



Planning & Development Division
Planning & Economic Development Department
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MEMORANDUM

DATE: November 7, 2023
TO: Planning Commission members
FROM: Kyle Deming, Senior Planner
SUBJECT: Vacation Dwelling Units exemption expansion – additional options (PL23-178)

The attached memo was presented to the Planning Commission at their regular meeting on October 10, 2023. Commissioners considered the memo and testimony by a resident and requested staff provide additional options for consideration.

Additional options include:

1. Expand the exemption from the cap on the Vacation Dwelling Units (VDUs) to include all rural residentially-zoned (RR-1 and RR-2) properties.
2. Expand the VDU cap exemption to include properties within 100 feet of a licensed hotel.

Option 1 would allow any of the 785 residential addresses (see attached map) in the RR-1 and RR-2 zones to apply for a VDU permit without waiting for their opportunity under the cap. While this change to the ordinance is relatively simple for the public to understand and staff to administer, it results in far too many sites being exempt from the cap which undermines the integrity of the cap. The reasons Council established the cap were to manage the number of permanent dwelling units being converted to short-term rentals and to reduce conflicts between permanent residents and VDU guests. Additionally, some RR-1 and RR-2 sites are not well-suited for the extra vehicle traffic and waste water processing (449 addresses are on private septic systems) that short-term rentals sometimes generate.

Option 2 would allow a VDU at any residential property within 100 feet of a licensed hotel by exempting those properties from the VDU cap. Because VDUs provide a service similar to, but less intense than a hotel, it may be appropriate to allow them adjacent to an existing hotel as is in keeping with good zoning practice of transitioning geographically from more intense to less intense uses. This approach would also reduce conflicts between permanent residences and VDUs by locating them in areas close to existing hotels. This approach would result in 56 properties being exempt from the cap (see attached map).

Summary and Recommendation:

Option 1 results in a very large expansion in the number of properties being made eligible for VDUs which is inconsistent with the purpose of the cap on VDUs (reduce pressure on permanent housing stock and reduce land use conflicts). While Option 2 creates a smaller cap expansion and does so in a way

that is more directly related to good zoning practice, this option still expands the cap in a somewhat unpredictable pattern and expanding the cap for any purpose increases the likelihood that the Council will need to field requests for additional exemptions. Therefore, staff continues to recommend against making a change to the VDU exemption cap.

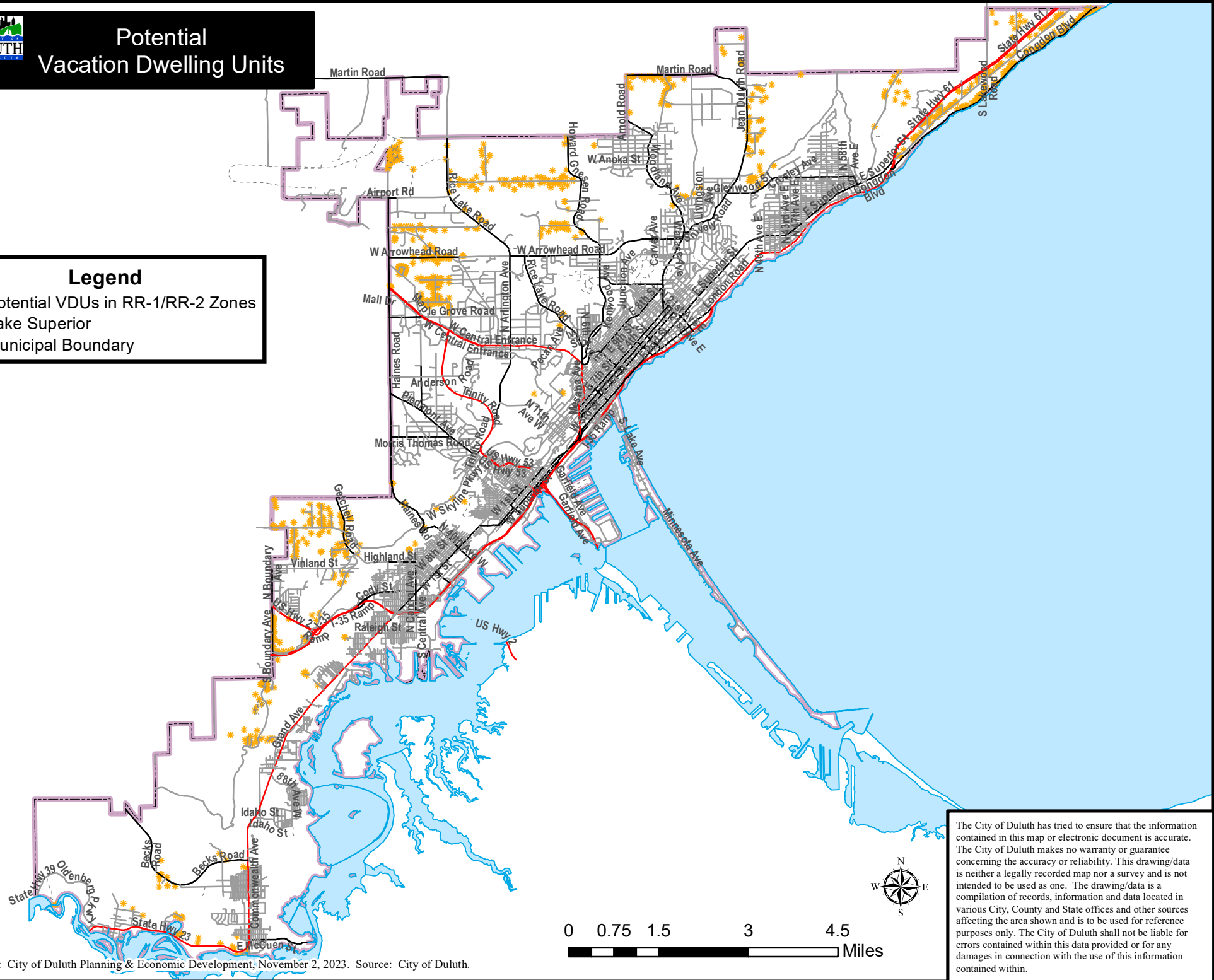
APPENDIX



Potential Vacation Dwelling Units

Legend

- * Potential VDUs in RR-1/RR-2 Zones
- Lake Superior
- Municipal Boundary

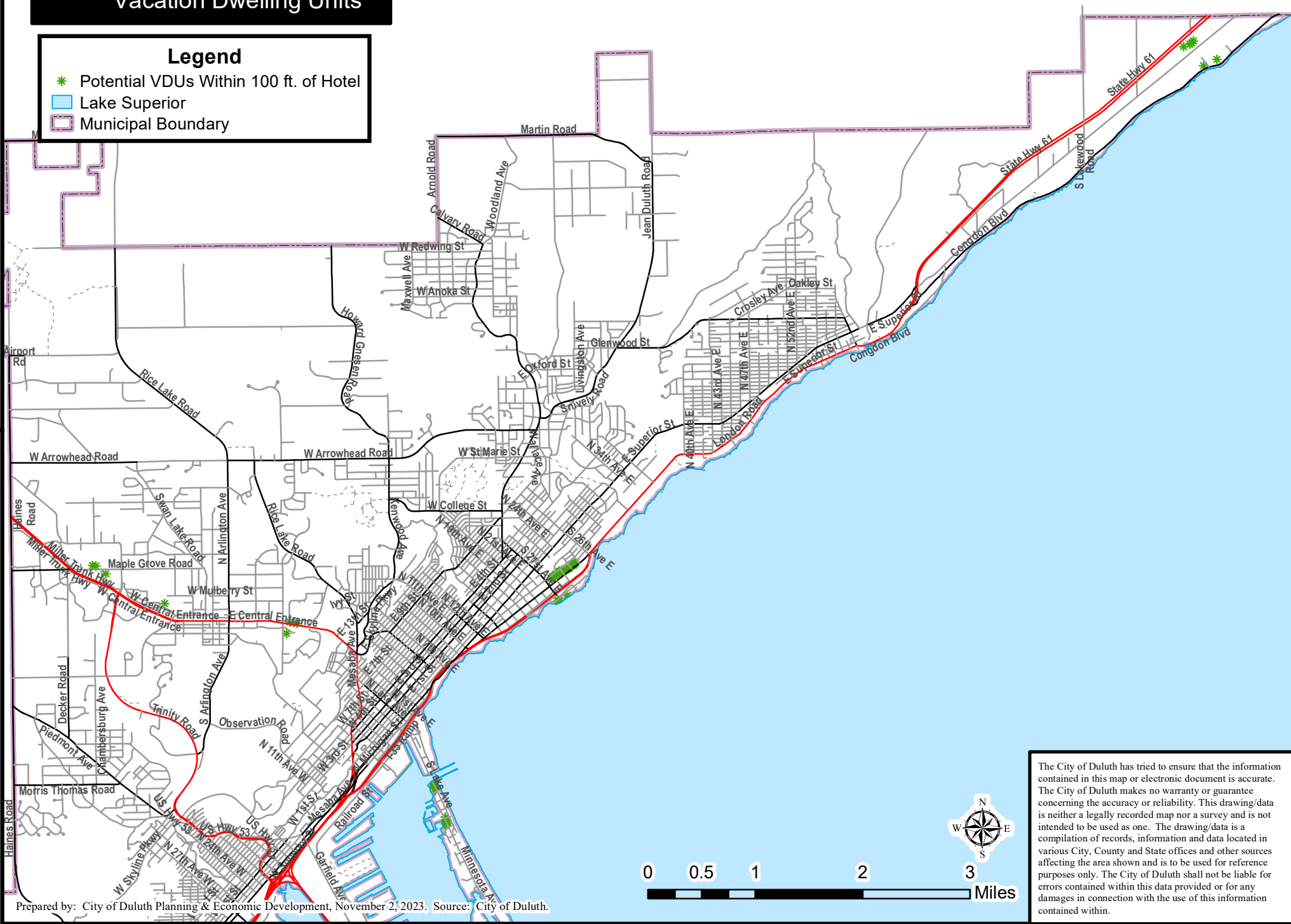


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Legend

- * Potential VDUs Within 100 ft. of Hotel
- Lake Superior
- Municipal Boundary



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MEMORANDUM

DATE: October 2, 2023
TO: Planning Commission members
FROM: Kyle Deming, Senior Planner
SUBJECT: Vacation Dwelling Units in RR-1 districts near MU-C districts (PL23-178)

Question: Is it good land use practice to exempt vacation dwelling units (VDUs) in those portions of Rural Residential (RR-1) districts in close proximity to Mixed Use-Commercial (MU-C) districts from the cap on VDU permits?

Summary and Recommendation: The cap on VDU permits was established to balance concerns about loss of permanent housing with the desire by landowners to provide a form of tourist accommodations in demand by the travelling public. Staff recommends making no changes to the VDU permit cap based on the analysis below, which finds that expanding the exemption will only benefit seven residences and one business and will increase the likelihood of getting more requests to be exempt from the cap.

UDC ANALYSIS

1. Background: Vacation Dwelling Units (VDUs) are a form of short-term rental allowed as an Interim Use Permit by the Unified Development Chapter (UDC). The City Council established a cap on the number of VDUs that are permitted within the City and landowner interest in VDUs exceeds the cap. The number of VDU permits is allowed to increase annually based on the net increase of permanent residential dwelling units from the previous year. Form Districts are exempt from the VDU permit cap, and it has been asked if the exemption should be expanded to include VDUs in RR-1 Districts.
2. Brief history of VDU regulation in Duluth
 - a. City Council approved Ordinance 10192 on Dec. 17, 2012, providing for Vacation Dwelling Units (VDUs) and Accessory Vacation Dwelling Units (Accessory VDUs).
 - b. 2013 amended minimum stay of 5 nights during summer for all zone districts (6/15 – 9/15) to minimum stay of 3 nights during the summer for R-2, MU-N, and F-5 districts.
 - c. After a 10-month moratorium on VDU permits was put in place to allow a study by staff, City Council created Accessory Home Share permits April 11, 2016 (PL16-016). Council also set minimum rental period for VDUs to 2 nights for all zone districts, clarified screening requirements, and set a cap of 60 VDU permits.
 - d. In 2019 City Council provided an exemption from the cap on VDUs for properties in Form Districts (PL19-014).
 - e. In 2021 City Council amended the VDU and AHS ordinances to (PL21-136):

- i. Give the Planning Commission authority to approve VDU IUPs
- ii. Limited VDUs to 4 bedrooms per permit
- iii. Set the annual increase in the number of VDU permits to 10% of the net increase in housing units, with no more than 10 new permits per year, and set a maximum of 120 VDU permits total.
- iv. Established the Vacation Dwelling Unit, Limited, a short-term rental permit for homeowners to rent out a portion of their homes for 2-7 night stays up to 21 days per year.

- f. Number of VDUs: The table at right shows the number of VDU permits in effect for each zone district. There are 68 VDU permits in Form Districts (shaded gray in the table) that are exempt from the VDU cap. There are 73 VDU permits (unshaded in the table) in MU-N, R-1, and R-2 districts that are subject to the cap on VDU permits.

Vacation Dwelling Unit (VDU)		
Permits by Zone District		
Zone District	Number of VDU Permits	
F-1	2	68 VDU Permits from Form Districts exempt from the cap
F-2	10	
F-3	4	
F-4	10	
F-5	24	
F-6	8	
F-7	3	
F-8	7	
MU-N	2	73 VDU Permits
R-1	65	subject to the cap
R-2	6	
Total	141	

- g. Distribution of VDUs: Please see the Appendix for a map of existing permitted VDUs citywide.

3. Brief summary of Current VDU regulations: The Unified Development Chapter (UDC) establishes the parameters under which short term rentals, such as Vacation Dwelling Units (VDUs), are allowed. Current VDU rules, called Use Specific Standards, are found in the Appendix, but generally, standards include:
- a. A minimum rental period of two nights with the VDU's maximum occupancy related to the number of bedrooms (two guests per bedroom, plus one additional person), and a maximum of 4 bedrooms allowed in a VDU.
 - b. Off street parking related to the number of bedrooms is required, except parking is not required for VDUs in Form Districts.
 - c. Screening is required to buffer neighbors from the VDUs outdoor activity areas, which must be shown on a site plan.
 - d. VDU permit holder must have a local contact within 25 miles that is capable of responding 24 hours per day and this contact info. must be provided to neighbors.
 - e. VDU permits terminate in six years or if the property is transferred.
 - f. In addition to a UDC Interim Use Permit, VDUs also need a building permit to recognize the altered use of the space. The Fire Department inspects the VDUs for safety and issues an Operational Permit. And the Treasurer collects appropriate lodging taxes from VDUs.
 - g. The State of Minnesota also inspects the facility and requires a lodging license as well.

4. Why VDUs are allowed in certain districts?

- a. When the VDU ordinance was originally established, VDUs were primarily in detached dwelling structures and so only those zone districts that primarily permitted detached dwellings were opened to VDU permits. Since detached dwellings are not allowed in more intense commercial (i.e. MU-C), industrial, and waterfront zones, VDUs were not permitted in those districts. This is to preserve sites in these high value zone districts and to minimize complaints that typically arise from locating sensitive land uses locating near uses that generate a lot of vehicle traffic and noise.
- b. With a change to the UDC in 2019 the Council expanded VDUs to be permitted in all Form Districts and it exempted VDUs in Form Districts from the cap on VDU permits.
- c. This expansion of the cap exemption was to satisfy demand for VDUs in areas of the city where noise and traffic conflicts with detached dwellings would not likely occur.
- d. Additionally, due to the abundance of vacant building space in Form Districts, conversions to VDUs would likely not displace permanent residents and the additional lodgers may benefit the surrounding tourist-oriented businesses.

5. Why exempt from the VDU cap those VDUs proposed to in a RR-1 zone near a MU-C zone?

- a. Good planning practice is to locate intense land uses adjacent to high-capacity transportation and utility areas, be they nodes or corridors. The practice is also to transition to medium and then lower intensity land uses as distance from the node or corridor increases.
 - i. Mixed Use-Commercial (MU-C) zoning is the most intense commercial-oriented zone district and is located primarily along the Central Entrance-Miller Trunk Highway corridor as well as parts of Haines Rd. between Maple Grove Rd. and Arrowhead Rd.
 - ii. There are also MU-C zones at the Spirit Valley Shopping Center and West Duluth Super One, in the vicinity of the Heritage Hockey Center-27th Ave. W. between Michigan St. and I-35, along Lower Michigan St. in Lincoln Park, and along London Rd. from 21st -26th Ave. E.
 - iii. Adjacent to these zones are Mixed Use-Neighborhood (MU-N) zones, Apartment Residential (R-2) zones, or mid-density Form Districts where lower intensity commercial uses mix with higher intensity residential uses. Beyond these zones are typically lower intensity residential zones such as Residential-Traditional (R-1).
- b. Rural Residential (RR-1) zones are typically located beyond R-1 zones, but there are places where MU-C zones abut RR-1 zones, as shown on the attached map. Below are some reasons to consider exempting RR-1 zones from the VDU cap when they are within close proximity to a MU-C zone.
 - i. Adjacent to intense land uses. MU-C zones are typically populated with uses that generate traffic and noise and so the additional intensity of a VDU may not be out of character for the adjacent RR-1 zone.
 - ii. Near transportation infrastructure. Since MU-C zones are typically near high-capacity transportation infrastructure, it may be a convenient location for VDU guests in an adjacent RR-1 district. Additionally, the guests may benefit from being

near amenities typically found in MU-C zones including retail stores, restaurants, and services.

- iii. Larger RR-1 lots allow space for buffering to adjacent permanent residences. RR-1 sites are typically larger, which allows space to buffer the potential noise and traffic generated by the VDU from adjacent residential uses.

6. Why not exempt RR-1 zones from the VDU?

- a. RR-1 dwellings are typically on private septic systems and VDU guests may not be familiar with practices necessary to protect the septic system. Guests may deposit things that cannot be handled by the septic system or run too much water into the septic system at one time causing unwanted material to overflow into the leach field that is only supposed to handle liquids (hydraulic overload). The attached map shows RR-1 zoned address within 300 feet of a MU-C zone colored based on their method of wastewater treatment. Aside from the cluster of addresses in the Miller Creek Townhomes neighborhood, most addresses within 300 feet of MU-C zones are served by private septic systems.
- b. Another concern about expanding the exemption is that exceptions to the rules create complexity. People like predictability in regulations and adding another exception to the VDU cap, especially one that would apply on only part of a zone district, may cause frustration with determining eligibility. Additionally, creating this exception may cause other people interested in obtaining a VDU permit to request similar treatment.
- c. Creating the proposed cap exemption will benefit seven residential addresses and one commercial structure containing three addresses. The attached map shows RR-1 zoned addresses within 300 feet of MU-C zones. Aside from the cluster of addresses in the Miller Creek Townhomes neighborhood (whose Declaration and/or Bylaws likely prohibit owners from obtaining a VDU), there are few properties that would benefit from expanding the VDU cap exemption.

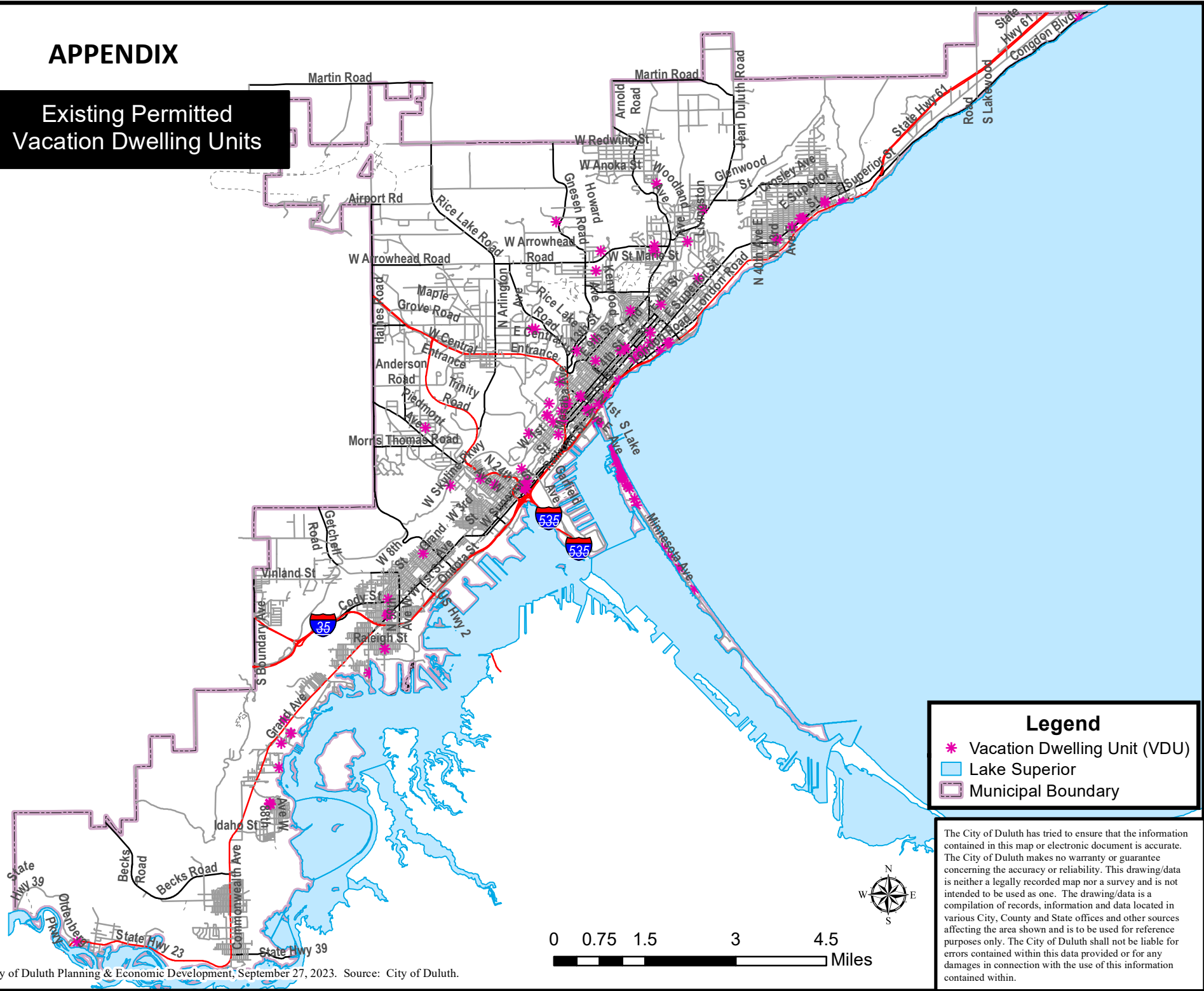
7. Recommendation

- a. Make no change to the VDU cap exemption because:
 - i. The change doesn't serve an overwhelming need in the community (only 7 residences and one business would be affected), and
 - ii. Expanding the exemption to the cap will increase the likelihood of getting more requests to be exempted from the cap.
- b. If a change to the cap is desired, consider the following proposed conditions:
 - i. Limit exemption to parcels within 300 feet of an existing MU-C district.
 - ii. Before issuing the VDU Interim Use Permit, require inspection and certification that the septic system is functioning properly. Require the applicant to provide documentation of the septic system capacity and limit VDU occupancy to correspond accordingly.
 - iii. Require periodic (annual?) septic system inspection and filing of inspection results with the City.
 - iv. Require notices be posted within the VDU regarding proper usage of the septic system.

APPENDIX



Existing Permitted Vacation Dwelling Units



APPENDIX



RR-1 Zoned Areas
Within 300 ft.
of MU-C Zones
and Existing Addresses

MU-B-(Mixed Use
Business Park)

RR-1 (Rural
Residential 1)

R-2 (Residential
Urban)

MU-P (Mixed
Use Planned)

R-P (Residential
Plan)

R-1 (Residential
Traditional)

MU-C (Mixed Use
Commercial)

Legend

Addresses Within 300 ft. Buffer

- Address On Private Septic
- Address On Public Sewer
- RR-1 within 300 ft. of MU-C
- Zoning Boundaries

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Miles

APPENDIX

Duluth Legislative Code: Chapter 50
Unified Development Chapter. Selected text

ARTICLE 3: PERMITTED USES.

Section 50-20: Use Specific Standards.

Section 50-20.3.U. Vacation dwelling unit.

1. Rental Period. The minimum rental period shall not be less than two consecutive nights, nor more than a maximum of 29 consecutive nights. The minimum rental period shall not apply for vacation dwelling units in form districts,
2. Maximum Number of Persons and Bedrooms. The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two, which shall not exceed nine. The maximum number of bedrooms that may be rented may not exceed four. Vacation dwelling units licensed before December 1, 2021, that exceeded four bedrooms are entitled to continue operating, however, this exemption expires upon transfer of any ownership interest in the permitted property.
3. Off Street Parking. Off street parking shall be provided at the following rate:
 - (a) Vacation dwelling units licensed on May 15, 2016, shall provide the following minimum number of off street parking spaces:
 - 1-2 bedroom unit, one space
 - 3-4 bedroom unit, two spaces
 - 5+ bedroom unit, three spaces.
 - (b) Vacation dwelling units licensed after May 15, 2016, shall provide the following minimum number of off street parking spaces:
 - 1-2 bedroom unit, one space
 - 3 bedroom unit, two spaces
 - 4+ bedroom unit, number of spaces equal to the number of bedrooms minus one.
 - (c) Vacation dwelling units licensed on May 15, 2016, are entitled to continue operating under the former off-street parking requirement. The parking exemption for vacation dwelling units licensed on May 15, 2016, expires upon transfer of any ownership interest in the permitted property.
 - (d) The minimum off-street parking requirements shall not apply for vacation dwelling units in form districts.
4. Motorhome/ATV. Only one motorhome (or pickup-mounted camper) and/or one trailer either for inhabiting or for transporting recreational vehicles (ATVs, boat, personal watercraft, snowmobiles, etc.) may be parked at the site, off the street;
5. Other Licenses Required. In addition to the permit issued pursuant to this chapter, the property owner must obtain all licenses and permits from the city of Duluth and state of Minnesota required for guest occupancy on the property.
6. Guest Records. The property owner must provide required documents and adhere to additional requirements listed in the city of Duluth's UDC application manual related to the keeping of a guest record, designating and disclosing a local contact, property use rules, taxation, and interim use permit violations procedures;
7. Application Materials. The property owner must provide a site plan, drawn to scale, showing parking and driveways, distance from lot line of proposed vacation dwelling to neighboring residential structures, all structures and outdoor recreational areas that guests will be allowed to use, including, but not limited to, deck/patio, barbecue grill, recreational fire, pool, hot tub, or sauna, and provide detail concerning the provision of any dense urban screen or fence that may be required to buffer these areas from adjoining properties. A dense urban screen or fence is required if the adjoining property is used as a residential use, as identified in 50-19.8. Prior to the permit being authorized, the fence or dense vegetative screen must be in place, and it must be continuously

maintained during the entire permit period. The requirement for a dense urban screen or fence may be waived if the adjoining property owner does not want it on or near their shared property line, and indicates this with a signed letter;

8. Vacation Rentals Within Multi Family Structures. Any vacation dwelling unit that will be located in a multi-family structure that has nine or more dwelling units shall:
 - (a) Make available 24-hour staffing at a front desk that is accessible to all tenants;
 - (b) If determined applicable by the Land Use Supervisor, provide a letter from a duly established Home Owner's Association stating the support of the Home Owner's Association Board of Directors for the vacation dwelling unit, and enumerating any Home Owner's Association rules to be incorporated into the interim use permit;
9. Termination. The interim use permit shall terminate upon change in ownership of the property or in six years after the date of issuance, whichever occurs first. Upon permit termination, property owner may reapply. The permit is only valid for the property and applicant or property owner that it was initially issued to and the permit shall not be transferred to a new applicant or property owner, or to a new property or different address.
10. Maximum Number of Vacation Dwelling Units. No more than 60 permits may be issued for either vacation dwelling units or accessory vacation dwelling units, excepting that the maximum number of permits that may be issued shall increase by 10 percent of the net increase in housing units constructed and issued certificates of occupancy in the city in the previous year, or no more than ten (10) new vacation dwelling units per year, whichever is less, provided that the total number of vacation dwelling units authorized shall not exceed 120 units. Permits for vacation dwelling units within Form Districts (F1-F9) are exempt from the maximum number of permits that may be issued.
11. Nuisance Reduction. The vacation dwelling permit holder shall ensure that all requirements for waste removal services and prohibitions on burning of trash is strictly adhered to by occupants of the vacation dwelling. The permit holder must designate in writing a managing agent or local contact who resides within 25 miles of the City and who has authority to act for the owner in responding 24-hours-a-day to any complaints from neighbors or the City. The permit holder must notify the city within 10 days of a change in the managing agent or local contact's contact information. The permit holder shall notify by letter all property owners within 100' of the property boundaries of the name, address, and phone number of the managing agent or local contact named above and provide the city with a copy of the letter. The permit holder must notify said property owners within 10 days of a change in the managing agent or local contact's contact information.
12. Advertisement. The permit holder must include the permit number on all print, poster or web advertisements.

ARTICLE 5: ADMINISTRATION AND PROCEDURES.

Section 50-39: Enforcement and Penalties.

Section 50-39.1.A. Violations defined.

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

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;

Section 50-39.2.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.

3. Enforcement of Vacation Dwelling Unit, Accessory Vacation Dwelling Unit, Accessory Vacation Dwelling Unit, Limited, or Accessory Home Share Violations
- (a) If the city determines that a vacation dwelling unit, accessory vacation dwelling unit, accessory vacation dwelling unit, limited, 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, accessory vacation dwelling unit, limited, 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, accessory vacation dwelling unit, limited, 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.