

## MOTION TO SPLIT ORDINANCE 18-014

BY COUNCILORS SIPRESS AND RUSS:

We move to split Ordinance 18-014 to allow for separate city council votes on amending Section 50-37.10.E, criteria for interim use permits, to increase the maximum number of vacation dwelling units that may be permitted and amending Section 50-37.10.E, criteria for interim use permits, limiting the number a single owner or entity shall have.. The two parts of Ordinance 18.014 are attached hereto as Part A and Part B

STATEMENT OF PURPOSE: The purpose of this motion is to split Ordinance 18-014 to allow city councilors to vote separately on proposed changes to Chapter 50 of the Duluth City Code, as amended, also known as the Unified Development Chapter (UDC), concerning accessory home share and vacation dwelling regulations

Part A.

**..Title**

AN ORDINANCE AMENDING SECTIONS 50-37.10.E, CRITERIA FOR INTERIM USE PERMITS, TO INCREASE THE MAXIMUM NUMBER OF VACATION DWELLING UNITS THAT MAY BE PERMITTED.

**..Body**

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-37.10 of the Duluth City Code, 1959, as amended, be amended as follows:

50-37.10      Special use or interim use permit.

---

This Section applies to all applications for those special uses listed for specific zone districts in Table 50-19.8. It also applies to applications for interim uses that will be authorized for only a specified period of time. This Section is intended to comply with the provisions of MSA 462.3595 and 462.3597 as amended, and shall be interpreted to comply with those provisions wherever possible.

A.      Applications.

An application for a special use or interim use shall be filed pursuant to Section 50.37.1.B;

B.      Procedure.

1. The planning commission shall review the application, shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H. In the case of a special use permit, planning commission shall make, and in the case of an interim use permit, council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The commission or council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.2.P, a development agreement regarding the design, construction, and operation of the special use, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to met;
2. If the permit is approved or approved with modifications, all future use of the land and structures erected on the land pursuant to the permit shall comply with its terms and conditions. The city may require that some or all of the documents presented by the applicant in support of the application, including without limitation any site plan, landscape plan, building elevation drawings, or development agreement, be recorded as a city public document prior to the issuance of any building permit. A decision not to require recording of some or all of those documents shall not relieve the applicant or any successors or assigns in title to the

property from the duty to comply with all terms and conditions of the permit. Constructing any improvement or beginning any activity authorized by the permit shall constitute the applicant's agreement to conform to all terms and conditions of the permit;

3. The city may approve an application or approve it with modifications, with a condition that if a structure authorized by the permit is not constructed by a specified date, or if an activity authorized by the permit is not begun by a specified date, the permit shall terminate. If that condition is attached, the city shall notify the applicant and the property owner when a permit has lapsed, and that decision may be appealed pursuant to Section 50-37.1.O;
4. The city may approve an application or approve it with modifications, with a condition that abandonment of an activity authorized by a permit longer than a stated period terminates the permit, and any future reactivation of the use will require the filing and approval of a new permit application;
5. The commission may not approve or approve with modifications, a special use permit valid only for a specific period of time, but must instead recommend to council an interim use permit pursuant to subsection D below for that purpose;
6. Any approved permit shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the city;

C. Criteria for special use permits.

The planning commission shall approve the application or approve it with modifications if the commission determines that the application meets the following criteria:

1. The application is consistent with the comprehensive land use plan;
2. The application complies with all applicable provisions of this Chapter, including without limitation any use-specific standards applicable to the proposed use, development or redevelopment, and is consistent with any approved district plan for the area;

Without limiting the previous criteria, the commission may deny any application that would result in a random pattern of development with little contiguity to existing or programmed development or would cause anticipated negative fiscal or environmental impacts on the community;

D. Interim use permit.

1. As an alternative to a special use permit, MSA 462.3597 authorizes the city to issue an interim use permit that authorizes a special use to exist until a specified date or until an amendment to this Chapter authorizes or prohibits that use. An applicant may apply for an interim use permit, and

the commission may decide to recommend an interim use permit even if the application is for a special use permit;

2. An application for an interim use, or a decision to approve an interim use, shall be subject to the same procedures used for special uses, and the commission shall have all the powers described in Section 50-37.10.B.1 above, except that the commission shall forward a recommendation to council for action, and final approval of an interim use shall be by council resolution rather than commission action. The council may require financial security pursuant to Section 50-37.1.P to ensure that any improvements related to the interim use will be removed at the end of the interim use period;
3. An application to extend the period of an interim use permit shall be treated as major modifications of the initial permit and shall be processed pursuant to Section 50-37.1.N;

E. Criteria for interim use permits.

In addition to the criteria in subsection C above, the council shall only approve an interim use permit, or approve it with conditions, if it determines that:

1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location;
2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures or improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.
3. ~~No more than 60 permits may be issued for either~~ The maximum number of vacation dwelling units or accessory vacation dwelling units that may be permitted shall not exceed 0.5% of the total owner occupied housing units in Duluth.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.  
(Effective date: \_\_\_\_\_, 2018)

Part B.

**..Title**

AN ORDINANCE AMENDING SECTIONS 50-37.10.E, CRITERIA FOR INTERIM USE PERMITS, TO INCREASE THE MAXIMUM NUMBER OF VACATION DWELLING UNITS THAT MAY BE PERMITTED.

**..Body**

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-37.10 of the Duluth City Code, 1959, as amended, be amended as follows:

50-37.10      Special use or interim use permit.

---

This Section applies to all applications for those special uses listed for specific zone districts in Table 50-19.8. It also applies to applications for interim uses that will be authorized for only a specified period of time. This Section is intended to comply with the provisions of MSA 462.3595 and 462.3597 as amended, and shall be interpreted to comply with those provisions wherever possible.

A.      Applications.

An application for a special use or interim use shall be filed pursuant to Section 50.37.1.B;

B.      Procedure.

1. The planning commission shall review the application, shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H. In the case of a special use permit, planning commission shall make, and in the case of an interim use permit, council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The commission or council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.2.P, a development agreement regarding the design, construction, and operation of the special use, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to met;
2. If the permit is approved or approved with modifications, all future use of the land and structures erected on the land pursuant to the permit shall comply with its terms and conditions. The city may require that some or all of the documents presented by the applicant in support of the application, including without limitation any site plan, landscape plan, building elevation drawings, or development agreement, be recorded as a city public document prior to the issuance of any building permit. A decision not to require recording of some or all of those documents shall not relieve the applicant or any successors or assigns in title to the

property from the duty to comply with all terms and conditions of the permit. Constructing any improvement or beginning any activity authorized by the permit shall constitute the applicant's agreement to conform to all terms and conditions of the permit;

3. The city may approve an application or approve it with modifications, with a condition that if a structure authorized by the permit is not constructed by a specified date, or if an activity authorized by the permit is not begun by a specified date, the permit shall terminate. If that condition is attached, the city shall notify the applicant and the property owner when a permit has lapsed, and that decision may be appealed pursuant to Section 50-37.1.O;
4. The city may approve an application or approve it with modifications, with a condition that abandonment of an activity authorized by a permit longer than a stated period terminates the permit, and any future reactivation of the use will require the filing and approval of a new permit application;
5. The commission may not approve or approve with modifications, a special use permit valid only for a specific period of time, but must instead recommend to council an interim use permit pursuant to subsection D below for that purpose;
6. Any approved permit shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the city;

C. Criteria for special use permits.

The planning commission shall approve the application or approve it with modifications if the commission determines that the application meets the following criteria:

1. The application is consistent with the comprehensive land use plan;
2. The application complies with all applicable provisions of this Chapter, including without limitation any use-specific standards applicable to the proposed use, development or redevelopment, and is consistent with any approved district plan for the area;

Without limiting the previous criteria, the commission may deny any application that would result in a random pattern of development with little contiguity to existing or programmed development or would cause anticipated negative fiscal or environmental impacts on the community;

D. Interim use permit.

1. As an alternative to a special use permit, MSA 462.3597 authorizes the city to issue an interim use permit that authorizes a special use to exist until a specified date or until an amendment to this Chapter authorizes or prohibits that use. An applicant may apply for an interim use permit, and

the commission may decide to recommend an interim use permit even if the application is for a special use permit;

2. An application for an interim use, or a decision to approve an interim use, shall be subject to the same procedures used for special uses, and the commission shall have all the powers described in Section 50-37.10.B.1 above, except that the commission shall forward a recommendation to council for action, and final approval of an interim use shall be by council resolution rather than commission action. The council may require financial security pursuant to Section 50-37.1.P to ensure that any improvements related to the interim use will be removed at the end of the interim use period;
3. An application to extend the period of an interim use permit shall be treated as major modifications of the initial permit and shall be processed pursuant to Section 50-37.1.N;

E. Criteria for interim use permits.

In addition to the criteria in subsection C above, the council shall only approve an interim use permit, or approve it with conditions, if it determines that:

1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location;
2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures or improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.
3. No more than 60 permits may be issued for either vacation dwelling units or accessory vacation dwelling. No single owner or entity shall have more than three vacation dwelling unit or three accessory vacation dwelling unit permits

Section 2. That this ordinance shall take effect 30 days after its passage and publication.  
(Effective date: \_\_\_\_\_, 2018)