File #: 26-0679R, **Version:** 1

RESOLUTION FINDING THAT THE SUBJECT OF TWO SEPARATE INITIATIVE PETITIONS CONTAINING PROPOSED ORDINANCES GOVERNING THE LAND USE AND ZONING OF TWO SPECIFIC PARCELS OF PROPERTY LOCATED IN OR NEAR THE FORMER LESTER PARK GOLF COURSE ARE PREEMPTED BY STATE LAW AND SHOULD NOT BE PLACED ON THE BALLOT.

CITY PROPOSAL:

WHEREAS, there was submitted to the city clerk on June 23, 2026, a petition to propose an ordinance prohibiting the city council from amending, without prior approval of the voters, the zoning or comprehensive land use plan related to the approximately 230 acres of real estate (Parcel 1) located within or near the former Lester Park Golf Course, which property was conditionally conveyed to DEDA by Ordinance 25-032 on December 8, 2025;

WHEREAS, there was submitted to the city clerk on June 23, 2026, a petition to propose an ordinance mandating that the city of Duluth take all actions necessary within 180 days of the effective date, to rezone as Park and Open Space (P-1) the 37.5-acre parcel (Parcel 2) located within or near the former Lester Park Golf Course, which parcel was authorized to be conveyed to the Duluth Economic Development Authority (DEDA) by Ordinance 21-069 on December 20, 2021, and further, prohibiting any rezoning of Parcel 2 that authorizes private residential, commercial, industrial, hospitality, or mixed-use development unless said rezoning is first approved by a majority of voters at a City election;

WHEREAS, on July 8, 2026, the Duluth City Clerk certified both petitions to be sufficient in satisfying the signature requirements of Section 51 of the Duluth City Charter, which petitions were submitted to the city council;

WHEREAS, the Duluth City Charter provides the right to petition the city council for the adoption of ordinances and submission to the voters on the ballot;

WHEREAS, the grant to a municipality of the power to govern itself through a home rule charter and to include in the charter the right of referendum does not preclude the legislature from preempting charter authority on matters of state concern;

WHEREAS, the Municipal Planning Act (MPA), Minnesota Statutes, Sections 462.351 to 462.364, as amended, grants to municipalities the authority to engage in comprehensive municipal planning and also grants to municipalities general zoning authority;

WHEREAS, in its policy statement, the MPA states that its purpose is “to provide municipalities, in a single body of law, with the necessary powers and a uniform procedure for adequately conducting and implementing municipal planning;”

WHEREAS, through municipal planning, the city council seeks to develop land effectively, to make provision of public services less costly, and to achieve a more secure tax base;

WHEREAS, the doctrine of preemption is premised on the right of the state to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation;

WHEREAS, the Minnesota Court of Appeals has held, in the case of *Nordmarken v. City of Richfield,* 641 N.W.2d 343 (Minn. Ct. App. 2002), that the Minnesota legislature, by its statements of polices and purposes, and its enactment of comprehensive, uniform procedural laws for land use planning and zoning, has evinced its intent to occupy the field of the process by which municipal land use and development laws are finally approved or disapproved;

WHEREAS, the *Nordmarken* Court found that the legislature “has enacted for municipalities throughout the state and for metropolitan-area municipalities interrelated statutes that are aimed at obviating piecemeal, fragmentary municipal land use and development”;

WHEREAS, the *Nordmarken* Court further found that local regulation of the process for land use

planning and zoning through city charter provisions “is sufficiently antithetical to the avowed purposes of creating that single body of law and uniform procedure that is has substantial potential for adverse effect on the population”;

WHEREAS, the *Nordmarken* Court concluded as a matter of law that, through “its statements of policies and purposes and its enactment of comprehensive, uniform procedural laws for land use planning, the legislature has evinced its intent to occupy the field of the process by which municipal land use and development laws are finally approved or disapproved”;

WHEREAS, the *Nordmarken* Court further concluded that because local regulation by charter provisions “would encroach into that occupied field and undermine the comprehensive and uniform nature of the process,” such local charter provisions are preempted;

WHEREAS, the Minnesota courts have held that, where ordinances would be void if passed, proceeding to a vote under such circumstances would be “an exercise in futility and a waste of much-needed municipal dollars,” *Haumant v. Griffin*, 699 N.W.2d 774, 779 (Minn. Ct. App. 2005)*;* and

WHEREAS, the city council, having reviewed the record of this matter has reached a conclusion with respect to the issue of whether the proposed ordinances submitted in the two initiative petitions identified above are appropriate to submit to the voters at a regular or special election;

NOW, THEREFORE, BE IT RESOLVED, that the city council finds that the content of the proposed ordinances submitted by the above petitions is an attempt to regulate municipal land use planning and zoning that is in conflict with the MPA and such conflict has the potential for adverse effect on the community.

BE IT FURTHER RESOLVED, that the city council finds that the MPA preempts the city charter right to petition for the adoption of ordinances that attempt to regulate municipal land use planning and zoning.

BE IT FURTHER RESOLVED, that based on these findings, the city council concludes that adoption of the proposed ordinances by the city council or through submission of the proposed ordinances as a ballot question would be futile and, thereby, rejects the petitions and declines to take any further action on said petitions.

STATEMENT OF PURPOSE: The purpose of this ordinance is to state the Duluth City Council’s findings and conclusions that the Charter initiative process is preempted by state law in the field of municipal land use planning and zoning, and that the proposed ordinances set forth in the two petitions filed with the City Clerk on June 23, 2026 are likewise preempted.