



Legislation Text

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AN ORDINANCE AUTHORIZING THE CONVEYANCE OF CERTAIN REAL PROPERTY IN DOWNTOWN DULUTH TO MINNESOTA POWER, A DIVISION OF ALLETE, INC., FOR NOMINAL CONSIDERATION.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1.

(a) Pursuant to Section 2-176(a) of the Duluth City Code, 1959, as amended (the "Code"), the city council stated its intention to sell or convey certain property as set forth in Resolution 20-268, which property is legally described on the attached Exhibit 1 (the "Property"):

(b) Pursuant to Section 2-177.4 of the Code, the city may convey property to a non-governmental entity at less than market value if the city council finds that such conveyance will further other important city interests or objectives and that such conveyance is necessary to the accomplishment of such interests. The city council finds that the conveyance to Minnesota Power, a division of Allete, Inc., a Minnesota corporation ("Minnesota Power"), of the Property is necessary for the accomplishment of city interests, which interests include finalizing the terms and conditions contained in a development agreement dated May 30, 1985 and securing the public's rights in certain areas for plaza, utility and street purposes.

(c) Pursuant to Section 2-176(b) of the Code, the city's planning department reviewed the proposed conveyance of the Property for conformity to the city's comprehensive plan and reported that the conveyance of the Property conforms with said comprehensive plan and is surplus to the city's future needs.

(d) Pursuant to Section 2-176(c) of the Code, the St. Louis County Assessor determined that the Property has a current estimated market value of \$297,400.

Section 2. That the proper city officials are hereby authorized to convey the Property to Minnesota Power for the sum of \$1.00 and to execute all documents necessary to effectuate the conveyance of the Property to Minnesota Power, including the quit claim deed attached as Exhibit 2, contingent upon Minnesota Power dedicating easements over, under, and/or above the Property and other property owned by Minnesota Power for the following purposes: steam and hot water utility, stormwater utility, plazas, and street purposes, which easements shall be substantially in the form attached as Exhibits 3, 4, 5, 6, and 7.

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

STATEMENT OF PURPOSE: The purpose of this ordinance is to authorize the conveyance of the real property legally described on the attached Exhibit 1 (the "Property") to Minnesota Power, a division of Allete, Inc., a Minnesota corporation ("Minnesota Power"). The Property is located in downtown Duluth at the intersection of Lake Avenue and Superior Street. The Property proposed to be conveyed is highlighted in yellow on the attached Exhibit 8.

The City entered into a Lake Avenue Plaza Development Agreement dated May 30, 1985 (the "Development Agreement") wherein the city agreed to acquire certain real property from the State of Minnesota to construct a parking structure between Superior Street and Michigan Street, as well as plaza areas on top of the parking structure. Minnesota Power reimbursed the City's costs for a large portion of the improvements and undertook several maintenance and operational obligations in connection with the plaza areas and parking structure. Minnesota Power has been operating the parking structure, which, pursuant to the Development Agreement, is to be open to the public. After the improvements were constructed, the City was to convey the real property described in the Development Agreement to Minnesota Power, subject to certain easements in favor of the public for utility, street, and plaza purposes.

In 2019, Minnesota Power and the City engaged in negotiations to amend the Development Agreement to reduce the footprint of the plaza area, vacate the skywalk within Minnesota Power's building, and eliminate the public parking in the parking structure so that Minnesota Power could expand its building and increase security and safety for its employees and operations. In return, Minnesota Power agreed to dedicate new plaza easements, make improvements to the plaza, and grant an easement for a new, relocated stairwell that will serve as an entrance to the City's skywalk system. During negotiations, it was discovered that the City executed a deed in favor of Minnesota Power in 1989, as contemplated by the Development Agreement, but the deed was not recorded in the real estate records (the "1989 Deed"). In addition, the original 1989 Deed, which is in Minnesota Power's possession, is missing an exhibit reserving easements in favor of the public. Because the 1989 Deed was never recorded, Minnesota Power is not the owner of record of the Property and various easements in favor of the City over the Property still need to be evidenced of record in the real estate records. Therefore, the parties agreed to work together to address and fix all of the title issues surrounding the Property and complete the real estate transaction provided for under the Development Agreement (as modified by current negotiations). This requires revisions to the documents and council actions taken in June and July of 2019 relating to the plaza, skywalk and parking structure, as those documents and actions contained errors or were incomplete.

During negotiations, the City also discovered that the conveyance pursuant to the 1989 Deed was not authorized through an ordinance, which is required under the Duluth City Code, Section 2-175. Therefore, the purpose of this ordinance is to authorize the real estate transaction approved in the Development Agreement (as modified by current negotiations) and allow the City to issue a corrective deed to Minnesota Power for the Property. There will be several resolutions and ordinances related to finalizing this real estate transaction. Additionally, some of the items require the recommendation of the Planning Commission before they can be brought to council. These include an application to vacate platted Lake Avenue and an application to issue a concurrent use permit for a portion of Superior Street. Once these items receive the recommendation of the Planning Commission, they will be presented to the city council for approval.

At the closing of the Property, Minnesota Power will grant easements to the City for the following purposes:

- (1) Utility easement for stormwater purposes;
- (2) Utility easement for steam and hot water purposes;
- (3) Plaza easements (2); and
- (4) Street easement.

Additionally, the parties will enter into a First Amendment to the Development Agreement. At a later date, Minnesota Power will grant the City a skywalk easement for a new, relocated stairwell that will serve as an entrance to the City's skywalk system.

The City's planning department reviewed the proposed sale or conveyance for conformity to the City's comprehensive plan and determined that a sale or conveyance of the Property conforms with said comprehensive plan and the Property is surplus to the City's future needs. The letter of conformity is attached as Exhibit 9.

According to the St. Louis County assessor, the Property has a current estimated market value of \$297,400. However, the City's interest in the Property is valued at \$1.00 because the conveyance is for the purpose of correcting the 1989 Deed.

A visual summary of the items needed to correct the title issues described in this statement of purpose is attached as Exhibit 10.