

ORDINANCE NO. _____

AN ORDINANCE CREATING DULUTH NATURAL AREAS PROGRAM AND ESTABLISHING PROCEDURES WITH REGARD THERETO, AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ADDING A NEW ARTICLE XXIX THERETO.

BY COUNCILOR STENBERG:

The city of Duluth does ordain:

Section 1. That Chapter 2 of the Duluth City Code, 1959, as amended, is hereby amended to add a new Article XXIX which reads as follows:

Article XXIX. Duluth Natural Areas Program.

Sec. 2-152. Statement of purpose.

The city council finds that the city of Duluth is the owner of a substantial number of tracts of real estate, both inside and outside the city, some of which are of special or unique ecological or environmental significance to the community, which properties should be considered for conservation designation in order to protect those values. Said council further finds that there may be other tracts of land in private ownership or owned by other governmental entities which should be similarly protected if the cooperation of those owning such tracts can be secured. The purpose of this article is to create a program to protect and preserve the natural heritage of the Duluth area which will include mechanisms for identifying those properties, whether owned by the city or by others, and for establishing a means to protect such properties from development or exploitation inconsistent with such values.

Sec. 2-153. Duluth natural areas program created.

There is hereby created for the city of Duluth a "Duluth natural areas program," hereafter referred to in this Article as the "program," for the purpose of implementing the objectives set forth in Section 2-152 above. Properties eligible for inclusion in the program shall include all city-owned tracts of land, whether such

tracts lie within the boundaries of the city or outside such boundaries, which meet the program guidelines and are approved for inclusion by resolution of the city council. In addition, all lands owned by others which meet the program guidelines, and the owners of which request that their property be included in the program and commit to donate the property interests necessary to implementing the program protections and the management plan, whether such tracts lie within the boundaries of the city or outside such boundaries, shall be eligible for inclusion in the program.

Sec. 2-154. Guidelines.

(a) Program guidelines to be adopted.

The city council shall, by resolution, adopt program guidelines setting forth standards and criteria for consideration of inclusion of various tracts of property in the program, and for selection and implementation of appropriate program protections and management plans for tracts so designated. The minimum standards and criteria for inclusion of a parcel in the program are:

(1) The parcel is of special or unique ecological or environmental significance to the community as set out in Section 2-152, or its successor;

(2) The parcel is eligible land as set out in this ordinance;

(3) The parcel is one of the best remaining viable examples of a significant native plant communities area, or a special species area, or a natural water features area, or an important bird congregation area, or a geologic landform area. These terms may be more specifically defined in the program guidelines;

(4) Inclusion of the parcel in the program is in compliance with any applicable state or federal laws or regulations;

(b) Initial guidelines.

The initial program guidelines shall be developed by the environmental advisory council. Such initial program guidelines shall thereafter be reviewed by the planning commission and either recommended to the council for approval as presented by the environmental advisory council, recommended for approval as modified by the commission or recommended for disapproval by the council. The council shall either approve the program guidelines as approved by the commission, adopt amended program guidelines or disapprove the program guidelines and return said program guidelines to the environmental advisory council for further review and recommendation. This process shall continue until the council approves program guidelines for the program;

(c) Amendments.

After the adoption of the initial program guidelines, the program guidelines may be amended at any time in accordance with the following process. Amendments to the program guidelines may be initiated by the environmental advisory council, by the planning commission or by the council. All proposed amendments shall be referred to the environmental advisory council for their review and recommendation. After review by the environmental advisory council, any such amendment, together with the its affirmative or negative recommendation, shall be referred to the planning commission for its review and recommendation. If recommended for approval by the planning commission, any such amendment shall be referred to the council for its review and approval or disapproval. Except that, upon the affirmative vote of a majority of the council, any proposed

amendment which has been reviewed but not recommended for approval by either the environmental advisory council or by the planning commission may be reviewed and considered for approval by the council.

Sec. 2-155. Property designation and protections.

(a) Provisional designation. After adoption of the initial program guidelines in conformance with the provisions of Sec. 2-154(b) above, specific tracts of land may be designated for inclusion in the program in conformance with the procedures set forth in the program guidelines. Such designation shall be provisional in nature, subject to finalization as provided for in subsection (b) below and shall be accomplished by resolution. Such designation shall only be allowable with regard to tracts which meet or exceed the criteria established in the program guidelines and the resolution designating each tract shall include findings of fact setting forth the elements of the criteria met by each such tract. The designation of any tract for inclusion in the program under this subsection shall not be effective and shall be deemed to be provisional unless and until, within one year of such provisional designation, the specified program protections have been imposed or implemented and a management plan, as described in the program guidelines, has been approved by the council. If the specified program protections have not been imposed or implemented or a management plan has not been approved within said one year period, the provisional designation shall terminate. Provided, however, that if the applicant petitions the planning commission for an extension of time to allow imposition or implementation of the program protections or the management plan or both, which petition is filed in sufficient time for the planning commission to act prior

to the expiration of such provisional designation and is based upon good cause shown, not attributable to the applicant, the planning commission may, by resolution approve an extension of the provisional designation for a period of up to one additional year.

(b) Completion of designation process. After a tract of land has been provisionally designated as provided for in subsection (a) above, the council shall, by resolution or, if necessary to implement the program protections and the management plan, by ordinance approve the program protections deemed appropriate for the designated tract from those provided for in Section 2-156 below and, if implementation of such program protections are within the control of the city, shall authorize, impose or implement such protections on such tract. In addition said resolution or ordinance shall also approve a management plan to be applied to such property along with authorizing whatever action is necessary to implement that management plan;

(c) Process. The provisional designation of any tract and the approval of the program protections and the management plan for such tract shall be accomplished following the same procedures as those established for proposed amendments to the program guidelines set forth in Section 2-154(c) above. Upon completion of the designation process and the adoption of the appropriate program protections and management plan for any tract, the designation of said tract shall be deemed to be final and complete;

(d) If the program administrator determines that a substantial change is needed in the management plan, the management plan may be amended pursuant to the same process by which it was established.

Sec. 2-156. Program protections.

The resolution or ordinance designating any tract for inclusion in the program shall specify what level of program protections shall be applied to each such designated tract. Protections for designated tracts, including the granting of a conservation easement or inclusion in a state preservation program, shall be in one of the following forms and shall be implemented by ordinance or resolution as required by law, the approval of which ordinance or resolution shall require the affirmative vote of seven councilors. Any such designation or conveyance shall be subject to any and all limitations on the title held by the owner of such property at the time of such designation unless and until such limitations are later modified or eliminated in accordance with applicable law:

(a) By resolution, the council may declare its intent to hold such tract in perpetuity for the benefit of the city's residents and, at its option, designating what, if any, development of the tract will be permitted; any property so designated may be conveyed or used in contravention with the terms of this designation only upon the affirmative vote of eight councilors;

(b) By ordinance, dedicate an easement in favor of the general public over such tract generally preserving such tract in the condition it is in at the time of such dedication and limiting the uses to which the property may be put; provided, however, that the provisions preserving the property and limiting the use thereof may, by the dedicatory ordinance, be limited to allow such other uses as the council may deem advisable and set forth the terms and conditions under which such other uses may be permitted;

(c) By ordinance, convey such tract or any interest in said tract held by the city to the state of Minnesota or to such other

qualified entity as appropriate for the purpose of preserving such tract in the condition it is in at the time of such conveyance;

(d) By resolution, accept conveyance of any such tract or any portion thereof or of any other interest therein, or to accept a conservation easement over such property meeting the requirements of Minnesota Statutes, Chapter 84C and Section 170(h) of the Internal Revenue Code of 1986, as amended from the owner thereof and, subject to the title or deed of conservation easement received by the city, by resolution or ordinance as appropriate implement any of the protections set forth in paragraphs (a) through (c) above with regard thereto.

Sec. 2-157. Program administrator.

The director of the department of planning and development is hereby designated as the program administrator for the program. The program administrator shall be responsible to provide all services necessary to the environmental advisory council, the planning commission and the council necessary to the performance of their functions under this article and under the program guidelines, to implement all aspects of the program including overseeing the implementation of the protections for properties designated under the program and implementation of the management program, to the extent that such implementation is the responsibility of the city, for maintaining all program records and for performing such other responsibilities as are set forth, from time to time, in the program guidelines.

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication.

Approved:

Approved for presentation to council:

Department Director

Administrative Assistant

Approved as to form:

Attorney

ATTY REA:nmj 8/27/2002

STATEMENT OF PURPOSE: The purpose of this ordinance is to establish the Duluth natural areas program to create a structure in which that program will operate and to authorize a process for establishing and modifying program guidelines by resolution.

The reason for creating the program is to attempt to insure that areas of unique environmental value in the city will be preserved for the benefit of future generations of Duluthians. The program will attempt to protect these resources not only from damage or destruction from development but also from diminution through over-use.

In order to qualify for designation under the program, the resources sought to be protected must be in a substantially undisturbed natural state and must represent a unique resource characteristic of the Duluth area. The land most likely for designation is city-owned land within the city itself which contain resources in this category though privately-owned land which a private owner wishes to have included in the program will also be eligible. While it is not anticipated that it will occur often, city land located outside the boundaries of the city itself would also eligible for designation.

The ordinance contemplates a two-stage process for designation. In the first phase, property which was proposed for inclusion would be reviewed first by the environmental advisory council for the purpose of evaluating its environmental qualifications, then by the planning commission to review how designation would fit into the overall land use planning objectives of the city. The recommendations of those bodies are then considered by the city council which makes the decision as to whether the subject property meets the program criteria as set forth in the guidelines and therefore should be included in the program.

If the council approves inclusion of the property in the program, the designation is, at this point, provisional, subject to the second phase of the approval process. The second phase involves the development of a management plan for the subject property and the determination of the most appropriate protections to be imposed on it. The protections could range from simple designation along with approval of a management plan. The management plan and the protections determination would follow the same approval process as the eligibility determination, with the city council making the final determination. Only after the management plan and protections are approved is the designation final.

The program guidelines which set up the criteria for inclusion in the program and for the contents of the management plan are subject to approval by resolution after going through the same review process as is involved in designation and in adoption of the management plan and the protections.

The ordinance also creates the position of program administrator who is responsible for the administration of the ordinance and the lands designated under it. This role is assigned to the director of the department of planning and development.