



City of Duluth

411 West First Street
Duluth, Minnesota
55802

Minutes

City Council

MISSION STATEMENT: *The mission of the Duluth City Council is to develop effective public policy rooted in citizen involvement that results in excellent municipal services and creates a thriving community prepared for the challenges of the future.*

TOOLS OF CIVILITY: *The Duluth City Council promotes the use and adherence of the tools of civility in conducting the business of the council. The tools of civility will provide increased opportunities for civil discourse in order to find positive resolutions to the issues that face the city. These tools include: pay attention, listen, be inclusive, do not gossip, show*

Monday, October 12, 2015

7:00 PM

Council Chamber

ROLL CALL

Present: 9 - Councilors Zach Filipovich, Jay Fosle, Sharla Gardner, Howie Hanson, Jennifer Julsrud, Linda Krug, Barb Russ, Joel Sipress and President Emily Larson.

PUBLIC HEARING - 7 PM - Proposed Assessment Roll for the Extension of the Watermain on North 85th Avenue West.

At this time, 7:02 p.m. the public hearing began for the Proposed Assessment Roll for the Extension of the Watermain on North 85th Avenue West.

No one appeared at this time, 7:03 p.m. the public hearing was declared

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

1. **15-066** Communications regarding the proposed rezoning of the Morgan Park School site (15-079-O).

Attachments [Dixon R. and Tammera A. Bastie](#)
[Lucille Kolberg](#)
[SDH&M, LLC, developer](#)

This Petition/Other Communication was received.

REPORTS FROM THE ADMINISTRATION

REPORTS FROM OTHER OFFICERS

2. **15-064** Clerk application for exempt permit to the Minnesota gambling control board from Holy Family Catholic Church on November 8, 2015 (bingo).

Attachments [Application](#)

This Report was received.

REPORTS OF BOARDS AND COMMISSIONS

3. **15-068** Duluth transit authority minutes of June 25, 2015, meeting and June 2015 financial statement.

Attachments [Minutes](#)
 [Financial Statement](#)

This Board or Commission Report was received.

4. **15-069** Library board minutes of August 25, 2015, meeting.

Attachments [Minutes](#)

This Board or Commission Report was received.

5. **15-070** Entertainment and convention center authority minutes of April 28, May 26 and June 30, 2015, meetings.

Attachments [April 28, 2015](#)
 [May 26, 2015](#)
 [June 30, 2015](#)

This Board or Commission Report was received.

REPORTS OF COUNCIL COMMITTEES

REPORTS OF COUNCIL OPEN ISSUES

OPPORTUNITY FOR CITIZENS TO BE HEARD

Gerald Schlafer commented on examples of "nothing is free and someone is paying for it".

Chuck Davis commented on bike routes through downtown Duluth.

MOTIONS AND RESOLUTIONS**CONSENT AGENDA****COMMITTEE 1****BY COUNCILOR FILIPOVICH (FINANCE)**

6. **15-0693R** RESOLUTION CONFIRMING ASSESSMENT ROLL LEVIED TO DEFRAY THE ASSESSABLE PORTION OF THE EXTENSION OF THE WATER MAIN ON NORTH 85TH AVENUE WEST.

CITY PROPOSAL:

RESOLVED, that the assessment roll levied to defray the assessable portion of the following is hereby confirmed:

Water Main Extension on North 85th Avenue West.

Contract 2014012 - total assessable amount of \$94,198.52 to be deposited in Fund 510. Assessment roll attached as Exhibit A.

STATEMENT OF PURPOSE: This resolution confirms the assessable portion of the above-related projects.

Attachments [Exhibit A](#)

This Resolution was adopted unanimously.

BY COUNCILOR HANSON (PURCHASING & LICENSING)

7. **15-0694R** RESOLUTION AUTHORIZING A CONTRACT WITH BEDROCK FLINT, INC., FOR TUCKPOINTING THE FACILITY MAINTENANCE BUILDING IN THE AMOUNT OF \$102,718.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Bedrock Flint, Inc., for the tuckpointing of the east and west walls of the facility maintenance building, in the amount of \$102,718, payable from Capital Improvements 450; Finance 030; Buildings and Structures 5520; Project: CP2015-1502b - 2015 capital projects, citywide CIP eligible building improvements.

STATEMENT OF PURPOSE: This resolution authorizes a contract with

Bedrock Flint, Inc., for tuckpointing the walls of the facility maintenance building in the amount of \$102,718.

The project entails tuckpointing the east and west exterior walls of Property and Facilities Maintenance building. The work includes grinding out the failing mortar, tuckpointing in new mortar, and cleaning and sealing the identified masonry surfaces. Water is currently infiltrating the building through failed mortar joints. This project would stop the leaks and associated degradation of the facility.

The facilities management division requested quotes from the following companies: Harbor City, Bedrock Flint, and Stretar Masonry. Harbor City did not provide a quote; Stretar quoted \$115,000; and Bedrock Flint quoted \$102,718. The project was awarded to Bedrock Flint based on being the lowest, complete quote.

Requisition No. 15-0613

This Resolution was adopted unanimously.

8. **15-0696R** RESOLUTION AUTHORIZING AN AMENDMENT TO AGREEMENT 22491 WITH HOISINGTON KOEGLER GROUP, INC., FOR ADDITIONAL SERVICES FOR A CROSS CITY TRAIL MASTER PLAN, AN INCREASE OF \$14,000, FOR A TOTAL AMOUNT NOT TO EXCEED \$51,800.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to amend Agreement 22491, attached as Exhibit A, with Hoisington Koegler Group, Inc. (HKGi) for additional services in preparing a master plan for the Cross City Trail from Sister Cities Park to Becks Road, for an additional amount of \$14,000, for a total amount not to exceed \$51,800, payable from Parks Fund 205; Community Resources 130; Parks Capital 1220; Improvements Other than Buildings 5530; Project: CM205-mstrpl Cap Mtce Fund 205, master plans.

STATEMENT OF PURPOSE: This resolution authorizes an amendment to Agreement 22491 with HKGi. The amendment will allow for the completion of the Cross City Trail Mini-Master Plan by adding to HKGi's scope of work to include incorporation of additional evaluations and assessments, organization and facilitation of three additional public meetings, and wrap up of the Mini-Master Plan process for an increase of \$14,000, and a total amount not to exceed \$51,800.

Costs based on hourly fees including all coordination with staff, meeting agendas, meeting preparation, meeting summaries and expenses (travel, mileage, plotting/ printing). The amended HKGi proposal is attached as Exhibit B.

Requisition No. 15-0397

Attachments [Exhibit A](#)
[Exhibit B](#)

This Resolution was adopted unanimously.

9. **15-0704R** RESOLUTION AUTHORIZING A SINGLE SOURCE PURCHASE FROM NOVASPECT, INC., FOR REGULATOR AND RELIEF PRODUCTS IN THE AMOUNT OF \$40,617.35.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to purchase Fisher regulator and relief products from Novaspect, Inc., in the amount of \$40,617.35, payable from Gas Fund 520, Public Works and Utilities 500, Customer Services 1940, Service 2410, Utility System Mtc Supplies 5227.

STATEMENT OF PURPOSE: This resolution authorizes the single source purchase of Fisher regulator and relief products in the amount of \$40,617.35 from Novaspect, Inc. These parts are necessary for direct maintenance, repair and replacement of existing equipment. These items are kept in stock to prevent any interruption of gas to our customers.

Novaspect is the sole regional source of Fisher products. Fisher products are the only regulator and reliefs used in the natural gas system. All of these items must be of the same manufacturing and compatible with the extensive training employees have received on the repair and maintenance of these items.

Requisition No. 15-0622

This Resolution was adopted unanimously.

10. **15-0716R** RESOLUTION AUTHORIZING A PURCHASE FROM SHI, INC. FOR DESKTOP AND LAPTOP PERSONAL COMPUTER REPLACEMENTS UNDER THE CITY'S FOUR YEAR REPLACEMENT PLAN IN THE TOTAL AMOUNT OF \$255,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to purchase desktop and laptop personal computer replacements from SHI, Inc. under the city's four year replacement plan in the total amount of \$255,000, with \$78,104.53 payable from 250-015-2014-5580-CE250-1401, \$92,582.02 from 250-015-2014-5580-CE250-1402 and \$84,313.45 from 250-015-2015-5580-CE250-1501. This annual purchase will cover replacements for desktop and laptop personal computers for various city departments.

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize the city to purchase desktop and laptop personal computer replacements from SHI, Inc. under the city's four year replacement plan in the total amount of \$255,000. This annual purchase will cover replacements for the various city departments. SHI, Inc. is a Minnesota state contract vendor that offers very competitive pricing.

This Resolution was adopted unanimously.

11. **15-0731R** RESOLUTION ISSUING A 3.2 PERCENT MALT LIQUOR LICENSE AND APPROVING ISSUANCE OF AN ON SALE WINE LICENSE TO LARK O' THE LAKE, LLC (LARK O' THE LAKE CAFÉ), 231 EAST SUPERIOR STREET.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale 3.2 percent malt liquor license for the period ending April 30, 2016, and approves issuance of the following on sale wine license for the period ending August 31, 2016, subject to departmental approvals, the payment of sales and property taxes, and further subject to approval of the Liquor Control Commissioner;

Lark O' the Lake, LLC (Lark O' the Lake Café), 231 East Superior Street, #100-101, main floor, with Don Monaco, 33.34 percent, Mark Marino, 33.33 percent, and Sandra Ettestad, 33.33 percent owners.

STATEMENT OF PURPOSE: The applications of Lark O' the Lake Cafe for a 3.2% beer license and wine license were reviewed by the Alcohol, Gambling and Tobacco Commission at their meeting on October 7th and

were unanimously approved.

This Resolution was adopted unanimously.

12. **15-0732R** RESOLUTION APPROVING ISSUANCE OF A TEMPORARY ON SALE INTOXICATING LIQUOR LICENSE TO CHURCHES UNITED IN MINISTRY.

CITY PROPOSAL:

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

Churches United in Ministry, (CHUM International Dinner), 1111 North 11th Avenue East, on October 24, 2015, from 5:00 p.m. to 8:00 p.m., with Mary Schmitz, manager.

STATEMENT OF PURPOSE: The application of CHUM for a temporary on sale liquor license was approved by the police department and was reviewed by the Alcohol, Gambling and Tobacco Commission at their meeting on October 7th and was unanimously approved.

This Resolution was adopted unanimously.

COMMITTEE 2

BY COUNCILOR RUSS (PLANNING & ECONOMIC DEVELOPMENT)

13. **15-0711R** RESOLUTION AUTHORIZING A SUBLEASE AGREEMENT WITH THE STATE OF MINNESOTA, DEPARTMENT OF ADMINISTRATION, ACTING FOR THE BENEFIT OF THE COUNCIL FOR MINNESOTANS OF AFRICAN HERITAGE, FOR SUBLEASE OF SPACE IN THE DULUTH ATHLETIC CLUB BUILDING.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into a sublease agreement, substantially in the form of that attached hereto as Exhibit A, with the state of Minnesota, department of administration, acting on behalf of the Council for Minnesotans of African Heritage, for the subleasing of space in the Duluth Athletic Club building at 402 West First Street in Duluth, Minnesota, sublease payment to be deposited in Fund 268-031-6251-4622 (Workforce Development Fund, Grants Division, Office Support, Rent of Building).

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into a sublease with the state of Minnesota, department of administration, acting on behalf of the Council for Minnesotans of African Heritage for the subleasing of approximately sixty-four (64) square feet of office space in the Duluth Athletic Club building. The term of the agreement is from October 12, 2015 through June 30, 2017 and provides that city will receive a total of \$7,530.28 in rent payments during the term of the agreement

Attachments [Exhibit A - Resolution 15-0711](#)

This Resolution was adopted unanimously.

COMMITTEE 3

BY COUNCILOR JULSRUD (PUBLIC WORKS & UTILITIES)

14. **15-0625R** RESOLUTION AWARDING A CONTRACT TO NORTHLAND CONSTRUCTORS OF DULUTH, LLC FOR AIRPORT ROAD SANITARY SEWER RELOCATION BETWEEN RALSTON DRIVE AND VANDENBERG DRIVE IN THE AMOUNT OF \$103,652.50.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Northland Constructors of Duluth, LLC for Airport Road sanitary sewer relocation between Ralston Drive and Vandenberg Drive in the amount of \$103,652.50, payable from Cirrus Building Fund 412, Department 030 (finance), Object 5520 (buildings and structures), City Project No. 1486.

STATEMENT OF PURPOSE: This resolution will authorize relocation of the sanitary sewer in Airport Road between Ralston Drive and Vandenberg Drive by Northland Constructors of Duluth, LLC in the amount of \$103,652.50. Northland Constructors was the lowest responsible bidder of the four companies that responded. The engineer's estimate was \$173,065. The sanitary sewer needs to be relocated prior to construction

of the new Cirrus building. Payable from Cirrus Building Fund 412, Department 030 (Finance), Object 5520 (Buildings and Structures), city project no. 1486, requisition no. 15-0530.

TABULATION OF BIDS RECEIVED SEPTEMBER 3, 2015

Northland Constructors of Duluth, LLC Duluth, MN \$103,652.50
Utility Systems of America, Inc. Eveleth, MN \$108,421.00
Hiland Brothers, Inc. Carlton, MN \$112,826.00
JGM Contracting, Inc. Angora, MN \$193,076.00

Attachments [15-0625R Map](#)

This Resolution was adopted unanimously.

15. **15-0645R** RESOLUTION ACCEPTING THE CONVEYANCE OF A GAS UTILITY EASEMENT FROM PLB MILLER HILL, LLC FOR PUBLIC PURPOSES.

CITY PROPOSAL:

RESOLVED, that the city of Duluth does hereby accept the conveyance of a gas utility easement from PLB Miller Hill, LLC for public utility purposes and attached as Exhibit 1 hereto over property legally described in said Exhibit 1 in connection with serving the existing building at 1408 Maple Grove Road.

STATEMENT OF PURPOSE: This resolution authorizes the acceptance of a gas utility easement from PLB Miller Hill, LLC in order to provide service to 1408 Maple Grove Road.

Attachments [15-0645R Exhibit 1](#)
 [15-0645 Exhibit A](#)

This Resolution was adopted unanimously.

16. **15-0713R** RESOLUTION AUTHORIZING AN AGREEMENT WITH INFOR, INC. FOR PROFESSIONAL SERVICES PERTAINING TO THE MODIFICATION AND ENHANCEMENT OF THE CITY'S ENTERPRISE ASSET MANAGEMENT SYSTEM FOR AN AMOUNT NOT TO EXCEED \$160,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Infor, Inc., substantially in the form of that attached as Exhibit A, to provide professional services pertaining to the modification and enhancement of the city's Enterprise Asset Management (EAM) system for an amount not to exceed \$160,000, payable as follows:

\$40,000 Water Fund 510, Public Works & Utilities 500, Utility General Expense 1915, Contract Services 5310;

\$40,000 Gas Fund 520, Public Works & Utilities 500, Utility General Expense 1915, Contract Services 5310;

\$40,000 Sewer Fund 530, Public Works & Utilities 500, Utility General Expense 1915, Contract Services 5310;

\$40,000 Stormwater Fund 535, Public Works & Utilities 500, Utility General Expense 1915, Contract Services 5310.

STATEMENT OF PURPOSE: The purpose of this resolution is to serve as a Master Agreement between the city and Infor, Inc., for professional services to assist the city in modifications and enhancements to the city's Enterprise Asset Management (EAM) application which contains all utility based infrastructure assets not to exceed \$160,000. The city has utilized the EAM application for the past four years and this agreement will allow us to utilize the expertise of Infor professional services to complete a multi-phased plan to modify and enhance the application to improve operational efficiencies as well as allow for further integration of data throughout other utility systems.

Attachments [Exhibit A](#)

This Resolution was adopted unanimously.

BY COUNCILOR FOSLE (PUBLIC SAFETY)

17. **15-0700R** RESOLUTION AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE MINNESOTA DEPARTMENT OF PUBLIC SAFETY IN THE AMOUNT OF \$281,800 FOR THE 2016 TOWARDS ZERO DEATHS PROJECT.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to accept an award from the state of Minnesota, department of public safety, in the amount of \$281,800. Such funds are to be used to reimburse the Duluth police department and other Lake Superior traffic enforcement team participants for overtime salary/fringe benefits reimbursement for traffic enforcement of speed, distracted and impaired driving and passenger safety, St. Louis County 9-1-1 dispatch support, grant management administration, and travel to the TZD Conference. Funds to be deposited in Fund No. 215-200-2209-4210-02 (Duluth police grant programs, police, 2016 TZD grant, pass thru federal grants operating).

FURTHER RESOLVED, that the proper city officials are authorized to execute a grant agreement, substantially the same as the attached Exhibit A, from the state of Minnesota, department of public safety.

STATEMENT OF PURPOSE: The Duluth Police Department is the designated recipient and fiscal agent of a 2016 Toward Zero Deaths Law Enforcement Grant from the Minnesota Department of Public Safety in the total amount of \$281,800. This is a recurring grant that provides additional pass-through federal funding for the Lake Superior Traffic Enforcement Team. This resolution authorizes the proper city officials to accept the grant. The grant monies will be used to support over time reimbursement for traffic enforcement. The grant period is October 1, 2015 through September 30, 2016.

Attachments [Exhibit A](#)

This Resolution was adopted unanimously.

18. **15-0714R** RESOLUTION AUTHORIZING AN AGREEMENT WITH PUBLIC SAFETY CORPORATION TO ASSIST IN THE ENFORCEMENT OF THE FALSE ALARM ORDINANCE.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that attached hereto as Exhibit A, with Public Safety Corporation ("PSC") to assist the city of Duluth ("city") in enforcement of the False Alarm Ordinance, Chapter 29B of the Duluth City Code. Fees and penalties collected under the agreement are payable into Fund 110, Department 160, Organization 1610, Revenue Source 4329 (general fund, police department, administration & investigations, false alarm fees and penalties).

STATEMENT OF PURPOSE: This resolution authorizes the renewal of an

agreement with PSC to provide false alarm services to the city. The goal of the False Alarm Ordinance is to encourage more responsible use of alarm systems and to reduce the number of false alarms to which peace officers must respond. PSC utilizes a software system which is designed to assist in accessing information relevant to false alarms. Net revenues will be split 65 percent to the city and 35 percent to PSC. PSC has provided false alarm services to the city since 2010. In 2014 the city's share of net revenues was \$20,797.51. The term of the new contract is five years.

Attachments [Exhibit A - 15-0714r](#)

This Resolution was adopted unanimously.

BY COUNCILOR SIPRESS (RECREATION, LIBRARIES & AUTHORITIES)

- 19. 15-0715R** RESOLUTION AUTHORIZING AN AMENDMENT TO AGREEMENT 22490 WITH BARR ENGINEERING, FOR ADDITIONAL SERVICES FOR THE SPIRIT MOUNTAIN ENVIRONMENTAL ASSESSMENT WORKSHEET (EAW), AN INCREASE OF \$17,352, FOR A TOTAL AMOUNT NOT TO EXCEED \$49,670.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to amend Agreement 22490, attached as Exhibit A, with BARR Engineering for additional services in preparing the environmental assessment worksheet (EAW) for the Spirit Mountain Recreation Area, proposal email is attached as Exhibit B, for an additional amount of \$17,352, for a total amount not to exceed \$49,670, payable from Tourism and Recreational Projects 452; Finance 030; Improvements Other than Buildings 5530; Project: HANDHTAX-1506 - half and half tax projects, Lower Spirit Nordic.

STATEMENT OF PURPOSE: This resolution authorizes an amendment to Agreement 22490 with BARR Engineering, for additional services in preparing the Environmental Assessment Worksheet (EAW) for improvements to the Spirit Mountain Recreation Area including Nordic trails, downhill bike trails, and changes to the disc golf course, an increase of \$17,352, and a total amount not to exceed \$49,670.

Estimated costs are based on hourly fees. The increase is due, in part, to additional work to assess and reduce potential adverse project impacts on adjacent residents. Estimated task hours remaining are 132 hours.

Additional work scope tasks and tasks remaining are included in Exhibit B.

Attachments [EXHIBIT A - BARR C22490.pdf](#)
[EXHIBIT B - BARR PROJECT PROPOSAL INCREASE.pdf](#)

This Resolution was adopted unanimously.

- 21. 15-0725R** RESOLUTION AGREEING TO MAKE IMPROVEMENTS TO THE DEDA PORTION OF THE SLIP 2 DOCK FACE AND TO IMPOSE DECLARATION RESTRICTIONS

CITY PROPOSAL:

RESOLVED, that, pursuant to the authorization contained in Resolution No. 15D-45 of the Duluth Economic Development Authority ("DEDA"), city hereby agrees that it will cause to be made those improvements to the portion of the dock face of Slip No. 2 in BAYFRONT DIVISON on the face of DEDA-owned property, which improvements are described in the plans therefore approved pursuant to that certain development agreement between DEDA and Pier B Holding LLC for "The Silos at Pier B Project", to be constructed by the developer on said DEDA portion of the dock face, all in accordance with the requirements of Minnesota State Department of Employment and Economic Development and the Commissioner of Minnesota Management and Budget pursuant to that certain Construction Grant for the Pier B Bayfront Development Project under Redevelopment Grant Program RDGP-12-0044-o-FY12 and to execute a Declaration in the form attached to said Grant imposing restrictions on the property upon which said construction work is performed.

STATEMENT OF PURPOSE: The purpose of this resolution is to document for the benefit of the State of Minnesota that the City is authorized to use grant proceeds from Redevelopment Grant Program RDGP-12-0044-o-FY12 to reconstruct the DEDA-owned portion of the east dock face of Slip No. 2 along with the City-owned portion and committing the City to impose the state required restrictions on the property in the form of a Declaration as part of the Pier B Project.

As part of the financing structure of the Project, the City had secured a redevelopment grant, a portion of which was programed to use for the reconstruction of the east dock face of the slip (adjacent to Bayfront Festival Park). A portion of the property upon which the dock face exists is owned by DEDA and therefore the State is requiring that the City pass a resolution accepting authorization from DEDA to do the work and committing to put the normal, state-required restrictions on the property in

the form of a Declaration. The Declaration essentially prohibits the City from selling the property without the State's consent for the useful life of the improvements.

This resolution will allow the City to comply with the State's requests.

This Resolution was adopted unanimously.

- 22. 15-0726R** RESOLUTION AUTHORIZING CITY OFFICIALS TO EXECUTE LEASE AND SERVICE AGREEMENT WITH CASSIE HAMLIN AND BRIAN ENGBRETSON FOR RESIDENTIAL DWELLING UNIT LOCATED WITHIN THE WHEELER FIELDHOUSE BUILDING.

CITY PROPOSAL:

RESOLVED, that the proper city officers are authorized to enter into a lease and service agreement with Cassie Hamlin and Brian Engbretson for the residential dwelling unit located within the Wheeler Fieldhouse Building, said agreement to be substantially in the form of the lease agreement attached as Exhibit A. Monthly rental payments shall be deposited into Fund 110, Public Administration 121, Property and Facilities Management 1222, Rent for Buildings 4622.

STATEMENT OF PURPOSE: This resolution authorizes a lease and service agreement with Cassie Hamlin and Brian Engbretson for the residential dwelling unit located within the Wheeler Fieldhouse Building located at 3501 Grand Avenue.

The lease is month-to-month effective October 1, 2015. Rent is \$450 per month. At least \$100 of the \$450 must be paid in cash. The lessees are eligible for up to \$350 in rent when they provide the on-site maintenance services specified in the agreement. On-site services will be recorded by the lessees and verified by the city park maintenance supervisor.

Attachments [Wheeler Rental Agreement](#)

This Resolution was adopted unanimously.

END OF CONSENT AGENDA

The following entitled resolutions were also to be considered:

COMMITTEE 3**BY COUNCILOR SIPRESS (RECREATION, LIBRARIES & AUTHORITIES)**

- 20. 15-0717R** RESOLUTION OF SUPPORT FOR THE INSTALLATION OF A TRAFFIC SIGNAL FOR THE KENWOOD VILLAGE PROJECT, CITY PROJECT NO. 1468, AT THE INTERSECTION OF KENWOOD AVENUE AND CLEVELAND STREET, AND SIGNAL AND INTERSECTION IMPROVEMENTS TO ARROWHEAD ROAD AND KENWOOD AVENUE.

CITY PROPOSAL/BY COUNCILOR SIPRESS:

RESOLVED, that the city of Duluth intends to install a traffic signal at the intersection of Cleveland Street and Kenwood Avenue, and to make improvements to the existing signalized intersection of Arrowhead Road and Kenwood Avenue, City Project No. 1468.

General improvements may include the following:

1. Installation of a traffic signal at Cleveland Street and Kenwood Avenue.
2. Dedicated left turn arrows and lanes for all legs of Arrowhead Road and Kenwood Avenue.
3. Replacement of existing signalized equipment with new mast arms, signal heads, pedestrian countdown heads, hand holes and wiring.
4. Replace loop detection system with a camera system and add EVP capability.
5. Interconnection of existing and proposed signal systems, and adjustment and coordination of signal timing.
6. Where feasible, combination and/or elimination of driveway accesses in close proximity of the intersection improvements.

STATEMENT OF PURPOSE: This resolution states the intent to proceed with signal improvements at both Kenwood Avenue and Arrowhead Road, and Kenwood Avenue and Cleveland Street. The engineering division will issue a request for proposals to complete the improvements. St. Louis County, as a contributing partner for its leg of the intersection, will participate on the selection committee. Depending upon funding and upon how quickly the design can be completed, the signal work should be complete by early 2017.

Sponsors: Sipress

Attachments [15-0717 Map](#)

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

Chad Ronchetti expressed support for the resolution.

A motion was made that this Resolution be adopted. The motion carried by a unanimous vote.

COMMITTEE 1

BY COUNCILOR HANSON (PURCHASING & LICENSING)

23. **15-0730R** RESOLUTION ISSUING A 3.2 PERCENT MALT LIQUOR LICENSE AND APPROVING ISSUANCE OF AN ON SALE WINE LICENSE TO NORTHERN WATERS SMOKEHAUS, (NORTHERN WATERS), 1608 WOODLAND AVENUE.

CITY PROPOSAL:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale 3.2 percent malt liquor license for the period ending April 30, 2016, and approves issuance of the following on sale wine license for the period ending August 31, 2016, subject to departmental approvals, the payment of sales and property taxes, and further subject to approval of the Liquor Control Commissioner;

Northern Waters Smokehaus, (Northern Waters), 1608 Woodland Avenue, main floor, with Eric Goerd, president and 75 percent owner, and Lynn Goerd, 25 percent owner.

STATEMENT OF PURPOSE: The applications of Northern Waters for a 3.2% beer license and wine license were reviewed by the Alcohol, Gambling and Tobacco Commission at their meeting on October 7th and were unanimously approved.

President Larson noted that she would be abstaining on discussion or voting on this resolution due to a family conflict.

A motion was made that this Resolution be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ and Sipress.

Abstain: 1 - President Larson

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance is to be read for the first time:

COMMITTEE 3

BY COUNCILOR JULSRUD (PUBLIC WORKS & UTILITIES)

- 24. 15-087-O** AN ORDINANCE GRANTING ST. LOUIS COUNTY TEMPORARY EASEMENTS OVER VACATED 20TH AVE. E AND HERITAGE PARK.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to enter into an agreement, a copy of which is attached hereto as Exhibit A, with St. Louis County granting said county a temporary easement over the following-described property in St. Louis County, Minnesota for street and utility purposes and for construction related thereto, said easements to terminate upon the sooner of the completion of reconstruction of 4th Street by said county or December 31, 2017:

That portion of vacated 20th Avenue East bounded on the Southeast by the Northwestern line of 4th Street, and on the Northeast by a line lying 103.86 feet Northwesternly of and parallel with the Northwesternly line of platted 4th street: and

A 10.00 foot wide temporary construction easement in Lots 9 and 10 of Block 10, Highland Park Addition to Duluth, according to the recorded plat thereof, described as follows:

Beginning at the intersection of the northeast line of said Lot 9 with the east line of Woodland Avenue; thence southerly along the east line of Woodland Avenue 43.80 feet; thence southeasterly 75.00 feet to a point on the southeast line of said Lot 10, said point being 60.00 feet southwest of the east corner of said Lot 9, hereinafter described as Line A; thence northeast 60.0 feet along southeast line of said Lots 9 and 10 to the east corner of Lot 9; thence northwest along the northeast line of said Lot 9 to the intersection with a

t is parallel with and distant 10.00 feet northwest of southeast line of said Lots 9 and 10; thence southwest along said line parallel with southeast line of Lots 9 and 10 to the intersection with a line that is parallel with and distant 10.00 feet northeasterly of said Line A; thence northwesterly along said line parallel with Line A to the intersection with a line that is parallel with and distant 10.00 feet east of said east line of Woodland Avenue; thence north along said line parallel with said east line of Woodland Avenue to the northeast line of said Lot 9; thence northwest along northeast line of said Lot 9 to the Point of Beginning.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

STATEMENT OF PURPOSE: The purpose of this ordinance is to approve an agreement granting to St. Louis County a temporary easement to allow them to keep 20th Avenue East open between Woodland 4th Street until construction of the 4th Street reconstruction project is started, to allow the County to demolish that road when appropriate and to allow them to perform necessary construction work on Heritage Park property.

The Council had previously approved an agreement for the work related to the 20th Avenue East right-of-way but further discussion with the County revealed that they needed additional temporary easements to perform all of the work anticipated for the Project. This agreement grants them temporary easements to cover all of the necessary work.

Attachments [Exhibit A](#)

This Ordinance was read for the first time.

The following entitled ordinances are to be read for the second time:

COMMITTEE 2

BY COUNCILOR RUSS (PLANNING & ECONOMIC DEVELOPMENT)

25. 15-079-O AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM R-1 TO R-2 AND MU-N, PROPERTY AT 1243 88th AVENUE WEST (SDH&M, LLC)

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That approximately 6.44 acres of land located on the eastern portion of 1243 88th Avenue West and as more particularly described as follows:

That part of Block 13, MORGAN PARK OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota, bounded as follows:

On the South by the center line of Hilton Street as dedicated on said MORGAN PARK OF DULUTH.

On the West by the center line of 90th Avenue West as dedicated on said MORGAN PARK OF DULUTH.

On the North by the center line of Falcon Street as dedicated on said MORGAN PARK OF DULUTH.

On the East by a line 295.91 feet Easterly and parallel with the West line of Block 13, said MORGAN PARK OF DULUTH;
be reclassified from Residential-Traditional (R-1) to Residential-Urban (R-2), and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as shown in the attached document.

Section 2. That approximately 5.58 acres of land located on the western portion of 1243 88th Avenue West and as more particularly described as follows:

That part of Block 13, MORGAN PARK OF DULUTH, according to the recorded plat thereof, St. Louis County, Minnesota, bounded as follows:

On the South by the center line of Hilton Street as dedicated on said MORGAN PARK OF DULUTH.

On the West by a line 295.91 feet Easterly and parallel with the West line of Block 13, said MORGAN PARK OF DULUTH.

On the North by the center line of Falcon Street as dedicated on said MORGAN PARK OF DULUTH.

On the East by the center line of 88th Avenue West as dedicated on said MORGAN PARK OF DULUTH;
be reclassified from Residential-Traditional (R-1) to Mixed Use-Neighborhood (MU-N), and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as shown in the attached document.

Section 3. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This amendment provides a zoning change from R-1 to R-2 and MU-N at 1243 88th Avenue West.

On September 8, 2015, the Duluth city planning commission held a public hearing on the proposal and voted 7 yeas, 0 nays and 1 abstention to recommend that the city council approve the rezoning requested.

The applicant did not submit written consent of 2/3 of property owners within 100 feet of the property to be rezoned. The motion to approve the rezoning must prevail with an affirmative vote of 2/3 by the city council.

Petition received: August 5, 2015
Action deadline: December 3, 2015

Petitioner:
Aaron Schweiger
SDH&M, LLC
1115 W Michigan Street
Duluth, MN 55806
Schweiger.aaron@gmail.com

PL 15-124

Attachments [Map](#)
[Staff Report](#)
[Comments received after staff report](#)

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

This Ordinance was withdrawn.

26. **15-080-O** AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM RR-1 TO MU-C, PROPERTY AT 4258 HAINES ROAD (HAINES ROAD, LLC)

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That approximately 2.96 acres of land located at 4258 Haines Road and as more particularly described as follows:

That part of the Southwest Quarter of the Northwest Quarter of the Northwest Quarter of Section 18, Township 50 North, Range 14 West of the Fourth Principal Meridian, St. Louis County, Minnesota, described as follows:

Commencing at the West Quarter corner of said Section 18; thence on an assumed bearing of North 00 degrees 14 minutes 33 seconds West, along the West line of said Section 18, a distance of 1321.17 feet to the South line of said Southwest Quarter of the Northwest Quarter of the Northwest Quarter; thence South 89 degrees 48 minutes 39 seconds East, along said South line, a distance of 300.00 feet to the intersection with a line 300 feet Easterly and parallel with the said West line of Section 18; thence South 89 degrees 48 minutes 39 seconds East, along said South line, a distance of 405.28 feet to the East line of said Southwest Quarter of Northwest Quarter of Northwest Quarter; thence North 00 degrees 22 minutes 22 seconds West, along said East line, a distance of 144.68 feet to the center line of Sundby Road as traveled; thence North 49 degrees 13 minutes 07 seconds West, along said center line, a distance of 508.04 feet; thence South 40 degrees 46 minutes 53 seconds West, a distance of 33.00 feet to the Southwesterly right of way line of said Sundby Road and the intersection with a line 300 feet Easterly and parallel with the said West line of Section 18; thence South 00 degrees 14 minutes 33 seconds East, along said parallel line, a distance of 450.19 feet to the Point of Beginning;

be reclassified from Rural Residential-1 (RR-1) to Mixed Use-Commercial (MU-C), and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as shown in the attached document.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This amendment provides a zoning change from RR-1 to MU-C at 4258 Haines Road.

On September 8, 2015, the Duluth city planning commission held a public hearing on the proposal and voted 7 yeas, 0 nays and 0 abstentions to recommend that the city council approve the rezoning requested.

The applicant did not submit written consent of 2/3 of property owners within 100 feet of the property to be rezoned. The motion to approve the rezoning must prevail with an affirmative vote of 2/3 by the city council.

Petition received: August 7, 2015
Action deadline: December 5, 2015

Petitioner:
Haines Road, LLC
4258 Haines Road

Duluth, MN 55811
Rwmertz29@gmail.com

PL 15-129

Attachments [Attachment 1](#)
[Attachment 2](#)

A motion was made that this Ordinance be adopted The motion carried unanimously

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

- 27. 15-081-O** AN ORDINANCE GRANTING A CONCURRENT USE PERMIT FOR A PARKING LOT DRIVE AISLE IN THE RIGHT-OF-WAY OF ELIZABETH STREET.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to Mark Lambert and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) A private drive aisle and sidewalk servicing the adjacent BlueStone Flats building, as shown in the exhibits.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its

agents or representatives; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support,

temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public right of way or easement shall be limited to the designated area described in Section 1 above and further shown on the exhibits; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30

days from and after its passage and publication.

(Effective Date: November 11, 2015)

STATEMENT OF PURPOSE: This ordinance grants Mark Lambert a concurrent use permit for installation of a parking lot drive aisle and sidewalk in the right-of-way of Elizabeth Street.

On September 8, 2015, the planning commission held a public hearing on the proposal, and voted 7 yeas, 1 nay and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets.

Petition received: August 21, 2015

Action deadline: December 19, 2015

Applicant

Mr. Mark Lambert

333 North Main Street, Suite 110

Stillwater, MN 55082

mlambert@summitre.net

PL 15-084

Attachments [Attachment 1](#)

Councilor Hanson noted that he would be abstaining on discussion or voting on this ordinance due to a business interest.

A motion was made that this Ordinance be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Julsrud, Krug, Russ, Sipress and President Larson

Abstain: 1 - Councilor Hanson

- 28. 15-082-O** AN ORDINANCE GRANTING A CONCURRENT USE PERMIT FOR A PARKING RAMP CANOPY IN THE RIGHT OF WAY OF THE 400 BLOCK OF EAST SECOND STREET (ESSENTIA HEALTH)

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to Essentia Health, and its successor(s) in interests, referred to herein as the

permittee, to construct and maintain the following:

(a) A canopy, with a minimum clear space of 10' 6", over the parking ramp entrance on East Second Street in a 10' x 43' area, as shown in the exhibits.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be

responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public right of way or easement shall be

limited to the designated area described in Section 1 above and further shown on the exhibits; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective Date: November 11, 2015)

STATEMENT OF PURPOSE: This ordinance grants Essentia Health a concurrent use permit for installation of a parking ramp entrance canopy in the right of way of East Second Street.

On September 8, 2015, the planning commission held a public hearing on the proposal, and voted 8 yeas, 0 nays and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets.

Petition received: July 7, 2015

Action deadline: November 4, 2015

Applicant
Essentia Health
Attn: Harvey Anderson
502 E 2nd Street
Duluth, MN 55805
Harveyj.anderson@essentiahealth.org

PL 15-104

Attachments [Attachment 1](#)

Councilor Hanson noted that he would be abstaining on discussion or voting due to a business interest.

A motion was made that this Ordinance be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Julsrud, Krug, Russ, Sipress and President Larson.

Abstain: 1 - Councilor Hanson

Enactment No: 10412

- 29. 15-083-O** AN ORDINANCE AMENDING SECTION 50-37.12 TEMPORARY OR SIDEWALK USE PERMIT, AND 50-37.13 ZONING PERMIT, RELATED TO SIDEWALK CAFES AND ENSURING ADEQUATE PEDESTRIAN ACCESS ON PUBLIC SIDEWALKS

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-37.12 of the Duluth City Code, 1959, as amended, be amended as follows:

50-37.12 ~~Temporary or~~ Sidewalk use permit.

This Section applies to ~~temporary~~ uses or proposals to use a portion of a public sidewalk for a café, eating area, transit shelter or bench, bicycle rack, temporary display or other purpose that does not involve the permanent vacation of any part of the street.

Application.

An application for a ~~temporary or~~ sidewalk use permit shall be filed pursuant to Section 50-37.1.B;

Procedure.

The land use supervisor shall refer the application to the city engineer for a recommendation as to whether the proposed design and location of the ~~temporary or~~ sidewalk use will provide for and not hinder the safety of pedestrians, bicyclists and motor vehicle drivers near the proposed use or structure. The land use supervisor shall then review and make a decision on an application based on the criteria in subsection 50-37.12.C. The land use supervisor may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;

Criteria.

The land use supervisor shall approve the application, or approve it with modifications, if the supervisor determines that the following criteria have been met:

The city engineer has confirmed that the proposed

or structure will not hinder the safety of pedestrians, bicyclists and motor vehicle drivers near the proposed use or structure;

The proposed use or structure will not encroach into drive aisles, loading zones, fire lanes or parking lots;

The proposed use or structure will not encroach into any area located directly between any operating building entrance and the street curb (other than a building entrance intended only to serve patrons of an outside eating area);

The proposed use or structure will be set back at least ~~5~~ seven feet from the curb and at least ~~five~~ six feet from all parking meters, street trees, and street furniture in order to allow for the free passage of pedestrians;

The applicant has signed an agreement with the city (a) to keep the sidewalk and street within 20 feet of the proposed use or structure free from any litter generated by the use or activity, (b) accepting all liability resulting from the proposed use or structure and holding the city harmless for any and all such liability, (c) providing liability insurance meeting city standards, and (d) determining the period of use.

Section 2. That Section 50-37.13 of the Duluth City Code, 1959, as amended, be amended as follows:

50-37.13 Zoning permit.

This Section applies to a variety of permits covering development, redevelopment, and natural resources protection where the land use is a permitted use and the city must confirm whether the application complies with all other applicable provisions of this Chapter. The specific permits included in this Section are summarized in Table 50-37.13-1 below. *[See Attachment 1, Table 50-37.13-1, Zoning Permits]*

Application.

An application for a zoning permit shall be filed pursuant to Section 50-37.1.B; Procedure.

The building official shall review and make a decision on an application for a zoning permit based on the criteria in subsection C below. The building official may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have

n met;

All buildings, structures and improvements must be constructed and maintained, and all land uses must be operated, in accordance with the terms and conditions of this Chapter and any zoning permit issued pursuant to this Section 50-37.13;

General criteria.

The building official shall approve the application, or approve it with modifications, if the building official determines that the application complies with all applicable provisions of this Chapter;

Additional provisions for specific areas and types of permits.

Shoreland permit.

No building or zoning permit for land within any shoreland shown on the Natural Resources Overlay map in Section 50-18.1 may be issued until the building official has confirmed that the application complies with all applicable requirements of Section 50-18.1.D;

Erosion and sediment control permit (ESCP).

No land disturbance activity that requires an erosion and sediment control permit (ESCP) as indicated in Table 50-18.1.E-1 may be begin until a permit has been obtained. The building official shall refer the application to the city engineer, who shall review the plan to ensure that it complies with the requirements of Section 50-18.1.E. The city engineer may require additional information and may require that any information submitted be verified by a licensed engineer, licensed surveyor or other technical professional. If the application is denied, the applicant shall be given a summary of the plan's deficiencies. The ESCP permit shall be considered expired only after all construction activities are completed and the entire site is fully stabilized with 70 percent successful establishment of vegetation;

Airport environs permit.

No airport environs permit shall be issued unless all of the requirements of Section 50-18.2 have been met. A permit for a tree or structure of less than 75 feet of vertical height above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour

or topographic features, would violate the provisions of Section 50-18.2; Flood plain permit.

No building or zoning permit for land within any flood plain shown on the Natural Resources Overlay map in Section 50-18.1 may be issued until the building official has confirmed that the application complies with all applicable requirements of Section 50-18.1.C.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective Date: November 11, 2015)

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

The proposed ordinance clarifies the approval process for temporary permits, as the language currently directs these types of permits, incorrectly, to the section for sidewalk use permits.

The proposed ordinance also increases the required distances for sidewalk cafes, and similar uses, on public sidewalks. Planning staff believe that the current minimum requirement (five feet from the curb and five feet from all street furniture) does not leave sufficient space for adequate pedestrian flow on the sidewalks, around the cafes. Proposing increasing the minimum required distance to seven feet from the curb, and six feet from all street furniture, meters, trees, etc.

The proposed changes were discussed at a published public hearing on September 8, 2015. After the public hearing was closed, the Duluth planning commission made a motion to recommend that the city council approve the recommended amendments to UDC. The vote passed with a vote of 8 yeas, 0 nays and 0 abstentions, with 1 planning commission member being absent from the meeting.

Action deadline: Not applicable

PL: 15-146

Attachments [Attachment 1](#)
[Attachment 2](#)

A motion was made that this Ordinance be adopted. The motion carried unanimously

30. **15-084-O** AN ORDINANCE AMENDING SECTION 50-20.4 INDUSTRIAL USES, 50-20.6 TEMPORARY USES, 50-26.4 FENCES AND WALLS, AND 50-41 DEFINITIONS, TO ALLOW FOR CRAFT MANUFACTURING.

The city of Duluth does ordain:

Section 1. That Section 50-19.8 of the Duluth City Code, 1959, as amended, be amended as per Attachment A, Table 50-19.8 Use Table and Table 50-19.1 Use Table Legend.

Section 2. That Section 50-20.4 of the Duluth City Code, 1959, as amended, be amended as follows:

50-20.4 Industrial uses.

Airport and related facilities.

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

In the I-G district, airport and related facilities are permitted only on land owned by the public or airport authority that is used for the exclusive purpose as an airport;

Contractor's shop and storage yard.

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

Electric power transmission line or substation.

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

General corridor criteria:

The public need for the route and facility as specifically proposed shall be demonstrated;

Where possible, lines shall avoid existing and potential urban density residential neighborhoods;

The applicant shall provide an evaluation of the future needs for additional transmission lines in the same general area as the proposed route and the advisability of utilizing structures capable of expansion of transmission capacity through multiple circuiting or design modification;

When routing transmission lines, the following shall be avoided unless no reasonable alternative exists: slopes of 20 percent grade or greater; intrusions into scenic areas such as streams, open water, valleys, overviews, ridge crests and high points; wetlands; forests, by running along the fringe rather than through the forests, and by utilizing open areas in order to minimize cutting, although leaving a strip at the outside for screening purposes; soils susceptible to erosion that would create sedimentation and pollution problems; areas of unstable soils that would be subject to extensive slippages; areas with high water tables, especially if construction requires excavation; open space recreation areas, including parks, golf courses, etc.; long views of lines parallel to highways and trails; airports; and parkways;

Routes shall utilize or parallel existing railroads and highway rights-of-way if possible. If such highway rights-of-way are developed the line and structures shall be sufficiently set back and screened in order to minimize view of the line and structures from the highway;

Design criteria:

If a proposal would unduly harm adjacent property or property values, alternatives must be evaluated to determine whether a feasible alternative to the proposal exists. Such consideration of alternatives shall include the underground placement of the line. Any consideration of feasibility of such underground lines shall include economic, technological or land characteristic factors. Economic considerations alone shall not render underground placement not feasible;

All structures shall be located and designed in such a way that they are compatible with surrounding land uses, scenic views and existing transmission structures with regard to height, scale, material, color and design;

Lines shall meet or exceed the National Electric Safety Code;

Electromagnetic noise and interference with radio and television reception, as well as audible hum outside the line right of way, shall be minimized;

The cleared portion of the right-of-way shall be

t to a minimum and where vegetation will be removed, new vegetation consisting of native grasses, shrubs and low growing trees shall be planted and maintained. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements;

Junk and salvage services.

Junk and salvage service operations and facilities shall comply with all state and Western Lake Superior Sanitary District requirements;

No junk or salvage service facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as these are defined or shown in Section 50-18.1, *Natural Resources Overlay*;

There shall be no burning of materials;

Major utility or wireless telecommunications facility.

Policy.

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

Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility;

Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities;

Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;

Promoting and encouraging, wherever possible, the sharing and co-location of wireless telecommunications facilities among service providers;

Promoting and encouraging, wherever possible, the placement, height and quantity of wireless

communications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;

That in granting a special use permit, the city has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the city;

Applicability and exemptions.

Except as otherwise provided by subsection (b) below, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities after July 25, 2010, without having first obtained a special use permit for wireless telecommunications facilities. All legally permitted wireless tele-commun-i-ca-tions facilities, constructed as permitted, existing on or before July 25, 2010, shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility will require the complete facility and any new installation to comply with this Section 50-20.4.E. Any repair and maintenance of a wireless facility does not require an application for a special use permit;

The following shall be exempt from the requirements of this Section 50-20.4.E:

The city's fire, police, department of transportation or other public service facilities owned and operated by the city or those owned and operated by county, the state or federal government;

Any facilities expressly exempt from the city's siting, building and permitting authority;

Over-the-air reception devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers

DS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception;

Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications;

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

Location standards.

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

On existing towers or other structures on city owned properties;

On existing towers or other structures on other property in the city;

A new tower on city owned properties, other than property designated for park use, or in the Park and Open Space (P-1) District;

A new tower on city owned properties designated for park use, or in the Park and Open Space (P-1) District;

A new tower on properties in Industrial-General (I-G) and Industrial-Waterfront (I-W) districts;

A new tower on properties in form districts or mixed use districts, other than the Mixed-Use Neighborhood (MU-N) District;

A new tower on properties in residential, Mixed-Use Neighborhood (MU-N) and Airport (AP) districts;

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

An applicant may not by-pass sites of higher

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

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

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

Other standards and requirements.

The following requirements are applicable to all wireless telecommunications facilities.

To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt from appropriate state or federal agency rules or regulations, then the holder of such special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards;

To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security are changed or are modified during the duration of

Special use permit for wireless telecommunications facilities, then the holder of such special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed or modified rule, regulation, standard or provision, or sooner as may be required by the issuing entity;

The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings; this shall include the utilization of stealth or concealment technology as may be required by the city. Facilities located within the migratory bird flight path shall utilize stealth or concealment technology;

All utilities at a wireless telecommunications facilities site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the city, including specifically, but not limited to, the city and state building and electrical codes, where appropriate;

At a telecommunications site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion;

All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or federal government, including but not limited to the most recent editions of the ANSI Code, as well as accepted and responsible workmanlike industry practices and recommended

ctices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply;

A holder of a special use permit granted under this Section 50-20.4.E shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the city or other governmental entity or agency having jurisdiction over the applicant;

The holder of a special use permit shall notify the city of any intended modification of a wireless telecommunication facility and shall apply to the city to modify, relocate or rebuild a wireless telecommunications facility;

All new towers shall be structurally designed to accommodate at least four additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

The foreseeable number of FCC licenses available for the area;

The kind of wireless telecommunications facilities site and structure proposed;

The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;

Available space on existing and approved towers;

New guyed towers are prohibited;

Tower condition inspections shall be conducted every three years for a guyed tower and five years for monopoles and self-supporting towers. All inspections shall be documented in a report such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures,

SI/TIA/EIA-222F or most recent version. The inspection report shall be provided to the building official within two days of a request by the city for such records; The owner of a proposed new tower, and the owner's successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:

Respond within 60 days to a request for information from a potential shared-use applicant;

Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;

Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference;

No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed a height that shall permit operation without required artificial lighting of any kind in accordance with city, state or federal statute, law, code, rule or regulation;

No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed 75 feet in height within the migratory bird flight path;

Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law;

Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section 50-20.4.E;

Wireless telecommunications facilities and antennas shall be located, fenced or otherwise

ured in a manner that prevents unauthorized access. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them;

Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted;

All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the following distances: A distance equal to the height of the proposed tower or wireless telecommunications facility structure plus ten percent of the height of the tower or structure, or the existing setback requirement of the underlying zone district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated;

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the city a bond, or other form of security acceptable to the

as to type of security and the form and manner of execution, in an amount that shall be set in accordance with Section 31-6(a) of the City Code, and with such sureties as are deemed sufficient by the city to assure the faithful performance of the terms and conditions of this Section 50-20.4.E and conditions of any special use permit issued. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit;

A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain for the duration of the special use permit commercial general liability insurance for personal injuries, death and property damage, and umbrella insurance coverage in the following amounts: \$1,000,000 per occurrence/\$2,000,000 aggregate;

For a wireless telecommunications facility on city property, the policy shall specifically include the city and its officers, employees, agents and consultants as additional insureds. The amounts of such coverage shall be established as a condition of the special use permit and shall be consistent with the liability limits provided in MSA 466.04;

The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A;

The insurance policies shall contain an endorsement obligating the insurance company to furnish the building official with at least 30 days prior written notice in advance of the cancellation of the insurance;

Renewal or replacement policies or certificates shall be delivered to the building official at least 15 days before the expiration of the insurance that such policies are to renew or replace;

No permit necessary to the site preparation or construction of a permitted wireless

ommunications facilities may be issued until the holder of the special use permit shall file with the city building official a copy of the required policies or certificates representing the insurance in the required amounts;

Notwithstanding the requirements noted in this subsection no insurance shall be required in those instances where the city, county, state or a federal agency applies for and secures a special use permit for wireless telecommunications facilities.

All special use permits approved for wireless telecommunication facilities located on city property after July 25, 2010, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the city, and its officers, employees, agents and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the city, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city. An indemnification provision will not be required in those instances where the city itself applies for and secures a special use permit for wireless telecommunications facilities;

Additional provisions for special use permit review.

In addition to those standards and criteria in Section 50-37.1 *Common procedures* and Section 50-37.10

Special and interim use permits, each application for a special use permit for a wireless telecommunications facility shall comply with the following additional standards:

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

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

(c) The land use supervisor will administratively approve an application to colocate on an existing wireless telecommunication facility upon receiving

a complete application, if the application meets all the requirements of the Chapter and would not substantially change the physical dimensions of the wireless telecommunication facility. Substantial changes shall mean:

- (i) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- (ii) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- (ii) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- (iv) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property; or
- (v) The mounting of the proposed antenna would defeat the concealment elements of the eligible support structure; or
- (vi) The mounting of the proposed antenna would not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment;

- (d) At any stage prior to issuing a special use permit the city may require such additional information as it deems necessary to confirm compliance with this UDC;
- (e) The city may refer any application or part of an application to any advisory, other committee or commission for a non-binding recommendation;
- (f) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the city may disapprove an application for any of the following reasons:
 - (i) Conflict with safety and safety-related codes and requirements;
 - (ii) Conflict with the historic nature or character of a neighborhood or historical district;
 - (iii) The use or construction of wireless telecommunications facilities that is contrary to an already stated purpose of a specific zoning or land use designation;
 - (iv) The placement and location of wireless telecommunications facilities that would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the city or employees of the service provider or other service providers;
 - (v) Conflicts with the provisions of this Section 50-20.4.E;
 - (vi) The failure of the applicant to provide additional requested information in sufficient time for the city to comply with the requirements of MSA 15.99;
 - (g) Except for necessary building permits, once a special use permit has been granted, no additional zoning approvals shall be required by the city for the wireless telecommunications facilities covered by the special use permit;
 - (h) In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters and licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other

applicable requirements, the city may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site;

6. Relief and appeal.

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

(Effective Date: November 11, 2015)

Manufacturing, craft.

Manufacturing, craft, artisan production shop.

(a) In the F-5 and F-7 districts, the use shall not exceed 5,000 sq. ft. in gross floor area;

(b) In the F-5 and F-7 districts, the use is permitted in all building types and on all floors;

(c) Artisan production shops shall maintain at least ten percent of the gross floor area of the facility for retail purposes;

Manufacturing, craft, artisan studio.

(a) In the F-5 and F-7 districts, the use shall not exceed 3,000 sq. ft. in gross floor area;

(b) In the F-5 and F-7 districts, this use is permitted in all building types and on all floors;

(c) Artisan studio's shall maintain at least ten percent of the gross floor area of the facility for retail purposes;

3 Manufacturing, craft, brewery or distillery.

(a) No outdoor storage is permitted;

(b) Access and loading areas facing any street, adjacent residential use or residential zoning district, shall have the doors closed at all times, except during movement of raw material, other supplies and finished

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

The proposed ordinance creates new land use definitions for “craft, artisan production shop”, “craft, artisan studio”, and “craft, brewery or distillery”, and use specific development standards (industrial). These new land uses are allowed as permitted uses only in the F-5 and F-7 zone districts, and the MU-B district (as recommend by the Planning Commission). It also relaxes the restriction on fences in the front yard; the current rules restrict fences to four feet in the front yard, whereas the proposed change would allow fences up to six feet in height, with some restrictions.

The proposed changes were discussed at a published public hearing on September 8, 2015. After the public hearing was closed, the Duluth planning commission made a motion to recommend that the city council approve the recommended amendments to UDC. The planning commission recommended a minor text change to the language related to allowing craft manufacturing in the MU-B zone district, which has been incorporated in this ordinance. The vote passed with a vote of 8 yeas, 0 nays and 0 abstentions, with 1 planning commission member being absent from the meeting.

PL: 15-133

Attachments [Attachment A](#)

[Ordinance Cover Letter](#)

[Motion to Split Ordinance 15-084 Larson](#)

A motion was made that this Ordinance be adopted. The motion carried unanimously.

31. **15-086-O** AN ORDINANCE AMENDING SECTIONS 50-20.3 COMMERCIAL USES, 50.20.5 ACCESSORY USES, AND 50-41 DEFINITIONS TO ALLOW FOR URBAN AGRICULTURE LAND USES.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-20.3 of the Duluth City Code, 1959, as amended, be amended as follows:

Sec. 50-20.3. Same--Commercial uses.

Adult entertainment establishment.

All adult entertainment establishments shall comply with MSA 617.242 and Chapter 5 of this Code;

Agriculture, ~~community garden, farmers market, general and urban.~~

~~No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 feet from any lot line;~~

~~All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 feet from any lot line;~~

Agriculture, community garden.

(a) Compost bins, water tanks, and other containers shall be controlled for odors and pests and shall be screened from view by adjacent properties and any public right-of-way with a fence at least as tall as the container, or with shrubs, trees, and/or perennials planted so that at maturity they will provide at least 75 percent opacity to the height of the container. If not visible from a public right-of-way or adjacent property, this screening is not required;

(b) If a primary structure is present, accessory structures shall follow requirements in Section 50-21. If no primary structure is present, structures shall be allowed no closer than 20 feet from the front property line, three feet from any side property line, and five feet from the rear property line. No accessory structure shall exceed 20 feet in height;

(c) Fences must adhere to restrictions in Section 50-26.4;

(d) No sale of produce or other goods is allowed;

(e) Events such as weddings, parties and other activities normally associated with an event center, religious assembly, or other use that typically holds large events,

are not allowed unless permitted within the zone district;

(f) For outdoor growing operations, mechanized equipment similar in scale to that designed for household use shall be permitted. Use of larger mechanized farm equipment is generally prohibited; provided, however, that during the initial preparation of the land, heavy equipment may be used;

(g) Keeping of bees is permitted, as regulated by Chapter 6 of the City Code. Keeping of all other animals is prohibited;

(h) All tools and equipment shall be stored in an enclosed, secured structure; Agriculture, farmers market.

(a) Farmers markets are only allowed between the hours of 7:00 a.m. to 7:00 p.m.;

(b) As part of the special use permit process, planning commission shall determine that the farmer's market will provide adequate on-site parking, or that sufficient public parking exists nearby;

(c) Sales shall be limited to no more than three days per week; Agriculture, general.

(a) No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 feet from any lot line;

(b) All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 feet from any lot line;

(c) Any production or processing of cheese, honey or other products raised on the farm must be done inside a building and in accordance with all state regulations;

Agriculture, urban.

(a) Compost bins, water tanks, and other containers shall be controlled for odors and pests and shall be screened from view by adjacent properties and any public right-of-way with a fence at least as tall as the container, or with shrubs, trees, and/or perennials planted so that at maturity they will provide at least 75 percent opacity to the height of the container. If not visible from a public right-of-way or adjacent property, this screening is not required;

(b) If a primary structure is present, accessory structures, including ones of a temporary nature such as hoop houses, shall follow requirements in Section 50-21;

(c) For urban agriculture uses where operations are

primarily conducted within a building, such as a greenhouse or hydroponic operation, such building shall be considered the primary building and not an accessory building. For urban agriculture uses where operations are primarily conducted outside, structures (including ones of a temporary nature such as hoop houses) shall be allowed no closer than 20 feet from the front property line, three feet from any side property line, and five feet from the rear property line. No accessory structure shall exceed 20 feet in height, and accessory structures shall not exceed more than 30 percent of the lot area;

(d) Fences must adhere to restrictions in Section 50-26.4;

(e) No sale of produce or other goods is allowed;

(f) Events such as weddings, parties and other activities normally associated with an event center, religious assembly, or other use that typically holds large events, are not allowed unless permitted within the zone district;

(g) For outdoor growing operations, mechanized equipment similar in scale to that designed for household use shall be permitted. Use of larger mechanized farm equipment is generally prohibited; provided, however, that during the initial preparation of the land, heavy equipment may be used;

(h) Keeping of fish for aquaculture or aquaponics is allowed, subject to any conditions of the special use permit. Keeping of chickens, rabbits and bees is permitted, as regulated by Chapter 6 of the City Code. Keeping of all other animals is prohibited unless specifically approved in the City Code;

(i) All tools and equipment shall be stored in an enclosed, secured structure;

Automobile and light vehicle repair and service.

No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;

A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;

All areas for outdoor storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property;

Automobile or light vehicle sales, rental or storage.

In the MU-C district, the use is permitted when located at least 100 feet from any R district;

Bank.

When in the MU-N district, the following standards apply:

The speaker box and drive-through window must be at least 50 feet from any property line containing a

tial structure;

Drive-through may not open before 7:00 a.m. or after 10:00 p.m. during the weekday, or before 8:00 a.m. or after 10:00 p.m. on the weekend;

Glare from cars in the drive-through lane and stacking space shall be shielded from adjacent residential properties through the use of screening, fencing or a dense urban screen;

The land use supervisor may require that the drive-through be located on the opposite side of the building from a residential use or that a masonry sound wall be constructed;

Banks are limited to no more than two drive-through windows and one drive-through lane for ATM services on the premises;

Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;

Banks in the R-P, F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities;

Drive-through lanes shall allow for stacking space for three cars;

Bed and breakfast.

This is a primary use of land, and the owner need not reside in the use. The use shall:

Have no more than 12 habitable units;

If located in a residential zone district, the use shall appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;

If located in a residential zone district, the use shall have no greater impact on surrounding public areas or infrastructure or natural resources than a fully occupied private home with house guests;

Be located on a lot or tract containing a minimum of 0.6 acre;

Contain a minimum of 1,500 square feet of area on the first floor of the main building;

Dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For-profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;

Shall not have signage exceeding 12 square feet in size,

any signage shall complement the architecture of the structure;
Shall limit each guest stay to a maximum of 21 consecutive days;
Building materials sales.

Outdoor storage is limited to ten percent of the parcel's land area, and shall not be permitted in any required front yard area;

Each such area shall be screened from view from any ground floor window or door on any adjacent property, and from all adjacent rights-of-way, by an opaque fence or wall between six feet and eight feet in height. The fence may exceed eight feet in height where the difference in grade between the property line or right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area;

A landscaped earth berm may be used instead or in combination with a required fence or wall;

Convention center.

A convention center may not exceed 50,000 square feet if it is within 500 feet of a multi-family use, or 15,000 square feet if it is within 500 feet of a one or two family use;

Daycare facility, small and large.

In the RR-1 and RR-2 districts this use and related parking facilities and structures other than driveways are limited to no more than 20 percent of the lot or parcel area;

Filling station.

No displays or storage of merchandise, parts or refuse may be located closer than ten feet from any public right-of-way;

A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;

Grocery store, small and large.

Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas;

Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock;

Mini-storage facility.

This use shall comply with the following standards:

The use shall be contained within an enclosed building or buildings;

If the use abuts a residential zone district on any property line, building architecture shall employ sloped roofs and shall display wall relief features and colors commonly found in residential construction;

The use shall be designed so that doors to individual storage units do not face any abutting street frontage;

At least 50 percent of the wall surface area of any wall facing an abutting public street shall be faced with brick or split-block materials. Exposed concrete masonry unit (CMU) construction is not permitted on those facades;

Hours of public access to mini-storage units abutting one or more residential zone districts shall be restricted to the period from 6:00 a.m. to 10:00 p.m.;

Signage shall be limited to one 40 square feet illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;

Mini-storage facilities are only allowed on properties within the RR-1 district that are also within the Airport Overlay District Safety Zone B. There shall be a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;

In the R districts a dense urban screen shall be installed along all side and rear property lines;

Office.

In the MU-I district, offices are limited to those in support of the permitted institutional uses in the district; general offices unrelated to the activities of those institutions are not permitted;

In the MU-B district, offices are limited to those in support of the permitted industrial uses in that zone district; general offices unrelated to the activities of those institutions are not permitted;

In the F-6 district, offices may not have drive-through facilities;

Other outdoor entertainment or recreation use not listed.

No circus ground, carnival ground, event ground, or amusement park shall be approved within 300 feet of an R-C, RR-2 or R district;

Parking lot or parking structure (primary use).

In the MU-C district, any parking structure shall be located at least 50 feet from any RC, RR or R district;

In F-1, F-2, F-3, F-4, F-6, F-8 and F-9 districts, only parking lots are allowed as primary uses. In F-7, only parking structures are allowed as primary uses. In F-5, parking lots and parking structures are allowed as primary uses;

Parking lots (primary use) are stand alone and self-contained, separate and distinct from other adjacent land uses. They need to conform to UDC requirements, such as lot frontage and drive aisle width, independent of adjacent properties;

Recreational vehicle (RV) park.

Within any flood plain district, recreational vehicles that

not meet the exemption criteria specified in Subsection 2 below shall be subject to the elevation and anchoring provisions of Section 50-18.1.C for new structures;

Criteria for exempt recreational vehicles:

- (a) The vehicle must have a current license required for highway use;
- (b) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks;
- (c) No permanent structural type additions may be attached to the vehicle;
- (d) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district;
- (e) Accessory structures are not permitted within the floodway district. Any accessory structure in the flood fringe district must be constructed of flood-resistant materials and be securely anchored as specified in Section 50-18.1.C.3.v;
- (f) Cost of an accessory structure must not exceed \$500;

Recreational vehicles that are exempt in Section 50-20.3.P.2 lose this exemption when development occurs on the site exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all accessory structures will then be treated as a new structure and shall be subject to the elevation/floodproofing requirements and the land use standards specified in Section 50-18.1.C.3(C) of this ordinance *[Chapter]*. No development or improvement on the parcel or attachment to the recreational vehicle is allowed that would hinder the removal of the vehicle to a flood-free location;

New commercial recreational vehicle parks or campgrounds, subdivisions or condominium associations, and the expansion of any similar existing use exceeding five units or dwelling sites may be allowed subject to the following:

On any new or replacement recreational vehicle site in the flood fringe district, the recreational vehicle and its contents must be placed on fill above the regulatory flood protection elevation and adequate road access to the site must be provided in accordance with Section 50-18.1.C.5(d). No fill placed in the floodway to meet the requirements of this section shall increase the flood stage of the regional flood;

Any new or replacement recreational vehicle site located in the floodway district, or as an alternative to

) above in the flood fringe district, may be allowed as a special use in accordance with the following provisions and the provisions of Section 50-37.10;

The applicant must submit an emergency plan for the safe evacuation of all vehicles and people acceptable to the city council as specified in Section 50-18.1.C.5(d). The plan shall demonstrate that adequate time and personnel exist to carry out an evacuation, and that all vehicles will meet the exemption criteria specified in Section 50-20.Q.2 above; and

All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding;

Restaurant.

In the R-2 and MU-N district, no use shall exceed 5,000 sq. ft. in gross floor area;

Drive-ins and drive-throughs for restaurants are only allowed in the MU-N, MU-C, MU-B, MU-P, F-2, F-3, F-4, and F-5 zone districts zone districts;

Drive-through lanes shall allow for stacking space for 5 cars;

When in the MU-N district, the following additional standards apply:

The speaker box and drive-through window must be at least 50 feet from any property line containing a residential structure;

Drive-through may not open before 7:00 a.m. or after 10:00 p.m. during the weekday, or before 8:00 a.m. or after 10:00 p.m. on the weekend;

Glare from cars in the drive-through lane and stacking space shall be shielded from adjacent residential properties through the use of screening, fencing, or a dense urban screen;

The land use supervisor may require that the drive-through be located on the opposite side of the building from a residential use or that a masonry sound wall be constructed;

Restaurants are limited to one drive through lane and one speaker box;

When in the F-3 and F-5 districts, the following additional standards apply;

Access to and from the drive-through must be through the alley, if alley exists;

Restaurants are limited to one drive through lane;

Retail sales, small and large.

Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas;

Outdoor display is for the temporary display of

merchandise and not for the permanent storage of stock;
Retail stores are limited to one drive-through window;
Any drive-through lane that is located between a retail store and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;
Drive-through lanes shall allow for stacking space for three cars;
When in the MU-N district, the following standards apply:
The speaker box and drive-through window must be at least 50 feet from any property line containing a residential structure;
Drive-through may not open before 7:00 a.m. or after 10:00 p.m. during the weekday, or before 8:00 a.m. or after 10:00 p.m. on the weekend;
Glare from cars in the drive-through lane and stacking space shall be shielded from adjacent residential properties through the use of screening, fencing, or a dense urban screen;
The land use supervisor may require that the drive-through be located on the opposite side of the building from a residential use or that a masonry sound wall be constructed;
Seasonal camp or cabin.
In the R-C and RR-1 districts, buildings shall be located not less than 200 feet from any R district;
In the R-C district, the design of the site shall preserve the rural character by:
Separating each camp or cabin site by at least 50 feet, measured from the closest points on each tent or cabin area;
Preserving all natural vegetation not required to be removed for access roads, trails or public safety;
Using gravel or pervious paving, rather than impervious materials, for all access road and driveways serving fewer than 25 camp or cabin sites;
Veterinarian or animal hospital.
In the R-C and RR-1 districts, this use is permitted provided that service is limited to large livestock/large animal care and any building or enclosure so used shall be located not less than 100 feet from any lot line;
In the R-2, R-P, MU-N and MU-C districts, this use is permitted provided that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, that are ordinarily permitted in the house for company) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a soundproof building with adequate ventilation;
Vacation dwelling unit.

The minimum rental period shall as follows:

For properties zoned RR-1, RR-2, R-1 and R-P the minimum rental period shall not be less than two nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than five nights;

For properties zoned R-2, MU-N and F-5 the minimum rental period shall not be less than two nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than three nights;

The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two;

Off street parking shall be provided at the following rate:

1-2 bedroom unit, one space;

3-4 bedroom unit, two spaces;

5+ bedroom unit, three spaces;

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, on or off the street;

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 for three to 21 days;

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;

The interim use permit shall expire upon change in ownership of the property or in six years, whichever occurs first.

Section 2. That Section 50-20.5 of the Duluth City Code, 1959, as amended, be amended as follows:

50-20.5 Accessory uses.

Accessory agriculture roadside stand.

Only one stand offering for sale farm products produced on the premises is permitted provided that such stand does not exceed an area of 200 square feet and that it is located not nearer than 25 feet to any street or highway;

Accessory bed and breakfast.

The owner and operator of an accessory bed and breakfast shall be required to live in the establishment. In addition, the use shall:

Have no more than five habitable units;

Appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;

Have no greater impact on surrounding public areas, infrastructure or natural resources than a fully occupied private home with house guests;

Be located on a lot or tract containing a minimum of 0.6 acre;

Contain a minimum of 1,500 square feet of area on the first floor of the main building;

Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;

Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;

Shall limit each guest stay to a maximum of 21 consecutive days;

May be subject to other conditions deemed necessary by the city to ensure the use complies with the purpose of this subsection;

Accessory boat dock, residential.

This use shall comply with the following standards:

Dockage of boats owned and primarily used by a resident of the property is a permitted accessory use to the primary residential use and shall not be limited in number;

If there is a residential structure on the property and the property has frontage on an improved street, the owner of the residential structure may rent out boat dockage to a maximum of two boats owned by others. If the property does not have frontage on an improved street, the owner of the residential structure may not rent dockage space to others. Boat dockage use on a property that is not residentially developed is permitted as a principal use provided that the use is limited to one boat for each lot or group of contiguous lots in the same ownership, and the boat is owned and primarily used by the owner of the property;

For each new rental boat dock space created or made legal after April 14, 1974, one off street parking space shall be provided in addition to all other off street parking

ces required by other legal uses of the property, such spaces to be constructed in accordance with Section 50-24;

At the request of the building official, the owner of property shall provide boat registration or other documentary evidence to prove compliance with these standards;

No buildings other than residential or residential accessory structures, no winter storage of boats other than those owned by a resident of the property in question, no repair facilities, fuel sales, food or refreshment sales, rentals of boats, boat or parts sales or displays or other commercial uses shall be permitted;

Accessory dwelling unit.

An accessory dwelling unit may be created within, or detached from, any one-family dwelling, as a subordinate use, in those districts shown in Table 50-19.8, provided the following standards are met:

Only one accessory dwelling unit may be created per lot;

No variances shall be granted for an accessory dwelling unit;

Only the property owner, which shall include title holders and contract purchasers, may apply for an accessory dwelling unit;

One off-street parking space shall be provided in addition to off-street parking that is required for the primary dwelling;

Accessory dwelling units shall contain no more than 800 square feet of floor space and shall be consistent in character and design with the primary dwelling;

If a separate outside entrance is necessary for an accessory dwelling unit located within the primary dwelling, that entrance must be located either on the rear or side of the building;

Accessory heliport.

All accessory heliports shall have and maintain in effect at all times all required permits and approvals, if any, for the facility and operation required by the FAA, and shall design and maintain the facility and conduct operations in compliance with those permits and approvals;

In the R-C and I-G districts, this use shall be permitted only when it is accessory to an airport as a primary use;

Accessory home occupation.

All home occupations not listed separately in Table 50-19.8 must comply with the following standards:

The use must be conducted entirely in the residence or accessory buildings and not on outdoor portions of the lot, except that the growing of food crops or ornamental crops, to be sold or donated off-site, shall be exempt from this provision;

No business involving retail sales of goods from the premises is permitted;
No person not a member of the family residing on the premises shall work on the premises;

Not more than 25 percent of the floor area of one story of the dwelling shall be devoted to such home occupation and not more than 50 percent of an accessory structure may be devoted to such home occupation;

The home occupation shall not require external alterations that would change the residential character of the property;

No display pertaining to such occupation shall be visible from the street;

The use of the property for a home occupation shall not result in the number of client appointments at the property in excess of two appointments per hour and appointments shall be limited to the hours of 8 a.m. to 7 p.m. and not more than four clients shall be on site at the same time;

No equipment shall be used that creates offensive noise, vibration, sound, smoke, dust, odors, heat, glare, X-ray or electrical disturbance to radio or television or that otherwise constitutes a nuisance;

All home occupations that require a license from the state shall maintain a valid license at all times and shall operate in compliance with the terms of that license and all applicable regulations of the state at all times;

. No motor vehicle repair is permitted as an accessory home occupation and repair of motor vehicles not registered to the owner or leaseholder of the property is prohibited regardless of whether the repair is being made for compensation;

Accessory sidewalk dining area.

In all districts, this use requires approval of a sidewalk use permit pursuant to Section 50-37.12;

Accessory solar or geothermal power equipment.

In all districts, other than building integrated solar collection systems, solar collection systems shall comply with the following requirements:

Ground-mounted solar system.

Solar collectors shall not be located in the front yard between the principal structure and the public right-of-way;

Solar collectors shall be located a minimum of six feet from all property lines and other structures;

Solar collector areas in any residential district shall not exceed the greater of one-half the footprint of the principal structure or 600 square feet, whichever is greater. The size of solar collector areas in all

ricks except residential districts shall not exceed one-half of the footprint of the principal structure;

Free-standing or ground-mounted solar installations shall not exceed 20 feet in height, when the system is oriented at its maximum design pitch;

Roof-mounted or wall-mounted solar system.

A solar collection system shall be located a minimum of six feet from all property lines and other structures except the structure on which it is mounted;

Notwithstanding the height limitations of the zoning district, building-mounted solar energy systems shall not extend higher than three feet above the ridge level of a roof on a structure with a gable, hip or gambrel roof and shall not extend higher than ten feet above the surface of the roof when installed on a flat or shed roof;

The solar collector surface and mounting devices for building-mounted solar energy systems shall be set back not less than one foot from the exterior perimeter of a roof for every one foot that the system extends above the parapet wall or roof surface, if no parapet wall exists, on which the system is mounted. Solar energy systems that extend less than three feet above the roof surface shall be exempt from this provision;

A solar collection system may be located on an accessory structure;

Solar easements.

A property owner who has installed or intends to install a solar collection system shall be responsible for negotiating with other property owners in the vicinity for any necessary solar easement and shall record the easement with the county recorder. If no such easement is negotiated and recorded, the owner of the solar collector shall have no right to prevent the construction of structures permitted by this Chapter on nearby properties on grounds that the construction would cast shadows on the solar collection system;

Accessory uses or structures not listed elsewhere.

In any residential district, any accessory building that is erected prior to the construction of the principal building shall comply with the following conditions:

The construction of the principal building shall be completed and the certificate of occupancy for such principal use issued within two years of issuance of the building permit for the accessory building;

Prior to issuance of a building per

STATEMENT OF PURPOSE: This ordinance implements a text amendment to Chapter 50 of the City Code, known as the Unified

Development Chapter (UDC). The proposed ordinance clarifies use specific development standards for urban agriculture and general agriculture. The proposed changes were discussed at a published public hearing on September 8, 2015. After the public hearing was closed, the Duluth planning commission made a motion to recommend that the city council approve the recommended amendments to UDC. The vote passed with a vote of 8 yeas, 0 nays and 0 abstentions, with 1 planning commission member being absent from the meeting.

President Larson moved to table the ordinance, which motion was seconded and unanimously carried.

This Ordinance was tabled.

- 32. 15-085-O** AN ORDINANCE AMENDING SECTIONS 50-19.8 USE TABLE, AND 50-20.3 COMMERCIAL USES, RELATED TO DRIVE-THROUGHS FOR BANKS, RESTAURANTS AND RETAIL STORES, AND PRIMARY USE PARKING LOTS, IN THE MU-N ZONE DISTRICT

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-19.8 of the Duluth City Code, 1959, as amended, be amended as follows:

[See Attachment 1, Table 50-19.8 Use Table and Table 50-19.1 Use Table Legend]

Section 2. That Section 50-20.3 of the Duluth City Code, 1959, as amended, be amended as follows:

Sec. 50-20.3. Same--Commercial uses.

Adult entertainment establishment.

All adult entertainment establishments shall comply with MSA 617.242 and Chapter 5 of this Code;

Agriculture, general.

No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 feet from any lot line;

All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 feet from any lot line;

Automobile and light vehicle repair and service.

No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;

A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;

All areas for outdoor storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property;

Automobile or light vehicle sales, rental or storage.

In the MU-C district, the use is permitted when located at least 100 feet from any R district;

Bank.

When in the MU-N district, the following standards apply:

The speaker box and drive-through window must be at least 50 feet from any property line containing a residential structure;

Drive-through may not open before 7:00 a.m. or after 10:00 p.m. during the weekday, or before 8:00 a.m. or after 10:00 p.m. on the weekend.

Drive-through may be open at 6:00 a.m. during the weekday or at 7:00 a.m. on the weekend only if all speaker boxes and drive-through windows are at least 125 feet from any residential structure, excluding any residential use or structure on the same property or within the same development;

Glare from cars in the drive-through lane and stacking space shall be shielded from adjacent residential properties through the use of screening, fencing or a dense urban screen;

The land use supervisor may require that the drive-through be located on the opposite side of the building from a residential use or that a masonry sound wall be constructed;

Banks are limited to no more than two drive-through windows and one drive-through

· ATM services on the premises;

Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;

Banks in the R-P, F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities;

Drive-through lanes shall allow for stacking space for three cars;

Bed and breakfast.

This is a primary use of land, and the owner need not reside in the use. The use shall:

Have no more than 12 habitable units;

If located in a residential zone district, the use shall appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;

If located in a residential zone district, the use shall have no greater impact on surrounding public areas or infrastructure or natural resources than a fully occupied private home with house guests;

Be located on a lot or tract containing a minimum of 0.6 acre;

Contain a minimum of 1,500 square feet of area on the first floor of the main building;

Dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For-profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;

Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;

Shall limit each guest stay to a maximum of 21 consecutive days;

Building materials sales.

Outdoor storage is limited to ten percent of the parcel's land area, and shall not be permitted in any required front yard area;

Each such area shall be screened from view from any ground floor window or door on any adjacent property, and from all adjacent rights-of-way, by an opaque fence or wall between six feet and eight feet in height. The fence may exceed eight feet in height where the difference in grade between the property line or right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area;

A landscaped earth berm may be used instead or in combination with a required fence or wall;

Convention center.

A convention center may not exceed 50,000 square feet if it is within 500 feet of a multi-family use, or 15,000 square feet if it is within 500 feet of a one or two family use;

Daycare facility, small and large.

In the RR-1 and RR-2 districts this use and related parking facilities and structures other than driveways are limited to no more than 20 percent of the lot or parcel area;

Filling station.

No displays or storage of merchandise, parts or refuse may be located closer than ten feet from any public right-of-way;

A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;

Grocery store, small and large.

Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas;

Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock;

Mini-storage facility.

This use shall comply with the following standards:

The use shall be contained within an enclosed building or buildings;

If the use abuts a residential zone district on any property line, building architecture shall employ sloped roofs and shall display wall relief features and colors commonly found in residential construction;

The use shall be designed so that doors to individual storage units do not face any abutting street frontage;

At least 50 percent of the wall surface area of any wall facing an abutting public street shall be faced with brick or split-block materials. Exposed concrete masonry unit (CMU) construction is not permitted on

se facades;

Hours of public access to mini-storage units abutting one or more residential zone districts shall be restricted to the period from 6:00 a.m. to 10:00 p.m.;

Signage shall be limited to one 40 square foot illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;

Mini-storage facilities are only allowed on properties within the RR-1 district that are also within the Airport Overlay District Safety Zone B. There shall be a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;

In the R districts a dense urban screen shall be installed along all side and rear property lines;

Office.

In the MU-I district, offices are limited to those in support of the permitted institutional uses in the district; general offices unrelated to the activities of those institutions are not permitted;

In the MU-B district, offices are limited to those in support of the permitted industrial uses in that zone district; general offices unrelated to the activities of those institutions are not permitted;

In the F-6 district, offices may not have drive-through facilities;

Other outdoor entertainment or recreation use not listed.

No circus ground, carnival ground, event ground, or amusement park shall be approved within 300 feet of an R-C, RR-2 or R district;

Parking lot or parking structure (primary use).

~~In the MU-C district, any parking structure shall be located at least 50 feet from any RC, RR or R district;~~

~~In F-1, F-2, F-3, F-4, F-6, F-8 and F-9 districts, only parking lots are allowed as primary uses. In F-7, only parking structures are allowed as primary uses. In F-5, parking lots and parking structures are allowed as primary uses;~~

~~3. Parking lots (primary use) are stand alone and self-contained, separate and distinct from other adjacent land uses. They need to conform to UDC requirements, such as lot frontage and drive aisle width, independent of adjacent properties;~~

Parking lots.

(a) Parking lots (primary use) shall be stand alone and

self-contained, separate and distinct from other adjacent land uses. They need to conform to UDC requirements, such as lot frontage and drive aisle width, independent of adjacent properties;

(b) When in the MU-N district, the following standards apply:

(i) Primary use parking lots shall meet all the street landscaping provisions in Section 50-25.3 as applicable. In addition, primary use parking lots shall be screened from adjacent structures and uses. Such screening shall consist of a continuous, view-obscuring fence, wall or compact evergreen hedge along all property lot lines which are adjacent to residential structures and uses, which shall be broken only for egress and access driveways and walkways. Such fence, wall or hedge shall be not less than four feet nor more than six feet in height;

(ii) Primary use parking lots shall meet all the landscaping provisions in Section 50-25.4, as applicable. In addition, regardless of the number of parking spaces provided, the parking lot must set aside at least 15 percent of the interior parking area for landscaping islands;

(iii) If the primary use parking lot abuts an improved public alley, driveway access must be provided to the alley;

(iv) Primary use parking lots must be designed to be a similar lot size as other lots in the neighborhood, and shall not alter the essential character of the neighborhood;

Parking structures.

(a) In the MU-C district, any parking structure shall be located at least 50 feet from any RC, RR or R district;

Recreational vehicle (RV) park.

Within any flood plain district, recreational vehicles that do not meet the exemption criteria specified in Subsection 2 below shall be subject to the elevation and anchoring provisions of Section 50-18.1.C for new structures;

Criteria for exempt recreational vehicles:

(a) The vehicle must have a current license required for highway use;

(b) The vehicle must be highway ready, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities commonly used in campgrounds and recreational vehicle parks;

(c) No permanent structural type additions may be attached to the vehicle;

(d) The vehicle and associated use must be permissible in any pre-existing, underlying zoning district;

(e) Accessory structures are not permitted within the floodway district. Any accessory structure in the flood fringe district must be constructed of flood-resistant materials and be securely anchored as specified in Section 50-18.1.C.3.v;

Cost of an accessory structure must not exceed \$500;

Recreational vehicles that are exempt in Section 50-20.3.P.2 lose this exemption when development occurs on the site exceeding \$500 for an accessory structure such as a garage or storage building. The recreational vehicle and all accessory structures will then be treated as a new structure and shall be subject to the elevation/floodproofing requirements and the land use standards specified in Section 50-18.1.C.3(C) of this ordinance *[Chapter]*. No development or improvement on the parcel or attachment to the recreational vehicle is allowed that would hinder the removal of the vehicle to a flood-free location;

New commercial recreational vehicle parks or campgrounds, subdivisions or condominium associations, and the expansion of any similar existing use exceeding five units or dwelling sites may be allowed subject to the following:

On any new or replacement recreational vehicle site in the flood fringe district, the recreational vehicle and its contents must be placed on fill above the regulatory flood protection elevation and adequate road access to the site must be provided in accordance with Section 50-18.1.C.5(d). No fill placed in the floodway to meet the requirements of this section shall increase the flood stage of the regional flood;

Any new or replacement recreational vehicle site located in the floodway district, or as an alternative to 4.(a) above in the flood fringe district, may be

wed as a special use in accordance with the following provisions and the provisions of Section 50-37.10:

The applicant must submit an emergency plan for the safe evacuation of all vehicles and people acceptable to the city council as specified in Section 50-18.1.C.5(d). The plan shall demonstrate that adequate time and personnel exist to carry out an evacuation, and that all vehicles will meet the exemption criteria specified in Section 50-20.Q.2 above; and

All attendant sewage and water facilities for new or replacement recreational vehicles must be protected or constructed so as to not be impaired or contaminated during times of flooding;

Restaurant.

In the R-2 and MU-N district, no use shall exceed 5,000 sq. ft. in gross floor area;

Drive-ins and drive-throughs for restaurants are only allowed in the MU-N, MU-C, MU-B, MU-P, F-2, F-3, F-4, and F-5 zone districts zone districts;

Drive-through lanes shall allow for stacking space for 5 cars;

When in the MU-N district, the following additional standards apply:

The speaker box and drive-through window must be at least 50 feet from any property line containing a residential structure;

Drive-through may not open before 7:00 a.m. or after 10:00 p.m. during the weekday, or before 8:00 a.m. or after 10:00 p.m. on the weekend.

Drive-through may be open at 6:00 a.m. during the weekday or at 7:00 a.m. on the weekend only if all speaker boxes and drive-through windows are at least 125 feet from any residential structure, excluding any residential use or structure on the same property or within the same development;

Glare from cars in the drive-through lane and stacking space shall be shielded from adjacent residential properties through the use of screening, fencing, or a dense urban screen;

The land use supervisor may require that the drive-through be located on the opposite side of the building from a residential use or that a masonry sound wall be constructed;

Restaurants are limited to one drive through lane and one speaker box;
When in the F-3 and F-5 districts, the following additional standards apply;
Access to and from the drive-through must be through the alley, if alley exists;
Restaurants are limited to one drive through lane;
Retail sales, small and large.
Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas;
Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock;
Retail stores are limited to one drive-through window;
Any drive-through lane that is located between a retail store and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open part 10:00 p.m.;
5 Drive-through lanes shall allow for stacking space for three cars;
When in the MU-N district, the following standards apply:
The speaker box and drive-through window must be at least 50 feet from any property line containing a residential structure;
Drive-through may not open before 7:00 a.m. or after 10:00 p.m. during the weekday, or before 8:00 a.m. or after 10:00 p.m. on the weekend.
Drive-through may be open at 6:00 a.m. during the weekday or at 7:00 a.m. on the weekend only if all speaker boxes and drive-through windows are at least 125 feet from any residential structure, excluding any residential use or structure on the same property or within the same development;
Glare from cars in the drive-through lane and stacking space shall be shielded from adjacent residential properties through the use of screening, fencing, or a dense urban screen;
The land use supervisor may require that the drive-through be located on the opposite side of the building from a residential use or that a masonry sound wall be constructed;
Seasonal camp or cabin.

In the R-C and RR-1 districts, buildings shall be located not less than 200 feet from any R district;

In the R-C district, the design of the site shall preserve the rural character by:

Separating each camp or cabin site by at least 50 feet, measured from the closest points on each tent or cabin area;

Preserving all natural vegetation not required to be removed for access roads, trails or public safety;

Using gravel or pervious paving, rather than impervious materials, for all access road and driveways serving fewer than 25 camp or cabin sites;

Veterinarian or animal hospital.

In the R-C and RR-1 districts, this use is permitted provided that service is limited to large livestock/large animal care and any building or enclosure so used shall be located not less than 100 feet from any lot line;

In the R-2, R-P, MU-N and MU-C districts, this use is permitted provided that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, that are ordinarily permitted in the house for company) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a soundproof building with adequate ventilation;

Vacation dwelling unit.

The minimum rental period shall as follows:

For properties zoned RR-1, RR-2, R-1 and R-P the minimum rental period shall not be less than two nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than five nights;

For properties zoned R-2, MU-N and F-5 the minimum rental period shall not be less than two nights except for the period from June 15 to September 15 when the minimum rental period shall not be less than three nights;

The total number of persons that may occupy the vacation dwelling unit is one person plus the number of bedrooms multiplied by two;

Off street parking shall be provided at the following rate:

1-2 bedroom unit, one space;

3-4 bedroom unit, two spaces;

5+ bedroom unit, three spaces;

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, on or off the street;

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 for three to 21 days;

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;

The interim use permit shall expire upon change in ownership of the property or in six years, whichever occurs first.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective Date: November 11, 2015)

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

The proposed ordinance allows the land use "primary use parking lot" as a special use in the MU-N district. The current UDC does not allow this use in the Mixed Use Neighborhood district out of concern for potential land use conflicts, such as noise and light, between the parking lot and any adjacent residential uses. This amendment allows primary use parking lots in the MU-N zone district, but any new primary use parking lots would have higher landscaping standard than primary use parking lots in other zone districts, and would require a special use permit (and a public hearing in front of the planning commission).

The proposed ordinance also allows for increased hours of operation for drive-throughs in the MU-N district. This text change allows drive-throughs to be open an hour earlier (6 a.m. instead of 7 a.m. on weekdays, and 7 a.m. instead of 8 a.m. on weekends), but only if there is at least 125 feet from the drive-through to the nearest residential structure (note that the ordinance reviewed by the planning commission had originally stated 150 feet).

The proposed changes were discussed at a published public hearing on

September 8, 2015. After the public hearing was closed, the Duluth planning commission made a motion to recommend that the city council approve the recommended amendments to UDC. The planning commission recommended a minor text change to the language related to primary use parking lots and screening, which has been incorporated in this ordinance. The vote passed with a vote of 8 yeas, 0 nays and 0 abstentions, with 1 planning commission member being absent from the meeting.

Action deadline: Not applicable

PL: 15-135

Attachments [Attachment 1](#)
[Cover Letter](#)

A motion was made that this Ordinance be adopted. The motion carried unanimously.

COUNCILOR QUESTIONS AND COMMENTS

The meeting was adjourned at 7:21 p.m.