



Planning & Development Division
Planning & Economic Development Department

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Date: April 5, 2021
To: Heritage Preservation Commission and Planning Commission
From: Steven Robertson, Senior Planner
RE: Proposed UDC Text Amendments Related to Historic Preservation

In coordination with the City Attorney's office, staff is reviewing UDC provisions associated with historic preservation. The current language in the UDC has standards relates to historic districts and historic landmarks. The language is intended to be applicable for locally designated historic landmarks and the two locally designated historic districts. To reduce ambiguity, staff recommend an amendment to the applicable UDC section to clarify that the intent of local historic preservation efforts and the work of the Heritage Preservation Commission is on locally designated landmarks and districts.

..Title

AN ORDINANCE AMENDING SECTIONS 50-18.3, 50-36.3, 50-37.14, 50-41.8 AND 50-41.12 RELATED TO HISTORIC PRESERVATION

..Body

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 50-18.3 of the Duluth City Code, 1959, as amended, be amended as follows:

50-18.3 Historic Resources Overlay (HR-O).

A. Purpose.

The purpose of this Section 50-18.3 is to preserve, protect and promote any areas, places, buildings, structures, lands, districts and other objects having a special historical, community or aesthetic interest or value through a process of local designation. The provisions of this section are not intended to apply to historic districts or landmarks designated under authority of federal or state law. The Historic Resources Overlay:

1. Safeguards the heritage of the city by preserving properties that reflect elements of the city's cultural, social, economic, political, engineering, visual or architectural history;
2. Protects and enhances the city's appeal and attraction to residents, visitors and tourists, while enhancing its economic viability through the protection and promotion of its unique character as related to its history and heritage;
3. Enhances the visual and aesthetic character, diversity and interest of the city;
4. Fosters civic pride in the beauty and notable accomplishments of the past;
5. Promotes the preservation and continued use of historic properties for the education and general welfare of the people of the city;

B. Designation of local historic resources.

1. Through the process for designating historic resources in Section 50-37.8, or its predecessor ordinance previously codified as Chapter 28A of the City Code, the heritage preservation commission has designated:
 - (a) Two locally designed historic preservation districts: the Duluth Civic Center Historic District, and the Duluth State Normal School Historic District, whose boundaries are shown on Exhibits 50-18.3-1 and 50-18.3-2; and
 - (b) Those locally designated historic preservation landmarks on file with the secretary of the planning commission;
2. The heritage preservation commission and planning commission may from time to time recommend, and the council may approve, additional locally designated historic preservation districts or locally designated landmarks pursuant to Section 50-37.8;

C. Review of construction/demolition activities.

Within those locally designated local historic preservation districts shown on Exhibit 50-18.3-1 and with regard to those locally designated historic preservation landmarks on file with the secretary of the planning commission:

1. Construction and demolition activities, including all street and utility activities, shall be approved pursuant to Section 50-37.14;

2. The issuance of city permits to do any of the following shall be approved pursuant to Section 50-37.14:
 - (c) Remodel, repair or alter in any manner that will change the exterior appearance;
 - (d) New construction, including parking facilities;
 - (e) Move a building;
 - (f) Change the nature or appearance of a designated historic preservation landmark or district, including landscape features;
 - (g) Demolition in whole or in part;

D. Emergency repair.

In emergency situations where immediate repair is needed to protect the safety of the structure and its inhabitants, the building official may approve the repair of only those items needed to ensure safety. Such repairs shall be limited to those necessary to correct the safety emergency. In the case of a permit issued pursuant to this subsection D, the building official shall require that the repairs be made in conformance with the U.S. secretary of interior's recommended standards for heritage preservation projects and adopted historic preservation guidelines for the landmark or district to the extent possible. In addition, the building official shall immediately notify the historic preservation commission of the action and specify the facts or conditions constituting the emergency situation;

E. Building code enforcement.

This Section 50-18.3 is also intended to encourage the sensitive rehabilitation, restoration, stabilization and preservation of historic buildings throughout the city. These rehabilitation and preservation efforts should provide for the upgrading and maintenance of the safety features of the building or structure to provide a practical level of safety to the public and surrounding properties. While ensuring this increased level of public safety, the enforcement authorities are encouraged to be open to acceptable alternative solutions and alternative compliance concepts, where practical, that will permit the continued use of existing buildings and structures without creating overly restrictive financial burdens on owners or occupants. Nothing in this Section shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any building or structure.

Section 2. That Section 50-36.3 of the Duluth City Code, 1959, as amended, be amended as follows:

50.36.3 Heritage preservation commission.

B. Creation.

Pursuant to Minnesota Statute 471.193, there is hereby created and established a city of Duluth heritage preservation commission, hereinafter called the "commission." The commission shall have the responsibility of recommending to the city council the adoption of ordinances designating areas, places, building structures, works of art or other objects having special historical, cultural or architectural interest for the community as historical preservation landmarks or districts;

C. Membership and terms.

The commission shall consist of seven voting members, all of whom are to be citizens of the city, five of whom will be appointed by the mayor with the approval of the council; one will be appointed by the county historical society, and one will be appointed by the planning commission. Members shall be persons who have demonstrated an interest in the historical, cultural or architectural development of the city or who own

property within a historic preservation district. At least two of the five members appointed by the mayor shall be preservation-related professionals;

Appointments shall be for a term of three years. In the event of a vacancy, the vacancy for the unexpired term shall be filled in the same manner as the appointment was originally made. Members shall serve without compensation and shall continue to hold office until their successors have been appointed and confirmed;

D. Powers.

The heritage preservation commission shall have the following powers:

1. Recommendation of locally designated historic preservation ~~landmarkssites~~ and districts to the city council;
2. Approve, approve with conditions or deny applications for historic construction and demolition permits pursuant to Section 50-37.14;
3. Recommend historic preservation guidelines specific to a locally designated historic preservation landmark or locally designated historic preservation district;
4. Make an annual report to the state historic preservation officer by October 31 of each year;
5. Conduct continuing survey of all areas, places, buildings, structures or similar objects in the city that the commission, on the basis of information available or presented to it, has reason to believe are or will be eligible for designation as historic preservation landmarks or districts;
6. Work for the continuing education of the citizens of the city with respect to the historic and architectural heritage of the city and keep current and public an official list of designated historic preservation landmarks and districts;
7. The commission may retain the services, on a permanent or part-time basis, of technical experts and other persons as may be required to perform the commission's duties;
8. The commission shall have authority to solicit gifts and contributions to be made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purpose of historic preservation;
9. The commission may recommend to the planning commission and council that certain properties eligible for designation as locally designated historic preservation landmarks or locally designated historic preservation districts be acquired by gift, by negotiation or other legal means;
10. Upon final designation of a locally designated historic preservation landmark or locally designated historic preservation district, adopt historic preservation guidelines specific to the landmark or district. Such guidelines shall detail allowable architectural and/or site modifications, essential features to be retained and any other criteria by which future proposals for modifications shall be judged. The United States secretary of the interior standards for treatment of historic properties shall be among the standards used to create such a program. These guidelines are intended to provide assurance to owners of properties within historic preservation landmarks or districts that any permit review process will be based on clear and objective standards rather than the taste of individual commission members;
11. The commission may nominate a historic preservation landmark or district to the national register of historic places, but only with the consent of the council.

Section 3. That Section 50-37.14 of the Duluth City Code, 1959, as amended, be amended as follows:

50-37.14 Historic construction/demolition permit.

This Section **only** applies to applications for construction or demolition within a **locally designated historic preservation** district or on a **local historic** property listed in Section 50-18.3 where the city must confirm whether the application complies with the standards in Section 50-18.3 and with all other applicable provisions of this Chapter and state law.

E. Application.

An application for a historic construction/demolition permit shall be filed pursuant to Section 50-37.1.B;

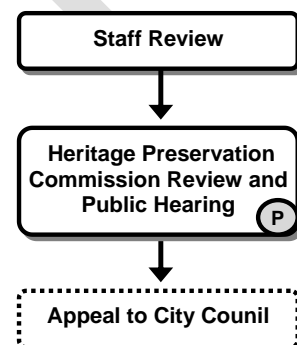
F. Procedure.

The application shall be reviewed by the heritage preservation commission. The commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a decision to adopt, adopt with modifications, or deny the application based on the criteria in subsection C below;

G. Criteria.

The commission shall approve the application, or approve it with modifications, if the commission determines that the application complies with all applicable provisions of this Chapter and state law and that the work to be performed shall not adversely affect the historic preservation landmark or district based on adopted historic preservation guidelines.

Historic Construction / Demolition Permit



(P) Indicates Public Hearing Required

Section 4. That Section 50-41.8 of the Duluth City Code, 1959, as amended, be amended as follows:

50-41.8 Definitions: H

Habitable room. Any room used or intended to be used for sleeping, cooking, living or eating purposes, excluding such enclosed spaces as closets, pantries, bath or toilet facilities, service rooms, corridors, laundries, unfinished attics, foyers, storage space, utility rooms or similar spaces.

Habitable unit. Any habitable room or group of habitable rooms that provide sleeping facilities alone or in combination with required cooking, eating or living facilities.

Hardship. The property in question cannot be put to reasonable use under existing regulations and the plight of the landowner is due to circumstances unique to the property and not created by the landowner. Economic considerations alone shall not constitute a hardship.

Hazardous waste. Any refuse, sludge or other waste material or combinations of refuse, sludge or other waste material in solid, semisolid, liquid or contained gaseous form that because of its quality, concentration, or chemical, physical or infectious characteristics may:

A. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

B. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants and corrosives. Hazardous waste does not include: source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Height of building. The vertical distance at the center of the principal front of a building, measured from the grade on that front to the highest point of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable or of a mean height level between eaves and hip or gambrel roof.

Height of tower or structure. The vertical distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightening protection device.

Height of wall or fence. The vertical distance measured from finished grade on the highest side of the fence or wall to the top of the fence or wall.

~~Historic preservation district. A contiguous collection or group of lands, parcels, sites, structures, buildings or objects that is determined to be historically, culturally or architecturally significant as a whole and has been locally designated as a historic preservation district pursuant to Section 50-18.3 of this Chapter.~~

Historic preservation guidelines. The established criteria by which any proposed changes, including architectural or site modifications to a locally designated historic preservation district or locally designated historic landmark shall be judged.

~~Historic preservation landmark. Any individual property, parcel, place, building, structure, work of art or other object that has been determined to be historically, culturally or architecturally significant and has been locally designated as a local historic preservation landmark pursuant to Section 50-18.3 of this Chapter.~~

Hosting platform. Any entity, website, smartphone application or other intermediary used to facilitate reservations of vacation dwelling units, accessory vacation dwelling units, or accessory home shares within the city.

Hotel or motel. A building or series of buildings operated as a commercial establishment providing accommodations to the transient traveling public in habitable units for compensation, and including both short-stay and extended stay facilities, and that may offer customarily incidental services. A hotel must have a minimum of five separate habitable units, and must have a reception desk staffed at all times.

Hospital. An institution or place where sick or injured in-patients are given medical or surgical care, at either public or private expense, but excluding a nursing home and excluding institutions where persons suffering from permanent types of illness, injury, deformity or deficiency or age are given care and treatment on a prolonged or permanent basis.

Section 5. That Section 50-41.12 of the Duluth City Code, 1959, as amended, be amended as follows:

50-41.12. Definitions: L.

Land development. A human-made change to, or construction on, the land surface that changes its runoff characteristics.

Land disturbing activity. Land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands of or downstream of the city, including clearing, grading, excavating, transporting and filling of land. Land disturbing activity does not include:

- A. Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- B. Construction, installation and maintenance of electric, telephone and cable television utility lines or individual service connection to these utilities;
- C. Installation of septic tank lines or drainage fields unless included in an overall plan for a land disturbance activity relating to construction of a building to be served by the septic tank system;
- D. Tilling, planting or harvesting of agricultural, horticultural or silviculture crops;
- E. Installation of fence, sign, telephone and electric poles and other kinds of posts or poles;
- F. Emergency work to protect life, limb or property and emergency repairs, except if the land disturbing activity would have required an approved erosion and sediment control plan except for the emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of Section 50-18.1.E.

Landing area. The area of the airport used for the landing, taking off, or taxiing of aircraft.

Land owner. The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Landscape plan. An accurate scale drawing that indicates the major natural features of a site and all proposed buildings, structures and site improvements in sufficient detail to allow the evaluation of impacts on natural systems and other aspects of the development.

Laundromat. An establishment providing home type (large institutional or commercial type) washing, drying or ironing machines for use on the premises.

Link. For purposes of the connectivity index described in Section 50-23.3, links are stretches of road that connect "nodes" as defined below. Street stub-outs are considered as links, but temporary dead-end streets internal to a development, private streets in gated sections or alleys shall not be counted as links. Every road segment that connects a node in the development to the external street network shall be counted as a link in the index calculation.

Loading space. A space within the principal building or on the same lot as the principal, providing for the off street standing, loading or unloading of trucks and trailers.

Locally designated historic preservation district. A contiguous collection or group of lands, parcels, sites, structures, buildings or objects that have been locally determined to be historically, culturally or architecturally significant as a whole and has been locally designated as a historic preservation district pursuant to Section 50-18.3 of this Chapter.

Locally designed historic preservation landmark. Any individual property, parcel, place, building, structure, work of art or other object that has been locally determined to be historically, culturally or architecturally significant and has been locally designated as a local historic preservation landmark pursuant to Section 50-18.3 of this Chapter

Local watershed. All the water that drains to a natural waterway located primarily within the city.

Lot. Land occupied or intended for occupancy by a use permitted in this Chapter, including one main building together with its accessory buildings, and the yards and parking spaces required by this Chapter, and having its principal frontage upon a street or upon an officially approved place. For the purposes of this Chapter, the term "lot" may include two or more lots of record that are contiguous or separated only by a public easement not exceeding 25 feet in width, are owned by the same owner and where none of the parcels can be severed or legally sold, conveyed or used without the other parcels by virtues of a legally binding agreement that runs with the land and is recorded in the office of the county recorder. If at any time any parcel that had been recognized as part of any lot by reason of such proximity, ownership and agreement are severed, legally sold, conveyed or used separately from the other parcel or

parcels making up said lot, the parcel so severed, legally sold, conveyed or used shall henceforth not be considered part of the lot, any uses relying on its status as part of the lot shall become nonconforming and the provision of Section 50-39 shall not be applicable to any such use.

Lot, corner. A lot abutting upon two or more streets at their intersection.

Lot, double frontage. A lot having a frontage on two streets as distinguished from a corner lot.

Lot, flag. A lot so shaped and designed that the main building site is setback from the street and that portion of the lot providing access has a width less than 25 percent of the lot width at its greatest point.

Lot, front. The area of a lot that abuts a public street is the front of the lot. For corner lots, the shortest side fronting upon a street shall be considered the front of the lot unless structures exist on the lot. In that case, the frontage shall be established by the orientation of the buildings, or of the principle entrance if building orientation does not clearly indicate lot frontage. For corner lots, where no other method determines conclusively the front of a lot, the city engineer shall select one frontage on the basis of traffic flow on adjacent streets, so that the lot is considered to front on the street with the greatest traffic flow.

Lot frontage. Frontage shall be the dimension of the lot line at the street, except where the lot line at the street is not straight, in which case the frontage shall be the dimension across the lot at the required front yard line.

Lot of record. A parcel of land that is part of a subdivision, the map of which has been recorded by the county recorder or a parcel of land described by metes and bounds the description of which has been recorded by the county recorder.

Lots on the block face. When a dimensional standard is calculated based on a dimension measured for "lots on the block face" the measurement shall apply only to (a) developed lots on the same side of the street between the next two intervening side streets, and (b) lots that face developed streets (not to streets shown on a plat or map that have not been constructed). For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot (not as separate platted lots).

Low density residential lot. A single lot located in an area that is zoned for one-family or two-family residences and in which the predominant land use is such type of residences.

Low density residential structure. A one-family or two-family home.

Lowest floor. The lowermost floor of the lowest enclosed area, including basement and crawl space.

Section 6. That this ordinance shall be effective thirty (30) days after its passage and publication.

STATEMENT OF PURPOSE: