ARTICLE FIVE. ADMINISTRATION AND PROCEDURES.

This Section is intended to comply with all applicable provisions of MSA Chapter 462, as amended, and shall be interpreted to comply with those provisions wherever possible.

50-35 SUMMARY TABLE.

Table 50-35-1: Procedures Summary Table

Type of Application			Review, Decision, & Appeal Authority					
R = Review D = Decision A = Appeal <> = Hearing N = Newspaper Notice S = Sign Notice M = Mail Notice RES = Resolution ORD = Ordinance AL= Action Letter COA = Certificate of Appropriateness	Public Notice Required	Pre-Application Required	Staff	Land Use Supervisor	Heritage Preservation Commission	Planning Commission	Council	Final Action
Comprehensive Land Use Plan								
Text Amendment	N			R		<R>	D	RES
Map Amendment	N, M			R		<R>	D	RES
UDC Text or Zoning Map Amendment								
Text Amendment	N			R		<R>	D	ORD
Map Amendment	N, S, M*	✓		R		<R>	D	ORD
District Plan Adoption/Amendment	S	✓		R		<D>	<A>	
Subdivision Plat Approval								
Concept Plan		✓		R				**
Preliminary Plat	N, S, M	✓		R		<D>		AL
Final Plat				R		<D>		AL***
Minor Subdivision/Registered Land Survey				R		<D>		AL***
Vacation of Street	S, M	✓		R		<R>	D	RES
Concurrent Use of Streets Permit	S	✓		R		<R>	D	ORD
Historic Resource Designation	M				<R>	R	D	ORD
Variance	S, M	✓	R			<D>	<A>	AL
Special Use Permit	S, M	✓		R		<D>	<A>	AL
Interim Use Permit	S, M	✓		R		<R>	D	RES
Planning Review								
General Planning Review				D		<A>		AL
Planning Commission Review When required in MU-C, MU-W, MU-I Zoning Districts and HE-O Overlay District	S, M	✓		R		<D>	<A>	AL
Temporary and Sidewalk Use Permit				D		<A>		AL
Zoning Permit****			D			<A>		AL
Historic Construction/Demolition	S				<D>		<A>	COA
Wetland/WCA Permits			D			<A>		AL

*****Mailed notice is required to affected property owners within 350 ft. when the amendment involves changes in district boundaries affecting an area of 5 acres or less. ** Planning staff will provide applicant with a preapplicaiton verification.

*** Applicant must provide documentation that the plat or RLS has been recorded with the county.

**** This category includes shoreland permit, erosion and sediment control permit, sign permit, fence permit and airport environs permits. Appeals of airport environs permits related to Duluth International Airport are heard by the airport board of adjustment.

(Ord. No. 10041, 8-16-2010, § 8; Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 46; Ord. No. 10192, 12-17-2012, § 12; Ord. No. 10286, 3-10-2014, § 17; Ord. No. 10303, 6-9-2014, § 1; Ord. No. 10509, 6-12-2017, §4)

50-36 REVIEWERS AND DECISION-MAKERS.

50-36.1 Council.

The council is the governing body of the city, with all of those powers granted by the state and the City Charter. In the context of this Chapter, the council has the following powers.

A. To adopt the comprehensive land use plan and to approve all amendments to it pursuant to Section 50-37.2;
B. To adopt the text, amendments to that text, and interim ordinances related to this Chapter pursuant to Section 50-37.3;
C. To adopt the official zoning map and all amendments to it pursuant to Section 50-37.3;
D. To approve the vacation a public street pursuant to Section 50-37.6;
E. To approve the concurrent use of a public street pursuant to Section 50-37.7;
F. To approve historic resource designations pursuant to Section 50-37.8;
G. To approve interim use permits pursuant to Section 50-37.10;
H. To hear appeals of decisions of the planning commission pursuant to Section 50-37.1.O. (Ord. No. 10044, 8-16-2010, § 6.)

50-36.2 Planning commission.

A. Creation.

The planning commission is that body authorized by MSA 462.354 and created by Ordinance 1809. In addition, the council hereby designates the planning commission as the board of adjustment authorized by MSA 462.354 and Section 27 of the City Charter. The planning commission shall have all powers authorized for a planning commission or a board of adjustment under the state law and this City Code. Procedures before the planning commission shall be governed by rules and regulations adopted by the commission. This Section is intended to comply with the provisions of MSA 462.354 as amended, and Section 27 of the City Charter, and shall be interpreted to comply with those provisions wherever possible;

B. Membership and terms.

Except as provided by Ordinance 9985, the planning commission shall consist of nine members, all of whom shall be citizens of the city and none of whom shall be a paid city employee, and all of whom shall be appointed by the mayor and with the consent of the council, and all of whom shall make and file with the city clerk an oath and affirmation as provided in Section 28 of the city Charter. Members shall be appointed for a term of four years, and the terms shall be staggered in accordance with Ordinance 9985. Vacancies shall be filled by appointment for the unexpired term only. Members of the board shall serve without compensation;

C. Meetings and proceedings.

1. All hearings of the planning commission shall be public and shall occur after 5:00 p.m.;
2. The concurring vote of a majority of the members of the commission shall be sufficient to exercise any power granted to the planning commission by this Chapter;
3. The commission may delegate to a committee of the commission or to its secretary specific review and approval activities provided that it provides written criteria to guide the performance of the delegated duties, and the decisions made by the committee or secretary will be considered decisions of the commission;

D. Powers.

Except as otherwise provided in this Chapter or other law, the planning commission shall have the following powers within all zone districts:

1. Appeals.
   To hear and decide appeals where an applicant alleges an error in any order, requirement, permit or decision made by the land use supervisor or the building official in the enforcement of any provisions of this Chapter, pursuant to Section 50-37.1.O. In the case of each appeal, the commission shall make written findings of facts and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts;
2. District plans.
   To approve, approve with modifications, or deny applications for approval of a district plan in those districts where approval of such a plan is required prior to development, pursuant to Section 50-37.4;
3. Subdivision plats.
   To approve, approve with modifications, or deny preliminary and final plats for the subdivision of land pursuant to Section 50-37.5 and in accordance with the state law;
4. Variances.
   To approve, approve with modifications or deny applications for variances to the provisions of this Chapter as provided in Section 50-37.9;
5. Special use permits.
   To approve, approve with conditions or deny applications for a special use permit pursuant to Section 50-37.10;
6. Planning review for certain districts.
   Planning review in the MU-N, MU-C, MU-I and MU-W districts pursuant to Section 50-37.11;
7. Review and recommendation.
   To review and comment on any application for which a review role for the commission is shown in Table 50-35-1. (Ord. No. 10041, 8-16-2010, § 9; Ord. No. 10044, 8-16-2010, § 6.)

50-36.3 Heritage preservation commission.

A. Creation.

Pursuant to Minnesota Statute 471.193, there is hereby created and established a city of Duluth heritage preservation commission, hereinafter called the "commission." The commission shall have the responsibility of recommending to the city council the adoption of ordinances designating areas, places, building structures, works of art or other objects having special historical, cultural or architectural interest for the community as historical preservation landmarks or districts;

B. Membership and terms.

The commission shall consist of seven voting members, all of whom are to be citizens of the city, five of whom will be appointed by the mayor with the approval of the council; one will be appointed by the county historical society, and one will be appointed by the planning commission. Members shall be persons who have demonstrated an interest in the historical, cultural or architectural development of the city or who own property within a historic preservation district. At least two of the five members appointed by the mayor shall be preservation-related professionals;

Appointments shall be for a term of three years. In the event of a vacancy, the vacancy for the unexpired term shall be filled in the same manner as the appointment was originally made. Members shall serve without compensation and shall continue to hold office until their successors have been appointed and confirmed;

C. Powers.

The heritage preservation commission shall have the following powers:

1. Recommendation of historic preservation sites and districts to the city council;
2. Approve, approve with conditions or deny applications for historic construction and demolition permits pursuant to Section 50-37.14;
3. Recommend historic preservation guidelines specific to a landmark or district;
4. Make an annual report to the state historic preservation officer by October 31 of each year;
5. Conduct continuing survey of all areas, places, buildings, structures or similar objects in the city that the commission, on the basis of information available or presented to it, has reason to believe are or will be eligible for designation as historic preservation landmarks or districts;
6. Work for the continuing education of the citizens of the city with respect to the historic and architectural heritage of the city and keep current and public an official list of designated historic preservation landmarks and districts;
7. The commission may retain the services, on a permanent or part-time basis, of technical experts and other persons as may be required to perform the commission's duties;
8. The commission shall have authority to solicit gifts and contributions to be made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purpose of historic preservation;
9. The commission may recommend to the planning commission and council that certain properties eligible for designation as historic preservation landmarks or districts be acquired by gift, by negotiation or other legal means;
10. Upon final designation of a historic preservation landmark or district, adopt historic preservation guidelines specific to the landmark or district. Such guidelines shall detail allowable architectural and/or site modifications, essential features to be retained and any other criteria by which future proposals for modifications shall be judged. The United States secretary of the interior standards for treatment of historic properties shall be among the standards used to create such a program. These guidelines are intended to provide assurance to owners of properties within historic preservation landmarks or districts that any permit review process will be based on clear and objective standards rather than the taste of individual commission members;
11. The commission may nominate a historic preservation landmark or district to the national register of historic places, but only with the consent of the council. (Ord. No. 10041, 8-16-2010, § 10; Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 47; Ord. No. 10225, 5-28-2013, § 9.)

50-36.4 Land use supervisor.

The land use supervisor is that individual responsible for administration of all aspects of this Chapter where specific authority has not been delegated to another city official or employee, and is responsible for exercising those powers to implement adopted plans through the review of applications described in MSA 462.356 subdivision 2 and MSA 462.359. The land use supervisor may delegate specific responsibilities to any individual city employee under the supervisor's management, but shall remain responsible for all decisions made by those employees. Except as otherwise provided in this Chapter or other law, the land use supervisor's authority shall extend to all zone districts. The land use supervisor's authority shall include, but shall not be limited to, the following:

A. Planning review.
   To approve, approve with modifications or deny applications for planning review pursuant to Section 50-37.11;
B. Temporary and sidewalk use permit.
   To approve, approve with modifications or deny applications for approval of a temporary or sidewalk use permit pursuant to Section 50-37.12;
C. Review and recommendation.
   To review and comment on any application for which a review role for the land use supervisor is shown in Table 50-35-1;
D. Application manual and administrative procedure.

To prepare an applications manual and adopt administrative procedures to implement this Chapter. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 48.)

50-36.5 Building official.

The building official shall be responsible for ensuring that applications for the following permits and approvals are only issued if the application complies with (a) the provisions of this Chapter, as such provisions may have been modified by any variance approved by the planning commission, and (b) any district plan approved by the planning commission and applicable to the area where the permit or approval is sought. The building official may delegate specific responsibilities to any individual city employee under the official's management, but shall remain responsible for all decisions made by those employees. Except as otherwise provided in this Chapter or other law, the building official's authority shall extend to all zone districts. The building official's authority shall include, but shall not be limited to, the following:

A. Zoning permits.

Approve, approve with conditions or deny applications for zoning permits pursuant to Section 50-37.13. Conditions shall only be applied to bring the application into conformity with this Chapter and related administrative regulations. In the administration of the State Building Code on projects where no permit is required under this Chapter, the building official shall, to the extent feasible and practical, utilize the erosion and sediment practice specifications as guidelines for adequate erosion control;

B. Airport environs permit.

Serve as the zoning administrator for the Duluth International Airport pursuant to the zoning regulations enacted by the joint airport zoning board and pursuant to MSA 360.063, subd. 3;

C. Building permits.

Approve, approve with conditions or deny applications for building permits pursuant to Section 50-37.15. Conditions shall only be applied to bring the application into conformity with this Chapter, the applicable building code(s) and related administrative regulations;

D. Certificates of occupancy.

Approve, approve with conditions or deny applications for certificates of occupancy pursuant to Section 50-37.16. Conditions shall only be applied to bring the application into conformity with this Chapter, the applicable building code(s) and related administrative regulations. (Ord. No. 10044, 8-16-2010, § 6.)

50-36.6 Other departments.

Additional departments of the city may be consulted regarding any application under this Chapter, or regarding the potential impacts of the proposed activities or structures covered by an application, at the discretion of the building official, the land use supervisor, the historic preservation commission, the planning commission or council.

Notices to consider variances, amendments, or special uses under shoreland standards will be sent to the DNR commissioner or the commissioner's designated representative at least ten days before public hearings. Notices of hearings to consider proposed plats will include copies of the plats.

A copy of approved amendments and plats, and final decisions granting variances or special uses under shoreland standards will be sent to the DNR commissioner or the commissioner's designated representative within ten days of final action. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10075, 1-24-2011, § 2.)

50-37 REVIEW AND APPROVAL PROCEDURES.

50-37.1 Common procedures and requirements.

A. Pre-application meetings.

A pre-application meeting is an informal discussion between a potential applicant, interested citizen, city staff and the heritage preservation commission (if applicable) regarding a possible project subject to this Chapter. The purpose of the pre-application meeting is to assist the applicant by identifying the types of approval needed to complete the project, application material and impact studies required, applicable comprehensive plan provisions and applicable review criteria. A pre-application meeting may include a site visit at the request of the city. Pre-application meetings are required for the following types of applications:

1. UDC zoning map amendment;
2. District plan adoption or amendment;
3. Subdivision concept plan;
4. Vacation of street;
5. Concurrent use of streets permit.
6. Historic resource designation;
7. Special use or interim use permit;

B. Authority to file applications.

1. A property owner or a contract purchaser may apply for any type of permit or approval unless a more specific application is stated in this Section 50-37.1.B or in sections 50-37.2 through 16 below. In the event of a conflict between the provisions of this Section 50-37.1.B and the provisions of sections 50-37.2 through 16, the provisions of sections 50-37.2 through 16 shall govern;
2. An agent of the property owner, or a resident of the property, may apply for any type of permit or approval provided the agent or resident has written authority of the property owner to do so;
3. Applications for designation of a historic resource are governed by Section 50-37.8;
4. Any person may request an interpretation of this Chapter, and the land use supervisor may issue interpretations of this Chapter as needed and shall post issued interpretations on the city web site;

C. Application materials and fees.

1. Each application for a permit or approval, or for a modification of a permit or approval, pursuant to this Chapter, shall include all those application materials listed for that type of application or modification listed in the UDC application manual for this Chapter and a fee in the amount listed for that type of application or modification shown in the latest schedule of fees approved by council;
2. The city may reject applications not meeting the requirements of this Chapter, the UDC application manual, or as required or authorized by MSA 15.99;
3. Any and all representations made by the applicant to the city on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the city;
4. The schedule of fees shall be adopted from time to time by the council by resolution, pursuant to Section 31-6 of the Code, to defray estimated staff costs and expenses of processing applications;
5. The schedule of fees may provide for additional fees if an applicant submits more than two applications that are incomplete, pursuant to Section D below, for the same proposed development;
6. All fees are non-refundable regardless of whether the applicant withdraws the application prior to a decision or whether the application is approved, approved with conditions or denied;

D. Determination of completeness.

A determination of completeness shall be made for each application pursuant to MSA 15.99;

E. Inactive complete applications.

If an application has been determined to be complete, but review of the application reveals possible additional impacts on the surrounding area, any request by the city for additional materials necessary to evaluate those impacts shall comply with the provisions of MSA 15.99;

F. Withdrawal of applications.

An applicant may withdraw an application at any time prior to a decision by the city by filing a written request to withdraw the application with the city. Any resubmission is subject to the provisions of subsection 50-37.1.G below. If the application is later resubmitted, it shall be treated as a new application for purposes of review and scheduling. Any fees paid for a withdrawn application shall not be refunded;

G. Successive applications.

If an application pursuant to this Chapter has been denied by the city, an application requesting the same or essentially the same approval shall not be accepted during the next 12 months. This prohibition does not apply to proposals initiated by the city.

H. Public notice.

1. Types of notice.
   The city uses one or more of the following methods to notify the public about pending applications where there is an opportunity for public comment on the application. The type(s) of notice provided for different types of applications are shown in Table 50-35-1.
   (a) Newspaper notice means the publication of one notice in a newspaper of general circulation within the city at least ten days before the date of the public hearing, except in the case of amendments to the text of this Chapter or zoning map, in which case the notice shall be published at least once each week for three successive weeks before the date of the public hearing;
   (b) Mailed notice means a letter mailed by first class mail to property owners within 350 feet of the applicant's parcel at least ten days prior to the date of the public hearing. In the case of an application for vacation of a street, the notice shall be mailed to the owners of all properties abutting (a) the portion of the street proposed to be vacated, and (b) the portion of that street extending 350 feet from the ends of the portion proposed to be vacated. In the case of an application for rezoning an area of five acres or less, the notice shall be mailed to each property owner in the area to be rezoned and each owner of property located partly or entirely within 350 feet of the area to be rezoned. Failure to give mailed notice as required by this Section or any defect in the notice given shall not invalidate any action of the planning commission or council, provided that a bona fide attempt to comply with this Section has been made;
   (c) Sign notice means a sign with minimum dimensions of 24 inches by 30 inches posted as close as reasonably possible to each street frontage on the applicant's property with the text between three and five feet above grade level, with a title line reading "Zoning Notice" in letters at least three inches tall, and with the remainder of the text in letters at least 1/2 inch tall. Each sign must be posted at least two weeks before the date of the public hearing, and must remain in place and legible through the date of the public hearing as shown on the sign. If the sign will not be legible at the stated height due to snow accumulations it may be placed higher, but at the lowest elevation that will be legible to the public. If snow obscures the sign during the posting period, the snow shall be removed and/or the sign shall be relocated so as to be legible within 24 hours after snowfall ends. Evidence produced at or before the public hearing that one or more of the required signs were not in place or legible throughout that period shall be grounds for postponement of the public hearing and a requirement to repost the property. Required signs may not be posted in any portion of the public right-of-way;

2. Content of notice.
   Each required notice shall include the following information:
   (a) The name of the applicant;
   (b) The address of the property;
   (c) A narrative description of the project including the proposed land uses, size (in square feet) and height (in feet and stories) of any proposed buildings or building expansions;
   (d) The type of permit or approval being sought;
   (e) Contact information where additional information can be obtained from the applicant (which may be an address, telephone number, web site, or e-mail address or other electronic site or method);
   (f) Contact information for the assigned city staff member;
   (g) The date, time and place of the public hearing;
3. Special notice provision for appeals.
   In the case of an appeal to the planning commission or council pursuant to Section 50-37.1.O, mailed notice shall be provided to any interested parties that were notified of the original application and the right to receive notice of any appeal, and who have notified the city in writing that they would like to receive notice of the appeal;

I. Public hearings.

1. Public hearings before the planning commission and public hearings before the council on matters related to this Chapter shall be conducted pursuant to rules and practices established by each of those bodies and in compliance with state law;
2. Attendance shall be open to the public;
3. All hearing and decision timeframes shall comply with MSA 15.99;

J. Review criteria.

1. The planning commission shall approve or recommend approval of an application if it makes a written finding that:
   (a) The application is consistent with the adopted comprehensive land use plan, as that plan may have been amended after adoption;
   (b) The application complies with all applicable requirements of this Chapter, as those requirements may have been varied through a variance approved pursuant to Section 50-37.9;
   (c) The application complies with all additional approval criteria listed in Section 50-37.2 below;
2. If the planning commission determines that the criteria in subsection 1 have not been met, the commission shall deny or recommend denial of the application or approve it with conditions to bring the application into conformance with the above criteria;
3. The council is encouraged, but not required, to make decisions on applications under this Chapter pursuant to the criteria listed in subsection 1. In no case may the city's final action result in the approval of a use variance;
4. The applicant bears the burden of proof that an application complies with all applicable standards and criteria in this Chapter;

K. Conditions on approval.

1. As an alternative to denying an application, the building official and the land use supervisor are authorized to approve applications with conditions necessary to bring them into compliance with the requirements of this Chapter or with any previously approved district plan for the property;
2. As an alternative to denying an application, the planning commission is authorized to recommend or impose conditions on approvals that it determines are necessary to (a) bring the application into compliance with the requirements of this Chapter, the purposes of the zone district where the property is located or any previously approved district plan for the property, or (b) prevent or minimize adverse effects upon surrounding areas or upon public facilities and services;
3. All conditions imposed on approved applications shall be reasonably related to the anticipated impacts of the proposed development or land use and to the purposes of this Chapter;
4. In the case of decisions made by the planning commission or council, where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any condition imposed shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts;
5. Any conditions on approved applications shall be listed in or attached to the approval document, and violation of any approved condition shall be a violation of this Chapter;

L. Administrative adjustments.

Where an application concerns development or redevelopment of a lot and the applicant demonstrates practical difficulty in designing the redevelopment to comply with all requirements of this Chapter, the land use supervisor is authorized to approve applications that diverge from the requirements of this Chapter in up to two of the following ways:

1. The front, side or rear setback of a new or modified structure is one foot smaller than the minimum setbacks required by this Chapter;
2. For properties zoned Residential-Traditional (R-1) or Residential-Urban (R-2), and have a lot frontage of 40 feet of less, the corner side yard setback is no less than five feet smaller than the minimum setback required by this Chapter;
3. The front, side, or rear setback for a new or modified city operated utility structure on existing utility lines is no less than five feet;
4. The height of a new or modified structure is no more than two feet taller than the maximum allowed by this Chapter;
5. For properties where Section 50-24 requires more than three off street parking spaces, and the property does not contain a single-family residential structure (regardless of the use of that structure) the site may contain three less parking space than the minimum that is required, or may contain five more parking space than the maximum allowed in Section 50-24.4;
6. Handicap accessibility structures can encroach into the yard setbacks when such structures comply with the Minnesota State Building Code;
7. For properties where Section 50-21.2 requires improved street frontage, exceptions limiting the street improvement to no more than 50 feet in length may be granted if the land use supervisor determines that further extension of the street is not anticipated due to topography, comprehensive land use plan or utility availability;
8. For properties where Section 50-21.2 requires that not more than 30 percent of the rear yard be occupied by any one accessory structure, exceptions may be granted for an accessory structure to occupy up to 40 percent of the rear yard;
9. The area of a new or modified sign is no more than ten percent larger than the maximum allowed by Section 50-27;
10. Where the Land Use Supervisor determines that a residentially-zoned property meets the eligibility requirements for a variance in Section 50-37.9.G.1.A, an administrative adjustment may be granted to allow parking to encroach into the front yard where parking is prohibited by Table 50-24-3 with the following conditions:

(a) The adjustment shall allow parking to encroach up to 4 feet into the front yard where parking is prohibited by Table 50-24-3;

(b) A wall, fence or dense vegetative screen at least 3 feet tall and at least 75% opaque must be provided to screen parked vehicles from view of abutting properties and the street, where screening the street view is possible;

(c) Barriers must be installed to prevent vehicles from overrunning the parking and driveway areas; such barrier may be a fence, wall or raised curbing (or concrete parking bumpers when secured to the underlying pavement);

(d) A placard with a diagram no less than 5 inches by 7 inches showing the location and arrangement of parking spaces shall be visible at all times from the exterior of the dwelling; such placard shall be on all-weather media and installed on the front exterior door at an elevation of between 2 feet and 6 feet above the threshold;

M. Modifications of approvals.

1. Application.
   An applicant who has received a permit or approval from the city pursuant to this Chapter may apply to modify that approval pursuant to this Section 50-37.1. An application for a modification shall be made to the building official, who shall determine whether it requests a minor or major modification pursuant to the criteria in subsections 2 or 3, as applicable;
2. Minor modifications.
   Minor modifications are those that (a) relate to redevelopment of a single building on one or more existing platted lot(s), (b) qualify as administrative adjustments pursuant to subsection 50-37.1.L or (c) that the city determines are otherwise consistent with any district plan approved for the zone district where the property is located. Applications for minor modifications may be approved by the city if it determines that the applicant would have practical difficulties designing or constructing the project without the minor modification. However, the city may require that an application meeting the criteria for a minor modification be treated as an application for a major modification if it determines that the application raises a significant public controversy on which numerous parties other than the owner of the property may want to offer testimony;
3. Major modifications.
   Major modifications are those that do not qualify as administrative adjustments pursuant to subsection 50-37.1.L or minor modifications pursuant to subsection 2 above. Applications for major modifications shall be treated as a new application for an approval of the same type being modified. However, if the city determines that an application for modification is not consistent with a district plan applicable to the property, and that the inconsistency may materially and adversely affect other property owners subject to the same district plan, the city may require that the applicant obtain approval of a revised district plan instead of a major modification. In the case of a major modification involving a natural resources permit, the city may require additional reports and data necessary to evaluate the impacts of the modification;

N. Lapsing of approvals.

Some permits and approvals issued pursuant to this Chapter shall lapse and be of no further force or effect if the action approved in the permit or approval does not begin within a specific period of time, as listed below:

1. Approved preliminary plats for subdivision shall lapse unless a complete application for a final plat of at least 50 percent of the land covered by the preliminary plat is submitted within one year of the preliminary plat approval. Approved final subdivision plats shall lapse unless the approved final plat is recorded within two years after approval;
2. Approved minor subdivisions and boundary line adjustments shall lapse unless recorded within 180 days of approval;
3. Approved vacations of streets shall lapse unless a plat showing the vacation is recorded with the office of the county recorder within 90 days after final approval;
4. Approved planning reviews, zoning permits, special use permits, interim use permits, concurrent use of street permits, sidewalk use permits and variances shall lapse if the project or activity authorized by the permit or variance is not begun within one year of the permit date. The building official may extend this period one time for a period of up to one year if the property owner presents a written request showing the reasons for the delay was outside the owner's control;
5. Erosion and sediment control permits (ESCP) shall lapse one year after approval if all construction activities are not completed or the entire site is not fully stabilized with 70 percent successful establishment of vegetation. In case of a lapse of the ESCP, a new permit shall be obtained;
6. Approved building permits shall lapse one year after issuance unless construction has begun by that date;
7. The MS-4 statement of compliance and accompanying drainage report will be valid for two years from the date of approval. If permanent stormwater facilities (BMPs) are not fully constructed and operational within two years, and extension of one year may be granted if a written request is submitted and approved by the city engineer. The written request should document the reasons for the extension and the current state of completion of the project;

O. Appeals.

This Section is intended to comply with the provisions of MSA 462.357 and MSA 360.068 as amended, and shall be interpreted to comply with those provisions wherever possible.

1. General provisions for appeal to planning commission.
    - (a) Except as noted in subsection 2, any person aggrieved by, or any department of the city affected by, any decision of any city official engaged in the administration or enforcement of this Chapter may appeal that decision to the planning commission. The appeal must be filed within ten days after the decision by filing with the land use supervisor a written notice of appeal addressed to the commission and specifying the grounds of the appeal;
    - (b) If the appeal relates to a decision regarding the zoning of an airport or the Airport Overlay district, any person aggrieved by the decision, any taxpayer affected by the decision and any governing body of a municipality, county or airport zoning board, that believes the decision is an improper application of this Chapter as it concerns that governing body or board may appeal that decision to the airport board of adjustment. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the board and specifying the grounds of the appeal. If the appellant is a person aggrieved or a taxpayer affected by the decision regarding the zoning of an airport or the Airport Overlay district, the applicant shall submit an appeal to the city clerk in the manner set forth in Minnesota Statutes 360.068, Subdivision 2. All appeals shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;
    - (c) The land use supervisor shall promptly transmit to the commission, or to the airport board of adjustment, as applicable, the documents and records related to the decision being appealed;

(d) A timely appeal shall stay all proceedings involved in the appeal; and no appeal shall be deemed to permit the appellant to do or to continue doing, directly or indirectly, any act or thing prohibited by the decision being appealed. However, if the land use supervisor notifies the planning commission in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the planning commission may order that proceedings not be stayed pending appeal;

(e) The commission shall fix a time for a hearing on the appeal, shall provide notice of the hearing pursuant to Section 50-37.1.H, and shall hold a public hearing pursuant to Section 50-37.1.I;

(f) Any party may appear at the hearing in person, by agent or by attorney. Notice of the decision of the board shall be mailed to the appellant;

(g) If the appeal alleges that the boundaries of a wetlands or shorelands area on the Natural Resources Overlay map in Section 50-18.1 are in error, the appellant shall bear the burden of proving the map erroneous by the production of clear and convincing technical evidence;

2. Exceptions.

(a) An appeal from any decision regarding the interpretation or application of sign regulations in subsections 50-27.1.I, *No safety obstructions*, 50-27.1.L, *Attachment to buildings*, 50-27.1.M, *Wind pressure design*, 50-27.1.N, *Electrical wiring,* or 50-27.1, *Certification of structural engineer*, must be taken to the state building official as provided in the State Building Code;

(b) An appeal from a decision regarding a building permit must be taken to the building appeals board created in Article IV of Section 10 of the City Code or to the state building official;

(c) An appeal from any decision under the housing code provisions in Section 50-32 of this Chapter must be taken to the building appeals board;

(d) If an applicant believes that the decision of staff regarding compliance with the requirements of the SP-O zone district is incorrect or deprives the applicant of the reasonable use of his or her property, or is unreasonable given the size and shape of the property and its orientation to the protected views, the applicant may request review of the decision by the planning commission. The planning commission's review shall be based on the purpose and standards of this Section, but may authorize variations to those standards, in accordance with the procedures in Article V of this Chapter, if unusual site conditions not generally shared along Skyline Parkway make compliance with the standards unreasonable or ineffective to protect the intended views of Lake Superior, the St. Louis River and the harbor;

3. Powers of planning commission on appeal.

(a) The planning commission shall consider the record of the application and any testimony presented at the hearing regarding the application of this Chapter to the application and shall affirm, modify or reverse the decision appealed, and may make any orders, requirements, decisions or determinations that the land use supervisor could have made regarding the application;

(b) In hearing permitted appeals of decisions regarding the sign regulations in Section 50-27, the planning commission shall have only the power to affirm, reverse or modify the decision of the land use supervisor;

(c) In the case of an appeal regarding the application of the NR-O Natural Resources Overlay district, no relief shall be granted that violates the limitations on variances applicable to that district;

(d) The decision of the planning commission shall be final unless a further appeal is filed pursuant to subsection 4 below;

4. Appeals of planning commission decisions to council.

(a) Except as provided in subsection 5 below, any person aggrieved by, or any department of the city affected by, any decision of the planning commission may appeal that decision to the council;

(b) Any appeal must be filed within ten days after the planning commission's decision by filing with the city clerk a written notice of appeal addressed to the council and specifying the grounds for the additional appeal;
(c) The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. However, if the land use supervisor notifies the council in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the council may order that proceedings not be stayed pending appeal;
(d) The council shall hear the appeal at the next scheduled meeting with time available, and may affirm, modify or reverse the board's decision, and may make any orders, requirements, decisions, or determinations it deems appropriate regarding the appeal;
(e) No decision on an appeal or variance shall have the effect of allowing a use that is not a permitted or special use in the zone district where the property is located;
(f) If the appeal is regarding an application in any district where the approval of a district plan is required or requested prior to development, the council shall only approve development plans if it finds that the requirements for the district plan in that district will be satisfied;

5. Appeal of planning commission decisions to the courts.
   (a) In the case of an appeal regarding the zoning of an airport or an Airport Overlay district, the appeal shall proceed pursuant to applicable state law and shall be perfected within 60 days after the decision appealed from is filed in the office of the planning commission;
   (b) In case of decisions appealable to the district court pursuant to MSA 462.361, the appeal shall be perfected in 60 days after the decision appealed from is filed in the office of the planning commission;
   (c) All other appeals not otherwise provided for above shall be pursuant to MSA 606.01;
6. Appeals of heritage preservation commission decisions to council.
   Where applicable, subsection 50-37.1.O.4 shall apply of heritage commissions decisions, when appealable to city council;

(Ord. No. 10723, 12-14-2020, § 8)

P. Security for improvements.

1. If the provisions of this Chapter or conditions attached to a permit or approval under this Chapter require the applicant to construct or make improvements to the property, to protect the city or adjacent property owners from injury or damage, or to return the property to a stated condition following the completion of operations or construction, and those actions have not been completed, then the city shall require the applicant to post security to ensure that those improvements are made in a timely manner, and that if the applicant fails to make those improvements the city will have adequate funds on hand to complete the improvements at the applicant's expense;
2. Security shall be posted in a form acceptable to the city, which may include but are not limited to cash, a promissory note, a letter of credit issued by a financial institution acceptable to the city, or a performance bond issued by a financial institution acceptable to the city. The security shall be in an amount equal to 110 percent of the estimated cost for the city to complete the improvements;
3. The city shall release posted financial security upon confirmation by the building official that the required improvements have been constructed in accordance with all applicable design and construction standards. In the case of any improvements to be dedicated to the city, the city shall release posted financial security upon acceptance of the improvements by the city. At the discretion of the building official, partial releases of financial security may be made after construction or dedication of some but not all of the required improvements, but financial security equal to 110 percent of the estimated cost of for the city to complete the improvements shall be retained;
4. As an alternative to requiring the posting of financial security, the city may authorize the issuance of a temporary certificate of occupancy for the property, provided that the applicant signs a development agreement with the city agreeing to pay the city a specific financial penalty per month if the required improvements are not constructed by a certain date. The amount of the penalty shall be calculated so that if the applicant does not construct the improvements within one year after the required date the penalties will equal at least that amount set in accordance with Section 31-8 of this Code of the estimated cost for the city to complete the improvements. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 49; Ord. No. 10153, 5-14-2012, § 14; Ord. No. 10155, 5-29-2012, § 28; Ord. No. 10129, 12-17-2012, § 13; Ord. No. 10286, 3-10-2014, § 18; Ord. No. 10303, 6-9-2014, § 2; Ord. No. 10364, 4-13-2015, § 1; Ord. No. 10509, 6-12-2017, §5; Ord. No. 10526, 9-25-2017, § 1; Ord. No. 10561, 4-9-2018, § 1)

50-37.2 Comprehensive land use plan adoption or amendment.

A. Application.

Pursuant to state law, only the planning agency (planning commission or planning staff) or council may initiate amendments to the comprehensive land use plan;

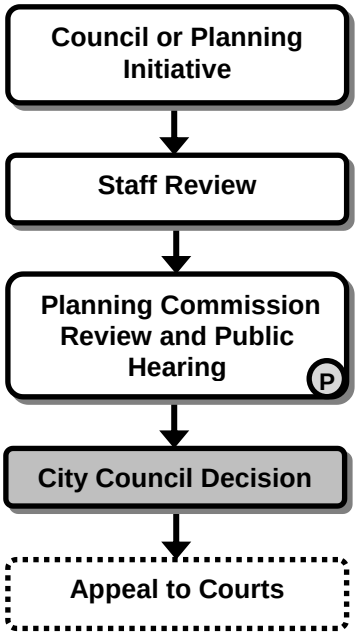
B. Procedure.

The proposal shall be reviewed by the land use supervisor, who shall forward a recommendation to the planning commission. The planning commission shall then review the proposal and make a recommendation to council. Council shall then make a decision to adopt, modify or not adopt the plan or amendment pursuant to the criteria in subsection C below. Council action shall be by resolution, with the affirmative votes of at least two-thirds of those members constituting a quorum required to take action;

C. Criteria.

The planning commission shall review the proposal, and council shall make a decision, based on whether the proposal promotes the best interests of the city and the general health, safety and welfare of the citizens of Duluth. (Ord. No. 10044, 8-16-2010, § 6.)

Comprehensive Plan Amendment



P Indicates Public Hearing Required

50-37.3 UDC text or zoning map amendment.

A. Application.

1. The planning commission may, upon its own motion, propose and hear amendments to the text of the UDC or the boundaries of the official zoning map. Any property owner may petition the planning commission to amend the district boundaries in which the property is located;
2. The application provisions of Section 37.1.B shall apply to the extent they are consistent with subsection 1 above.

B. Procedure.

1. Planning commission review.

   The planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and make a written recommendation to council based on the criteria in subsection C below;
2. Council decision.

   Upon receipt of the planning commission recommendation, the council shall make a decision to adopt, adopt with modifications, or deny the application based on the criteria in subsection C below. Council action shall be by ordinance;
3. When written consent or supermajority required.

   The following provisions shall apply after the initial adoption of the zoning map reflecting the zone district consolidations reflected in this UDC.

   (a) Where a proposed amendment to the zoning map would change any property from a residential district to a mixed use, form or special purpose district, a planning commission hearing and a notice of three weeks shall be required. In addition, the affirmative vote of 2/3 of the council shall be required if:

   (i) The city has not received the written consent of the owners of 2/3 of those properties located wholly or partially within 100 feet of the property proposed to be rezoned;

   (ii) The planning commission has completed a study of an area containing at least 40 acres of land surrounding the applicant's property and the proposed rezoning is a result of that study, and a finding is made that it would be impractical to obtain the required written consent;

   (b) For purposes of this provision, the property proposed to be rezoned shall include all contiguous property owned by the applicant, including the parcel proposed for rezoning, as well as any contiguous properties purchased from the applicant within one year preceding map amendment application date;

C. Criteria.

The planning commission shall review the application, and council shall approve the application, or approve it with modifications, if it determines that the application:

1. Is consistent with the comprehensive land use plan;
2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use;
3. Is required by public necessity, convenience, or general welfare, or good zoning practice;
4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible;

D. Interim ordinances.

1. Council may adopt interim controls when changes to the text of this Chapter or the zoning map are under consideration. Upon introduction of an interim ordinance, council may provide by resolution that no use, development, project or subdivision for which an application has not been previously filed shall be established or expanded, and that no application for a UDC permit or approval, a license, or building permit that (a) concerns both the geographical area and subject matter of the interim ordinance and (b) is filed after the introduction of the interim ordinance, may be granted or further processed pending a final decision on the adoption of the interim ordinance;
2. Upon enactment of an interim ordinance, the following restrictions shall apply:
   (a) No permits, licenses, or other approvals of any kind that concern both the geographical area and subject matter of the interim ordinance shall be processed or issued except in accordance with its terms;
   (b) No use, development, project, or subdivision that concerns both the geographical area and subject matter of the interim ordinance shall be established or expanded except in accordance with its terms;
3. If the interim ordinance is not adopted, the resolution establishing interim uses shall be null and void and requests for permits and other necessary approvals shall be processed promptly in accordance with the procedures governing the request. (Ord. No. 10044, 8-16-2010, § 6.)

50-37.4 District plan adoption or amendment.

The MU-I zone district described in Article II of this Chapter includes a district plan option. Projects described in an approved district plan may be approved without the need for additional hearings once the plan is approved. Following the approval or amendment of a district plan, no UDC approval, permit or building permit shall be issued for a project, structure or land use that is inconsistent with the adopted or amended plan.

A. Application.

1. Any property owner within the boundaries of a zone district requiring or allowing the approval of a district plan may file an application for approval of a district plan. Any property owner within the boundaries of an approved district plan may file an application for amendment of that district plan;
2. The application provisions of Section 37.1.B shall apply to the extent they are consistent with subsection 1 above;

B. Procedure.

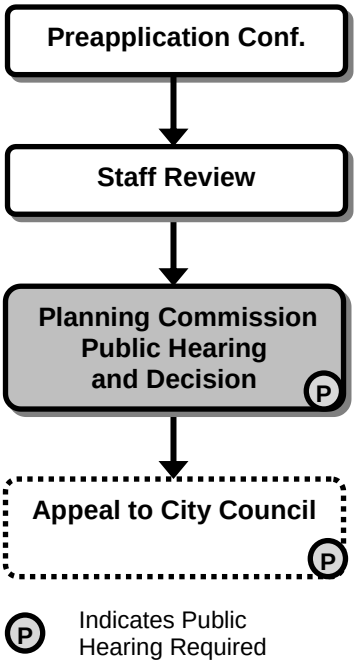
The planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and make a decision to adopt, adopt with modifications, or deny the application based on the criteria in subsection C below;

C. Criteria.

The planning commission shall approve the application, or approve it with modifications, if it determines that the application:

1. Is consistent with the comprehensive land use plan;
2. Is consistent with the purpose of the zone district and the plan approval requirements and criteria for the zone where the plan is proposed, as stated in Article II of this Chapter;
3. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 50.)

District Plan Adoption or Amendment



50-37.5 Subdivision plat approval or amendment.

A. Applicability.

This Section applies to all applications to subdivide unplatted land, or to replat previously platted land, or to adjust the boundary lines between existing property lines. This Section is intended to comply with all applicable provisions of state law, including without limitation Laws of Minnesota 1933, Chapter 93 and Laws of Minnesota 1974, Chapter 236 and any provisions of MSA 462.358 and Chapter 505 and 508, as amended, still applicable to the city, and shall be interpreted to comply with those provisions wherever possible. All applications to subdivide land shall follow the standard subdivision process in subsections G and H below unless provided for in subsections C, D, E or I below.

In addition to city approval, all subdivision plats, registered land surveys, and condominium plats will need to be approved by the St. Louis County surveyor prior to recording at the St. Louis County recorder's office.

1. General exemptions.

The following subdivisions of land are exempted from the provisions of this Section:

a) Platted cemeteries done in accordance with the requirements of applicable state statutes and ordinances;
b) Transfers of interest in land pursuant to court order; or
c) Registered land surveys prepared for the purpose of clarifying existing land descriptions.

2. Conveyance by metes and bounds.

The following conveyances by metes and bounds shall be exempt from the provisions of this Section and shall not constitute a subdivision if the subject of the conveyance meets any of the following:

a) Was a separate parcel of record on the date of adoption of subdivision regulations, or was the subject of a written agreement to convey entered into prior to such time; or
b) Was a separate parcel of not less than 2-1/2 acres in area and 150 feet in width on January 1, 1966; or
c) Was a separate parcel of not less than five acres in area and 300 feet in width on July 1, 1980, or;
d) Is a single parcel of commercial or industrial land of not less than five acres and having a width of not less than 300 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width; or
e) Is a single parcel of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet and its conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.

In any case in which compliance with the foregoing restrictions will create an unnecessary hardship and failure to comply does not interfere with the purpose of the subdivision regulations, the planning commission may waive such compliance by adoption of a resolution to that effect and the conveyance may then be filed or recorded;

B. Property transfers.

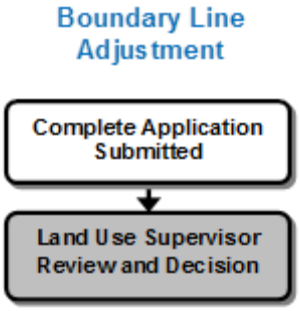
Pursuant to Minnesota Statute 272.162, no land shall be transferred or divided in official records until the transfer has been approved by the land use supervisor to determine if the transfer is appropriate and conforms with existing city ordinances and regulations if the platted lot or parcel conveyed is:

1. Less than a whole parcel of land as charged in the tax lists; and
2. Is part of or constitutes a Subdivision as defined in Minnesota Statute 462.352, sub. 12.

The land use supervisor shall certify that the transfer has complied with subsection C through I below, as applicable;

C. Boundary line adjustment.

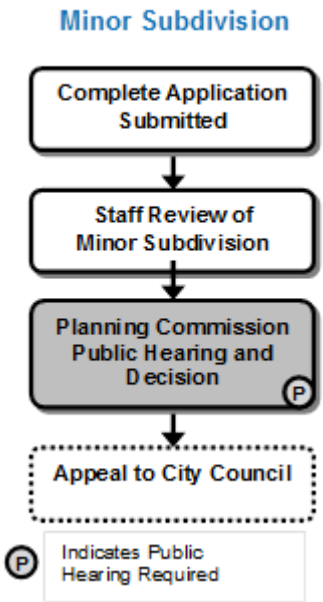
A boundary line adjustment provides for the alteration of existing property lines, where no additional lots and parcels are created.



1. The land use supervisor shall approve the application if it is determined that:
   (a) The application will not result in the creation of any new lots or parcels;
   (b) If each of the existing lots and parcels, and the structures on those lots parcels, complies with the requirements of this Chapter, then after the adjustment each of the resulting lots or parcels, and the structures on those lots or parcels, will still comply with the requirements of this Chapter;
   (c) If one or more of the existing lots or parcels, or a structure on one or more of those lots or parcels, does not comply with the requirements of this Chapter, the proposed relocation will not create any new nonconformity or increase any existing nonconformity between the requirements of this Chapter;
2. After the application is approved, the applicant must submit a legal description and survey or similar recordable exhibit, prepared by a licensed land surveyor, reflecting the relocated boundaries; obtain the land use supervisor's signature on that survey or exhibit; and record the survey or exhibit in the appropriate office at St. Louis County. If the survey or exhibit is not recorded within 180 days after the boundary line adjustment is approved, that approval will lapse;

D. Minor subdivision.

A minor subdivision allows for the subdivision of a maximum of four lots, or the combination of any number of previously platted lots into a smaller number of platted lots. A minor subdivision is an approval process for simple land divisions; it does not provide for the subdivision of unplatted land, unless that land is described by a governmental subdivision legal description.



1. The planning commission shall approve the application if it is determined that:
   (a) The lot or lots to be subdivided or combined have frontage on an improved public street;
   (b) Each proposed lot meets the minimum zoning requirements of the district that it is in. If a proposed lot is described by a governmental subdivision legal description, the proposed lot must be at least five acres in size and have 250 feet of frontage regardless of the zoning requirements of the district that it is in;
   (c) If an existing structure on a lot complies with the requirements of this Chapter, then after the minor subdivision structures on each of the resulting lots will still comply with the requirements of this Chapter; and
   (d) If one or more of the existing lots, or a structure on one or more of those lots, does not comply with the requirements of this Chapter, the proposed relocation will not create any new nonconformity or increase any existing nonconformity between the requirements of this Chapter.
2. After the application is approved, the applicant must submit a legal description and survey or similar recordable exhibit prepared by a licensed land surveyor, reflecting the relocated boundaries; obtain the land use supervisor's signature on that survey or exhibit; and record the survey or exhibit in the appropriate office at St. Louis County. The approval will lapse if the survey or exhibit is not recorded within 180 days after the minor subdivision is approved;

E. Combination of parcels.

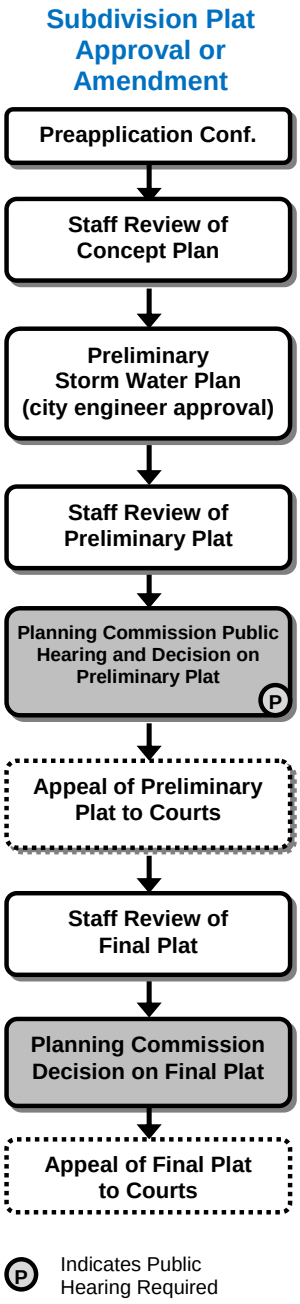
Any person with a legal or equitable interest in two or more contiguous lots or parcels of land may combine those parcels into a fewer number of lots or parcels by plat or registered land survey by complying with all the applicable subdivision procedures in subsections D, H or I;

F. Amending an approved subdivision plat.

An application to adopt or amend a subdivision preliminary plat or a subdivision final plat shall be filed pursuant to Section 50-37.5.G. An application to amend the street names of a subdivision final plat shall be filed pursuant to Section 50-37.5.H;

G. Subdivision plat, preliminary procedure.

1. Consolidated preliminary and final review.
   For subdivisions that result in no more than four lots that are no less than five acres each, and where each lot will have a minimum frontage of 250 feet on an improved public road, preliminary and final review may be consolidated if the land use supervisor determines that the proposed subdivision is of small size and minor importance. Subdivisions so designated as being of small size and minor importance may submit a final plat application after staff review of a concept plan;
2. Concept plan.
   No application for a preliminary plat shall be accepted until the applicant has submitted a concept plan for the proposed subdivision. Concept plans shall reflect the general location of proposed lots, tracts, and streets, shall reflect all areas of the property where development is restricted pursuant to the NR-O overlay district in Section 50-18.1. The intent of the concept plan is to review general concepts for development of the site before applicants have incurred costs for engineering, soil, or storm water studies. The concept plans shall be reviewed in an informal discussion with planning staff;
3. Preliminary storm water plan.
   A preliminary storm water plan shall be submitted and approved by the city engineer prior to submittal of the application for a preliminary plat;
4. Preliminary plat decision.
   The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 50-37.5.J.3 below;
5. Preliminary plat criteria.
   The planning commission shall approve the application, or approve it with modifications if it determines that the application:
   a) Is consistent with the comprehensive land use plan;
   b) Is consistent with all applicable requirements of MSA 462.358 and Chapter 505;
   c) Is consistent with all applicable provisions of this Chapter;
   d) Is consistent with any approved district plan covering all or part of the area of the preliminary plat;
   e) Is located in an area where adequate police, fire and emergency facilities are available to serve the projected population of the subdivision within the city's established response times, or the applicant has committed to constructing or financing public facilities that will allow police, fire or emergency service providers to meet those response times;
   f) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible;



H. Subdivision plat, final procedure.

1. Final plat decision.
   After the approval of the preliminary plat, the applicant shall submit one or more final plats covering part or all of the land covered by the preliminary plat, together with evidence that the requirements of the approved plat have been met for the portion(s) of the land covered by the final plat. The planning commission shall approve, adopt with modifications or deny the final plat based on the criteria in subsection 3 below. The planning commission may refer the final plat to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection 3 below have been met;
2. Final plat review and referral.
   The final plat, together with the surveyor's mathematical calculations, shall be reviewed by the city engineer for accuracy of the surveys, the adequacy of the monuments, the proposed street improvements and other features of concern. The final plat may be submitted to the county engineer if the plat involves features of concern to the county highway department, and to such other divisions of government or public utility corporations as the city deems necessary or desirable. The city engineer shall check the plat boundary survey to determine the coinciding of the plat boundary lines with the boundary lines of adjoining plats, tracts or other subdivision lines or markers;
3. Final plat criteria.
   The planning commission shall approve the application, or approve it with modifications, if the application meets the following criteria:
   a. Is consistent with all applicable provisions of MSA 462.358 and Chapter 505;
   b. Is consistent with the terms and provisions of the preliminary plat approval for the property;
   c. Demonstrates that all required improvements have been installed or that (a) the applicant has signed a development agreement committing to construct those improvements within 2 year after approval of the final plat and (b) adequate security for the construction of the required improvements has been posted with the city pursuant to Section 50-37.1.P;
4. Final plat recording.
   Once approved, plats shall be signed by the president and secretary of the planning commission. After the final plat is approved, it must be recorded in the office of the county recorder as provided in MSA 505.04. The approval will lapse if the plat is not recorded within two years after the plat is approved. After the final plat has been recorded, lots may be sold and building permits for structures on the platted lots may be issued; any sales of lots shown on the final plat before recording of the final plat shall be a violation of this Chapter;

I. Registered land survey.

Registered land surveys that subdivide land shall be approved in the manner required for the approval of minor subdivision plats in subsection D above if the registered land survey create four or less parcels or tracts of land. Registered land surveys that create five or more parcels or tracts of land must follow the process listed below.

1. Concept plan.
   No registered land survey shall be accepted until the applicant has submitted a concept plan for the proposed subdivision. Concept plans shall reflect the general location of proposed parcels and tracts, and shall reflect all areas of the property where development is restricted pursuant to the NR-O overlay district in Section 50-18.1. The intent of the concept plan is to review general concepts for development of the site before applicants have incurred costs for engineering, soil, or storm water studies. The concept plans shall be reviewed in an informal discussion with planning staff;
2. Storm water plan and wetland delineation.
   A storm water plan shall be submitted and approved by the city engineer, and all wetlands must be delineated, prior to submittal of the application for a registered land survey;
3. Review and referral.
   The registered land survey, together with the surveyor's mathematical calculations, shall be reviewed by the city engineer. The registered land survey may be submitted to the county engineer if the registered land survey involves features of concern to the county highway department, and to such other divisions of government or public utility corporations as the city deems necessary or desirable;
4. Registered land survey decision.
   The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 50-37.5.I.5 below;
5. Registered land survey criteria.
   The planning commission shall approve the application, or approve it with modifications if it determines that the application:
   (a) Is consistent with the comprehensive land use plan;
   (b) Is consistent with all requirements of MSA 462.358 and Chapter 508;
   (c) Is consistent with all applicable provisions of this Chapter;
   (d) Is consistent with any approved district plan covering all or part of the area of the registered land survey;
   (e) Is located in an area where adequate police, fire and emergency facilities are available to serve the projected population of the subdivision within the city's established response times, or the applicant has committed to constructing or financing public facilities that will allow police, fire or emergency service providers to meet those response times;
   (f) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible;

6. Registered land survey recording.

After the registered land survey is approved, it must be recorded in the office of the county recorder as provided in MSA 508. The approval will lapse if the registered land survey is not recorded within 180 days after the registered land survey is approved. After the registered land survey has been recorded, parcels and tracts may be sold and building permits for structures on the parcels and tracts may be issued; any sales of parcels and tracts shown on the registered land survey before recording of the registered land survey shall be a violation of this Chapter. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10303, 6-9-2014, § 3.)

50-37.6 Vacation of street.

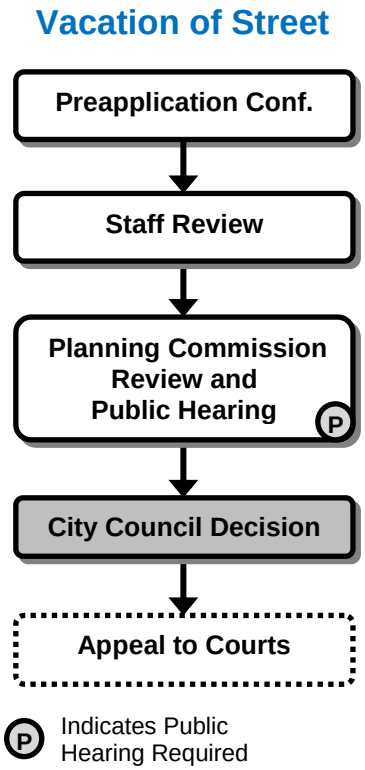
This Section applies to all applications to vacate a public street, highway or utility easement. This Section is intended to comply with the provisions of City Charter Section 100.

A. Application.

1. An application for vacation of a public street, highway or utility easement may be made by the City, or must be accompanied by a petition of the person or persons who own a majority of the lineal frontage of the land abutting the portion of the street, highway or utility easement proposed to be vacated;
2. The application shall be filed with the city and forwarded to the planning commission for review;
3. Other application provisions of Section 37.1.B shall apply to the extent they are consistent with subsections 1 and 2 above;

B. Procedure.

1. Review and recommendation. The city shall review the application to determine the sufficiency of the signatures on the petition. The planning commission shall review the application, conduct a public hearing on the proposed vacation pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a recommendation to council based on whether the petition meets the criteria in subsection C below;
2. Council decision. Upon receipt of the planning commission recommendation, and a copy of the vacation plat prepared by the applicant and approved by the city engineer, the council shall make a final decision by resolution pursuant to Section 100(b)5 of the City Charter. Failure to present a vacation plat meeting the city engineer's requirements to the land use supervisor within 90 days of the planning commission's recommendation shall result in the application being denied;
3. Recording. After approval of the vacation, the city shall file the vacation plat and authorizing resolution in the office of the county recorder;



C. Criteria.

The planning commission shall review the proposed vacation, and council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10153, 5-14-2012, § 15; Ord. No. 10723, 12-14-20, § 9)

50-37.7 Concurrent use of streets permit.

This Section applies to all applications for construction of a skywalk and to any other application requesting that the city approve the concurrent use of the street surface, right-of-way or the air rights above the street or the land beneath the street, but shall not apply to the following:

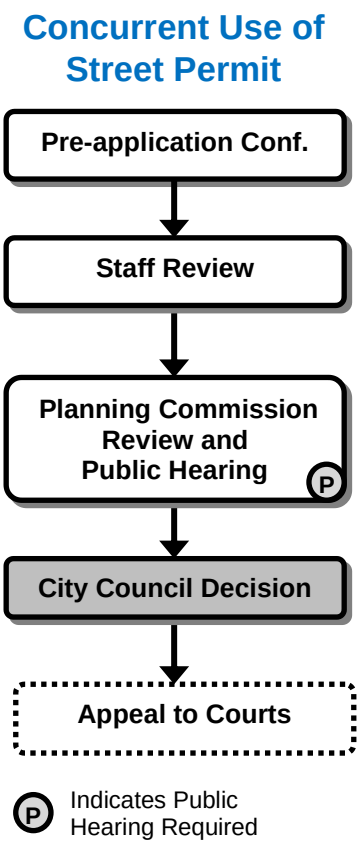
1. Use of a portion of a public sidewalk for a café, eating area, transit shelter or bench, or bicycle parking area, or
2. An awning, canopy, marquee or wall sign, including building mounted exterior lights that conform to the limits of 50-31 and that provide illumination to an awning, canopy, marquee, or wall sign, extending not more than 18 inches into the public street right-of-way, or an awning or canopy of canvas, canvas-like material, nylon or vinyl-coated fabric extending into the public street right-of-way, up to the limits established by Section 50-27, and
3. HVAC air ducts, vents, and related vent covers/hoods painted to match the color of the building where they are mounted, but not including mechanical units (ie. condensers) and motors, extending not more than 18 inches into a public alley right-of-way and having a vertical clearance of at least twelve feet six inches (12'6") over the surface of the alley;

A. Application.

An application for concurrent use of streets shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. Review and recommendation.
   The planning commission shall review the petition, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a recommendation to council based on whether the application meets the criteria in subsection C below;
2. Council decision.
   Upon receipt of the planning commission recommendation, the council shall make a decision to approve, approve with modifications or deny the application, in whole or part, based on the criteria in subsection C below. The council action shall be by ordinance;



C. Criteria.

The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.
4. For requests for off-street parking in a public street right of way, a concurrent use permit may be granted in the following circumstances:
   (a) Where overnight on-street parking is prohibited within that portion of the street frontage abutting the property; and
   (b) Where the distance between the principle structure and the public street right of way is 18 feet or less; and
   (c) Where access to the side or rear yard is not possible due to the presence of the principle structure and the lack of an improved alley; and
   (d) Where a site plan has been submitted showing the arrangement of parking, landscaping, and pedestrian access to the property meeting the following standards:

(i) The parking area must be at least 9 feet wide by 17 feet deep, including any extension of the parking space from the public right of way into the abutting private property, and must not block existing or proposed public improvements such as sidewalks or streets;

(ii) The parking area width must not exceed 55% of the lot width;

(iii) The parking area must be improved with bituminous, concrete, or similar materials or pervious paving system;

(iv) A paved walkway at least 3 feet wide must be provided that links the front entrance of the dwelling and the street;

(v) A wall, fence or dense vegetative screen at least 3 feet tall and at least 75% opaque must be provided to screen parked vehicles from view of abutting properties;

(vi) Barriers must be installed to prevent vehicles from overrunning the parking and driveway areas, such barrier may be a fence, wall or raised curbing (or concrete parking bumpers when secured to the underlying pavement);

(e) A placard with a diagram no less than 5 inches by 7 inches showing the location and arrangement of parking spaces shall be visible at all times from the exterior of the dwelling; such placard shall be on all-weather media and installed on the front exterior door at an elevation of between 2 feet and 6 feet above the threshold;

(f) The applicant must sign a document acknowledging that private improvements installed in the public right of way may be removed by the City if needed for installation or repair of public improvements or if the applicant violates the terms of the permit.

(Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 51; Ord. No. 10339, 11-24-2014, § 1; Ord. No. 10509, 6-12-2017, §6; Ord. No. 10723, 12-14-20, § 10)

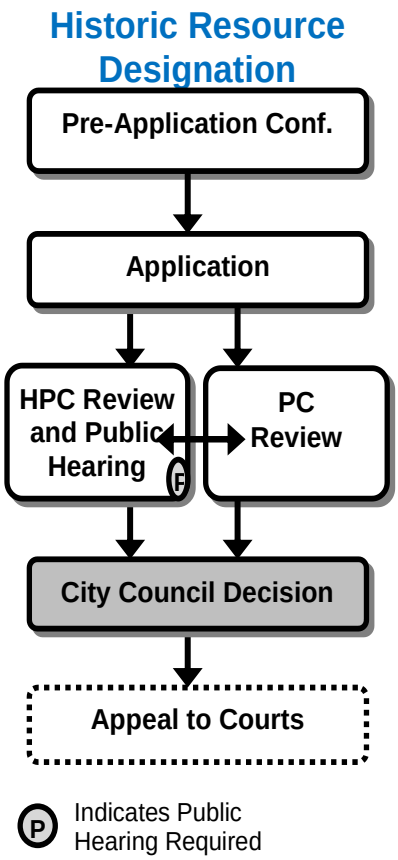
50-37.8 Historic resource designation.

A. Application.

1. The heritage preservation commission may, upon its own motion, propose and hear applications to designate a building, structure, site, or object as a local historic landmark. Any property owner or contract purchaser may petition the heritage preservation commission to designate their building, structure, site, or object as a local historic landmark;
2. The application provisions of Section 37.1.B shall apply to the extent they are consistent with subsection 1 above;

B. Procedure.

1. Review and recommendation by heritage preservation commission.
   The heritage preservation commission shall review the application, submit the application to the planning commission, conduct an investigation and public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, make a recommendation to council, and report on the historical, cultural and architectural significance of the buildings, structures, sites or objects proposed for designation The report shall also attempt to determine the economic status of the property or properties by providing information such as assessed value, recent real estate transactions and other appropriate data. A copy of the report shall be sent to the state historic preservation officer for review and comment in accordance with MSA 471.193. Any comments made by the planning commission and state historic preservation officer regarding a proposed designation must be included in the commissioner's recommendation to the council;
2. Review and recommendation by planning commission.
   The planning commission shall review the application and make a recommendation to the heritage preservation commission and council. In its review and recommendation, the commission shall consider potential effects on the surrounding neighborhood, economics, environment and other planning considerations;
3. Designation by council.
   Upon receipt of the report and recommendation of the heritage preservation commission, the council shall make a decision to approve, approve with modifications or deny the designation, in whole or part, based on the criteria in subsection C below. The council action shall be by ordinance;



4. Preservation plan.
   Within one year of approval of the designation, a preservation plan must be submitted by the applicant of the historic resource designation to the Heritage Preservation Commission for review. The Heritage Preservation Commission may approve, approve with modifications, or deny the preservation plan;
5. Registration of historic sites.
   The city shall record or file with the county recorder the legal description of all properties affected by the council action that also have an approved preservation plan. The city shall also distribute an official list of all locally designated historic preservation landmarks and districts to the land use supervisor and the state historic preservation officer;

C. Criteria.

Historic preservation landmarks and districts shall only be designated when the property or properties are found to meet one of the following criteria:

1. It has character, interest or value as part of the development, heritage or cultural characteristics of the city, state, or the United States;
2. Its location was a site of a significant historical event;
3. It is identified with a person or persons who significantly contributed to the culture or development of the city, state, or the United States;
4. It embodies a distinguishing characteristic of an architectural type;
5. It is identified as the work of an architect or master builder whose individual work has influenced the development of the city or state;
6. It embodies elements of architectural design, detail, materials or craftsmanship that represents significant architectural innovation;
7. Its unique location or singular physical characteristics represents an established and familiar visual feature of a neighborhood, community or city. (Ord. No. 10041, 8-16-2010, § 11; Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10225, 5-28-2013, § 10; Ord. No. 10261, 12-9-2013, § 1; Ord. No. 10723, 12-14-20, § 11)

50-37.9 Variance.

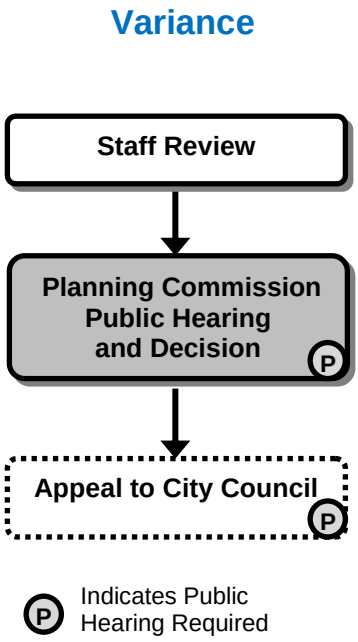
This Section applies to applications for a variance from the terms and provisions of this Chapter. Different types of variances are subject to differing criteria for approval, and in many cases are also subject to limitations on the types of variances that can be granted.

A. Application.

An application for a variance shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

The planning commission shall review the application, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision on the application based on the criteria in subsections C through M below, as applicable to the specific type of variance being requested. The planning commission may grant a different variance or different form of relief than that requested by the applicant if it determines that the alternative relief better meets the criteria in subsections C through M below. The commission may impose appropriate conditions and safeguards to protect adjacent properties and the public interest, including but not limited to financial security pursuant to Section 50-37.2.P or a development agreement regarding the design, construction and operation of the project, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the variance will continue to be met. Constructing any improvement or beginning any activity authorized by the variance shall constitute the applicant's agreement to conform to all terms and conditions of the permit;



C. General variance criteria.

Unless different or inconsistent criteria or limitations are stated in subsections D through M below for the specific type of variance being requested, the planning commission shall approve an application for a variance, or approve it with conditions, if it finds that the proposed variance meets the following criteria. If there is a direct conflict between a provision or criteria in subsections D through M below and the general criteria in this subsection C, the provisions in subsections D through M shall govern:

1. Because of the exceptional narrowness, shallowness or shape of the applicant's property, or because of exceptional topographic or other conditions related to the property, the strict application of the requirements of this Chapter would result in practical difficulties to the property owner;
2. The plight of the property owner is due to circumstances unique to the property, and not created by the property owner or the property owners predecessors-in-interest;
3. The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity;
4. The property owner proposes to use the property in a reasonable manner not permitted by this code;

5. The relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety or public welfare of the inhabitants of the city;
6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map, and will not alter the essential character of the locality;
7. The relief does not allow any type of sign that is not allowed in the zone district where the property is located, pursuant to Section 50-27;
8. The relief complies with any additional limitations or criteria applicable to that variance in subsections D through M below;
9. Economic considerations alone shall not constitute a practical difficulty;

D. No use variances.

No variance may be permitted to allow any use that is not listed in Table 50-19.8 as a permitted or special use in the zone district where the property is located, or Table 50-27.4 for a permitted sign in the district where the property is located;

E. Variances to lot size in unsewered areas.

A variance from the minimum lot size in unsewered area shall not be granted without presentation of a permit or letter of intent to issue a permit for onsite sewerage treatment from the county.

F. Variances for two-family dwellings in the R-1 district.

The commission shall not grant any variance from the requirements for the allowance of two-family dwellings within the R-1 zone district except:

1. A variance from the required front yard setback;
2. A variance reducing the minimum dimensional requirements by up to ten percent;

G. Variances from parking and loading regulations.

1. Residential districts.

(a) A variance may be granted to allow parking on a portion of a lot in a residential district where parking is not permitted by Section 50-24.6.B for lots meeting all the following:

(i) The distance between the dwelling and the public right of way exceeds 18 feet; and

(ii) The position of the principle structure on the lot does not permit access to the side or rear yard; and

(iii) There is no improved alley or street providing access to the side or rear yard; and

(iv) There is no permitted overnight parking on any street within 150 feet of the property;

(b) The variance shall be subject to the following conditions, and any other conditions determined by the commission to be reasonable and necessary to protect the interests of the abutting property owners and the residential character of the surrounding neighborhood:

(i) The maximum variance that can be granted shall not exceed 55% of the lot width;

(ii) A paved walkway at least 3 feet wide shall be provided that links the front entrance of the dwelling and the street;

(iii) A wall, fence or dense vegetative screen at least 3 feet tall and at least 75% opaque must be provided to screen parked vehicles from view of abutting properties and the street, where screening the street view is possible;

(iv) Barriers must be installed to prevent vehicles from overrunning the parking and driveway areas; such barrier may be a fence, wall or raised curbing (or concrete parking bumpers when secured to the underlying pavement);

(v) A placard with a diagram no less than 5 inches by 7 inches showing the location and arrangement of parking spaces shall be visible at all times from the exterior of the dwelling; such placard shall be on all-weather media and installed on the front exterior door at an elevation of between 2 feet and 6 feet above the threshold;

2. Reducing required parking spaces.
   Except as provided in 50-37.9.G, variances from the minimum amount of off-street parking required may be approved if a smaller amount of off-site parking will be adequate to meet the needs of the facility because the facility is restricted to occupancy or use by populations with documented lower vehicle uses, such as the elderly or disabled;
3. Exceeding required parking spaces.
   Variances from the maximum parking limits provided in 50-24.4 shall not exceed 200 percent of the minimum requirement provided in Table 50-24.1. In addition to meeting the general variance criteria in 50-37.9C, a parking study that provides justification for the number of off-street parking spaces proposed is required. It must include estimates of parking demand based on recommendations of the Institue of Traffic Engineers (ITE), or other acceptable estimates as approved by the City Engineer and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations. (Ord. No. 10460, 7-11-2016, § 1)

H. Variances to reduce setbacks;

When the application is for the reduction of a required front, rear or side yard setback, the commission may require the submission of a landscaping and buffering plan, and may require that all required landscaping or buffering, or landscaping and buffering of equal effectiveness, be installed within the reduced setback area. Decorative fencing and decorative wall structures may be proposed where more intense vegetated landscaping will not provide adequate mitigation of impacts on adjacent properties. The commission shall only approve the variance if the landscaping and buffering will mitigate impacts on adjacent properties as effectively as those required by Sections 50-25 and 50-26 of this Chapter;

I. Variances in the MU-C district.

1. Within the MU-C district, the only variances that may be approved are variations in any dimensional standard in Sections 50-15.3 and 50-21 by no more than ten percent. However, if the need for a variance is the result of a government taking pursuant to eminent domain powers, then (a) the limits of this subsection I.1 shall not apply and (b) all or part of the required landscaping and buffering may be placed in the public right-of-way if the property owner executes a perpetual maintenance agreement with the owner of the right-of-way;

2. In the case of a setback reduction variance, the landscaping and buffering in any reduced setback area shall be at least four feet in height and screen out at least 50 percent of the view of any parking area, unless the setback is reduced to less than five feet, in which case it shall screen out at least 75 percent of the view of the parking area;

J. Variances in A-O airport overlay district.

Variances shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;

K. Variances from flood plain regulations.

Variances to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the limitations in this subsection K.

1. In a floodway:
    a) No variance shall be granted that would result in any increase in flood levels during the base flood discharge;
    b) No variance shall authorize the placement of a manufactured home, dwelling unit or any structure designed for human habitation;
    c) No variance shall be granted authorizing a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
    d) Variances shall be limited to giving the applicant a minimal reasonable use of the site;

2. In a flood fringe:
    a) No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
    b) Variances shall not produce any adverse effects to the flood capacity or efficiency of the watercourse;

3. Flood insurance notice and recordkeeping.
   The building official shall notify the applicant for a variance that:
    a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and
    b) Construction below the 100 year or regional flood level increases risks to life and property. Such copy notification shall be maintained with a record of all variance actions. The building official shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the administrator of the national flood insurance program;

4. General considerations.
   The city shall consider the following factors in granting variances and imposing conditions on permits and variances in flood plains:
    a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
    b) The danger that materials may be swept onto other lands or downstream to the injury of others;
    c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
    d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
    e) The importance of the services to be provided by the proposed use to the community;
    f) The requirements of the facility for a waterfront location;
    g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
    h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
    i) The relationship of the proposed use to the comprehensive land use plan and flood plain management program for the area;
    j) The safety of access to the property in times of flood for ordinary and emergency vehicles; and
    k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;

5. Submittal of hearing and decision notices to the DNR.
    a) The planning commission shall submit to the commissioner of the DNR a copy of the application for proposed variance sufficiently in advance so that the commissioner will receive at least ten days' notice of the hearing. Such notice shall specify the time, place, and subject matter of the hearing and shall be accompanied by such supporting information as is necessary to indicate the nature and effect of the proposed use. The notice may be sent by electronic mail or U.S. mail to the respective DNR area hydrologist;
    b) A copy of all decisions granting variances shall be forwarded to the commissioner of the DNR within ten days of such action. The notice may be sent by electronic mail or U.S. mail to the respective DNR area hydrologist;

6. Additional federal emergency management agency conditions.
   The following additional conditions of FEMA must be satisfied:
    a) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;
    b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

7. Conditions attached to variances,
   Upon consideration of the factors listed above and the purpose of this Section, the planning commission may attach such conditions to the granting of variances and permits as it deems necessary to fulfill the purposes of this Section. Such conditions may include, but are not limited to, the following:
    a) Modification of waste treatment and water supply facilities;
    b) Limitations on period of use, occupancy, and operation;
    c) Imposition of operational controls, sureties, and deed restrictions;
    d) Requirements for construction of channel modifications, compensatory storage, dikes, levees, and other protective measures; and
    e) Floodproofing measures, in accordance with the State Building Code and this chapter. The applicant shall submit a plan or document certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood protection elevation and associated flood factors;

L. Standards for variances in shorelands.

No variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas;

M. Reconstruction of a nonconforming building.

A variance may be granted to permit the reconstruction of a nonconforming building that has been damaged from any cause or has deteriorated to the extent of more than 60 percent of its assessed market value as determined by the city assessor, if the commission determines that it is necessary for the preservation and enjoyment of a substantial property right and is not detrimental to the public welfare of the city. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10153, 5-14-2012, § 16; Ord, No. 10225, 5-28-2013, § 11; Ord. No. 10285, 3-10-2014, § 2; Ord. No. 10340, 11-24-2014, § 3; Ord. No. 10460, 7-11-2016, § 1, Ord. No. 10509, 6-12-2017, §7)

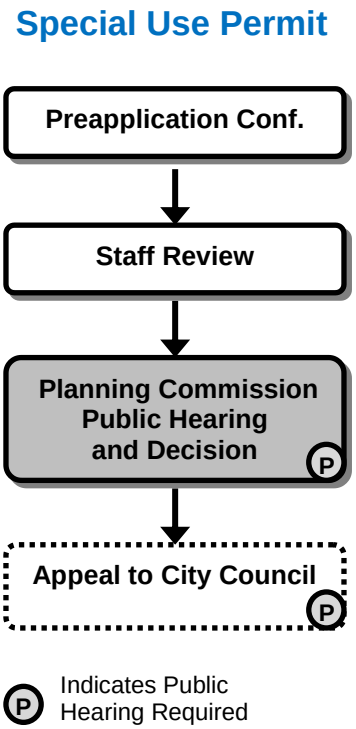
50-37.10 Special use or interim use permit.

This Section applies to all applications for those special uses listed for specific zone districts in Table 50-19.8. It also applies to applications for interim uses that will be authorized for only a specified period of time. This Section is intended to comply with the provisions of MSA 462.3595 and 462.3597 as amended, and shall be interpreted to comply with those provisions wherever possible.

A. Applications.

An application for a special use or interim use shall be filed pursuant to Section 50.37.1.B;

B. Procedure.



1. The planning commission shall review the application, shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H. In the case of a special use permit, planning commission shall make, and in the case of an interim use permit, council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The commission or council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.2.P, a development agreement regarding the design, construction, and operation of the special use, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to met;
2. If the permit is approved or approved with modifications, all future use of the land and structures erected on the land pursuant to the permit shall comply with its terms and conditions. The city may require that some or all of the documents presented by the applicant in support of the application, including without limitation any site plan, landscape plan, building elevation drawings, or development agreement, be recorded as a city public document prior to the issuance of any building permit. A decision not to require recording of some or all of those documents shall not relieve the applicant or any successors or assigns in title to the property from the duty to comply with all terms and conditions of the permit. Constructing any improvement or beginning any activity authorized by the permit shall constitute the applicant's agreement to conform to all terms and conditions of the permit;
3. The city may approve an application or approve it with modifications, with a condition that if a structure authorized by the permit is not constructed by a specified date, or if an activity authorized by the permit is not begun by a specified date, the permit shall terminate. If that condition is attached, the city shall notify the applicant and the property owner when a permit has lapsed, and that decision may be appealed pursuant to Section 50-37.1.O;
4. The city may approve an application or approve it with modifications, with a condition that abandonment of an activity authorized by a permit longer than a stated period terminates the permit, and any future reactivation of the use will require the filing and approval of a new permit application;
5. The commission may not approve or approve with modifications, a special use permit valid only for a specific period of time, but must instead recommend to council an interim use permit pursuant to subsection D below for that purpose;
6. Any approved permit shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is

overturned by a competent authority, the permit shall be void in total, upon determination by the city;

C. Criteria for special use permits.

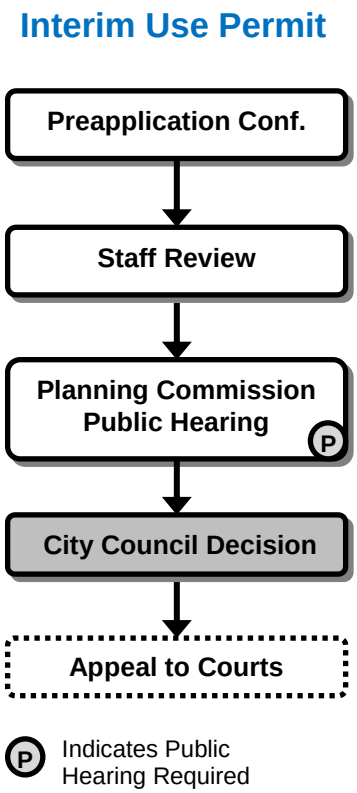
The planning commission shall approve the application or approve it with modifications if the commission determines that the application meets the following criteria:

1. The application is consistent with the comprehensive land use plan;
2. The application complies with all applicable provisions of this Chapter, including without limitation any use-specific standards applicable to the proposed use, development or redevelopment, and is consistent with any approved district plan for the area;

Without limiting the previous criteria, the commission may deny any application that would result in a random pattern of development with little contiguity to existing or programmed development or would cause anticipated negative fiscal or environmental impacts on the community;

D. Interim use permit.

1. As an alternative to a special use permit, MSA 462.3597 authorizes the city to issue an interim use permit that authorizes a special use to exist until a specified date or until an amendment to this Chapter authorizes or prohibits that use. An applicant may apply for an interim use permit, and the commission may decide to recommend an interim use permit even if the application is for a special use permit;
2. An application for an interim use, or a decision to approve an interim use, shall be subject to the same procedures used for special uses, and the commission shall have all the powers described in Section 50-37.10.B.1 above, except that the commission shall forward a recommendation to council for action, and final approval of an interim use shall be by council resolution rather than commission action. The council may require financial security pursuant to Section 50-37.1.P to ensure that any improvements related to the interim use will be removed at the end of the interim use period;
3. An application to extend the period of an interim use permit shall be treated as major modifications of the initial permit and shall be processed pursuant to Section 50-37.1.N;



E. Criteria for interim use permits.

In addition to the criteria in subsection C above, the council shall only approve an interim use permit, or approve it with conditions, if it determines that:

1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location;

2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures of improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.
3. No more than 60 permits may be issued for either vacation dwelling units or accessory vacation dwelling units. Permits issued for vacation dwelling units or accessory vacation dwelling units in any form district shall not be counted against the maximum number of permits that may be issued;
4. Except for properties within the Higher Education Overlay District as identified in 50-18.5, the minimum rental period and off-street parking requirements of 50-20.3.U and 50-20.5.M shall not apply for vacation dwelling units or accessory vacation dwelling units in form districts, (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 52; Ord. No. 10451, 5-23-2016, §3; Ord. No. 10625, 6-10-2019 §1)

50-37.11 Planning review.

This Section applies to all development and redevelopment activities except for the construction, reconstruction or modification of one- and two-family residential structures that are located (a) on lots platted and zoned for residential development, and (b) outside of the R-C district and SP-O district.

A. Applications.

An application for a planning review shall be filed pursuant to Section 50-37.1.B;

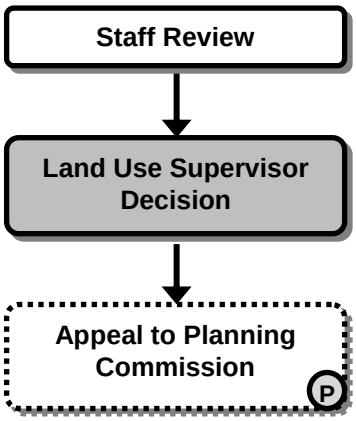
B. Procedure.

1. Building permit applications for certain types of development and redevelopment activities will trigger planning review for compliance with the standards of this Chapter. Except as stated in subsection 2 below, this planning review shall be conducted by the land use supervisor pursuant to the criteria in subsection C below;
2. For applications involving covered types of development and redevelopment activities in the MU-C, MU-I, MU-W and HE-O zone districts, the planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and make a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below;
3. The land use supervisor or the planning commission may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;

C. Criteria.

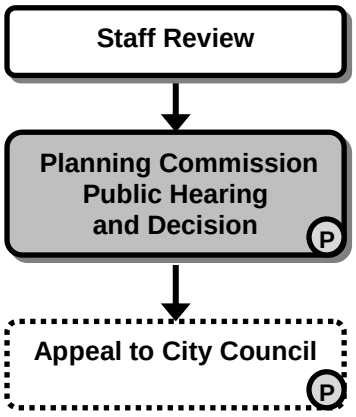
The land use supervisor or planning commission shall approve the planning review or approve it with modifications, if it is determined that the application complies with all applicable provisions of this Chapter. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 53 Ord. No. 10192, 12-17-2012, § 14.)

Planning Review General



P Indicates Public Hearing Required

Planning Review in MU-C, MU-I, MU-W and HE-O



P Indicates Public Hearing Required

50-37.12 Sidewalk use permit.

This Section applies to uses or proposals to use a portion of a public sidewalk for a café, eating area, transit shelter or bench, bicycle rack, temporary display or other purpose that does not involve the permanent vacation of any part of the street.

A. Application.

An application for a sidewalk use permit shall be filed pursuant to Section 50-37.1.B;

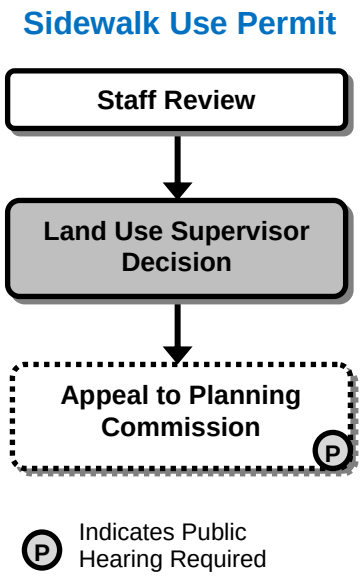
B. Procedure.

The land use supervisor shall refer the application to the city engineer for a recommendation as to whether the proposed design and location of the sidewalk use will provide for and not hinder the safety of pedestrians, bicyclists and motor vehicle drivers near the proposed use or structure. The land use supervisor shall then review and make a decision on an application based on the criteria in subsection 50-37.12.C. The land use supervisor may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;

C. Criteria.

The land use supervisor shall approve the application, or approve it with modifications, if the supervisor determines that the following criteria have been met:

1. The city engineer has confirmed that the proposed use or structure will not hinder the safety of pedestrians, bicyclists and motor vehicle drivers near the proposed use or structure;
2. The proposed use or structure will not encroach into drive aisles, loading zones, fire lanes or parking lots;
3. The proposed use or structure will not encroach into any area located directly between any operating building entrance and the street curb (other than a building entrance intended only to serve patrons of an outside eating area);
4. The proposed use or structure will be set back at least seven feet from the curb and at least six feet from all parking meters, street trees, and street furniture in order to allow for the free passage of pedestrians;
5. The applicant has signed an agreement with the city (a) to keep the sidewalk and street within 20 feet of the proposed use or structure free from any litter generated by the use or activity, (b) accepting all liability resulting from the proposed use or structure and holding the city harmless for any and all such liability, (c) providing liability insurance meeting city standards, and (d) determining the period of use. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 54; Ord. No. 10413, 10-12-2015 § 1.)



50-37.13 Zoning permit.

This Section applies to a variety of permits covering development, redevelopment, and natural resources protection where the land use is a permitted use and the city must confirm whether the application complies with all other applicable provisions of this Chapter. The specific permits included in this Section are summarized in Table 50-37.13-1 below.

Table 50-37.13-1: Types of Zoning Permits

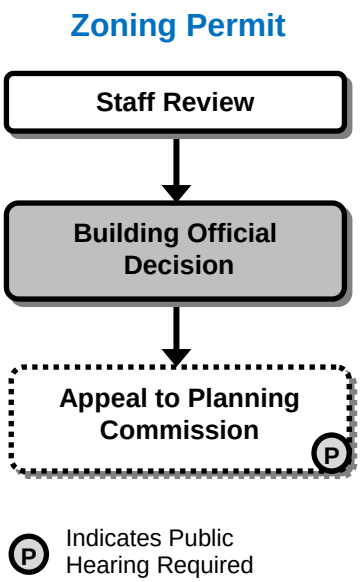
Type of Permit	Primary Compliance Requirement
Flood Plain Permit	Floodplains (Subsection 50-18.1.C)
Shoreland Permit	Shorelands (Subsection 50-18.1.D)
Erosion and Sediment Control Permit	Temporary Soil and Erosion Control (Subsection 50-18.1.E)
Temporary Use Permit	Temporary Land Uses (Sections 50-19, 50-20.6)
Sign Permit	Signs (Section 50-27)
Fence Permit	Fences and Walls (Section 50-26.4)
Airport Environs Permit	A-O Airport Environs Overlay district (Section 50-18.2)

A. Application.

An application for a zoning permit shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. The building official shall review and make a decision on an application for a zoning permit based on the criteria in subsection C below. The building official may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;
2. All buildings, structures and improvements must be constructed and maintained, and all land uses must be operated, in accordance with the terms and conditions of this Chapter and any zoning permit issued pursuant to this Section 50-37.13;



C. General criteria.

The building official shall approve the application, or approve it with modifications, if the building official determines that the application complies with all applicable provisions of this Chapter;

D. Additional provisions for specific areas and types of permits.

1. Shoreland permit.

No building or zoning permit for land within any shoreland shown on the Natural Resources Overlay map in Section 50-18.1 may be issued until the building official has confirmed that the application complies with all applicable requirements of Section 50-18.1.D;

2. Erosion and sediment control permit (ESCP).

No land disturbance activity that requires an erosion and sediment control permit (ESCP) as indicated in Table 50-18.1.E-1 may be begin until a permit has been obtained. The building official shall refer the application to the city engineer, who shall review the plan to ensure that it complies with the requirements of Section 50-18.1.E. The city engineer may require additional information and may require that any information submitted be verified by a licensed engineer, licensed surveyor or other technical professional. If the application is denied, the applicant shall be given a summary of the

plan's deficiencies. The ESCP permit shall be considered expired only after all construction activities are completed and the entire site is fully stabilized with 70 percent successful establishment of vegetation;

3. Airport environs permit.

No airport environs permit shall be issued unless all of the requirements of Section 50-18.2 have been met. A permit for a tree or structure of less than 75 feet of vertical height above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour or topographic features, would violate the provisions of Section 50-18.2;

4. Flood plain permit.

No building or zoning permit for land within any flood plain shown on the Natural Resources Overlay map in Section 50-18.1 may be issued until the building official has confirmed that the application complies with all applicable requirements of Section 50-18.1.C. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 55; Ord. No. 10285, 3-10-2014, § 3; Ord. No. 10413, 10-12-2015 § 2.)

50-37.14 Historic construction/demolition permit.

This Section applies to applications for construction or demolition within a historic district or on a historic property listed in Section 50-18.3 where the city must confirm whether the application complies with the standards in Section 50-18.3 and with all other applicable provisions of this Chapter and state law.

A. Application.

An application for a historic construction/demolition permit shall be filed pursuant to Section 50-37.1.B;

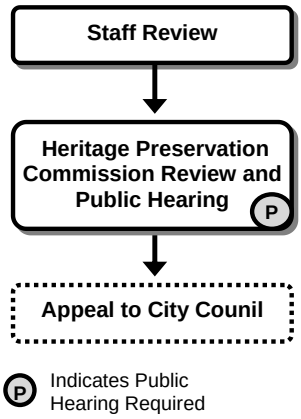
B. Procedure.

The application shall be reviewed by the heritage preservation commission. The commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a decision to adopt, adopt with modifications, or deny the application based on the criteria in subsection C below;

C. Criteria.

The commission shall approve the application, or approve it with modifications, if the commission determines that the application complies with all applicable provisions of this Chapter and state law and that the work to be performed shall not adversely affect the historic preservation landmark or district based on adopted historic preservation guidelines. (Ord. No. 10041, 8-16-2010, § 12; Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10286, 3-10-2014, § 19.)

Historic Construction / Demolition Permit



50-37.15 Building permit.

This Section applies to all applications for a building permit.

A. Application.

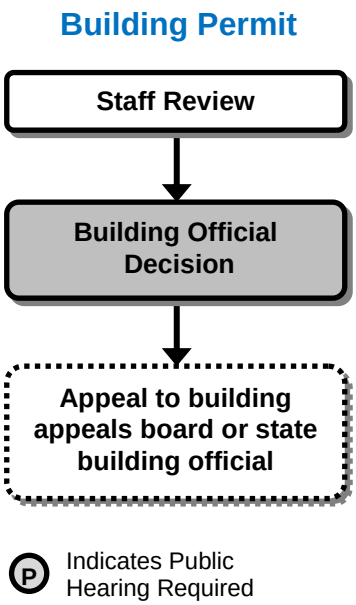
An application for a building permit shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. The building official shall review and make a decision on an application for a building permit based on the criteria in subsection C below. The building official may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;
2. All buildings, structures and improvements must be constructed and maintained, and all land uses must be operated, in accordance with the terms and conditions of this Chapter and the building permit;

C. Criteria.

The building official shall approve the application, or approve it with modifications, if the building official determines that the application complies with all applicable provisions of this Chapter and all applicable provisions of any building code adopted by the city. (Ord. No. 10044, 8-16-2010, § 6.)



50-37.16 Certificate of occupancy.

Certificates of occupancy shall be required for any of the following, and no occupancy, use or change of use in this list shall occur until a certificate of occupancy has been issued by the building official.

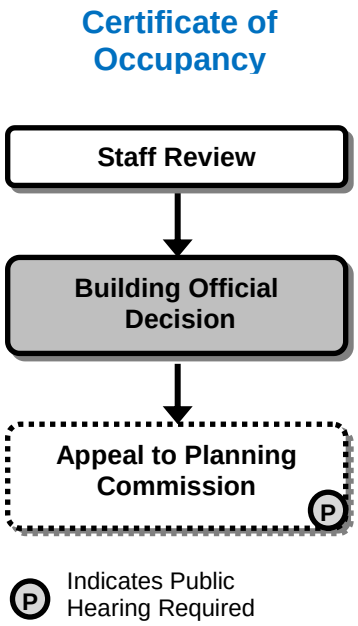
- Occupancy and use of a building that has been erected or structurally altered;
- Change in use of an existing building to a use of a different classification as shown in Table 50-19.8;
- Occupancy and use of vacant land;
- Change in the use of land to a use of a different classification as shown in Table 50-19.8;
- Any change in the use of a nonconforming use.

A. Application.

An application for a certificate of occupancy shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. The building official shall review and make a decision on an application for a certificate of occupancy based on the criteria in subsection C below;
2. Each certificate of occupancy shall state that the building or the proposed use of a building or land complies with all provisions of law. A record of all certificates of occupancy shall be kept by the building official;
3. Upon application, a certificate of occupancy shall be issued for all lawful nonconforming uses of land or buildings;
4. Any certificate issued upon a false statement of any fact that is material to the issuance of the permit shall be void. Whenever the building official determines that a material false statement has been made, the official shall revoke the certificate of occupancy and promptly notify the property owner in writing of that revocation. Any person who proceeds to occupy the building or engage in the use covered by a certificate of occupancy after its revocation without having first obtained a new certificate commits a violation of this Chapter;
5. The building official may revoke a certificate of occupancy if the city has determined that the property owner or an occupant of the property has failed to obtain any other required permit or approval under this Chapter or has otherwise violated this Chapter and the property owner has not responded to city requests to remedy the violation within a reasonable time;



C. Criteria.

The building official shall issue a certificate of occupancy or approve it with conditions if the building official determines that the construction of the building or structure complies with the terms of all applicable building permits and the use, development, and operation of the property comply with all applicable provisions of this Chapter. (Ord. No. 10044, 8-16-2010, § 6.)

50-37.17 Accessory home share permit

This Section applies to an accessory home share permit for the offering or advertising, for trade or sale, of a habitable room or space in an owner-occupied dwelling for a period of 29 days or less;

A. Application.

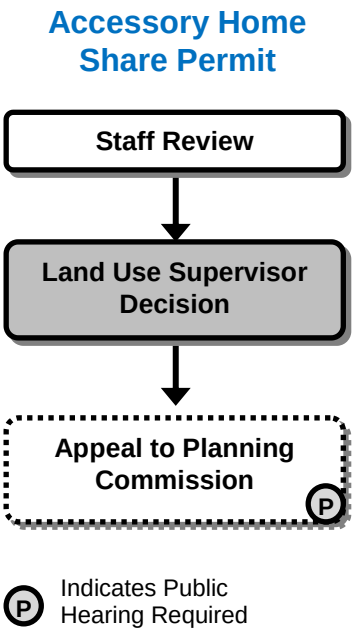
An application for an accessory home share permit shall be filed pursuant to Section 50-37.17;

B. Procedure.

The land use supervisor shall review and make a decision on an application based on the criteria in subsection 50-20.5.G. The land use supervisor may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;

C. Criteria.

An application for a certificate of occupancy shall be filed pursuant to Section 50-37.1.B; (Ord No. 10466, 4-11-2016, **§** 3; Ord. No. 10723, 12-14-20, § 12)



50-38 NONCONFORMITIES

This Section clarifies how this Chapter applies to those buildings, structures and land uses that do not comply with this Chapter, including without limitation (a) those that do not comply with the Chapter on the date it is adopted, and (b) those that comply with the Chapter on the date it is adopted but become nonconforming due to the adoption of an amendment to this Chapter. This Section is intended to comply with the provisions of MSA 462.357, subd. 1.e as amended, and shall be interpreted to comply with those provisions wherever possible. (Ord. No. 10044, 8-16-2010, § 6; cited only by Ord. No. 10285, 3-10-2014, § 4.)

50-38.1 Types of nonconformities.

The city recognizes five different types of nonconformities, each of which is addressed in the subsections below.

A. Nonconforming buildings;
B. Nonconforming uses;
C. Nonconforming lots;
D. Nonconforming on-premises signs;
E. Nonconforming off-premises signs. (Ord. No. 10044, 8-16-2010, § 6; cited only by Ord. No. 10285, 3-10-2014, § 4.)

50-38.2 General provisions.

A. Airport hazards.

1. The owner of any nonconforming structure or tree within the Airport Overlay is required to allow the installation, operation and maintenance on the structure or tree those markers and lights deemed necessary by the building official to indicate to aircraft the presence of the airport hazards. Any required markers and lights shall be installed, operated and maintained at the expense of the owner;
2. The regulations in Section 50-18.2 A-O Airport Overlay shall not:
   (a) Require the removal, lowering or other alteration of any structure or tree not conforming to the regulations regarding Duluth International Airport on June 18, 1988, or not conforming to the regulations regarding Sky Harbor Municipal Airport on September 26, 1994;
   (b) Interfere with the continuance of any nonconforming use as permitted by this Section 50-38;
   (c) Require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun before September 26, 1994 and completed on or before September 25, 1996;

B. Flood hazard areas.

A structure or the use of a structure or premises located in a flood plain or flood fringe area as defined and shown in Section 50-18.1.B that was lawful before February 1, 1980, or before an amendment to the flood plain management regulations of Section 50-18.1.B, but that is not in conformity with the provisions of this Chapter may be continued subject to the following conditions. Historic structures, as defined under "substantial improvement" in Section 50-41, are subject to the provisions of subsections 1 through 5 of this Section:

1. No such use or structure shall be expanded, changed or altered in a way that increases its nonconformity. Expansion of uses or structures within the floodway district is prohibited;
2. Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the regulatory flood protection elevation in accordance with any of the elevation on fill or floodproofing techniques (i.e., FP-1 thru FP-4 floodproofing classifications) allowable in the State Building Code, except as further restricted in 3 and 6 below;

3. The cost of all structural alterations to any nonconforming structure over the life of the structure shall not exceed 50 percent of the assessed market value of the structure as determined by the city assessor unless the conditions of this Section are satisfied. The cost of all structural alterations must include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds 50 percent of the assessed market value of the structure as determined by the city assessor, then the structure must meet the standards of this Chapter for new structures depending upon whether the structure is in the floodway or flood fringe district, respectively;
4. If any nonconforming use, or any use of a nonconforming structure, is discontinued for one year, any future use of the premises shall conform to this Chapter;
5. If any nonconformity is substantially damaged, as defined in Section 50-41, it shall not be reconstructed except in conformity with the provisions of this chapter. The applicable provisions for establishing new uses or new structures in Section 50-18.1.C will apply, depending upon whether the use or structure is in the floodway, flood fringe or general flood plain district;
6. Any substantial improvement, as defined in Section 50-41, to a nonconforming structure requires that the existing structure and any additions must meet the applicable requirements of Section 50-18.1.C for new structures, depending upon whether the structure is in the floodway, flood fringe or general flood plain district. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10285, 3-10-2014, § 4.)

50-38.3 Nonconforming buildings.

A. A nonconforming building may continue to be used, and may be expanded provided that the expansion does not increase or extend any nonconformity horizontally or vertically. All additions must comply with the dimensional requirements in Article II and Section 50-21 or 50-22, as applicable, and the parking requirements of Section 50-24 must be satisfied for the expansion area;
B. A nonconforming building that has been damaged from any cause or has deteriorated to the extent of more than 60 percent or more of its assessed market value at the time of the damage shall not be restored, except in conformity with this Chapter, unless the owner obtains a variance pursuant to Section 50-37.9. When damaged by less than 60 percent of its assessed market value as determined by the city assessor, a nonconforming building may be repaired or reconstructed, provided that a building permit is applied for within 180 days and such repairs or reconstruction are completed within one year of the date of the damage. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10285, 3-10-2014, § 4.)

50-38.4 Nonconforming uses of buildings and land.

A. Any building existing on July 14, 1958, or existing on the date of the adoption of a city ordinance making it nonconforming, may continue to be used for the purposes it was used when it became nonconforming, even though that use does not conform to this Chapter, but may not be expanded or changed in a way that would increase any nonconformity;
B. The nonconforming use of a building may be extended throughout those parts of the building that were clearly arranged or designed for such use on the date the building became nonconforming;
C. A nonconforming use of a building or portion of a building that is discontinued for a continuous period of one year shall not again be used except for a permitted or special use in the district where the building is located, as shown in Table 50-19.8;
D. A building containing a nonconforming use shall not be enlarged, extended, reconstructed or structurally altered, unless the use is changed to a permitted or special use in the district where the building is located, as shown in Table 50-19.8;
E. A nonconforming use of land existing on July 14, 1958, may be continued but may not be expanded or extended, either on the same or adjoining property. If the nonconforming use of land or any portion of the use is discontinued for a continuous period of one year or changed, any future use of the land shall comply with this Chapter;
F. If no structural alterations are made to a nonconforming building, a nonconforming use of a building or land may be changed to another nonconforming use with fewer adverse impacts on surrounding properties, as determined by the land use supervisor;

G. Whenever a nonconforming use of a building or land has been changed to a use with fewer adverse impacts, as determined by the land use supervisor, the use shall not later be changed to a nonconforming use with greater adverse impacts on surrounding properties, as determined by the land use supervisor;
H. Within the Airport Overlay, whenever the building official determines that a nonconforming structure or tree has been abandoned or more than 80 percent torn down, deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit in Section 50-18.2. Whether or not an application for a permit is filed, the building official may order the owner of the abandoned or partially destroyed nonconforming structure, at his own expense, to lower, remove, reconstruct or to equip the same in the manner necessary to conform to the provisions of Section 50-18.2;
I. Whenever a nonconforming use of a building or land has been changed to a conforming use, all nonconforming uses expire, and the property may only be used for a permitted or special use in the district where the building is located, as shown in Table 50-19.8;
J. A nonconforming use of a building or land existing on the date this Chapter is adopted shall remain a nonconformity unless it complies with all applicable provisions of this Chapter;
K. The adoption of this Chapter shall not validate any temporary use beyond the expiration date of any temporary permit issued under prior approvals. (Ord. No. 10044, 8-16-2010, § 6; cited only by Ord. No. 10285, 3-10-2014, § 4.)

50-38.5 Nonconforming lots.

A. A lot that existed on November 18, 2010, and was held in separate ownership from adjoining lots on that date and does not meet the minimum lot area or frontage requirements for the zone district in which it is located may nevertheless be used for the construction of a primary structure permitted in that zone district. All other applicable dimensional standards in Article II and Section 50-21 apply unless the applicant obtains a variance from those dimensional standards pursuant to Section 50-37.9;
B. Nonconforming lots that are not provided with public sewer shall comply with county individual sewage treatment systems ordinance and standards. However a lot or parcel of record that was lawful as to lot area requirements and under separate ownership from any adjoining lot or parcel on May 23, 1993, shall not be deemed nonconforming as to lot area requirements unless subdivided after that date. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 56; cited only by Ord. No. 10285, 3-10-2014, § 4.)

50-38.6 Nonconforming on-premises signs.

A. A legal nonconforming on-premises sign that was previously permitted may remain in use, so long as it remains otherwise lawful, and may be restored, repaired, or altered in the following ways: replacing lamps, replacing ballast, replacing transformers, painting the pole(s) and the cabinet, replacing or repairing the sign face(s), including H-bars and retainers behind the face(s), replacing trim, and replacement of sign fasteners, nuts, and washers. The following are not considered repair or restoration and shall require the legal nonconforming on-premises sign to be brought into conformance with this Chapter, except as provided in subsection F below: change or replacement in poles, structural supports, bases or shrouds, footings, moving the sign for any reason, change or replacement of the interior and/or exterior cabinet frame (excluding trim) and any changes made to the size, height, light intensity or bulk of the sign or the temporary or permanent removal of the sign for the repair or replacement of the cabinet or any part thereof, not including the face, Temporary removal of the sign cabinet for the replacement of the sign face(s) is permitted and will not require that the sign be brought into conformance with all requirements of this Chapter;
B. No legal nonconforming sign may be relocated, in whole or in part, to any other location on the same or other lot, unless the entire sign conforms to all regulations of the zoning district in which the sign is relocated;
C. A legal nonconforming on-premises sign may not be altered in any way that would create any new nonconformity or increase the degree of any previously existing nonconformity;

D. In the event that any legal nonconforming sign is damaged or destroyed to the extent of more than 50 percent of its value prior to the damage, the sign cannot be restored or repaired unless it conforms to all applicable regulations for the district;

E. All sign illumination, electronic message signs**,** and electronic billboards that do not conform with the display requirements of this Chapter, including brightness, message duration and similar performance requirements for the electronic component, are required to conform to the standards of this Chapter for the electronic component within 90 days of this date*:* March 11, 2013;

F. A legal nonconforming on-premises sign that does not meet the standards for sign area or sign height is being altered in such a way as to reduce the nonconformity, the alteration may be approved by the land use supervisor. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10204, 3-11-2013, § 2; cited only by Ord. No. 10285, 3-10-2014, § 4.)

50-38.7 Nonconforming off-premises signs.

In order to bring nonconforming off-premises signs into closer conformance with the purposes of Chapter, the following system is established to enable the reconstruction, structural alteration or relocation of certain nonconforming off-premises signs. Once rebuilt, the sign shall retain its status as a nonconforming off-premises sign.

A. Reconstruction of existing signs.

1. A sign permit for reconstruction on the same site of a nonconforming off-premises sign that either exists or has been destroyed no more than six months prior to written sign permit application, may be issued after the building official certifies that the sign to be reconstructed has less of an adverse impact on the area near the site than the sign being replaced. A reconstructed sign may be enlarged, up to the maximum size of an off-premises sign permitted within the applicable zone district, by use of an exception credit pursuant to subsection 2. For purposes of this subsection the "same site" shall mean contiguous property owned by one person or entity, or a related person or entity, and not divided by an improved street;
2. No permit shall be issued until the sign to be reconstructed is removed;
3. All signs shall be constructed and placed in strict conformance with the permit and the failure to do so shall constitute a violation of this Chapter, and if not corrected shall be grounds for revocation of the permit and an order for removal of the sign;

B. Exception credit system.

1. The owner of a nonconforming off-premises sign may receive an exception credit if it is determined by the building official that a nonconforming off-premises sign is to be removed, or has been removed, due to a termination of lease for reasons beyond the reasonable control of the applicant, or other forced removal (not including destruction or other situations rendering the sign unusable). Such reasons include but are not limited to the refusal of a lessor to renew a lease or the applicant's inability to obtain a lease renewal on reasonable terms and conditions (including lease rent at a fair market rate). An exception credit may be issued for each such sign that has been removed no more than 30 days prior to written application for the exception credit;
2. The building official shall determine if the applicant is eligible to receive an exception credit and shall certify and keep a log of all such credits documenting the owner of the credit, cumulative square footage of sign area credited and number of locations available for sign structures. After approving the use of an exception credit, the building official shall notify the owner, in writing, of the owner's remaining credited total of available square footage of sign area and remaining credited number of locations available for sign structures;

C. Use of exception credits.

1. Exception credits may be used to permit the relocation of certain nonconforming off-premises signs that do not meet site, location or other requirements of this Chapter;
2. An application for an exception credit shall include a statement identifying the exception credit(s) to be used for the permit for the new location. No holder of a credit shall be granted a permit under this Section 50-38.7 for more locations than it lost or for more square footage of sign area than it lost. No sign permit shall be issued until the sign(s) that is the basis for the credit is first removed;
3. All signs shall be constructed and placed in strict conformance with the sign permit and the failure to do so shall constitute a violation of this Section, and if not corrected, shall be grounds for revocation of the sign permit and an order for removal of the sign. No sign permit issued under this Section shall be valid until the applicant has complied with all applicable requirements of the NR-O, Natural Resources Overlay district, and MSA Chapter 173. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10047, 8-30-2010, § 4; Ord. No. 10204, 3-11-2013, § 3; cited only by Ord. No. 10285, 3-10-2014, § 4.)

50-39 Enforcement and penalties.

This Section describes how this Chapter will be enforced, as well as the penalties for violation of the Chapter. This Section is intended to comply with the provisions of MSA 462.362 as amended, and shall be interpreted to comply with those provisions wherever possible. All violations of this Chapter are hereby declared to be public nuisances. (Ord. No. 10044, 8-16-2010, § 6.)

50-39.1 Violations.

A. Violations defined.

It shall be a violation of this Chapter, and a public nuisance, to do any of the following:

1. Activities inconsistent with UDC.
   To erect, construct, reconstruct, remodel, alter, maintain, expand, move or use any building, structure or sign, or to engage in development or subdivision of any land inconsistent with this Chapter, or to fail to obtain required approvals for any of those activities;
2. Use of nonconformities inconsistent with UDC.
   To use, occupy, create, expand, replace, or change a nonconforming use, structure, lot or sign except in compliance with this Chapter;
3. Making lots or setbacks nonconforming.
   To reduce or diminish the lot area, setbacks, or open space on any parcel of land below the minimum required by this Chapter;
4. Increasing intensity of use.
   To increase the intensity of use of any land or structure, except in accordance with the procedural and substantive standards of this Chapter;
5. Activities inconsistent with approval or permit.
   To engage in any development, redevelopment, use, construction, remodeling or other activity inconsistent with the terms and conditions of any permit or approval issued by the city;
6. Violation of stormwater permits.
   In the case of violation of a stormwater permit, the permittee shall take the following actions prior to imposition of a penalty, if any, by the city:
   (a) Submit reports of noncompliance with requirements contained in a compliance schedule of the permit in writing within 14 days after the compliance schedule deadline. Reports of noncompliance shall include a description of the noncompliance, its cause, the steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance and the effect of the noncompliance on the permittee's ability to meet remaining deadlines;
   (b) Take all reasonable steps to minimize or prevent any adverse impacts on the waters of the state resulting from noncompliance with a stormwater permit;
7. Violations related to wireless telecommunications facilities.
   Under the following circumstances, the city may declare the wireless telecommunications facility a public nuisance and take all available enforcement actions including, but not limited to, revocation of the special use permit:
   (a) The wireless telecommunications facility has been abandoned. A facility is deemed abandoned if it is not used as wireless telecommunications facility for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case repair or removal shall commence within 90 days;
   (b) The wireless telecommunications facility fall into a state of disrepair and creates a health or safety hazard;
   (c) The wireless telecommunications facility has been located, constructed, repaired, maintained or modified without first obtaining the required special use permit, or in any manner that constitutes a violation of Section 50-20.4.D;
   (d) For a violation of the conditions and provisions of the special use permit;

8. Failure to remove signs.
   To fail to remove any sign installed, created, erected or maintained in violation of this Chapter, or for which a required sign permit was not obtained, or for which the sign permit has lapsed, or for which the business or use for which the sign was permitted has been closed for more than one year;
9. Failure to maintain.
   To fail to maintain any property, including without limitation (a) any dwellings, dwelling units, housekeeping units, or rooming units, and (b) any sign, and (c) any required landscaping or screening in the condition required by this Chapter;
10. Failure to replace.
    To fail to replace any site feature or element required by this Chapter if that site feature is removed, or to fail to replace any required landscaping or screening that dies or becomes diseased;
11. Unauthorized actions involving historic resources.
    To fail to obtain required approvals before construction, remodeling, repainting or altering a historic preservation landmark or a structure in a historic preservation district identified in Section 50-18.3;
12. Violations related to vacation dwelling units, accessory vacation dwelling units or accessory home shares.

    To use any lot, structure, dwelling or dwelling unit as a vacation dwelling unit, accessory vacation dwelling unit, or accessory home share without the approvals or permits required by this chapter, in violation of the provisions of this chapter, or in violation of any other applicable provisions of city code; (Ord No. 10466, 4-11-2016, §4; 10590, 9-24-2018, §1)

B. Continuing violations.

Each day that a violation occurs or remains uncorrected after receipt of notice of the violation from the city shall constitute a separate violation. (Ord. No. 10044, 8-16-2010, § 6.)

50-39.2 Enforcement.

A. Responsibility.

The building official is responsible for enforcing this Chapter. No permit or approval for the construction, alteration or demolition of any building, or for the use of land, shall be issued if the building as proposed to be constructed, altered or demolished would be a violation of this Chapter;

B. Authorization for inspections.

For the purposes of enforcing this Chapter, the building official is authorized to enter, examine and survey, between the hours of 8:00 a.m. and 5:00 p.m., any property subject to the regulations of this Chapter. Prior to making an inspection based on a possible violation, the building official shall inform the owner of the property to be inspected, or their agent, of the date and time of the inspection in writing at least four days prior to the inspection. Advance notice need not be given in the case of routine inspections. After written notice has been given, the owner or occupant of the property to be inspected, or the person in charge of that property, shall give the building official free access to the property between 8:00 a.m. and 5:00 p.m., for the purpose of inspection. The inspection shall not have for its purpose the harassment of the owner or occupant and shall be made so as to cause the least amount of inconvenience to the owner or occupant of the property consistent with the efficient performance of the duties of the building official. Nothing in this Section 50-39.2.B shall be construed to prohibit the entry of the building official:

1. At any time when in the opinion of the building official an actual emergency tending to create an immediate danger to public health and safety exists;
2. At any time when an inspection is requested by the owner or occupant;

C. Enforcement tools.

The city may use any of the following tools and powers to enforce this Chapter, in any order, and the use of one tool or power shall not restrict the city from using an additional tool or power to remedy the same violation.

1. Order requiring compliance.
    (a) The city may issue a written order identifying the violation(s) of this Chapter and requiring that the property owner or occupant bring the property into compliance with this Chapter, at the owner or occupant's expense, within a specified time. The notice shall state what actions are necessary to bring the property into compliance;
    (b) The time allowed for correction shall be not less than 14 days, except that (i) if the order identifies a threat to public health or safety then a compliance shorter than 14 days may be required, and (ii) if the order involves a violation of the provisions of the Airport Overlay district or the sign regulations in Section 50-27, or the vacation dwelling unit, accessory vacation dwelling unit, or accessory home share regulations in Sections 50-19 and 50-20, the time for compliance shall be not less than ten days. In determining a reasonable time for performance the building official shall consider the nature and extent of the work involved, the season of the year, the existence of any immediate danger to public health and safety, and any other pertinent factors. The building official may extend the time for compliance in writing for good cause shown;
    (c) The property may continue to be used for occupancy or habitation pending compliance with the order unless the notice identifies an imminent threat to public health or safety and requires that occupancy or habitation be limited or end by a certain date;
    (d) When an order to correct a violation of this Chapter has been issued, the building official is authorized to enter and re-inspect the property subject to the order for the purpose of determining compliance with the order. The owner or occupant of the property, or the person in charge of the property, shall give free access to the property for the purpose of the inspection;
    (e) Every occupant of property shall give the owner of the property, or his agent or employee, access to any part of the property at all reasonable times for the purpose of making repairs or alterations required to comply with the order;
    (f) The city shall not charge a fee for inspections made in response to complaints or to confirm compliance with an order;
2. Enforcement of wireless telecommunications facility violations.
    (a) If the city determines that the wireless telecommunication facility is a public nuisance, the building official shall notify the holder of the special use permit in writing and order the correction of the violation or removal of the facility;
    (b) If the order requires removal of the wireless telecommunication facility the holder of the special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within the deadline provided for in the order to remove. If the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so if the land use supervisor determines that the retention of those access roads would promote the purposes of this Chapter;
    (c) Notwithstanding anything in this subsection to the contrary, the building official may approve a temporary extension of the order, for no more 90 days, during which time a suitable plan for the repair, sale, removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the city, and an agreement to such plan shall be executed by the holder of the special use permit and the city. If such a plan is not developed, approved and executed within the 90 day time period, then the city may exercise all available legal rights;

(d) The holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with an order of the building official or any provision of Section 50-20.4.D;

(e) If compliance or substantial progress towards compliance with the order has not been made by the compliance deadline, the city may exercise any legal remedies available to secure compliance with the order at the sole expense of the owner or special use permit holder;

3. Enforcement of Vacation Dwelling Unit, Accessory Vacation Dwelling Unit or Accessory Home Share Violations

(a) If the city determines that a vacation dwelling unit, accessory vacation dwelling unit, or accessory home share is a public nuisance, operating without approvals or permits required by this Chapter, or operating in violation of this Chapter or any other applicable provisions of city code, the city shall notify the holder of the interim use permit or home share permit in writing and order the correction of the violation in accordance with this Section;

(b) Any vacation dwelling unit, accessory vacation dwelling unit, or home share permit issued pursuant to this chapter may be suspended for up to six (6) months or revoked by the city for good cause. If the city intends to suspend or revoke a permit, the land use supervisor shall issue written notice of such intent to the permit holder at least twenty-one (21) days before such suspension or revocation is set to begin. The permit holder may then demand a hearing before the land use supervisor. Such demand shall be made in writing to the land use supervisor within ten (10) days following issuance of the notice;

(c) For purposes of this section, “good cause” shall include, but not be limited to:

(i) failure to remedy a violation noted pursuant to 50-39.2.C.1;

(ii) issuance of three or more violation notices under section 50-39.2.C.1 within a single permit cycle;

(iii) the occurrence of one or more nuisance events as defined in Duluth City Code § 40-10;

(iv) use or operation of the dwelling unit or home share in a manner that imperils public health, safety or welfare, including, but not limited to, violation of this Chapter or any other provision of local, state, or federal law intended to protect the occupants of the dwelling or the surrounding neighborhood and community;

(d) Any permit holder whose license is suspended or revoked by the land use supervisor may appeal the final suspension or revocation to the Planning Commission in accordance with 50-37.1.O.

4. Withholding permits or approvals.

The city may refuse to process applications for permits and approvals under this Chapter if the application concerns a property where (a) the building official has determined to be in violation of the Chapter, (b) the city has issued an order requiring that the violation be corrected, and (c) the owner occupant has not remedied the violation within the time stated in that order, unless the application is for the purposes of remedying the existing violation;

5. Prevention of violation.

If the city becomes aware that a building, structure, sign or site feature is about to be constructed in violation of this Chapter, the city may take appropriate action to prevent the violation. The city’s action may include but is not limited to withdrawal of any permits or approval related to the construction or activity that would constitute a violation;

6. Abatement.

(a) The city may take action to abate or remove the violation, and to charge the costs of the abatement or removal to the property owner if the property owner or occupant of a property fails to comply with an order to correct a violation of this Chapter within the time specified in the order, as that time may be extended by the building official in writing for good cause shown, and the building official determines that the continuance of the violation creates a threat to public health or safety;

(b) Following the abatement or removal, the city shall issue an order that the owner of the land on which the violation occurred pay to the city the documented costs of the abatement or removal with 30 days;

(c) If the owner of the land does not pay the documented costs of abatement or removal to the city within 30 days, those costs may be assessed against the land on which the violation occurred, and the city shall provide the owner of the land written notice of the assessment. Unless the assessment is paid within 90 days from the service of notice on the property owner, the sum shall bear interest at the rate set in accordance with Section 31-8 of this Code, per annum from the date the cost was incurred until paid, and shall be collected in the same manner as are general taxes;

(d) The city shall end the process of assessing abatement and removal costs against the land, or shall cancel the assessment if it has been finalized, upon receipt of payment in full of all costs documented in the order and all accrued interest on those costs;

7. Administrative citations.
The city may issue an administrative citation pursuant to Chapter 12 of the City Code and may take all actions authorized;

8. Court actions.
The city may enforce this Chapter by filing an action in law or equity in any court of competent jurisdiction, including without limitation a request for a declaratory judgment, a request for a restraining order or a temporary or permanent injunction, or a request for money damages based on the penalties for violation established in this Chapter or elsewhere in the City Code. The decision as to whether to seek enforcement in the courts, and what type of enforcement to seek, shall be at the discretion of the city;

9. Nuisance abatement.
If the building official determines that the violation constitutes a public nuisance under state law, the city may use all powers granted by state law to abate public nuisances;

10. Other enforcement powers.
The city may enforce this Chapter through any other powers granted to the city by state law;

D. Notices and orders.

1. Any notice and order under Section 50-39.2.C.1 shall be served upon the owner or the owner's agent and the occupant as the case may require. In the case of a notice involving the sign regulations in Section 50-27, the notice shall also be served on the owner of the sign or the person or entity that erected or caused the erection of the sign;

2. The notice shall be deemed to be properly served upon those individuals or entities identified in subsection 1 if a copy of the notice is:

(a) Served personally; or

(b) Sent by United States mail, postage prepaid, to the last known address of the owner, occupant or agent shows in the city records; or

(c) Posted in a conspicuous place in or about the property affected by the notice; or

(d) Served by any other method authorized or required by state law;

3. Any notice served pursuant to subsection 1 shall automatically become an order if a written petition for a hearing is not filed with the building official within 14 days after the notice is served. An order is final unless an appeal is filed pursuant to Section 50-37.1.O;

4. If the building official finds that an emergency exists that requires immediate action to protect the public health and safety, the building official may, without notice or hearing, issue an order declaring that emergency and requiring those actions that the building official deems necessary to meet the emergency notwithstanding the other provisions of this Chapter, and that order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but may file with the building official a request for a hearing following compliance with the order. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10096, 7-18-2011, § 57; Ord. No. 10155, 5-29-2012, § 29; Ord No. 10446, 4-11-2016, §4; 10590, 9-24-2018, §2)

50-39.3 Penalties.

A. The owner of any property where the violation of this Chapter occurs, and any person violating this Chapter, shall be guilty of a misdemeanor and may be fined as provided in Section 1-7 or Section 12-6 of the City Code;

B. In the case of violation of a stormwater permit, if the contractor or owner fails to install or correct deficiencies related to erosion or sediment control BMPs ordered by the city engineer, the city engineer may withhold payment from related work or levy a fine until adequate BMPs are installed by the contractor or owner. When the contractor or owner fails to conduct quality control or adequately inspect BMPs to ensure function, or fails to take action ordered by the city engineer to remedy erosion or sediment control problems, the city engineer will issue a written order to the contractor and owner. The contractor or owner shall respond within 24 hours with sufficient personnel, equipment, and materials and conduct the required remedial work or be subject to a per calendar day deduction or fine for noncompliance, which shall be set in accordance with Section 31-8 of this Code;

C. Penalties shall be waived if the violation is corrected within the time stated in any enforcement notice or order. (Ord. No. 10044, 8-16-2010, § 6; Ord. No. 10155, 5-29-2012, § 30.)