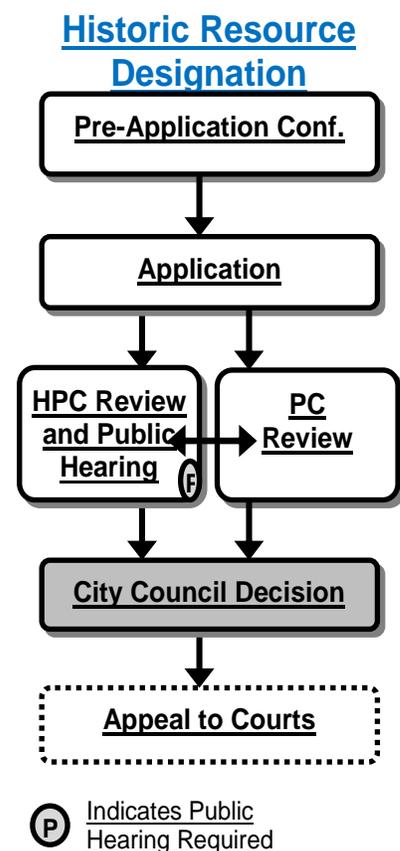
A. Application.

An application for historic resource designation shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. Review and recommendation by heritage preservation commission.

The heritage preservation commission shall review the application, submit the application to the planning commission, conduct an investigation and public hearing pursuant to Section 50 37.1.I, with public notice as required by Section 50 37.1.H, make a recommendation to council, and report on the historical, cultural and architectural significance of the buildings,



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structures, sites or objects proposed for designation. The report shall also attempt to determine the economic status of the property or properties by providing information such as assessed value, recent real estate transactions and other appropriate data. A copy of the report shall be sent to the state historic preservation officer for review and comment in accordance with MSA 471.193. Any comments made by the planning commission and state historic preservation officer regarding a proposed designation must be included in the commission's recommendation to the council;

2. Review and recommendation by planning commission.

The planning commission shall review the application and make a recommendation to the heritage preservation commission and council. In its review and recommendation, the commission shall consider potential effects on the surrounding neighborhood, economics, environment and other planning considerations;

3. Designation by council.

Upon receipt of the report and recommendation of the heritage preservation commission, the council shall make a decision to approve, approve with modifications or deny the designation, in whole or part, based on the criteria in subsection C below. The council action shall be by ordinance;

4. Registration of historic sites.

The city clerk shall record or file with the county recorder the legal description of all properties affected by the council action. The city clerk shall also distribute an official list of all locally designated historic preservation landmarks and districts to the land use supervisor and the state historic preservation officer;

C. Criteria.

Historic preservation landmarks and districts shall only be designated when the property or properties are found to meet one of the following criteria:

1. It has character, interest or value as part of the development, heritage or cultural characteristics of the city, state, or the United States;
2. Its location was a site of a significant historical event;
3. It is identified with a person or persons who significantly contributed to the culture or development of the city, state, or the United States;
4. It embodies a distinguishing characteristic of an architectural type;
5. It is identified as the work of an architect or master builder whose individual work has influenced the development of the city or state;
6. It embodies elements of architectural design, detail, materials or craftsmanship that represents significant architectural innovation;
7. Its unique location or singular physical characteristics represents an established and familiar visual feature of a neighborhood, community or city.

Section 11. That Section 50-37.9 of Chapter 50 be amended as follows:

50-37.9 Variance.

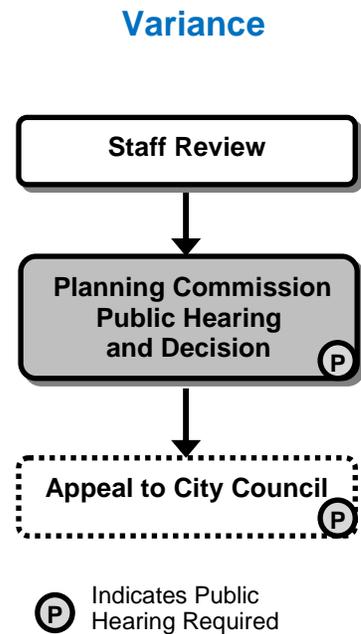
This Section applies to applications for a variance from the terms and provisions of this Chapter. Different types of variances are subject to differing criteria for approval, and in many cases are also subject to limitations on the types of variances that can be granted.

A. Application.

An application for a variance shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

The planning commission shall review the application, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision on the application based on the criteria in subsections C through M below, as applicable to the specific type of variance being requested. The planning commission may grant a different variance or different form of relief than that requested by the applicant if it determines that the alternative relief better meets the criteria in subsections C through M below. The commission may impose appropriate conditions and safeguards to protect adjacent properties and the public interest, including but not limited to financial security pursuant to Section 50-37.2.P or a development agreement regarding the design, construction and operation of the project, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the variance will continue to be met. Constructing any improvement or beginning any activity authorized by the variance shall constitute the applicant's agreement to conform to all terms and conditions of the permit;



C. General variance criteria.

Unless different or inconsistent criteria or limitations are stated in subsections D through M below for the specific type of variance being requested, the planning commission shall approve an application for a variance, or approve it with conditions, if it finds that the proposed variance meets the following criteria. If there is a direct conflict between a provision or criteria in subsections D through M below and the general criteria in this subsection C, the provisions in subsections D through M shall govern:

1. Because of the exceptional narrowness, shallowness or shape of the applicant's property, or because of exceptional topographic or other conditions related to the property, the strict application of the requirements of this Chapter would result in peculiar and practical difficulties or exceptional or undue hardship to the property owner;
2. The special circumstances or conditions that create the need for relief were not directly or indirectly created by the action or inaction of the property owner or applicant;
3. The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity;
4. The relief is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant;
5. The relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any

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other respect impair the health, safety or public welfare of the inhabitants of the city;

6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map;
7. The relief does not allow any type of sign that is not allowed in the zone district where the property is located, pursuant to Section 50-27;
8. The relief complies with any additional limitations or criteria applicable to that variance in subsections D through M below;

D. No use variances.

No variance may be permitted to allow any use that is not listed in Table 50-19.8 as a permitted or special use in the zone district where the property is located;

E. Variances to lot size in unsewered areas.

A variance from the minimum lot size in unsewered area shall not be granted without presentation of a permit or letter of intent to issue a permit for onsite sewerage treatment from the county.

F. Variances for two-family dwellings in the R-1 district.

The commission shall not grant any variance from the requirements for the allowance of two-family dwellings within the R-1 zone district except:

1. A variance from the required front yard setback;
2. A variance reducing the minimum dimensional requirements by up to ten percent;

G. Permitted variances from parking and loading regulations.

1. Residential districts.

(a) A variance may be granted to allow parking on a portion of a lot in an R zone where parking is not permitted by Section 50-24.6.B in the following two cases:

- (i) On any non-corner lot in an R district where the permitted parking area as shown in Table 50-24-3 is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, and the applicant demonstrates hardship;
- (ii) On any corner lot in an R district where the R district parking area is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, without a showing of hardship;

(b) The variance shall be subject to the following conditions, and any other conditions determined by the commission to be reasonable and necessary to protect the interests of the abutting property owners and the residential character of the surrounding neighborhood:

- (i) On a non-corner lot with frontage of less than 50 feet, only one parking area may be located outside the R district parking area;
- (ii) On a corner lot with frontage of less than 50 feet, the variance may allow for compliance with the off street parking requirements of this Chapter;
- (iii) On a corner or non-corner lot with frontage of 50 feet or greater, no variance may allow a parking area, including any

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driveway area leading to it, to exceed an additional 30 percent of the front yard;

- (iv) The proposed parking area shall be entirely located on the applicant's lot and shall not encroach across any abutting lot line unless such abutting lot and the subject lot are under the same ownership and the abutting lot is not occupied by a dwelling unit;
- (v) Where the proposed parking area will encroach into any unimproved area of a street, the variance shall expire upon improvement of the street;
- (vi) Economic considerations, in whole or part, shall not constitute a hardship;

- 2. Reducing required parking spaces. Except as provided in 50 37.9.G, variances from the minimum amount of off-street parking required may be approved if a smaller amount of off-site parking will be adequate to meet the needs of the facility because the facility is restricted to occupancy or use by populations with documented lower vehicle uses, such as the elderly or disabled;
- 3. Exceeding required parking spaces. Variances from the maximum parking limits provided in 50-24.4 shall not exceed 175 percent of the minimum requirement provided in Table 50-24.1;

H. Variances to reduce setbacks;

When the application is for the reduction of a required front, rear or side yard setback, the commission may require the submission of a landscaping and buffering plan, and may require that all required landscaping or buffering, or landscaping and buffering of equal effectiveness, be installed within the reduced setback area. Decorative fencing and decorative wall structures may be proposed where more intense vegetated landscaping will not provide adequate mitigation of impacts on adjacent properties. The commission shall only approve the variance if the landscaping and buffering will mitigate impacts on adjacent properties as effectively as those required by Sections 50-25 and 50-26 of this Chapter;

I. Variances in the MU-C district.

- 1. Within the MU-C district, the only variances that may be approved are variations in any dimensional standard in Sections 50-15.3 and 50-21 by no more than ten percent. However, if the need for a variance is the result of a government taking pursuant to eminent domain powers, then (a) the limits of this subsection I.1 shall not apply and (b) all or part of the required landscaping and buffering may be placed in the public right-of-way if the property owner executes a perpetual maintenance agreement with the owner of the right-of-way;
- 2. In the case of a setback reduction variance, the landscaping and buffering in any reduced setback area shall be at least four feet in height and screen out at least 50 percent of the view of any parking area, unless the setback is reduced to less than five feet, in which case it shall screen out at least 75 percent of the view of the parking area;

J. Variances in A-O airport overlay district.

Variances shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions,

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and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;

K. Variances from flood plain regulations.

Variances to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the limitations in this subsection K.

1. In a floodway:
 - (a) No variance shall be granted that would result in any increase in flood levels during the base flood discharge;
 - (b) No variance shall authorize the placement of a manufactured home, dwelling unit or any structure designed for human habitation;
 - (c) No variance shall be granted authorizing a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
 - (d) Variances shall be limited to giving the applicant a minimal reasonable use of the site;
2. In a flood fringe:
 - (a) No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
 - (b) Variances shall not produce any adverse effects to the flood capacity or efficiency of the watercourse;
3. Flood insurance notice and recordkeeping.

The building official shall notify the applicant for a variance that:

- (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;
 - (b) Construction below the 100 year or regional flood level increases risks to life and property. Such copy notification shall be maintained with a record of all variance actions. The building official shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the administrator of the national flood insurance program;
4. General considerations.

The city shall consider the following factors in granting variances and imposing conditions on permits and variances in flood plains:

 - (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
 - (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
 - (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
 - (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
 - (e) The importance of the services to be provided by the proposed use to the community;
 - (f) The requirements of the facility for a waterfront location;

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- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the comprehensive land use plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;

L. Standards for variances in shorelands.

No variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas;

M. Reconstruction of a nonconforming building.

A variance may be granted to permit the reconstruction of a nonconforming building that has been damaged from any cause or has deteriorated to the extent of more than 50 percent of its reconstruction value, if the commission determines that it is necessary for the preservation and enjoyment of a substantial property right and is not detrimental to the public welfare of the city.

Section 12. That Section 50-41.1 of Chapter 50 be amended as follows:

50-41.1. Definitions: A.

Accessory agriculture roadside stand. A structure erected for the display and sale of agriculture products grown on the premises and that is subordinate to the primary residential or agricultural use of the premises.

Accessory bed and breakfast. An owner-occupied building designed as a one-family dwelling that provides no more than five guest rooms for lodging accommodations by prior arrangements for compensation. The primary residence in the building or a separate, lawfully existing building located on the same site must be occupied by the building owner on a permanent basis. It may or may not include serving of meals to guests.

Accessory boat dock, residential. A personal use boating structure, subordinate to a primary residential use of property, that is built over or floats upon the water of a lake, river, or stream, and that serves one property owner for mooring boats or as a landing place for marine transport.

Accessory caretaker quarters. A subordinate dwelling unit intended for an employee or owner who looks after or takes charge of goods or property. The unit shall be either inside or attached to a main structure by a common wall. The unit is a complete, independent living facility with provisions for cooking, eating, sanitation and sleeping.

Accessory communications tower for private use. Any structure, subordinate to a primary use of land, that is designed and constructed primarily for the purpose of supporting one or more wireless analog or digital telecommunication facilities, that is located on the ground or anchored to the ground and exceeds 24 feet in height. Such a tower may have a variety of configurations, including a monopole, a lattice tower or a guyed tower.

Accessory day care facility. A private or public establishment licensed by the state that regularly provides one or more dependents with care, training, supervision, rehabilitation or developmental guidance on a regular basis, for periods less than 24 hours a day, for gain or

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otherwise, as a secondary and subordinate activity to a permitted or approved special use of the property.

Accessory dwelling unit. A subordinate dwelling unit added to, created within, or detached from a single-family residence, but located on the same lot or parcel as a primary residential structure, that provides basic requirements for living, sleeping, cooking and sanitation.

Accessory heliport. An area used or intended to be used for the landing and takeoff of helicopters that is secondary and incidental to, and is operated in support of, a permitted or approved special use on the same property, including operations facilities, such as maintenance, loading, and unloading, storage, fueling or terminal facilities.

Accessory home occupation. A business or occupation incidental and subordinate to the principal residential use. All home occupations must comply with the conditions in Section 50-20.5.F. Examples include but are not limited to: artist's studio; dressmaking; accessory beauty salon or barber shop, office of a physician or dentist for consultation or emergency treatment but not for general professional practice, lawyer, engineer, architect or accountant; teaching, with instruction limited to not more than two pupils at the same time. A home occupation shall not be interpreted to include accessory bed and breakfast, restaurants or tea rooms.

Accessory recycling collection point. A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper or clothing for recycling purposes conducted totally within an enclosed structure or container, and that is accessory to a permitted or approved special use in the zone district. This definition does not include processing except for can banks that crush cans as they are deposited.

Accessory sidewalk dining area. An outdoor eating and drinking area that is generally associated with and subordinate to a permitted or approved special use on the same property and that is, located on a public sidewalk. This use may include removable tables, chairs, planters, or similar features and equipment.

Accessory solar or geothermal power equipment. Accessory uses and structures that are clearly subordinate in size and use to the primary use and structure on the property, and that are used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. These structures and uses may include but are not limited to the following, and may be located at ground level or above or below ground unless specifically limited in this Chapter, provided that they meet all other applicable requirements of this Chapter: solar photovoltaic modules, solar thermal hot water collectors, solar arrays; and geothermal heat pumps, earth tubes, or downhole heat exchangers.

Accessory use or structure. A use or structure subordinate in use, area or purpose to the principal use or structure on the same lot and serving a purpose naturally and normally incidental to the principal use or structure and that is not included in a separate definition of an accessory use or structure in this Chapter. Where an accessory building is attached to the principal building in a substantial manner by a wall or a roof, it shall be considered part of the principal building. An accessory building or use may be permitted on a lot of record that abuts or is separated by a public easement of no more than 25 feet in width to another lot or lots on which the primary use is located, provided all lots are owned by the same owner and none of the parcels are severed, legally sold, conveyed, or used without the other parcels. Examples include but are not limited to: pet houses, storage sheds, swimming pools, garages, accessory uses and structures for energy conservation and renewable energy production, and accessory structures for stormwater management and water conservation.

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Accessory vacation dwelling unit. An accessory dwelling unit as defined by this Chapter that is used for periods of occupancy from three to 21 days.

Accessory wind power equipment. A small scale accessory wind power generating or distribution system, that is clearly subordinate in size and use to the primary use and structure on the property, and that is used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. Accessory wind power equipment is designed to generate no more than 10Kw of energy.

Accessory wireless antenna attached to existing structure. Any wireless service antenna located in or on the roof or upper facade of a structure that is not a telecommunications tower, such as a building, water tower, steeple, silo or utility pole.

Adjacent developed lots facing the same street. Where a dimensional standard is related to dimensions on "adjacent developed lots facing the same street" the measurement shall only include those lots that contain a primary structure and that share a side lot line with the subject property and shall not include corner lots where the primary structure faces a different street. If there is only one adjacent developed lot that fronts the same street, the measure shall refer only to the dimension on that lot. For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot, not as separate platted lots.

Adult entertainment establishment. See definition in Chapter 5 of the City Code.

Adult bookstore. See definition in Chapter 5 of the City Code.

Agriculture, general. The production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, or bees and apiary products primarily for distribution and consumption beyond the Duluth/Superior area. This use also includes wetlands, pasture, forest land, wildlife land, and other uses that depend on the inherent productivity of the land, but not include a use meeting the definition of "agriculture, urban."

Agriculture, urban. The raising of crops and small livestock primarily for local sustenance, rather than commercial purposes, for sale and consumption within the immediate Duluth/Superior area.

Airport boundary. Those lands including the property owned by the city, state, and the United States, and their respective political subdivisions, that are used for aeronautical purposes and are contiguous with the runway and building area facilities. The Duluth International Airport boundaries are illustrated on Sheet 3, airport property map, of the approved set of airport layout plans on file in the offices of the Duluth Airport Authority. The Sky Harbor Municipal Airport boundaries are illustrated on Exhibit 50-18.2-2.

Airport elevation. The established elevation of the highest point on the usable landing area, which elevation is established to be 1,438 feet above mean sea level for Duluth International Airport and 610 feet above mean sea level for Sky Harbor Municipal Airport.

Airport hazard. Any structure, tree, or use of land that obstructs the air space required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land that is hazardous to persons or property because of its proximity to the airport.

Airport and related facilities. An area of land that is used or intended for the landing and takeoff of aircraft, and includes its buildings and facilities, if any. Accessory uses may include but are not limited to: car rental, aircraft servicing, fueling, or leasing, private aviation clubs or associations, and hotels.

Alley. A dedicated public right-of-way not more than 30 feet wide affording a secondary means of access to abutting property and not intended for general traffic circulation.

Alley line. The established side line of an alley easement.

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Antenna. A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

Apartment. A part of a building consisting of a room or suite of rooms intended, designed or used as a residence by an individual or a one-family, including full cooking and bathroom facilities for individual use.

Apartment hotel. A building designed for or containing not less than 20 apartments, individual guest rooms or suites and in which may be furnished services ordinarily furnished by hotels, such as drugstores, tea room, barbershop, cigar and newsstands when such uses are located entirely within the building with no separate entrance from the street, and having no sign or display visible from the outside of the building indicating the existence of such use.

Automobile and light vehicle sales, rental, or storage. The sale, display, lease, rental, or storage of light motor vehicles, including automobiles, vans, light trucks, light trailers, boats, and recreational vehicles. This shall not include salvage operations, scrap operations, vehicle impound yards, or commercial parking lots available for short-term use.

Automobile and light vehicle repair and service. Any building, structure, or lot used for the business of repairing automobiles and small engines or the sale and installation of tires, batteries, and other minor accessories and services for automobiles and small engines. This shall not include car washes, retail sale of automotive supplies, tires, or parts unrelated to repairs being performed on the premises, the retreading or vulcanizing of tires, filling stations, or convenience stores that sell gasoline or lubricating oil, but not other automotive accessories or services.

Average lot depth. The average of the lengths of the two side lot lines of a platted lot. In the case of flag lots (lots where the buildable portion of the lot is connected to a public street by an access or driveway 20 feet wide or less), the length of the access or driveway portion of the lot shall be ignored in measuring either side lot line.

Section 13. That Section 50-41.4 of Chapter 50 be repealed and replaced as follows:

50-41.4. Definitions: D.

Data center. An establishment primarily involved in the compiling, storage, conversion or analysis and maintenance of documents, records, and other types of information in digital form.

Daycare facility. A facility that provides accommodations for persons of any age who receive custodial care for less than 24 hours by individual other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for.

Decorative fence. A powder coated steel fence, solid core ornamental fence, decorative wood fence, or fence of similar construction or appearance, but not including a snow fence, chain link or highway guard rail.

Demolition debris. Solid waste resulting from the demolition of buildings, roads and other man-made structures including concrete, brick, bituminous concrete, untreated wood, masonry, glass, trees, rock and plastic building parts. It does not include asbestos wastes, appliances, furniture or household refuse.

Dense urban screen. Continuous screening wall, berm, fence, or row of planting at least six feet tall, with screening material designed to provide 75 percent opacity one year after planting along the full required height and length of the screening buffer.

Design storm. A rainfall event used in the analysis and design of drainage facilities.

Detention. The temporary storage of drainage water.

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Deteriorated. A building or component of a building shall be deemed to have deteriorated when its function has been so impaired by natural forces including but not limited to weathering or decay that it needs to be replaced to restore its functionality.

Developable area. All land within a zone district not occupied by streets and public rights-of-way.

Development. The construction of a building or structure, any clearing, grading, excavation or other movement of land, or the division of a parcel of land into two or more parcels.

Diameter at breast height (DBH). The primary method of measuring the diameter of a tree trunk. Diameter is measured in inches 54 inches above the ground. If the tree splits into multiple trunks at a height below 54 inches, but above the ground, the diameter is measured at the highest point beneath the split.

Direct illumination. Illumination by light sources that are effectively visible, either directly or through a translucent material, as a part of the sign and illuminating outward.

Discharge. The discharge of any pollutant into the waters of the state from any point source.

Discharge rate. The rate at which drainage water is released from a specific site and expressed as a volume per unit of time, such as cubic feet per second.

District. Any section of the city within which the zoning regulations are uniform.

DNR. Minnesota department of natural resources.

Drainage basin. The tributary area through which drainage water is collected, regulated, transported and discharged to receiving waters.

Drainage system. Any system that conveys stormwater or surface water including sewers culverts, ditches, and swales.

Drainage water. Stormwater, snow melt, surface and irrigation water, water from footing drains and sump pumps or other drains approved by the city.

Drip line. A vertical line extending from the outermost edge of a tree's canopy to the ground.

Dry cleaning or laundry plant. An establishment where laundry or dry cleaning is performed in bulk and primarily for commercial and institutional customers. This use does not include facilities where the public drops off or picks up dry cleaning or laundry that is cleaned off-site.

Dwelling. Any building or portion of a building that is designed for or used for residential purposes and that either (a) has a minimum width of 20 feet, or (b) has a principal entrance facing the front lot line.

Dwelling unit. A habitable unit in a dwelling providing sleeping, cooking, eating, living and sanitation facilities designed for and occupied by one family only, occupied by the owner or by another family for periods of occupancy exceeding one week, and that is physically separated from any other habitable unit that may be located in the same building.

Dwelling unit, efficiency. A dwelling unit consisting of one principal room, exclusive of bathroom, kitchen, hallway, closets or dining alcove directly off the principal room, providing that such dining alcove does not exceed 125 square feet in area.

Dwelling, live-work. A dwelling unit containing an integrated living and working space that is intended to function predominately as business workspace with incidental residential use. The unit typically has a store-front, with the workspace, public display area, or show-room on the ground floor of the unit and the majority of the residence located either on the upper floor if there are two floors, or the back of the unit if there is only one floor.

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Dwelling, multi-family. A building containing three or more dwelling units that is not a townhouse.

Dwelling, one-family. A building containing one dwelling unit designed for exclusive occupancy by one family and occupied exclusively by one family, having a minimum outside width of 20 feet measured at its narrowest point and placed on a permanent foundation that complies with the State Building Code. This definition includes a manufactured or modular home that meets this definition and the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sections 5401 et. seq.).

Dwelling, townhouse. A structure containing three to eight dwelling units each sharing two vertical party or division walls, except that each end unit will have a single party or division wall, with no dwelling units sharing a common horizontal surface.

Dwelling, two-family. A building containing two dwelling units designed for exclusive occupancy by two families and occupied exclusively by two families. A twin home is a two-family dwelling where each unit shares a common vertical wall, and where a side lot line exists on the common wall extending to the front and rear lot lines, but is on two separate lots.

Section 14. That Section 50-41.7 of Chapter 50 be amended as follows:

50-41.7. Definitions: G.

Garage, private. An accessory building designed or used for the storage only of not more than four motor driven vehicles. Not more than one of the vehicles may be a commercial vehicle, and that vehicle shall not exceed a two ton capacity.

Garden material sales. An establishment engaged in the storage, distribution, and sale of garden materials, including a greenhouse used to raise flowers, shrubs and plant for sale. Accessory uses may include delivery services.

General development waters. Includes lakes that are generally large, deep lakes or lakes of varying sizes and depths with high levels and mixes of existing development at the time of the original classification. These lakes often are extensively used for recreation. General development rivers include agriculture and urban rivers. This class has a wide variety of existing land and recreational land use characteristics.

General flood plain. The area within a flood plain that is not in a floodway or flood fringe.

Golf course. A tract of land laid out with at least 9 holes for playing the game of golf and improved with tees, greens, fairways and hazards. This use does not include a miniature golf course. A golf course may include a driving range, clubhouse, restaurant, putting and chipping greens, maintenance facilities, and shelters as accessory uses.

Government building or public safety facility. A building or facility housing the offices or operations of a department or agency of the city, county, state, or federal government, or a quasi-governmental, including but not limited to a building or facility that provides fire protection, police protection, or emergency medical services (not including a hospital or medical or dental clinic), together with incidental storage and maintenance of necessary vehicles.

Grade. A. For buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street;

B. For buildings having walls adjoining more than one street, the average of the elevations of the sidewalk at the centers of all walls adjoining the streets;

C. For buildings having no wall adjoining a street, the average level of the finished surface of the ground adjacent to the exterior walls of the building;

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D. Any wall approximately parallel to and not more than 15 feet from a street line is to be considered as adjoining the street. Where sidewalks do not exist the grade shall be as established by the office of the city engineer.

Grocery store. A retail sales establishment selling primarily food and beverages for off-site preparation and consumption that maintains a sizable inventory of fresh fruits, vegetables, fresh-cut meats, or fresh seafood or specialize in the sale of one type of food item. This use may also include sales of personal convenience and small household goods.

A. A small grocery store is one that contains less than 15,000 square feet of gross floor area;

B. A large grocery store is one that contains 15,000 square feet or more of gross floor area.

Groundwater management area. A geographically defined area that may be particularly sensitive in terms of groundwater quantity or quality by nature of the use or movement of groundwater, or the relationship between groundwater and surface water, and where special management measures are deemed necessary to protect groundwater and surface water resources.

Groundwater recharge volume. The portion of the water quality volume used to maintain groundwater recharge rates at development sites.

Section 15. That Section 50-41.13 of Chapter 50 be amended as follows:

50-41.13. Definitions: M.

Maintenance agreement. A legally recorded document that acts as a property deed restriction, and that provides for long-term maintenance of stormwater BMPs.

Major system. In the context of stormwater management, one of the 42 major watercourses, or tributaries, as described by the Urban Study for Duluth Area Stormwater Flooding March 1976. Includes Lester/Amity Creeks, Tischer Creek, Brewery, Oregon, Miller, Coffee, Kingsbury, Knowlton, Stewart, Sargent, Mission, Buckingham, Chester and other systems as designated by the city.

Manufacturing, light. A facility or area used for the assembly, fabrication, or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outside operations or storage of goods and materials used in the assembly, fabrication, or processing does not exceed 25 percent of the floor area of buildings on the lot. Examples include but are not limited to: food processing, electronic equipment assembly and manufacturing and assembly from finished products.

Manufacturing, heavy. An establishment or use of land that includes the assembly, fabrication, or processing of goods and materials using processes that ordinarily have impacts on the environment or significant impacts on the use and enjoyment of surrounding properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards, or any use where the area occupied by outside storage of goods and materials used in the assembly, fabrication, or processing exceeds 25 percent of the floor area of buildings on the lot. Examples include but are not limited to: battery, chemicals, machinery, and plastics manufacture; mushroom plant; batching plant; beverage bottling and distribution, packaging plant; slaughterhouse; and rendering plant. This use does not include any use that meets the definition of "light manufacturing" or "hazardous or special manufacturing", or a solid waste disposal site, or a yard waste compost facility, and does not include any use that constitutes a public nuisance.

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Manufacturing, hazardous or special. An establishment or business that uses hazardous inputs or creates hazardous by-products in the course of manufacturing, assembly, fabrication, or materials treatment, or that uses manufacturing, assembly, fabrication, or treatment processes that create potentially hazardous impacts on the environment or surrounding areas. Examples include but are not limited to: acid manufacture; acid bulk storage; cement, lime, gypsum or plaster of paris manufacture; central concrete mixing or concrete proportioning plant; distillation, manufacture or refining of bones, coal or tar asphalt; explosives, manufacture or storage; fat, grease, lard or tallow rendering or refining; fertilizer manufacture from organic matter; glue or size manufacture; paper manufacture; petroleum or asphalt refining or storage; smelting of tin, copper, zinc or iron ores; storage or processing raw hides or fur; and stockyards or slaughter of animals other than poultry.

Marina or yacht club. A facility or area for storing, servicing, fueling, berthing, securing, and launching of private pleasure craft that may include the sale of fuel and incidental supplies for the boat owners, crews and guests. Accessory uses may include restaurants and bars.

Maximum extent practicable (MEP). The statutory standard (33 U.S.C. 1342(p)(3)(B)(iii)) that establishes the level of pollutant reductions that an Owner or Operator of Regulated MS4s must achieve. The USEPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent MEP may be different for each Small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The USEPA envisions application of the MEP standard as an iterative process.

Medical or dental clinic. An establishment where patients who are not lodged overnight are admitted for examination and treatment by a group of licensed health care practitioners, dentists, or licensed health care practitioners and dentists in practice together.

Migratory bird flight path. The zone of jurisdictional land located from the Lake Superior and Saint Louis River shorelines to no less than two miles inland or where Skyline Parkway runs parallel to the shoreline, an area from the shoreline to Skyline Parkway or two miles inland, whichever is greater.

Mining, extraction and storage. The extraction, removal or the processing of sand, clay, loam, gravel, rock, top soil or fill materials (exclusive of sod) for commercial purposes, except as a necessary incident to any construction on the premises.

Mini-storage facility. A building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual, compartmentalized and controlled access units or lockers.

Minor system. Those other city drainage systems that empty into the major system, which mainly consists of storm sewer, culverts and smaller open channel sections such as swales and small ditches.

Minor utilities. A piece or system of service equipment or infrastructure that is necessary to support development within the immediate vicinity and that involves only small structures. Employees typically are not located at the site on an ongoing basis. Examples include but are not limited to: electric transformer stations, gas regulator stations, telephone exchange buildings, cable equipment boxes, district power distribution lines, electric utility boxes, and well, water and sewer pumping stations.

Mixed use structure. A structure containing a mix of the four major land uses, as defined by the permitted use table in UDC Section 50-19 (residential, public, commercial, and industrial). To be considered a mixed use structure, a structure must have at least 20 percent

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of its total square footage used by one of the four major land uses that is different than its principal use.

Modify or modification. When used in the context of wireless telecommunications facility, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access and parking. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co-location is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything, nor does it include upgrades or changeouts of equipment or antennas where the replacement is of similar size and appearance.

Motor vehicle. Any self-propelled vehicle designed primarily for transportation of person or goods. It does not include an electric personal wheelchair.

Municipal separate storm sewer system (MS4). A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains):

A. Owned or operated by a state, city, town, borough, county, parish, district, association or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial water, stormwater or other wastes. Including special district, or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under Section 208 of the CWA (33 U. S. C.1288) that discharges to waters of the United States;

B. Designed or used for collecting or conveying stormwater;

C. That is not a combined sewer; and

D. That is not part of a publicly owned treatment works (POTW) as defined in 40 CFR 122.2.

MPCA. Minnesota pollution control agency.

Museum, library, or art gallery. A facility or area that is open to the public and is intended for the acquisition, preservation, study, and exhibition of works of artistic, historical or scientific value.

Section 16. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 29, 2013)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Fosle, Gardner, Hartman, Julsrud, Krause, Krug, Larson, Stauber and President Boyle -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 28, 2013
Approved May 28, 2013
DON NESS, Mayor

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ORDINANCE NO. 10226

AN ORDINANCE AMENDING CHAPTER I, SECTION 1, OF THE CITY CHARTER AMENDING THE LEGAL DESCRIPTION FOR THE CITY OF DULUTH.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

The city of Duluth does ordain:

Section 1. That Chapter I, Section 1 of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 1. The city of Duluth in the County of St. Louis and State of Minnesota shall continue to be, upon the adoption of this Charter, a municipal corporation of the same name, and with the same boundaries as it now has, to-wit: Commencing at a point where the north line of section twenty-five (25) township fifty-one (51) north of range thirteen (13) west, in St. Louis County, Minnesota, intersects the shore line of Lake Superior; thence west to the northwest corner of section twenty-six (26), in said township fifty-one (51) north of range thirteen (13) west; thence south to the quarter corner post on the west line of said section twenty-six (26); thence west to the center of section twenty-seven (27) in said township fifty-one (51) north of range thirteen (13) west; thence south to the quarter corner post on the south line of said section twenty-seven (27); thence west to the northwest corner of section thirty-five (35) in township fifty-one (51) north of range fourteen (14) west; thence south to the southwest corner of said section thirty-five (35); thence west to the northwest corner of township fifty (50) north of range fourteen (14) west ^(A); thence south to the southwest corner of said township fifty (50) north of range fourteen (14) west; thence west to the northwest corner of section two (2) in township forty-nine (49) north of range fifteen (15) west ^(B); thence south to the southwest corner of section fourteen (14) in said township forty-nine (49) north of range fifteen (15) west, thence west to the northwest corner of section twenty-two (22) in said township forty-nine (49) north of range fifteen (15) west; thence south to the southwest corner of section thirty-four (34) in said township forty-nine (49) north of range fifteen (15) west; thence west on the town line between township forty-eight (48) north of range fifteen (15) west and township forty-nine (49) north of range fifteen (15) west, to the southwest corner of said township forty-nine (49) north of range fifteen (15) west; thence south on the range line between township forty-eight (48) north of range fifteen (15) west and township forty-eight (48) north of range sixteen (16) west, to the center line of the channel of the St. Louis River; thence easterly along the center line of the channel of said river to the state boundary line between the States of Minnesota and Wisconsin; thence along said state boundary line to the mouth of the St. Louis River at the entry of the Bay of Superior between Minnesota and Wisconsin points; thence in a straight line to the place of beginning.

By and in its corporate name, it shall have perpetual succession; save as herein otherwise provided and save as prohibited by the Constitution or Statutes of the State of Minnesota, it shall have and exercise all powers, functions, rights and privileges possessed by the city of Duluth prior to the adoption of this Charter; also all powers, functions, rights and privileges now or hereafter given or granted to municipal corporations of the first class having "home rule charters" by the Constitution and laws of the State of Minnesota; also all powers, functions, rights and privileges usually exercised by, or which are incidental to, or inhere in, municipal corporations of like power and degree; also all municipal power, functions, rights, privileges and immunities of every name and nature whatsoever; and in addition, it shall have all the powers, and be subject to the

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restrictions contained in this Charter. In its corporate name, it may take and hold, by purchase, condemnation, gift or devise, and lease and convey any and all such real, personal or mixed property, within or without its boundaries as its purposes may require, or as may be useful or beneficial to its inhabitants.

Section 1(A). Certain lands upon which the Duluth International Airport is located were annexed to the corporate limits of the city of Duluth by Ord. No. 7564, passed February 13, 1967, under authority of M.S.A. 414.03, Subd. 2.

Section 1(B). Certain lands upon which the South St. Louis County fairgrounds is located were detached from the corporate limits of the city of Duluth by Resolution No. 11-0052 and subsequent order by the state of Minnesota chief administrative law judge, under authority of M.S.A. 414.061, Subd. 1.

Section 2. That this ordinance shall take effect 90 days after its passage and publication. (Effective date: August 28, 2013)

President Boyle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Fosle, Gardner, Hartman, Julsrud, Krause, Krug, Larson, Stauber and President Boyle -- 9

Nays: None -- 0

Passed May 28, 2013

Approved May 28, 2013

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10227

AN ORDINANCE AMENDING CHAPTER IV, SECTION 21, OF THE CITY CHARTER RELATING TO POLITICAL ACTIVITIES OF CITY EMPLOYEES.

The city of Duluth does ordain:

Section 1. That Chapter IV, Section 21 of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 21. At the head of each department there shall be an officer of the city, who shall have control and direction of the department subject to the general supervision of the chief administrative officer. The head of each department shall, with the approval of the chief administrative officer, have the power to appoint and remove all officers and employees of the department subject to the civil service provisions of this Charter; provided, that the equal opportunity representative shall be appointed by the mayor with the approval of the city council and may only be removed by the mayor with the approval of the city council. Two or more departments may be headed by the same individual and the chief administrative officer may head one or more departments, and heads of the departments may also serve as chiefs of divisions thereof as may be established by ordinance, upon recommendation by the mayor. The authority herein conferred upon the chief administrative officer is granted subject to the limitations contained in Section 19 of this Charter.

Each department head shall possess the necessary qualifications to insure efficient administration of such department. The council by ordinance

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

shall establish appropriate minimum qualifications for department heads, the deputy fire chief, the deputy chief of police and the equal opportunity representative.

No officer or employee of the city may use their official authority or influence to compel another officer or employee of the city to apply for membership in or become a member of a political organization, to pay or promise to pay a political contribution or to take part in political activity.

All city employees shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

Section 2. That this ordinance shall take effect 90 days after its passage and publication. (Effective date: August 28, 2013)

President Boyle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Fosle, Gardner, Hartman, Julsrud, Krause, Krug, Larson, Stauber and President Boyle -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 28, 2013
Approved May 28, 2013
DON NESS, Mayor

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ORDINANCE NO. 10228

AN ORDINANCE AMENDING CHAPTER IV, SECTION 23, OF THE CITY CHARTER REMOVING CITY ASSESSOR REFERENCE.

The city of Duluth does ordain:

Section 1. That Chapter IV, Section 23 of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 23. The administrative organization of the city shall always provide for the following officers who may or may not be made heads of departments: a clerk, an auditor and a treasurer. The clerk shall be the secretary of the council, unless the council shall elect to appoint a separate officer as secretary of the council under the provisions of Section 6 of this Charter, and shall perform such duties as are usually performed by clerks of municipal corporations, and all such as are required by the laws of the state, and by this Charter, and, in addition, shall perform all such other duties as are required of such office by the council. The clerk shall be the custodian of the official seal of the city.

Section 2. That this ordinance shall take effect 90 days after its passage and publication. (Effective date: August 28, 2013)

President Boyle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Fosle, Gardner, Hartman, Julsrud, Krause, Krug, Larson, Stauber and President Boyle -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 28, 2013
Approved May 28, 2013
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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ORDINANCE NO. 10229

AN ORDINANCE AMENDING CHAPTER XI, SECTION 84, OF THE CITY CHARTER AMENDING THE STATED DOLLAR AMOUNT FOR FAILURE TO COMPLY LIABILITY.

The city of Duluth does ordain:

Section 1. That Chapter XI, Section 84 of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 84. Every corporation, co-partnership or person exercising any franchise in the city of Duluth shall file annually on the first Monday in February in each year, in the office of the auditor, a statement, subscribed and sworn to by at least two officers of such corporation, or by the individual in control, in case such franchise is exercised by a person or co-partnership, setting forth in detail for the preceding calendar year the then actual cost to said corporation, co-partnership or persons of the plant or business operated by such corporation, co-partnership or person, the actual encumbrances, debts and obligations thereon, if any, the amount of stock issued, and to whom issued, and the consideration therefor, the gross earnings, the expenses and nature thereof, and the net income, after deducting all proper costs and expenses, the names and residences and the amount of the stock of all stockholders of such public service corporation; if any bonds have been redeemed and not cancelled, that fact shall also be stated. This duty may be enforced by appropriate legal proceedings. Every such corporation or person, who fails to comply with the provisions of this Section, shall also be liable to the city of Duluth for each day of such failure in an amount to be set by city council resolution, to be recovered in a civil action in any court of competent jurisdiction, and at the end of sixty (60) days, if such default shall continue, the council may forfeit such franchise.

Section 2. That this ordinance shall take effect 90 days after its passage and publication. (Effective date: August 28, 2013)

President Boyle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Fosle, Gardner, Hartman, Julsrud, Krause, Krug, Larson, Stauber and President Boyle -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 28, 2013
Approved May 28, 2013
DON NESS, Mayor

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