



CITY OF DULUTH
Planning Division

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STAFF REPORT

File Number	PL 15-059	Contact	Steven Robertson, 218 730 5295	
Application Type	Interim Use Permit	Planning Commission Date	May 12, 2015	
Deadline for Action	Application Date	April 6, 2015	60 Days	June 5, 2015
	Date Extension Letter Mailed	April 22, 2015	120 Days	August 4, 2015
Location of Subject	938 and 940 South Lake Avenue			
Applicant	Phyllis Sherman	Contact	218 727 1343	
Agent		Contact		
Legal Description	010-4380-00910			
Site Visit Date	April 18, 2015	Sign Notice Date	April 27, 2015	
Neighbor Letter Date	April 24, 2015	Number of Letters Sent	30	

Proposal

The applicant would like to use her home as a vacation rental property. A vacation dwelling unit allows rentals for 3 to 21 days, with a minimum of 2 nights, with the exception of a minimum of 5 nights from June 15 to September 15 for properties zoned RR-1, RR-2, R-1, and R-P.

	Current Zoning	Existing Land Use	Future Land Use Map Designation
Subject	R-1	Residential	Traditional Neighborhood
North	R-2	Residential	Traditional Neighborhood
South	R-1	Residential	Traditional Neighborhood
East	R-1	Beach/Lake	Preservation
West	R-1	Residential	Traditional Neighborhood

Summary of Code Requirements (reference section with a brief description):

UDC Section 50-19.8. Permitted Use Table. A Vacation Dwelling Unit is an Interim Use in an R-1 District.
 UDC Sec. 50-37.10.B . . . Council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The . . . Council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.1.P, a development agreement regarding the design, construction, and operation of the special use, 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 special use permit will continue to met.
 UDC Sec. 50-37.10.E . . . the Council shall only approve an interim use permit, or approve it with conditions, if it determines that:
 1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location; 2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures of improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.

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Comprehensive Plan Findings (Governing Principle and/or Policies) and Current History (if applicable):

Future Land Use - Traditional Neighborhood: Characterized by grid or connected street pattern, houses oriented with shorter dimension to the street and detached garages, some with alleys. Limited commercial, schools, churches, and home-businesses. Parks and open space areas are scattered through or adjacent to the neighborhood. Includes many of Duluth's older neighborhoods, infill projects and neighborhood extensions, and new traditional neighborhood areas.

Note: Interim Use Permits are approved, approved with recommendations, or denied by the City Council by resolution after a public hearing is held by the Planning Commission. Interim Use Permits expire if the project or activity authorized by the permit is not begun within 1 year.

Discussion (use numbered or bullet points; summarize and attach department, agency and citizen comments):

- 1) Applicant is applying for an Interim Use Permit. The minimum rental period shall not be less than 2 nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than 5 nights.
- 2) A time limit on this Interim Use is needed to verify that the Vacation Dwelling Unit can function without negative impacts to surrounding residential uses thereby causing damage to the public's health, safety and welfare. Typically Planning Staff recommends that the City Council resolution states that approval shall expire upon change in ownership of the property or in six years, whichever occurs first.
- 3) The applicant owns lots 181 and 183 of Upper Duluth Lake Avenue; the two lots total 80 feet wide by 100 feet long. According to St. Louis County records, the home is a duplex and was built in 1959 and has a main floor sq. ft. of 1,280, with a gross area of 1,280 sq. ft. There is also a 480 square foot garage, built in 1964
- 4) The applicant will rent out 1 bedroom, allowing a maximum of 3 guests at any one time; the applicant will provide one off street parking space (between home and garage).
- 5) Permit holders must designate a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24 hours a day to complaints from neighbors or the City. Permit holder must provide the contact information for the managing agent or local contact to all property owners within 100 feet of the property boundary. Applicant will act as managing agent (as applicant lives in the other unit of the duplex).
- 6) The applicant has not provided any plans showing additional buffering/screening. Based on the location (near unimproved right of way and beach), staff do not believe additional screening is required to reduce land use conflicts.
- 7) Applicant has completed an inspection from the Minnesota Department of Health as part of the process for obtaining a Lodging License, and one with the City's fire prevention officer. She has provided tax identification numbers, and has applied for both a Hotel/Motel License and a Tourism Tax permit.
- 8) Applicant must comply with Vacation Regulations (included with staff report), including providing information to guests on city rules (included with staff report as "Selected City Ordinances on Parking, Parks, Pets, and Noise").
- 9) No public, agency, or City comments were received.

Staff Recommendation (include Planning Commission findings, i.e., recommend to approve):

Based on the above findings, Staff recommends that Planning Commission recommend approval subject to the following:

- 1) The Interim Use Permit shall not be effective until the applicant has received all required licenses and permits for operation.
- 2) The applicant shall adhere to the terms and conditions listed in the interim use permit document and provide evidence of compliance, which will be included in the resolution to the City Council (guest record book including name, address, phone number and vehicle license plate; name, address, and phone number of local contact/managing agent to property owners within a 100 feet; rules of how the property can be used must be provided to guests including selected city ordinances on parking, parks, pets and noise; and acknowledge that interim use permit may be suspended in the event of multiple nuisance calls).
- 3) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further Planning Commission review; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

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Attachments (aerial photo with zoning; future land use map; site plan; copies of correspondence)



City Planning

PL15-059, 938/940 Lake Ave S

Legend

- Trout Stream (GPS)
- Other Stream (GPS)
- Zoning Boundaries**
- Zoning Boundaries
- Vacated ROW
- Easement Type**
- Utility Easement
- Other Easement
- Future Land Use**
- Preservation
- Recreation
- Rural Residential
- Low-density Neighborhood
- Traditional Neighborhood
- Urban Residential
- Neighborhood Commercial
- Neighborhood Mixed Use
- General Mixed Use
- Central Business Secondary
- Central Business Primary
- Auto Oriented Commercial
- Large-scale Commercial
- Business Park
- Tourism/Entertainment District
- Medical District
- Institutional
- Commercial Waterfront
- Industrial Waterfront
- Light Industrial
- General Industrial
- Transportation and Utilities

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Aerial photography flown 2013

Prepared by: City of Duluth Planning Division, April 17, 2015. Source: City of Duluth.

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City Planning

PL15-059, 938/940 Lake Ave S



Aerial photography flown 2013

Prepared by: City of Duluth Planning Division, April 17, 2015. Source: City of Duluth.

Legend

Contours 1 Ft

Index Intermediate Index

Trout Stream (GPS)

Other Stream (GPS)

Vacated ROW

Easement Type

Utility Easement

Other Easement

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[Signature]



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To the Planning Commission:

I have complied with the following:

Application has been made to the City Clerk's Office for the Hotel/Motel License.

The fire department and health department have made inspections and I have fulfilled all their requirements.

I obtained a Tax ID Number.

I have applied for the City of Duluth Tourism Tax permit.

I have sent letters to the neighbors letting them know of my intention.

I had a sign made for the yard and will put it up on April 28th.

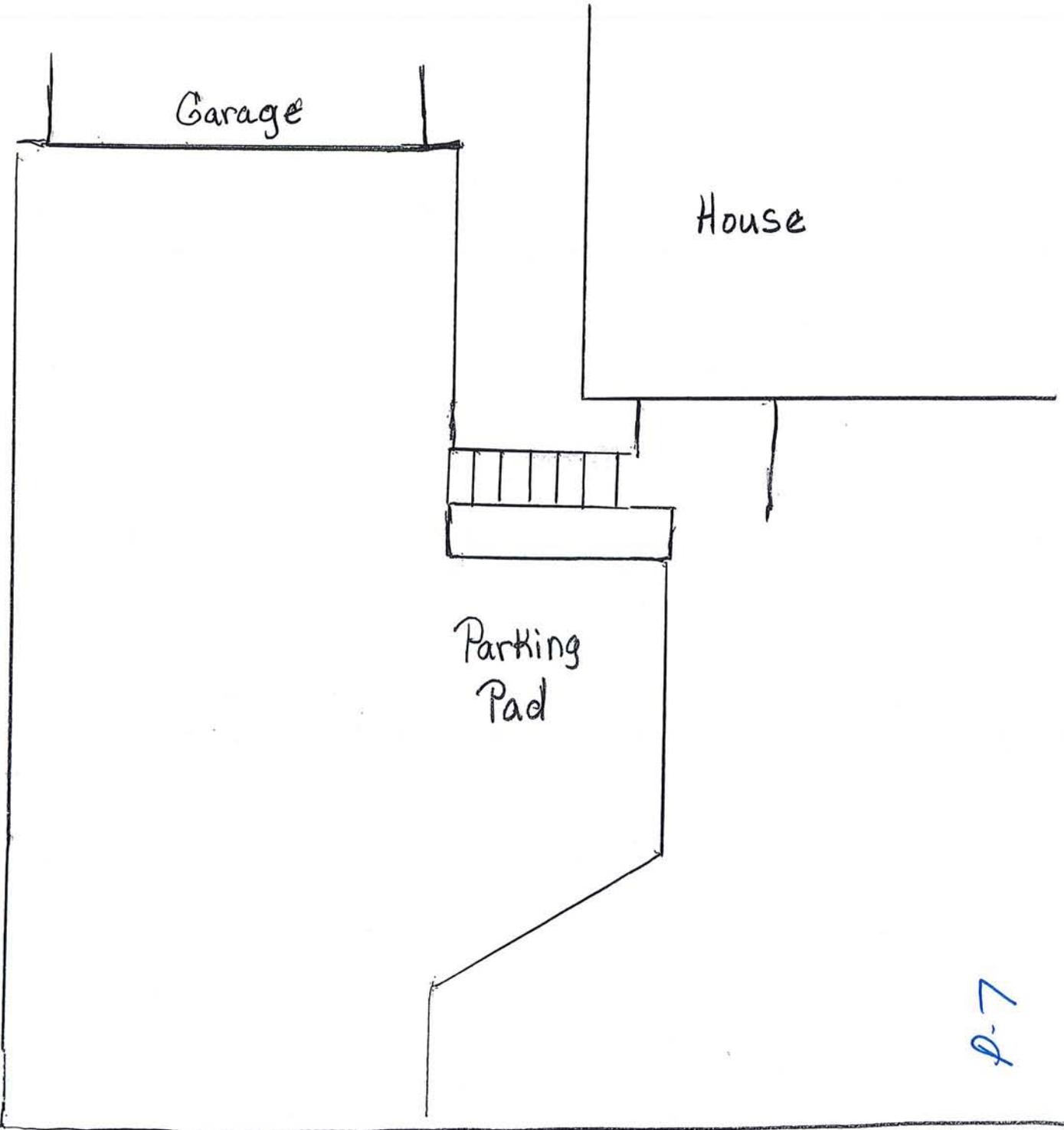
I would like to be on the list for the May 16th meeting of the Planning Commission.

Thank you very much,
Phyllis A. Sherman

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RECEIVED APR 06 2015

In order to be in compliance with parking requirements, I have contacted Trinity Concrete of Duluth and they will be excavating an area in the front yard and creating a parking pad. They also will be removing the fence and plants along the driveway and installing a new fence that will be higher than the existing fence in order to further protect the neighbor. This work will be done as soon as the frost is out of the ground which most likely will be the third week in April. I will send in a picture once it is completed.



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Lake Avenue

RECEIVED APR 06 2015



The house is a duplex with a 1-bedroom apartment on each side. I live on the left at 938 S. Lake and the VRBO would be on the right at 940 S. Lake.

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RECEIVED APR 06 2015



The house is buffered
on the right by a
fence, trees, and
a 60 ft easement.

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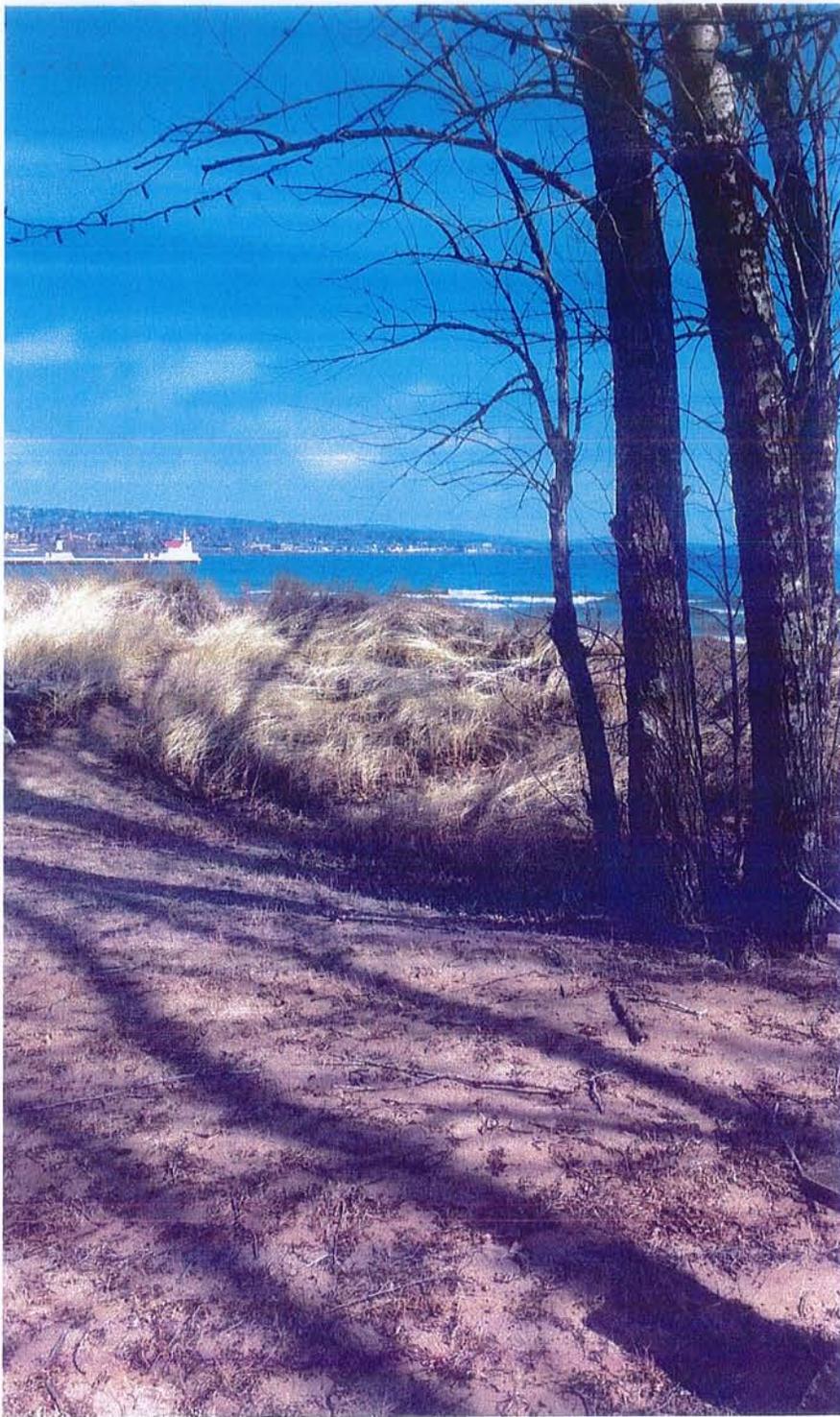
RECEIVED APR 06 2015



The left side of the house has a fence and bushes that will all be removed by Trinity Concrete as soon as the frost is out of the ground. A new fence will go up in it's place.

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RECEIVED APR 06 2015



The back-yard backs
up to the beach
and lake.

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RECEIVED APR 06 2015



Vacation Rentals Regulations

Vacation rental units are defined in the City of Duluth Legislative Code Chapter 50 (Unified Development Chapter) as Vacation Dwelling Units and are subject to the regulations described here.

Vacation Dwelling Unit – a habitable unit in a dwelling providing sleeping, cooking, eating, living and sanitation facilities that are physically separated from other habitable units that may or may not be located in the same building for periods of occupancy from 3 to 21 days. This use does not include hotels, motels, or bed and breakfasts.

Number of Bedrooms

Off-Street Parking Spaces Provided

Vacation Dwelling Units and Accessory Vacation Dwelling Units are allowed as an Interim Use in RR-1, RR-2, R-1, R-2, R-P, MU-N, and F-5 districts. All vacation rentals must obtain an Interim Use Permit.

Vacation Dwelling Unit Interim Use Permit Standards:

1. The minimum rental period shall be as follows:
 - a. For properties zoned RR-1, RR-2, R-1, and R-P the minimum rental period shall not be less than 2 nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than 5 nights;
 - b. For properties zoned R-2, MU-N, and F-5 the minimum rental period shall not be less than 2 nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than 3 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, 1 space
 - b. 3-4 bedroom unit, 2 spaces
 - c. 5+ bedroom unit, 3 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 3 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.

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In addition to the UDC Interim Use Permit requirements listed above, Vacation Dwelling Units and Accessory Vacation Dwelling Units must adhere to the following regulations:

1. Permit holder must keep a guest record including the name, address, phone number, and vehicle (and trailer) license plate information for all guests and must provide a report to the City upon 48 hours' notice.
2. Permit holder must designate a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The permit holder must notify the Land Use Supervisor within 10 days of a change in the managing agent or local contact's contact information.
3. Permit holder must provide the name, address, and phone number for the managing agent or local contact to all property owners within 100' of the property boundary. The permit holder must notify neighboring properties within 10 days of a change in the managing agent or local contact's contact information.
4. Permit holder must disclose in writing to their guests the following rules and regulations:
 - a. The managing agent or local contact's name, address, and phone number;
 - b. The maximum number of guests allowed at the property;
 - c. The maximum number of vehicles, recreational vehicles, and trailers allowed at the property and where they are to be parked;
 - d. Property rules related to use of exterior features of the property, such as decks, patios, grills, recreational fires, pools, hot tubs, saunas and other outdoor recreational facilities;
 - e. Applicable sections of City ordinances governing noise, parks, parking and pets;
5. If a permit holder is cited for any nuisance event as described in Chapter 40, Article III of the Duluth Legislative Code, the Land Use Supervisor may suspend the Interim Use Permit for 90 days. If the permit holder is cited for any nuisance event a second time, the Interim Use Permit shall be revoked.
6. Permit holder must post their permit number on all print, poster or web advertisements;
7. Prior to rental, the building must be inspected and an Operational Permit issued by the Fire Prevention office. Contact the Fire Prevention office at 218-730-4397 or 218-730-4399 for information.
8. Permit holder must apply for and be granted State and local sales tax numbers, including Hotel and Motel Use Sales Tax.



Selected City Ordinances on Parking, Parks, Pets & Noise

Thanks for choosing to visit our wonderful city. The summary of ordinances below was assembled to answer commonly asked questions related to vehicle parking, park use, pets and noise. We hope you enjoy all that Duluth has to offer and that you'll return again soon!

Vehicle Parking Rules:

Sec. 33-82. Prohibitions generally.

(c) No person shall, for the purpose of camping, lodging, or residing therein, leave or park a vehicle or motor vehicle on or within the limits of any highway or on any highway right-of-way, except where signs are erected designating the place as a camp site;

Sec. 33-85. Parking more than 24 consecutive hours prohibited.

No vehicle shall be left standing or parked more than 24 consecutive hours on any street or highway within the city.

Sec. 33-97.8. Alternate side parking.

Except where signs direct otherwise, all vehicles parked on streets in Duluth must observe the alternate side parking program to enable street cleaning, plowing, and other maintenance. All vehicles must be parked on the side of the street designated for parking for the week with house numbers that are either odd or even, see <http://www.duluthmn.gov/> for the designation of "odd" or "even" side parking for the week. The following week vehicles must be parked on the opposite side of the street. Every Sunday between the hours 4:00 p.m. and 8:00 p.m. shall be a changeover period and the provisions of this Section shall not be in force during such time.

Park Rules:

Sec. 35-9.3. Use of parks between certain hours prohibited without prior registration. Nearly all parks and beaches in Duluth are closed to public use after 10:00 p.m., including the beaches along Park Point.

Sec. 35-6. Vehicles, parking and recreational trails and paths.

(b) No person shall operate any motor vehicle or bicycle or ride a horse in any area of any park except on the roadway portion of streets, or highways, or parking areas in such park.

Many of the trails in Duluth are reserved for specific users year round or only during certain times of the year. This information is posted near trailheads to designate where bicycles, skis, and hikers are allowed. Direction of travel for trails may also be designated. Please observe these rules.

Additionally, winter use of ski trails within the City of Duluth requires that users have a DNR Ski Pass. See <http://www.dnr.state.mn.us/licenses/skipass/index.html> for more info. on obtaining this pass.

Sec. 35-7. Setting fires, prohibited.

(a) Except as provided in this Section, no person shall start or maintain any fire or hot coals in any park other than in designated park grills or privately owned grills suitable for the purpose for which they are used;

(c) The director of parks and recreation or the fire chief may ban all burning, including burning in grills, in parks at times of high fire danger.

It is a violation of this section to create a recreational fire on the beaches of Park Point.

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Sec. 35-8. Prohibited activities.

Within any public park, no person shall:

- (a) Discharge any firearm, air gun, crossbow, bow and arrow, slingshot or other missile firing device, provided that the director of parks may, by written permit, authorize archery exhibitions and contests
- (b) Do any hunting or trapping or in any other manner disturb or injure or attempt to disturb or injure any animal, including birds;
- (c) Urinate or defecate anywhere but in a proper toilet facility;
- (d) Throw, deposit or place or cause to be thrown, deposited or placed any papers, bottles, cans or any other garbage or waste at any place except into a trash container;
- (e) Tip over any trash container or otherwise cause the contents of a trash container to be deposited on the ground;
- (i) Possess any glass beverage container while outside of a motor vehicle;
- (j) Consume alcoholic beverages or possess opened or unopened alcoholic beverages.

Sec. 35-2. Animals running at large, animal control.

- (a) No dogs, cats or other domestic pets shall be allowed to run at large upon any park. Dogs, cats and other domestic pets shall be considered to be at large if they are not under control of the owner or other responsible person by means of a leash of suitable strength not exceeding six feet in length;
- (b) The director of parks and recreation may designate any park or area in a park as prohibited to pets or other animals. Any area so designated shall be clearly marked by signs indicating such prohibition. No person owning, controlling or caring for any animal shall allow such animal to enter any park area where such animal is prohibited.

Sec. 35-3. Fastening animals to fences, trees, etc., prohibited.

No person shall tie or fasten any animal to any fence, building, railing, tree, shrub or plant in or upon any park in the city.

Pet Rules:

Sec. 6-33. Animal noise.

- (a) No person shall harbor or keep any dog which, by loud and frequent or habitual barking, yelping or howling shall cause reasonable annoyance of another person or persons;

Sec. 6-36. Running at large prohibited.

No person shall suffer or permit any animal owned or controlled by that person to run at large within the city.

Sec. 6-38. Animal litter.

- (a) The owner of any animal or any person having the custody or control of any animal shall be responsible for cleaning up any feces of the animal and disposing of such feces in a sanitary manner;
- (b) It is unlawful for any person owning, keeping or harboring an animal to cause said animal to be on property, public or private, not owned or possessed by such person without having in his/her immediate possession a device for the removal of feces and depository for the transfer of animal feces to a receptacle located on property owned or possessed by such person. A device may include a plastic or paper bag which is used to recover animal feces;
- (c) It is unlawful for any person in control of, causing or permitting any animal to be on any property, public or private, not owned or possessed by such person to fail to remove feces left by such animal to a proper receptacle located on the property owned or possessed by such person;
- (d) For the purposes of this Section, the term public property includes, without limitation, streets, sidewalks, boardwalks, trails, boulevards, playgrounds and parks;

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Noise Rules:

Sec. 34-5. Disturbing the neighborhood.

No person, within the city, shall keep a dwelling, gaming area, party room, or meeting area which attracts people to the neighborhood at times or in such a manner that their arrival or leaving or activities while in the neighborhood result in an unreasonable disturbance of the usual peace, quiet, comfort, or decency of the neighborhood.

Sec. 34-6. Disorderly conduct.

(a) No person shall commit or suffer to be committed in any apartment or other dwelling owned, occupied or controlled by him, any rioting, quarreling, fighting, reveling, shouting, loud music or electronically amplified noise, or disorderly conduct which disturbs or annoys another person in a neighboring apartment or other dwelling, or in a neighboring building, or lawfully in the vicinity of said neighboring dwelling or building;

(b) No person within any public or private place shall take part in or incite or encourage any brawling, shouting, dancing, or noise production, which unreasonably disturbs others lawfully in the vicinity.

Sec. 40-10. Definitions, User Charge for Excessive Consumption of Police Services.

Nuisance event. An event requiring special security assignment in order to protect the public peace, health, safety and welfare. A nuisance event includes, but is not limited to, the following:

- (e) Loud and boisterous conduct, noises and activities that disturb the peace;
- (f) Events between 11:00 p.m. and sunrise which disturb the peace and tranquility of the neighborhood;
- (g) Congregating in a tumultuous, noisy or rowdy crowd;
- (h) Fighting or use of obscene or inflammatory language;
- (i) Loud music constituting a nuisance or disturbing the peace;
- (j) Activities causing excessive pedestrian or vehicular traffic and parking problems and congestion.

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