



## Legislation Text

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**File #:** 17-046-O, **Version:** 1

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AN ORDINANCE GRANTING A CONCURRENT USE PERMIT FOR APPROXIMATELY TWELVE PARKING SPACES IN THE PLATTED STREET RIGHT OF WAY OF EAST RED WING 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 K & J Auto, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) Parking twelve vehicles in the right of way of East Red Wing Street, to be directionally bored underground, as shown in 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 as to form 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 be approved by the city attorney; and

(d) The policy shall contain a condition that it may not be canceled without 30 days' written notice to the city of Duluth and directed to the attention of the city attorney; and

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

(f) 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 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 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 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.

Section 6. 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 ten 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. 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 shall provide proof of liability insurance to fully indemnify the city for all activities in the public right-of-way;

(c) Prior to council review, permittee shall enter into an agreement with the city to be assessed for improvements to Red Wing Street. Such an agreement, between the applicant and the engineering department, must be signed before September 15, 2017;

(d) Vehicles parked on the site and in the right-of-way must at all times remain consistent with the city staff parking exhibit, and meet parking space standards identified in the UDC. Any vehicles failing to comply with the parking exhibit may be ticketed and towed by the city, at the permittee's expense, in addition to unlicensed or inoperable vehicles;

(e) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the Land Use Supervisor without further planning commission approval; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50.

Section 9. The following events shall automatically cause the termination of the term of 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

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

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This ordinance grants K & J Auto, an auto body repair shop at 4002 Woodland Avenue, to park 12 vehicles within the right-of-way along Red Wing Street along the perimeter of the building. The space in question has been used without a concurrent use permit for decades. The permit as proposed and recommended by the planning commission includes a limited amount of cars that meet both parking design standards within the UDC, in addition to keeping the front entrance, garage door, and storm sewer from being obstructed.

On September 12, 2017, the planning commission held a public hearing on the proposal as shown in Attachment 2, and voted 6 yeas, 0 nays, 0 abstentions, to recommend that the city council approve the request for a concurrent use of streets.

Applicant:

K & J Auto

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