



## Legislation Text

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**File #:** 21-0887R, **Version:** 1

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RESOLUTION RESCINDING RESOLUTION NO. 21-0174 AND VACATING A PORTION OF A RETAINED UTILITY EASEMENT OVER VACATED WEST MICHIGAN STREET IN THE PLAT OF DULUTH PROPER, SECOND DIVISION.

**CITY PROPOSAL:**

WHEREAS, on August 24, 2020, the city council passed Resolution No. 20-0651 that vacated a portion of West Michigan Street in the plat of Duluth Proper, Second Division subject to the retention of the utility easement over the entire area to be vacated; and

WHEREAS, a certified copy of Resolution No. 20-0651 was recorded in the Office of the St. Louis County Registrar of Titles on September 16, 2020 as Document No. 1029045 and the Office of the St. Louis County Recorder on September 18, 2020 as Document No. 1390843; and

WHEREAS, on February 16, 2021, Duluth Lincoln Park 1 LLC, petitioned the Duluth city council for the vacation of a portion of the retained utility easement over vacated West Michigan Street in the plat of Duluth Proper, Second Division; and

WHEREAS, pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in a public hearing and the city planning commission found that this portion of the street easement is not needed for public street purposes; and

WHEREAS, the planning commission, at its regular meeting on March 9, 2021, recommended approval of the vacation petition; and

WHEREAS, the city council passed Resolution No. 21-0174 on March 22, 2021, but a certified copy of said resolution was not filed with the St. Louis County Recorder and Registrar of Titles; and

WHEREAS, in May 2021, it was discovered that Resolution No. 20-0651 contained a typographical error in the body of the resolution while the legal description in the exhibit attached to Resolution No. 20-0651 did not contain the error; and

WHEREAS, the typographical error in Resolution No. 20-0651 was corrected by the re-recording of a new certified copy of Resolution No. 20-0651 and an affidavit of the City Clerk of the city of Duluth, both of which were recorded as a single document in the Office of the St. Louis County Registrar of Titles on June 3, 2021 as Document No. 1041623 and the Office of the St. Louis County Recorder on June 9, 2021 as Document No. 1416112; and

WHEREAS, Resolution No. 21-0174 was passed before the error contained in Resolution No. 20-0651 was corrected, and the recording data referenced in Resolution No. 21-0174 did not include or reference the re-recording of Resolution No. 20-0651 from June 2021.

WHEREAS, the cleanest and most expedient way to remedy this error is to rescind Resolution No. 21-0174 in its entirety and to restate the terms of the vacation accurately in this resolution;

NOW, THEREFORE, BE IT RESOLVED, that Resolution No. 21-0174, passed March 22, 2021, is hereby rescinded in its entirety.

RESOLVED FURTHER, that the city council of the city of Duluth approves the vacation legally described below and depicted on the attached Exhibit A:

All that part of the utility easement retained in the street vacation filed with the Office of the St. Louis County Registrar of Titles on September 16, 2020 as Document No. 1029045 and the Office of the St. Louis County Recorder on September 18, 2020 as Document No. 1390843, as corrected by that certain document filed in the Office of the St. Louis County Registrar of Titles on June 3, 2021 as Document No. 1041623 and the Office of the St. Louis County Recorder on

June 9, 2021 as Document No. 1416112 lying over, under and across vacated West Michigan Street adjacent to and abutting Block 38, DULUTH PROPER SECOND DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota described as follows:

Beginning at the East most corner of said Block 38; thence on an assumed bearing of South 41 degrees 39 minutes 38 seconds West, along the Southeasterly line of said Block 38 for a distance of 63.00 feet; thence South 48 degrees 19 minutes 27 seconds East 1.00 feet to a line parallel with and distant 1.00 foot Southeasterly of the Southeasterly line of said Block 38; thence North 41 degrees 39 minutes 38 seconds East, along said parallel line 63.00 feet to the Southeasterly extension of the Northeasterly line of said Block 38; thence North 48 degrees 19 minutes 27 seconds West, along said Southeasterly extension 1.00 foot to the point of beginning.

Said parcel contains 63 square feet.

RESOLVED FURTHER, that the city clerk is, pursuant to Section 100 (b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution showing the easement to be vacated.

STATEMENT OF PURPOSE: The purpose of this resolution is to rescind Resolution No. 21-0174 that vacated a portion of a retained utility easement that contained an error in the legal description, as well as vacate a portion of the retained utility easement with the corrected legal description. The error contained in Resolution No. 21-0174 makes the document unrecordable in the real estate records and the method to remedy the error is through this new resolution

The purpose of the original application was to vacate a 12 inch (1 foot) portion of a utility easement lying within the vacated portion of West Michigan Street to provide footing placement for the proposed 74-unit apartment building. The portion of the utility easement to be vacated is not needed for the efficient supply of utilities or public services in the City.

This item was originally heard on March 9, 2021, and the Duluth city planning commission held a public hearing on the proposal and voted 9 yeas, 0 nays, and 0 abstentions to recommend the city council approve the vacation.

The motion to approve the vacation by the city council must prevail with at least six affirmative votes.

Petition Received: February 16, 2021

Petitioner: Duluth Lincoln Park 1 LLC  
PL 21-015