

**MINUTES OF THE REGULAR MEETING  
OF THE DULUTH CITY COUNCIL**

Monday, April 13, 2015

Duluth City Council meeting held on Monday, April 13, 2015, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ, Sipress and President Larson -- 9

Absent: None -- 0

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The minutes of council meetings held on February 9 and 23, 2015, were approved upon a unanimous vote.

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At this time, 7:03 p.m., the public hearing regarding the proposed confirmation of assessment roll for the mill and overlay on North Second Avenue West from Second Alley to West Fourth Street was called to order. No one appeared who wished to be heard and the public hearing was closed.

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At this time, 7:04 p.m., the public hearing regarding the proposed confirmation of assessment roll for the mill and overlay on North 21st Avenue West from Lower Michigan Street to West Third Street was called to order. No one appeared who wished to be heard and the public hearing was closed.

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At this time, 7:05 p.m., the public hearing regarding the proposed confirmation of assessment roll for the mill and overlay on 40th Avenue West from Michigan Street to Grand Avenue was called to order. No one appeared who wished to be heard and the public hearing was closed.

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At this time, 7:06 p.m., the public hearing regarding the proposed confirmation of assessment roll for the mill and overlay on West Superior Street from 40th to 46th Avenues West. No one appeared who wished to be heard and the public hearing was closed.

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

15-0413-17 Noah Hobbs communication regarding the proposed medical cannabis land uses (15-021-O(a)). -- Received

15-0413-02 Lakehead Boat Basin, Inc., and Island Inn and Suites, by Craig A. Hanson, attorney, appeal of the planning commission decision to deny a variance from the MU-W height limit at 1001 Minnesota Avenue (15-0203R and 15-0203R). -- Committee 2 (planning and economic development)

15-0413-01 Christopher and Bethany Owen, et. al. (three signatures), by Steven C. Overom, attorney, appeals of the planning commission decisions with respect to two variances for the Center American Indian Resources project. -- Committee 2 (planning and economic development)

15-0413-03 The following communications regarding the variance appeal by Lakehead Boat Basin (15-0203R & 15-0204R): (a) Jan Cohen; (b) Jan Karon; (c) Jeff Stuermer. -- Received

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### **REPORTS FROM THE ADMINISTRATION**

Chief Administrative Officer David Montgomery noted that the city is working with the school district regarding the parking and traffic problems at East High school.

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### **REPORTS OF BOARDS AND COMMISSIONS**

15-0413-04 Duluth economic development authority minutes of February 24, 2015, meeting. -- Received

15-0413-05 Duluth transit authority: (a) Minutes of January 28, 2015, meeting; (b) January 2015 financial statement. -- Received

15-0413-06 Duluth public utilities commission: (a) Minutes of February 17, 2015, meeting; (b) Resolutions: (1) Establishing the customer charge and user charges for the city's wastewater facilities effective with meter readings after May 1, 2015; superseding all prior inconsistent or conflicting rates (15PUC-001); (2) Establishing fees for various utility-related services (15PUC-002); (3) Approving the 2015 capital improvement plan for the natural gas system (15PUC-003). -- Received

15-0413-07 Heritage preservation commission minutes of January 27, 2015, meeting. -- Received

15-0413-08 Housing and redevelopment authority of Duluth minutes: (a) October 28, 2014; (b) November 25, 2014; (c) January 27, 2015, annual; (d) January 27, 2015, regular, meetings. -- Received

15-0413-09 Spirit Mountain recreation area authority minutes of: (a) January 15, 2015; (b) February 19, 2015, meetings. -- Received

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### **REPORTS OF COUNCIL OPEN ISSUES**

Councilor Gardner presented the April 2015 Duluth Distinguished Artists award to Julie Ahasay who has shared her talent, humor and creativity to entertain audiences and contribute to the growth of the Duluth theater community for the past four decades, and her collaboration with other artists and her inclusiveness are essential contributing factors that resulted in the city of Duluth becoming a major regional theater destination.

Ms. Ahasay commented about her experiences and thanked the council for this recognition.

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### **OPPORTUNITY FOR CITIZENS TO BE HEARD**

Henry Banks presented the council with the Voices for Racial Justice 2015 racial equity agenda and related documents and commented on its importance (Public Document No. 15-0413-18).

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

RESOLVED, that the assessable rolls levied to defray the assessable portions of the following are hereby confirmed:

Mill and overlay on North Second Avenue West from Second Alley to West Fourth Street.

Contract 2014014 - total assessable amount of \$28,482 to be deposited in Fund 440.

Resolution 15-0182 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the assessable rolls levied to defray the assessable portions of the following are hereby confirmed:

Mill and overlay on North 21st Avenue West from Lower Michigan Street to West Third Street.

Contract 2014013 - total assessable amount of \$36,057 to be deposited in Fund 440.

Resolution 15-0183 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the assessable rolls levied to defray the assessable portions of the following are hereby confirmed:

Mill and overlay on West Superior Street from 40th to 46th avenues West.

Contract 2014006 - total assessable amount of \$112,768.31 to be deposited in Fund 440.

Resolution 15-0184 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the assessable rolls levied to defray the assessable portions of the following are hereby confirmed:

Mill and overlay on 40th Avenue West from Michigan to Grand Avenue.

Contract 2014005 - total assessable amount of \$41,813.59 to be deposited in Fund 440.

Resolution 15-0185 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute and implement a collective bargaining agreement with the city of Duluth Supervisory Association (CDSA), containing the same terms and conditions, and being substantially the same as that on file with the office of the city clerk as Public Document No. 15-0413-10, covering the years 2015 through 2017.

Resolution 15-0207 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to amend Agreement 22394 with Great Lakes Aquarium (aquarium) for an additional \$75,000, for the construction of a

discovery center, payable from tourism tax fund balance.

Resolution 15-0214 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to purchase Techrete, Techrete water based primer, Crafcoc sealant, leveling mastic and a three month rental of a patcher trailer from Brock White Company, State Contract No. 46779, for a total amount of \$173,512, payable from Street System Maintenance Utility 290, Public Works and Utilities 500, Gravel and Other Maintenance Materials 5224.

Resolution 15-0181 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor license, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

Marshall School, 1215 Rice Lake Road, for May 2, 2015, with Elizabeth Tessier, chief financial officer.

Resolution 15-0196 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to Essentia Health Foundation and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 15-0200 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Duluth legacy endowment fund in the amount of \$1,250 for the A.H. Zeppa Family Foundation's parklet pilot project Year 2, which will create a seasonal parklet for public use, funds to be deposited in the 262-020-4700 (community development, planning, other sources) and to execute any documents required to accept such grant.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Duluth legacy endowment fund in the amount of \$2,500 for the Duluth public library's West Duluth Branch's furniture purchase, which will create a gathering space for area youth, funds to be deposited in the 240-300-SG80-4270 (library, special gifts, library, miscellaneous) and to execute any documents required to accept such grant.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Duluth legacy endowment fund in the amount of \$2,500 for the GND Development Alliance's facility audio-visual upgrades, which will increase utility of a community facility, funds to be deposited in the 205-130-1219-4270 (parks fund, community resources, parks operating, miscellaneous grants) and to execute any documents required to accept such grant.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept a grand from the Duluth legacy endowment fund in the amount of \$2,500 for the Lake Superior

Zoological Society's addition of a public address system, funds to be deposited in the 205-130-1219-4270 (parks fund, community resources, parks operating, miscellaneous grants) and to execute any documents required to accept such grant.

Resolution 15-0195 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that:

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

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, 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 undeveloped right-of-way is useless for all purposes; and

(c) The city planning commission, at its Tuesday, March 10, 2015, regular meeting, recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the platted road easement described below and as described and depicted on Public Document No. 15-0413-11:

VACATION LEGAL DESCRIPTION:

That portion of 66th Avenue West in the plat of HUNTER'S GRASSY POINT ADDITION TO DULUTH, THIRD DIVISION, which lies between the northwesterly line of Block 14 and the southeasterly line of said Block 14 and Block 17, in said plat; and

(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. 15-0413-11 showing the platted easement to be vacated.

Resolution 15-0201 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that proper city officials are hereby authorized to accept the dedication of an easement for drainage and utility purposes from Kwik Trip, Inc., a Wisconsin corporation, over a portion of vacated 66th Avenue West, Hunter's Grassy Point Addition to Duluth, Third Division, and over a portion of unplatted property in part of the Northeast Quarter of Section 13, Township 49 North, Range 15 West, as shown and described on the attached Exhibit A and as shown on Public Document No. 15-0413-12, a copy of which is on file in the office of the city clerk.

Resolution 15-0202 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the council finds as follows:

(a) The building official of the city of Duluth duly issued condemnation orders for structures located upon the below described parcel of land located within the city of Duluth after determining that the criteria of Section 10-3 of the city of Duluth Legislative Code was met in each case:

1025 West Second Street, Tax Parcel Number 010-1160-00730. Notification of order for condemnation for to owner John Vos by hand delivery to the latest address of record and by certified mail sent to latest address of record and by posting on the site of the

condemned building all on January 14, 2015, and by publication in the Duluth News Tribune on February 16 and 23, 2015;

(b) The order is now final; and

(c) The cost for demolition of the structure has been estimated to not exceed \$25,000.

BE IT RESOLVED, that pursuant to Section 10-3(b) of the city of Duluth Legislative Code the building official is authorized to:

(a) Proceed with the work ordered or to contract to have the work done, payable from Fund 262 020 5434 CD13CD; and

(b) Should the sale of the salvage from such work exceed the cost of the demolition, the balance in excess of the cost shall be paid to the owner of said building or to such other persons as may by law be entitled thereto; and

(c) Submit to the city council a statement of the cost of such work for its further determination of the manner by which such costs shall be recouped as provided by Section 10-3(b) of the city of Duluth Legislative Code.

Resolution 15-0205 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept the re-dedication of an easement for street and highway, pedestrian and utility purposes from Independent School District No. 709 over a portion of previously vacated Ensign Street, Huseby's Division, First Addition, as shown on Exhibit A and Public Document No. 15-0413-13, on file in the office of the city clerk.

RESOLVED FURTHER, that Resolution 15-0166 approved on March 23, 2015, is hereby rescinded.

Resolution 15-0206 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to apply for a grant from the Minnesota department of employment and economic development (DEED) for a contamination investigation and response action plan development grant for the Garfield and Elm site located on Rice's Point.

Resolution 15-0212 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that pursuant to Minnesota Statutes 204B.16, subdivision 3, the following locations are designated as polling places in the city of Duluth for the September 15, 2015, municipal and school board primary election, and the November 3, 2015, municipal and school board general election, and until further notice:

#### POLLING PLACE LIST

	<b>POLLING PLACE</b>	<b>ADDRESS</b>
1.	St. Michael's Catholic Church (lower level)	4901 East Superior Street
2.	Lakeside Presbyterian Church (lower level)	4430 McCulloch Street
3.	Lutheran Church of the Good Shepherd (lower level)	1325 North 45th Avenue East

## POLLING PLACE LIST

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4.	Faith Lutheran Church (lower level)	1814 North 51st Avenue East
5.	Lakeview Covenant Church (lower level)	1001 Jean Duluth Road
6.	Woodland Community Club	3211 Allendale Avenue
7.	Glen Avon Presbyterian Church (lower level)	2105 Woodland Avenue
8.	Duluth Congregational Church (lower level)	3833 East Superior Street
9.	Pilgrim Congregational Church (lower level)	2310 East Fourth Street
10.	U.M.D. Kirby Student Center	1120 Kirby Drive
11.	Vineyard Christian Fellowship (auditorium)	1533 West Arrowhead Road
*12.	Unitarian Universalist Congregation of Duluth	835 West College Street
13.	Mt. Olive Lutheran Church (lower level)	2010 East Superior Street
14.	First Lutheran Church (lower level)	1100 East Superior Street
15.	Peace Church (Tenth Avenue entrance)	1015 East 11th Street
16.	First United Methodist Church (Lakeview social hall)	230 East Skyline Parkway
17.	Rainbow Senior Center (auditorium)	211 North Third Avenue East
18.	Lafayette Square (upper level)	3026 Minnesota Avenue
19.	Duluth Public Library (Green Room)	520 West Superior Street
20.	Duluth Gospel Tabernacle Church (lower level - west entrance)	1515 West Superior Street
21.	Lincoln Park Senior Center (lower level)	2014 West Third Street
22.	Shepherd of the Hills Lutheran Church (fellowship hall)	802 Maple Grove Road
23.	Duluth Heights Community Club	33 West Mulberry Street
24.	Christ Lutheran Church (rear lower level entrance)	2415 Ensign Street
25.	St. Lawrence Church	2410 Morris Thomas Road
26.	Holy Family Catholic Church	2430 West Third Street
27.	Harrison Community Club	3002 West Third Street
28.	City Center West	5830 Grand Avenue
29.	Faith Haven (recreation room)	4901 Grand Avenue
30.	Elim Lutheran Church (social hall)	6101 Cody Street
31.	Bayview Heights School (gym)	8702 Vinland Street
32.	Asbury United Methodist Church (lower level)	6822 Grand Avenue
33.	Goodfellowship Community Center (warming area)	1242-88th Avenue West
34.	Stowe School (Room 27)	715-101st Avenue West

\* New polling site location

BE IT FURTHER RESOLVED, that under the authority of Ordinance 8728, that an absentee ballot board shall be in effect and utilized as allowed for under Minnesota Statutes, for the September 15, 2015, and November 3, 2015, elections.

BE IT FURTHER RESOLVED, that the city agrees to indemnify and hold harmless any organization allowing the city to use its building for a polling place from any claims or damages for bodily injury or property damage that are not covered by the insurance of the property owner or property operator, and arise out of the claimants' activities in the polling place for the purpose of voting, but subject to municipal liability limits contained in state law.

Resolution 15-0192 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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BY PRESIDENT LARSON:

WHEREAS, the Minnesota National Guard 148th Fighter Wing Explosive Ordinance Disposal ("EOD") unit is located within the city limits of Duluth. Prior to 2012, the 148th Fighter Wing EOD unit was available for public use at the request of local law enforcement and worked well with local safety personnel. The city of Duluth provided a portion of a port security grant to the 148th Fighter Wing EOD unit to help purchase equipment; and

WHEREAS, a policy change occurred two years ago when the Minnesota National Guard prohibited local utilization of the EOD unit; and

WHEREAS, the closest bomb squad asset now available to the city of Duluth is located in the Twin Cities area or Crow Wing County, Minnesota; and

WHEREAS, because the city of Duluth is the hub of the second largest metropolitan area in Minnesota and has one of the busiest international ports in the United States, as well as an international airport, it is important that local law enforcement and safety officials are allowed to utilize the 148th Fighter Wing EOD unit.

THEREFORE BE IT RESOLVED, that the Duluth City Council calls upon Governor Mark Dayton to declare the Minnesota National Guard 148th Fighter Wing Explosive Ordinance Disposal unit a community asset and make the unit available to local law enforcement to enhance local public safety.

Resolution 15-0215 was unanimously adopted.

Approved April 13, 2015

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. 15-0413-14 with the commissioner of transportation, state of Minnesota, granting the city a limited use permit for the construction and maintenance of Fairmount Park/Lake Superior Zoo fence and landscaping in the state's right-of-way for Trunk Highway 23 (Grand Avenue) from 72nd Avenue West to 74th Avenue West.

Resolution 15-0141 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the city of Duluth desires to designate a portion of London Road, a portion of which that road hereinafter described should be designated a municipal state aid highway under the provisions of Minnesota law.

FURTHER RESOLVED, by the city of Duluth, that the road described as follows, to wit:  
London Road from Superior Street to 12th Avenue East, approximately 0.20 miles,  
be and hereby is established, located and designated a municipal state aid highway of said city, subject to the approval of the commissioner of transportation of the state of Minnesota.

FURTHER RESOLVED, that the city clerk is hereby authorized and directed to forward two certified copies of this resolution to the commissioner of transportation for his consideration, and that upon his approval the designation of said road or portion thereof, that same be constructed, improved and maintained as a municipal state aid highway of the city of Duluth, to be numbered Municipal State Aid Highway 193.

Resolution 15-0186 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to contract with MSA Professional Services, Inc., to provide engineering and design services for replacing the HVAC system in the water plant filtration building and other improvements including a dehumidification system for the filtration building. These services are payable from Water Fund 510, Public Works and Utilities 500, Capital (including depreciation/debt service) 1905, Capital Improvement-Revenue 5333.

Resolution 15-0187 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized and directed to execute an agreement between the city of Duluth and the Minnesota department of transportation (MnDOT), a copy of which is on file in the office of the city clerk as Public Document No. 15-0413-15, to provide for payment by the city to the state of the city's share of the costs of the signal and emergency vehicle preemption (EVP) systems, Pond No. 3, utility, and S.A.P. 118-010-026 (CIMS) eligible work items construction to be performed upon, along and adjacent to Trunk Highway No. 23 from 590 feet north of Becks Road to Trunk Highway No. 35 within the corporate city limits under State Project No. 6910-89, at an estimated cost of \$1,434,047.83. The working fund is Permanent Improvement Fund 411, with the city's costs for this project payable from Federal funds, municipal state aid funds, and the respective utility funds.

Estimated construction, engineering and contingency costs from federal and municipal state aid funding is \$819,218.84.

Estimated construction and engineering costs from utility funding:

Water Utility Fund 510 - \$146,172.52;

Gas Utility Fund 520 - \$15,269.63;

Sanitary Sewer Fund 530 - \$444,850.35;

Stormwater Utility Fund 535 - \$8,536.50.

Resolution 15-0211 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to execute and implement an agreement, substantially the same as that on file with the city clerk as Public Document No. 15-0413-16, between the city and Arrowhead Bowhunter's Alliance for conducting the annual deer control hunt in 2015, with options to renew for three additional years, at no net cost to the city

and establishing the rules to be applied to participants in management of the hunt.

Resolution 15-0208 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to accept \$42,002 from the Arrowhead Library System for use in 2015 by the Duluth public library to purchase library materials, said sum to be deposited in Fund No. 110-121-1218-4654-02 (general, public administration, library services).

Resolution 15-0213 was unanimously adopted.

Approved April 13, 2015

DON NESS, Mayor

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The following resolutions were also considered:

Resolution 15-0191, confirming the appointments and reappointments of members to city boards and commission, was introduced by Councilor Gardner.

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

Janet Kennedy commented on the importance of representation on the boards and commission with equitable voices.

Councilor Gardner moved to return the resolution to the administration for further review which motion was seconded and unanimously carried.

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RESOLVED, that the proper city officials are hereby authorized to contract with Ziegler for the lease of 20 motor graders Model 12M3 AWD for an annual lease amount for the first four years of \$351,648, and for a final six month lease amount of \$175,824, for a total lease amount of \$1,582,416, payable from General Fund 110, Public Administration 121, Maintenance Operations 1217, Street Maintenance 2140, Vehicle/Equip Lease (long-term) 5418.

Resolution 15-0209 was adopted upon the following vote:

Yeas: Councilors Filipovich, Gardner, Hanson, Julsrud, Krug, Russ, Sipress and President Larson -- 8

Nays: Councilor Fosle -- 1

Approved April 13, 2015

DON NESS, Mayor

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Resolution 15-0203, by Councilor Russ, affirming the decision of the planning commission to deny the application for a variance from the maximum height limitation by Island Inn & Suites LLC at 1001 Minnesota Avenue, was introduced for discussion.

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

Elizabeth Hooper commented in support of the resolution.

Resolution 15-0203 was adopted as follows:

BY COUNCILOR RUSS:

RESOLVED, that the city council finds as follows:

(a) On February 9, 2015, Island Inn & Suites LLC applied for a variance that would allow for a hotel with a maximum height of 120 feet instead of the current maximum of 35 feet. The planning commission considered the request at its March 10, 2015, meeting and voted to deny the request. The basis for the commission's decision were its conclusions that:

(1) Currently the property is used as a marina. Marinas and hotels are permitted uses in the MU-W zone district. With the existing marina, applicant has a reasonable use of the property. A hotel could be built on the property within the existing height limit of 35 feet, as demonstrated by the neighboring hotel at 1003 Minnesota Avenue. Moreover, the MU-W zone district allows many additional uses that could be accommodated on this property. Thus, the height variance is not necessary for the preservation and enjoyment of a substantial property right;

(2) The applicant claimed that the variance request is needed to accommodate a previous development project; however, approvals for the earlier project have expired, and the new project is not eligible for any grandfathering considerations;

(3) Other commercial and residential buildings in the area meet the maximum height of 35 feet. Granting a variance to allow an additional 85 feet of height would alter the essential character of the area, which is typified by a mixture of residential (single-family and two-family), commercial (marinas and a hotel), and government (Army Corps of Engineers) uses, all located in low-rise buildings that are consistent with the purpose and dimensional standards of the appropriate zone districts per sections 50-14.5, 50-15.6, and 50-17.3 of the City of Duluth Legislative Code;

(4) The need for relief is not due to circumstances unique to this property. The applicant acknowledges there are no issues caused by exceptional narrowness, shallowness, shape or other physical conditions; and

(5) For the reasons stated above, this property does not meet the definition of practical difficulty;

(b) Island Inn & Suites LLC was provided written notice of the commission's action on March 11, 2015;

(c) Lakehead Boat Basin and Island Inn & Suites filed an appeal of the commission's decision to the city council on March 19, 2015, pursuant to Section 50-37.1.O(4) of the City Code; and

(d) The city council heard the appeal at its April 13, 2015, meeting.

RESOLVED FURTHER, that the decision of the planning commission to deny the application for the 85 foot height variance is affirmed on the following grounds:

(a) The request for the variance is not due to exceptional narrowness, shallowness, or shape of the applicant's property;

(b) The relief is not necessary for the preservation and enjoyment of a substantial property right;

(c) The variance would alter the essential character of the area, which is typified by a mixture of residential, commercial, and government uses, all located in low-rise buildings that are consistent with the purpose and dimensional standards of the appropriate zone districts per sections 50-14.5, 50-15.6, and 50-17.3 of the City of Duluth Legislative Code; and

(d) The applicant has not demonstrated practical difficulty.

Resolution 15-0203 was adopted upon the following vote:

Yeas: Councilors Filipovich, Gardner, Hanson, Julsrud, Krug, Russ, Sipress and President Larson -- 8

Nays: Councilor Fosle -- 1

Approved April 13, 2015

DON NESS, Mayor

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Resolution 15-0204, by Councilor Russ, reversing the decision of the planning commission to deny the application for a variance from the maximum height limitation by Island Inn & Suites LLC at 1001 Minnesota Avenue, was introduced.

Councilor Russ moved to remove this resolution from the agenda, because of the action on Resolution 15-0203, which motion was seconded and unanimously carried.

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BY PRESIDENT LARSON:

RESOLVED, that the Duluth City Council supports consultation and discussion between administration and public works officials with the city of Duluth and St. Louis County regarding use of transportation sales and use tax revenue for projects that benefit both the county and the city of Duluth.

Resolution 15-0189 was unanimously adopted.  
Approved April 13, 2015  
DON NESS, Mayor

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RESOLVED, that the city of Duluth accepts a bequest by Jerome Clarence Miller of \$100,000 to the Duluth public library; said funds to be deposited in Fund 240-300-SG80-4660 (library, special gifts, library miscellaneous).

Resolution 15-0190 was unanimously adopted.  
Approved April 13, 2015  
DON NESS, Mayor

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**INTRODUCTION AND CONSIDERATION OF ORDINANCES**

**ORDINANCE TABLED**

INTRODUCED BY COUNCILOR RUSS

15-014 - AN ORDINANCE AUTHORIZING THE CONVEYANCE OF PROPERTY IN LAKESIDE TO KNUTSON CUSTOM CONSTRUCTION, LLC, FOR RESIDENTIAL REDEVELOPMENT.

Councilor Russ moved to remove the ordinance from the table and return it to the administration, which motion was seconded and unanimously carried.

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The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR RUSS

15-022 - AN ORDINANCE AMENDING SECTION 2-177 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE METHODS OF CONVEYANCE OF REAL PROPERTY.

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The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR RUSS

15-018 (10363) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1 TO P-1 FOR GROSVENOR SQUARE, KELSO PARK, PORTMAN COMMUNITY RECREATION CENTER, RUSSELL SQUARE AND WASHINGTON SQUARE (CITY OF DULUTH).

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

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INTRODUCED BY COUNCILOR RUSS

15-019 (10364) - AN ORDINANCE AMENDING SECTION 50-37.1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATED TO ADMINISTRATIVE ADJUSTMENTS OF THE LAND USE SUPERVISOR.

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

- - -

INTRODUCED BY COUNCILOR RUSS

15-020 (10365) - AN ORDINANCE AMENDING SECTION 50-20.4 OF THE DULUTH CITY CODE, 1959, AS AMENDED, USE SPECIFIC STANDARDS OF MAJOR UTILITY OR WIRELESS TELECOMMUNICATIONS FACILITY.

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

- - -

INTRODUCED BY COUNCILOR RUSS

15-021(a) - AN ORDINANCE AMENDING SECTIONS 50-19.8, 50-20.2 AND 50-41.13 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO AMEND THE PERMITTED USE TABLE TO ALLOW FOR MEDICAL CANNABIS LAND USES.

Councilor Fosle moved to amend both subsections 50-20.2.B.3 and 50-20.2.D.3 of the ordinance by:

(a) Deleting "200 feet of" and inserting "1,500 feet from";

(b) Adding the phrase "at a density of greater than one unit per five acres" to the end of the subsections;

which motion was seconded and unanimously carried.

*Editor's Note: With the amendment, the ordinance was now considered as having a new first reading.*

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INTRODUCED BY COUNCILOR RUSS

15-021(b) (10366) - AN ORDINANCE ADDING SECTION 50-17.5, AND AMENDING SECTIONS 50-13.3, 50-19.1, 50-19.8 AND 50-41.1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO AMEND THE PERMITTED USE TABLE TO ALLOW FOR A NEW AIRPORT ZONE DISTRICT.

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

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The meeting was adjourned at 8:01 p.m.

JEFFREY J. COX, City Clerk

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### **ORDINANCE NO. 10363**

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1 TO P-1 FOR GROSVENOR SQUARE, KELSO PARK, PORTMAN COMMUNITY RECREATION CENTER, RUSSELL SQUARE AND WASHINGTON SQUARE (CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the subject properties located on located on the eastern and northeast portions of the city and as more particularly described as follows:

010-2970—00320

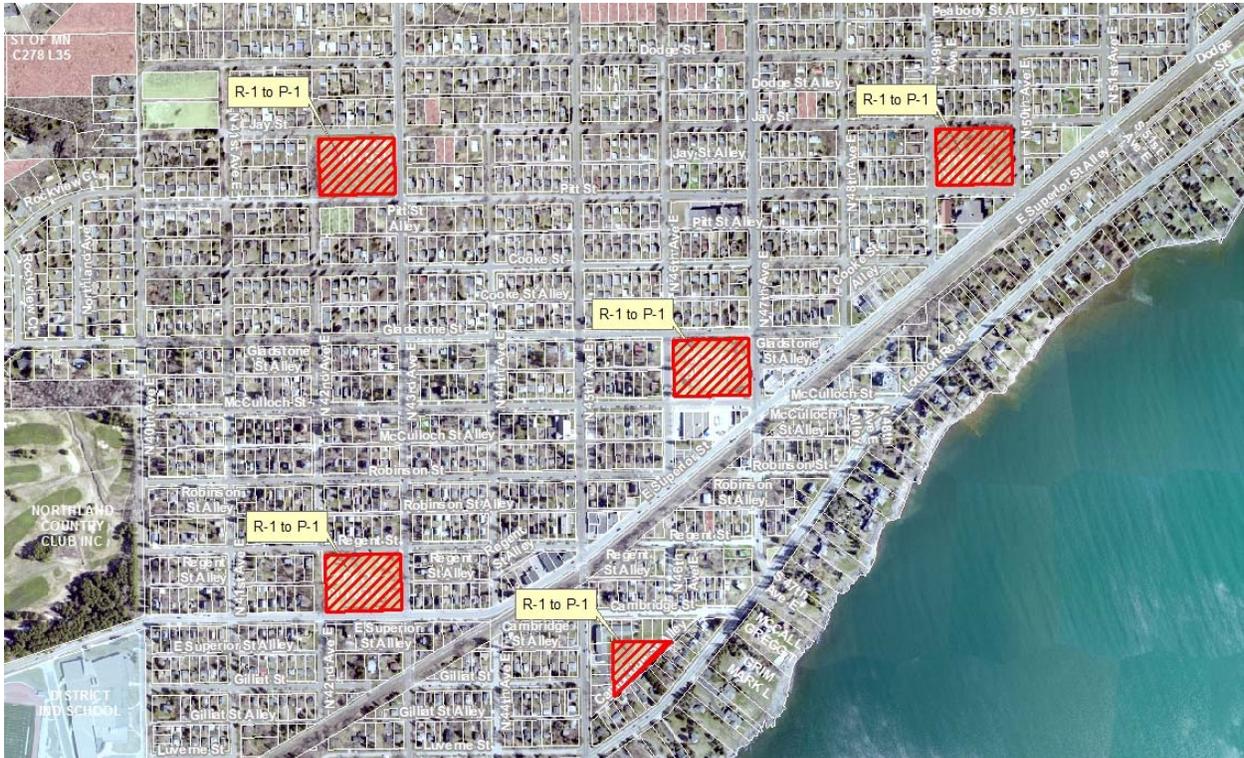
010-3030-03025

010-3030-02035

010-2990-01326

010-3010-03605

be reclassified from Residential-Traditional (R-1) to Park and Open Space (P-1) 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:



(Ref. File No. 15-033)

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 16, 2015)

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

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ, Sipress and President Larson -- 9

Nays: None -- 0

Passed April 13, 2015  
 Approved April 13, 2015  
 DON NESS, Mayor

ATTEST:  
 JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10364**

AN ORDINANCE AMENDING SECTION 50-37.1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATED TO ADMINISTRATIVE ADJUSTMENTS OF THE LAND USE SUPERVISOR.

The city of Duluth does ordain:

Section 1. That Section 50-37.1 of the Duluth City Code, 1959, as amended, be amended as follows:

50-37.1 Common procedures and requirements.

**A. Pre-application meetings.**

A pre-application meeting is an informal discussion between a potential applicant, interested citizen, city staff and the heritage preservation commission (if applicable) regarding a possible project subject to this Chapter. The purpose of the pre-

application meeting is to assist the applicant by identifying the types of approval needed to complete the project, application material and impact studies required, applicable comprehensive plan provisions and applicable review criteria. A pre-application meeting may include a site visit at the request of the city. Pre-application meetings are required for the following types of applications:

1. UDC zoning map amendment;
2. District plan adoption or amendment;
3. Subdivision concept plan;
4. Vacation of street;
5. Concurrent use of streets permit.
6. Historic resource designation;
7. Special use or interim use permit;

**B. Authority to file applications.**

1. A property owner or a contract purchaser may apply for any type of permit or approval unless a more specific application is stated in this Section 50-37.1.B or in sections 50-37.2 through 16 below. In the event of a conflict between the provisions of this Section 50-37.1.B and the provisions of sections 50-37.2 through 16, the provisions of sections 50-37.2 through 16 shall govern;
2. An agent of the property owner, or a resident of the property, may apply for any type of permit or approval provided the agent or resident has written authority of the property owner to do so;
3. Applications for designation of a historic resource are governed by Section 50-37.8;
4. Any person may request an interpretation of this Chapter, and the land use supervisor may issue interpretations of this Chapter as needed and shall post issued interpretations on the city web site;

**C. Application materials and fees.**

1. Each application for a permit or approval, or for a modification of a permit or approval, pursuant to this Chapter, shall include all those application materials listed for that type of application or modification listed in the UDC application manual for this Chapter and a fee in the amount listed for that type of application or modification shown in the latest schedule of fees approved by council;
2. The city may reject applications not meeting the requirements of this Chapter, the UDC application manual, or as required or authorized by MSA 15.99;
3. Any and all representations made by the applicant to the city on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the city;
4. The schedule of fees shall be adopted from time to time by the council by resolution, pursuant to Section 31-6 of the Code, to defray estimated staff costs and expenses of processing applications;
5. The schedule of fees may provide for additional fees if an applicant submits more than two applications that are incomplete, pursuant to Section D below, for the same proposed development;
6. All fees are non-refundable regardless of whether the applicant withdraws the application prior to a decision or whether the application is approved, approved with conditions or denied;

**D. Determination of completeness.**

A determination of completeness shall be made for each application pursuant to MSA 15.99;

**E. Inactive complete applications.**

If an application has been determined to be complete, but review of the application reveals possible additional impacts on the surrounding area, any request by the city for additional materials necessary to evaluate those impacts shall comply with the provisions of MSA 15.99;

**F. Withdrawal of applications.**

An applicant may withdraw an application at any time prior to a decision by the city by filing a written request to withdraw the application with the city. Any resubmission is subject to the provisions of subsection 50-37.1.G below. If the application is later resubmitted, it shall be treated as a new application for purposes of review and scheduling. Any fees paid for a withdrawn application shall not be refunded;

**G. Successive applications.**

If an application pursuant to this Chapter has been denied by the city, an application requesting the same or essentially the same approval shall not be accepted during the next 12 months;

**H. Public notice.**

1. Types of notice.

The city uses one or more of the following methods to notify the public about pending applications where there is an opportunity for public comment on the application. The type(s) of notice provided for different types of applications are shown in Table 50-35-1.

(a) Newspaper notice means the publication of one notice in a newspaper of general circulation within the city at least ten days before the date of the public hearing, except in the case of amendments to the text of this Chapter or zoning map, in which case the notice shall be published at least once each week for three successive weeks before the date of the public hearing;

(b) Mailed notice means a letter mailed by first class mail to property owners within 350 feet of the applicant's parcel at least ten days prior to the date of the public hearing. In the case of an application for vacation of a street, the notice shall be mailed to the owners of all properties abutting (a) the portion of the street proposed to be vacated, and (b) the portion of that street extending 350 feet from the ends of the portion proposed to be vacated. In the case of an application for rezoning an area of five acres or less, the notice shall be mailed to each property owner in the area to be rezoned and each owner of property located partly or entirely within 350 feet of the area to be rezoned. Failure to give mailed notice as required by this Section or any defect in the notice given shall not invalidate any action of the planning commission or council, provided that a bona fide attempt to comply with this Section has been made;

(c) Sign notice means a sign with minimum dimensions of 24 inches by 30 inches posted as close as reasonably possible to each street frontage on the applicant's property with the text between three and five feet above grade level, with a title line reading "Zoning Notice" in letters at least three inches tall, and with the remainder of the text in letters at least 1/2 inch tall. Each sign must be posted at least two weeks before the date of the public hearing, and must remain in place and legible through the date of the public hearing as shown on the

sign. If the sign will not be legible at the stated height due to snow accumulations it may be placed higher, but at the lowest elevation that will be legible to the public. If snow obscures the sign during the posting period, the snow shall be removed and/or the sign shall be relocated so as to be legible within 24 hours after snowfall ends. Evidence produced at or before the public hearing that one or more of the required signs were not in place or legible throughout that period shall be grounds for postponement of the public hearing and a requirement to repost the property. Required signs may not be posted in any portion of the public right-of-way;

2. Content of notice.

Each required notice shall include the following information:

- (a) The name of the applicant;
- (b) The address of the property;
- (c) A narrative description of the project including the proposed land uses, size (in square feet) and height (in feet and stories) of any proposed buildings or building expansions;
- (d) The type of permit or approval being sought;
- (e) Contact information where additional information can be obtained from the applicant (which may be an address, telephone number, web site, or e-mail address or other electronic site or method);
- (f) Contact information for the assigned city staff member;
- (g) The date, time and place of the public hearing;

3. Special notice provision for appeals.

In the case of an appeal to the planning commission or council pursuant to Section 50-37.1.O, mailed notice shall be provided to any interested parties that were notified of the original application and the right to receive notice of any appeal, and who have notified the city in writing that they would like to receive notice of the appeal;

I. Public hearings.

1. Public hearings before the planning commission and public hearings before the council on matters related to this Chapter shall be conducted pursuant to rules and practices established by each of those bodies and in compliance with state law;
2. Attendance shall be open to the public;
3. All hearing and decision timeframes shall comply with MSA 15.99;

J. Review criteria.

1. The planning commission shall approve or recommend approval of an application if it makes a written finding that:
  - (a) The application is consistent with the adopted comprehensive land use plan, as that plan may have been amended after adoption;
  - (b) The application complies with all applicable requirements of this Chapter, as those requirements may have been varied through a variance approved pursuant to Section 50-37.9;
  - (c) The application complies with all additional approval criteria listed in Section 50-37.2 below;
2. If the planning commission determines that the criteria in subsection 1 have not been met, the commission shall deny or recommend denial of the application or approve it with conditions to bring the application into conformance with the above criteria;

3. The council is encouraged, but not required, to make decisions on applications under this Chapter pursuant to the criteria listed in subsection 1. In no case may the city's final action result in the approval of a use variance;
4. The applicant bears the burden of proof that an application complies with all applicable standards and criteria in this Chapter;

**K. Conditions on approval.**

1. As an alternative to denying an application, the building official and the land use supervisor are authorized to approve applications with conditions necessary to bring them into compliance with the requirements of this Chapter or with any previously approved district plan for the property;
2. As an alternative to denying an application, the planning commission is authorized to recommend or impose conditions on approvals that it determines are necessary to (a) bring the application into compliance with the requirements of this Chapter, the purposes of the zone district where the property is located or any previously approved district plan for the property, or (b) prevent or minimize adverse effects upon surrounding areas or upon public facilities and services;
3. All conditions imposed on approved applications shall be reasonably related to the anticipated impacts of the proposed development or land use and to the purposes of this Chapter;
4. In the case of decisions made by the planning commission or council, where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any condition imposed shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts;
5. Any conditions on approved applications shall be listed in or attached to the approval document, and violation of any approved condition shall be a violation of this Chapter;

**L. Administrative adjustments.**

Where an application concerns development or redevelopment of a lot and the applicant demonstrates practical difficulty in designing the redevelopment to comply with all requirements of this Chapter, the land use supervisor is authorized to approve applications that diverge from the requirements of this Chapter in up to two of the following ways:

- 1 The front, side or rear setbacks of a new or modified structure is one foot smaller than the minimum setbacks required by this Chapter;
- 2 For properties zoned Residential-Traditional (R-1) or Residential-Urban (R-2), and have a lot frontage of 40 feet or less, the corner side yard setback is no less than five feet smaller than the minimum setback required by this Chapter;
- 3 The front, side, or rear setback for a new or modified city operated utility structure on existing utility lines is no less than five feet;
- 4 The height of a new or modified structure is no more than two feet taller than the maximum allowed by this Chapter;
- 5 For properties where Section 50-24 requires more than three off street parking spaces, and the property does not contain a single-family

residential structure (regardless of the use of that structure) the site may contains one less parking space than is required, or may contain one more parking space than the maximum allowed in Section 50-24.4;

- 6 Handicap accessibility structures can encroach into the yard setbacks;
- 7 For properties where Section 50-21.2 requires improved street frontage, exceptions limiting the street improvement to no more than 50 feet in length may be granted if the land use supervisor determines that further extension of the street is not anticipated due to topography, comprehensive land use plan or utility availability;
- 8 For properties where Section 50-21.2 requires that not more than 30 percent of the rear yard be occupied by any one accessory structure, exceptions may be granted for an accessory structure to occupy up to 40 percent of the rear yard;
- 9 The area of a new or modified sign is no more than ten percent larger than the maximum allowed by Section 50-27;

**M. Modifications of approvals.**

1. Application.

An applicant who has received a permit or approval from the city pursuant to this Chapter may apply to modify that approval pursuant to this Section 50-37.1. An application for a modification shall be made to the building official, who shall determine whether it requests a minor or major modification pursuant to the criteria in subsections 2 or 3, as applicable;

2. Minor modifications.

Minor modifications are those that (a) relate to redevelopment of a single building on one or more existing platted lot(s), (b) qualify as administrative adjustments pursuant to subsection 50-37.1.L or (c) that the city determines are otherwise consistent with any district plan approved for the zone district where the property is located. Applications for minor modifications may be approved by the city if it determines that the applicant would have practical difficulties designing or constructing the project without the minor modification. However, the city may require that an application meeting the criteria for a minor modification be treated as an application for a major modification if it determines that the application raises a significant public controversy on which numerous parties other than the owner of the property may want to offer testimony;

3. Major modifications.

Major modifications are those that do not qualify as administrative adjustments pursuant to subsection 50-37.1.L or minor modifications pursuant to subsection 2 above. Applications for major modifications shall be treated as a new application for an approval of the same type being modified. However, if the city determines that an application for modification is not consistent with a district plan applicable to the property, and that the inconsistency may materially and adversely affect other property owners subject to the same district plan, the city may require that the applicant obtain approval of a revised district plan instead of a major modification. In the case of a major modification involving a natural resources permit, the city may require additional reports and data necessary to evaluate the impacts of the modification;

**N. Lapsing of approvals.**

Some permits and approvals issued pursuant to this Chapter shall lapse and be of no further force or effect if the action approved in the permit or approval does not begin within a specific period of time, as listed below:

1. Approved preliminary plats for subdivision shall lapse unless a complete application for a final plat of at least 50 percent of the land covered by the preliminary plat is submitted within one year of the preliminary plat approval. Approved final subdivision plats shall lapse unless the approved final plat is recorded within two years after approval;
2. Approved minor subdivisions and boundary line adjustments shall lapse unless recorded within 180 days of approval;
3. Approved vacations of streets shall lapse unless a plat showing the vacation is recorded with the office of the county recorder within 90 days after final approval;
4. Approved planning reviews, zoning permits, special use permits, interim use permits, concurrent use of street permits, sidewalk use permits and variances shall lapse if the project or activity authorized by the permit or variance is not begun within one year of the permit date. The building official may extend this period one time for a period of up to one year if the property owner presents a written request showing the reasons for the delay was outside the owner's control;
5. Erosion and sediment control permits (ESCP) shall lapse one year after approval if all construction activities are not completed or the entire site is not fully stabilized with 70 percent successful establishment of vegetation. In case of a lapse of the ESCP, a new permit shall be obtained;
6. Approved building permits shall lapse one year after issuance unless construction has begun by that date;
7. The MS-4 statement of compliance and accompanying drainage report will be valid for two years from the date of approval. If permanent stormwater facilities (BMPs) are not fully constructed and operational within two years, and extension of one year may be granted if a written request is submitted and approved by the city engineer. The written request should document the reasons for the extension and the current state of completion of the project;

#### O. Appeals.

This Section is intended to comply with the provisions of MSA 462.357 and MSA 360.068 as amended, and shall be interpreted to comply with those provisions wherever possible.

1. General provisions for appeal to planning commission.
  - (a) Except as noted in subsection 2, any person aggrieved by, or any department of the city affected by, any decision of any city official engaged in the administration or enforcement of this Chapter may appeal that decision to the planning commission. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the commission and specifying the grounds of the appeal;
  - (b) If the appeal relates to a decision regarding the zoning of an airport or the Airport Overlay district, any person aggrieved by the decision, any taxpayer affected by the decision and any governing body of a municipality, county or airport zoning board, that believes the decision is an improper application of this Chapter as it concerns that governing body or board may appeal that decision to the airport board

of adjustment. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the board and specifying the grounds of the appeal. If the appellant is a person aggrieved or a taxpayer affected by the decision regarding the zoning of an airport or the Airport Overlay district, the applicant shall submit an appeal to the city clerk in the manner set forth in Minnesota Statutes 360.068, Subdivision 2. All appeals shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;

- (c) The building official shall promptly transmit to the commission, or to the airport board of adjustment, as applicable, the documents and records related to the decision being appealed;
- (d) A timely appeal shall stay all proceedings involved in the appeal; and no appeal shall be deemed to permit the appellant to do or to continue doing, directly or indirectly, any act or thing prohibited by the decision being appealed. However, if the building official notifies the planning commission in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the planning commission may order that proceedings not be stayed pending appeal;
- (e) The commission shall fix a time for a hearing on the appeal, shall provide notice of the hearing pursuant to Section 50-37.1.H, and shall hold a public hearing pursuant to Section 50-37.1.I;
- (f) Any party may appear at the hearing in person, by agent or by attorney. Notice of the decision of the board shall be mailed to the appellant;
- (g) If the appeal alleges that the boundaries of a wetlands or shorelands area on the Natural Resources Overlay map in Section 50-18.1 are in error, the appellant shall bear the burden of proving the map erroneous by the production of clear and convincing technical evidence;

## 2. Exceptions.

- (a) An appeal from any decision regarding the interpretation or application of sign regulations in subsections 50-27.1.I, *No safety obstructions*, 50-27.1.L, *Attachment to buildings*, 50-27.1.M, *Wind pressure design*, 50-27.1.N, *Electrical wiring*, or 50-27.1, *Certification of structural engineer*, must be taken to the state building official as provided in the State Building Code;
- (b) An appeal from a decision regarding a building permit must be taken to the building appeals board created in Article IV of Section 10 of the City Code or to the state building official;
- (c) An appeal from any decision under the housing code provisions in Section 50-32 of this Chapter must be taken to the building appeals board;
- (d) If an applicant believes that the decision of staff regarding compliance with the requirements of the SP-O zone district is incorrect or deprives the applicant of the reasonable use of his or her property, or is unreasonable given the size and shape of the property and its

orientation to the protected views, the applicant may request review of the decision by the planning commission. The planning commission's review shall be based on the purpose and standards of this Section, but may authorize variations to those standards, in accordance with the procedures in Article V of this Chapter, if unusual site conditions not generally shared along Skyline Parkway make compliance with the standards unreasonable or ineffective to protect the intended views of Lake Superior, the St. Louis River and the harbor;

3. Powers of planning commission on appeal.
  - (a) The planning commission shall consider the record of the application and any testimony presented at the hearing regarding the application of this Chapter to the application and shall affirm, modify or reverse the decision appealed, and may make any orders, requirements, decisions or determinations that the building official or land use supervisor could have made regarding the application;
  - (b) In hearing permitted appeals of decisions regarding the sign regulations in Section 50-27, the planning commission shall have only the power to affirm, reverse or modify the decision of the building official;
  - (c) In the case of an appeal regarding the application of the NR-O Natural Resources Overlay district, no relief shall be granted that violates the limitations on variances applicable to that district;
  - (d) The decision of the planning commission shall be final unless a further appeal is filed pursuant to subsection 4 below;
4. Appeals of planning commission decisions to council.
  - (a) Except as provided in subsection 5 below, any person aggrieved by, or any department of the city affected by, any decision of the planning commission on an appeal pursuant to subsection 1 above may appeal that decision to the council;
  - (b) Any appeal must be filed within ten days after the planning commission's decision by filing with the city clerk a written notice of appeal addressed to the council and specifying the grounds for the additional appeal;
  - (c) The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. However, if the building official notifies the council in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the council may order that proceedings not be stayed pending appeal;
  - (d) The council shall hear the appeal at the next scheduled meeting with time available, and may affirm, modify or reverse the board's decision, and may make any orders, requirements, decisions, or determinations it deems appropriate regarding the appeal;
  - (e) No decision on an appeal or variance shall have the effect of allowing a use that is not a permitted or special use in the zone district where the property is located;
  - (f) If the appeal is regarding an application in any district where the approval of a district plan is required or requested prior to development, the council shall only approve development plans if it finds that the requirements for the district plan in that district will be satisfied;

5. Appeal of planning commission decisions to the courts.
  - (a) In the case of an appeal regarding the zoning of an airport or an Airport Overlay district, the appeal shall proceed pursuant to applicable state law and shall be perfected within 60 days after the decision appealed from is filed in the office of the planning commission;
  - (b) In case of decisions appealable to the district court pursuant to MSA 462.361, the appeal shall be perfected in 60 days after the decision appealed from is filed in the office of the planning commission;
  - (c) All other appeals not otherwise provided for above shall be pursuant to MSA 606.01;
6. Appeals of heritage preservation commission decisions to council.  
Where applicable, subsection 50-37.1.O.4 shall apply of heritage commissions decisions, when appealable to city council;

**P. Security for improvements.**

1. If the provisions of this Chapter or conditions attached to a permit or approval under this Chapter require the applicant to construct or make improvements to the property, to protect the city or adjacent property owners from injury or damage, or to return the property to a stated condition following the completion of operations or construction, and those actions have not been completed, then the city shall require the applicant to post security to ensure that those improvements are made in a timely manner, and that if the applicant fails to make those improvements the city will have adequate funds on hand to complete the improvements at the applicant's expense;
2. Security shall be posted in a form acceptable to the city, which may include but are not limited to cash, a promissory note, a letter of credit issued by a financial institution acceptable to the city, or a performance bond issued by a financial institution acceptable to the city. The security shall be in an amount equal to 110 percent of the estimated cost for the city to complete the improvements;
3. The city shall release posted financial security upon confirmation by the building official that the required improvements have been constructed in accordance with all applicable design and construction standards. In the case of any improvements to be dedicated to the city, the city shall release posted financial security upon acceptance of the improvements by the city. At the discretion of the building official, partial releases of financial security may be made after construction or dedication of some but not all of the required improvements, but financial security equal to 110 percent of the estimated cost of for the city to complete the improvements shall be retained;
4. As an alternative to requiring the posting of financial security, the city may authorize the issuance of a temporary certificate of occupancy for the property, provided that the applicant signs a development agreement with the city agreeing to pay the city a specific financial penalty per month if the required improvements are not constructed by a certain date. The amount of the penalty shall be calculated so that if the applicant does not construct the improvements within one year after the required date the penalties will equal at least that amount set in accordance with Section 31-8 of this Code of the estimated cost for the city to complete the improvements.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 16, 2015)

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

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ, Sipress and President Larson -- 9

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed April 13, 2015  
Approved April 13, 2015  
DON NESS, Mayor

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### ORDINANCE NO. 10365

AN ORDINANCE AMENDING SECTION 50-20.4 OF THE DULUTH CITY CODE, 1959, AS AMENDED, USE SPECIFIC STANDARDS OF MAJOR UTILITY OR WIRELESS TELECOMMUNICATIONS FACILITY.

The city of Duluth does ordain:

Section 1. That Section 50-20.4 of the Duluth City Code, 1959, as amended, be amended as follows:

50-20.4 Industrial uses.

**A. Airport and related facilities.**

1. In the R-C district, airport and related facilities are permitted only on land owned by the public or airport authority that is used for the exclusive purpose as an airport and only on land on which an airport was established on November 19, 2010;
2. In the I-G district, airport and related facilities are permitted only on land owned by the public or airport authority that is used for the exclusive purpose as an airport;

**B. Contractor's shop and storage yard.**

In the F-5 zone, this use is permitted only in the West Superior study area;

**C. Electric power transmission line or substation.**

The following standards shall apply, in addition to regular requirements of the special use permit process:

1. General corridor criteria:
  - (a) The public need for the route and facility as specifically proposed shall be demonstrated;
  - (b) Where possible, lines shall avoid existing and potential urban density residential neighborhoods;
  - (c) The applicant shall provide an evaluation of the future needs for additional transmission lines in the same general area as the proposed route and the advisability of utilizing structures capable of expansion of transmission capacity through multiple circuiting or design modification;
  - (d) When routing transmission lines, the following shall be avoided unless no reasonable alternative exists: slopes of 20 percent grade or greater; intrusions into scenic areas such as streams, open water, valleys, overviews, ridge crests and high points; wetlands; forests, by running along the fringe rather than through the forests, and by

- utilizing open areas in order to minimize cutting, although leaving a strip at the outside for screening purposes; soils susceptible to erosion that would create sedimentation and pollution problems; areas of unstable soils that would be subject to extensive slippages; areas with high water tables, especially if construction requires excavation; open space recreation areas, including parks, golf courses, etc.; long views of lines parallel to highways and trails; airports; and parkways;
- (e) Routes shall utilize or parallel existing railroads and highway rights-of-way if possible. If such highway rights-of-way are developed the line and structures shall be sufficiently set back and screened in order to minimize view of the line and structures from the highway;
2. Design criteria:
- (a) If a proposal would unduly harm adjacent property or property values, alternatives must be evaluated to determine whether a feasible alternative to the proposal exists. Such consideration of alternatives shall include the underground placement of the line. Any consideration of feasibility of such underground lines shall include economic, technological or land characteristic factors. Economic considerations alone shall not render underground placement not feasible;
  - (b) All structures shall be located and designed in such a way that they are compatible with surrounding land uses, scenic views and existing transmission structures with regard to height, scale, material, color and design;
  - (c) Lines shall meet or exceed the National Electric Safety Code;
  - (d) Electromagnetic noise and interference with radio and television reception, as well as audible hum outside the line right of way, shall be minimized;
  - (e) The cleared portion of the right-of-way shall be kept to a minimum and where vegetation will be removed, new vegetation consisting of native grasses, shrubs and low growing trees shall be planted and maintained. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements;

**D. Junk and salvage services.**

- 1. Junk and salvage service operations and facilities shall comply with all state and Western Lake Superior Sanitary District requirements;
- 2. No junk or salvage service facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as these are defined or shown in Section 50-18.1, *Natural Resources Overlay*;
- 3. There shall be no burning of materials;

**E. Major utility or wireless telecommunications facility.**

1. Policy.

Overall policy and desired goals for special use permits for wireless telecommunications facilities. In order to ensure that the placement, construction and modification of wireless telecommunications facilities protects the city's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Section 50-20.4.E, the city has adopted an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- (a) Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility;
- (b) Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities;
- (c) Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;
- (d) Promoting and encouraging, wherever possible, the sharing and co-location of wireless telecommunications facilities among service providers;
- (e) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;
- (f) That in granting a special use permit, the city has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the city;

2. Applicability and exemptions.

- (a) Except as otherwise provided by subsection (b) below, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities after July 25, 2010, without having first obtained a special use permit for wireless telecommunications facilities. All legally permitted wireless telecommunications facilities, constructed as permitted, existing on or before July 25, 2010, shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility will require the complete facility and any new installation to comply with this Section 50-20.4.E. Any repair and maintenance of a wireless facility does not require an application for a special use permit;
- (b) The following shall be exempt from the requirements of this Section 50-20.4.E:
  - (i) The city's fire, police, department of transportation or other public service facilities owned and operated by the city or those owned and operated by county, the state or federal government;
  - (ii) Any facilities expressly exempt from the city's siting, building and permitting authority;
  - (iii) Over-the-air reception devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception;
  - (iv) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed

amateur radio and other similar non-commercial telecommunications;

- (v) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower;

3. Location standards.

(a) Wireless telecommunications facilities shall be located, sited and erected in accordance with the following priorities, (i) being the highest priority and (vii) being the lowest priority:

- (i) On existing towers or other structures on city owned properties;
- (ii) On existing towers or other structures on other property in the city;
- (iii) A new tower on city owned properties, other than property designated for park use, or in the Park and Open Space (P-1) district;
- (iv) A new tower on city owned properties designated for park use, or in the Park and Open Space (P-1) district;
- (v) A new tower on properties in Industrial-General (I-G) and Industrial-Waterfront (I-W) districts;
- (vi) A new tower on properties in form districts or mixed use districts, other than the Mixed-Use Neighborhood (MU-N) district;
- (vii) A new tower on properties in residential, Mixed-Use Neighborhood (MU-N), and Airport (AP) districts;

(b) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site;

(c) An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the city why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship;

(d) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application;

(e) The city may approve any site located within an area in the above list of priorities, provided that the city finds that the proposed site is in the best interest of the health, safety and welfare of the city and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood;

4. Other standards and requirements.

The following requirements are applicable to all wireless telecommunications facilities.

- (a) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt from appropriate state or federal agency rules or regulations, then the holder of such special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards;
- (b) To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security are changed or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed or modified rule, regulation, standard or provision, or sooner as may be required by the issuing entity;
- (c) The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings; this shall include the utilization of stealth or concealment technology as may be required by the city. Facilities located within the migratory bird flight path shall utilize stealth or concealment technology;
- (d) All utilities at a wireless telecommunications facilities site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the city, including specifically, but not limited to, the city and state building and electrical codes, where appropriate;
- (e) At a telecommunications site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion;
- (f) All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or federal government, including but not limited to the most recent editions of the ANSI Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply;

- (g) A holder of a special use permit granted under this Section 50-20.4.E shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the city or other governmental entity or agency having jurisdiction over the applicant;
- (h) The holder of a special use permit shall notify the city of any intended modification of a wireless telecommunication facility and shall apply to the city to modify, relocate or rebuild a wireless telecommunications facility;
- (i) All new towers shall be structurally designed to accommodate at least four additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
  - (i) The foreseeable number of FCC licenses available for the area;
  - (ii) The kind of wireless telecommunications facilities site and structure proposed;
  - (iii) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
  - (iv) Available space on existing and approved towers;
- (j) New guyed towers are prohibited;
- (k) Tower condition inspections shall be conducted every three years for a guyed tower and five years for monopoles and self-supporting towers. All inspections shall be documented in a report such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report shall be provided to the building official within two days of a request by the city for such records;
- (l) The owner of a proposed new tower, and the owner's successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
  - (i) Respond within 60 days to a request for information from a potential shared-use applicant;
  - (ii) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
  - (iii) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference;
- (m) No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed a height that shall permit operation without

- required artificial lighting of any kind in accordance with city, state or federal statute, law, code, rule or regulation;
- (n) No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed 75 feet in height within the migratory bird flight path;
  - (o) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law;
  - (p) Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section 50-20.4.E;
  - (q) Wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them;
  - (r) Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted;
  - (s) All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the following distances: A distance equal to the height of the proposed tower or wireless telecommunications facility structure plus ten percent of the height of the tower or structure, or the existing setback requirement of the underlying zone district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated;
  - (t) The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the city a bond, or other form of security acceptable to the city as to type of security and the form and manner of execution, in an amount that shall be set in accordance with Section 31-6(a) of the City Code, and with such sureties as are deemed sufficient by the city to assure the faithful performance of the terms and conditions of this Section 50-20.4.E and

- conditions of any special use permit issued. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit;
- (u) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain for the duration of the special use permit commercial general liability insurance for personal injuries, death and property damage, and umbrella insurance coverage in the following amounts: \$1,000,000 per occurrence/\$2,000,000 aggregate;
    - (i) For a wireless telecommunications facility on city property, the policy shall specifically include the city and its officers, employees, agents and consultants as additional insureds. The amounts of such coverage shall be established as a condition of the special use permit and shall be consistent with the liability limits provided in MSA 466.04;
    - (ii) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A;
    - (iii) The insurance policies shall contain an endorsement obligating the insurance company to furnish the building official with at least 30 days prior written notice in advance of the cancellation of the insurance;
    - (iv) Renewal or replacement policies or certificates shall be delivered to the building official at least 15 days before the expiration of the insurance that such policies are to renew or replace;
    - (v) No permit necessary to the site preparation or construction of a permitted wireless telecommunications facilities may be issued until the holder of the special use permit shall file with the city building official a copy of the required policies or certificates representing the insurance in the required amounts;
    - (vi) Notwithstanding the requirements noted in this subsection no insurance shall be required in those instances where the city, county, state or a federal agency applies for and secures a special use permit for wireless telecommunications facilities.
  - (v) All special use permits approved for wireless telecommunication facilities located on city property after July 25, 2010, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the city, and its officers, employees, agents and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action

or award of damages as may be attributable to the negligent or intentional acts or omissions of the city, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city. An indemnification provision will not be required in those instances where the city itself applies for and secures a special use permit for wireless telecommunications facilities;

5. Additional provisions for special use permit review.

In addition to those standards and criteria in Section 50-37.1 *Common procedures* and Section 50-37.10 *Special and interim use permits*, each application for a special use permit for a wireless telecommunications facility shall comply with the following additional standards:

(a) The city may hire any consultant or expert necessary to assist the city in reviewing and evaluating an application for a special use permit for a wireless telecommunications facility, including the construction and modification of the site, once permitted, and any site inspections. An applicant shall deposit with the city funds sufficient to reimburse the city for all reasonable costs of consultant and expert evaluation and consultation to the city in connection with the review of any application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be set in accordance with Section 31-6(a) of the City Code;

(b) The placement of the deposit with the city shall precede the pre-application meeting. The city will maintain a separate escrow account for all such funds. The city's consultants shall invoice the city for its services related to the application. The total amount of the funds needed for the review of the application may vary depending on the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the city, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the city before any further action or consideration is taken on the application. In the event that the amount held in escrow by the city is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be refunded to the applicant;

(c) The land use supervisor will administratively approve an application to co-locate on an existing wireless telecommunication facility upon receiving a complete application, if the application meets all the requirements of the Chapter and would not substantially change the physical dimensions of the wireless telecommunication facility. Substantial changes shall mean:

(i) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to

exceed 20 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

- (ii) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
  - (ii) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
  - (iv) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property; or
  - (v) The mounting of the proposed antenna would defeat the concealment elements of the eligible support structure; or
  - (vi) The mounting of the proposed antenna would not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment;
- (d) At any stage prior to issuing a special use permit the city may require such additional information as it deems necessary to confirm compliance with this UDC;
- (e) The city may refer any application or part of an application to any advisory, other committee or commission for a non-binding recommendation;
- (f) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the city may disapprove an application for any of the following reasons:
- (i) Conflict with safety and safety-related codes and requirements;
  - (ii) Conflict with the historic nature or character of a neighborhood or historical district;
  - (iii) The use or construction of wireless telecommunications facilities that is contrary to an already stated purpose of a specific zoning or land use designation;
  - (iv) The placement and location of wireless telecommunications facilities that would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the city or employees of the service provider or other service providers;
  - (v) Conflicts with the provisions of this Section 50-20.4.E;

- (vi) The failure of the applicant to provide additional requested information in sufficient time for the city to comply with the requirements of MSA 15.99;
  - (g) Except for necessary building permits, once a special use permit has been granted, no additional zoning approvals shall be required by the city for the wireless telecommunications facilities covered by the special use permit;
  - (h) In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters and licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the city may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site;
6. Relief and appeal.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Section 50-20.4.E may request relief, waiver or exemption in the submitted application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. The requested relief, and any relief granted by the city, may be temporary or permanent, partial or complete. The burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the city in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the city, its residents and other service providers;

**F. Manufacturing, light.**

In the MU-I district, this use is permitted provided it is related to and incidental to a permitted institutional primary use on the property;

**G. Manufacturing, hazardous or special.**

1. In permitting any such uses, the city may impose appropriate conditions and safeguards, including performance bonds, to protect the health, safety and welfare of the residents of the community and the environment;
2. All future use of the land and structures erected on the land shall be governed by and limited to the approved plans and conditions imposed by the city. Any subsequent change or addition to the plan or use shall be submitted for approval as if it were a new use;
3. Without limitation on other valid reasons for denying approval for such a use, the city may deny approval if it finds that the use would have negative environmental, health or safety impacts on the community or have little or no contiguity with existing or programmed development in the affected area;

**H. Mining, extraction, and storage.**

1. No special use permit for this use shall be issued until the city determines that:
  - (a) The city engineer has certified that the proposed extraction, removal or processing, and the proposed finished grades on the property, will not endanger the function of any public highway or utility easement of the city. If the city engineer proposes conditions and safeguards that are necessary to protect adjoining property, both city and privately owned, those conditions and safeguards have been included in the application or agreed to in writing by the applicant;
  - (b) The proposed excavation, removal or processing shall not result in the creation of any hazardous sharp pits, steep banks, soil erosion, drainage or sewerage problems or other conditions that would ultimately impair the use of the property in accordance with the general purpose and intent of the zoning regulations for that district;
  - (c) Finished slopes in the excavated area shall not exceed one foot vertical rise to two feet of run except in the case of dams or swimming pools, or where specifically approved in writing by the planning commission;
  - (d) No stagnant water shall be permitted to result from such removal, excavation or processing;
2. No earthmoving, processing or excavating equipment or trucks that are inoperative for more than 30 days shall be stored in the open on the property;
3. Upon completion of the excavation, processing or removal of earth materials in accordance with the approved proposed contour lines, the premises shall be cleared of all debris and, unless the excavated area is beneath water, a top layer of soil that will sustain the growth of turf shall be spread over the premises and shall be seeded with perennial rye or grasses;
4. All excavation, removal and processing, and the extent, limits, and time limits of each activity, shall comply with all terms and conditions in the approved special use permit;
5. The applicant shall post financial security pursuant to Section 50-37.1.P to ensure compliance with the terms and conditions of the permit, including but not limited to remediation of the site following excavation, removal and processing operations;

**I. Radio or television broadcasting tower.**

All radio or television broadcasting towers shall be located in the area of the city known as the tower farm within Section 28, Township 50, Range 14, so as to place the visual and safety impacts of the structure near similar structures, unless the applicant provides a report from a qualified specialist in the type of facility being constructed or the type of service being provided stating that it is technically not possible to construct the required structure or to provide the applicant's service from that area of the city;

**J. Solid waste disposal or processing facility.**

This use shall comply with the following standards:

1. All aspects of the solid waste disposal operation shall be setback from all property lines a minimum of 150 feet. Natural vegetation shall be retained in such setbacks where practical. All aspects of yard waste composting facilities shall be set back 100 feet from all property lines;

2. All solid waste disposal operations and facilities, including without limitation yard waste composting facilities, medical waste disposal facilities and petroleum soil disposal sites, shall comply with all state and Western Lake Superior Sanitary District requirements;
3. Solid waste disposal facilities for industrial waste shall only be allowed in I-G and I-W zones. Such facilities shall be approved in the special use permit only for specified types of industrial waste;
4. The special use permit shall specify the types of wastes authorized;
5. Solid waste disposal facilities for construction debris shall only be allowed in I-G and I-W zones'
6. Facilities for composting of yard waste shall not accept materials other than yard waste;
7. No solid waste disposal facilities, except composting facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as defined in Section 50-18.1 or Article VI;
8. All filled areas shall be covered and vegetated in accordance with an approved schedule for filling, covering and vegetating. Further, there shall be an approved plan as part of the special use permit for the vegetation and dust control of stockpiled cover material;
9. There shall be no burning of materials;
10. Facility locations shall have direct access to an arterial street and shall not access through a neighborhood. Increased traffic generated by the facility shall not have an adverse effect on the neighborhood. All roads leading to and from and within facilities located in RR-1 and MU-B zones shall be constructed with an approved dust-free material;
11. All vehicles transporting materials to or from the facility shall be covered;
12. Except for yard waste composting facilities there shall be no processing, separating or sorting of materials outside of covered structures;
13. Noise emanating from a building in which dumping, separating or other processing of material is performed shall not exceed state noise requirements at any property line that abuts property zoned other than I-G and I-W;
14. In the absence of other compliance funding required by state permitting agencies, there shall be a bond, letter of credit or other security (including an account to accept deposits of tipping fees) acceptable to the city, prior to the issuance of a permit to ensure compliance with the terms of the permit and to ensure proper closure of the facility. Such bond, letter of credit or other surety shall provide for the amount of the closure costs estimated and certified by the project engineer for each phase of operation and final closure;

**K. Storage warehouse.**

In the F-5 district, this use is only permitted in the West Superior portion of the F-5 district;

**L. Wholesaling.**

In the F-5 district, this use is only permitted in the West Superior portion of the F-5 district;

**M. Wind power facility.**

In all districts, 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 rights-of-way;
2. In the MU-B district, towers that are 50 feet or less in height are permitted by right; taller towers require a special use permit, and no tower shall be approved over 200 feet in height. In other districts where this use is listed as a permitted use, towers that are 200 feet or less in height are permitted by right; taller towers require a special use permit;
  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. All signs on a wind generator, tower, building or other structure associated with a small wind energy system visible from any public road, other than the manufacturer's or installer's identification, appropriate warning signs or owner identification, shall be prohibited;
  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. Building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure and stamped engineered drawings of the tower, base, footings and foundation as provided by the manufacturer. Wet stamps shall not be required;
  11. 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;
  12. This use shall not be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator;
  13. If a wind turbine is inoperable for six consecutive months the owner shall be notified that it must, within six months of receiving the notice, restore their system to operating condition. If the owner(s) fails to restore their system to operating condition within the six month time frame, then the owner shall be required, to remove the wind turbine from the tower for safety reasons, at its expense. If the owner(s) fails to remove the wind turbine from the tower, the city may pursue legal action to have the wind generator removed at the owner's expense.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 16, 2015)

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

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ, Sipress and President Larson -- 9

Nays: None -- 0

Passed April 13, 2015  
 Approved April 13, 2015  
 DON NESS, Mayor

ATTEST:  
 JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 10366**

AN ORDINANCE ADDING SECTION 50-17.5, AND AMENDING SECTIONS 50-13.3, 50-19.1, 50-19.8, AND 50-41.1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO AMEND THE PERMITTED USE TABLE TO ALLOW FOR A NEW AIRPORT ZONE DISTRICT.

The city of Duluth does ordain:

Section 1. That Section 50-17.5 of the Duluth City Code, 1959, as amended, is added as follows:

50-17.5 Airport District (AP).

**A. Purpose.**

The AP district is intended to protect and reserve lands dedicated for airport operations. Structures and development (e.g., parking, hangars) that are incidental to and supportive of airport operations may be permitted.

<b>TABLE 50-17.5-1: AP DISTRICT DIMENSIONAL STANDARDS</b>	
LOT STANDARDS	
Minimum lot area	0 sq. ft.
Minimum lot frontage	0 ft.
STRUCTURE SETBACKS	
Minimum depth of front yard	5 ft.
Minimum width of side yard	5 ft.
Minimum depth of rear yard	5 ft.
STRUCTURE HEIGHT	
Maximum height of building	30 ft., or Per 50-18.2, whichever is greater

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

Section 2. That Section 50-13.3 of the Duluth City Code, 1959, as amended, is amended as follows:

50-13.3 Zone districts established.

For the purposes of this Article, the city is hereby divided into districts, as follows:

Table 50-13.3-1: Zone Districts Established		
District Type	Abbreviation	District Name
Residential	R-C	Rural-Conservation

Table 50-13.3-1: Zone Districts Established

District Type	Abbreviation	District Name
	RR-1	Residential-Rural 1
	RR-2	Residential-Rural 2
	R-1	Residential-Traditional
	R-2	Residential-Urban
	R-P	Residential-Planned
Mixed Use	MU-N	Mixed Use-Neighborhood
	MU-C	Mixed Use-Commercial
	MU-I	Mixed Use-Institutional
	MU-B	Mixed Use-Business Park
	MU-W	Mixed Use-Waterfront
	MU-P	Mixed Use-Planned
Form Based	F-1	Form District 1
	F-2	Form District 2
	F-3	Form District 3
	F-4	Form District 4
	F-5	Form District 5
	F-6	Form District 6
	F-7	Form District 7
	F-8	Form District 8
	F-9	Form District 9
Special Purpose	I-G	Industrial-General
	I-W	Industrial-Waterfront
	P-1	Park & Open Space
	<u>AP</u>	<u>Airport</u>
Overlay	NR-O	Natural Resources Overlay
	A-O	Airport Overlay
	SP-O	Skyline Parkway Overlay
	HR-O	Historic Resources Overlay

Table 50-13.3-1: Zone Districts Established		
District Type	Abbreviation	District Name
	HE-O	Higher Education-Overlay

Section 3. That Section 50-19.1 of the Duluth City Code, 1959, as amended, is amended as follows:

50-19.1 General.

Table 50-19.8, use table, lists land uses and indicates whether they are allowed by right or with a special use permit, or prohibited in each base zone district. The use table also includes references to any additional regulations applicable to that use.

The following legend in Table 50-19.1 shall be referenced when using the Permitted Use Table in 50-19.8.

TABLE 50-19.1: Use Table Legend for 50-19.8	
Abbreviation	Reference
P	Permitted Use
S	Special Use
I	Interim Use
A	Accessory Use
U	Use <u>Permitted</u> in the Upper Stories of the Form District Building
<sup>1</sup>	May Require Planning Commission Review Hearing (MU-C, MU-I, and MU-W Only)
<sup>2</sup>	May Require Additional Development Standards and Planning Commission Review if in the Higher Education Overlay District (HE-O)
Notes:	
Additional restrictions may apply on uses within the natural resources, airport, historic resources, or skyline parkway overlay districts (NR-O, A-O, HR-O, SP-O)	
All permitted uses in the MU-N Zone District shall be considered as eligible for an interim use permit in R-1 or R-2 District for structures identified as a city of Duluth Local historic landmark, per Section 50-20.7.	

Section 4. That Section 50-19.8 of the Duluth City Code, 1959, as amended, is amended as follows:

50-19.8 Permitted use table.

**TABLE 50-19.8: USE TABLE**

	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-M	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		AP
<b>RESIDENTIAL USES</b>																										
<b>Household Living</b>																										
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					
Dwelling, townhouse				S	P <sup>2</sup>	P	P <sup>2</sup>				P <sup>1</sup>	P														
Dwelling, multi-family					P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	U	P	U	P	P	P	U	P	P					
Dwelling, live-work							P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	P	P	P	P	P	P		P	P					
Manufactured home park				S	S <sup>2</sup>	P	S <sup>2</sup>																			
<b>Group Living</b>																										
Co-housing facility				S	S <sup>2</sup>	P	P <sup>2</sup>					P														
Residential care facility/assisted living (6 or fewer )		P	P	P	P <sup>2</sup>	P	P <sup>2</sup>					P	U	P	U	P	P	U	U	P	P					
Residential care facility/assisted living (7 or more)				S	P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	U	P	U	P	P	U	U	P	P					
Rooming house					S <sup>2</sup>		P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	U	P	U	P	P	U	U	P	P					
<b>PUBLIC, INSTITUTIONAL AND CIVIC USES</b>																										
<b>Community and Cultural Facilities</b>																										
Bus or rail transit station							P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P	P	P	P	P	P	P	P	P	P					
Cemetery or mausoleum	S	S	S	S	S <sup>2</sup>	P	S <sup>2</sup>	S	S	S														S		
Club or lodge (private)					S <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	P	P	P	P	P	P	P	P			S			
Government building or public safety facility		P	P	S	P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P	P	P <sup>1</sup>	P	P	P	P	P	P	P	P	P	S	S	S	P		
Museum, library or art gallery				S	S <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>		S	P <sup>1</sup>	P	P	P	P	P	P	P	P	P			S			

**TABLE 50-19.8: USE TABLE**

	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-M	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		AP
Park, playground or forest reserve	P	P	P	P	P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	P	P	P	P	P	P	P	P	P			P		
Religious assembly, small (less than 50,000 sq. ft.)		P	P	S	P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	S	P <sup>1</sup>	P	P	P	P	P	P	P	P	P					50-20.2.C	
Religious assembly, large (50,000 sq. ft. or more)		S	S	S	S <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	S	P <sup>1</sup>	P	P	P	P	P	P	P	P	P					50-20.2.C	
<b>Educational Facilities</b>																										
Business, art or vocational school							P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P	P	P	P	P	P	P	P	P						
School, elementary		P	P	P	P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>			P	U	P	U	P	P	U	U	U					50-20.2.D	
School, middle or high		S	S	S	S <sup>2</sup>	P	S <sup>2</sup>	S <sup>1</sup>	S <sup>1</sup>			P	U	P	U	P	P	U	U	U					50-20.2.D	
University or college									P <sup>1</sup>			P			U	P	P	U	U	U						
<b>Health Care Facilities</b>																										
Hospital									P <sup>1</sup>																	
Medical or dental clinic					S <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P	P	P	P	P	P	P	P	P					50-20.2.B	
Nursing home					P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P		P		P										
Other institutional support uses not listed in this table									P <sup>1</sup>																	
<b>COMMERCIAL USES</b>																										
<b>Agriculture and Animal-Related</b>																										
Agriculture, general	P	P																							50-20.3.B	
Agriculture, urban		P	P	P	P <sup>2</sup>	P	P <sup>2</sup>					P														
Kennel	S	S						S	S	P		P														
Riding stable	S	S	S			P					S												S			
Veterinarian or animal hospital	S	S			P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P	P	P	P	P	P								50-20.3.T	
<b>Food, Beverage and Indoor Entertainment</b>																										
Adult entertainment establishment																					P				50-20.3.A	
Convention or event center								P <sup>1</sup>		P	P <sup>1</sup>	P				P	P		P	P	P					50-20.3.H

**TABLE 50-19.8: USE TABLE**

	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-M	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		AP
Indoor entertainment facility								P <sup>1</sup>		P	P <sup>1</sup>	P		P		P	P		P	P	P					
Restaurant (less than 5,000 sq. ft.)					S <sup>2</sup>	S	S <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	S	P	P	P	P	P	P	P	P	P					50-20.3.Q
Restaurant (5,000 sq. ft. or more)						S		P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	S	P	P	P	P	P	P	P	P	P					50-20.3.Q
Theater							S <sup>2</sup>	P <sup>1</sup>			P <sup>1</sup>	P		P		P	P		P	P	P					
<b>Lodging</b>																										
Hotel or motel							S <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P		P		P	P		P	P	P					
Bed and breakfast				S	P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P		P		P		P								50-20.3.F
Seasonal camp or cabin	P	P				P					P <sup>1</sup>													S		50.20.3.S
Vacation dwelling unit		I	I	I	I <sup>2</sup>	I	I <sup>2</sup>										I									50-20.3.U
<b>Offices</b>																										
Bank							S <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	S	P	P	P	P	P	P	P	P	P	P					50-20.3.E
Office					S <sup>2</sup>		P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P	P	P	P	P	P	P	P	P	P					50-20.3.M
Data center							S <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	S	P	U	U	U	U	U	U	U	U	U	P				
<b>Outdoor Recreation &amp; Entertainment</b>																										
Golf course		S	S			P																		P		
Marina or yacht club											P <sup>1</sup>												S	S		
Recreational vehicle park	S	S	S								S													S		50.20.3.P
Other outdoor entertainment or recreation use not listed		S						S		S	S															50.20.3.N
<b>Personal Services</b>																										
Business park support activities										P		P														
Preschool		S	S	S	P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	P	P	P	P	P	S	P	S						
Daycare facility, small (14 or fewer)	P	P	P	P	P <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	P	P	P	P	P	P	P	P					50-20.3.I	
Daycare facility, large (15 or more)		S	S	S	S <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	P	P	P	P	P	S	P	S					50-20.3.I	
Funeral home or crematorium					S <sup>2</sup>		S <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P		P		P		P		P			P					
Mini-storage facility		S								P											P	P			50-20.3.L	

**TABLE 50-19.8: USE TABLE**

	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-U	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	
Personal service and repair, small (less than 10,000 sq. ft.)						P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P	P	P	P	P	P	P	P	P	P				
Personal service and repair, large (10,000 sq. ft. or more)							S <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P		P		P		P		P			P		
<b>Retail Sales</b>																									
Adult bookstore																							P		Chapter 5
Building materials sales								S		P		P													50-20.3.G
Garden material sales		S						P <sup>1</sup>				P				P									
Grocery store, small (less than 15,000 sq. ft.)						P	P <sup>2</sup>	P <sup>1</sup>			P <sup>1</sup>	P		P		P	P	P	P	P					50-20.3.K
Grocery store, large (15,000 sq. ft. or more)								P <sup>1</sup>				P													50-20.3.K
Retail store not listed, small (less than 15,000 sq. ft.)					S <sup>2</sup>	P	P <sup>2</sup>	P <sup>1</sup>	P <sup>1</sup>		P <sup>1</sup>	P	P	P	P	P	P	P	P	P	P				50-20.3.R
Retail store not listed, large (15,000 sq. ft. or more)								P <sup>1</sup>			P <sup>1</sup>	P		P		P	P		P	P					50-20.3.R
<b>Vehicle-Related</b>																									
Automobile and light vehicle repair and service							S <sup>2</sup>	P <sup>1</sup>		P		P		P		P	P	P					P		50-20.3.C
Automobile and light vehicle sales, rental, or storage								P <sup>1</sup>		P													P		50-20.3.D
Filling station					S <sup>2</sup>	P	S <sup>2</sup>	P <sup>1</sup>		P	P <sup>1</sup>	P		P		P	P	P				P	P		50-20.3.J
Parking lot or parking structure (primary use)								P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	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			

**TABLE 50-19.8: USE TABLE**

	Residential						MU-N	Mixed Use					Form									Special				Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P		MU-C	MU-I	MU-B	MU-M	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	AP		
<b>INDUSTRIAL USES</b>																											
<b>Industrial Service</b>																											
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 <sup>1</sup>	P	P												P	P			
Industrial services										P													P	P			
<b>Manufacturing and Mining</b>																											
Manufacturing, light									P <sup>1</sup>	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	S			50-20.4.H
Water-dependent manufacturing, light or heavy																								P			
<b>Transportation-Related</b>																											
Airport and related facilities	S																						P		P		50-20.4.A
Railroad yard or shipyard and related facilities																							P	P			
Truck freight or transfer terminal										P													P	P			
<b>Utilities</b>																											
Electric power or heat generation plant																							P	P			

**TABLE 50-19.8: USE TABLE**

	Residential						MU-N	Mixed Use					Form									Special				Use-Specific Standards			
	R-C	RR-1	RR-2	R-1	R-2	R-P		MU-C	MU-I	MU-B	MU-M	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	AP				
Electric power transmission line or substation	S	S	S	S	S <sup>2</sup>	P	S <sup>2</sup>	S	S	S	S	P	S	S	S	S	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 <sup>2</sup>	P	S <sup>2</sup>	S	S	S	S	P	S	S	S	S	S	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			
Water or sewer pumping stations/reservoirs	S	S	S	S	S <sup>2</sup>	P	S <sup>2</sup>	S	S	S	S	P	S	S	S	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
<b>Waste and Salvage</b>																													
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
<b>Wholesale Distribution and Storage</b>																													
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			

**TABLE 50-19.8: USE TABLE**

	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-U	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		AP
<b>ACCESSORY USES</b>																										
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	A					50-20.5.F
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	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	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	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	A	50-20.5.K
<b>TEMPORARY USES</b>																										

**TABLE 50-19.8: USE TABLE**

	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-U	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		AP
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	A	50-20.6.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	A	50-20.6.B
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	A	A	50-20.6.C
Temporary real estate sales office				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A					50-20.6.D
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	A	
<b>FORM DISTRICT BUILDING TYPES</b>																										
Main Street Building I													P	P												
Main Street Building II															P	P	P	P								
Main Street Building III																			P	P						
Corridor Building I														P												
Corridor Building II																P	P									
Lakefront Corridor Building																					P					
Corridor Building III																					P					
Cottage Commercial I														P				P								
Cottage Commercial II																P										
Iconic Building														P		P	P	P		P						

Section 5. That Section 50-41.1 of the Duluth City Code, 1959, as amended, is 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 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.

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 1,428 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.

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 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 16, 2015)

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

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ, Sipress and President Larson -- 9

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed April 13, 2015  
Approved April 13, 2015  
DON NESS, Mayor

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