



## Legislation Text

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**File #:** 18-013-O, **Version:** 1

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AN ORDINANCE AMENDING SECTIONS 50-19.8 USE TABLE, 50-20.3 COMMERCIAL USES, AND 50-40.6 DEFINITIONS.

### 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:

Attachment 2, Table 50-19.8 Use Table and Table 50-19.1 Use Table Legend

Section 2. That Section 50-30.3 of the Duluth City Code, 1959, as amended, be amended as follows:

### **50-20.3 Commercial uses.**

#### J. Filling station.

1. No displays or storage of merchandise, parts or refuse may be located closer than ten feet from any public right-of-way;
2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;
3. A vehicle wash facility or fueling pump or dispenser must be at least 50 feet from any property line containing a residential structure, excluding any residential use or structure on the same property as the filling station or within the same development. All outdoor speakers and audio components of a vehicle wash facility or fuel pump or dispenser located within 125 feet of any residential structure shall be muted daily between the hours of 10:00 p.m. and 6:00 a.m.
4. In all residential zone districts and the mixed use neighborhood (MU-N district), or any form district where a filling station is an allowed use, the following additional standards apply:
  - a. New structures, including car washes, convenience stores, and canopies shall be located close to the street to define the street edge, and shall provide transparent windows and doors for retail buildings to ensure security and visibility between the store, the pump islands and surrounding streets, with interior signage to make opaque no more than 30% of any transparent window or door;
  - b. An unobstructed, five-foot wide minimum, pedestrian walkway between the public sidewalk (or if none exists at the time of development, the adjacent street curb) and building entrances shall be provided;
  - c. Curb cuts to allow for vehicle traffic into and out of the site shall be located a minimum of 50 feet from street intersections, unless a greater or lesser distance is specified by the City Engineer for reasons of traffic or pedestrian safety. The number and width of curb cuts from the public street shall be evaluated to ensure pedestrian safety and to encourage walkability, including evaluation to consider appropriate car entrance locations while allowing for necessary tanker truck turning;
  - d. Vehicle stacking lanes shall be located away from adjacent uses such as residential and

outdoor amenity areas to reduce the impacts of noise and pollution caused by stacking vehicles near such uses. Landscaping and fencing shall be used to buffer potential impacts;

- e. Noise-generating areas, including auto service bays, car wash openings, vacuum stations, outdoor loading areas, garbage storage and stacking lanes, shall be located away from adjacent residential areas and outdoor amenity areas. Potential noise generators shall be buffered with landscaping, berming, or fencing to reduce impacts;
- f. Site and sign illumination shall be designed to avoid glare/light spillover toward adjacent land uses. Proposed concrete color shall take glare and light spillover into account.

Section 3. That Section 50-41.1 of the Duluth City Code, 1959, as amended, be amended as follows:

**50-41.1. Definitions: A.**

**Accessory agriculture roadside stand.** A structure erected for the display and sale of agriculture products grown on the premises and that is subordinate to the primary residential or agricultural use of the premises.

**Accessory bed and breakfast.** An owner-occupied building designed as a one-family dwelling that provides no more than five guest rooms for lodging accommodations by prior arrangements for compensation. The primary residence in the building or a separate, lawfully existing building located on the same site must be occupied by the building owner on a permanent basis. It may or may not include serving of meals to guests.

**Accessory boat dock, residential.** A personal use boating structure, subordinate to a primary residential use of property, that is built over or floats upon the water of a lake, river, or stream, and that serves one property owner for mooring boats or as a landing place for marine transport.

**Accessory caretaker quarters.** A subordinate dwelling unit intended for an employee or owner who looks after or takes charge of goods or property. The unit shall be either inside or attached to a main structure by a common wall. The unit is a complete, independent living facility with provisions for cooking, eating, sanitation and sleeping.

**Accessory communications tower for private use.** Any structure, subordinate to a primary use of land, that is designed and constructed primarily for the purpose of supporting one or more wireless analog or digital telecommunication facilities, that is located on the ground or anchored to the ground and exceeds 24 feet in height. Such a tower may have a variety of configurations, including a monopole, a lattice tower or a guyed tower.

**Accessory day care facility.** A private or public establishment licensed by the state that regularly provides one or more dependents with care, training, supervision, rehabilitation or developmental guidance on a regular basis, for periods less than 24 hours a day, for gain or otherwise, as a secondary and subordinate activity to a permitted or approved special use of the property.

**Accessory dwelling unit.** A subordinate dwelling unit added to, created within, or detached from a single-family residence, but located on the same lot or parcel as a primary residential structure, that provides basic requirements for living, sleeping, cooking and sanitation.

**Accessory heliport.** An area used or intended to be used for the landing and takeoff of helicopters that is secondary and incidental to, and is operated in support of, a permitted or approved special use on the same property, including operations facilities, such as maintenance, loading, and unloading, storage, fueling or terminal facilities.

**Accessory home occupation.** A business or occupation incidental and subordinate to the principal residential use. All home occupations must comply with the conditions in Section 50-20.5.F. Examples include but are not limited to: artist's studio; dressmaking; accessory beauty salon or barber shop, office of a physician or dentist for consultation or emergency treatment but not for general professional practice, lawyer, engineer, architect or accountant; teaching, with instruction limited to not more than two pupils at the same time. A home occupation shall not be interpreted to include accessory bed and breakfast, restaurants or tea rooms.

**Accessory home share.** A habitable room or space in an owner-occupied dwelling offered for trade or sale, whether for money or exchange of goods or services, for periods of 29 days or less.

**Accessory recycling collection point.** A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper or clothing for recycling purposes conducted totally within an enclosed structure or container, and that is accessory to a permitted or approved special use in the zone district. This definition does not include processing except for can banks that crush cans as they are deposited.

**Accessory sidewalk dining area.** An outdoor eating and drinking area that is generally associated with and subordinate to a permitted or approved special use on the same property and that is, located on a public sidewalk. This use may include removable tables, chairs, planters, or similar features and equipment.

**Accessory solar or geothermal power equipment.** Accessory uses and structures that are clearly subordinate in size and use to the primary use and structure on the property, and that are used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. These structures and uses may include but are not limited to the following, and may be located at ground level or above or below ground unless specifically limited in this Chapter, provided that they meet all other applicable requirements of this Chapter: solar photovoltaic modules, solar thermal hot water collectors, solar arrays; and geothermal heat pumps, earth tubes, or downhole heat exchangers.

**Accessory use or structure.** A use or structure subordinate in use, area or purpose to the principal use or structure on the same lot and serving a purpose naturally and normally incidental to the principal use or structure and that is not included in a separate definition of an accessory use or structure in this Chapter. Where an accessory building is attached to the principal building in a substantial manner by a wall or a roof, it shall be considered part of the principal building. An accessory building or use may be permitted on a lot of record that abuts or is separated by a public easement of no more than 25 feet in width to another lot or lots on which the primary use is located, provided all lots are owned by the same owner and none of the parcels are severed, legally sold, conveyed, or used without the other parcels. Examples include but are not limited to: pet houses, storage sheds, swimming pools, garages, accessory uses and structures for energy conservation and renewable energy production, and accessory structures for stormwater management and water conservation.

**Accessory vacation dwelling unit.** An accessory dwelling unit as defined by this Chapter that is used for periods of occupancy from three to 21 days.

**Accessory wind power equipment.** A small scale accessory wind power generating or distribution system, that is clearly subordinate in size and use to the primary use and structure on the property, and that is used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. Accessory wind power equipment is designed to generate no more than 10Kw of energy.

**Accessory wireless antenna attached to existing structure.** Any wireless service antenna located in or on the roof or upper facade of a structure that is not a telecommunications tower, such as a building, water tower, steeple, silo or utility pole.

**Adjacent developed lots facing the same street.** Where a dimensional standard is related to dimensions on "adjacent developed lots facing the same street" the measurement shall only include those lots that contain a primary structure and that share a side lot line with the subject property and shall not include corner lots where the primary structure faces a different street. If there is only one adjacent developed lot that fronts the same street, the measure shall refer only to the dimension on that lot. For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot, not as separate platted lots.

**Adult entertainment establishment.** See definition in Chapter 5 of the City Code.

**Adult bookstore.** See definition in Chapter 5 of the City Code.

**Agriculture, community garden.** A use in which land managed by a group of individuals is used to grow food or ornamental crops, such as flowers, for donation or for use by those cultivating the land and their households. Community gardens may be divided into separate plots for cultivation by one or more individuals

or may be farmed collectively by members of the group and may include common areas maintained and used by group members

**Agriculture, farmers market.** A recurring event, held outdoors or in another defined place, on designated days and times, where market vendors, consisting of agricultural producers, home processors, and craft producers that manufacture non-food goods by the force of their own labor, are organized for the purpose of selling their products directly to the public. A minimum of 30% of vendors shall be vendors selling food crops.

**Agriculture, general.** The production or keeping of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, or bees and apiary products. This definition includes all activities listed under “agriculture, urban.”

**Agriculture, urban.** An establishment where food or ornamental crops are grown that includes, but is not limited to, growing on the ground, on a rooftop or inside a building, aquaponics, and aquaculture.

**Airport boundary.** Those lands including the property owned by the city, state, and the United States, and their respective political subdivisions, that are used for aeronautical purposes and are contiguous with the runway and building area facilities. The Duluth International Airport boundaries are illustrated on Sheet 3, airport property map, of the approved set of airport layout plans on file in the offices of the Duluth Airport Authority. The Sky Harbor Municipal Airport boundaries are illustrated on Exhibit 50-18.2-2.

**Airport elevation.** The established elevation of the highest point on the usable landing area, which elevation is established to be 1,428 feet above mean sea level for Duluth International Airport and 610 feet above mean sea level for Sky Harbor Municipal Airport.

**Airport hazard.** Any structure, tree, or use of land that obstructs the air space required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land that is hazardous to persons or property because of its proximity to the airport.

**Airport and related facilities.** An area of land that is used or intended for the landing and takeoff of aircraft, and includes its buildings and facilities, if any. Accessory uses may include but are not limited to: car rental, aircraft servicing, fueling, or leasing, private aviation clubs or associations, and hotels.

**Alley.** A dedicated public right-of-way not more than 30 feet wide affording a secondary means of access to abutting property and not intended for general traffic circulation.

**Alley line.** The established side line of an alley easement.

**Antenna.** A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

**Apartment.** A part of a building consisting of a room or suite of rooms intended, designed or used as a residence by an individual or a one-family, including full cooking and bathroom facilities for individual use.

**Apartment hotel.** A building designed for or containing not less than 20 apartments, individual guest rooms or suites and in which may be furnished services ordinarily furnished by hotels, such as drugstores, tea room, barbershop, cigar and newsstands when such uses are located entirely within the building with no separate entrance from the street, and having no sign or display visible from the outside of the building indicating the existence of such use.

**Artisan production shop.** A building or portion thereof used for the creation of original handmade works of art or craft items by no more than six artists or artisans, either as a principal or accessory use, where the facility includes an area for retail of the art/craft items being produced.

**Artisan studio.** A building or portion thereof used for the creation of original handmade works of art or craft items by no more than three artists or artisans, either as a principal or accessory use, where the facility includes an area for retail of the art/craft items being produced.

**Automobile and light vehicle sales, rental, or storage.** The sale, display, lease, rental, or storage of light motor vehicles, including automobiles, vans, light trucks, light trailers, boats, and recreational vehicles. This shall not include salvage operations, scrap operations, vehicle impound yards, or commercial parking lots available for short-term use.

**Automobile and light vehicle repair and service.** Any building, structure, or lot used for the business of

repairing automobiles and small engines or the sale and installation of tires, batteries, and other minor accessories and services for automobiles and small engines. This shall not include car washes, retail sale of automotive supplies, tires, or parts unrelated to repairs being performed on the premises, the retreading or vulcanizing of tires, filling stations, or convenience stores that sell gasoline or lubricating oil, but not other automotive accessories or services.

Automobile, Repair- An establishment engaged in performing repairs of, automobiles, light vehicles, and small engines. Repair may include all activities or repair or servicing of automobiles allowed in “automobile service”, rebuilding or reconditioning of passenger automobiles, body, frame or fender straightening, dent repair, replacement or repair, painting or rust-proofing, or other similar repair or servicing of automobiles. Such work excludes commercial wrecking or dismantling, scrap/salvage yards, tire recapping and truck-tractor repair.

Automobile, Service- An establishment engaged in performing servicing of automobiles, light vehicles, and small engines. Service may include muffler replacement, oil changing and lubrication, tire repair and replacement except tire recapping, wheel alignment, brake repair, suspension repair, transmission repair and replacement, flushing of radiators, servicing of air conditioners, audio installation, detailing, and other similar activities of light repair or servicing of automobiles. This shall not include car washes, retail sale of automotive supplies, tires, or parts unrelated to repairs being performed on the premises, the retreading or vulcanizing of tires, filling stations, or convenience stores that sell gasoline or lubricating oil.

Average lot depth. The average of the lengths of the two side lot lines of a platted lot. In the case of flag lots (lots where the buildable portion of the lot is connected to a public street by an access or driveway 20 feet wide or less), the length of the access or driveway portion of the lot shall be ignored in measuring either side lot line. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10225, 5-28-2013, § 12; Ord. No. 10366, 4-13-2015, § 5; Ord. No. 10414, 10-12-2015, § 5. Ord No. 10446, 4-11-2016, §6)

Section 4. That Section 50-41.6 of the Duluth City Code, 1959, as amended, be amended as follows:

**50-41.6. Definitions: F.**

FAA. The federal aviation administration or its duly designated and authorized successor agency.

Family. One or more persons related by blood, marriage or adoption, including foster children, and in addition to and including five other unrelated persons occupying a dwelling and living as a single housekeeping unit.

FCC. The federal communications commission or its duly designated and authorized successor agency.

Filling station. A building, structure or land used primarily for the dispensing, sale or offering for sale at retail of any automobile fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories but not including major repair work such as motor replacement, body and fender repair or spray painting. This use may include the retail sales of convenience goods.

A. A small filling station is one that contains no more than 6 pumps or 12 fueling points.

B. A large filling station is one that contains more than 6 pumps or 12 fueling points.

Flood. A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

Flood frequency. The frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

Flood fringe. That portion of the flood plain outside of the floodway. Flood fringe is synonymous with “floodway fringe.”

Flood hazard area. The areas identified as flood plain, floodway, or flood fringe at or below the flood protection elevation.

Flood peak. The highest value of stage or discharge attained during a flood event; thus peak stage or peak discharge.

Flood plain. The beds proper and the areas adjoining a wetland, lake, or watercourse that have been or may in the future be covered by a regional flood.

Flood profile. A graph or a longitudinal plot of water surface elevations of a flood event along a reach of a stream or river.

Floodproofing. A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

Floodway. The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain that are reasonably required to carry and store the regional flood discharge.

Food processing. The sorting, treatment, or preparation of food products for sale or as inputs to further processing, but not including the slaughtering of small or large livestock or confined animal feeding operations. Examples include: creamery operations and poultry processing.

Forest management. Tree removal from a predominantly forested area with the intent of maintaining forest cover and not resulting in conversion to non-forest, such as grassy fields or pavement. Clearcuts constitute forest management as long as tree cover returns by planting or natural regeneration.

Frontage. All the property on one side of a street between two streets that intersect such street (crossing or terminating), measured along the line of the street, or if the street is dead ended, then all of the property abutting on one between a street that intersects such street and the dead end of the street.

Funeral home or crematorium. An establishment providing services such as preparing the human dead for burial, cremating human remains, and arranging and managing funerals. This use does not include cemeteries and columbaria. (Ord. No. 10044, 8-16-2010, § 6; renumbered by Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4; Ord. No. 10285, 3-10-2014, § 6.)

Section 5. 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 designated historic preservation district or 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 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. (Ord. No. 10044, 8-16-2010, § 6; renumbered by Ord. No. 10096, 7-18-2011, § 58; Ord. No. 10204, 3-11-2013, § 4. Ord No. 10446, 4-11-2016, §7)

Section 6. That this ordinance shall take effect 30 days after its passage and publication.  
(Effective date: \_\_\_\_\_, 2018)

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

Filling stations are being separated into two land uses, small and large. Large filling stations would not be allowed in R-2 or MU-N zone districts; only small filling stations would be allowed in those zoning districts. In addition, new use specific standards are being proposed for filling stations to improve neighborhood character and reduce land use conflicts.

Automobile and light vehicle repair and service is being separated into two separate land uses, automobile repair, and automobile service. The intent is to encourage new automobile repair uses, which tend to have several inoperative vehicles on site for extended periods, in commercial or industrial areas but not residential areas; automobile service uses, such as oil change businesses, would still be allowed in the MU-N district.

Hotel or motel is being defined to include a minimum number of separate habitable units to help better clarify the land use.

The planning commission held a public hearing and considered the changes at their January 9 and February 13, 2018, regular planning commission meetings. At their special annual meeting on March 6, 2018, they voted 9-0 to recommend that the city council approve these ordinance changes.