



## Legislation Details (With Text)

<b>File #:</b>	25-002-O	<b>Name:</b>	
<b>Type:</b>	Ordinance	<b>Status:</b>	Passed
<b>File created:</b>	2/28/2025	<b>In control:</b>	Planning and Economic Development
<b>On agenda:</b>	3/10/2025	<b>Final action:</b>	3/24/2025
<b>Enactment date:</b>	3/24/2025	<b>Enactment #:</b>	10929

**Title:** AN ORDINANCE AMENDING UDC SECTION 50-18; NATURAL RESOURCES OVERLAY, SEC 50-20; USE SPECIFIC STANDARDS FOR MANUFACTURED HOME PARK AND RECREATIONAL VEHICLE PARK, SEC 50-33.2; SITE DESIGN FOR PLATS, TABLE 50-35-1 PROCEDURES SUMMARY TABLE; SEC 50-37; ADMINISTRATION AND PROCEDURES FOR SPECIAL USE PERMITS, SUBDIVISION PLAT APPROVAL AND VARIANCES, SEC 50-38.2; PROVISIONS FOR NON-CONFORMITIES IN FLOODPLAINS, AND ARTICLE 6; DEFINITIONS.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachment 1, 2. Attachment 2

Date	Ver.	Action By	Action	Result
3/24/2025	1	City Council	adopted	
3/10/2025	1	City Council	read for the first time	

AN ORDINANCE AMENDING UDC SECTION 50-18; NATURAL RESOURCES OVERLAY, SEC 50-20; USE SPECIFIC STANDARDS FOR MANUFACTURED HOME PARK AND RECREATIONAL VEHICLE PARK, SEC 50-33.2; SITE DESIGN FOR PLATS, TABLE 50-35-1 PROCEDURES SUMMARY TABLE; SEC 50-37; ADMINISTRATION AND PROCEDURES FOR SPECIAL USE PERMITS, SUBDIVISION PLAT APPROVAL AND VARIANCES, SEC 50-38.2; PROVISIONS FOR NON-CONFORMITIES IN FLOODPLAINS, AND ARTICLE 6; DEFINITIONS.

### CITY PROPOSAL:

The city of Duluth does ordain:

Section 1: That Section 50-18.1.A.2.(b) of the Duluth City Code, 1959, be amended as follows:

(b) For flood plains:

(i) The following maps together with all attached material are a part of the NR-O map. The attached material includes the Flood Insurance Study for St. Louis County, Minnesota, and Incorporated Areas, dated March 25, 2025, and the Flood Insurance Rate Map panel numbers 27137C3525E, 27137C3545E, 27137C3550E, 27137C3754E, 27137C3755E, 27137C3756E, 27137C3757E, 27137C3758E, 27137C3759E, 27137C3764E, 27137C3766E, 27137C3767E, 27137C3768E, 27137C3769E, 27137C3776E, 27137C3777E, 27137C3778E, 27137C3779E, 27137C3781E, 27137C3782E, 27137C3783E, 27137C3784E, 27137C3786E, 27137C3788E, 27137C3790E, 27137C3795E, 27137C3805E, 27137C3810E, 27137C3842E, 27137C3845E, 27137C3850E, 27137C3851E, 27137C3852E, 27137C3853E, 27137C3854E, 27137C3856E, 27137C3857E, 27137C3860E, 27137C3861E, 27137C3862E, 27137C3865E, 27137C3870E, 27137C3880E, 27137C3885E, all dated March 25, 2025, all prepared by the Federal Emergency Management Agency. These materials are on file in the Planning and Economic Development Department at City Hall.

(ii) Flood Boundary and Floodway Map panels for the City of Duluth Minnesota, dated February 1, 1980,

and numbered:

- (1) 270421 0015 C
- (2) 270421 0025 C
- (3) 270421 0030 C
- (4) 270421 0035 C
- (5) 270421 0040 C
- (6) 270421 0045 C

(iii) Flood Insurance Rate Map panels for the City of Duluth, Minnesota, dated April 2, 1982, and numbered:

- (7) 270421 0015 C
- (8) 270421 0025 C
- (9) 270421 0030 C
- (10) 270421 0035 C
- (11) 270421 0045 C

(iv) Flood Insurance Rate Map panel for the City of Duluth, Minnesota, numbered 270421 0040 D and dated November 4, 1992;

(v) Flood Insurance Rate Map panels for St. Louis County, Minnesota, unincorporated areas, numbered 270416 1475 C, 270416 1500 C, and 270416 1650 C, all dated February 19, 1992;

(vi) The Letter of Map Revision issued by the Federal Emergency Management Agency, Case No. 07-05-3554P, with an effective date of October 17, 2008, including all attached maps, tables and flood profiles; and

(vii) The Letter of Map Revision issued by the Federal Emergency Management Agency, Case No. 12-05-3211P, with an effective date of November 26, 2012, including all attached maps, tables and flood profiles.

(ii) Copies of the above-listed documents are hereby adopted by reference and declared to be a part of this section. All documents shall be kept on file in the land use supervisor's office;

Section 2: That Section 50-18.1.C of the Duluth City Code, 1959, be repealed and replaced as follows:

C. Flood plains.

This Section regulates development in the flood hazard areas of the City of Duluth. These flood hazard areas are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. It is the purpose of this Section to promote the public health, safety, and general welfare by minimizing these losses and disruptions.

This Section supports the public interest to promote sound land use practices, and floodplains are a land resource to be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.

This Section is a requirement to maintain eligibility in the National Flood Insurance Program.

This Section is also intended to preserve the natural characteristics and functions of watercourses and floodplains in order to moderate flood and stormwater impacts, improve water quality, reduce soil erosion, protect aquatic and riparian habitat, provide recreational opportunities, provide aesthetic benefits and enhance community and economic development.

1. Applicability

(a) Applicability and Planning Commission Review

(i) This Section applies to all lands within the jurisdiction of the City of Duluth within the Special Flood Hazard Areas (SFHAs) identified on the Flood Insurance Rate maps identified in Section 50-18.1.A.2(b). Areas within the SFHA are within one of four districts: the Floodway, Flood Fringe, General Floodplain or Coastal Districts.

(ii) The Floodway, Flood Fringe, General Floodplain and Coastal Districts, are within the Natural Resource Overlay District. The standards imposed in the overlay districts are in addition to any other requirements. In case of a conflict, between this Section and any other requirements in Federal and State law or the Duluth City Charter and Code, the more restrictive standards apply.

(iii) These regulations apply to all areas within the SFHA. If areas below the Base Flood Elevation (BFE) extend beyond the mapped SFHA based on actual field conditions, the Base Flood Elevation (BFE) shall be the governing factor in locating the outer boundaries of the one-percent annual chance floodplain and these regulations apply to the outer boundary of the one-percent annual chance



floodplain.

**Figure 50-18.1.C-1:** The mapped floodplain may not always align with on-the-ground contour elevations.

(iv) These regulations implement the National Flood Insurance Program (NFIP) rules in 44 CFR § 59 to 78, and the Minnesota department of natural resources (DNR) shoreland regulations, and the DNR flood plain regulations contained in Minnesota Statutes, Chapter 103F and Minnesota Rules, parts 6120.5000 - 6120.6200. The planning and zoning enabling legislation for this overlay is in Minnesota Statutes, Chapter 462.

(v) Abrogation and Greater Restrictions.

It is not intended by this section to repeal, abrogate, or impair any existing easements, covenants, or other private agreements. The standards in this section take precedence over any less restrictive, conflicting local laws, ordinances, or codes. All other sections inconsistent with this section are hereby repealed to the extent of the inconsistency only.

(vi) Warning and Disclaimer of Liability.

This section does not imply that areas outside the floodplain districts or land uses permitted within such districts will be free from flooding or flood damages. Not all flood risk is mapped or predictable. Larger floods may and do occur, and the flood height may be increased by man-made or natural causes, such as ice jams or bridge openings restricted by debris. This section does not create liability on the part of the City of Duluth or its officers or employees for any flood damages that result from reliance on this section, or any administrative decision lawfully made hereunder.

(vii) Persons contesting the location of the district boundaries may exercise their rights to Planning Commission review and further appeal as outlined in Sec 50-37.1.O.

(b) Floodplain Districts

(i) Floodway District. Those areas of Zone AE delineated within floodway areas as shown on the Flood Insurance Rate Maps referenced in Section 50-18.1.A.2(b) and those areas within Zone A determined to be located in the floodway based on the delineation methods in Section 50-18.1.C.5(d).

(ii) Flood Fringe District.

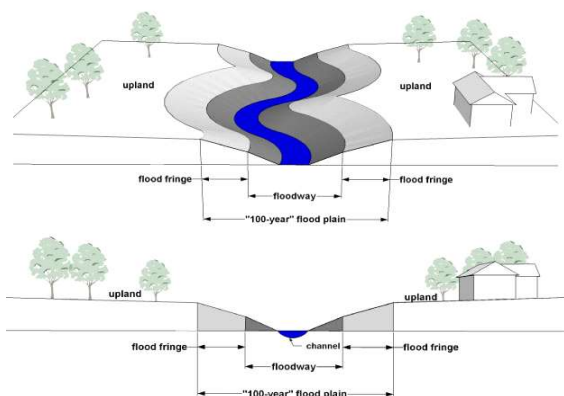
Those areas of Zone AE located outside of the delineated floodway as shown on the Flood Insurance Rate Maps referenced in Section 50-18.1.A.2(b), and those areas within Zone A determined to be located outside of the floodway based on the delineation methods in Section 50-18.1.C.5(d).

(iii) General Floodplain District.

Those areas within Zone A or AE that do not have a floodway delineated as shown on the Flood Insurance Rate Maps referenced in Section 50-18.1.A.2(b).

(iv) Coastal District.

Those areas within Zones VE, as shown on the Flood Insurance Rate Maps adopted in Section 50-18.1.A.2(b). This area also includes Coastal A and AE Zone Areas shown on the Flood Insurance Rate Maps adopted in Section 50-18.1.A.2(b).



**Figure 50-18.1.C-2: Flood plain, floodway, and flood fringe.** Graphic taken from Floodplain Management in the United States: An Assessment Report, prepared for the Federal Interagency Floodplain Management Task Force 1992.

**(c) Annexations.**

The Flood Insurance Rate Map panels referenced in Section 50-18.1.A.2(b) may include floodplain areas that lie outside of the corporate boundaries of the City of Duluth at the time of adoption of this Section. If any of these floodplain land areas are annexed into the City of Duluth after the date of adoption of this Section, the newly annexed floodplain lands will be subject to the provisions of this Section immediately upon the date of annexation. Annexations into panels not referenced in Section 50-18.1.A.2(b) require ordinance amendment in accordance with Section 50-18.1.C.10.

**(d) Municipal Boundary Adjustments.**

The Flood Insurance Rate Map panels referenced in Section 50-18.1.A.2(b) apply countywide. If at any point any lands come under the jurisdiction of another local government, the following shall apply:

(i) City adjustments of corporate boundaries, including but not limited to annexations and detachments, shall shift floodplain administrative authority of all affected lands immediately upon the date of the boundary adjustment occurring. Cities retain jurisdictions for all incorporated lands, and the County retains jurisdiction under this Section on all unincorporated lands.

**2. Requirements for all floodplain districts**

**(a) Permit Required.**

A permit must be obtained from the City of Duluth to verify compliance with all applicable standards outlined in this Section prior to the following uses or activities:

(i) The erection, addition, modification, maintenance, rehabilitation, repair, or alteration of any building, structure, or portion thereof. Normal maintenance requires a permit to determine if such work, either separately or in conjunction with other planned work, constitutes a substantial improvement, as specified in Section 50-38.2.B.1(c).

(ii) The construction of a fence, pool, deck, or placement of anything that may cause a potential obstruction.

(iii) The change or expansion of a nonconforming use.

(iv) The repair of a structure that has been damaged by flood, fire, tornado, or any other source.

(v) The placement of fill, excavation, utilities, on-site sewage treatment systems, or other service facilities. Placement or excavation of less than 5 cubic yards of material for gardening or small landscaping projects is exempt from this requirement.

(vi) The storage of materials or equipment, in conformance with Section 50-18.1.C.2(b)(ii).

(vii) Relocation or alteration of a watercourse (including stabilization projects or the construction of new or replacement dams, culverts and bridges). A local permit is not required if a public waters work permit has been obtained from the Department of Natural Resources.

(viii) Any other type of "development," as defined in Sec 50-41.4.

**(b) Minimum Development Standards**

(i) All development must:

- (1) Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Be constructed with materials and equipment resistant to flood damage;
- (3) Be constructed by methods and practices that minimize flood damage;
- (4) Be constructed with heating, ventilation, duct work, and air conditioning equipment and other service facilities elevated at least up to the Regulatory Flood Protection Elevation (RFPE). Water, sewage, electrical, and other utility lines below the RFPE shall be constructed so as to prevent water from entering or accumulating within them during conditions of flooding;
- (5) Be reasonably safe from flooding and consistent with the need to minimize flood damage;
- (6) Be assured to provide adequate drainage to reduce exposure to flood hazards;
- (7) Not be detrimental to uses in adjoining areas;
- (8) Not adversely affect the efficiency or restrict the flood carrying capacity of the channel and adjoining floodplain of any tributary watercourse or drainage system.
- (9) Ensure that any fill or other materials are protected from erosion, discharge, and sediment entering surface waters by the use of vegetative cover or other methods as soon as possible.
- (ii) Materials that, in time of flooding, are buoyant, flammable, explosive, or could be injurious to human, animal, or plant life shall be stored at or above the Regulatory Flood Protection Elevation (RFPE) or floodproofed. Storage of materials likely to cause pollution of the waters, such as sewage; sand; rock; wrecked and discarded equipment; dredged spoil; municipal, agricultural or industrial waste; and other wastes as further defined in Minnesota Statutes, Section 115.01, are prohibited unless adequate safeguards approved by the Minnesota Pollution Control Agency are provided.
- (iii) Critical facilities shall be located so that the lowest floor is not less than two feet above the Base Flood Elevation (BFE), or the 0.2% annual chance flood elevation, whichever is higher.

### 3. Floodway District

#### (a) Permitted Uses in Floodway.

Development allowed in the floodway district is limited to that which has low flood damage potential, is allowed in the underlying zone district, and will not obstruct flood flows, increase velocities, or increase the water surface elevations of the one-percent annual chance flood. The following uses and activities may be allowed with a permit, subject to the standards in Section 50-18.1.C.3(b):

- (i) Agricultural uses, recreational uses, parking lots, loading areas, airport landing strips, water control structures, navigational facilities, as well as public open space uses.
- (ii) Roads, driveways, railroads, trails, bridges, and culverts.
- (iii) Public utility facilities and water-oriented industries which must be in or adjacent to watercourses.
- (iv) Grading, filling, land alterations, ecological restoration projects, and shoreline stabilization projects.
- (v) No structures are allowed in the Floodway District, except structures accessory to the uses detailed in Section 50-18.1.C.3(a)(i) and Section 50-18.1.C.3(c)(i), which require a special use permit.

#### (b) Standards for Permitted Uses in Floodway.

In addition to the applicable standards detailed in Section 50-18.1.C.2:

- (i) The applicant must demonstrate that the development will not result in any of the following during the one-percent annual chance flood: cause a stage increase of 0.00 feet or greater, obstruct flood flows, or increase velocities. This shall be demonstrated through hydrologic and hydraulic analysis performed by a professional engineer, or using other standard engineering practices (e.g. projects that restore the site to the previous cross-sectional area). This is commonly documented through a "no-rise certification."
- (ii) Any development that would result in a stage increases greater than 0.00 feet may only be allowed with a permit if the applicant has applied for a Conditional Letter of Map Revision (CLOMR) in accordance with 44 CFR § 65.12, and FEMA has issued the CLOMR. Map revisions must follow the procedures in Section 50-18.1.C.8(d) and Section 50-18.1.C.9.
- (iii) Any development resulting in decreases to the water surface elevation of the base flood identified in the Flood Insurance Study requires a Letter of Map Revision (LOMR) following the procedures in Section 50-18.1.C.8(d) and Section 50-18.1.C.10.
- (iv) Any development in the beds of public waters that will change the course, current or cross section is required to obtain a public waters work permit in accordance with Minnesota Statutes, section 103G.245 or a utility crossing license in accordance with Minnesota Statutes, section 84.415, from the Department of Natural



Resources, or demonstrate that no permit is required, before applying for a local permit.

(v) Any facility used by employees or the general public must be designed with a flood warning system that provides adequate time for evacuation, or be designed to ensure that within the area inundated during the base flood event, the depth (in feet) multiplied by the velocity (in feet per second) is less than four.

(vi) Fill and other land alteration activities must offer minimal obstruction to the flow of flood waters, as certified by a professional engineer, and be protected from erosion and sediment entering surface waters using permanent vegetative ground cover, or other methods as soon as possible.

(c) Special Uses in Floodway.

The following uses and activities may be permitted as special uses, subject to the standards detailed in Section 50-18.1.C.3(d):

(i) Commercial extractive uses, and storage and stockpiling yards.

(ii) Structures accessory to uses detailed in Section 50-18.1.C.3(a)(i) and Section 50-18.1.C.3(c)(i).

(d) Standards for Special Uses in Floodway.

In addition to the applicable standards detailed in Section 50-18.1.C.2, Section 50-18.1.C.3(b) and Section 50-20.1.Q.:

(i) Extractive uses and storage of materials require the completion of a site development and restoration plan, to be approved by the Planning Commission.

(ii) Accessory Structures.

Structures accessory to the uses detailed in Section 50-18.1.C.3(a)(i) and Section 50-18.1.C.3(c)(i) must be constructed and placed so as to offer a minimal obstruction to the flow of flood waters and are subject to the standards in Section 50-18.1.C.4(b)(iii) of this Chapter.

(iii) The use or development conforms to the underlying zone district.

#### 4. Flood Fringe District

(a) Permitted Uses in Flood Fringe.

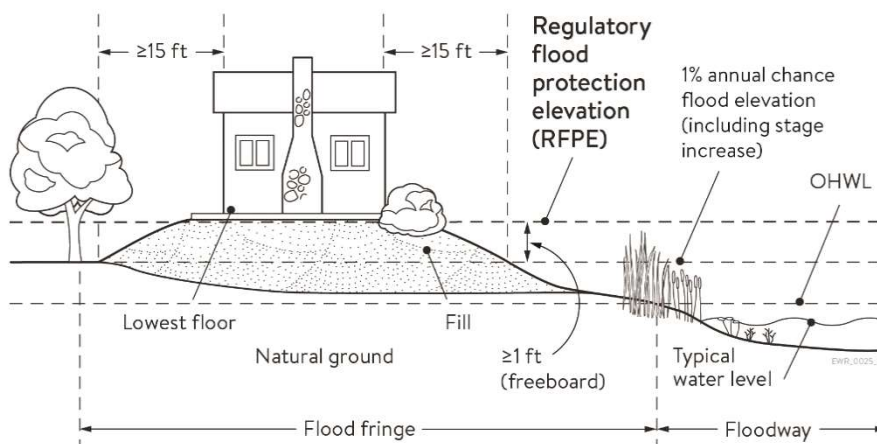
Any uses or activities allowed in any applicable underlying zoning districts may be allowed with a permit, subject to the standards set forth in Section 50-18.1.C.4(b).

(b) Standards for Permitted Uses in Flood Fringe.

In addition to the applicable standards detailed in Section 50-18.1.C.2:

(i) Residential Structures.

(1) Elevation on Fill. Structures erected, constructed, reconstructed, altered, or moved on fill within the Flood Fringe District shall be placed so that the lowest floor is elevated at or above the Regulatory Flood Protection Elevation (RFPE). Construction of this type shall only be permitted in locations where the natural ground is no lower than three feet below the base flood elevation. The finished fill elevation shall be at or above the elevation associated with the base flood plus any stage increases that result from designation of a floodway. Fill must extend at the same elevation at least 15 feet beyond the outside limits of the structure. Elevations must be certified by a registered professional engineer, land surveyor or other qualified person designated by the Building Official. Elevation methods alternative to these fill standards are subject to a Special Use Permit, as provided in Section 50-18.1.C.4(c)(i) (Figure 50-18.1.C-3).



**Figure 50-18.1.C-3: Overview of fill standards for residential structures.**

**(ii) Nonresidential Structures.**

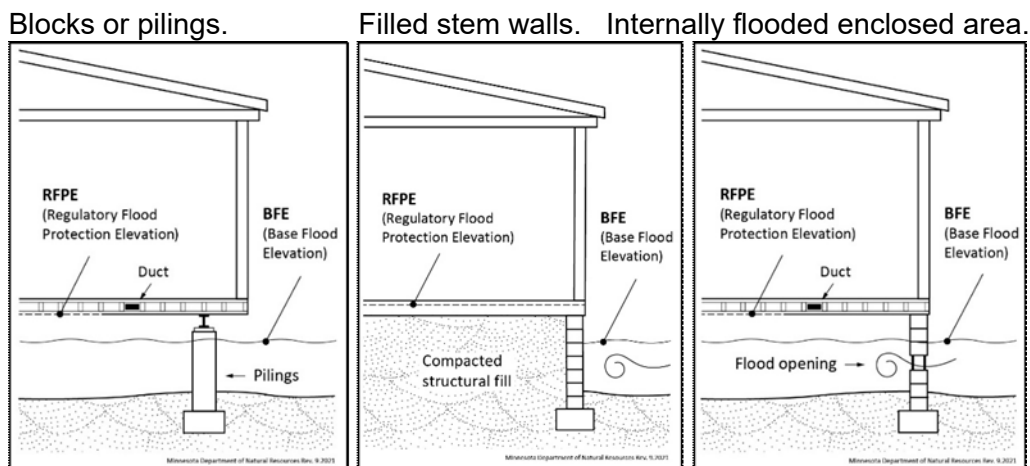
Nonresidential structures must meet one of the following construction methods:

**(1) Elevation on Fill.**

Structures may be elevated on fill, meeting the standards in Section 50-18.1.C.4(b)(i)(1). Fill for nonresidential structures is not required to be extended 15 feet beyond the outside limits of the structure.

**(2) Alternative Elevation Methods.**

Structures may be elevated using methods alternative to the fill standards in Section 50-18.1.C.4(b)(i)(1). Such methods include the use of blocks, pilings, filled stem walls, or internally-flooded enclosed areas such as crawl spaces, attached garages, or tuck under garages (Figure 50-18.1.C-4).



**Figure 50-18.1.C-4**

**(3) Designs accommodating for internally-flooded enclosed areas must be certified by a registered professional engineer or architect, or meet or exceed the standards detailed in FEMA Technical Bulletin 1, as amended, as well as the following standards:**

**(a) The lowest floor shall be elevated at or above the Regulatory Flood Protection Elevation (RFPE).**

**(b) The floor of the enclosed area must be at or above the exterior grade on at least one side of the structure.**

**(c) To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings below the base flood elevation on at least two sides of the structure. The bottom of all openings shall be no higher than one-foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, have a net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention.**

**(d) Internally flooded enclosed areas shall only be used for the parking of vehicles, building access, or storage. Bathrooms and toilet rooms shall not be allowed. Such areas shall be subject to a deed-restricted non-conversion agreement as well as inspections as needed by determination of the Land Use Supervisor.**

(4) Dry Floodproofing.

Structures having watertight enclosed basements or spaces below the Regulatory Flood Protection Elevation (RFPE) must meet the following standards:

(a) Walls must be substantially impermeable to the passage of water, with structural components having the capacity of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, at least up to the Regulatory Flood Protection Elevation (RFPE);

(b) Must meet the standards of FEMA Technical Bulletin 3, as amended; and

(c) A registered professional engineer or architect shall be required to certify that the design and methods of construction meet the standards detailed in this Section.

(iii) Accessory Structures.

All accessory structures must meet the following standards:

(1) Structures shall not be designed or used for human habitation.

(2) Structures will have a low flood damage potential as defined in FEMA Floodplain Management Bulletin P-2140, as amended.

(3) Structures shall constitute a minimal investment not to exceed 576 square feet in size, one-story in height, and shall only be used for parking and storage, except as provided under Section 50-18.1.C.4(b)(iii)(5).

(4) Structures with two or more rigid walls, must meet one of the following construction methods:

(a) Wet Floodproofing.

Structures may be floodproofed in a way to accommodate internal flooding. To allow for the equalization of hydrostatic pressure, there shall be a minimum of two openings on at least two sides of the structure and the bottom of all openings shall be no higher than one foot above grade. The openings shall have a minimum net area of not less than one square inch for every square foot of enclosed area subject to flooding, and shall allow automatic entry and exit of floodwaters without human intervention. Portions of structures below the RFPE must be constructed of flood damage-resistant materials. Utilities must be elevated above the RFPE and any utility lines below the RFPE shall be constructed so as to prevent floodwaters from entering or accumulating within them. Wet floodproofed structures must be anchored to resist flotation, collapse, and lateral movement.

(b) Elevation on Fill.

Structures may be elevated on fill, meeting the standards in Section 50-18.1.C.4(b)(i). Fill is not required to be extended 15 feet beyond the outside limits of the structure.

(c) Alternative Elevation Methods.

Structures may have their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) through methods alternative to the fill standards in Section 50-18.1.C.4(b)(iii)(4)(b), and must meet the standards in Section 50-18.1.C.4(b)(ii)(2).

(d) Dry Floodproofing.

Structures may be dry-floodproofed, or watertight, meeting the standards in Section 50-18.1.C.4(b)(ii)(3).

(5) Structures with fewer than two rigid walls, such as carports, gazebos, and picnic pavilions, meeting the standards in Section 50-18.1.C.2(b)(i) may be located at an elevation below the Regulatory Flood Protection Elevation, exceed 576 square feet in size, and may include uses as provided under Section 50-18.1.C.4(a).

(iv) Any facilities where regular employment occurs or that are used by the general public must be designed with a flood warning system that provides adequate time for evacuation, or be designed to ensure that within the area inundated during the base flood event, the depth (in feet) multiplied by the velocity (in feet per second) is less than four.

(v) Manufactured homes and recreational vehicles must meet the standards of Section 50-20.1.F and Section 50-20.1.Q, respectively.

(c) Special Uses in Flood Fringe.

The following uses and activities may be permitted as special uses, subject to the standards in Section 50-18.1.C.4(d):

(i) Alternative Elevation Methods - Residential Structures.

Residential structures with their lowest floor elevated above the Regulatory Flood Protection Elevation (RFPE) using methods alternative to the fill requirements in Section 50-18.1.C.4(b)(i).

(d) Standards for Special Uses in Flood Fringe.

In addition to the applicable standards detailed in Section 50-18.1.C.2, :



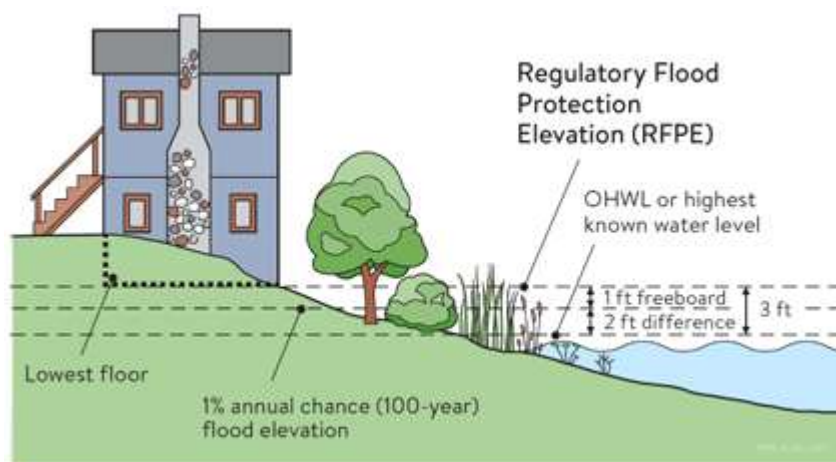
- (i) All residential structures with lowest floors elevated through alternative elevation methods must meet the standards in Section 50-18.1.C(b)(ii)(2).
  - (ii) The use or development must conform to the underlying zone district.
  - 5. General Floodplain District
  - (a) Permitted Uses in General Floodplain District
  - (i) Until the floodway is delineated, allowable uses and applicable standards will follow those listed in the Floodway District, Section 50-18.1.C.3
  - (ii) All other uses are subject to a floodway/flood fringe determination as provided in Section 50-18.1.C.5(d), in addition to the standards provided in Section 50-18.1.C.5(b) and Section 50-18.1.C.5(c). Permitted uses shall be determined as follows:
    - (1) If the development is determined to be in the Floodway District, Section 50-18.1.C.3 applies.
    - (2) If the development is determined to be in the Flood Fringe District, Section 50-18.1.C.4 applies.
  - (b) Determining Flood Elevations
  - (i) All development requires a determination of the Base Flood Elevation (BFE).
  - (1) Proposed developments of more than 50 lots or 5 acres, whichever is lesser, must use detailed methods for determining the BFE. This may include use of supporting A Zone modeling and the “shoreland method”, when eligible, on lakes.
  - (2) Exceptions to this requirement include projects that restore the site to the previous cross-sectional area, such as shore stabilization or culvert replacement projects. Base Flood Elevations (BFE) may be found using best available data from any Federal or State sources (including MNDNR’s Lake & Flood Elevations Online (LFEO) Viewer).
  - (c) Encroachment Analysis
  - (i) Encroachments due to development may not allow stage increases more than one-half (0.5) foot at any point, unless through a map revision following the procedures in Section 50-18.1.C.8(d) and Section 50-18.1.C.10. This evaluation must include the cumulative effects of previous encroachment and must be documented with hydrologic and hydraulic analysis performed by a professional engineer, or using other standard engineering practices. If increased flood damages would occur, due to the water surface level increase, then a stage increase less than one-half (0.5) feet is required.
  - (ii) Alterations or changes that result in stage decreases are allowed and encouraged.
  - (d) Standards for the Analysis of Floodway Boundaries
  - (i) Requirements for Detailed Studies.
- Any development, as requested by the Land Use Supervisor, shall be subject to a detailed study to determine the limits of the Floodway District. This determination must be consistent with the minimum standards for hydrologic and hydraulic mapping standards and techniques, as detailed in Minnesota Rules, part 6120.5600, Subp. 4 and FEMA Guidelines and Standards for Flood Risk Analysis and Mapping, as revised. Additionally:
- (1) A regulatory floodway necessary to carry the discharge of the one-percent annual chance flood must be selected without increasing the water surface elevation more than one-half (0.5) foot at any point. This determination should include the cumulative effects of previous encroachments. A lesser water surface elevation increase than one-half (0.5) foot is required if, due to the water surface level increase, increased flood damages would potentially result; and
  - (2) An equal degree of encroachment on both sides of the stream within the reach must be assumed in computing floodway boundaries, unless topography, existing development patterns, and comprehensive land use plans justify a modified approach, as approved by the Department of Natural Resources.
- (e) Other Acceptable Methods.
- For areas where a detailed study is not available or not required:
- (i) Development prohibited in floodways (e.g. most buildings) requires a floodway/flood fringe determination to verify the development is within the flood fringe. This determination must be done by a professional engineer or utilize other accepted engineering practices. The Department of Natural Resources may also provide technical assistance and must approve any determinations made via methods alternative to those described in Sec 50-18.1.C.5(d) to determine floodway boundaries.
  - (ii) For areas where the floodway has not been determined in and along lakes, wetlands, and other basins, the following methodology may be used as an alternative to Item A above, provided these areas are not affected by velocities and the lot is able to accommodate a building site above the Regulatory Flood Protection

Elevation (RFPE):

(1) All areas that are at or below the ordinary high-water level, as defined in Minnesota Statutes, section 103G.005, Subd. 14, will be considered floodway, and all areas below the Base Flood Elevation (BFE) but above the ordinary high-water level will be considered flood fringe, provided that within 25 feet of the ordinary high water level, or within the Shore Impact Zone, whichever distance is greater, land alterations shall be restricted to:

(a) The minimum required to accommodate beach areas, access areas, and accessory structures as permitted, not to exceed a volume greater than 10 cubic yards; projects involving volumes exceeding 10 cubic yards require floodway/flood fringe determination in accordance with the procedures in Section 50-18.1.C.5(e) (i); and

(b) The minimum required to accommodate shoreline stabilization projects to correct an identified erosion problem as verified by a qualified resource agency or the Land Use Supervisor.



**Figure 50-18.1.C-5**

6. Coastal District

(a) Permitted Uses in the Coastal District.

The following uses and activities may be allowed with a permit if they are allowed within the applicable underlying zoning districts, subject to the standards in Section 50-18.1.C.6(c):

(i) Within V Zones: Agricultural uses, recreational uses, parking lots, loading areas, airport landing strips, water control structures, navigational facilities, ecological restoration projects, as well as public open space uses.

(ii) Within coastal AE Zones: Any uses or activities allowed in any applicable underlying zoning districts may be allowed with a permit, subject to the standards set forth in Section 50-18.1.C.4(b) (Flood Fringe District).

(b) Special Uses in the Coastal District.

The following uses and activities may be permitted as special uses if they are allowed within the applicable underlying zoning districts, subject to the standards in Section 50-18.1.C.6(c):

(i) Within V Zones: Any new construction and substantial improvements of structures, including manufactured homes, permitted in any applicable underlying zoning districts are allowed provided they meet the provisions of Section 50-18.1.C.2 and Section 50-18.1.C.6(c).

(ii) Within coastal AE Zones: Special uses within the coastal AE zone are regulated pursuant to the provisions contained within Section 50-18.1.C.4(c) (Flood Fringe District - Special Uses).

(c) Standards for Permitted & Special Uses in the Coastal District.

(i) Within coastal AE Zones: Standards in Section 50-18.1.C.4(b) Flood Fringe District apply.

(ii) Within coastal V Zones:

(1) All new construction and substantial improvements of structure, shall be placed landward of the Ordinary High Water Line of Lake Superior, and be elevated on pilings or columns so that:

(a) The bottom of the lowest horizontal structural member supporting the lowest floor (excluding the pilings or columns) is elevated to or above the regulatory flood protection elevation, and

(b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components.

Water loading values used shall be those associated with the base flood.

Wind loading values shall be those defined according to American Society of Civil Engineers 7-13, as amended, Minimum design loads and associated criteria for buildings and other structures or those established by the State Building Code in MN Rules 1303.2200 or current version adopted by the Minnesota Department of Labor and Industry.

A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice meeting the provisions of this Sec 50-18.1.C.

(2) All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.

(a) For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot.

(b) Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions: Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Water loading values used shall be those associated with the base flood. Wind loading values shall be those established by the State Building Code. Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

(c) All space enclosed by breakaway walls, open wood lattice-work, or insect screening below the lowest floor shall be used solely for parking of vehicles, building access, or storage.

(3) The use of fill for structural support of buildings is prohibited.

(4) The man-made alteration of sand dunes, which would increase potential flood damage, is prohibited.

(5) In zones V or VE, new or substantially improved above ground gas or liquid storage tanks shall be elevated with the bottom of the lowest horizontal supporting member above RFPE on the landward side of buildings.

(6) In zones V or VE, new or substantially improved underground gas or liquid storage tanks must be installed below the lowest eroded ground elevation.

7. Public and private utilities, service facilities, roads, bridges, and railroads

(a) Public Transportation Facilities.

Railroad tracks, roads, and bridges must be elevated to the Regulatory Flood Protection Elevation (RFPE) where such facilities are essential to the orderly functioning of the area, or where failure or interruption would result in danger to public health or safety. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety. All public transportation facilities shall be designed to minimize increases in flood elevations.

(b) Public Utilities.

All utilities such as gas, electrical, sewer, and water supply systems to be located in the floodplain must be elevated and/or floodproofed to the Regulatory Flood Protection Elevation (RFPE), be located and constructed to minimize or eliminate flood damage, and be designed to eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. All public utilities should be designed to minimize increases in flood elevations. New solid waste management facilities, as defined in Minnesota Rules, part 7035.0300, are prohibited in the one-percent annual chance floodplain. Water supply systems are subject to the provisions in Minnesota Rules, part 4725.4350.

(c) Private On-Site Water Supply, Individual Sewage Treatment Systems, and other Service Facilities. Private facilities shall be subject to applicable provisions detailed in Section 50-18.1.C.7(b). In addition, new or replacement on-site sewage treatment systems are to be located to avoid impairment to them or contamination from them during times of flooding, shall not be located in a designated floodway, and are subject to the provisions in Minnesota Rules, part 7080.2270.

8. Administration

(a) For duties that apply to floodplain administration, see Section 50-36.4.

(b) For permit application requirements that apply to floodplain administration, see Section 50-37.13.D.4.

(c) Recordkeeping.

The building official must maintain applicable records in perpetuity documenting:

(i) All certifications for dry floodproofing, alternative elevation methods, and construction in Coastal Districts, where applicable.

(ii) Analysis of no-rise in the Floodway District, as detailed in Section 50-18.1.C.3(b)(i), and encroachment analysis ensuring no more than one-half foot of rise in the General Floodplain District, as detailed in Section 50-18.1.C.5(b)(i)(2) and Section 50-18.1.C.5(c)(i).

(iii) Final elevations, as applicable, detailing the elevation to which structures and improvements to structures are constructed or floodproofed. Elevations shall be determined by an engineer, architect, surveyor or other qualified individual, as approved by the Building Official. In V Zones, the final elevations must be determined by a professional engineer or architect.

(iv) Substantial damage and substantial improvement determinations, as detailed in Section 50-38.2.B.1(c), including the cost of improvements, repairs, and market value.

(v) The Land Use Supervisor must maintain a record of all variance actions, including justification for their issuance, and must report such variances to the commissioner or the commissioner's designated representative and postmarked within ten days of final action or when requested by the Federal Emergency Management Agency.

(d) Certificate of Occupancy for a New, Altered, or Nonconforming Use.

No building or structure may be occupied or used in any manner until a certificate of occupancy has been issued by the Building Official stating that the finished fill and building floor elevations or other flood protection measures are in compliance with the requirements of this Section.

(e) Notifications for Watercourse Alterations.

Before authorizing any alteration or relocation of a river or stream, the Land Use Supervisor must notify adjacent communities. If the applicant has applied for a permit to work in public waters in accordance with Minnesota Statutes, Section 103G.245, this will suffice as adequate notice. A copy of the notification must also be submitted to FEMA.

(f) Notification to FEMA When Physical Changes Increase or Decrease Base Flood Elevations.

Where physical changes affecting flooding conditions may increase or decrease the water surface elevation of the base flood, the City must notify FEMA of the changes in order to obtain a Letter of Map Revision (LOMR), by submitting a copy of the relevant technical or scientific data as soon as practicable, but no later than six months after the date such supporting information becomes available. Within the General Floodplain District, a map revision is only required if physical changes result in stage increases greater than 0.5 feet.

9. Violations and Penalties.

(a) Enforcement.

Violations of the provisions of this Section constitutes a misdemeanor and is punishable as defined by law. The Land Use Supervisor may utilize the full array of enforcement actions available to them including, but not limited to, those outlined in Sec 50-39.2, or a request to the National Flood Insurance Program for denial of flood insurance. The City of Duluth must act in good faith to enforce these official controls and to correct ordinance violations to the extent possible so as not to jeopardize its eligibility in the National Flood Insurance Program.

10. Amendments

(a) Ordinance Amendments.

Any revisions to the floodplain maps by the Federal Emergency Management Agency or annexations of new map panels require an ordinance amendment to update the map references in Section 50-18.1.A.2(b).

(b) Required Approval.

All amendments to this section must be submitted to the Department of Natural Resources for review and approval prior to adoption, for compliance with state and federal rules and requirements.

11. Severability.

See Section 50-12.

Section 3: That Section 50-20.1.F of the Duluth City Code, 1959, be repealed and replaced as follows:

F. Manufactured home park

Manufactured homes and manufactured home parks are subject to applicable standards for each floodplain district. In addition:

1. New and replacement manufactured homes must be placed and elevated in compliance with Section 50-18.1.C.4 or Section 50-18.1.C.6, as applicable, of this Chapter and must be securely anchored to a system that resists flotation, collapse and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

2. New manufactured home parks and expansions to existing manufactured home parks must meet the appropriate standards for subdivisions below.

(a) All lots within floodplain districts must be suitable for a building site outside of the floodway.

(b) Subdivision of lands within the floodplain districts may not be approved if the cost of providing governmental services would impose an unreasonable economic burden on the City of Duluth.

(c) All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been formulated and submitted for review with the application.

(d) The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents.

3. Within the coastal V Zone, the placement or substantial improvement of manufactured homes shall comply with the provisions of Section 50-18.1.C.6(c)(ii)(1-4).

Section 4: That Section 50-20.3.Q of the Duluth City Code, 1959, be repealed and replaced as follows:

Q. Recreational vehicle (RV) park

New recreational vehicle parks or campgrounds and expansions to existing recreational vehicle parks or campgrounds are prohibited in any floodplain district. Recreational vehicles placed in existing recreational vehicle parks, campgrounds or lots of record in the floodplain must either:

1. Meet the requirements for manufactured homes in Sec 50-20.1.F, or

(a) Be travel ready, meeting the following criteria:

(i) The vehicle must be fully licensed.

(ii) The vehicle must be ready for highway use, meaning on wheels or the internal jacking system, attached to the site only by quick disconnect type utilities.

(iii) No permanent structural type additions may be attached to the vehicle.

(iv) Accessory structures may be permitted in the Flood Fringe District,

provided they do not hinder the removal of the vehicle should flooding occur, and meet the standards outlined in Section 50-18.1.C.2 and Section 50-18.1.C.4(b)(iii).

(b) Within Coastal V zones, recreational vehicles must meet the criteria within Sec 50-20.1.Q.1(a) or otherwise comply with the provisions of Section 50-18.1.C.6(c)(ii)(1-4).

Section 5: That Section 50-33.2.D of the Duluth City Code, 1959, be amended as follows:

D. At a minimum, the lands included in the plat or survey shall be designed so that all developable parcels can be developed in compliance with the requirements of:

1. Section 50-18.1, Natural resources overlay district, which identifies areas subject to flood plain, shorelands and wetland constraints, and stormwater and erosion control;

(a) If located in a floodplain, proposed developments of more than 50 lots or 5 acres, whichever is lesser, must meet the requirements of Section 50-18.1.C.5(b)(i).

2. Section 50-18.4, Skyline Parkway overlay district, which identifies constraints on the location of structures and fences on lands located within 200 feet downhill of Skyline Parkway;

Section 6: That Section 50-35-1 of the Duluth City Code, 1959, be amended as follows:

That Section 50-35-1: Procedures Summary Table is amended as shown in Attachment 1.

Section 7: That Section 50-37.5.C.1 of the Duluth City Code, 1959, be amended as follows:

50-37.5

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 or 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;
- (d) All lots within floodplain districts must be suitable for a building site outside of the floodway.
- (e) The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents.

Section 8: That Section 50-37.5.D.1 of the Duluth City Code, 1959, be amended as follows:

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.
- (e) All lots within floodplain districts must be suitable for a building site outside of the floodway.
- (f) All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been formulated and submitted for review with the application.
- (g) The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents.

Section 9: That Section 50-37.5.G.5 of the Duluth City Code, 1959, be amended as follows:

G. Subdivision plat preliminary procedure.

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; and

(g) All lots within floodplain districts must be suitable for a building site outside of the floodway.

Section 10: That Section 50-37.5.I.5 of the Duluth City Code, 1959, be amended as follows:

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;

(g) All lots within floodplain districts must be suitable for a building site outside of the floodway;

(h) All subdivisions must have vehicular access both to the subdivision and to the individual building sites no lower than two feet below the Regulatory Flood Protection Elevation (RFPE), unless a flood warning/emergency evacuation plan has been formulated and submitted for review with the application; and

(i) The floodplain boundary, including the Floodway and Flood Fringe District boundaries, if determined, the Regulatory Flood Protection Elevation (RFPE) and the required elevation of all access roads must be clearly identified on all required subdivision drawings and platting documents.

Section 11: That Section 50-37.9.K of the Duluth City Code, 1959, be repealed and replaced as follows:

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 following limitations:

Variances must not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

1. Variances from the provisions of Section 50-18.1.C may only be issued upon:

(a) 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 from the provisions of Section 50-18.1.C may only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(c) A determination that failure to grant the variance would result in exceptional hardship to the applicant.

(d) A showing of good and sufficient cause.

2. Variances must be consistent with the general purpose of these standards and the intent of applicable provisions in state and federal law.

3. Variances may be used to modify permissible methods of flood protection, but no variance shall permit a lesser degree of flood protection than the Regulatory Flood Protection Elevation (RFPE).

4. The Land Use Supervisor must notify the applicant for a variance in writing 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) Such construction below the base flood level increases risks to life and property. Notification must be maintained with a record of all variance actions.

5. The following are additional considerations when granting variances:

(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 safety of access to the property in times of flood for ordinary and emergency vehicles.

6. Land Use Supervisor or Planning Commission may attach such conditions to the granting of variances

as it deems necessary to fulfill the purposes of this subsection K and Section 50-18.1.C. Such conditions may include, but are not limited to, the following:

- (a) Limitations on period of use, occupancy, and operation.
- (b) Imposition of operational controls, sureties, and deed restrictions.
- (c) The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
- (d) Other conditions as deemed appropriate by the Land Use Supervisor or Planning Commission.

Notifications to the Department of Natural Resources

- 1. All notices of public hearings to consider variances under this subsection K must be sent via electronic mail to the Department of Natural Resources respective area hydrologist at least ten (10) days before the hearings.
- 2. A copy of all decisions granting variances uses under this subsection K must be sent via electronic mail to the Department of Natural Resources respective area hydrologist within ten (10) days of final action.

Section 12: That Section 50-37.10.A of the Duluth City Code, 1959, be amended as follows:

A. Applications

An application for a special use or interim use shall be filed pursuant to Section 50.37.1.B; all applications for a special use in the floodplain shall be processed and reviewed in accordance with the provisions of Section 50-18.1(C).

Section 13: That Section 50-37.10.B of the Duluth City Code, 1959, be amended as follows:

B Procedures

- 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. The planning commission 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;
- 7. The City of Duluth must consider all relevant factors specified in other sections of this Chapter in granting special use permits.

8. Notifications to the Department of Natural Resources for Special Uses in Floodplains

(a) All notices of public hearings to consider special uses in floodplains identified in Section 50-18.1.C must be sent via electronic mail to the Department of Natural Resources respective area hydrologist at least ten (10) days before the hearings.

(b) A copy of all decisions granting special uses in floodplains identified in Section 50-18.1.C must be sent via electronic mail to the Department of Natural Resources respective area hydrologist within ten (10) days of final action.

Section 14: That Section 50-37.13.D.4 of the Duluth City Code, 1959, be amended as follows:

4. Flood plain permit.

No building or zoning permit for land within any floodplain, as identified in Sec 50-13.1.A.2(b), 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.

The permit application must include the following, as applicable:

(a) A site plan showing all existing or proposed buildings (with uses defined), structures, service facilities, potential obstructions, and pertinent design features having an influence on the permit. In V Zones, the plans must be prepared by a professional engineer or architect.

(b) Location and detail of grading (with land elevations noted), fill, or storage of materials.

(c) Copies of any required local, state or federal permits or approvals.

(d) Other relevant information requested by the Land Use Supervisor or Building Official as necessary to properly evaluate the permit application.

Section 15: That Section 50-38.2.B of the Duluth City Code, 1959, be repealed and replaced as follows:

B. Floodplains.

1. A structure or the use of a structure or premises located in a floodplain or flood fringe area as defined and shown in Section 50-18.1.C that was lawful before February 1, 1980, or before an amendment to the flood plain management regulations of Section 50-18.1.C, but that is not in conformity with the provisions of this Chapter may be continued subject to the following conditions.

(a) Within the floodway and general floodplain districts (when a site has been determined to be located in the floodway following the procedures in Section 50-18.1.C.5(c), or when the floodway has not been delineated), any expansion or enlargement of uses or structures is prohibited.

(b) Within all districts, any addition, modification, rehabilitation, repair, or alteration shall be in conformance with the provisions of the Unified Development Chapter, shall not increase the flood damage potential or increase the degree of obstruction to flood flows, and where applicable, must be protected to the Regulatory Flood Protection Elevation (RFPE).

(c) If any nonconforming structure is determined to be substantially damaged or substantially improved based on the procedures in Section 50-38.2.B.2, it may not be reconstructed except in conformity with the provisions of this Chapter. Any structures located outside the one-percent annual chance floodplain are exempt from this provision.

(d) If any nonconforming use, or any use of a nonconforming structure, is discontinued for more than one year, any future use of the premises must conform to Section 50-18.1(C).

(e) If any nonconforming structure has utilities, electrical, or mechanical equipment damaged due to flooding, it must be rebuilt in conformance with the elevation requirements in Section 50-18.1.C.2(b)(i)(4) to the greatest extent practicable. This requirement shall apply regardless of the determinations made in Section 50-38.2.B.2.

2. Substantial Improvement and Substantial Damage Determinations.

Prior to issuing any permits for additions, modifications, rehabilitations, repairs, alterations, or maintenance to nonconforming structures, the Building Official is required to determine if such work constitutes substantial improvement or repair of a substantially damaged structure. A determination must be made in accordance with the following procedures:

(a) Estimate the market value of the structure.

In the case of repairs, the market value of the structure determined by the county assessor shall be the market value before the damage occurred and before any restoration or repairs are made.

(b) Estimate the cost of the project.

The property owner shall accommodate for inspection, and furnish other documentation needed by the

Building Official to evaluate costs.

(i) Improvement costs shall be comprised of the market rate of all materials and labor, as well as the costs of all ordinary maintenance and upkeep carried out over the past one year.

(ii) Costs to repair damages shall be comprised of the market rate of all materials and labor required to restore a building to its pre-damaged condition regardless of the work proposed, as well as associated improvement costs if structure is being restored beyond its pre-damaged condition.

(c) Compare the cost of the improvement, repairs, or combination thereof to the estimated market value of the structure, and determine whether the proposed work constitutes substantial improvement or repair of a substantially damaged structure.

(i) For the purposes of determining whether the proposed work would constitute substantial improvement, the evaluation shall also include all rehabilitations, additions, or other improvements completed since the community has adopted floodplain standards impacting this structure.

(ii) If any nonconforming structure experiences a repetitive loss it shall be considered substantially damaged and must not be reconstructed except in conformity with the provisions of this Chapter.

(d) Based on this determination, the Building Official shall prepare a determination letter and notify the property owner accordingly. Structures determined to be substantially damaged or substantially improved may not be reconstructed except in conformity with the provisions of this Chapter.

Section 16: That the definition for Accessory use or structure be amended as follows in Section 50-41.1 of the Duluth City Code, 1959:

50-41.1 Definitions: A

**Accessory use or structure.** A use or structure subordinate in use, area or purpose to the principal use or structure on the same lot and serving a purpose naturally and normally incidental to the principal use or structure and that is not included in a separate definition of an accessory use or structure in this Chapter. Where an accessory building is attached to the principal building in a substantial manner by a wall or a roof, it shall be considered part of the principal building. An accessory building or use may be permitted on a lot of record that abuts or is separated by a public easement of no more than 25 feet in width to another lot or lots on which the primary use is located, provided all lots are owned by the same owner and none of the parcels are severed, legally sold, conveyed, or used without the other parcels. Examples include but are not limited to: pet houses, storage sheds, swimming pools, garages, accessory uses and structures for energy conservation and renewable energy production, and accessory structures for stormwater management and water conservation. Accessory structures proposed in the Special Flood Hazard Area, as defined within this section, shall be subject to the standards of Section 50-18.1.C.

Section 17: That the new definitions for Base Flood, Base Flood Elevation, and Breakaway wall be added to Section 50-41.2 of the Duluth City Code, 1959 as follows:

50-41.2 Definitions: B

**Base Flood.** The flood having a one-percent chance of being equaled or exceeded in any given year. "Base flood" is synonymous with the term "regional flood" used in Minnesota Rules, part 6120.5000.

**Base Flood Elevation (BFE).** The elevation of the base flood, regional flood, or one-percent annual chance flood. The term "base flood elevation" is used in the flood insurance study.

**Breakaway wall.** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Section 18: That the definitions of Basement and Building be amended as follows in Section 50-41.2 of the Duluth City Code, 1959:

50-41.2 Definitions: B

**Basement.** Any area of a structure, including crawl spaces, having its floor or base subgrade below ground level on all four sides, regardless of the depth of excavation below ground level.

**Building.** Any structure designed or built for the support, enclosure, shelter or protection of persons, animals, chattels or property of any kind, and when separated by party or division walls without openings, each portion of such building so separated shall be deemed a separate building. For floodplain management and flood hazard purposes, the term "building" shall be used synonymous with "structure" as defined in this section.

Section 19: That the new definitions for Coastal A Zone, Coastal High Hazard Area, and Critical Facilities be added to Section 50-41.3 of the Duluth City Code, 1959 as follows:

50-41.3 Definitions: C

**Coastal A Zone.** A special flood hazard area subject to the potential for breaking wave heights of greater than or equal to 1.5 feet, but less than 3 feet. The area will be identified on a FIRM as Zone AE, and located between the inland limit of Zone VE and the Limit of Moderate Wave Action (LiMWA).

**Coastal High Hazard Area.** An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast, and any other area subject to high velocity wave action from storms or seismic sources.

**Critical Facilities.** Buildings and structures that contain essential facilities and services necessary for emergency response and recovery, or that pose a substantial risk to the public in the event of failure, disruption of function, or damage by flooding. Examples include (1) hospitals and health care facilities having surgery or emergency treatment facilities; (2) fire, rescue, ambulance, and police stations and emergency vehicle garages; (3) designated emergency shelters; (4) designated emergency preparedness, communication, and operation centers and other facilities required for emergency response.

Section 20: That the definitions for Equal degree of encroachment be amended as follows in Section 50-41.5 of the Duluth City Code, 1959:

50-41.5 Definitions: E

**Equal degree of encroachment.** In the context of flood related regulation, a method of determining the location of encroachment lines so that flood plain lands on both sides of a stream are capable of conveying a proportionate share of flood flows. This is determined by considering the effect of encroachment on the hydraulic efficiency of the flood plain along both sides of a stream for a significant reach. a method of determining the location of floodway boundaries so that floodplain lands on both sides of a stream are capable of conveying a proportionate share of flood flows.

Section 21: That the definitions for Flood, Flood frequency, Flood fringe, Flood peak, Flood plain, Flood profile, Floodproofing, and Floodway be amended as follows in Section 50-41.6 of the Duluth City Code, 1959:

50-41.6 Definitions: F

**Flood.** A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas. A temporary rise in the stream flow or water surface elevation from any source that results in the inundation of normally dry land areas.

**Flood frequency.** The frequency for which it is expected that a specific flood stage or discharge may be equaled or exceeded.

**Flood fringe.** That portion of the flood plain outside of the floodway. Flood fringe is synonymous with "floodway fringe." The portion of the floodplain located outside the floodway. This includes areas mapped as one-percent annual chance floodplain.

**Flood hazard area.** The areas identified as flood plain, floodway, or flood fringe at or below the flood protection elevation.

**Flood peak.** The highest value of stage or discharge attained during a flood event; thus peak stage or peak discharge.

**Flood plain.** The beds proper and the areas adjoining a wetland, lake, or watercourse that have been or may in the future be covered by a regional flood. The beds, channel and the areas adjoining a wetland, lake or watercourse, or other source which have been or hereafter may be inundated by the base flood.

**Flood profile.** A graph or a longitudinal plot of water surface elevations of a flood event along a reach of a stream or river.

**Floodproofing.** A combination of structural provisions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages. A combination of structural and non-structural additions, changes, or adjustments to properties and structures subject to flooding, primarily for the reduction or elimination of flood damages.

**Floodway.** The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain that are reasonably required to carry and store the regional flood discharge. floodplain which must be reserved to carry or store the base flood discharge without cumulatively increasing the water surface elevation more than one-half foot.

Section 22: That the new definitions for FEMA, Flood Insurance Rate Map, and Flood Insurance Study be added to Section 50-41.6 of the Duluth City Code, 1959 as follows:

50-41.6 Definitions: F

**FEMA.** Federal Emergency Management Agency.

**Flood Insurance Rate Map (FIRM).** An official map on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

**Flood Insurance Study (FIS).** The study referenced in Section 50-18.1.A.2(b), which is an examination, evaluation and determination of flood hazards, and if appropriate, corresponding surface elevations, or an examination, evaluation, and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards. Section 23: That the definition for General floodplain be amended as follows in Section 50-41.7 of the Duluth City Code, 1959:

50-41.7 Definitions: G

**General floodplain.** The area within a flood plain on the flood insurance rate map and on the flood boundary and floodway map adopted in Section 50.18.1.C that does not have a delineated floodway or flood fringe. Those floodplains designated on the Flood Insurance Rate Maps referenced in Section 50-18.1.A.2(b), that are not VE or V zones, and that do not have a delineated floodway.

Section 24: That the new definitions for Limit of Moderate Wave Action be added to Section 50-41.12 of the Duluth City Code, 1959 as follows:

50-41.12 Definitions: L

**Limit of Moderate Wave Action (LiMWA).** A line shown on a Flood Insurance Rate Map to indicate the inland limit of the 1.5-ft breaking wave height during the base flood.

Section 25: That the definition for Lowest floor be amended as follows in Section 50-41.12 of the Duluth City Code, 1959:

50-41.12 Definitions: L

**Lowest floor.** The lowermost floor of the lowest enclosed area, including basement and crawl space. The lowest floor of the lowest enclosed area (including basement). In the context of flood related regulation, an unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR § 60.3.

Section 26. That the new definitions for New Construction be added to Section 50-41.14 of the Duluth City Code, 1959 as follows:

50-41.14 Definitions: N

**New Construction.** In the context of floodplain requirements, structures for which the start of construction commenced on or after the effective date of an adopted floodplain management regulation and includes any subsequent improvements to such structures.

Section 27: That the definition for Regulatory flood protection elevation be amended as follows in Section 50-41.18 of the Duluth City Code, 1959:

50-41.18 Definitions: R

**Regulatory flood protection elevation.** An elevation corresponding with a point not less than two feet above the water surface profile associated with the regional flood plus any increases in flood stages attributable to encroachments on the flood plain. Within an A-O zone, as shown on the flood insurance rate map adopted in Section 18.1.A.2(b), an elevation above the highest adjacent grade of an existing or proposed structure equivalent to two feet plus the depth number in feet specified on the flood insurance rate map. An elevation that is two feet above the elevation of the base flood plus any increases in the water surface elevation caused by encroachments on the floodplain that result from designation of a floodway. These increases in water surface elevations are typically identified in the Floodway Data Tables, found in the Flood Insurance Study.

Section 28: That the new definition of Repetitive Loss be added to Section 50-41.18 of the Duluth City Code, 1959 as follows:

50-41.18 Definitions: R

**Repetitive Loss.** Flood related damages sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of each such flood event on the average equals or exceeds 25% of the market value of the structure before the damage occurred.

Section 29: That the definitions for Solid land, Structure, Subdivision, Substantial damage, and Substantial improvement be amended as follows in Section 50-41.19 of the Duluth City Code, 1959:



50-41.19 Definitions: S

**Solid land.** Any land that is neither a wetland nor located in a floodway.

**Structure.** Anything constructed or erected, the use of which requires a location on the ground, or attached to some thing having a location on the ground. Examples include but are not limited to: backstops for tennis courts, fences or pergolas. For flood plain management and flood hazard purposes only, a structure shall be defined as: A roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Recreational vehicles not considered travel ready, as detailed in Section 50-20.1.Q.1 (a), shall also be considered a structure for the purposes of this Chapter.

**Subdivision.** The division of a lot, tract or parcel of land into three or more lots, plats, sites or other divisions of land of one acre or less in area, for the purpose, whether immediate or future, of sale, rent, lease, or of building development. This term also includes the division of a lot, tract or parcel of land into two or more lots, plat, sites or other divisions of land of more than one acre and less than ten acres in area, if the division provides or there is shown on a plat of the division a new street or highway. The term also includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided. The division of a lot, tract or parcel of land into two or more lots, tracts, plats, sites or other divisions of land. The term also includes resubdivision or replatting.

**Substantial damage.** Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 60 percent of the assessed market value of the structure as determined by the St. Louis County Asector before the damage occurred. For flood plain management and flood hazard purposes, substantial damage shall occur when damage of any origin sustained by a structure, where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the assessed market value of the structure as determined by the St. Louis County Asector before the damage occurred. Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial improvement.** Within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition or other improvement of a structure, the cost of which equals or exceeds 60 percent of the assessed market value of the structure as determined by the city assessor before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. For flood plain management and flood hazard purposes, substantial improvement shall be within any consecutive 365-day period, any reconstruction, rehabilitation (including normal maintenance and repair), repair after damage, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the assessed market value of the structure as determined by the city assessor before the “start of construction” of the improvement. The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;

(b) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this Chapter, “historic structure” shall be as defined in 44 Code of Federal Regulations, Part 59.1. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

(a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.” For the purpose of this Chapter, “historic structure” is defined in 44 CFR § 59.1.

Section 30 That the new definitions of Special flood hazard area, State Increase, and Start of Construction be added to Section 50-41.19 of the Duluth City Code, 1959 as follows:

50-41.19 Definitions: S

**Special flood hazard area (SFHA).** An area having special flood, mudslide (i.e., mudflow), or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, A99, AH, VO, V1-30, VE, V, M, or E.

**Stage Increase.** Any increase in the water surface elevation during the one-percent annual chance flood caused by encroachments on the floodplain.

**Start of Construction.** Includes substantial improvement, and means the date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Section 31: That the new definition of Truck, Light Duty be added to Section 50-41.20 of the Duluth City Code, 1959 as follows:

50-41.20 Definitions: T

**Truck, Light Duty.** Any motor vehicle that has all three of the following: (a) 8,500 pounds Gross Vehicle Weight Rating or less; (b) vehicle curb weight of 6,000 pounds or less; and (c) basic vehicle frontal area less than 45 square feet.

Section 32: That the new definition of Water Control Structure be added to Section 50-41.23 of the Duluth City Code, 1959 as follows:

50-41.23 Definitions: W

**Water Control Structure.** A water management system that conveys water, controls the direction or rate of flow, or maintains a desired water surface elevation.

STATEMENT OF PURPOSE: This ordinance amends the zoning regulations to be compliant with FEMA standards allowing the City to remain a participating community in the National Flood Insurance Program. The amended standards also reduce risk, both personal and property, to the community and supports the public interest through sound land use practices.

The planning commission held a public hearing for PLUTA-2412-0003 and considered the ordinance amendments at a Tuesday, February 11, 2025, planning commission meeting. Following discussion, the commission voted with 5 yeas, 0 nays, and 0 abstentions, to recommend that the city council approve the proposed text changes to the Unified Development Chapter of the City Code.

PLUTA-2412-0003