



CITY OF DULUTH

DEPARTMENT OF PLANNING & CONSTRUCTION SERVICES
Community Planning Division

411 West First Street – Room 208 – Duluth, Minnesota 55802-1197
218-730-5580 – www.duluthmn.gov/community-planning

Date: August 22, 2018
To: Planning Commission
From: Steven Robertson, Senior Planner
RE: Staff Proposal for Minor Amendments to the UDC

Planning Staff are recommending the Planning Commission review and, if considered appropriate, recommend to the City Council four changes to the UDC. This item was first discussed at the August 14, 2018, Planning Commission meeting, but the public hearing was continued until the special meeting on August 28 to give the public and the members of the Planning Commission more time to review the information.

Enforcement (50-39)

Amend section 39-2.C to change the time required for correction of a violation or appeal a notice to 14 days. In addition, amend section 39-1.8 to clarify when a sign should be removed.

Mixed Use Waterfront, MU-W (15.6 and 50-21)

Amend section 50-15.6 to require a minimum side yard setback of 25 feet to promote open view sheds to the water, and also clarify the off-street parking requirements and exceptions. Also amend the exceptions for detached accessory structures (such as garages) to not allow them closer than 25 feet to the side or rear lot lines, if 200 square feet or larger.

Structures in Common Open Space (50-21)

Amend section 50-21.2.F to allow private structures (such as an expansion of a single family home) into a common open space of a platted Common Interest Community, if the home owner association or governing body grants permission and records an easement as proof of consent.

Safe Routes to School (50-23, 50-20, 50-41)

Amend section 50-23 to requiring that new subdivisions comply with Safe Routes to School infrastructure where applicable, and adding two new use specific standards for new schools or schools with significant redevelopment.

..Title

AN ORDINANCE AMENDING SECTION 50-15.6 MIXED USE WATERFRONT

..Body

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-15.6 of the Duluth City Code, 1959, as amended, be amended as follows:

50-15.6 Mixed Use-Waterfront (MU-W).

A. Purpose

The MU-W district is intended to provide for waterfront-dependent commercial uses and medium to high density residential development. Intended non-residential uses include visitor-related retail and services, lodging, recreational facilities and maritime uses, as well retail and service uses that take advantage of the waterfront setting, as shown in Table 50-19.8. Development may include horizontal or vertical mixed use, and should facilitate transit and pedestrian connections between developments and the surrounding areas and community;

**TABLE 50-15.6-1
MU-W DISTRICT DIMENSIONAL STANDARDS**

LOT STANDARDS		
Minimum lot area per family	Townhouse or live-work dwelling	2,200 sq. ft.
	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
Minimum lot frontage		50 ft.
STRUCTURE SETBACKS		
Minimum depth of front yard		0 ft.
Minimum width of side yard	Non-residential use adjacent to residential district or use	15 ft.
	Non-residential use adjacent to non-residential district or use	0 ft.
	Multi-family adjacent to single-family district or use	10 ft.
	Multi-family adjacent to multi-family district or use	0 ft.
Minimum Width of Side Yard		25 ft
Minimum depth of rear yard		25 ft.
STRUCTURE HEIGHT		
Maximum height of building	Residential or mixed use	120 ft.
	Non-residential	60 ft.
	Within 500 ft. of R-1 district	35 ft.
	Within 500 ft. of R-2 district	50 ft.

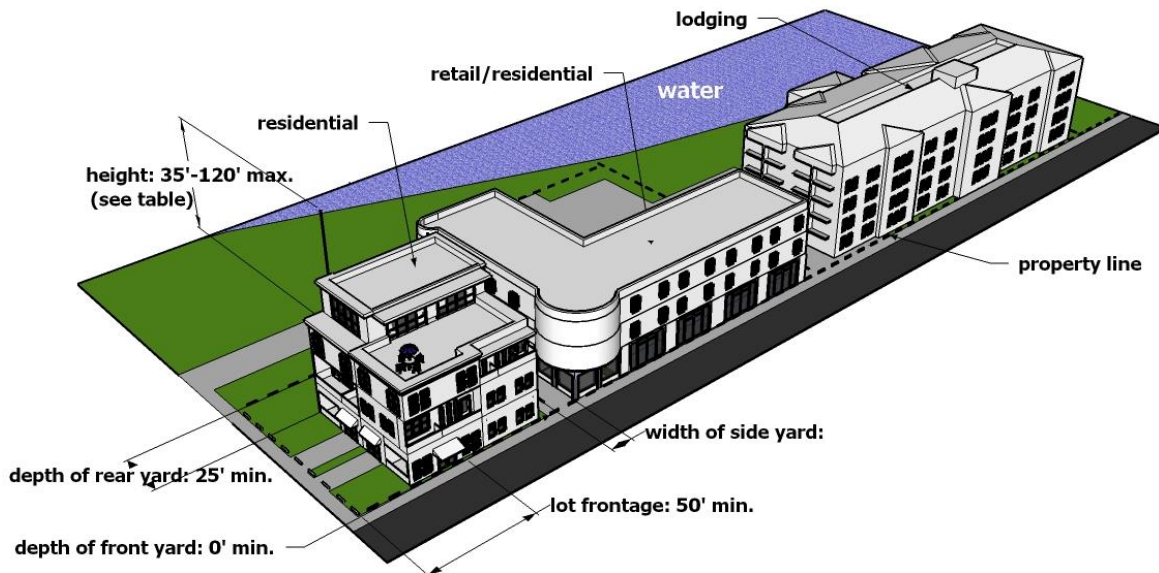
Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

B. Example.

MU-W Example Building Forms



C. Illustration.



D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article V, shall be required for all development, redevelopment and expansions in the MU-W district, including but not limited to construction of driveways or other access from public streets and construction of off-premises signs, but excluding the following:

1. Building construction or expansion of less than 500 square feet in area;
2. Building renovations that affect the exterior of structures that do not result in an increase in building square footage;

3. Grading and construction of parking areas less than 3,000 square feet. Development may not proceed until the planning commission has approved the project through planning review;

E. Development standards.

All permitted development in the MU-W shall comply with the following development standards:

1. Proposed development shall be visually and functionally oriented toward the waterfront of Lake Superior, the harbor and the St. Louis River to the maximum extent possible so that users of buildings and associated outdoor areas have direct views and physical access to the waterfront;
2. To protect public views to the waterfront from the closest landward public street running approximately parallel to the water, all primary structures shall have a maximum width of 200 feet measured along the shoreline and shall be separated from other primary structures by a minimum of 50 feet. These requirements shall not apply to portions of buildings that do not block public views of Lake Superior, the harbor and the St. Louis River from the closest landward public street running approximately parallel to the water due to topography or the location;
3. Buildings shall have a primary façade, with a functioning entrance for residents, employees or patrons facing the waterfront, and a second primary façade with a similar functioning entrance facing at least one of the adjacent streets, to the maximum extent feasible;
4. The quality of façade design and materials and the level of detail on the building façade facing the water shall be comparable to that on any other building façade containing a functioning entrance. The building façade facing the water shall have at least 40 percent transparency, measured as set forth in Section 50-22.5.D.1; no rectangular area greater than 30 percent of each story of the façade facing the water may be windowless, as measured from floor to floor, and no horizontal distance greater than 15 feet of each story of a facade facing the water may be windowless;
5. For any development, redevelopment, or expansion of an existing structure or use, the parking requirements in Section 50-24 shall be met without use of the reduction allowed by 50-24.3, adjustment to required off-street parking, except that where a property is not adjacent to an R zone district, However, the required parking may be reduced as allowed by 50-24.3 only if the applicant can demonstrate to the Land Use Supervisor's satisfaction that nearby properties provide sufficient supplemental on-street or off-street parking and that all the parking needs generated by the use can be met on site. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10232, 6-10-2013, § 4; Ord. No. 10286, 3-10-2014, § 3.)

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

STATEMENT OF PURPOSE: This ordinance implements one minor text amendment to chapter 50 of the City Code, known as the Unified Development Chapter (UDC).

..Title

AN ORDINANCE AMENDING SECTION 50-21, DIMENSIONAL STANDARDS

..Body

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-21 of the Duluth City Code, 1959, as amended, be amended as follows:

50-21 DIMENSIONAL STANDARDS.

50-21.1 General dimensional standards.

A. Residential, mixed use, special purpose and overlay zones.

The dimensional standards for residential, mixed use, special purpose and overlay districts are shown in the description for each district in the following Sections of Article II:

- Standards for residential districts are shown in Section 50-14;
- Standards for mixed Use districts are shown in Section 50-15;
- Standards for special purpose districts are shown in Section 50-17; and
- Standards for overlay districts are shown in Section 50-18.

All dimensional standards shown in Article II are subject to the special dimensional standards in Section 50-21.2 and the exceptions and encroachments in Section 50-21.3 unless specifically noted;

B. Form districts.

The dimensional standards for form districts are integrated into descriptions of each form-based district in Article II and the building form standards in Section 50-22. The special dimensional standards in Section 50-21.2 and the exceptions and encroachments in Section 50-21.3 do not apply in the form districts unless specifically noted. (Ord. No. 10044, 8-16-2010, § 6.)

50-21.2 Special dimensional standards.

A. Lot without municipal sewer.

Lot areas for properties not provided with municipal sewer shall be at least two acres in size or the minimum lot area for the zone district, whichever is larger, and shall be subject to county ordinances and standards regulating individual sewage treatment systems. Lots with large wetlands or shallow bedrock may be required to be larger than two acres, and shall be determined on a case-by-case basis based on the area needed to fit a sewage treatment system on the site. Lots smaller than two acres may be allowed in areas zoned R-P based on soil and site conditions;

B. Front yards on double frontage lots.

On lots having double frontage and where the first and second frontages are on opposite lot lines, the required front yard shall be provided on the frontage that is the generally established frontage on the block, as determined by the building official;

C. Side yards.

1. Dwelling units above commercial uses.

In all residential and mixed use districts, where dwelling units are erected above commercial establishments, no residential side yard is required, except for any side yard required for the commercial building on the side of a lot adjoining a

residential district. in form districts, no side yard is required even if the lot adjoins a residential district;

2. Attached and multi-family dwellings.

For the purpose of side yard regulations, a two-family dwelling, townhouse, or multi-family dwelling shall be considered as one building occupying one lot;

3. Driveways.

Where no garage facilities are provided and the alley is not developed for access at the time the dwelling is constructed in an R-1 or R-2 district, there shall be provided one side yard of a minimum of nine feet for a driveway and the other side yard shall have a minimum width of five feet;

D. Rear yards.

An accessory structure cannot exceed 20 feet in height, and may not occupy more than 30 percent of the rear yard area. All accessory structures on a lot may not occupy more than 60 percent of the rear yard area;

E. Street improvements in Public Right of Way.

Except as provided in Section 50-37.1.L, for **development or redevelopment proposed on** lots without a principle structure:

1. The street shall be improved to the most current standards on file in the office of the city engineer and shall be designed for the road classification within the zone in which the property is located;

2. The street shall be improved across the entire frontage of the lot proposed to be developed and all other contiguous property owned by the owner of the subject lot;

3. Any street improvement that results in a dead-end street that is greater than 150 feet in length shall require construction of a turn-around for emergency and maintenance vehicles approved by the city fire marshal.

For lots developed with an existing legal principle structure, the street improvement requirements need not be met when the landowner proposes an expansion of the existing legally constructed structure or a replacement principle structure, if the landowner provides evidence of a perpetual easement to access the property from an improved street of a distance not greater than 150 feet, and such access shall be improved to meet Fire Code standards;

F. Common Open Space

1. All structures intended to be owned and occupied by an individual unit owner of a Common Interest Community shall be constructed within the space allocated in the governing documents for that specific unit owner, except as allowed in section 2 below;

2. A Home Owner Association or other applicable governing body of the community may grant building easements, with city approval, to allow encroachments of structures into the common open space as platted in the Common Interest Community Plat. In such instances, the building easement shall be considered part of the adjacent building parcel or unit. A copy of a recorded easement and survey depicting same by the private landowner are required to verify the circumstances in each instance. The Land Use Supervisor may grant city approval for the proposed building easement(s) if they do not impact more than 10% of the common open space of the community; the Planning Commission may grant city approval for impacts more than 10%. The Land Use Supervisor or Planning Commission may require the CIC to be replatted to reflect the change in the reduced common open space.

50-21.3 Exceptions and Encroachments.

The following exceptions and encroachments to required yard areas and height limits are allowed. These provisions do not apply to form districts except as specifically noted in exceptions to building heights.

Table 50-21-1: Exceptions and Encroachments

Structure or Feature	Conditions or Limits
Encroachments into Required Yard Areas	
Architectural features (sills, belt courses, eaves, cornices) awnings and canopies, bay windows, gutters and downspouts	Up to 18 in. into any required yard area
Unenclosed or lattice-enclosed stairs, fire escapes and balconies opening upon fire towers	Up to 5 ft. into any required rear yard, except as required to comply with applicable fire code or Americans with Disabilities Act
Chimneys and flues	Up to 2 ft. into any required front or side setback.
Open sided porch, deck, or paved terrace	Up to 10 ft. into front yard, but no closer than 5 ft. from any property line
Enclosed vestibule or fixed canopy with a floor area of not more than 40 sq. ft.	Up to 4 ft. into front yard
Fuel pumps or pump islands	Not closer than 15 ft. from any street line or closer than 50 ft. from any residential use
Fences meeting the standards of Section 50-26.4	Fences may not be located closer than 3 ft. to any publicly maintained right-of-way
Porte cochere, carport or canopy if every part is unenclosed except for necessary structural supports	Permitted in any side setback, but not less than 5 ft. from any side lot line
Residential window well	Permitted to encroach up to two feet from any property line, provided that window well: (a) has a minimum distance of at least 5 feet from any structure on any adjacent property, and (b) is limited to the minimum window well depth and width required by fire and building codes.
Accessory structures	No accessory structure may be located: (a) between a street and any façade of a primary building facing that street, or (b) closer than 10 ft. to any principal structure on an adjoining property, or (c) closer than 5 ft. to any rear lot line, or (d) closer than 3 ft. to any side lot line, except as listed for specific accessory structures below.
<i>Accessory structures in MU-W</i>	If 200 square feet or larger, not closer than 25 feet to any side or rear lot line, and not closer than 25 to any existing principal or accessory structure.
<i>Accessory boat dock, residential</i>	No setback required from property lines along the water
<i>Accessory clotheslines, play equipment, trash containers, odor-controlled composting bins and rainwater harvesting tanks</i>	Permitted in side and rear yards
<i>Accessory rain garden</i>	Permitted in all (front, side and rear) yards
Exceptions to Building Height Limits	
Television and radio towers, accessory communications towers for private use, religious assembly or ornamental spires and towers, belfries, monuments, tanks, water and fire towers, stage tower or scenery lofts, cooling towers, chimneys, elevator penthouses, air conditioning penthouses, skylights, smokestacks, conveyors, storage elevators and facilities, flagpoles, accessory wind power equipment or accessory rooftop solar collectors	In the Form District, the exceptions to building height limits for religious assembly or ornamental spires and towers only apply if the applicant proposes an Iconic Building

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

STATEMENT OF PURPOSE: This ordinance implements one minor text amendment to chapter 50 of the City Code, known as the Unified Development Chapter (UDC).

..Title

AN ORDINANCE AMENDING SECTIONS 50-23, CONNECTIVITY AND CIRCULATION, 50-20.2 PUBLIC, INSTITUTIONAL, AND CIVIC USES, AND 50-41-9 DEFINITIONS

..Body

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-23 of the Duluth City Code, 1959, as amended, be amended as follows:

50-23 CONNECTIVITY AND CIRCULATION.

50-23.1 Applicability and exemptions.

This Section 50-23 shall apply to all new subdivision, replatting, registered land surveys (RLSs), development and redevelopment applications after November 19, 2010. General circulation requirements are listed in Section 50-23.2, but additional circulation requirements apply in some circumstances. Sites that are (a) located in any zone district other than the RC, RR-1, RR-2, MU-B, I-G, or I-W districts, and (b) larger than three acres, and (c) will contain more than one development parcel shall meet the connectivity index requirements of Section 50-23.3. All new subdivision, replatting, development, and redevelopment applications shall meet the requirements of Section 50-23.4, and those containing more than one principal building shall meet the requirements of Section 50-23.5. (Ord. No. 10044, 8-16-2010, § 6.)

50-23.2 General circulation requirements.

Applications for subdivision, replatting, RLS, development, or redevelopment shall meet the following standards:

- A. Where adopted city plans show a bicycle or pedestrian path or trail or sidewalk, the site design shall provide connections to those paths or trails or sidewalks;
- B. Any requests by the city for designation or dedication of land for bicycle or pedestrian trails within a proposed development shall comply with the provisions of Section 50-33.8, *Land for public purposes*;
- C. Unless the city engineer waives the requirement in writing based on concerns of public safety, or due to site/ topography constraints:
 1. Each proposed street within a new subdivision, regardless of zoning designation, shall be public and designed and constructed to city engineer construction standards.
 2. Each proposed public or private street within the R-1, R-2, R-P, MU-P, MU-N, MU-C, MU-I or MU-W districts shall include a sidewalk at least five feet wide on both sides of the street;
 3. Each proposed public or private street within the MU-B, I-G or I-W districts shall include a sidewalk at least five feet wide on one side of the street;

- D. Whenever cul-de-sac streets are created, one ten foot wide pedestrian access/public utility easement shall be provided, between the cul-de-sac head or street turnaround and the sidewalk system of the closest adjacent street or pedestrian sidewalk or pathway, unless the city engineer determines that public access in that location is not practicable due to site or topography constraints (refer to Figure 50-23-A);

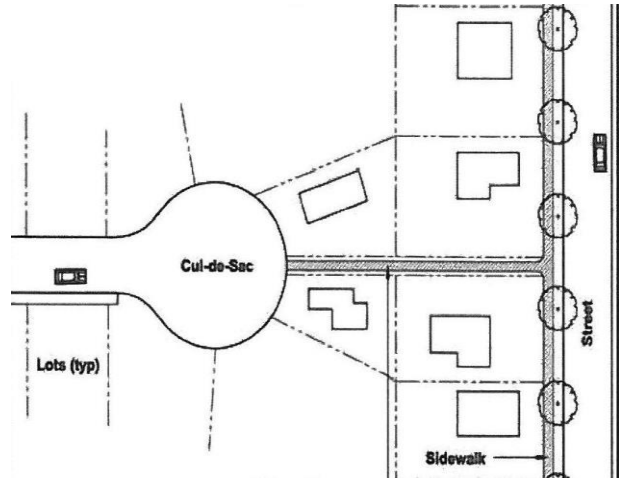


Figure 50-23-A: 10 ft. access easement from head of cul-de-sac to nearest street or path

- E. A pedestrian way at least ten feet in width shall be provided near the middle of any block face longer than 800 feet in order to provide connections with streets on either side of the block;
- F. Any use requiring vehicle access from a public street or alley shall be referred to the city engineer for review before any permits are issued. The city engineer shall consider, but not be limited to, the following factors when determining whether to approve the proposal:
1. The consolidation of curb cuts shall be encouraged, and new curb cuts shall be discouraged whenever appropriate, considering safe traffic flow, the objectives of this chapter, and access points needed for the proper function of the use;
 2. Functional classification of the road where the curb cut is proposed;
 3. The location of driveways shall be at least 100 feet from an intersection. The city engineer may permit driveways closer to an intersection due to limited lot frontage or site/topography constraints;
 4. The location of driveways relative to other existing uses is such that street traffic shall not be seriously disrupted and no unnecessary hazards shall be established for pedestrians. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 25; Ord. No. 10458, 7-11-2016, § 1)

50-23.3 Connectivity index for larger non-exempt developments.

A. Requirements.

1. A connectivity index is calculated by dividing the number of “links” in the proposed development by the number of “nodes” in the same development;
2. In order to promote walkability and reduce the number and length of vehicular trips both within developments and between new developments and surrounding areas, each development or redevelopment covered by this Section 50-23 shall provide internal junctions and external connections to achieve a connectivity index calculation of at least 1.65;
3. In addition, each street frontage of the development shall include at least one street stub or connection to the external street system every 1,500 feet;
4. The land use supervisor may reduce the required connectivity index, the requirement for external street connections, or the requirement for cul-de-sac access easements if compliance with the provisions of this subsection is impracticable due to site or topography constraints;

B. Example.

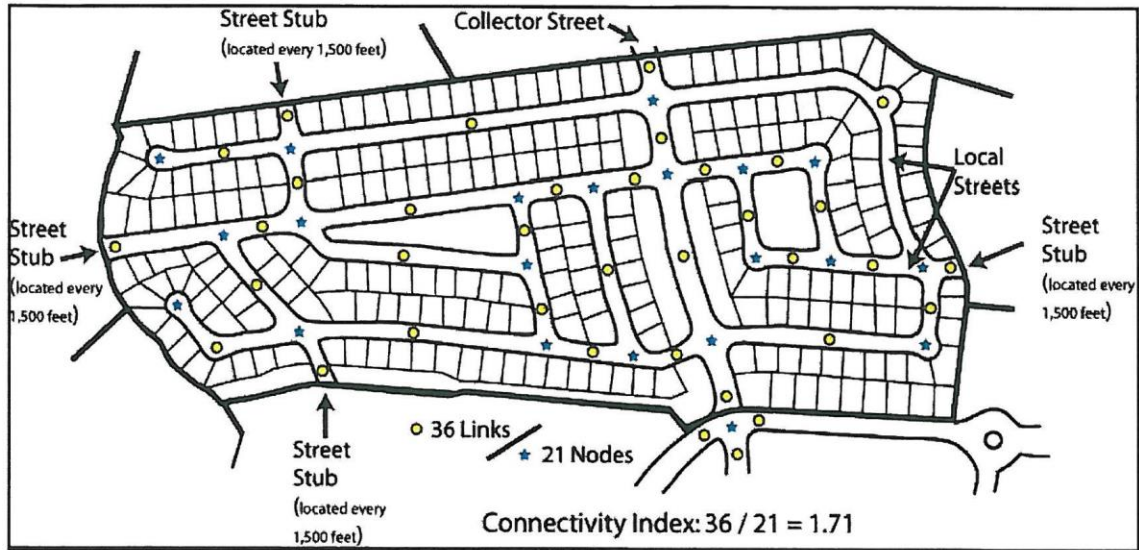


Figure 50-23-B: Example: There are 36 links (circles) and 21 nodes (stars).

(Ord. No. 10044, 8-16-2010, § 6.)

50-23.4 Americans with Disabilities Act.

All “places of public accommodation,” as defined in the federal Americans with Disabilities Act (42 U.S.C. 12101 et. seq.) shall comply with the requirements of that act concerning on-site circulation and access. (Ord. No. 10044, 8-16-2010, § 6.)

50-23.5 Multi-building developments.

Commercial developments containing more than one principal building on a single lot or parcel shall include an unobstructed walkway or pathway providing access between the principal buildings. The walkway or pathway shall be at least five feet wide. (Ord. No. 10044, 8-16-2010, § 6.)

50-23.6 Skywalks.

- A. The location and design of skywalks should not compromise the historic or architectural integrity of existing buildings;
- B. Design of skywalks shall be approved based on their architectural sensitivity, harmony and cohesiveness with the historic/industrial waterfront character of the surrounding area;
- C. New skywalks installed and existing sidewalks remodeled at a cost of more than 50 percent of their assessed value after November 19, 2010, shall be designed so that 66 percent of each vertical side elevation is made of glass or transparent materials. A lower level of transparency can be reduced, but not to less than 50 percent, if a higher level of transparency is technically infeasible due to span length and engineering limitations. (Ord. No. 10044, 8-16-2010, § 6.)

50-23.7 Safe Routes to School

Any subdivision approved by the City of Duluth on or after January 1, 2019, shall incorporate Safe Routes to School Infrastructure where applicable.

Section 2. That That Section 50-20.2 of the Duluth City Code, 1959, as amended, be amended as follows:

50-20.2 Public, institutional and civic uses.

A. Club or lodge (private).

1. In the P-1 and R-2 district, the club or lodge shall be operated by a not-for-profit civic, cultural or educational organization, and the primary activity cannot be any service that is customarily carried on as a business;
2. In the RR-1 district, any such buildings shall occupy not more than ten percent of the total area of the lot and shall be set back from all yard lines a distance of not less than two feet for each foot of building height;
3. In the RR-1, RR-2 and R-1 zone districts, the sum of all structures on the lot shall be not more than 50,000 square feet;
4. In the R-1 and R-2 zone districts, each property boundary with a lot occupied by a residential use shall be buffered with a dense urban screen;

B. Medical cannabis distribution facility.

1. An interim use permit shall be required to operate a medical cannabis distribution facility. The maximum length of an interim use permit shall be three years. Interim use permits granted pursuant to this section are not transferable and terminate upon sale of the facility or discontinuance of use;
2. In addition to the interim use permit requirements provided for under state law and Section 50-37 of the UDC, an applicant seeking to operate a medical cannabis distribution facility must submit a security plan stating how the facility will address public health, welfare and safety concerns including, but not limited to: parking, traffic flow, security, fencing, lighting, window and door placement, landscaping, and hours of operation;
3. The distance limitations on location of a medical cannabis distribution facility in relation to a public or private school provided for under Minn. Stat. § 152.29, as may be amended, are incorporated herein. A medical cannabis distribution facility shall not be closer than 1,500 feet of a zoning district that allows single family, two-family, townhomes, or multi-family dwellings as a permitted use at a density of greater than one unit per five acres;
4. A medical cannabis distribution facility shall be setback from all property lines a minimum of 25 feet;
5. Medical cannabis distribution facilities are prohibited from operating drive-throughs;
6. Parking, design standards, and other applicable requirements under the unified development chapter for this use will be the same as for other medical or dental clinics;

C. Medical cannabis laboratory.

1. An interim use permit shall be required to operate a medical cannabis laboratory. The maximum length of an interim use permit shall be three years. Interim use permits granted pursuant to this section are not transferable and terminate upon sale of the facility or discontinuance of use;
2. In addition to the interim use permit requirements provided for under state law and Section 50-37 of the UDC, an applicant seeking to operate a medical cannabis laboratory must submit a security plan stating how the facility will address public health, welfare and safety concerns including, but not limited to: parking, traffic flow, security, fencing, lighting, window and door placement, landscaping, and hours of operation;

3. A medical cannabis laboratory shall be setback from all property lines a minimum of 25 feet;
4. Parking, design standards, and other applicable requirements under the unified development chapter for this use will be the same as for other medical or dental clinics;

D. Medical cannabis manufacturer.

1. An interim use permit shall be required to operate a medical cannabis manufacturing facility. The maximum length of an interim use permit shall be three years. Interim use permits granted pursuant to this section are not transferable and terminate upon sale of the facility or discontinuance of use;
2. In addition to the interim use permit requirements provided for under state law and Section 50-37 of the UDC, an applicant seeking to operate a medical cannabis distribution facility must submit a security plan stating how the facility will address public health, welfare and safety concerns including, but not limited to: parking, traffic flow, security, fencing, lighting, window and door placement, landscaping, hours of operation, and odor produced by the manufacturing process;
3. The distance limitations on location of a medical cannabis manufacturing facility in relation to a public or private school provided for under Minn. Stat. § 152.29, as may be amended, are incorporated herein. A medical cannabis manufacturer shall not be closer than 1,500 feet of a zoning district that allows single family, two-family, townhomes, or multi-family dwellings as a permitted use at a density of greater than one unit per five acres;
4. A medical cannabis manufacturing facility shall be setback from all property lines a minimum of 50 feet;
5. No odor produced by a medical cannabis manufacturing facility shall be detectable at the manufacturer's property lines surrounding the facility;
6. Parking, design standards, and other applicable requirements under the Unified Development Chapter for this use will be the same as for other medical or dental clinics;

E. Medical or dental clinic.

1. In the residential districts, the clinic shall occupy 10,000 square feet or less in total floor area;
2. In the MU-N district, the clinic shall occupy 20,000 square feet or less in total floor area;

F. Religious assembly.

1. In the RR-1 district, any such buildings shall occupy not more than ten percent of the total area of the lot and shall be set back from all yard lines a distance of not less than two feet for each foot of building height;
2. In the RR-1, RR-2 and R-2 zone districts, the sum of all structures on the lot shall not exceed 50,000 square feet without a special use permit. A special use permit is required for all religious assemblies in the R-1 zone districts;
3. In the R-1 and R-2 zone districts, each property boundary with a lot occupied by a residential use shall be buffered with a dense urban screen;

G. School, elementary, middle or high.

1. In the RR-1, RR-2 and R-1 districts, the school shall have a curriculum similar to that ordinarily given in public schools and having no rooms regularly used for housing or sleeping purposes, except staff quarters, when located on the premises for the school;

2. In the RR-1, RR-2, R-1, R-2, MU-N and MU-C districts, any such building shall be located not less than 40 feet from any side or rear lot line;
3. Notwithstanding any lower maximum height stated in Article II, in all zone districts except the form districts, the maximum height for this use shall be 45 feet.
4. Schools shall provide sufficient off-street student drop-off and pick up areas so as to not pose a safety or traffic hazard to pedestrian or vehicles;
5. New schools, and existing schools that are remodeled or expanded where the value of improvements is greater than 50% of the assessed value of the existing structure(s), shall incorporate Safe Routes to School Infrastructure. This shall include safe and comfortable pedestrian and bicycle transpiration to and from the nearest residential neighborhood.

Section 3. That That Section 50-41.9 of the Duluth City Code, 1959, as amended, be amended as follows:

50-41.19. Definitions: S.

Safe Routes to School Program: A federal program under Title I, Section 1404 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, Public Law 109-59, and adopted by the State of Minnesota in Minnesota Statutes, Section 174.40.

Safe Routes to School Program Funding: A State of Minnesota account consisting of state bond proceeds and other funds as appropriated to be expended on eligible costs of a Safe Routes to School Program project receiving financial assistance. Assistance may be offered for acquisition of land or permanent easements, predesign, design, preliminary and final engineering, environmental analysis, construction and reconstruction of publicly owned infrastructure with a useful life of at least ten years that provides for non-motorized to and from a school; preparation of land for which a route to school is established, including demolition of structures and remediation of any hazardous conditions on the land; payment for the unpaid principal on debt issued by a political subdivision for a Safe Route to School project; and for any other eligible activity described in Minnesota Statutes, Section 174.40, as amended.

Safe Routes to School Administration: The Minnesota Department of Transportation program requirements and competitive process for financial assistance following Minnesota Statutes, Section 174.40, establishing criteria to evaluate capital improvements of transportation infrastructure that improves safety and encourages non-motorized transportation to and from a school.

Safe Routes to School Infrastructure: A safe and appealing non-motorized means of transportation to and from a school consistent with the Safe Routes to School Program and the Safe Routes to School Administration criteria and guidelines.

School, elementary. A public or private establishment providing educational services from kindergarten or Grade 1 through Grade 5, or from kindergarten or first grade through Grade 8, or some combination of those included years, together with incidental sports and outdoor activity areas.

School, middle or high. A public or private establishment providing educational services from Grade 6 through Grade 12, or from Grade 6 through 8, or from Grade 9 through Grade 12, or some combination of those included years, together with incidental sports and outdoor activity areas.

Seasonal camp or cabin. A facility containing one or more tent sites or cabins that is offered for use on short-term during defined seasons of the year, for compensation, and that may include accessory facilities such as showers, laundries or cooking and dining facilities.

Sediment. Solid mineral or organic material that, in suspension, is being transported, or has been moved from its original site by air, water, gravity or ice and has been deposited at another location.

Sedimentation. The process or action of depositing sediment that is determined to have been caused by erosion.

Setback. The minimum horizontal distance between a lot line and a building or structure required by this Chapter.

Shore impact zone. Land located between the ordinary high water level of public waters and a line parallel to it at a setback of 50 percent of the required structure setback, but not less than 50 feet.

Shoreland. Lands within 1,000 feet of a lake or within 300 feet of a river and its floodplain, as shown on the NR-O map. The limits of shorelands may be less than the above limits whenever the waters involved are bounded by topographic divides that extend landward from the waters for lesser distances and when approved by the commissioner.

Sidewalk. A paved surface located in the public right of way and used as a pedestrian walkway.

Sidewalk café. An outdoor dining area located within the public right of way in front or adjoining a restaurant or other eating and drinking establishment.

Sign. Any letter, word, symbol, model, printed, projected or affixed device, poster, picture, reading matter or representation in the nature of an advertisement, announcement, direction or informative device including its structure or component parts, which is more than one square foot in area and is located outdoors or is affixed to the interior or exterior of a window or door, or is displayed within 12 inches of a window intended for viewing from the exterior of the building. A sign shall not include (a) temporary parks and recreation signs permitted pursuant to Chapter 35 of the City Code, or (b) overhead banners and devices regulated under Article III of Chapter 45 of the City Code, or (c) any street name sign, public directional, utility or transportation sign, or motor vehicle traffic signs of any kind when officially placed, or to advertising or other information affixed to any motor vehicle, provided that such vehicle's primary use is not as a stationary advertising device, or (d) any inscription on any publicly owned building when the inscription is incorporated into the architectural design as a permanent feature.

Sign, A-frame. A sign ordinarily in the shape of the letter "A," or some variation thereof, that is displayed on the ground, not permanently attached, and usually two-sided.

Sign, agricultural identification. A sign describing an agricultural use that includes the name of the farm and/or the products grown on-site.

Sign, animated. A sign that uses movement or change of lighting to depict action or to create a special effect or scene. Animated signs do not include electronic message signs.

Sign, attention getting. Flags, pennants, streamers and similar devices or ornamentations designated for the purpose of attracting attention. Flags of nations, states, and cities, or fraternal, religious and civic organizations, permanent commercial flags, or temporary holiday decorations are not considered attention getting devices.

Sign, awning. A sign that is printed or displayed upon an awning. An awning is a roof-like cover designed for protection from the weather or as a decorative embellishment, which projects from a wall or roof of a structure over a window, walkway or door, with no supports that extend to the ground.

Sign, balloons. Balloons or inflated devices used as a means of directing attention to a business or service offered.

Sign, banner. A sign that is printed or displayed upon flexible material with or without frames.

Sign, banner-exhibition. A sign that is printed or displayed upon flexible material with or without frames in conjunction with a special exhibit for an educational facility, government building, museum, library or art gallery, or religious assembly.

Sign, billboard. A sign that directs attention to a business, commodity, service, event or other activity that is sold, offered or conducted other than on the premises where the sign is located.

Sign, building directory. A sign that serves as common or collective classification for a group of persons or businesses operating in the same building or on the same lot. A building directory sign may name the persons or businesses included, but carry no other advertising matter.

Sign, canopy. A sign that is printed or displayed upon a canopy. A canopy is a roofed structure constructed of fabric or other material placed to extend outward from the building and supported both by the structure and by supports that extend to the ground directly under the canopy.

Sign, construction. A temporary sign that identifies an architect, contractor, subcontractor and/or material supplier participating in construction on the property on which the sign is located and which may identify the proposed use for the property.

Sign, community event. Temporary signs that announce community events and activities, including the activities of religious assemblies, social clubs or similar groups, or special events such as fairs, rummage sales and garage sales.

Sign, directional-parking lot. A sign that identifies parking lot entrances and exits, driveway intersections, drive-through lanes, and features of a similar nature.

Sign, electronic display screen. A sign, or portion of a sign, that displays electronic video via television screens, plasma screens, digital screens, flat screens, LED screens, video boards, and holographic displays.

Sign, electronic message. Any sign, or portion of a sign, that uses changing lights to form a sign message or messages in text or image form where the sequence of messages and the rate of change is electronically programmed and can be modified by electronic processes. Time/temperature signs are not considered electronic message signs.

Sign, flashing. A sign which contains an intermittent or sequential flashing light source used primarily to attract attention. Flashing signs do not include electronic message signs.

Sign, freestanding. A sign that is placed on or supported by the ground, independent of the principal structure on the lot. Freestanding signs may be either pole or monument signs.

Sign, freestanding monument. A freestanding sign where the base of the sign structure is on the ground or up to a maximum of 24 inches above ground. The monument base must be designed as an integral part of the sign structure. The width of the top of the sign structure can be no more than 120 percent of the width of the base.

Sign, freestanding pole. A freestanding sign that is affixed, attached or erected on one or two poles that is not itself an integral part of the sign.

Sign, ghost. A painted wall sign that remains from an earlier time or advertises the use of a building that provides evidence of the history of the use of the building or activities of the community. A ghost sign is not considered an off-premises sign.

Sign, government information sign. Traffic signs, legal notices, railroad crossing signs, signs regulating vehicular or pedestrian traffic, or designating or giving direction to streets, schools, historic sites or public buildings, and temporary emergency signs.

Sign, home occupation. A sign identifying a home occupation or permitted accessory use on the premises.

Sign, illumination types.

A. Gooseneck reflector. Lighting designed for mounting above or to the side of signs with a long, shepherd hook-shaped arm to hold fixtures at a distance from the area of illumination;

B. Illumination, external. Lighting of a sign where lighting components are outside the sign structure and light is directed at the sign face;

C. Illumination, internal. Lighting of a sign constructed so that all lighting components are internal and illumination occurs as lighting is diffused through the sign face surfaces.

Sign, marquee. A permanent roof-like sign structure constructed over a building entry, with no supports extending to the ground, where a changeable message area is part of the vertical sign fascia.

Sign, memorial plaque. A sign, tablet or plaque memorializing a historic person, event, structure or site.

Sign, menuboard. A device that lists items for sale at an establishment with drive-through facilities.

Sign, moving. A sign that, in whole or in part, rotates, elevates or in any way alters position or geometry. Moving signs do not include clocks.

Sign, nameplate. A sign that is affixed flat against a wall of a building or imprinted into the wall of a building that designates the name of the building or the name and profession of one who resides or occupies space in the building.

Sign, noncommercial. A sign advocating action on a public issue or recommending a candidate for public office.

Sign, off-premises. A sign that directs attention to a business, product, service or entertainment not conducted, sold or offered upon the premises where the sign is located.

Sign, on-premises. A sign that directs attention to the name of the building or the name of the building management firm or to a business, principal product, service or entertainment conducted, sold or offered upon the premises where such sign is located.

Sign, parking lot information. Signs that provide information on the operation of a parking lot, such as "No Parking" or "Unauthorized users shall be towed."

Sign, political. Any sign that directs attention to an issue in an election or to either the name of a candidate running for election to a public office or the name of the office for which he is a candidate, or both.

Sign, portable. A sign whose principal supporting structure is intended, by design and construction, to rest upon the ground for support and may be easily moved or relocated for reuse. Portable signs include, but are not limited to, signs mounted upon a trailer, wheeled carrier or other non-motorized mobile structure, with wheels or with wheels removed. Portable signs do not include A-frame signs.

Sign, projecting. A sign that is attached to a structure that extends beyond the surface of the structure to which it is attached.

Sign, property identification/management. An accessory sign containing only messages related to the identification or management of the property where the sign is located, including but not limited to signs identifying entrances, exits, parking areas or hazardous areas, prohibiting trespassing, or information about limits on property use.

Sign, property identification. A sign identifying the property management company or apartment complex name of a multi-family dwelling.

Sign, public information. Signs within an educational facility, cemetery or mausoleum, museum, library or art gallery, and park, playground or forest reserve property that provide information on the use of the facility, such as directional signs, trailhead locations and information kiosks.

Sign, public assembly bulletin board. A bulletin board accessory to and located on the same property as a religious assembly or educational use listed in Table 50-19.8 that identifies the name of the institution and the dates and times of events related to that institution to which some or all of the public are invited. These signs are allowed where electronic message signs are allowed, and are subject to the same regulations and standards.

Sign, readerboard. A sign or portion of a sign face that allows for the creation of messages by physical manipulation of simple block letters, but not including an electronic message sign or electronic billboard. These signs are allowed where electronic message signs are allowed, and are subject to the same regulations and standards.

Sign, real estate. A sign advertising the real estate upon which the sign is located as being for rent, lease or sale. A real estate sign can also advertise an open house.

Sign, roof. A sign that is wholly erected, constructed or maintained above the roof structure or parapet of any building with the principal support attached to the roof structure.

Sign, scoreboard. A sign that records and displays the score of a game and may include such information as the name of the field or home team and advertising.

Sign, snipe. An off-premises sign painted, pasted or otherwise affixed to any tree, rock, retaining wall, fence, utility pole, hydrant, bridge, sidewalk, curb or street, bench or trash receptacle. Logos and labels located on mechanical equipment, recycling bins, trash containers or dumpsters, which are part of the equipment as manufactured and/or installed, are not snipe signs.

Sign, temporary off-premises. A temporary sign that advertises a business, commodity, service, event or other activity that is sold, offered or conducted other than on the premises where the sign is located, or is sold, offered or conducted on the premises only incidentally, if at all.

Sign, under-awning. A sign that is attached to and mounted under an awning.

Sign, under-canopy. A sign that is attached to and mounted under a canopy.

Sign, wall. A sign that is mounted flat against or painted on a wall, and projects no more than 12 inches from the wall of a structure with the exposed face of the sign in a plane parallel to the face of the wall. Wall sign does not include window sign. For the purposes of this definition, a fence is not considered a wall and wall signs are prohibited mounted on fences.

Sign, window. A sign that is attached to, placed upon, printed on the interior or exterior of a window or door of a building, or displayed within 12 inches of a window intended for viewing from the exterior of such a building. A window sign may be either permanent or temporary. Window clings are considered a window sign and subject to all window sign regulations.

Significant tree. All trees of more than ten inches DBH, and all special tree species of more than six inches DBH shall be considered significant, unless they are under power lines or deemed hazardous by a certified arborist or landscape architect or professional forester. In addition, any replacement tree planted as part of a tree replacement plan shall be considered significant, even if it does not meet the size definition above.

Site. A parcel or several adjoining parcels of land under common ownership. For purposes of the natural resources overlay district, this definition is limited to apply to any parcel of land upon which work requiring a permit under this Chapter is to be performed, and includes any adjacent lands owned by the

owner of the subject parcel on the date of application for any permit and any lands adjacent to the subject parcel that were owned by the same person owning the subject parcel as of January 1, 1980.

Site plan. An accurate scale drawing that indicates the major features of a proposed development in sufficient detail to allow the evaluation of the land planning, building design and other aspects of the development, and meeting all requirements of the UDC application manual.

Slope. An incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude (e.g., slope = 3:1 = 3 feet horizontal to 1 feet vertical).

Solar, geothermal or biomass power facility (primary use). Uses and structures 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: solar panels (photovoltaic and hot water), heat exchanges, biomass firing equipment, piping, and other transfer mechanisms, controls and related structural support for transporting and storing collected energy from solar, geothermal, or biomass energy systems. These structures and uses 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.

Solid land. Any land that is neither a wetland nor located in a floodway.

Solid waste. As defined in MSA 116.06, Subd. 22, and also including medical wastes and petroleum contaminated soils.

Solid waste disposal or processing facility. Any tract or parcel of land, including any constructed facility that is designed or operated for the purpose of disposing of solid waste on or in the land, at which solid waste is disposed of in or on the land or processed for disposal or reuse, together with any appurtenant facilities needed to process solid waste for disposal or for transfer to another solid waste facility, and that is not listed as a separate use in this Chapter.

Special tree species. White pines, red (Norway) pines, white cedars, white spruces, eastern hemlocks, sugar maples, American basswoods, American elms, yellow birches and all oak species.

Special use. A specific type of structure or land use listed in Table 50-19.8 that may be allowed only after review and evaluation of potential impacts on surrounding properties and the attachment of any conditions necessary to mitigate those impacts.

Stealth or stealth technology. When used in the context of wireless telecommunications, 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.

Steep slope. Land having average slopes over 12 percent, as measured over horizontal distances 50 feet or more, and that are not bluffs.

Storage warehouse. A structure containing an area available for storing raw materials, produce, goods or property, but not including mini-storage facilities.

Stormwater. Stormwater runoff, snowmelt runoff, surface runoff and drainage.

Stormwater management. The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

Stormwater pollution prevention plan. A plan, usually required by a permit, to manage stormwater associated with industrial, commercial, public, institutional, civic or other land use activities, including construction. The plan commonly describes and ensures the implementation of practices that are to be used to reduce pollutants in stormwater and non-stormwater discharges

Stormwater pollution prevention program (MS4 program). A compilation of best management practices (BMPs) to address the six minimum control measures and other provisions of the MS4 permit, that is designed and managed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable as appropriate to the community.

Stormwater best management practice (BMP). A measure, either structural or nonstructural, that is determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies. Non-structural BMPs are those practices that require modified or additional operational or behavioral practices, such as sweeping or having spill response equipment on site. Structural BMPs are those that require the construction of a structure or other physical modification on the site.

Stormwater retrofit. A stormwater BMP designed for an existing development site that previously had either no stormwater BMP in place or a practice inadequate to meet the stormwater management requirements of the site.

Stormwater runoff. Flow on the surface of the ground resulting from precipitation.

Story. That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

Story, half. A partial story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than four feet above the floor of such story, except that any partial story used for residence purposes, other than for a janitor or caretaker or his family, or by a family occupying the floor immediately below it, shall be deemed a full story.

Stream buffer. An area of land at or near a stream bank, wetland or water body that has intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes that may result in significant degradation to water quality.

Street. A public dedicated right-of-way, other than an alley, which affords the principal means of access to abutting property.

Street line. The established side line of a street easement or right-of-way.

Structure. Anything constructed or erected, the use of which requires a location on the ground, or attached to some thing having a location on the ground. Examples include but are not limited to: backstops for tennis courts, fences or pergolas.

Structural alteration. Any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any substantial changes in the roofs or exterior walls but not including openings in bearing walls as permitted by existing ordinances.

Subdivision. The division of a lot, tract or parcel of land into three or more lots, plats, sites or other divisions of land of one acre or less in area, for the purpose, whether immediate or future, of sale or of building development. This term also includes the division of a lot, tract or parcel of land into two or more lots, plat, sites or other divisions of land of more than one acre and less than ten acres in area, if the division provides or there is shown on a plat of the division a new street or highway. The term also includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

Substantial damage. Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 60 percent of the assessed market value of the structure as determined by the city assessor before the damage occurred. For flood plain management and flood hazard purposes, substantial damage shall occur when damage of any origin sustained by a structure, where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the assessed market value of the structure as determined by the city assessor before the damage occurred.

Substantial improvement. Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition or other improvement of a structure, the cost of which equals or exceeds 60 percent of the assessed market value of the structure as determined by the city assessor before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. For flood plain management and flood hazard purposes, substantial improvement shall be within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the assessed market value of the structure as determined by the city assessor before the "start of construction" of the improvement.

The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;

(b) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." For the purpose of this Chapter, "historic structure" shall be as defined in 44 Code of Federal Regulations, Part 59.1.

Sustainable development. Development that maintains or enhances economic opportunity and community well being while protecting and restoring the natural environment upon which people and

economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10047, 8-30-2010, §§ 6, 7, 8; Ord. No. 10075, 1-24-2011, § 3; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10285, 3-10-2014, § 11; Ord. No. 10338, 11-24-2014, § 7.)

Section 4. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: _____, 2018)

STATEMENT OF PURPOSE: This ordinance implements one minor text amendment to chapter 50 of the City Code, known as the Unified Development Chapter (UDC).

..Title

AN ORDINANCE AMENDING SECTION 50-39, ENFORCEMENT AND PENALTIES.

..Body

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-39 of the Duluth City Code, 1959, as amended, be amended as follows:

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. (Ord. No. 10044, 8-16-2010, § 6.)

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)

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. (Ord. No. 10044, 8-16-2010, § 6.)

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 ~~30~~ 14 days, except that (i) if the order identifies a threat to public health or safety then a compliance shorter than ~~30~~ 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 19 and 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 within 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 shown 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 45 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. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 57; Ord. No. 10155, 5-29-2012, § 29; Ord No. 10446, 4-11-2016, §4)

50-39.3 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. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10155, 5-29-2012, § 30.)

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

STATEMENT OF PURPOSE: This ordinance implements one minor text amendment to chapter 50 of the City Code, known as the Unified Development Chapter (UDC).