



Legislation Text

File #: 21-020-O, **Version:** 1

ORDINANCE GRANTING RAY E. RUOHO, BEATRICE D. RUOHO, CLINTON RUOHO, AND MATS HANSEN A CONCURRENT USE PERMIT FOR A PAVEMENT SNOWMELT SYSTEM AND RETAINING WALL IN THE STREET EASEMENT OF WALLACE AVENUE AT 2727 EAST FIFTH 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 by the city of Duluth (hereinafter referred to as "City") to Ray E. Ruoho, Beatrice D. Ruoho, Clinton Ruoho, and Mats Hansen, and their successor(s) in interest, (hereinafter referred to collectively as "Permittee"), to construct and maintain a pavement snowmelt system and retaining wall in the Wallace Avenue driveway at 2727 East Fifth Street on that property legally described in subsection (a) below and as shown in Exhibit A, conditioned upon the requirement discussed in subsection (b) below:

(a) A strip of land over, under, and across the southwesterly 20 feet of Wallace Avenue, as condemned by that document found in the Office of the Register of Deeds in Book 1 of Condemnation Plats on Page 54, St. Louis County, Minnesota; bounded on the northwest by a line that is parallel to and distant 65 feet northwesterly from the extended southeasterly line of Lot 15, Block 6, Willards Addition to Duluth and bounded on the southeast by a line that is parallel to and distant 40 feet northwesterly from the extended southeasterly line of said Lot 15.

(b) Ray E. Ruoho, Beatrice D. Ruoho, Clinton Ruoho, and Mats Hansen or their successor(s) in interest shall, by December 31, 2021: (1) consent to the registration of that certain condemnation document dated September 11, 1895, and recorded in the Office of the Register of Deeds on September 12, 1895 on page 54 in Book 1 of Condemnations as Document No. 6104 (the "Condemnation Document"), on Certificate of Title No. 349091, or, in the alternative, (2) grant the City an easement for road and utility purposes, in form acceptable to the City, on that portion of Wallace Avenue affecting the following described real property in St. Louis County, Minnesota: Lots 14-16, Block 6, WILLARD'S ADDITION TO DULUTH (the "Easement"). If the condition under this paragraph is not satisfied by December 31, 2021, evidenced by the recordation of the Condemnation Document or the Easement, as applicable, with the St. Louis County Registrar of Titles, then this concurrent use permit is null and void and of no further effect.

Section 2. 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 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, St. Louis County (hereinafter referred to as "County"), or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 3. By accepting the terms of this ordinance, Permittee agrees to hold harmless and defend

and indemnify the City and County against claims or demand which may arise against the City or County by reason of the existence of private improvements, or any act or omission of the permittee, their employees, agents, and assigns or of the City or County and their employees, agents, contractors, and assigns. Permittee agrees that the City and County shall not be liable for damage caused to the private improvements or to improvements on Permittee's adjacent property while the City or County engage in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations and any costs to repair or replace of any of the Permittee's property or improvements thereto. Permittee agrees to pay to the City and County all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 4. Permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by City or County officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, sidewalks, 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. Permittee shall immediately reimburse the City and County for any costs incurred by them arising out of permittee's failure to fulfill its obligations under the section.

Section 5. The terms and conditions of this ordinance shall be deemed to run with the land. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the Permittee shall provide written notice to the City planning and development division at City Hall Room 160, 411 West First Street, Duluth, Minnesota 55802 within ten days of such transfer. Permittee's successor in interest shall file with the planning and development division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance.

Section 6. The permit granted by this ordinance is subject to termination by the City 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 2 above shall be sufficient notice of termination. Upon termination, Permittee shall remove the private improvements as provided in Section 2.

Section 7. 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 Exhibit B and in planning commission file number PL21-026; 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; and

(c) Permittee will be responsible for the ownership, operation, and maintenance of the private improvements; and

(e) Permittee's private improvements shall be designed to and comply with any applicable engineering standards, building code, and fire code requirements; and

(f) Permittee shall be responsible for responding to requests for the location of the private improvements including marking their location on the ground and shall disclose to future owners of this land the responsibility for responding to location requests.

Section 8. By accepting the permit authorized by this ordinance, Permittee, for itself and its successors in interest, is agreeing to be bound by its terms.

Section 9. That the City shall record, with the Registrar of Titles of Saint Louis County, Minnesota, a certified copy of this ordinance.

Section 10. This ordinance shall take effect and be in force the later of 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This ordinance grants the landowners at 2727 East Fifth Street, Ray and Beatrice Ruoho, a concurrent use permit for a pavement snowmelt system and retaining wall in the street easement of Wallace Ave. The private improvement consists of a self-contained tubing system within the driveway pavement and extending into the apron near the curb through which warmed fluid will flow to provide

for safe access to and from the driveway as well as a brick retaining wall with fence and lights and as shown in Exhibit B. Some of the terms of this permit include St. Louis County because Wallace Avenue is County State Aid Highway 9. St. Louis County provides snow removal on Wallace Avenue pursuant to agreement with the City.

On April 13, 2021, the planning commission held a public hearing on the proposal as shown in Exhibits A and B, and voted 7 yeas, 0 nay, 0 abstentions, to recommend that the city council approve the request for a concurrent use permit (file number PL 21-026), with conditions. The staff report is attached hereto as Exhibit C.

Petition received: March 10, 2021

Action deadline: July 8, 2021

Applicant:

Ray E. Ruoho, Beatrice D. Ruoho, Clinton Ruoho, and Mats Hansen
2727 E. Fifth St.
Duluth, MN 55812

Permit Property:

2727 E. Fifth St.
010-4600-00630

Complete legal description of Concurrent Use Area provided in Exhibit A