



Legislation Text

File #: 21-042-O, Version: 1

AN ORDINANCE GRANTING ESSENTIA HEALTH A CONCURRENT USE PERMIT FOR A PRIVATE UTILITY CONDUIT IN THE PLATTED STREET RIGHT OF WAY OF NORTH FIFTH AND SIXTH AVENUE WEST AND 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 to Essentia Health, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

- (a) A private utility conduit, as shown in the exhibit Attachment 1.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

- (a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

- (b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

- (c) The insurance policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth, directed to the attention of the director of planning and economic development; and

- (d) The city of Duluth shall be named as an additional insured; and

- (e) The certificate shall also reference this ordinance by its ordinance number.

Section 3. 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 of Duluth 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 60 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 of this permit, permittee or successor in ownership 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 of Duluth, or

any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or permanently remove from the public easement, the private improvements when required by city 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 City for any costs incurred by City arising out of permittee's failure to fulfill its obligations under the section.

Section 6. 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 planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Upon the occurrence of such failure, ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. 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 the exhibit; 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 be hereinafter located in any part of said public easement; and

(c) Permittee will locate any private improvements in accordance with Gopher State Once Call rules and the Permittee or subsequent owner of the private improvements shall relocate any improvements found to be in conflict with existing or future city utility or street projects; and

(d) Within 45 days of installing the private improvements, Permittee shall submit record drawings showing the location and nature of such improvements. The record drawings shall comply with the city of Duluth Public Works and Utilities' "Engineering guidelines for Professional Services and Developments"; and

(e) Permittee shall provide notice to City Engineer at 218-730-5200 at least two working days in advance of any work permitted under this permit or any other permits related to such work and shall schedule such work to coordinate with any required inspections; and

(f) Permittee shall obtain all other permits as may be required by the city, other governmental agencies, and, including, but not limited to obstruction, excavation, electrical, stormwater, etc; and

(g) Permittee must repair or replace at their expense any damage to anything in the right-of-way caused by the Permittee's permitted installation or operations to the city's reasonable satisfaction; and

(h) The Permittee shall maintain the private improvements in a good and safe condition, and in compliance with all applicable fire, health, building or other codes or permits as applicable.

Section 9. The following events shall constitute cause for the immediate termination of the permit granted by this ordinance:

(a) The failure by the permittee to file the required insurance certificate as specified in Section 2 60 days after this ordinance takes effect, or to file the insurance certificates annually thereafter; or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect; or

(c) The failure of the permittee to register with Gopher State One Call as a facility operator, or to maintain current contact information with Gopher One.

Section 10. Permittee shall cause this ordinance to be recorded against the benefited property in the office of the St. Louis County Recorder.

Section 11. 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 12. That this ordinance shall take effect and be in force the later of 30 days from and after its passage and publication or the date upon which this ordinance is recorded as provided for in Section 10 above, whichever is later.

STATEMENT OF PURPOSE: This concurrent use permit will allow private underground utilities within the public right-of-way of for private utility conduit (two, two-inch conduits) between Essentia Health's new hospital to the Involta Data Center.

The area proposed for the concurrent use permit will not take away from the public's ability to use the public right-of-way, nor will it harm or inconvenience the health, safety and general welfare of the city.

The ordinance will require that the project proposer will locate any underground items in accordance with Gopher State One Call rules, and that the city will bear no responsibility for locating any facility related to the concurrent use permit. A condition of earlier zoning applications was that Essentia Health staff locate any private improvements in the public right of way (as opposed to City staff) and that they or subsequent owners of the private improvements shall relocate any improvements found to be in conflict with existing or future city utility or street projects. On August 14, 2019, Essentia Health was enrolled in Gopher One as a provider (MN01741).

The planning commission held a public hearing and considered the concurrent use permit application at a September 13, 2021, planning commission meeting. Following discussion, the commission voted with 8 yeas, 0 nays, and 0 abstentions, to recommend that the city council approve the concurrent us permit.

Applicant: Essentia Health

PL 21-147