



Planning & Development Division
Planning & Economic Development Department

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Date: August 17, 2021
To: Planning Commission
From: Steven Robertson, Senior Planner
RE: PI 21-127, UDC Text Amendment, Revocation of Planning Commission Permit

The Planning Staff are recommending a change to the UDC related to revocation of special use permits, interim use permits, and variances. The amended language provides an additional enforcement tool for the Land Use Supervisor and staff to more easily, speedily, and efficiently enforce the zoning code and ensure that conditions attached to Planning Commission approval have been implemented.

Recommendation:

Staff recommends that the Planning Commission discuss the items and suggests changes or edits as appropriate, to be brought back to the Plan

General Development, Development Process 1 Ensure that land use regulation sets clear expectations for development, redevelopment, and protection of Duluth's natural, cultural, economic, and social assets.

General Development, Development Process 2 In order to keep the regulatory burden reasonable and equitable, the City will implement the Comprehensive Plan through cooperation, incentives, and education, in addition to regulation.

50-39 ENFORCEMENT AND PENALTIES.

This Section describes how this Chapter will be enforced, as well as the penalties for violation of the Chapter. This Section is intended to comply with the provisions of MSA 462.362 as amended, and shall be interpreted to comply with those provisions wherever possible. All violations of this Chapter are hereby declared to be public nuisances.

50-39.1 Violations.

A. Violations defined.

It shall be a violation of this Chapter, and a public nuisance, to do any of the following:

1. Activities inconsistent with UDC.
To erect, construct, reconstruct, remodel, alter, maintain, expand, move or use any building, structure or sign, or to engage in development or subdivision of any land inconsistent with this Chapter, or to fail to obtain required approvals for any of those activities;
2. Use of nonconformities inconsistent with UDC.
To use, occupy, create, expand, replace, or change a nonconforming use, structure, lot or sign except in compliance with this Chapter;
3. Making lots or setbacks nonconforming.
To reduce or diminish the lot area, setbacks, or open space on any parcel of land below the minimum required by this Chapter;
4. Increasing intensity of use.
To increase the intensity of use of any land or structure, except in accordance with the procedural and substantive standards of this Chapter;
5. Activities inconsistent with approval or permit.
To engage in any development, redevelopment, use, construction, remodeling or other activity inconsistent with the terms and conditions of any permit or approval issued by the city;
6. Violation of stormwater permits.
In the case of violation of a stormwater permit, the permittee shall take the following actions prior to imposition of a penalty, if any, by the city:
 - (a) Submit reports of noncompliance with requirements contained in a compliance schedule of the permit in writing within 14 days after the compliance schedule deadline. Reports of noncompliance shall include a description of the noncompliance, its cause, the steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance and the effect of the noncompliance on the permittee's ability to meet remaining deadlines;
 - (b) Take all reasonable steps to minimize or prevent any adverse impacts on the waters of the state resulting from noncompliance with a stormwater permit;
7. Violations related to wireless telecommunications facilities.
Under the following circumstances, the city may declare the wireless telecommunications facility a public nuisance and take all available enforcement actions including, but not limited to, revocation of the special use permit:
 - (a) The wireless telecommunications facility has been abandoned. A facility is deemed abandoned if it is not used as wireless telecommunications facility for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case repair or removal shall commence within 90 days;
 - (b) The wireless telecommunications facility fall into a state of disrepair and creates a health or safety hazard;
 - (c) The wireless telecommunications facility has been located, constructed, repaired, maintained or modified without first obtaining the required special use permit, or in any manner that constitutes a violation of Section 50-20.4.D;
 - (d) For a violation of the conditions and provisions of the special use permit;

8. Failure to remove signs.
To fail to remove any sign installed, created, erected or maintained in violation of this Chapter, or for which a required sign permit was not obtained, or for which the sign permit has lapsed, or for which the business or use for which the sign was permitted has been closed for more than one year;
9. Failure to maintain.
To fail to maintain any property, including without limitation (a) any dwellings, dwelling units, housekeeping units, or rooming units, and (b) any sign, and (c) any required landscaping or screening in the condition required by this Chapter;
10. Failure to replace.
To fail to replace any site feature or element required by this Chapter if that site feature is removed, or to fail to replace any required landscaping or screening that dies or becomes diseased;
11. Unauthorized actions involving historic resources.
To fail to obtain required approvals before construction, remodeling, repainting or altering a historic preservation landmark or a structure in a historic preservation district identified in Section 50-18.3;
12. Violations related to vacation dwelling units, accessory vacation dwelling units or accessory home shares.
To use any lot, structure, dwelling or dwelling unit as a vacation dwelling unit, accessory vacation dwelling unit, or accessory home share without the approvals or permits required by this chapter, in violation of the provisions of this chapter, or in violation of any other applicable provisions of city code; (Ord No. 10466, 4-11-2016, §4; 10590, 9-24-2018, §1)

B. Continuing violations.

Each day that a violation occurs or remains uncorrected after receipt of notice of the violation from the city shall constitute a separate violation.

50-39.2 Enforcement.

A. Responsibility.

The building official is responsible for enforcing this Chapter. No permit or approval for the construction, alteration or demolition of any building, or for the use of land, shall be issued if the building as proposed to be constructed, altered or demolished would be a violation of this Chapter;

B. Authorization for inspections.

For the purposes of enforcing this Chapter, the building official is authorized to enter, examine and survey, between the hours of 8:00 a.m. and 5:00 p.m., any property subject to the regulations of this Chapter. Prior to making an inspection based on a possible violation, the building official shall inform the owner of the property to be inspected, or their agent, of the date and time of the inspection in writing at least four days prior to the inspection. Advance notice need not be given in the case of routine inspections. After written notice has been given, the owner or occupant of the property to be inspected, or the person in charge of that property, shall give the building official free access to the property between 8:00 a.m. and 5:00 p.m., for the purpose of inspection. The inspection shall not have for its purpose the harassment of the owner or occupant and shall be made so as to cause the least amount of inconvenience to the owner or occupant of the property consistent with the efficient performance of the duties of the building official. Nothing in this Section 50-39.2.B shall be construed to prohibit the entry of the building official:

1. At any time when in the opinion of the building official an actual emergency tending to create an immediate danger to public health and safety exists;
2. At any time when an inspection is requested by the owner or occupant;

C. Enforcement tools.

The city may use any of the following tools and powers to enforce this Chapter, in any order, and the use of one tool or power shall not restrict the city from using an additional tool or power to remedy the same violation.

1. Order requiring compliance.

- (a) The city may issue a written order identifying the violation(s) of this Chapter and requiring that the property owner or occupant bring the property into compliance with this Chapter, at the owner or occupant's expense, within a specified time. The notice shall state what actions are necessary to bring the property into compliance;
- (b) The time allowed for correction shall be not less than 14 days, except that (i) if the order identifies a threat to public health or safety then a compliance shorter than 14 days may be required, and (ii) if the order involves a violation of the provisions of the Airport Overlay district or the sign regulations in Section 50-27, or the vacation dwelling unit, accessory vacation dwelling unit, or accessory home share regulations in Sections 50-19 and 50-20, the time for compliance shall be not less than ten days. In determining a reasonable time for performance the building official shall consider the nature and extent of the work involved, the season of the year, the existence of any immediate danger to public health and safety, and any other pertinent factors. The building official may extend the time for compliance in writing for good cause shown;
- (c) The property may continue to be used for occupancy or habitation pending compliance with the order unless the notice identifies an imminent threat to public health or safety and requires that occupancy or habitation be limited or end by a certain date;
- (d) When an order to correct a violation of this Chapter has been issued, the building official is authorized to enter and re-inspect the property subject to the order for the purpose of determining compliance with the order. The owner or occupant of the property, or the person in charge of the property, shall give free access to the property for the purpose of the inspection;
- (e) Every occupant of property shall give the owner of the property, or his agent or employee, access to any part of the property at all reasonable times for the purpose of making repairs or alterations required to comply with the order;
- (f) The city shall not charge a fee for inspections made in response to complaints or to confirm compliance with an order;

2. Enforcement of wireless telecommunications facility violations.

- (a) If the city determines that the wireless telecommunication facility is a public nuisance, the building official shall notify the holder of the special use permit in writing and order the correction of the violation or removal of the facility;
- (b) If the order requires removal of the wireless telecommunication facility the holder of the special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within the deadline provided for in the order to remove. If the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so if the land use supervisor determines that the retention of those access roads would promote the purposes of this Chapter;
- (c) Notwithstanding anything in this subsection to the contrary, the building official may approve a temporary extension of the order, for no more 90 days, during which time a suitable plan for the repair, sale, removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the city, and an agreement to such plan shall be executed by the holder of the special use permit and the city. If such a plan is not developed, approved and executed within the 90 day time period, then the city may exercise all available legal rights;

- (d) The holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with an order of the building official or any provision of Section 50-20.4.D;
 - (e) If compliance or substantial progress towards compliance with the order has not been made by the compliance deadline, the city may exercise any legal remedies available to secure compliance with the order at the sole expense of the owner or special use permit holder;
3. Enforcement of Vacation Dwelling Unit, Accessory Vacation Dwelling Unit or Accessory Home Share Violations
- (a) If the city determines that a vacation dwelling unit, accessory vacation dwelling unit, or accessory home share is a public nuisance, operating without approvals or permits required by this Chapter, or operating in violation of this Chapter or any other applicable provisions of city code, the city shall notify the holder of the interim use permit or home share permit in writing and order the correction of the violation in accordance with this Section;
 - (b) Any vacation dwelling unit, accessory vacation dwelling unit, or home share permit issued pursuant to this chapter may be suspended for up to six (6) months or revoked by the city for good cause. If the city intends to suspend or revoke a permit, the land use supervisor shall issue written notice of such intent to the permit holder at least twenty-one (21) days before such suspension or revocation is set to begin. The permit holder may then demand a hearing before the land use supervisor. Such demand shall be made in writing to the land use supervisor within ten (10) days following issuance of the notice;
 - (c) For purposes of this section, "good cause" shall include, but not be limited to:
 - (i) failure to remedy a violation noted pursuant to 50-39.2.C.1;
 - (ii) issuance of three or more violation notices under section 50-39.2.C.1 within a single permit cycle;
 - (iii) the occurrence of one or more nuisance events as defined in Duluth City Code § 40-10;
 - (iv) use or operation of the dwelling unit or home share in a manner that imperils public health, safety or welfare, including, but not limited to, violation of this Chapter or any other provision of local, state, or federal law intended to protect the occupants of the dwelling or the surrounding neighborhood and community;
 - (d) Any permit holder whose license is suspended or revoked by the land use supervisor may appeal the final suspension or revocation to the Planning Commission in accordance with 50-37.1.O.
4. Withholding permits or approvals.
- The city may refuse to process applications for permits and approvals under this Chapter if the application concerns a property where (a) the building official has determined to be in violation of the Chapter, (b) the city has issued an order requiring that the violation be corrected, and (c) the owner occupant has not remedied the violation within the time stated in that order, unless the application is for the purposes of remedying the existing violation;
5. Prevention of violation.
- If the city becomes aware that a building, structure, sign or site feature is about to be constructed in violation of this Chapter, the city may take appropriate action to prevent the violation. The city's action may include but is not limited to withdrawal of any permits or approval related to the construction or activity that would constitute a violation;
6. Abatement.
- (a) The city may take action to abate or remove the violation, and to charge the costs of the abatement or removal to the property owner if the property owner or occupant of a property fails to comply with an order to correct a violation of this Chapter within the time specified in the order, as that time may be extended by the building official in writing for good cause shown, and the building official determines that the continuance of the violation creates a threat to public health or safety;

- (b) Following the abatement or removal, the city shall issue an order that the owner of the land on which the violation occurred pay to the city the documented costs of the abatement or removal with 30 days;
 - (c) If the owner of the land does not pay the documented costs of abatement or removal to the city within 30 days, those costs may be assessed against the land on which the violation occurred, and the city shall provide the owner of the land written notice of the assessment. Unless the assessment is paid within 90 days from the service of notice on the property owner, the sum shall bear interest at the rate set in accordance with Section 31-8 of this Code, per annum from the date the cost was incurred until paid, and shall be collected in the same manner as are general taxes;
 - (d) The city shall end the process of assessing abatement and removal costs against the land, or shall cancel the assessment if it has been finalized, upon receipt of payment in full of all costs documented in the order and all accrued interest on those costs;
7. Administrative citations.
The city may issue an administrative citation pursuant to Chapter 12 of the City Code and may take all actions authorized;
 8. Court actions.
The city may enforce this Chapter by filing an action in law or equity in any court of competent jurisdiction, including without limitation a request for a declaratory judgment, a request for a restraining order or a temporary or permanent injunction, or a request for money damages based on the penalties for violation established in this Chapter or elsewhere in the City Code. The decision as to whether to seek enforcement in the courts, and what type of enforcement to seek, shall be at the discretion of the city;
 9. Nuisance abatement.
If the building official determines that the violation constitutes a public nuisance under state law, the city may use all powers granted by state law to abate public nuisances;
 10. Other enforcement powers.
The city may enforce this Chapter through any other powers granted to the city by state law;

D. Notices and orders.

1. Any notice and order under Section 50-39.2.C.1 shall be served upon the owner or the owner's agent and the occupant as the case may require. In the case of a notice involving the sign regulations in Section 50-27, the notice shall also be served on the owner of the sign or the person or entity that erected or caused the erection of the sign;
2. The notice shall be deemed to be properly served upon those individuals or entities identified in subsection 1 if a copy of the notice is:
 - (a) Served personally; or
 - (b) Sent by United States mail, postage prepaid, to the last known address of the owner, occupant or agent shows in the city records; or
 - (c) Posted in a conspicuous place in or about the property affected by the notice; or
 - (d) Served by any other method authorized or required by state law;
3. Any notice served pursuant to subsection 1 shall automatically become an order if a written petition for a hearing is not filed with the building official within 14 days after the notice is served. An order is final unless an appeal is filed pursuant to Section 50-37.1.O;
4. If the building official finds that an emergency exists that requires immediate action to protect the public health and safety, the building official may, without notice or hearing, issue an order declaring that emergency and requiring those actions that the building official deems necessary to meet the emergency notwithstanding the other provisions of this Chapter, and that order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but may file with the building official a request for a hearing following compliance with the order.

50-39.3 Revocation of Special Use Permit, Interim Use Permit, or Variance

In the event the land use supervisor determines that property for which a special use permit, interim use permit, or variance has been approved is being used in violation of the terms or conditions of the permit or variance, the Planning Commission may revoke the permit or variance in accordance with the following procedure:

- A. The land use supervisor shall cause written notice of pending revocation to be served in accordance with the process set forth in Section 50-39.2.D, "Notices and orders." The notice of pending revocation shall specify the terms or conditions of the permit or variance which are being violated, state the nature of the violation or violations, and specify the date on which the pending revocation will be effective. The effective date of the revocation shall be no sooner than 14 calendar days after the date of the notice. The notice shall be served upon the following: (a) the owner of the property to which permit or variance applies at the address of such owner as listed on the records of the St. Louis County Auditor; (b) To the applicant for the permit or variance; (c) to the occupant of the property.
- B. The owner, applicant, or occupant may appeal the notice of pending revocation by filing an appeal of the land use supervisor's decision with the planning commission consistent with the requirements of Section 50-37.1.O, "Appeals."
 1. During the planning commission hearing to consider the appeal, the land use supervisor shall present evidence supporting the revocation of the permit or variance. The owner, applicant, or occupant of the site, acting as an "appellant", shall have the opportunity to present testimony, evidence, and argument in opposition to such revocation.
 2. The planning commission shall determine whether the terms or conditions of the permit or variance have been violated and whether the permit or variance should be revoked. The Commission may approve or deny the revocation of the permit or variance and shall make findings of fact and conclusions setting forth the basis of its decision. The commission shall also have the authority to continue the appeal hearing to allow either the land use supervisor or the appellant to submit additional information to the commission.
 3. After the planning commission renders its decision, the land use supervisor shall mail a notice of the commission's decision to the appellant. The decision of the planning commission shall be final unless a further appeal is filed pursuant to the requirements of Section 50-37.1.O, "Appeals".

50-39.3.4 Penalties.

- A. The owner of any property where the violation of this Chapter occurs, and any person violating this Chapter, shall be guilty of a misdemeanor and may be fined as provided in Section 1-7 or Section 12-6 of the City Code;
- B. In the case of violation of a stormwater permit, if the contractor or owner fails to install or correct deficiencies related to erosion or sediment control BMPs ordered by the city engineer, the city engineer may withhold payment from related work or levy a fine until adequate BMPs are installed by the contractor or owner. When the contractor or owner fails to conduct quality control or adequately inspect BMPs to ensure function, or fails to take action ordered by the city engineer to remedy erosion or sediment control problems, the city engineer will issue a written order to the contractor and owner. The contractor or owner shall respond within 24 hours with sufficient personnel, equipment, and materials and conduct the required remedial work or be subject to a per calendar day deduction or fine for noncompliance, which shall be set in accordance with Section 31-8 of this Code;
- C. Penalties shall be waived if the violation is corrected within the time stated in any enforcement notice or order.