



Nancy Harris, Mayor
Jamin Harkness, Post 1
Marline Thomas, Post 2

Lamar Doss, Post 3
Manfred Graeder, Post 4
Greg Whitlock, Post 5

**AGENDA
MAYOR AND COUNCIL
CITY OF DULUTH, GA
3167 Main Street
Duluth, GA 30096**

DECEMBER 11, 2023	CITY HALL COUNCIL CHAMBERS	6:00 pm
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***The leaders and staff of the City of Duluth are dedicated to ensuring that Duluth is:
an Attractive Destination, a Quality Community, a World Class Government,
and promotes a Sustainable Economic Environment.***

5:30 P.M. – AGENDA REVIEW Main St. Conference Room

6:00 P.M. - CALL TO ORDER Mayor Harris or Mayor Pro tem Thomas

INVOCATION OR MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

I. ANNOUNCEMENTS

1. AGENDA CHANGES (IF NECESSARY)
2. UPCOMING EVENTS – www.duluthga.net/events

Cookies & Cocoa with Santa, December 16. 10am-12pm. Duluth Festival Center. This event is designed to give our little ones a chance to tell Santa their last few wishes for Christmas. Arts and crafts are available for the kids (while supplies last), and children can bring letters to Santa to take back to the North Pole!

PLEASE NOTE: *This and other City meetings may be audio and/or videotaped for broadcast, transcription and/or archival purposes. As set forth in the Americans with Disabilities act (ADA) of 1990, the City of Duluth government does not discriminate on the basis of disability in the admission or access to or treatment of employment in its programs or activities, and complies with the requirements contained in section 35.107 of the Department of Justice regulations. All agenda packets may be converted to WCAG 2.0 compatibility format by emailing agenda@duluthga.net. In addition, any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program, or activity of the City of Duluth government should be made seven days prior to the event. Direct inquiries to the ADA Coordinator in the City Clerk office, located at 3167 Main Street, Duluth, GA. 30096, or by telephone at 770.476.3434.*

Frosty Fun Downtown Duluth.

December 19 & 20 - Snow Mazing, 2pm-8pm each day

December 21 & 22 - Toboggan Tunnel, 2pm-8pm each day

December 23 - Toboggan Tunnel, 2pm-7pm

December 27 - Snow Playground, 2pm-5pm

December 28 - Snow Slide, 4pm-6pm

December 29 & 30 - Inflatable Wonderland Story Walk, 12pm-8pm each day

December 31 - Noon Years Eve, 11am-1pm

January 2 - Jack Frost Magic, 4pm-7pm

January 2 - Live Ice Carving, 5pm-7pm

II. CEREMONIAL MATTERS

1. PROCLAMATION – DULUTH FALL FESTIVAL 40 YEARS

Mayor and Council will recognize the Duluth Fall Festival for 40 years of service to the City of Duluth.

2. PROCLAMATION – RICK CASE “BIKES FOR KIDS” DAY

Mayor and Council will present a proclamation to Tammy Baker and Mark Johnson to recognize Rick Case Bike for Kids.

III. MATTERS FROM CITIZENS

Maximum of five (5) minutes per person. Sign-up sheet available.

IV. CONSENT AGENDA

1. APPROVAL OF NOVEMBER 13 & 27 MINUTES

2. ORDINANCE TO AMEND THE DULUTH CODE

As discussed at the November 27, 2023 work session, staff proposes to revise the Municipal Code as it pertains to retaining wall heights and the need for permits, to be more consistent with the International Building Code (IBC). Approval of this item approves ordinance O2023-30 amending Section 5.29 to match the 4 foot maximum wall height which will align the City's code with the IBC in terms of permit requirements related to retaining walls.

3. ORDINANCE TO AMEND THE DULUTH CODE – ALCOHOL

Recommendations from the Alcohol Board and staff were discussed with the Mayor and Council during the November 27 work session. The City Attorney explained that most of the amendments for consideration were general

housekeeping items for clarification and moving certain subsections into the correct sections of the Code. In addition, language was added to assist Code Enforcement when issuing citations for presentation in court as well as updating language that aligns with state law. Approval of this ordinance approves ordinance O2023-31 to amend Chapter 3 of the Duluth Code as presented.

4. APPROVAL OF CONTRACT – CITY MANAGER

Approval of this item authorizes Mayor Harris to execute an amendment to the City Manager's Employment Agreement by amending Section 21 of the City Manager's contract regarding Notice of Delivery by adding language "or via hand delivery" further amending Section 10 Auto Allowance by increasing the per pay period allowance from \$500 to \$550; further extend the term of the contract until December 31, 2024.

5. BID AWARD – HVAC - RED CLAY THEATRE

Approval of this item awards the bid for the HVAC work at Red Clay Theatre to Lane Heating and Air in an amount not to exceed \$29,100 as discussed and authorized at the November 27 work session. *Budget amendment required.*

6. ORDINANCE TO AMEND BUDGET – HVAC & ICE MACHINE

At the November 27 work session, Lane Heating & Air was recommended to replace five (5) HVAC units at a cost of \$29,100 as well as the purchase of a commercial ice machine from ACity Discount at a cost of \$6,700. Accordingly, approval of this item approves budget amendment BA-FY24-16 to add \$35,800 in unallocated 2023 SPLOST Cultural Facilities fund to CA-10 Red Clay Theater - Special Recreational Facilities - Machinery line item, including associated transfers.

7. ORDINANCE TO AMEND FY23 BUDGET – ARPA FUNDS

The City received \$11,057,077 in American Rescue Plan Act (ARPA) federal funds and elected to claim the \$10 million standard allowance for lost revenue. In compliance with ARPA regulations, the City has reported police uniform salaries as lost revenue to document use of these funds for government services. For FY23, \$2,031,123.76 in police uniform salaries were reported as ARPA lost revenue. Accounting standards require funds be transferred from the ARPA Fund to the General Fund based on the salaries reported. Staff request approval of a budget amendment to add \$2,032,000 to American Rescue Plan Act 2021 - Other Financing Uses - Transfer to General Fund and American Rescue Plan Act 2021 - ARP Act of 2021 Local Fiscal Recovery Funds and General Fund - Transfer from ARPA 2021. Approval of this item approves BA-FY23-34 to amend the FY23 budget as presented.

8. ORDINANCE TO AMEND FY24 BUDGET – ARPA FUNDS

The City received \$11,057,077 in American Rescue Plan Act (ARPA) federal funds and elected to claim the \$10 million standard allowance for lost revenue. In compliance with ARPA regulations, the City is reporting police uniform salaries as lost revenue to document use of these funds for government services. For FY24, staff estimates \$2,760,000 in police uniform salaries will be reported as ARPA lost revenue. Accounting standards require funds be transferred from the ARPA Fund to the General Fund based on the salaries reported. Staff request approval of a budget amendment to add \$2,760,000 to American Rescue Plan Act 2021 - Other Financing Uses - Transfer to General Fund and American Rescue Plan Act 2021 - ARP Act of 2021 Local Fiscal Recovery Funds and General Fund - Transfer from ARPA 2021. Approval of this item approves BA-FY24-17 to amend the FY24 budget as presented.

V. PUBLIC HEARINGS

1. ORDINANCE OF- CASE Z2023-002 – RAINBOW VILLAGE

On November 6, 2023, Planning Commission heard and approved the rezoning case Z2023-002 for 3431 Duluth Highway. This parcel is proposed as an expansion of the adjacent Rainbow Village complex. Staff also recommends approval with conditions.

2. ORDINANCE OF SPECIAL USE – CASE SU023-008

On November 6, 2023, Planning Commission heard and approved the special use request SU2023-008 for 3585 Peachtree Industrial Blvd, Suite 157. The applicant proposed to use the space for a tobacco/vape shop, which is only permitted in this zoning classification with a special use permit. Staff also recommends approval with conditions.

3. 2040 COMPREHENSIVE PLAN UPDATE

The City of Community Development & Engineering staff has been working on a major update to the 2040 Comprehensive Plan, FORWARDuluth. For one month city staff has made a draft of the plan available for public review and comment. This presentation is the final opportunity for public input prior to submitting the plan to the Atlanta Regional Commission (ARC) for review. When ARC comments have been satisfied staff will bring forward a resolution to adopt the updated comprehensive plan.

VI. OLD BUSINESS

1. ORDINANCE TO AMEND THE CHARTER – 2ND READING

Per State Law, two readings of an ordinance to amend the City Charter must be presented before the Mayor and Council for consideration. The first reading was held and approved by the Mayor and Council at its regular meeting held November 13th. Approval of this item approves the 2nd reading of an ordinance to amend the Charter of the City of Duluth, Georgia, to repeal all laws or ordinances in conflict wherewith, and for other purposes.

Synopsis of Proposed Amendment:

- Section 1.13 (40)- Examples of Powers Taxicabs - regulations removed from under municipal and placed under State.
- Section 1.13 (23) Examples of Powers – Specific penalties, remove reference to Gwinnett County Health & Sanitation Ordinance.
- Section 2.18 – inserting “Mayor or” City Clerk.
- Section 4.14 – Certiorari - Superior and State court appellate act effective July 1, 2023, which now governs all appeals from Municipal Courts to State or Superior Court which in the past was handled by the Writ of Certiorari.
- Section 4.15 - Rules for Court. The Uniform Municipal Court Rules were approved by the Supreme Court of Georgia in 2010, and now govern all of the Municipal Court procedures.
- Removing where referenced “Georgia Municipal Election Code” and replacing with “Georgia Election Code.”

VII. NEW BUSINESS

1. BID AWARD - MAIN ST ENHANCED SIDEWALK – PHASE II

On October 5, 2023, the ad for the Main Street Enhanced Sidewalk, Phase II, was posted online and on the State Procurement Registry. On October 8, the ad started running in the Gwinnett Daily Post. On November 9, four proposal packages were received and opened, and the cost section of each was read allowed.

As advertised in the procurement documents, staff then evaluated the four submittals for completeness, cost, and qualifications. Scores were based on total cost (up to 70 points), written approach and project schedule (up to 25 points), and resumes and references (up to 5 points). Three independent evaluators reviewed the approach and schedule sections of each of the four submittals. The completeness reviews and reference checks were done by the City Engineer.

The scores are as follows:

- | | |
|-------------------------|------|
| - JHC Corporation: | 29.7 |
| - Ohmshiv Construction: | 79.0 |

- Vertical Earth:	92.3
- IP Construction:	95.3

Staff recommends awarding the contract to IP Construction in the amount of \$3,035,720.21. This includes the base bid and the add alternate (covering the landscaping of the enhanced green space at the corner of North and Main Streets, in the event the sewer project is complete in time for said landscaping).

2. ORDINANCE TO AMEND BUDGET - \$3,800,000 – MAIN ST PHASE II

With the approval of the awarding of the contract for the Main Street Enhanced Phase II project (CD-##), staff requests approval of a budget amendment to cover the following project costs:

Construction:	\$3,035,720.21
Contingency:	\$607,144.04 (20% for unforeseen circumstances)
Materials Testing:	\$67,158.00 (includes 20% contingency as well)
Construction Admin:	\$89,977.75

TOTAL BUDGET: \$3,800,000

This project is part of the City's 2017 SPLOST Intergovernmental Agreement (IGA) with Gwinnett County whereby the County pays 81% of the costs and the City pays the remaining 19% (plus any overage beyond the maximum IGA amount).

Council to consider approval of budget amendment BA-FY24-18 to add the following to the Main St Multi-Use Trail capital project budget: \$1,248,044 in Gwinnett County Joint funds; \$296,149 in unallocated 2017 SPLOST Transportation funds, and \$2,000,000 in unallocated 2023 SPLOST Transportation funds. The remaining funds for the project will come from the closing out of other transportation projects.

VIII. MATTERS FROM DEPT HEADS/CITY ATTORNEY

IX. MATTERS FROM COUNCIL

X. MATTERS FROM CITY MANAGER

XI. EXECUTIVE SESSION

It may be necessary to hold an executive session on Real Estate, Pending/Potential Litigation, or Personnel, which is properly excluded from the Georgia Open and Public Meeting Law (O.C.G.A. 50-14).

XII. ADJOURNMENT

The next scheduled meeting of the Mayor and Council is a work session for January 8, 2024 at 6:00 p.m.

PROCLAMATION



Duluth Fall Festival 40th Anniversary

- WHEREAS,** The Duluth Fall Festival began in 1983 and has always been held the last weekend in September for 40 years; and
- WHEREAS,** The Duluth Fall Festival is one of the most successful festivals in the southeast and has won many awards and recognitions. This included: County Living Magazine-Best Fall Festival in the U.S #5 2019, Best of Gwinnett-Best local Festival 2009-2022, Inside Gwinnett Magazine-Best Neighborhood Festival 2018, Gwinnett Daily Post-Best Festival 2018 & 2019; and
- WHEREAS,** all proceeds from the festival are used towards improving and beautifying Historic Downtown Duluth or to support non-profit organizations in Duluth; and
- WHEREAS,** the kickoff parade for the festival is the largest parade in Gwinnett County and has over 3,000 participants. The parade celebrates the people, school, organizations, and businesses that make Duluth everyone's hometown; and
- WHEREAS,** on Sunday morning there is a 5K race, the Duluth Donut Dash through Downtown Duluth that is an AJC Peachtree Road Race Qualifier and supports a local charity; and
- WHEREAS,** with the help of over four hundred volunteers the festival is planned and coordinated year-round and could not be done without their help, diligence and tireless effort.

NOW THEREFORE, I, NANCY HARRIS, MAYOR OF DULUTH, do hereby proclaim December 11, 2023, *Duluth Fall Festival Day* in the City of Duluth. Our strong and vibrant community is fortunate to have The Duluth Fall Festival here, helping to make Duluth a better place to live, work, play and call home for the past 40 years, and we commend you for a job well done.



Mayor Nancy Harris

ATTEST



Teresa Lynn, City Clerk



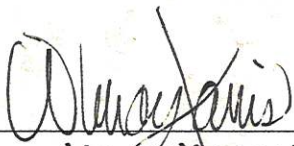
PROCLAMATION



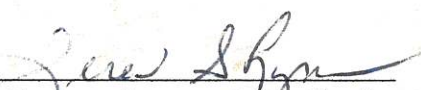
Rick Case "Bike for Kids" Day

- WHEREAS,** the "Bikes for Kids" program was started in 1982 by Rita & Rick Case in conjunction with local Boys and Girls Clubs and other charities, in an effort to collect and distribute bicycles to needy children in the area during the holiday season; and
- WHEREAS,** this program teaches a very valuable lesson about the joys of giving, and provides much-appreciated gifts for thousands of less fortunate children; and
- WHEREAS,** through this worthwhile program, thousands of bicycles are distributed to very deserving joyful new owners; and
- WHEREAS,** this contribution is significant in terms of effort and enhances the spirit of giving by all those participating in this project; and
- WHEREAS,** this is the celebration of the 41st anniversary of the Rick Case "Bike for Kids" program; and

NOW THEREFORE, I, NANCY HARRIS, MAYOR OF DULUTH, do hereby proclaim December 11, 2023, **RICK CASE "BIKES FOR KIDS" DAY** in the City of Duluth. We wish to commend the hard work and dedication exhibited by local charities, Rita & Rick Case and his staff, for their commitment to the ongoing success of this program. Additionally, I encourage our community to support this exceptional project in every way possible.


Mayor Nancy Harris

ATTEST:


Teresa Lynn, City Clerk





**DRAFT MINUTES OF THE
MAYOR AND COUNCIL
CITY OF DULUTH, GA
NOVEMBER 13, 2023**

PRESENT: Mayor Harris, Council members Harkness, Thomas, Doss, Graeder, and Whitlock, City Manager, Department Directors, City Attorney

A work session was held prior to the regular scheduled meeting to allow the elected officials to discuss this evening's agenda items. No other items were discussed and no action was taken.

Mayor Harris called the meeting to order at 5:40 pm.

I. EXECUTIVE SESSION

It was necessary to hold an executive session on Real Estate, Pending/Potential Litigation, or Personnel, which is properly excluded from the Georgia Open and Public Meeting Law (O.C.G.A. 50-14).

A motion was made by Councilmember Whitlock, seconded by Councilmember Thomas, to adjourn to executive session at 5:40 pm.

All for. Motion carried.

After the discussion, a motion was made by Councilmember Graeder, seconded by Councilmember Whitlock, to return to regular session at 5:55 pm.

All for. Motion carried.

MOMENT OF SILENCE – honoring Veterans.

Mayor Harris noted that Public Works installs over 800 Veteran's flags and markers and she receives many compliments on them.

PLEDGE OF ALLEGIANCE – led by veteran Councilmember Marline Thomas

II. ANNOUNCEMENTS

1. AGENDA CHANGES (none)
2. UPCOMING EVENTS – www.duluthga.net/events

Festival of Trees at SE Railroad Museum through December.

Duluth Live every Thursday & Friday 5-8pm and Sunday 4-7 pm through November. Live music & street performers in Parsons Alley and the Activity Lawn.

Duluth Farmers & Artisan Market every 2nd and 4th Sunday through November. 2pm-5pm.

Frosty Fun: Live Ice Carving - November 18 from 12-5pm. Parsons Alley
Ice Sculpture Inc. creates ice-cold wonders right before your eyes. Watch as they carve their frosty magic into an elf photo-op.

Frosty Fun: Roller Skating - November 18 & 19 from 2-6pm and Nov 20 from 4-8pm. Activity Lawn. Get ready to glide on ice-cold wheels!

Frosty Fun: Love the Butterfly - November 21 & 22 from 12-5pm. Town Green
Your favorite butterfly exhibit returns for Frosty Fun!

Frosty Fun: Mini Golf - November 24 from 2-8pm on the Activity Lawn
Enjoy a frosty twist on mini-golf with our 9-hole course on the new Activity Lawn.

Frosty Fun: Whoville Pop-Up - November 26 from 2-5pm in Parsons Alley
Join in the frosty fun with a Whoville Hair station (registration is required and will open on Nov 20), Grinch appearances, and frosty activities with Cindy Lou Who, including free temporary tattoos, photo ops, and crafts.

Deck the Hall, December 2, 2-7pm. Downtown Duluth. Live entertainment, crafts for the kids, a real snow playground and snow slide, photo ops with Santa and holiday light installations. Take an opportunity to chat with City Council members in a Community Chat from 4pm-5pm.

III. MATTERS FROM CITIZENS

Michael Hopkins of 3379 Windsor Valley Court, Duluth came forward and asked when the Davenport Road/Buford Highway traffic light would be completed. Community Development/Engineering Director Margie Pozin responded Gwinnett County working with Georgia Power to establish power before installation is complete.

IV. CONSENT AGENDA

1. APPROVAL OF OCTOBER 9TH/16TH MINUTES

2. ORDINANCE TO AMEND DULUTH CODE – CHAPTER 5 {A}

In previous meetings this year, Council discussed and approved amendments to the Plumbing Codes as required by the Metropolitan North GA Water Planning District, for greater water efficiency. In order to amend the Duluth code, an official ordinance must be approved. Approval of this item approves ordinance O2023-27 as presented.

3. ORDINANCE TO AMEND BUDGET - \$44,232 – INSURANCE {B}

As a result of the heavy rain received the evening of August 29th, two insurance claims were filed with our insurance carrier, GIRMA. One involved damage to the pour in place playground surface at Bunten Road Park which ultimately had to be replaced and the second involved the flooding of the restroom at WP Jones Park. Damage estimates of \$15,975 and \$28,256.76 were submitted and paid by GIRMA for these claims. Staff is requesting the funds from the insurance settlements be added to the budget to offset these expenditures. Approval of this item approves ordinance (BA-FY24-12) to add the insurance settlements of \$44,232 to the City Manager - City Manager's Office - General Emergency Repairs line item.

4. CERTIFICATION OF RESULTS - 2023 GENERAL MUNICIPAL ELECTION

Section 21-2.493(k) of the Georgia Election Code authorizes the Election Superintendent to certify the November 7, 2023 election results. Approval of this item accepts the following results of the November 7, 2023 General Municipal Election:

Mayor: Greg Whitlock - 985
Post 4: Manfred Graeder - 927
Post 5: Augustine Emmanuel - 355
Post 5: Shenee Holloway - 734

A motion was made by Councilmember Whitlock, seconded by Councilmember Doss, to approve the Consent Agenda as presented.

**Voted For: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

V. NEW BUSINESS

1. ORDINANCE TO AMEND DULUTH CHARTER – 1st READING

{C}

Staff held a discussion with the Mayor and Council at the September work session proposing amendments to the City Charter. Under Georgia law, cities are allowed under home rule status to amend certain provisions of their charter by requiring two readings of an ordinance at two regular consecutive meetings.

City Attorney Stephen Pereira read the ordinance to amend the Charter of the City of Duluth, Georgia, for Council's consideration.

- Section 1.13 (40)- Examples of Powers Taxicabs - regulations removed from under municipal and placed under State.
- Section 1.13 (23) Examples of Powers – Specific penalties, remove reference to Gwinnett County Health & Sanitation Ordinance.
- Section 2.18 – inserting “Mayor or” City Clerk.
- Section 4.14 – Certiorari - Superior and State court appellate act effective July 1, 2023, which now governs all appeals from Municipal Courts to State or Superior Court which in the past was handled by the Writ of Certiorari.
- Section 4.15 - Rules for Court. The Uniform Municipal Court Rules were approved by the Supreme Court of Georgia in 2010, and now govern all the Municipal Court procedures.
- Removing where referenced “Georgia Municipal Election Code” and replacing with “Georgia Election Code.”

A motion was made by Councilmember Harkness, seconded by Councilmember Graeder, to approve the first reading of ordinance 02023-26 as presented.

**Voted For: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

2. AWARD OF BID/ORD TO AMEND BUDGET – DEMOLITION

{D}

Community Development/Engineering Director Margie Pozin explained the request. In June 2023, the City executed a purchase and sale agreement for 3542 North Street, in order to facilitate the next phase of the Main Street Sidewalk project and the APRA funded Pinecrest Sanitary Sewer project. In July, the property closed, and in October, the occupant moved out. Immediately thereafter, the asbestos study was completed in an effort to get demolition bids.

Seven bids were solicited. Two bids were received.

- Wrecking Corp of America, LLC - \$19,200
- Complete Demolition Services - \$27,000

Staff recommends the contract be awarded to Wrecking Corp of America in the amount of \$19,200, and further authorize the City Manager to execute the contract once it is approved by the City Attorney. Staff recommends a 20% contingency be

included in the budget in the amount of \$3,840 to cover unforeseen circumstances on site during demolition. Contractor would only access these funds through written request and approval, if justified.

Should the Council award the demolition bids to Wrecking Corp of America, an ordinance to amend the FY24 budget, including contingency funds, is necessary. This project is part of the 2014 and 2017 Intergovernmental Agreements (IGA's) with Gwinnett County. Per the City's IGA with Gwinnett County, the City will be reimbursed 81% of the cost. Approval of this item approves ordinance BA-FY24-13 to add revenue of \$18,662 to the Gwinnett County Grants line item, \$4,378 in unallocated 2014 SPLOST Transportation funds to the Transfer from 2014 SPLOST line item, and \$23,040 to the Main Street Multi-Use Trail - Parkways & Boulevards - Land line item, including associated transfers.

A motion was made by Councilmember Thomas, seconded by Councilmember Whitlock, to approve awarding the demolition contract for 3542 North Street to Wrecking Corp of America in the amount of \$19,200 and further authorize the City Manager to execute said contract, as well as approve ordinance BA-FY24-13 as presented.

**Voted For: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

3. ORDINANCE TO AMEND BUDGET – RIVERGREEN PKWY {E, F}

Ms. Pozin came forward to present this request. With the presence of several schools that do not offer bus transportation within the Rivergreen Business Park, traffic along Rivergreen Parkway has several additional peak traffic hours. For most of the park this is not problematic as there are two business park entrances/exits (one of which is signal controlled), and interparcel connectivity. The only section of Rivergreen Park that is a concern during peak school traffic times is the section accessed from Corporate Way, as it is a cul-de-sac with a school at its intersection with Rivergreen Parkway.

Staff proposing an additional median opening and driveway on Rivergreen Parkway to access the rear property off of Corporate Way. Along with an access agreement between the City and the property owner this would allow a secondary point of ingress and egress in the event Corporate Way is blocked.

For this effort, the following was proposed:

- Traffic Counts - \$2,428
- Traffic Study and Concept Design - \$20,481
- Survey and Construction Plans - \$48,356
- 20% Contingency - \$14,253

TOTAL = \$85,518

Therefore, the Mayor and Council considered approval of budget amendment BA-FY24-14 to add \$85,518 in unallocated 2017 SPLOST Transportation funds to Rivergreen Medians CD-79 - Paved Streets - Professional Services line item, including associated transfers.

A motion was made by Councilmember Whitlock, seconded by Councilmember Doss, to approve ordinance BA-FY24-14 as presented.

**Voted For: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

4. ORDINANCE TO AMEND BUDGET - \$50,000 – REAL ESTATE {G}

The City of Duluth has entered into a purchase and sale agreement to purchase parcel R7204-577 located at 2516 Main Street. The property consists of 4.17 acres with current light industrial use. The agreement calls for \$20,000 in earnest money and a 90 day inspection period. Additionally, staff is requesting \$30,000 to hire an outside firm to conduct Phase I and II soil testing during the inspection period and for any additional cost necessary to close on the property. Approval of this item approves budget ordinance BA-FY24-15 to add \$50,000 in unallocated 2023 SPLOST Administrative Facilities funds to Public Works Land Acquisition - General Government Buildings - Professional Services line item, including associated transfers.

A motion was made by Councilmember Graeder, seconded by Councilmember Thomas, to approve ordinance BA-FY24-15 as presented.

**Voted For: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

VI. MATTERS FROM COUNCIL

Councilmember Graeder noted that the Main St. Phase I project is close to completion and asked about a ribbon cutting. Ms. Pozin said we are waiting for a meter and power service for completion. He also asked for status on the Pine Needle cul-de-sac. Ms. Pozin reported that it maybe completed by the end of the year; they are currently waiting for AT&T and AGL (Atlanta Gas Light).

VII. MATTERS FROM CITY MANAGER

The Taylor Park “Gigglebark” tree has been delivered and the contractor hopes to get it installed and finished by the end of the year, weather permitting.

VIII. ADJOURNMENT

A motion was made by Councilmember Whitlock, seconded by Councilmember Harkness, to adjourn at 6:30 pm.

**Voting for: Council members Harkness, Thomas, Doss, Graeder, and Whitlock
Motion carried.**

The next scheduled meeting of the Mayor and Council is a work session for November 27, 2023 at 5:30 p.m.



**NOTES OF THE WORK SESSION
MAYOR AND COUNCIL
CITY OF DULUTH, GA
NOVEMBER 27, 2023**

PRESENT: Mayor Harris, Council members Harkness, Thomas, Doss, Graeder, and Whitlock, City Manager, Department Directors, City Attorney

Mayor Harris called the meeting to order at 5:30 p.m.

I. PUBLIC COMMENTS

Billy Jones of 2794 Heath Lane came forward and spoke against a compensation increase for elected officials. He felt that a 50% increase was unjustified and that the requirement for meeting attendance should be kept.

Leslie Morgan of 3977 Bryn Mawr Court came forward to say she is a new resident but has already had her home flood. She was very concerned about stormwater issues and asked that the city keep the Howell Mill basin cleared of the very large debris.

II. DISCUSSION ITEMS

1. COMPENSATION - ELECTED OFFICIALS

{A}

SUMMARY:

Staff had been asked to research this topic several months ago. City Clerk/Asst. City Manager Teresa Lynn reported that staff had investigated the pay structure for elected officials in surrounding jurisdictions for comparison. Duluth was one of the very lowest paid in the sample group. Therefore, a recommendation was made to amend the current system of pay, base plus -per meeting to an annual salary of \$15,000 for the Mayor and \$9,000 for the Council. She explained that, in order to meet the requirements of state law for increase of compensation for elected officials, legal notice must be posted in the legal organ of the county for three consecutive weeks prior to adoption.

It was noted that there has been no increase in over 25 years. The current salary of the Mayor is \$6,000 + \$3,600 meeting pay = \$9,600. The Council base is \$2,400 + 3,600 meeting pay = \$6,000 . The City Attorney noted that no action can be taken during an "election cycle" but since that is past, action could be taken now but it would not take effect until January 2026.

IMPACT TO BUDGET: N/A until 2026

Several strategies were discussed. Staff was authorized to place this item on the January 8, 2024 Council agenda.

2. DULUTH CODE AMENDMENT – RETAINING WALLS

SUMMARY:

Community Development Director Margie Pozin explained that the current municipal code states that a permit shall not be required for the following:

Retaining walls which do not exceed three (3) feet in vertical height and provided that the slope of backfill materials does not exceed a one (1) foot rise in three (3) feet length. Retaining walls which exceed three (3) feet in vertical height shall require a permit and shall be constructed in compliance with the development regulations and shall be designed by a registered professional engineer.

The current International Building Code (IBC) indicates that walls not exceeding four (4) feet in vertical height are not required to be designed by a registered professional engineer. Staff would like to adjust this inconsistency and revise Chapter 5, Article II. Building Inspection Department, Section 5.29(1) and 5.29(5) to match the 4 foot maximum wall height.

IMPACT TO BUDGET: N/A

Staff was authorized to change the wording to include a reference to the height set by the IBC and place this item on the next Council agenda for approval.

3. RED CLAY THEATRE – HVAC & ICE MACHINE

SUMMARY:

City Manager James Riker reported that a needs assessment for Red Clay was completed several years ago. One of the areas identified for improvement was the HVAC. Asst. Public Works Director Jason Brock explained the scope of work required. Staff recently received three bids for replacement of five AC units and evaporator coils. Three companies provided bids with Lane Heating and Air Conditioning being the lowest bid at \$29,100. Staff is recommending the bid be awarded to Lane at the next meeting.

In addition, staff obtained bids to purchase a commercial ice machine. Staff is recommending the bid be awarded to ACity Discount in the amount of \$6,700.

IMPACT TO BUDGET: requires budget amendment

Staff was authorized to place the RFP award and budget amendment on the next Council agenda for authorization.

4. ORDINANCE TO AMEND DULUTH CODE–ALCOHOL

SUMMARY:

The City Attorney and City Clerk discussed the recommended changes and said that the Alcohol Board met with the City Attorney and Staff on Wednesday October 25th for the purpose of considering amendments to the City's Alcoholic Beverage Ordinance. The majority of the amendments brought before the Board for consideration were general housekeeping items for clarification and placing certain subsections into the correct sections of the code. In addition, language was added to assist Code Enforcement when issuing citations for presentation in court as well as updating language that aligns with state law.

IMPACT TO BUDGET: N/A

Staff was authorized to place this item on the next Council agenda for approval.

5. ARPA FUNDS TRANSFER TO GENERAL LEDGER

SUMMARY:

Asst. City Mgr/Finance Ken Sakmar explained that the City received \$11,057,077 in American Rescue Plan Act (ARPA) federal funds and elected to claim the \$10 million standard allowance for lost revenue. The City does not need to prove the loss of \$10 million in revenue but must report quarterly the expenditure of the funds to the federal government. Loss revenue funds are allowed to be used to support traditional government services. Eligible government services include road building and maintenance, and other infrastructure, health services, general government administration, administrative facilities, and the provisioning of police, fire, and other public safety services.

The federal government requires ARPA funds to be obligated by 12/31/24 and expended by 12/31/26. Project cost for the Pinecrest and Hill communities sanitary sewer projects are projected to exceed the available ARPA funds. However, should there be a delay in the sanitary sewer projects that could result in a loss of funding, for this reason staff felt it was best to report eligible police uniform salaries as part of lost revenue expenditures. Staff has reported 4 quarters of uniform salaries expenditures totaling \$2,663,240.27 covering the current and prior fiscal years.

To meet financial reporting requirements, staff is requesting approval of a current and prior year budget amendment to allow the recording of the expenditure of uniform salaries in the ARPA fund and associated transfer to the General Fund.

IMPACT TO BUDGET: requires budget amendment.

Staff was authorized to place this item on the next Council agenda for approval.

III. PRESENTATIONS/UPDATES

1. STORMWATER UPDATE

{B}

Stormwater issues have become more prevalent with the changes in weather severity, causing more discussion among citizens and staff alike. Community Dev/Eng. Director Margie Pozin came forward to give an update on the current program and focus on a few key elements in need of additional attention. A more in-depth discussion will follow in February, 2024.

Staff was directed to move forward with the two studies as recommended.

2. PROPOSED 2024 EVENT CALENDAR

{C}

The proposed event calendar is presented in November to allow staff the opportunity to begin offering contracts to vendors early enough to book for Spring and Summer activities. Event activities span budget years. Staff will present a proposed budget and then secure funding during the budget process in 2024.

3. TAD URA UPDATE

{D}

Staff provided an update on recent activities, potential projects and a future financial forecast relating to the Urban Redevelopment Agency (URA) Tax Allocation District, and is seeking Council feedback.

IV. MATTERS FROM COUNCIL

1. KNOX HOUSE UPDATE

Building has been purchased and plans are to open a deli.

V. ADJOURNMENT

Meeting adjourned at 8:30pm.

The next scheduled meeting of the Mayor and Council is a Community Chat on December 2, 2023 at 4pm on the Town Green.

**ORDINANCE
CITY OF DULUTH**

WHEREAS, the City of Duluth requires building permits for the construction of certain classes of retaining walls; and

WHEREAS, Subsection 5-29 (b) of Chapter 5 of the Duluth Code of Ordinances provides a list of structures which do not require building permits and specifically includes in this list of exceptions, retaining walls meeting certain specifications; and

WHEREAS, the Mayor and Council of the City of Duluth desire to amend the Code of Ordinances to conform the City Ordinance regarding permits for retaining walls to the International Building Code,

NOW THEREFORE, the City Council of the City of Duluth hereby ordains that the City of Duluth Municipal Code is hereby amended by deleting Subsection 5-29 (b) of Chapter 5 of the Duluth Code of Ordinances in its entirety and replacing said Subsection with a new Subsection 5-29 (b) to read as follows:

(b) *Permit exemptions.* Unless specifically addressed in this Code section, the City of Duluth adopts the exemptions identified in [Chapter 1](#) of each adopted regulatory code. Exemptions from permit requirements of this Code shall not be deemed to grant authorization for any work being done in any manner in violation of the provisions of this Code or any other laws or ordinances of the City of Duluth. Permits shall not be required for the following:

(1) Retaining walls which do not exceed four (4) feet in vertical height and provided that the slope of backfill materials does not exceed a one (1) foot rise in three (3) feet length. Retaining walls which exceed four (4) feet in vertical height shall require a permit and shall be constructed in compliance with the development regulations and shall be designed by a registered professional engineer.

(2) Signs which are exempted from permits by the Unified Development Code.

(3) One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses without electrical, mechanical or plumbing system provided the floor area is not great than one hundred twenty (120) square feet and the structure meets all applicable zoning requirements.

(4) Fences which do not exceed three (3) feet in height.

(5) Walls which do not exceed four (4) feet in height.

(6) Monuments and freestanding art pieces which do not exceed four (4) feet in height.

(7) Basketball goals which are stand alone and not part of a basketball court.

Although the structures listed above are exempt from requiring a permit, the listed structures shall meet the requirements of all other applicable codes, ordinances, regulations and resolutions governing the same.

IT IS SO ORDAINED this _____ day of _____ 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa Lynn, Asst. City Mgr/City Clerk

**ORDINANCE TO AMEND DULUTH CODE
CHAPTER 3
ALCOHOLIC BEVERAGE CONSUMPTION, LICENSING AND REGULATIONS**

WHEREAS, the Mayor and Council of the City of Duluth desires to make various housekeeping changes to Chapter 3 of the City of Duluth Code of Ordinances regarding the licensing and permitting of alcohol sales and handling;

NOW THEREFORE, the Mayor and Council of the City of Duluth hereby ordains that the Code be amended as follows:

PART I

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-103 of Article I of Chapter III, of the Code, in its entirety and replacing Section 3-103, Article I, Chapter III of the Code with the following:

Sec. 3-103. - Definitions.

As used in this article, defined words shall have the meaning specified unless the context in which the word or term is used clearly requires that a different meaning be used. For the purpose of this article the following definitions shall apply:

Alcohol means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Alcoholic beverages means and includes all alcohol, distilled spirits, beer, malt beverages, wine or fortified wine.

Art shop means a retail business located in the CBD zoning district or in a planned unit development with an underlying zoning of CBD or in a planned unit development where expressly permitted through a condition of zoning, devoted exclusively to providing art education that is limited to instructing in painting, sculpture, and similar crafts; or to selling and displaying portraits, paintings, sculptures, and similar art work and crafts. An art shop may sell art supplies in addition to providing art education or to offering artwork for sale. An art shop shall not allow any activities that would cause the business to be an "adult entertainment establishment" as defined in chapter 7, article XIV, sections 7-601 et seq. of this Code.

Beer or malt beverage means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other product, or any combination of such products in water containing not more than fourteen (14) percent alcohol by volume,

and including ale, porter, brown, stout, lager beer, small beer, strong beer, and hard cider as may be defined by state law. The term "malt beverage" does not include sake, known as Japanese rice wine.

Brewer means a manufacturer of beer or malt beverages.

Brewpub is a restaurant in which beer or malt beverages are manufactured or brewed subject to state law barrel production limitations for retail sales directly to consumers.

Church shall mean a permanent building where persons regularly assemble for religious worship.

City clerk shall mean the person holding the official title of clerk for the city.

College shall mean only such state, county, city, church, or other colleges that teach the subjects commonly taught in the common colleges of the state and shall not include private colleges where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught.

Commercial area shall mean any area which is correspondingly zoned in accordance with the city zoning ordinance.

Convenience store shall mean a retail establishment or hotel store which offers for sale packaged or unprepared food and grocery items for consumption off of the premises which may sell fuel products, household items, or tobacco products and having five thousand (5,000) or less square feet of floor area as floor area.

Deli and food market shall mean a retail establishment that sells food products prepared on site and may also engage in the selling of unprepared food products. Such establishment shall be authorized to sell unopened containers of wine or beer provided that the establishment derives no more than fifteen (15) percent of its gross sales from the sale of beer and wine. Unopened containers of wine or beer may only be sold in conjunction with the sale of food products prepared on site.

Golf course shall mean an outdoor golf course covering one (1) acre or more and containing at least nine (9) tees, fairways and greens.

Growler means a container used to transport draft beer that is not to exceed sixty-eight (68) ounces and not less than twelve (12) ounces and is filled with beer from a keg or a tax-determined tank by a licensee, or an employee of a licensee with a license issued by the city.

Hotel shall mean a building or structure kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for adequate pay to

travelers and guests whether transient, permanent or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests. Boarding houses or other similar facilities which have less than fifty (50) rooms used for sleeping accommodations for such guests are not classified as a hotel for the purposes of this article.

Hours of operation shall mean the hours during which a licensed establishment shall remain open for the purposes to include the sale of alcoholic beverages on or off premises.

Indoor commercial recreational establishment shall mean and is limited to an establishment:

(1) In which the sale of food and alcoholic beverages is incidental to its primary enterprise and activity on the premises and which shall derive at least twenty (20) percent of its total annual gross sales from the sale of prepared meals or foods and recreation activities; and

(2) In which meals are served, such place being provided with adequate and sanitary kitchen and dining room equipment and a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. Said establishment shall be prepared to serve food every hour they are open; and

(3) In which the primary activity on the premises of the indoor commercial recreational establishment shall be family oriented in nature, generally meaning a use which attracts a range of individuals from all age groups. Uses may specifically include, but are not limited to, dinner theaters, bowling centers, billiard parlors, video arcades, skating arenas and other similar use. Outdoor commercial recreation is not included, nor shall concession sales of alcoholic beverages be permitted. Bingo parlors, dance halls, nightclubs, adult entertainment and/or sexually related entertainment activities as defined in the city adult entertainment ordinance, chapter 7, article XIV, sections 7-601 et seq., and similar uses are specifically excluded from this definition of indoor commercial recreational establishments.

Karaoke shall mean a form of interactive entertainment in which customers sing along with recorded music (or music video) using a microphone and sound system. The lyrics are sometimes displayed on the video screen and usually do not have the original lyrics playing on the soundtrack.

License shall mean the authorization by the clerk of the city to engage in the sale of alcoholic beverages.

Licensee means the individual to whom a license is issued or, in the case of a partnership, corporation or company, all partners, officers, members, managers, and directors of the partnership corporation or company.

Liter means the metric measurement currently used by the United States.

Lounge shall mean a separate room connected with a part of and adjacent to a restaurant or located in hotels with all booths, stools and tables being unobstructed and open to view. All lounges shall be air conditioned.

Manager means an individual or that individual's designee who has responsibility for management of the operations, including the conduct of its employees and the sale of alcoholic beverages at an establishment from which alcoholic beverages are sold at retail or wholesale pursuant to a license, who is a full-time employee, part-time employee, or independent contractor engaged by the corporation, partnership, proprietor or other entity that owns such establishment.

Manufacturer means any maker, producer, or bottler of an alcoholic beverage. The term also means:

- (1) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits;
- (2) In the case of malt beverages, any brewer; and
- (3) In the case of wine, any vintner

Open area means the area that is directly outside and adjacent to a licensed restaurant where a licensee may obtain an annual permit authorizing the consumption of alcoholic beverages. Smoking shall not be allowed in the permitted open areas.

Owner means any person with an ownership interest in the licensed business.

Package means a bottle, can, keg barrel, growler, or other original consumer container.

Package store shall mean a geographic location within the city wherein a license may be issued for the sale of package alcoholic beverages. Such package store must be operated as a distinct business and cannot be operated in conjunction with or as a part of any other business, except only as provided in this article and/or by the laws of this state.

Patio shall be defined as that portion of an establishment which is outside the main structure but accessible from the main structure and is used for sales of food and/or beverages.

Performing arts facility shall mean and is limited to an establishment:

- (1) Which is located in the CBD zoning classification or in a planned unit development with an underlying zoning of CBD or in a planned unit development where expressly permitted through a condition of zoning;

(2) Which has as its principal objective or business the presentation of live music, mainline dramatic arts, plays, theatre productions and stand-up comedy; and

(3) Which does not feature, show, allow, promote or advertise adult businesses as defined and regulated in chapter 7, article XIV of this Code, including but not limited to adult dancing establishments, adult mini-motion picture theatres, adult motion picture theatres, adult motion picture arcades and erotic dance establishments.

Person means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.

Premises shall mean the definite closed or partitioned-in facility including, but not limited to, a room, shop, building, restaurant, or club wherein alcoholic beverages are sold.

Private club shall mean any association organized under the laws of the state which has been in existence at least one (1) year prior to the filing of its application for a license to be issued hereunder; has at least seventy-five (75) regular dues paying members; owns, hires or leases a building or space within a building for reasonable use of its members with suitable kitchen and dining space and equipment for the serving of prepared meals for the members and guests; and does not compensate any member, officer, agent or employee directly or indirectly from the profits of the sale of distilled spirits beyond a fixed salary as established by its members at any annual meeting or by its governing board out of the general revenue of the club; except that for the purposes of this section, tips which are added to the bills under club regulation shall not be considered as profits from the sale of distilled spirits.

Private residence shall mean a house or dwelling where not less than one (1) or more than three (3) families customarily reside and shall not include an apartment house having facilities for housing four (4) or more families and any residence which has been unoccupied for a period of six (6) consecutive months immediately prior to the filing of any application hereunder.

Registered agent shall mean a natural person age twenty-one (21) years or older and residing in the state who is empowered to act for and represent the licensee in all matters with the city relating to an establishment licensed or making application for a license to sell alcohol upon whom any process, notice or demand required or permitted by law or under this article may be served.

Restaurant shall mean a public place kept, used, maintained, advertised and held out to the public as a place where meals are actually and regularly cooked and served to the public,

without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment, having employed therein a sufficient number and kind of employees to cook and serve suitable food for its guests. At least one (1) meal per day shall be cooked on the premises and served at least five (5) days a week, with the exception of holidays, vacations, and periods of redecorating, and the cooking and service of such meals shall be the principal business conducted by such establishment with such establishment deriving at least fifty (50) percent of its total annual gross sales from the sale of prepared meals or food.

Retail sales shall mean selling or offering for sale alcoholic beverages to any member of the public.

Retailer or retail dealer means any person who sells alcoholic beverages at retail only to consumers and not for resale.

School building or educational building shall apply only to state, county, city, or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state and are accredited by the state or federal government.

Special events facility shall mean any public place kept, used, maintained, advertised and held out to the public as a place where special events including, but not limited to, weddings, wedding receptions, private parties and similar events are held and which provides meals for food services in connection with such events. Any such facility shall be equipped with an adequate and sanitary kitchen and dining room facility, and shall be capable of preparing and cooking meals, or serving catered meals and other food products associated with its special events on site. Any such establishments shall derive at least seventy-five (75) percent of its total annual gross sales from rental for special events and the service of meal and food products in connection with such special events. The revenues received from alcohol sales shall never exceed twenty-five (25) percent of the total annual gross sales for any such facility. Any such facility open to the public for the service of at least one (1) meal per day for five (5) or more days per week, shall be considered a restaurant.

Special events vendor shall mean a vendor licensed by the state to sell alcoholic beverages for consumption. Before receiving a license as a special events vendor, the vendor shall have entered into a contractual agreement with the city for the sale of alcoholic beverages at special events approved by the city to be held on public property including but not limited to the Duluth Town Green.

~~*Specialty gift shop* shall be defined as any retail gift shop that derives not more than fifteen (15) percent of its gross sales from the sale of package gift baskets containing non-alcohol related items such as flowers, plants, food or similar items which also contain unbroken containers of wine or malt beverages.~~

Spirituuous liquors or *distilled spirits* shall mean any alcoholic beverages containing alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, cordials, or other spirituous liquors by whatever name called to include fortified wines, as defined by the Federal Alcohol Administration.

Tavern shall mean an establishment located in the CBD or in a planned unit development with an underlying zoning of CBD or in a planned unit development where expressly permitted through a condition of zoning and licensed to sell alcoholic beverages to be consumed on the premises.

Wholesaler or *wholesale dealer* means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.

Wine shall mean any alcoholic beverages containing not more than twenty-one (21) percent alcohol by volume made from fruits, berries or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this section. Fortified wine means any alcoholic beverage containing more than twenty-one (21) percent alcohol by volume made from fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added. "Fortified wine" includes, but is not limited to, brandy.

PART II

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-111 of Article I of Chapter III, of the Code, in its entirety and replacing Section 3-111, Article I, Chapter III of the Code with the following:

Sec. 3-111. - Distance requirements.

(a) For the purposes of this code section, distance shall be measured by the most direct route of travel on the ground in a straight line from nearest point of the structure from which alcoholic beverages are sold or offered for sale, to the front door of the building of a church, government owned treatment center or a retail package store or to the nearest

property line of any private residence, or any real property being used for school or educational purposes.

(b) No license permitting the sale of malt beverages or wine or both for retail by the package shall be issued for any proposed location which is:

(1) Within a distance of one hundred (100) yards of any school building, educational building, school grounds or college campus; or

(c) No license permitting the sale of any distilled spirits or spirituous liquors for retail by the package shall be issued for any proposed location which is:

(1) Within a distance of fifty (50) yards of any private residence unless such residence is located in a commercially zoned (C-1, C-2, HC-R or HC-A) district;

(2) Within a distance of one hundred (100) yards of any church building;

(3) Within a distance of one hundred (100) yards of any public library or branch thereof;

(4) Within a distance of one hundred (100) yards of a public park;

(5) Within a distance of two hundred (200) yards of any school building, educational building, school grounds or college campus; or

(6) Within a distance of five hundred (500) yards of any business licensed to sell package spirituous liquors pursuant to this article ~~unless other such business is a hotel.~~

PART III

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-212 of Article II of Chapter III, of the Code, in its entirety and replacing Section 3-212, Article II, Chapter III of the Code with the following:

Sec. 3-212. - Annual renewal.

(a) All licensees holding licenses permitting the sale of alcoholic beverages shall be required to file their application to renew their licenses by June 1 of each year on forms prescribed by the city clerk. Any person licensed hereunder shall be required to submit a complete application to renew his/her license on the forms prescribed by the city clerk on or before June 1 of each year. For those applicants who fail to submit a complete application and license fee before June 1 but do so on or before June 30, a penalty of ten (10) percent of the license fee shall be imposed for said failure in addition to any other penalties that may be authorized. Further, those renewal applicants who fail to submit a complete application and license fee prior to the June 1 deadline may not receive the new license prior to the expiration of the old license. A minimum of seven (7) days shall be required for review prior to issuance of a renewed license. ~~Unlicensed sales of alcohol are~~

~~prohibited.~~ Any license holder who fails to submit a complete application for a license renewal prior to June 30 of each year shall be required to undergo the application process as a new license applicant. Unlicensed sales of alcohol are prohibited.

~~(b) It shall be the duty of all licensees or their designee who sell alcoholic beverages to file one (1) submittals annually; on or before June 1 with the office of the city clerk. Such submittal shall include, but shall not be limited to, the name of the establishment, the license number and the following information regarding; (1) all licensees, owners, and managers, and, (2) all employees working on the premises and connected with the sale of alcoholic beverages: name; birth date; social security number; home address; home telephone number; race; gender; place of birth (if outside the United States, Alien Registration Number); driver's license number and state of issuance; height; weight; hair color; eye color; and alias used presently or in the past.~~

PART IV

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-227 of Article II of Chapter III, of the Code, in its entirety and replacing Section 3-227, Article II, Chapter III of the Code with the following:

Sec. 3-227. – Owners, licensees, managers, and employees; responsibilities.

~~(a) It shall be the duty of all licensees who sell alcoholic beverages to file one (1) submittals annually; on or before June 1 with the office of the city clerk. Such submittal shall include the name of the establishment, the license number and the following information regarding; (1) all licensees, owners, and managers, and, (2) all employees working on the premises and connected with the sale of alcoholic beverages: name; birth date; social security number; home address; home telephone number; race; gender; place of birth (if outside the United States, Alien Registration Number); driver's license number and state of issuance; height; weight; hair color; eye color; and alias used presently or in the past.~~

~~(b)~~ (a) No owner, licensee, or manager shall allow any ~~manager or~~ employee required under this section to hold a permit to work on the licensed premises beyond five (5) days after their first work unless the licensee has on file, on the premises, the current, valid alcohol handling permit of each such manager or employee. An individual working on the premises beyond five (5) days after their first work in an establishment holding a license to sell alcoholic beverages without the required permit shall be considered in violation of this article and the employee, ~~and owner~~, licensee, ~~manager or other responsible party~~ are hereby punishable as provided ~~elsewhere~~ in this article.

~~(c)~~ (b) The owner, licensee, and manager ~~is are~~ responsible for the conduct and action of his/her employees while in his/her employment.

PART V

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-240 of Article II of Chapter III, of the Code, in its entirety and replacing Section 3-240, Article II, Chapter III of the Code with the following:

Sec. 3-240. - Licensees, owners, managers, and employees; permitting.

(a) All licensees, owners, and managers must make application for and obtain an alcohol handling permit prior to being granted a license to sell alcoholic beverages. In addition, all persons employed to work on the premises in connection with the **sale selling, serving, taking orders for, or any handling** of alcoholic beverages shall, within five (5) days after the date of their first work beyond in an establishment holding a license to sell alcoholic beverages, file a signed application as well as provide an authorization for release of personal information and criminal history record information to the city clerk, chief of police or authorized representative. Said application shall include, but shall not be limited to, the name, date of birth, **social security number**, and prior arrest record of the applicant. The licensee shall also be noted. Any arrest record shall be used for investigative purposes only, and shall give rise to no presumption or inference of guilt. Due to the inclusion of arrest information, these applications shall be regarded as confidential and shall not be produced for public inspection without a court order. No permit shall be issued until such time as a search of the criminal record of the applicant has been completed. The applicant must also certify that he or she has read and understands the legal restrictions on alcohol handling and sales and the potential penalties that may apply if such requirements are not met. **All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the chief of police or the city clerk.**

(b) The city clerk, chief of police or their designee shall have a criminal background history made relative to any police record of the person to be cleared. No alcohol handling permit may be issued to any person who has been convicted of a felony or of any crime in another state or jurisdiction which would be a felony in Georgia within five (5) years immediately prior to the application. No alcohol handling permit may be issued to any person who has had any license or permit relating to the sale, manufacture or distribution of alcohol revoked by any jurisdiction within a period of five (5) years immediately prior to the filing of such application. No alcohol handling permit may be issued to any person who has been convicted of two (2) or more offenses of driving under the influence of alcohol in this state or any other state, or in any country, within the five-year period immediately prior to the application. For purposes of this section, a bond forfeiture or a plea of guilty or nolo contendere shall be considered a conviction. In the event there is no record of a violation of this article, the city clerk may issue a temporary permit to the applicant which shall be specific as to the licensee. The city clerk may prescribe reasonable fees for processing such

permits which shall be paid at the time application is made. If it is found that the person to be cleared is not eligible for a permit, the city clerk shall notify the applicant, and in the case of manager or employee applicants, the applicant's employer, that this person is not eligible for a permit. The applicant who is denied an alcohol handling permit may appeal such ruling to the alcoholic beverage review board.

(c) For purposes of this article, a conviction or plea of guilty or nolo contendere shall be ignored as to any offense to which defendant was allowed to avail themselves of the Georgia First Offender Act (Ga. Laws 1968, P. 324) as amended. Except, however, that any such offense shall not be ignored where the defendant violated any term of probation imposed by the court granting first offender treatment or committed another crime and the sentencing court entered an adjudication of guilt as to the crime for which the defendant had previously been sentenced as a first offender. The city clerk or designee shall be authorized to run additional criminal background checks to verify that no violation of probation has occurred.

(d) All permits issued hereunder remain the property of the city and shall be produced for inspection upon the demand of the chief of police, the city clerk, or an agent designated by either. Such permit shall be present on the premises at all times while the permittee/~~permit holder~~ is working. ~~All permits issued through administrative error or through an error in completion of a background investigation may be terminated by the chief of police or the city clerk.~~

(e) No person shall be issued a alcohol handling permit and it shall be considered a violation of this article if it is determined that the person knowingly and willfully falsified, concealed, or covered up any material fact by any device, trick, or scheme while making application to the city clerk for an alcohol handling permit under this article.

(f) Wholesalers owners, managers, employees are exempt from alcohol training and permitting requirements.

~~(g) All persons required in this section to obtain an alcohol handling permit must also meet the age requirements as outlined in Section 3-361. Furthermore, all applicants must also meet the training required for the issuance of a permit as outlined in Section 3-215.~~

~~(h) An employee or person(s) of an establishment holding a license to sell alcoholic beverages, must always be present on the premises at all times in which the business is open to the public. Furthermore, said employee must have a valid and active alcohol handling permit with the city. No owner, licensee, or manager thereof shall allow an establishment holding a license to sell alcoholic beverages to be open to the public if no employee or person(s) present, has a valid alcohol handling permit with the city.~~

PART VI

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by adding a new Section 3-276 to Article II, Chapter 3 of the Duluth Code of Ordinances to read as follows:

Sec. 3-276. - Wine bars.

(a) Notwithstanding any other provision of this chapter to the contrary, the city clerk is authorized to issue a wine bar license to businesses:

(1) Located in the CBD zoning district; or in a planned unit development with an underlying zoning of CBD or in a planned unit development where expressly permitted through a condition of zoning.

(2) Which meet all other license application requirements set forth in this chapter.

(b) A wine bar established under this section may:

(1) Sell and serve beer and wine by the drink for consumption on the premises except on Sundays; and

(2) Sell beer and wine by the package.

~~(c) Nothing in this subsection shall prohibit a wine bar from serving food, provided that it meets all of the requirements for restaurants in this Code and is properly permitted by the city.~~

PART VII

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-280 of Article II of Chapter III, of the Code, in its entirety and replacing Section 3-280, Article II, Chapter III of the Code with the following:

Sec. 3-280. - License permitting the retail sale of package malt beverages and wine.

(a) The sale of package malt beverages or wine or both is prohibited except under a license granted by the city clerk, as provided in this article.

(b) Except as expressly provided herein, no license permitting the retail sale of package malt beverages or wine or both shall be granted unless the applicant falls under one (1) of the following categories, in accordance with the definitions and regulations set forth in this chapter:

~~(1) Specialty gift shop.~~

(2) Grocery store.

(3) Convenience store.

(4) Growler sales.

(5) Deli and food market.

~~(6) Wine tasting room.~~

(c) Except as expressly provided herein, no license permitting the retail sale of package malt beverages or wine or both shall be granted to any applicant hereunder unless the proposed premises is located in the C-1, C-2, HC-R or HC-A zoning districts or in a planned unit development with an underlying zoning of C-1, C-2, HC-R, HC-A, or where in a planned unit development where expressly permitted through a condition of zoning. A deli and food market ~~and specialty gift shop~~ licensed for the retail sale of package malt beverages or wine or both may be located in the C-1, C-2, HC-R, HC-A or CBD zoning districts or in a planned unit development with an underlying zoning of C-1, C-2, HC-R, HC-A, or where in a planned unit development where expressly permitted through a condition of zoning.

PART VIII

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended to remove Wine bars by deleting Section 3-284 of Chapter 3 in its entirety.

~~Sec. 3-284. - Wine bars.~~

~~(a) Notwithstanding any other provision of this chapter to the contrary, the city clerk is authorized to issue a wine bar license to businesses:~~

~~(1) Located in the CBD zoning district; or in a planned unit development with an underlying zoning of CBD or in a planned unit development where expressly permitted through a condition of zoning.~~

~~(2) Which meet all other license application requirements set forth in this chapter.~~

~~(b) A wine bar established under this section may:~~

~~(1) Sell and serve beer and wine by the drink for consumption on the premises except on Sundays; and~~

~~(2) Sell wine by the package.~~

~~(c) Nothing in this subsection shall prohibit a wine bar from serving food, provided that it meets all of the requirements for restaurants in this Code and is properly permitted by the city.~~

PART IX

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended to remove Retail package liquor store tasting events by deleting Section 3-285 of Chapter 3 in its entirety.

~~Sec. 3-285. -- Retail package liquor store tasting events.~~

~~(a) Retail package liquor stores may conduct up to fifty-two (52) tasting events per calendar year.~~

~~(b) Prior to holding a tasting event under this section, the licensee shall provide written notice to the city clerk's office.~~

~~(c) Tasting events as provided for in this section shall only be authorized to take place on the licensed premises and during the hours of operation provided for by section 3-112 of this chapter.~~

~~(d) Tasting events may last no longer than four (4) hours and are limited to one (1) event per day.~~

~~(e) Only alcoholic beverages that the licensee is licensed to sell on the licensed premises and which are part of the licensee's inventory may be served during a tasting event under this section.~~

~~(f) During a tasting event under this section, only one (1) type of alcoholic beverage may be offered (i.e. malt beverages, wine or distilled spirits). Provided however, that multiple brands of one (1) type of alcohol may be offered so long as no more than four (4) packages are open at any one (1) time.~~

~~(g) Packages opened for the purposes of a tasting event may not be sold, but should be kept locked in a secure room except when in use during the tasting event.~~

~~(h) If the event is for malt beverages a customer shall not be served more than eight (8) ounces of malt beverage during the event. If the event is for wine, a customer shall not be served more than five (5) ounces of wine during the event. If the event is for distilled spirits, a customer shall not be served more than one and one-half (1½) ounces of distilled spirits during the event.~~

~~(i) Only food that is lawful to sell on the licensed premises may be offered as part of a tasting event, and such food shall be offered at no cost to the consumer.~~

~~(j) Licensee must comply with any and all provisions set out in O.C.G.A. § 3-15-2 and any and all regulations enacted by the commissioner of the department of revenue.~~

PART X

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by adding a new Section 3-308 to Article II, Chapter 3 of the Duluth Code of Ordinances to read as follows:

Sec. 3-308. - Retail package liquor store tasting events.

- (a) Retail package liquor stores may conduct up to fifty-two (52) tasting events per calendar year.
- (b) Prior to holding a tasting event under this section, the licensee shall provide written notice to the city clerk's office.
- (c) Tasting events as provided for in this section shall only be authorized to take place on the licensed premises and during the hours of operation provided for by section 3-112 of this chapter.
- (d) Tasting events may last no longer than four (4) hours and are limited to one (1) event per day.
- (e) Only alcoholic beverages that the licensee is licensed to sell on the licensed premises and which are part of the licensee's inventory may be served during a tasting event under this section.
- (f) During a tasting event under this section, only one (1) type of alcoholic beverage may be offered (i.e. malt beverages, wine or distilled spirits). Provided however, that multiple brands of one (1) type of alcohol may be offered so long as no more than four (4) packages are open at any one (1) time.
- (g) Packages opened for the purposes of a tasting event may not be sold, but should be kept locked in a secure room except when in use during the tasting event.
- (h) If the event is for malt beverages a customer shall not be served more than eight (8) ounces of malt beverage during the event. If the event is for wine, a customer shall not be served more than five (5) ounces of wine during the event. If the event is for distilled spirits, a customer shall not be served more than one and one-half (1½) ounces of distilled spirits during the event.
- (i) Only food that is lawful to sell on the licensed premises may be offered as part of a tasting event, and such food shall be offered at no cost to the consumer.
- (j) Licensee must comply with any and all provisions set out in O.C.G.A. § 3-15-2 and any and all regulations enacted by the commissioner of the department of revenue.

PART XI

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-335 of Article II of Chapter III, of the Code, in its entirety and replacing Section 3-335, Article II, Chapter III of the Code with the following:

Sec. 3-335. - Classification of licenses; fees.

The licenses listed below are the only licenses authorized to be issued by this article and each such license is a separate and distinct license and shall require the payment of separate license fees as provided for in this chapter. The fee for an alcohol handling permit shall be seventy dollars (\$70.00) and ten dollars (\$10.00) per additional handling permit or for a replacement of a lost permit. The types of licenses, the restrictions on the issuance of each, and the fees for such licenses are as follows:

- (1) License permitting the sale of alcoholic beverages for consumption on the premises, three thousand five hundred dollars (\$3,500.00).
- (2) License permitting the sale of malt beverages and wine only, for consumption on the premises, one-thousand dollars (\$1,000.00).
- (3) License permitting the sale of wine only, for consumption on the premises, five hundred dollars (\$500.00)
- (4) License permitting the sale of malt beverages only, for consumption on the premises, five hundred dollars (\$500.00).
- (5) License permitting the sale of malt beverages and wine only for consumption through outdoor golf course sales, one hundred fifty dollars (\$150.00). Note that this license requires that the licensee also hold a license described in subsection (1) or subsection (2) above.
- (6) License permitting the sale of malt beverages and wine for consumption on the premises, and manufacture or brewing of beer for retail consumption on the premises and solely in draft form through operation of a brewpub, two hundred fifty dollars (\$250.00). Note that this license requires that the licensee also hold a license described in subsection (1) or subsection (2) above.
- (7) License permitting the sale of alcoholic beverages only for consumption off the premises by a licensed alcoholic beverage caterer, one hundred fifty dollars (\$150.00) and fifteen dollars (\$15.00) per event. Note that this license requires that the licensee also hold a license described in subsection (1) above.
- (8) License permitting the sale of malt beverages and wine only for consumption off the premises by a licensed alcoholic beverage caterer, one hundred dollars (\$100.00) and fifteen dollars (\$15.00) per event. Note that this license requires that the licensee also hold a license described in subsection (1) or subsection (2) above.
- (9) License permitting the sale of alcoholic beverages only for consumption through indoor commercial recreational establishment sales, seven hundred fifty dollars (\$750.00). Note that this license requires that the licensee also hold a license described in subsection (1) above.

(10) License permitting the sale of malt beverages and wine only for consumption through indoor commercial recreational establishment sales, five hundred dollars (\$500.00). Note that this license requires that the licensee also hold a license described in subsection (2) above.

(11) License permitting the sale of alcoholic beverages for consumption on the premises for a special events facility, one thousand five hundred dollars (\$1,500.00).

(12) License permitting the sale of malt beverages and wine for consumption at a special event by special events vendor, one hundred fifty dollars (\$150.00).

(13) License permitting the sale of malt beverages and wine for consumption on the premises of a performing arts facility, one thousand dollars (\$1,000.00).

(14) License permitting the sale of all alcoholic beverages consumption on the premises of a performing arts facility, three thousand five hundred dollars (\$3,500.00).

(15) Reserved.

(16) License permitting the retail sale of package spirituous liquors, five thousand dollars (\$5,000.00).

(17) License permitting ancillary sales, malt beverages (one hundred dollars (\$100.00)), wine (one hundred dollars (\$100.00)) or both (two hundred dollars (\$200.00)).

(18) License permitting the sale of all alcoholic beverages for consumption on the premises of a tavern, four thousand dollars (\$4,000.00).

(19) License permitting the sale of beer and wine only for consumption on the premises of a tavern, twelve hundred fifty dollars (\$1,250.00).

~~(20) License permitting the sale of alcoholic beverages for consumption in an open area, fifty dollars (\$50.00).~~ Reserved.

(21) License permitting the sale of malt beverages in growlers, five hundred dollars (\$500.00).

(22) Any request to amend any provision of a license granted under this article is subject to an additional one hundred fifty dollar (\$150.00) administrative application fee.

(23) License permitting retail package malt beverages, five hundred dollars (\$500.00).

(24) License permitting retail package wine, five hundred dollars (\$500.00).

(25) License permitting the sale of alcoholic beverages for caterer off the premises by a nonresident, fifty dollars (\$50.00).

(26) Art shop license; two hundred fifty dollars (\$250.00).

- (27) Rental fee for alcoholic beverage sales advertisement signage twenty-five dollars (\$25.00), plus a deposit equivalent to the replacement cost.
- (28) License permitting wholesaler—wine only, five hundred dollars (\$500.00).
- (29) License permitting wholesaler—beer and malt, five hundred dollars (\$500.00).
- (30) License permitting wholesaler—beer/wine combination, seven hundred fifty dollars (\$750.00).
- (31) License permitting wholesaler—spirituous liquors, five thousand dollars (\$5,000.00).
- (32) License permitting brewery for beer/malt beverages, five thousand dollars (\$5,000.00).
- (33) License permitting special temporary outdoor events, one hundred fifty dollars (\$150.00)
- (34) License permitting a wine bar, one thousand, seven hundred fifty dollars (\$1,750.00.)

PART XII

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-360 of Article III of Chapter III, of the Code, in its entirety and replacing Section 3-360, Article III, Chapter III of the Code with the following:

Sec. 3-360. - Age requirements on licensed premises.

(a) Age requirements for employees.

(1) *Package retail and wholesale licensees.* Except as provided in this subsection, no wholesale dealer or package licensee shall allow any employee under the age of eighteen (18) years to dispense, sell, serve, take orders for, or handle alcoholic beverages. **Those employees of a package retail or wholesaler licensee who are eighteen (18) years of age but younger than twenty-one (21) years of age shall be under direct supervision of a person who shall be both employed by said establishment and who shall be over the age of twenty-one (21) years of age and shall be on site at all times during which the underage employee is working. Such employee shall be trained and supervised periodically with respect to the procedure for requesting proper age identification and declining to sell alcoholic beverages to those under twenty-one (21) years of age failing to produce proper identification.**

a. The provisions of this section shall not prohibit persons under eighteen (18) years of age who are employed in grocery stores supermarkets, convenience stores, breweries or drug stores from selling or handling alcoholic beverages which are sold for consumption off the premises; however, the licensee shall ensure that

said person under eighteen (18) years of age shall be under direct supervision of a person who shall be both employed by said establishment and who shall be over the age of twenty-one (21) years of age and shall be on site at all times during which the underage employee is working. **Such employee shall be trained and supervised periodically with respect to the procedure for requesting proper age identification and declining to sell alcoholic beverages to those under twenty-one (21) years of age failing to produce proper identification.**

(2) *Consumption on the premises licensees and caterers.* No consumption on the premises licensee shall allow any employee under the age of eighteen (18) years to dispense, sell, serve, take orders for, or handle alcoholic beverages. No licensed caterer shall allow any employee under the age of twenty-one (21) years to dispense, sell, serve, take orders for, or handle alcoholic beverages at an authorized catered event.

a. The subsection shall not prohibit the employment of persons under the above ages on licensed premises where such persons do not dispense, sell, serve, take orders for, or handle alcoholic beverages.

b. This section shall not apply to those employees who clear tableware between customers, also known as "busboys," nor shall it apply to those employees who are cooks or dishwashers.

c. Those employees of a consumption on the premises licensee who are eighteen (18) years of age but younger than twenty-one (21) years of age shall be under direct supervision of a person who shall be both employed by said establishment and who shall be over the age of twenty-one (21) years of age and shall be on site at all times during which the underage employee is working. Such employee shall be trained and supervised periodically with respect to the procedure for requesting proper age identification and declining to sell alcoholic beverages to those under twenty-one (21) years of age failing to produce proper identification.

(b) *Entertainers at licensed establishments.* It is unlawful for any person under the age of eighteen (18) years of age to work as an entertainer in any establishment licensed hereunder without a written notarized consent form from parents or guardian.

(c) *Loitering at licensed establishments.* No licensee shall permit any person under twenty-one (21) to be in, frequent or loiter about the licensed premises unless such person is accompanied by a parent, legal guardian or custodian; provided, however, that this section shall not apply to persons who are employees under the terms of this chapter.

PART XIII

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-364 of Article III of Chapter III, of

the Code, in its entirety and replacing Section 3-364, Article III, Chapter III of the Code with the following:

Sec. 3-364. - Sales to underage or intoxicated persons prohibited.

(a) No licensee, ~~employee, individual or person(s) hereunder~~ shall serve or sell alcoholic beverages to:

(1) Any person under the age of twenty-one (21) years of age; or

(2) To any person in an intoxicated condition.

(b) No licensee, ~~or~~ employee, ~~individual or person(s)~~ thereof shall sell alcoholic beverages upon the licensed premises or permit alcoholic beverages to be consumed thereon on any day or at any time when the sale or consumption is prohibited by law.

(c) It shall be a violation not to require and properly check identification to ensure an underage person is not sold, served, or has in his or her possession alcoholic beverages while in a licensed establishment. For the purpose of this subsection "identification" means any document issued by a governmental agency containing a description of the person, such person's photograph or both, and giving such person's date of birth, including but not limited to a passport, military identification card, driver's license, or identification card authorized under an act to require the department of public safety to issue identification cards to persons who do not have a motor vehicle driver's license.

(d) The penalty for an individual found in violation of this section shall be as follows:

(1) For the first offense in a 36-month period, a fine of no more than five hundred dollars (\$500.00) and the permit holder who violated this section shall be required to re-take the City of Duluth Mandatory Alcohol Awareness Training class within sixty (60) days of receipt of the notice sent by the city.

a. The failure of the permit holder to complete the required alcohol awareness training set forth in this subsection within the time prescribed by the city clerk shall constitute a violation of this Code and may result in the revocation or suspension of the alcohol handling permit.

(2) For the second offense within a 36-month period, a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00). In addition, the individual's alcohol handling permit shall be suspended for a period of up to one (1) year by the city clerk.

(3) For the third offense within a 36-month period, a fine of one thousand dollars (\$1,000.00). In addition, the individual's alcohol handling permit shall be revoked by the city clerk.

(e) Any licensee who has an establishment where a violation of this section or O.C.G.A. § 3-3-23 has occurred by employees, managers, or owners of a licensee shall be subject to a suspension of their license by the city clerk for a period of one (1) to thirty (30) days.

(1) For the third violation of this section or O.C.G.A. § 3-3-23 within any 36-month period, the establishment's alcohol license shall be revoked.

(f) As to the penalties in this subsection, if there is a complete change in the licensed establishment's owners, or a change in partners or stockholders representing seventy-five (75) percent of the outstanding stock or shares of the firm owning the licensed establishment, the violations under the old ownership shall not count against the new owners.

(g) For purposes of this subsection, a single event resulting in the issuance of citations to more than one (1) individual shall be counted as one (1) violation.

(h) Any licensee who has been suspended under subsection (e) above shall be required to post signs, to be provided by the city clerk, on the exterior doors of the establishment which contain the following language: "An employee or owner of this store has violated state law and City of Duluth Ordinances by selling alcoholic beverages to a minor" for the period of the suspension imposed in subsection (e).

(i) Any licensed establishment where a second violation of this section or O.C.G.A. § 3-3-23 has occurred by employees, managers, or owners within any 36-month period shall not be used as a vendor by the city for any purchases by the city until such time as there are no violations within the previous 36-month period.

(j) The city clerk may relieve the licensee of any penalties that otherwise may be assessed under subsections (d), (e) or (f) of this section if it can be shown to the city clerk's satisfaction that such licensee freely and of its own volition reported such specific violations for which it may be charged to the chief of police or city clerk prior to such violation coming to the attention of the authorities. Such a report must have been specific and not speculative or general in nature. Documented evidence of such activities shall include, but shall not be limited to, written evidence that the licensee has promptly reported such violations or attempted violations of this chapter. In addition, the licensee must have fully cooperated with authorities in correcting such violations and participating in the prosecution of any other violators.

(k) The city clerk or chief of police, in accordance with O.C.G.A. § 3-3-2.1, shall notify the state department of revenue of any violation (violation being defined as a conviction or entry of a plea of guilty or nolo contendere) of this section or O.C.G.A. § 3-3-23 by any licensee.

(l) The provisions of this section shall apply to any violation which has not been fully adjudicated at the time of the effective date of its adoption.

PART XIV

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-380 of Article III of Chapter III, of the Code, in its entirety and replacing Section 3-380, Article III, Chapter III of the Code with the following:

Sec. 3-380. - Storage on unlicensed premises.

It shall be unlawful for any person or corporation not holding an alcoholic beverage license granted by the city to store any alcoholic beverages on the grounds of any retail establishment ~~excluding alcoholic beverages for personal consumption~~ in accordance with all applicable provisions of law.

PART XV

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-911 of Article V of Chapter III, of the Code, in its entirety and replacing Section 3-911, Article V, Chapter III of the Code with the following:

Sec. 3-911. - Suspension/revocation of license; causes.

(a) Due cause for the suspension or revocation of the licenses identified in section 3-910 (Suspension or revocation; notice of hearing; refund), shall include a violation of any laws or ordinances regulating such business; or violation of regulations made pursuant to authority granted for the purpose of regulating such business; or for the violation of any state or federal law; or for the violation of any city ordinances other than traffic ordinances or failure of licensee or employees to report promptly to the police department any violation of the law or ordinance, breach of the peace, disturbance or altercation resulting in violence occurring inside the premises; or for any other legal and sufficient cause.

(b) The violation of any term, condition or provision of this article in any particular, or as to any detail whatsoever, shall be cause for the suspension or revocation of any license as provided for in this article.

(c) Whenever the state shall revoke any permit or license to manufacture or sell, at wholesale or retail, any alcoholic beverages, or suspend or revoke a state retail consumption dealer's license, said action shall automatically serve to suspend the applicable city license issued under the terms of this article pending a revocation as provided for in this article.

(d) Any material omission from or untrue or misleading information which is contained in an original, renewal or transfer application for a license permitting the consumption of alcohol on the premises hereunder shall be cause for the denial or refusal of a license, and if any license has previously been granted under such circumstances, the same shall constitute due cause for revocation of such license. Any failure to notify of the change in any relationship as specified in section 3-224 (change in relationships and/or ownership interest) within thirty (30) days within such change is made shall likewise constitute due cause for cancellation, revocation or suspension of a license issued hereunder. Further, failure to pay all fees, taxes or other charges imposed under the provisions of this article shall constitute due cause for cancellation, revocation or suspension of a license issued hereunder.

(e) Any licensed establishment that is found to be in violation of sections 3-350 (types of entertainment, attire and conduct prohibited) ~~and 3-270 ("happy hour" promotions and sales)~~ of this code shall be subject to immediate license suspension and the city clerk shall take action to revoke the license as provided for in this article, in addition to all other penalties provided for in this article.

(f) Except as provided in section 3-364(f) (illegal sales of alcohol to minors), the city clerk shall take action to revoke the license of any licensee whose license has been suspended three (3) or more times in any consecutive 36-month period.

(g) The city clerk shall take action to revoke the license for any premises where alcoholic beverages have been sold or distributed during a period of suspension.

(h) The city clerk may suspend or revoke the license of any establishment which does not meet the licensing qualifications set forth in this article any time such knowledge becomes known to him or her as provided for in this article.

(i) In the case of an act of an employee, rather than the licensee, which presents cause for the suspension or revocation of a license, in determining whether to initiate such suspension or revocation hearings, the city clerk may take into consideration any documented evidence that the licensee has, on prior occasions, undertaken proactive efforts to promote compliance with the provisions of this chapter, including the provisions of this chapter prohibiting the sale or serving of alcohol to minors. Documented evidence of such activities shall include, but shall not be limited to, written evidence that the licensee has promptly reported freely and of its own volition violations or attempted violations of this article.

~~(j) When any license for the sale of alcoholic beverages is suspended, the establishment must cease sales of alcohol, post required signage of the violation, and ensure all alcoholic beverages on premise are locked securely and out of view of the general public for the~~

duration of the suspension period. The city will take sufficient and necessary actions to ensure this provision is enforced.

PART XVI

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-912 of Article V of Chapter III, of the Code, in its entirety and replacing Section 3-912, Article V, Chapter III of the Code with the following:

Sec. 3-912. - Removal of signs and alcoholic beverages from revoked, denied, or unlicensed premises.

~~When any license for the sale of alcoholic beverages is revoked, all signs indicating that such beverages may be sold or purchased shall immediately be removed from both inside and outside the place of business. Upon receipt by the city clerk of notice of revocation, the code compliance officer shall take the necessary steps to see that this section is enforced.~~

When any license for selling alcoholic beverages is revoked or denied, or there is no valid state and city license in existence for the sale of those alcoholic beverages, the sale, dispensing or providing of those alcoholic beverages at that location shall immediately cease; and all signs indicating that such beverages may be sold or purchased at the location and all such alcoholic beverages shall be removed from the place of business, both outside and inside. The city will take sufficient and necessary actions to ensure this provision is enforced.

PART XVII

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by striking in its entirety Section 3-913 of Article V of Chapter III, of the Code, in its entirety and replacing Section 3-913, Article V, Chapter III of the Code with the following:

Sec. 3-913. - Acceptance and consideration of application after rejection or revocation.

When any application, license or permit authorizing the sale or handling of alcohol on the premises is rejected or revoked, the city clerk shall not accept and/or consider any application from the same applicant for a license or permit within ~~two (2) years~~ **one (1) year** from the time of such rejection or revocation.

IT IS SO ORDAINED this 11th day of December 2023.

Those councilmembers voting in favor:

Mayor Nancy Harris

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa Lynn, Asst. City Mgr/City Clerk

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this 11h day of December 2023, by and between the City of Duluth, GA, a municipal corporation, hereinafter called "Employer," as party of the first part, and James Riker hereinafter "Employee" as party of the second part, both of whom understand as follows:

WITNESSETH:

WHEREAS: Employer desires to continue to employ the services of James Riker as City Manager of the City of Duluth, as provided by the charter; and

WHEREAS, it is the desire of the governing board, hereinafter called "Council," to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS Employee desires to continue his employment as City Manager of said City of Duluth; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1: Duties

Employer hereby agrees to continue to employ James Riker as City Manager of said Employer to perform the functions and duties specified in said City of Duluth Charter and by said City of Duluth Code of Ordinances and to perform other legally permissible and proper duties and functions as the Council shall from time-to-time assign. Further, Employee agrees that he shall take all necessary steps and diligently pursue an ICMA Credentialed Manager Certification without delay or interruption.

Section 2: Term

A. Employee agrees to remain in the exclusive employ of Employer until December 31, 2024, and neither to accept other employment nor to become employed by any other employer until said termination date, unless said termination date is affected as hereinafter provided.

B. In the event written notice is not given by either party to this agreement to the other 90 days prior to the termination date as hereinabove provided, this agreement shall be extended on the same terms and conditions as herein provided, all for an additional period of one year. Said agreement shall continue thereafter for a one-year period unless either party hereto gives 90 days written notice to the other party that the party does not wish to extend this agreement for an additional one-year term.

C. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs A and B, of this agreement.

D. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the Employer, subject only to the provision set forth in Section 4 of this agreement.

Section 3: Termination and Severance Pay

A. In the event the Employee is terminated by the Council during such time that the Employee is willing and able to perform his/her duties under this agreement, then the Employee is entitled to termination pay of four months of the Employee's salary. Any termination pay earned in accordance with the provisions of this section shall be in addition to any other accrued or guaranteed benefits which the Employee maybe entitled under the personnel policies of the City or the laws of the State of Georgia or the United States of America; however, the official shall not gain or accrue any additional benefits as a result of the termination pay provided to the employee.

B. The Employee shall be entitled to termination pay if he is terminated by the Mayor and Council for any reason other than arrest and/or conviction of a crime or for professional misconduct. For purposes of this article, the term "professional misconduct" shall include but not be limited to the following offenses: Willful disregard of an express directive of the City Council and/or refusal to obey reasonable orders of the City Council; willful neglect of duties; inappropriate or illegal harassment of City employees; or actions involving fraud or dishonesty. The Employee shall also be entitled to termination pay should he resign following a request by a majority of the City Council that a resignation be tendered in lieu of termination for a reason other than arrest or conviction of a crime or for professional misconduct. The Employee shall not be entitled to termination pay as described in this section upon voluntary resignation of his position. (Ord. Of 11-11-97)

C. If Employee is terminated, Employer agrees to provide for out placement services to Employee at its expense, should Employee desire them, in an amount not to exceed a total of \$2,500.

Section 4: Resignation

In the event Employee voluntarily resigns, his position with the Employer before expiration of the aforesaid term of his employment, then Employee shall give Employer 90 days' notice in advance, unless the parties agree otherwise.

Section 5: Disability

If Employee is permanently disabled or is otherwise unable to perform the essential functions of the job because of sickness, accident, injury, mental incapacity, or health for a period of four successive weeks beyond any accrued sick leave, Employer shall have the option to terminate this agreement, subject to the severance pay requirements of Section 3, paragraph A.

Section 6: Salary and Compensation

Employer agrees to pay Employee an annual base salary of \$223,936.44 effective payroll ending January 1, 2024. Employee's salary shall be payable in installments at the same time as other management employees of the Employer are paid. In addition, Employer agrees to increase said base salary annually, consistent with any cost-of-living increase provided to all other City employees. Notwithstanding the foregoing, Employer may increase Employee's base salary and/or benefits of Employee in such amounts and to such extent as the Council may determine that is desirable to do so on the basis of an annual salary review of said Employee conducted prior to the end of each fiscal year.

Section 7: Performance Evaluation

A. The Mayor and Council shall confer with the Employee on at least an annual basis regarding job performance and compensation. The Mayor and Council shall provide the Employee with a written job evaluation at least once per fiscal year and may conduct periodic interim reviews; shall conduct a salary review prior to the end of each fiscal year; and shall determine whether any adjustment of the compensation and benefits provided for the City Manager should be made for the next fiscal year.

B. Annually, at a strategic planning session the Council and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the City of Duluth and in the attainment of the Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided. Should the goals, objectives, or their relative priority be unclear to the Employee, it is his obligation to inform the Council in writing, of any specific area(s) that necessitate clarification.

C. In effecting the provisions of this section, the Council and Employee mutually agree to abide by the provisions of applicable law.

Section 8: Hours of Work

It is recognized that Employee must devote a great deal of time outside the normal office hours to business of the Employer, and to that end, Employee will be allowed to take compensatory time off as he shall deem appropriate during normal office hours.

Section 9: Outside Activities

Employee shall not spend more than 10 hours per week in teaching, consulting, or other non-Employer-connected business without the prior approval of the Council.

Section 10: Automobile

Employee's duties require use of an automobile at all times during his employment with Employer. The Employee shall have access to a City car for use during regular business hours. In addition, Employer shall pay a car allowance to Employee for a personal vehicle in the amount of \$550.00 per pay period, effective January 1, 2024.

Section 11: Vacation and Sick Leave

As an inducement to Employee to continue employment as City Manager, at signature hereof, Employee shall have credited to his personal account four weeks of vacation leave. On January 1st of each year thereafter, Employee shall have credited to his personal account four weeks of vacation leave. Employee's sick leave shall accrue at the same rate as other general management employees of Employer.

Section 12: Disability, Health, and Life Insurance

Employee shall receive the same benefits as all other general management employees of the City. These benefits include, but are not limited to, medical insurance, dental insurance, short-term disability insurance, long-term disability insurance, life insurance, and 457b Plan with limited matching contributions by the City.

Section 13: Dues and Subscriptions

Employer agrees to budget for and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the employer.

Section 14: Professional Development

A. Employer hereby agrees to budget for and to pay for travel and subsistence expenses of Employee according to the City's travel policy as it applies to all management employees for professional and official travel and meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including, but not limited to, the Georgia Municipal Association, ICMA Annual Conference, the American Planning Association and such other national, regional, state, and local governmental groups and committees thereof which Employee serves as a member.

B. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for his professional development and for the good of the Employer.

Section 15: Civic Club Membership

Employer recognizes the desirability of representation in and before local civic and other organizations, and Employee is authorized to become a member of anyone (1) such civic clubs or organizations subject to the approval of the City Council, for which Employer shall pay all expenses. Employee shall report to the Employer on each membership that he has taken out at Employer's expense.

Section 16: Indemnification

The City will provide errors and omissions insurance coverage for the Employee at the same level as that provided for elected officials and other management level employees and subject to the same conditions and exclusions.

Section 17: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the employee under any law or ordinance.

Section 18: Other Terms and Conditions of Employment

A. The Council, in consultation with the City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the Performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the City of Duluth Charter or any other law.

B. All provisions of the City of Duluth Charter and Code, and regulations and rules of the Employer relating to vacation and sick leave, retirement and pension system contributions, holidays, and other benefits and working conditions as they now exist or hereafter maybe amended, also shall apply to Employee as they would to other employees of Employer, in addition to said benefits enumerated specifically for the benefit of Employee except as herein provided.

C. Employee shall be entitled to receive the same vacation and sick leave benefits as are accorded department heads, including provisions governing accrual and payment therefor on termination of employment.

Section 19: No Reduction of Benefits.

Employer shall not at any time during the term of this agreement reduce the salary, compensation, or other financial benefits of Employee, except to the degree of such a reduction across-the-board for all employees of the employer.

Section 20: Notices

Notices pursuant to this agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, as follows: Employer: Attn: Asst. City Manager/City Clerk, City of Duluth, 3167 Main Street, Duluth, GA 30096. Employee: Attn: James Riker, or via hand delivery.

Section 21: General Provisions

- A. The text herein shall constitute the entire agreement between the parties.
- B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. This agreement shall become effective commencing January 1, 2024.
- D. If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid, or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Duluth, GA, Inc. has caused this agreement to be signed and executed in its behalf by its mayor, and duly attested by its Asst. City Manager/City Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

Nancy Harris, Mayor
City of Duluth, Georgia

ATTEST:

Teresa S. Lynn,
Asst. City Manager / City Clerk

James Riker,
City Manager

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2024 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2024 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2024 fiscal year as follows:

Total Revenues:	<u>81,868,674</u>
Operations Expenditures:	<u>39,373,405</u>
Capital Improvement Expenditures:	<u>42,495,269</u>
Total Expenditures:	<u>81,868,674</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth has awarded a bid to Lane Heating & Air for \$29,100 to replace 5 HVAC units at the Red Clay Theatre and wishes to purchase a commercial ice machine from ACity Discount of \$6,700; and

WHEREAS staff is requesting \$35,800 to replace the aging HVAC units currently in use and replace the current rented ice machine as part of planned upgrades to the Red Clay Theatre; and

WHEREAS it is requested \$35,800 in unallocated 2023 SPLOST Cultural Facilities funds be add to the Red Clay Theatre – Special Recreational Facilities – Machinery line item, including associated transfers; and

NOW THEREFORE, the City of Duluth 2024 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>81,904,474</u>
Operations Expenditures:	<u>39,373,405</u>
Capital Improvement Expenditures:	<u>42,531,069</u>
Total Expenditures:	<u>81,904,474</u>

IT IS SO ORDAINED this _____ day of _____, **2023**.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2023 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2023 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2023 fiscal year as follows:

Total Revenues:	<u>82,029,733</u>
Operations Expenditures:	<u>36,315,744</u>
Capital Improvement Expenditures:	<u>45,713,989</u>
Total Expenditures:	<u>82,029,733</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth has received American Rescue Plan Act (ARPA) federal funds of \$11,057,077 and claimed the lost revenue allowance of \$10,000,000 which we are reporting police uniform salaries to document the use of these funds; and

WHEREAS the City has report \$2,031,123.76 in police salaries and must now transfer funds from the ARPA Fund to the General Fund which is where the salaries were originally reported as required by accounting standards; and

WHEREAS it is requested \$2,032,000 be added to American Rescue Plan Act 2021 – Other Financing Uses – Transfer to the General Fund line item and American Rescue Plan Act 2021 – ARP Act of 2021 Local Fiscal Recovery Funds line item and General Fund – Transfer from ARPA 2021 line item; and

NOW THEREFORE, the City of Duluth 2023 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>84,061,733</u>
Operations Expenditures:	<u>38,347,744</u>
Capital Improvement Expenditures:	<u>45,713,989</u>
Total Expenditures:	<u>84,061,733</u>

IT IS SO ORDAINED this _____ day of _____, **2023**.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2024 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2024 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2024 fiscal year as follows:

Total Revenues:	<u>81,904,474</u>
Operations Expenditures:	<u>39,373,405</u>
Capital Improvement Expenditures:	<u>42,531,069</u>
Total Expenditures:	<u>81,904,474</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth has received American Rescue Plan Act (ARPA) federal funds of \$11,057,077 and claimed the lost revenue allowance of \$10,000,000 which we are reporting police uniform salaries to document the use of these funds; and

WHEREAS the City has report \$2,760,000 in police salaries and must now transfer funds from the ARPA Fund to the General Fund which is where the salaries were originally reported as required by accounting standards; and

WHEREAS it is requested \$2,760,000 be added to American Rescue Plan Act 2021 – Other Financing Uses – Transfer to the General Fund line item and American Rescue Plan Act 2021 – ARP Act of 2021 Local Fiscal Recovery Funds line item and General Fund – Transfer from ARPA 2021 line item; and

NOW THEREFORE, the City of Duluth 2024 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>84,664,474</u>
Operations Expenditures:	<u>42,133,405</u>
Capital Improvement Expenditures:	<u>42,531,069</u>
Total Expenditures:	<u>84,664,474</u>

IT IS SO ORDAINED this _____ day of _____, **2023**.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk

ORDINANCE NO. O-2023-28

AN ORDINANCE FOR THE REZONING OF ± 0.73 ACRES OF PROPERTY IN LAND LOT 293, AND BOUNDED AND TO THE BEGINNING CORNER, GWINNETT COUNTY CONSISTING OF TAX PARCEL R6293 121, GENERALLY KNOWN AS “Rainbow Village Phase II”, IS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT “B”. THE ORDINANCE PROVIDES FOR FINDINGS, ESTABLISHES CONDITIONS OF APPROVAL AS SHOWN ON ATTACHED EXHIBIT “C”, PROVIDES FOR SEVERABILITY, REPEALS CONFLICTING ORDINANCES, ESTABLISHES AN EFFECTIVE DATE, AND IS FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, the applicant, Axis Companies, and the following property owner: MBP LLC have filed a complete application (Z2023-002) with the City of Duluth seeking a rezoning for Rainbow Village Phase II. Said rezoning plan includes, but is not limited to, the rezoning of ±0.73 acres of property from C-1 (Neighborhood Business District) to PUD (Planned Unit Development).

WHEREAS, per Article 11 of the Duluth Unified Development Code, a rezoning must be approved by the Governing Body; and

WHEREAS, the City of Duluth Planning Commission held a public hearing at the meeting of November 6, 2023, duly noticed as prescribed by law and published in the Gwinnett Daily Post, regarding the application. At that meeting, the Planning Commission recommended approval with conditions of the rezoning as is set forth in the minutes of said meeting; and

WHEREAS, the City Council held a public hearing at the meeting of December 11, 2023, duly noticed as prescribed by law and published in the Gwinnett Daily Post, regarding said application, as shall be set forth in the minutes of said meeting.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

Pursuant to Article 11 of the Duluth Unified Development Code, the City Council finds that it is appropriate to rezone the property generally referred to as “Rainbow Village Phase II” to PUD (Planned Unit Development), for the following reasons:

- A. The rezoning is suitable given the use and development of adjacent and nearby properties. The parcel that makes up the subject property is surrounded by like Planned Unit Developments except for the parcel to the east zoned C-1 (Neighborhood Business District). The property to the south is Rainbow Village, which is zoned PUD. The rezone request for this parcel is for what is considered Phase II, an expansion of the existing Rainbow Village. The property to the north and west is zoned PUD and is a large multifamily residence named District at Duluth. The subject parcel has been vacant land.
- B. The proposed rezoning is not anticipated to adversely affect the existing use or usability of adjoining or nearby properties as conditions will be imposed on the development that address uses and intensities, architecture and design, landscape and screening, transportation and parking, roadways, stormwater facilities, street lighting and signage.
- C. The proposed rezoning is not anticipated to cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

- D. While every section of FORWARDuluth (Duluth Comprehensive Plan, 2040) is central to implementing the City's vision and goals, the Character Areas and Future Land Use Maps are the most influential in terms of daily decision-making and land use changes. Commercial, retail and/or offices have been envisioned on this property through the Comprehensive Plan and the Future Land Use Map.

In February of 2019, the City adopted FORWARDuluth, the 2040 update to the Comprehensive Plan. The subject property is located in the Downtown Core Character Area. FORWARDuluth envisions this Character Area to be the heart of the City and region and an aspiration listed for the Downtown Core Character Area is to encourage redevelopment of older and underutilized buildings particularly into dense residential and mixed-use developments. The proposed development accomplishes this aspiration by developing a vacant site into a dense residential development within walking distance to downtown.

SECTION 2. LEGAL DESCRIPTION.

The property that is subject to this ordinance consists of ±0.73 acres and is legally described on Exhibit "B", attached hereto. Said Exhibit is incorporated by reference as if fully set forth herein.

SECTION 3. CONDITIONS OF APPROVAL

Conditions of approval attached hereto as Exhibit "C". Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 4. SEVERABILITY.

Should any section or provision of this Ordinance or any Ordinance pertaining to the companion applications as identified above be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon approval by the City Council of the City of Duluth, Georgia.

SECTION 6. REPEALER.

All conflicting ordinances and conditions are hereby repealed and replaced with the conditions of approval set forth in this Ordinance, No. O-2023-28.

ATTACHMENTS:

Exhibit "A": Maps

Exhibit "B": Survey and Legal Description

Exhibit "C": Conditions of Approval

Exhibit "D": Proposed Building Elevations

Exhibit "E": Master Concept Plan and Rezoning Site Plan

Exhibit "F": Applicant's Responses to the Standards Governing the Exercise of Zoning Power

Exhibit "G": Applicant's Letter of Intent

Exhibit "H": Public Hearing Advertisement/Public Notice

{Signatures on the Following Page}

IT IS SO ORDAINED this 11th day of December, 2023.

Those councilmembers voting in favor:

Nancy Harris, Mayor

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

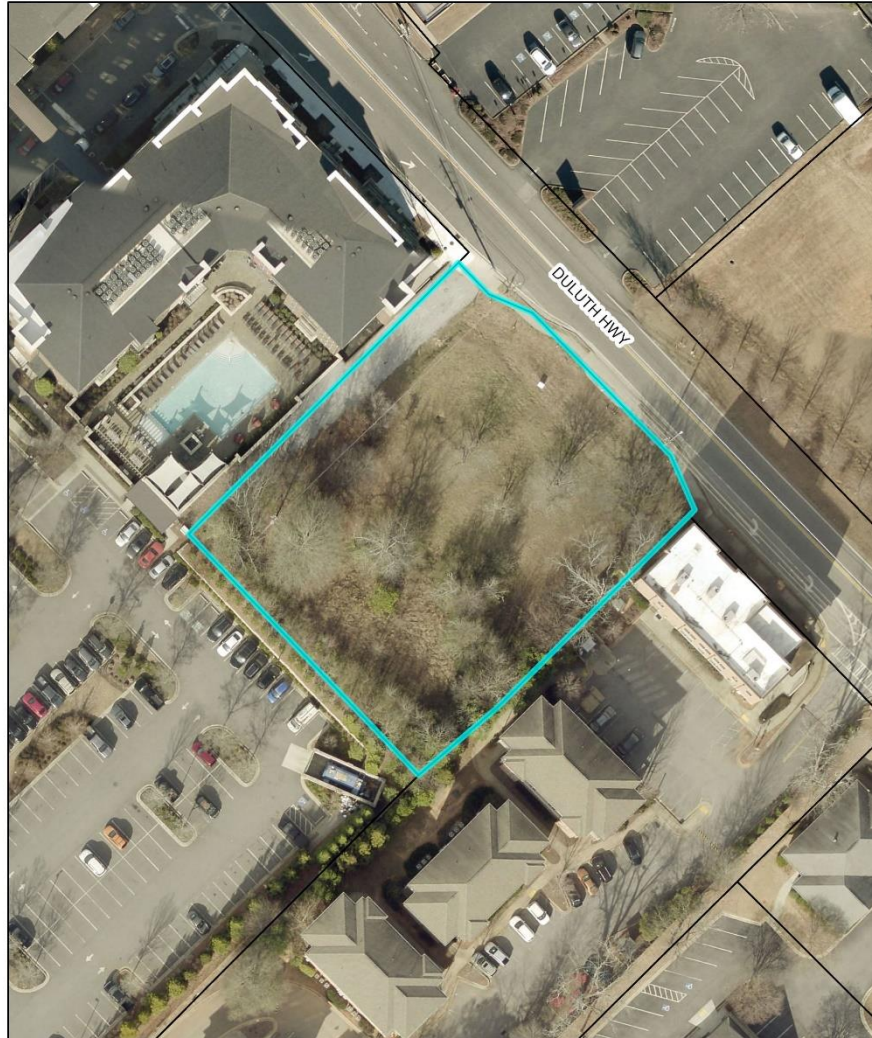
Those councilmembers voting in opposition:





ATTEST

Teresa Lynn, City Clerk

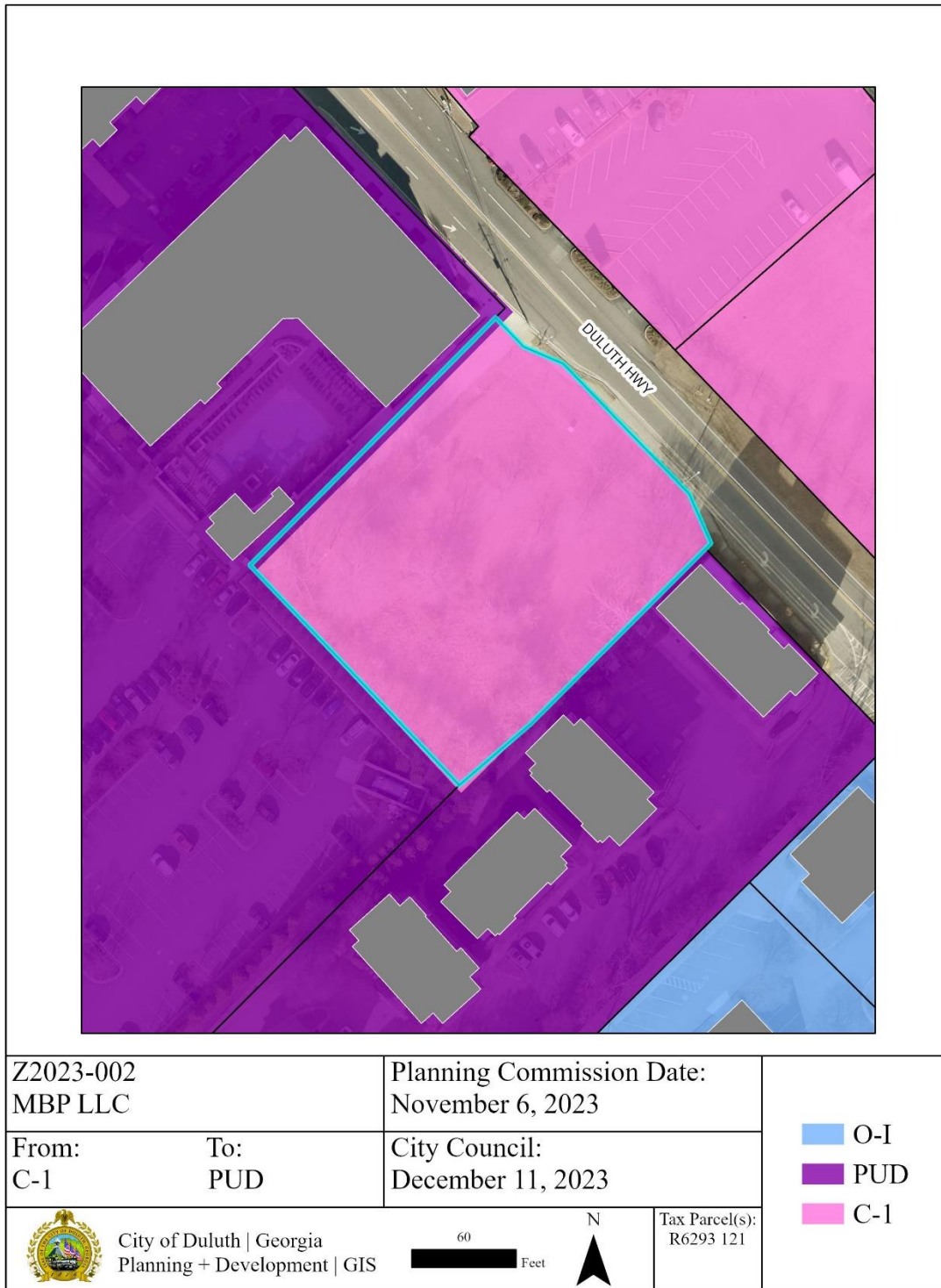
Exhibit "A"
Maps

Location Map



Z2023-002 MBP LLC		Planning Commission Date: November 6, 2023	
From: C-1	To: PUD	City Council: December 11, 2023	
 City of Duluth Georgia Planning + Development GIS		 	Tax Parcel(s): R6293 121

Zoning Map



Tax Parcel(s):
R6293 121

Character Map

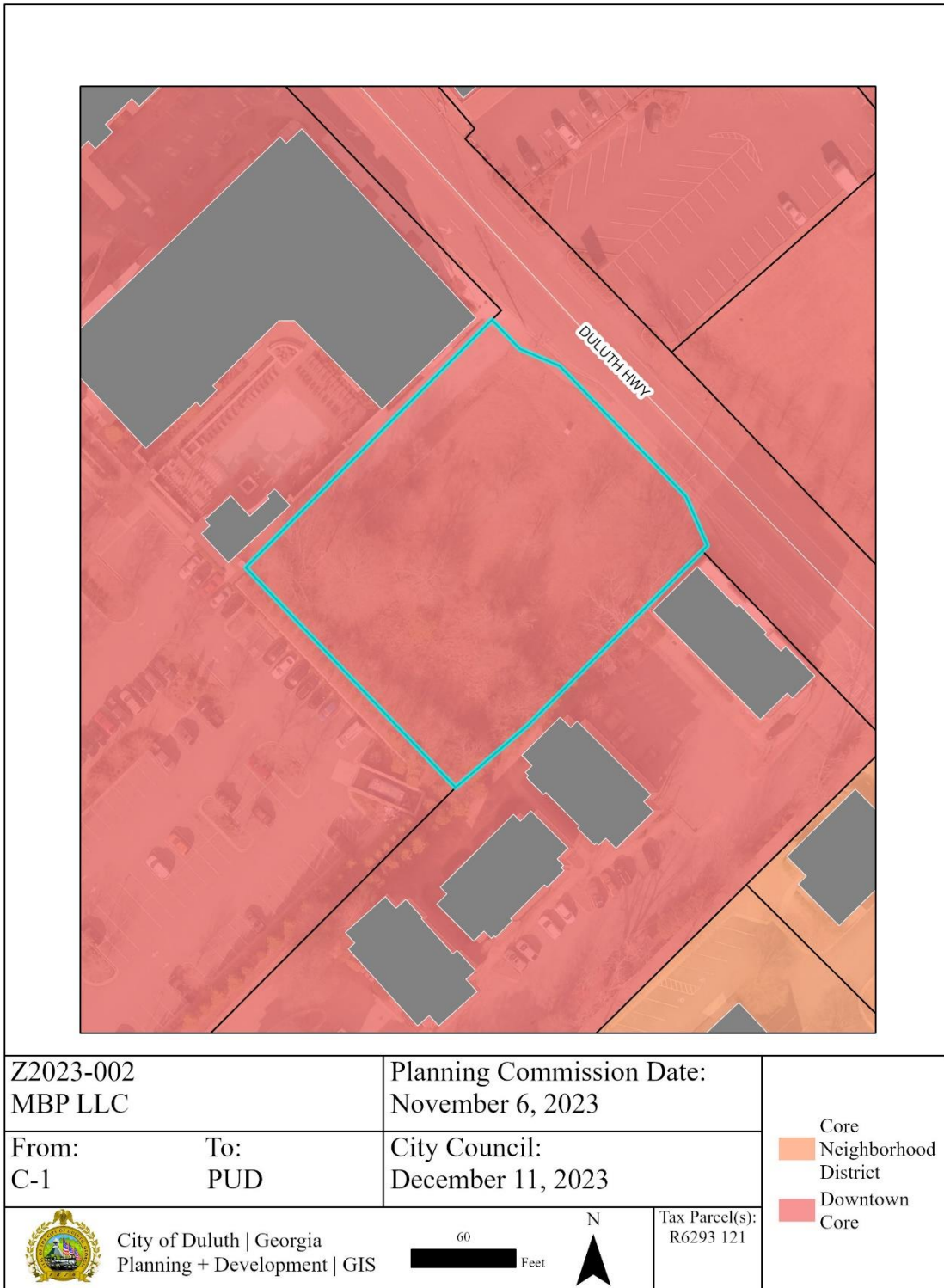


Exhibit "B"
Survey and Legal Description

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE TOWN OF DULUTH, GWINNETT COUNTY, STATE OF GEORGIA AND BEING A PART OF LAND LOT NO. 293 AND BOUNDED AND TO THE BEGINNING CORNER. CONTAINING THREE-FOURTHS OF AN ACRE MORE OR LESS. THIS IS THE SAME LANDS DESCRIBED AND CONVEYED BY D.P. LANGLEY TO M.T. MCDANIEL, BY WARRANTY DEED DATED JULY 31, 1916, AND RECORDED IN DEED BOOK 97 AT PAGE 62, GWINNETT COUNTY DEED RECORDS AND BY REFERENCE IS MADE A PART OF THIS DESCRIPTION.

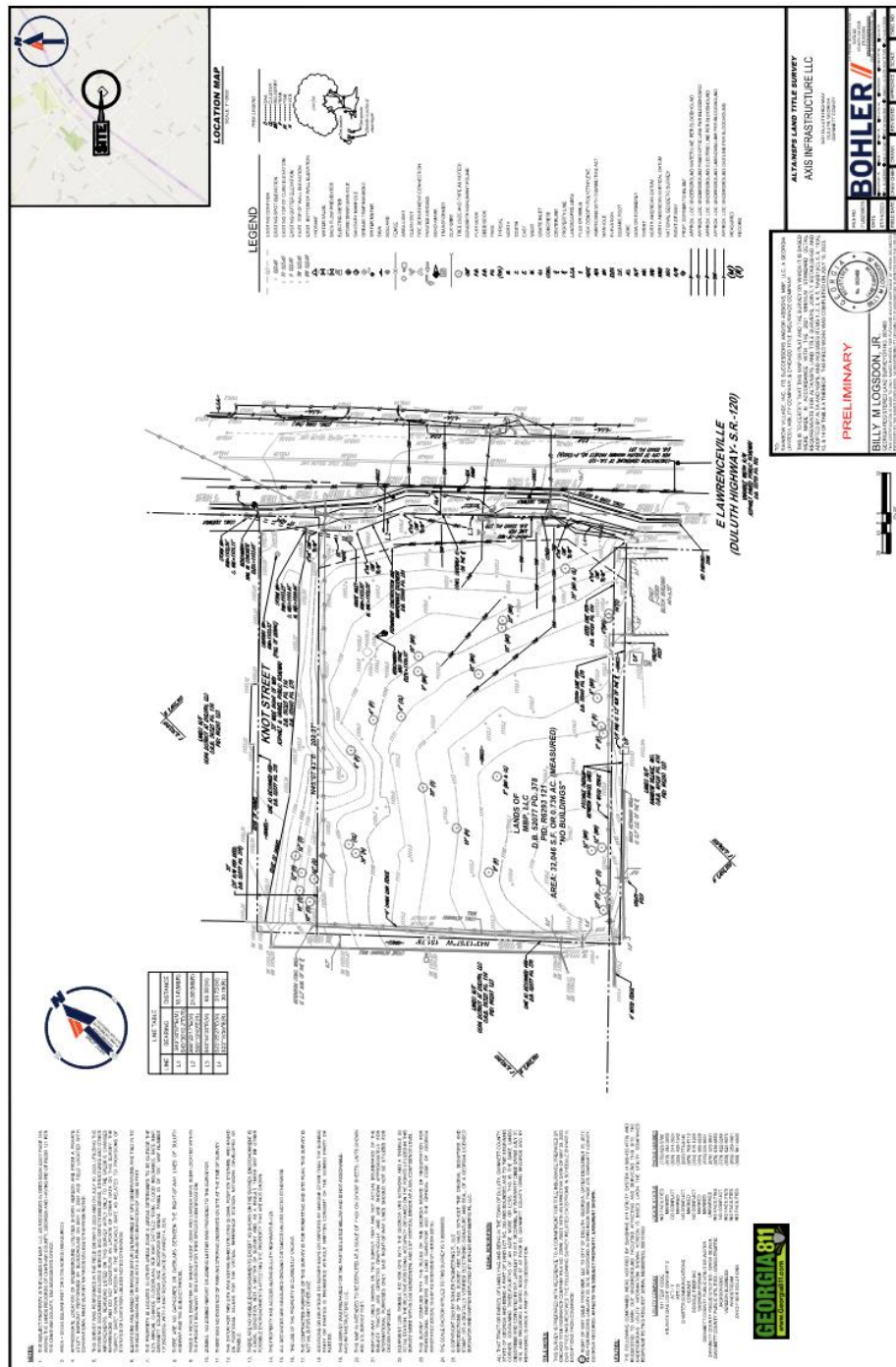


Exhibit "C"
Conditions of Approval

General

1. The subject property shall be developed in accordance with the Master Concept Plan (Exhibit "E") and all applicable exhibits except as modified by the conditions contained herein on file in the office of the Community Development & Engineering Department.
2. All conditions shall be shown on the final plat.
3. The Developer shall submit a combination plat to the City of Duluth for review and approval combining all land shown on the rezoning site plan (Exhibit "E").
4. All requirements imposed under this Ordinance shall meet or exceed the minimum standards of the Unified Development Code, unless modified by the conditions contained herein, regardless of any change in ownership.
5. The PUD has been specifically rezoned in regards to the Transitional Housing use that Rainbow Village offers to its clients. Should the use of this property change, an amendment to the PUD would have to be heard by the Planning Commission and voted upon by the Mayor and Council.
6. All Phase II construction traffic shall access the site via an approved construction exit on Duluth Highway. No Phase II construction equipment or traffic shall traverse through any portion of Phase I during any point of Phase II development. Failure to abide by this condition will result in an immediate stop work order.
7. Knot Street shall not be utilized during construction or after completion of the development without first paving the existing gravel road.

Uses and Intensities

8. The use shall be limited to a maximum of thirty-six (36) multi-family residential units. No units shall exceed three (3) bedrooms.
9. The residential portion of the project shall be served by parking spaces at a ratio of no less than 1 space per unit.
10. Residential building height shall not exceed three stories or forty-five (45) feet as measured from the mean elevation of the finished lot grade at the front of the building to the highest point on the roof.

Architecture and Neighborhood Design

11. The buildings within the development shall be designed in substantial accordance with the elevations shown in Exhibit "D" except as modified by the conditions contained herein. All buildings with common access points and corridors shall be enclosed and conditioned. Architectural wall packs shall be installed and operated on all multi-family buildings to cast lighting up and down illuminating walkways, streets, and driveways adjacent to buildings and to provide aesthetic value to the buildings.
12. Final building plans, including elevations and materials, for the development shall be submitted to and approved by the Community Development & Engineering Department prior to the

issuance of any building permits.

13. All retaining walls, as needed, shall be constructed of interlocking masonry block, brick or other decorative material as approved by the Community Development & Engineering Department. Timber walls are prohibited. All walls shall meet all City design standards and must be included in the site development plans. All walls require separate review and permit.
14. The Developer shall provide underground utilities throughout the entire development. Utility meters, power transformers, air conditioner units, etc. shall be located in the rear or side of buildings and not visible from the right-of-way. Placement of utilities shall be designed to maximize the quality and quantity of landscaping visible from the street and in no case should utility placement be designed to limit opportunities for improved streetscapes.

Landscape & Fencing

15. Developer shall submit an overall landscape plan consistent with Exhibit "E" for review and approval by the Planning and Development Department prior to the issuance of any development permits. Plan shall include the following: the installation of trees along all streets (outside of right-of-way); plan shall identify the location, type and width of all landscaped buffers. Specimen and caliper of all trees shall be approved by the Planning and Development Department.
16. The Developer shall install sod within all front, side and rear yards as well in areas labeled passive amenity area and greenspace.

Transportation, Roadways & Parking

17. The streets within the development shall be private. All roads, alleys, parking spaces and curbs shall be privately owned and maintained by the owner and kept in good repair, free from defects in paving or striping at all times. All streets and alleys shall be constructed to public street and alley standards found in the City of Duluth Unified Development Code.
18. Sidewalks shall be constructed by the Developer consistent with the locations as shown in the Master Concept Plan attached hereto as Exhibit "E". Specifically, internal sidewalks shall be a minimum of five feet (5') in width.

Street Lighting and Signage

19. Developer shall install decorative street lighting within the development. A lighting plan showing placement of lights and elevations of lighting equipment must be approved by the Community Development & Engineering Department prior to the issuance of any development permits. The owner shall be responsible for the purchase and installation of all lighting equipment and infrastructure.
20. A master signage plan shall be submitted to and approved by the Community Development & Engineering Department prior to the issuance of any building permits.
21. All street signs and light poles shall be decorative in nature as determined by the Community Development & Engineering Department. Details and specifications for all signs shall be incorporated into the land development plans for review and approval prior to the issuance of a land development permit.

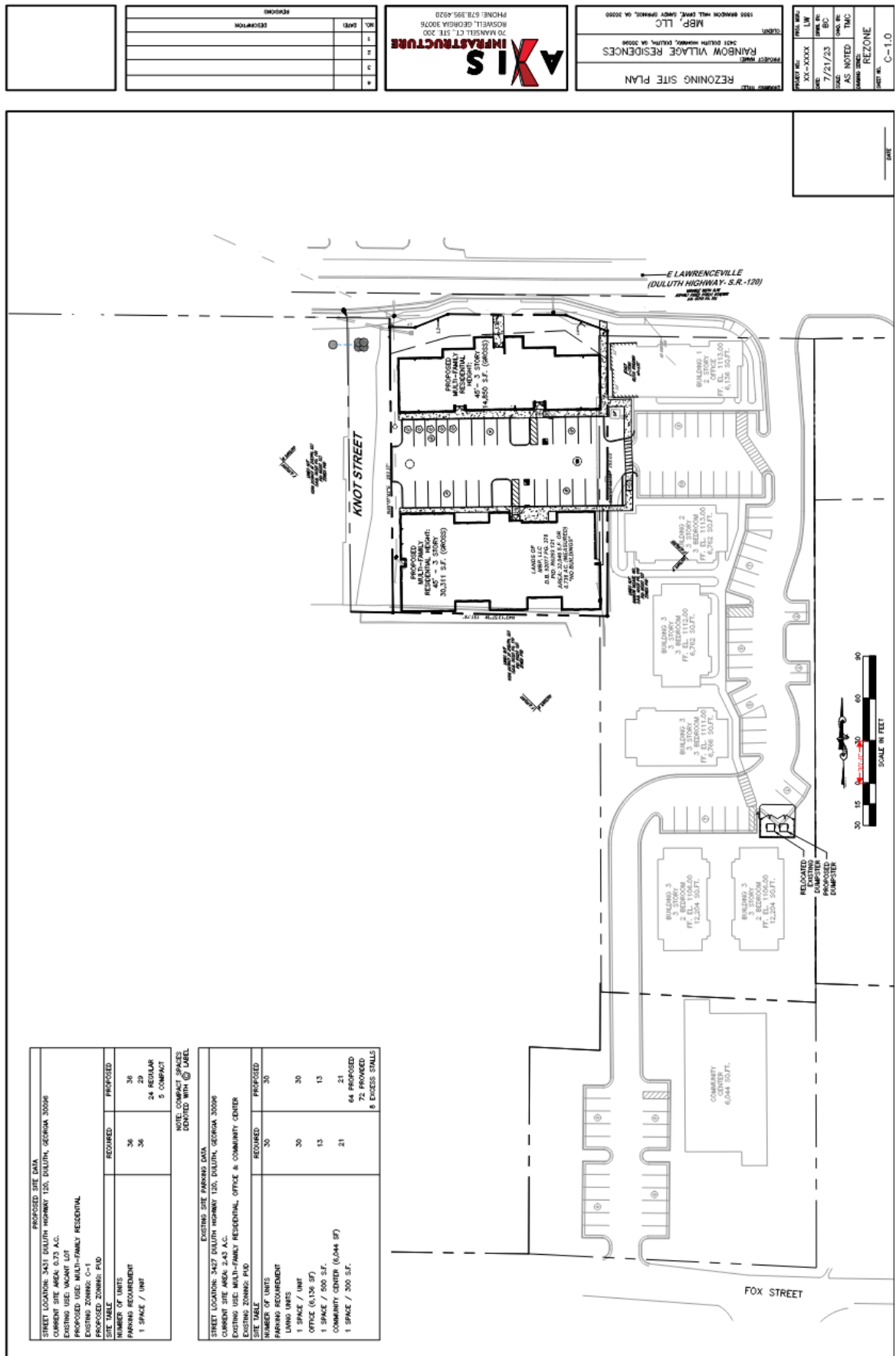
Exhibit "D"
Proposed Building Elevations



Residences Preliminary Concept
Duluth Highway
Duluth, Georgia 20096

[illegible]

Exhibit "E"
Master Concept Plan and Rezoning Site Plan



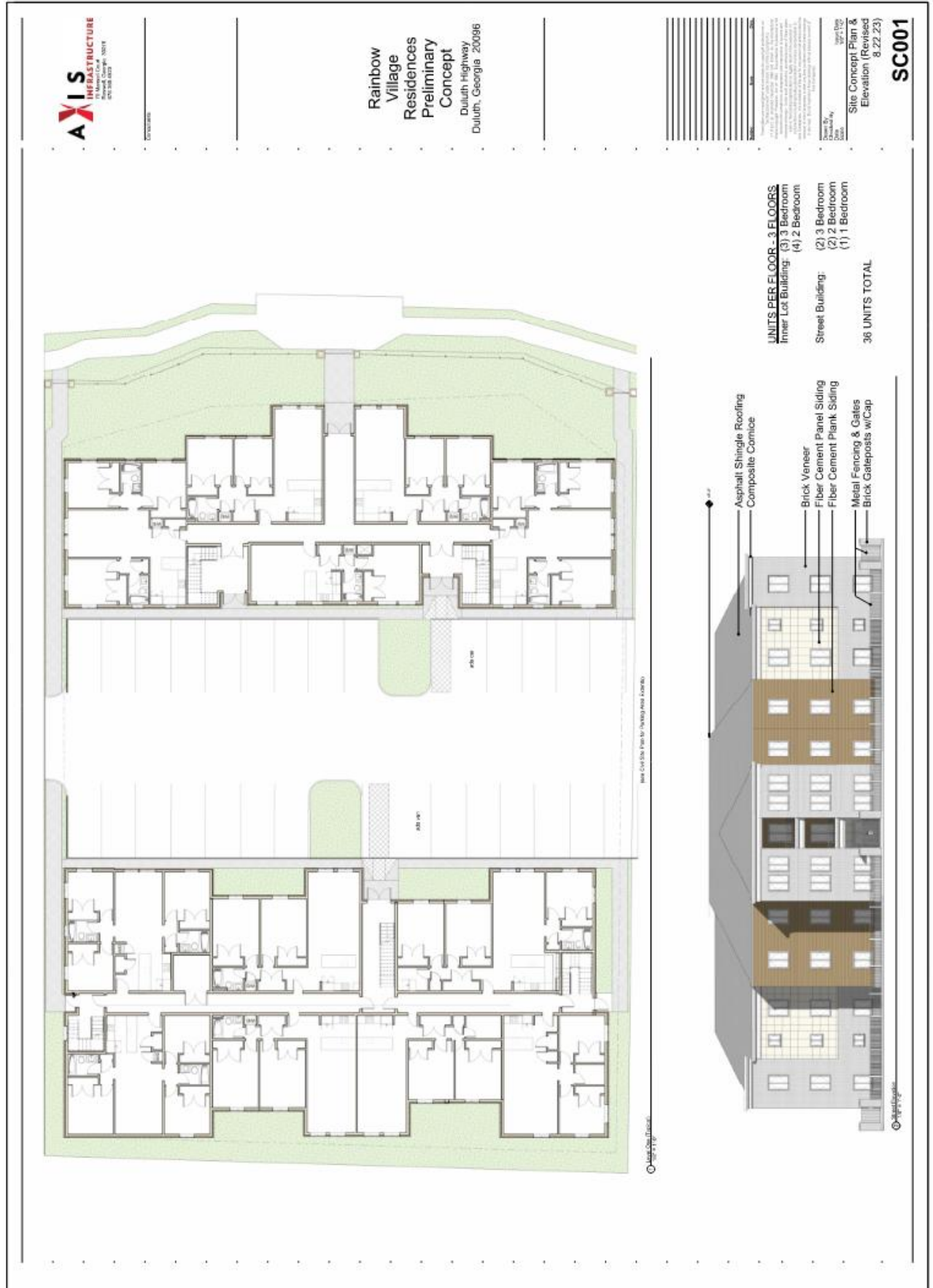


Exhibit "F"

Applicant's Responses to the Standards Governing the Exercise of Zoning Power

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

The rezoning request for this property will permit a use that is suitable in view of the use and development of adjacent and nearby property.

2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.

The rezoning request for this property will not adversely affect the existing use or usability of the adjacent or nearby property.

3. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

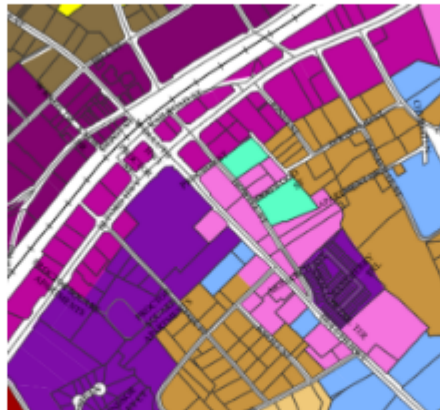
The rezoning request for this property will not result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.

4. Whether the zoning proposal is consistent with the Land Use Policy Plan, Comprehensive Plan, transportation plans, or other plans adopted for guiding development within the City of Duluth.

The rezoning request for this property is consistent with the Land Use Policy Plan, Comprehensive Plan, transportation plans or other plans adopted for guiding development within the city of Duluth.

5. Whether there are other existing or changing conditions affecting the use and development of property that give supporting grounds for either approval or disapproval of the zoning or special use proposal.

This parcel is currently zoned C-1 Commercial but is bounded on 3 sides by PUD. We are requesting that this isolated parcel be rezoned to PUD and become incorporated into the larger PUD that surrounds it.



6. Whether the property to be affected by a proposed rezoning has a reasonable economic use as currently zoned.

It would be difficult to develop this parcel as a standalone commercial development. Cross access to the adjacent Rainbow Village is ideal in lieu of another driveway access onto Duluth Highway. In addition it's only 0.736 acres that would limit the uses that would fit on the parcel with the required setbacks, parking requirements, etc as required by Code.

Exhibit "G"
Applicant's Letter of Intent



October 16, 2023

City of Duluth
3167 Main Street
Duluth, GA 30096

Re: Letter of Intent
Rainbow Village Rezoning
3431 Duluth Highway
Duluth, GA 30096

To whom it may concern,

The subject property is a 0.736 acre vacant, commercial lot located at 3431 Duluth Highway. The site is situated on the West side of Duluth Highway currently surrounded by (3) Planned Unit Development (PUD) properties.

The applicant is proposing to rezone the property from Commercial (C-1) to Planned Unit Development (PUD) zoning district to allow for multifamily dwelling units. If approved, the requested rezoning will allow the applicant to use the 0.736 acres efficiently as it will tie into the adjacent, existing Rainbow Village property.

The application provides a response to the rezoning proposal questions as required by the city. The rezoning request for this property is consistent with the Land Use Policy Plan, Comprehensive Plan, transportation plans or other plans adopted for guiding development within the City of Duluth.

Thank you for your time and consideration of this matter. If any further information is required, I can be reached via phone at 678.237.2764 or by email at teresacurry@axiscompanies.com.

Thank you,

A handwritten signature in blue ink, appearing to read "T. Curry", is written over a faint blue line.

Teresa Curry, P.E.
Partner

Exhibit "H"
Public Hearing Advertisement/Public Notice

GDP5938
gpn16
CITY OF DULUTH
NOTICE OF PUBLIC
HEARING

NOTICE IS HEREBY
GIVEN that a public
hearing will be held be-
fore Planning Commis-
sion to consider a Rezon-
ing request from Teresa
Curry, an approximately
0.79 acres of property in
Land Lot 293, 6th Dis-
trict, Gwinnett County,
located at 3431 Duluth
Highway, consisting of
tax parcel 6293-121, case
number Z2023-002. The
request is to rezone from
C-1 to PUD district to al-
low for apartment units
with parking.
The public is invited to
attend this hearing be-
fore the Planning Com-
mission on the proposed
rezoning. The meeting
date, place and time re-
garding this matter are
as follows:
WHEN:
**November 6th, 2023 - 6:00
p.m.**
WHERE:
**City Hall Council Cham-
bers
3167 Main Street
Duluth, GA 30096**
PERSONS INTEREST-
ED IN THIS MATTER
are invited to review the
proposed Rezoning,
which is on file with the
Department of Planning
& Development of the
City of Duluth and to at-
tend the public hearing
at the date, time and
place provided in this no-
tice, to express their
opinion on this matter.
Written comments may
also be received in lieu
of testimony during the
public hearing. Written
comments may be sent
to the following address:
City of Duluth
ATTN: Planning Depart-
ment
3167 Main Street
Duluth, GA 30096
OR
Email: [Planning@duluth-
ga.net](mailto:Planning@duluth-ga.net)
For more information,
contact Planning & De-
velopment, at (770)476-
1790.

In compliance with the
Americans with Disabili-
ties Act of 1990, the City
of Duluth is committed
to providing reasonable
accommodations for a
person with a disability.
Please contact Teresa
Lynn at (770) 476-3434 if
special program accom-
modations are necessary
and/or if program infor-
mation is needed in an
alternative format. Spe-
cial requests must be
made in a reasonable
amount of time in order
that accommodations
can be arranged.
10:8,2023



**CITY OF DULUTH
MAYOR AND COUNCIL**

Staff Report
December 11, 2023

CASE NUMBER:	Z2023-002
LOCATION:	3431 Duluth Highway, Duluth, GA 30096
PARCEL(S):	R6293 121
CURRENT ZONING:	C-1 (Neighborhood Business District)
PROPOSED ZONING:	PUD (Planned Unit Development)
ACREAGE:	+/- 0.73
REQUEST:	Approval of a Rezoning from C-1 (Neighborhood Business District) to PUD (Planned Unit Development) to allow for the expansion of Rainbow Village.
OWNER/APPLICANT:	<p>Teresa Curry c/o Axis Companies 70 Mansell Court, Suite 200 Roswell, GA 30076</p> <p><i>On behalf of</i> MBP LLC 1855 Brandon Hall Drive Sandy Springs, GA 30350</p>

STAFF RECOMMENDATION Z2023-002:	APPROVAL with Conditions
PLANNING COMMISSION RECOMMENDATION Z2023-002:	APPROVAL with Conditions

I. PURPOSE AND DESCRIPTION OF THE REQUEST

The purpose of the rezoning request (Z2023-002) from Axis Companies, on behalf of the property owner MBP LLC, is to rezone the current parcel from C-1 (Neighborhood Business District) to PUD (Planned Unit Development). The proposed rezoning request is for an entitlement to construct Phase II of Rainbow Village which is proposed to add 36 multi-family residential units.

Maps detailing the location, zoning district and character area of the subject property are attached hereto as Exhibit "A". The survey and legal description of the subject property is attached hereto as Exhibit "B". Recommended conditions of approval are detailed in Exhibit "C".

In order for the applicant to achieve their desired land use on the subject property, they are required to rezone the subject property.

II. EXISTING CONDITIONS

The subject property totals +/- 0.73 acres. The property is located within the Downtown Overlay District. The property to the south is Rainbow Village, which is zoned PUD. The rezone request for this parcel is for what is considered Phase II, an expansion of the existing Rainbow Village. The property to the east is zoned C-1 and is New Days Church. The property to the north and west is zoned PUD and is a large multifamily residence named District at Duluth. The subject parcel has been vacant land.

III. REVIEW OF THE REQUEST

1. Literal Interpretation of the Unified Development Code (UDC)

The application is reviewed for compliance with the requirements for PUD development (Sec. 504.02 of the UDC), review standards for PUD Rezoning (Sec. 504.06 of the UDC), and standards governing the exercise of zoning power (Sec. 1104.02 of the UDC).

2. Standards Governing the Exercise of Zoning Power

The current zoning of C-1 does not allow the proposed development by-right. Therefore, a rezoning to PUD is necessary to develop the property as proposed. In accordance with Section 504.01 of the Unified Development Code (UDC), the PUD zoning district is intended to:

- 1) Encourage larger scale planned development which will produce a logically organized and compatible set of land uses resulting in a higher overall quality of community development than if accomplished in incremental unplanned stages.
- 2) Allow a mixture and/or density of land uses not otherwise allowed in an established zoning district; by careful site planning the appropriate site improvements are incorporated into the plan that establish compatible relationships between the uses within the site and uses adjacent to the site.
- 3) Encourage creative site design which seeks to preserve the open space and unique environmental features, conserve energy through efficient building design and clustering, efficiently use the land, and increase the efficiency of public service delivery.
- 4) Provide flexibility in the application of area, height, bulk, placement and other zoning controls.

- 5) Promote land development in proper relation to the surrounding neighborhood.
- 6) Ensure that the design of the building forms are interrelated and architecturally harmonious.
- 7) To be applied in a manner consistent with the Land Use Plan for the City of Duluth.

Section 504.06 of the UDC outlines review standards for a PUD rezoning. In considering and acting upon applications for rezoning to the Planned Unit Development District, in addition to the standards for rezoning consideration in the Procedures and Permits Article of the UDC, the City Council may consider and base their recommendation and decision, respectively, on the following information:

- 1) Conformity to the purpose and intent of the Planned Unit Development District (Section 504.01 above).
- 2) Quality of site design.
- 3) Integration of a variety of land uses, building types and densities.
- 4) Preservation of natural features.
- 5) Compatibility with adjacent land uses.
- 6) Provision and type of open space and the provision of other amenities designed to benefit the general public.
- 7) Adequacy of utilities and other public works.

Section 1101.02 of the UDC states if a proposed use is not allowed by right under the existing zoning on a property, a request for an amendment to the Official Zoning Map (often called a “rezoning”) must be approved prior to development, construction, or occupancy. Section 1104.02 of the UDC establishes Standards Governing the Exercise of Zoning Power. The Applicant finds that the following standards are relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property and shall govern the exercise of the zoning power.

The Applicant has responded to the following Standards Governing the Exercise of Zoning Power.

- (a) How the proposed rezoning will permit a use that is suitable in view of the use and development of adjacent and nearby property.
- (b) How the proposed rezoning will adversely affect the existing use or usability of adjacent or nearby property.
- (c) Whether the property to be affected by a proposed rezoning has a reasonable economic use as currently zoned.
- (d) Whether the proposed rezoning will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
- (e) Whether the proposed rezoning is in conformity with the policy and interest of the Comprehensive Plan; Land Use Plan; transportation plans and other plans adopted for guiding development within the City of Duluth.
- (f) Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposed rezoning.

As required by Section 504.03 of the UDC, the application submitted a Development Summary Report that establishes the type, nature, size, intent and characteristics of the proposed development. The proposed building elevations are attached hereto as Exhibit “D”.

As required by Section 504.04 and 504.05 of the UDC, the Applicant has submitted a Master Concept Plan containing details related to the project’s uses, intensities, building locations,

location of the proposed street circulation system to be located within the Planned Unit Development, delineation of individual areas of the Planned Unit Development. The Master Concept Plan is attached hereto as Exhibit “E”.

The Applicant has provided written responses to the standards governing the exercise of zoning power as part of the application. Those documents are attached hereto as Exhibit “F”.

3. Literal Interpretation of FORWARDuluth, Plan 2040 (Comprehensive Plan)

The subject property is located in the Downtown Core Character Area. FORWARDuluth envisions this Character Area to be the heart of the City and region and an aspiration listed for the Downtown Core Character Area is to encourage redevelopment of older and underutilized buildings particularly into dense residential and mixed-use developments. The proposed development accomplishes this aspiration by developing a vacant site into a dense residential development within walking distance to downtown.

IV. PLANNING STAFF REVIEW

In accordance with Section 504.02 of the UDC, when reviewing a rezoning application for PUD the following criteria are evaluated.

- (a) A minimum of 10% of the gross area of the site shall be retained in common open space that is required to be deeded as a separate tract to an Owners Association and shall forever remain as open space. The required common open space shall include any conservation areas within a conservation easement established in accordance with Section 505.*

The proposed development meets this requirement. This development is an expansion of the existing Rainbow Village where there is an existing recreation area with a 3-story community center.

- (b) Additional common open space may be provided and may include active recreation areas for the proposed development, such as swimming pools, tennis courts, community facilities, etc.*

The proposed development meets this requirement. This development is an expansion of the existing Rainbow Village where there is an existing recreation area with a 3-story community center.

- (c) PUDs comprised solely of multi-family dwellings shall dedicate a minimum of 10% of the gross floor area to non-residential uses that benefit on-site residents. Examples of acceptable non-residential uses include a gym, community room, concierge, etc.*

The proposed development meets this requirement. This development is an expansion of the existing Rainbow Village where there is an existing recreation area with a 3-story community center.

- (d) A PUD that does not have access to a publicly-approved sewer system must meet all application requirements for wastewater disposal of the Gwinnett County Environmental Health Department. If sanitary sewer is proposed or required, it must be connected to a state-approved wastewater treatment facility, either privately or publicly owned.*

The proposed development would be served by Gwinnett County sewer, thus meeting this requirement.

- (e) Sidewalks shall be required along both sides of all streets within a PUD, with the exception that sidewalks on one side of the street can provide pedestrian connectivity throughout the site. The construction standards of the required sidewalks are given in the Project Design and Construction Standards Article of the Development Code.

The proposed development meets this requirement. Sidewalks are proposed on Duluth Highway as well as an internal walkway.

- (f) Where PUD abuts an RA-200, RA-100, R-75 district or a residential property, said PUD shall contain a 50-foot wide buffer strip along the abutting property lines. The 50 feet shall be added to the side or rear yard requirements of the PUD; at least 15 feet of the 50-foot buffer strip shall be planted area.

This requirement is not entirely applicable as the subject properties is adjacent to Phase I of the same development and another multi-family development. Per Table 7-B of the UDC, a zoning buffer is not required.

- (g) All utilities must be located underground, including private utilities such as electric power, cable and telephone.

All new utilities serving the proposed development will be underground.

The proposed Master Concept Plan includes a total additional 36 multi-family residential units to the Rainbow Village development within two 3-story buildings. The two buildings are separated by a parking lot which connects to Phase I of the development.

The original PUD ordinance states a parking ratio of 1 space per residential unit. Since Rainbow Village is operating as Transitional Housing for its clients, this parking ratio for the residential portion shall remain as the applicant has indicated most residents do not have cars and the office arranges shuttle transportation for the residents. Phase II proposes to include 29 parking spaces in addition to the 72 existing parking spaces which meets the required ratio of 1 parking space per residential unit.

V. **RECOMMENDATION**

Planning staff recommends **Approval with Conditions** of case Z2023-002. The Conditions of Approval are attached hereto as Exhibit "C."

Planning Commission recommends **Approval with Conditions** of case Z2023-002.

ATTACHMENTS:

Exhibit "A": Maps

Exhibit "B": Survey and Legal Description

Exhibit "C": Conditions of Approval

Exhibit "D": Proposed Building Elevations

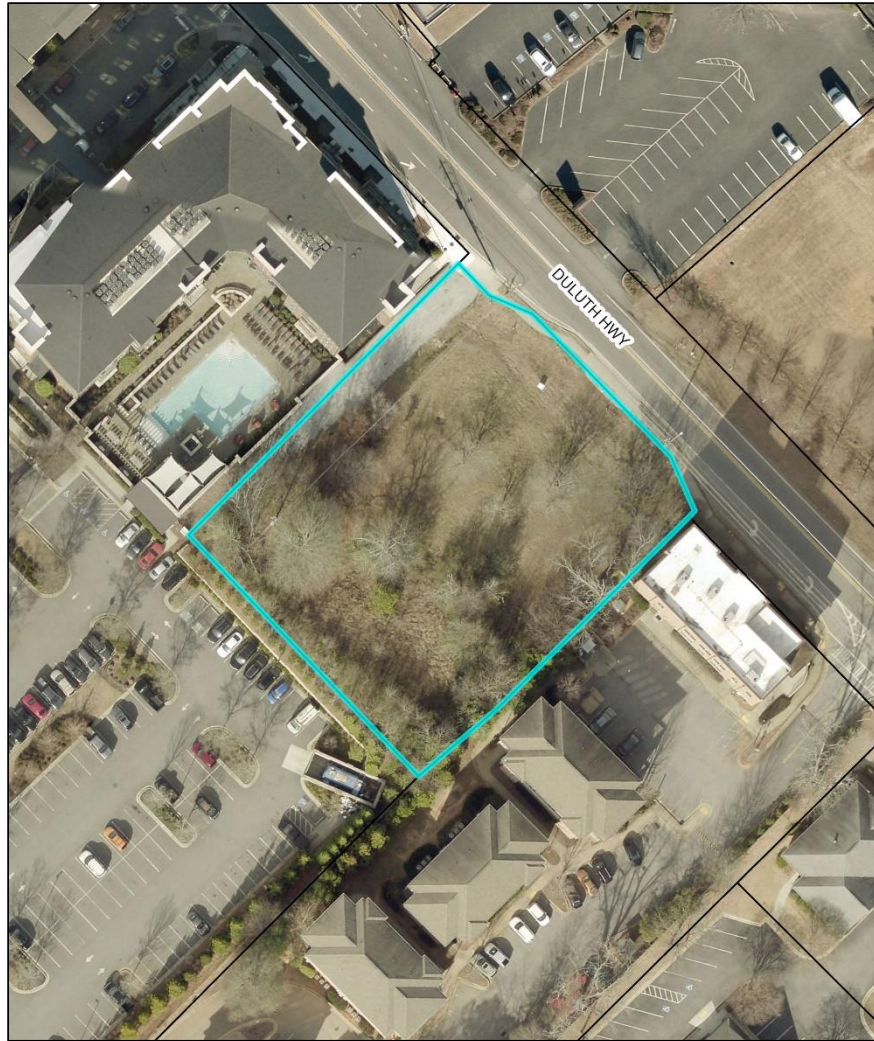
Exhibit "E": Master Concept Plan and Rezoning Site Plan


Exhibit "F": Applicant's Responses to the Standards Governing the Exercise of Zoning Power

Exhibit "G": Applicant's Letter of Intent

Exhibit "H": Public Hearing Advertisement/Public Notice

Exhibit "A"
Maps
Location Map



Z2023-002 MBP LLC		Planning Commission Date: November 6, 2023	<div>— Streets</div> <div> Address Outline</div> <div> Parcel</div>
From: C-1	To: PUD	City Council: December 11, 2023	
 City of Duluth Georgia Planning + Development GIS		Tax Parcel(s): R6293 121	

Zoning Map



Character Map

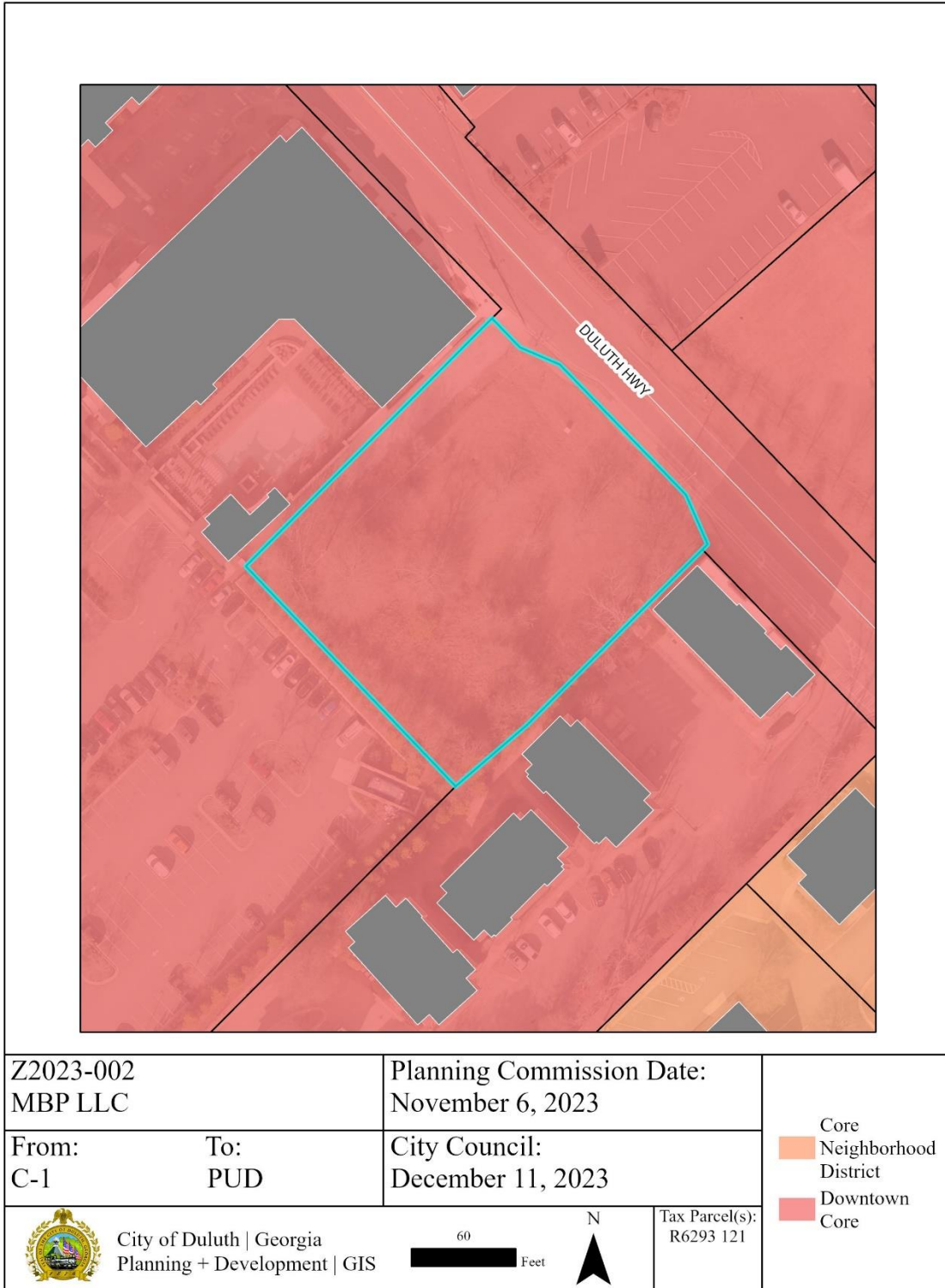


Exhibit "B"

Survey and Legal Description

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE TOWN OF DULUTH, GWINNETT COUNTY, STATE OF GEORGIA AND BEING A PART OF LAND LOT NO. 293 AND BOUNDED AND TO THE BEGINNING CORNER. CONTAINING THREE-FOURTHS OF AN ACRE MORE OR LESS. THIS IS THE SAME LANDS DESCRIBED AND CONVEYED BY D.P. LANGLEY TO M.T. MCDANIEL, BY WARRANTY DEED DATED JULY 31, 1916, AND RECORDED IN DEED BOOK 97 AT PAGE 62, GWINNETT COUNTY DEED RECORDS AND BY REFERENCE IS MADE A PART OF THIS DESCRIPTION.

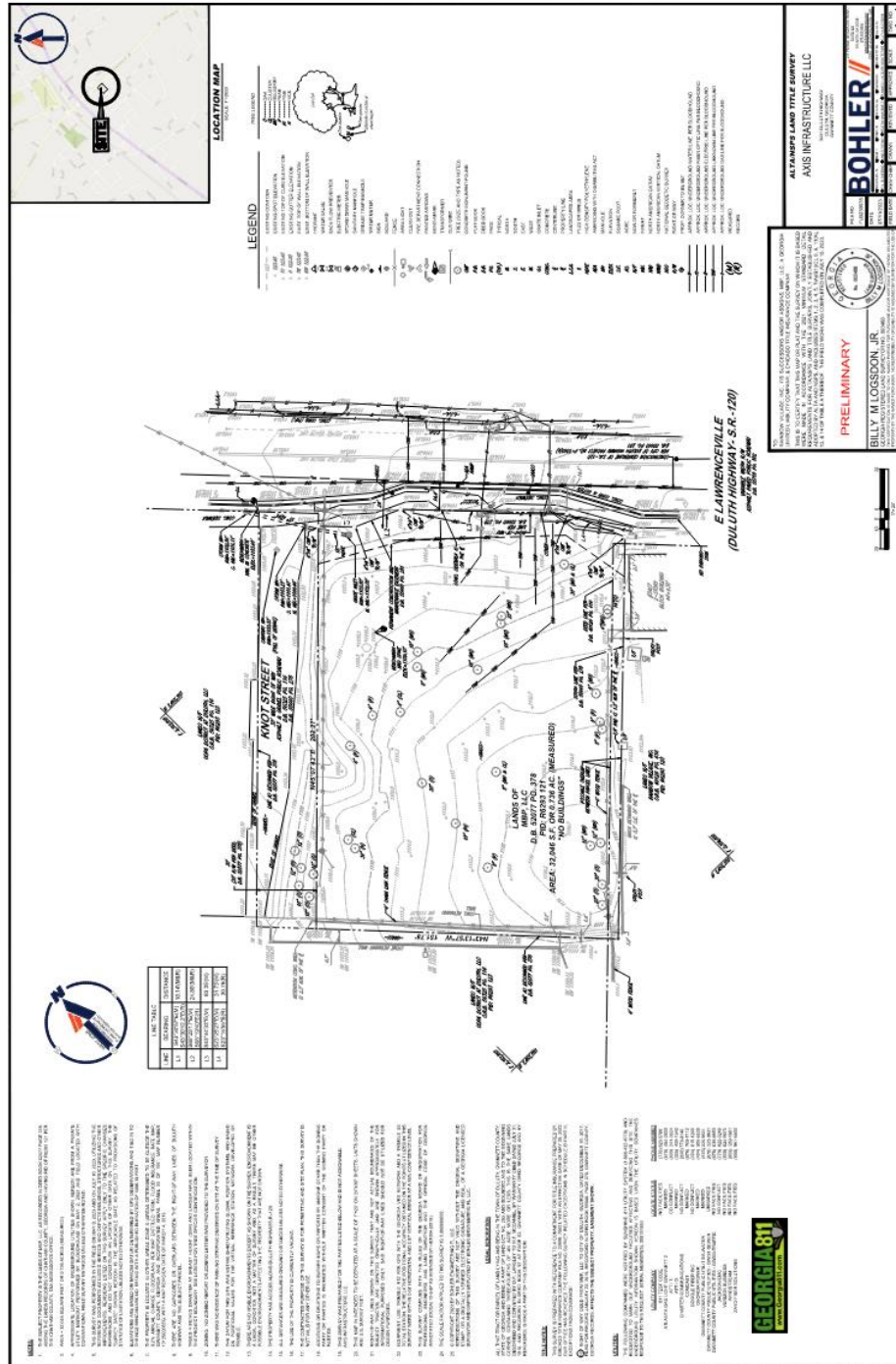


Exhibit “C” Conditions of Approval

General

1. The subject property shall be developed in accordance with the Master Concept Plan (Exhibit “E”) and all applicable exhibits except as modified by the conditions contained herein on file in the office of the Community Development & Engineering Department.
2. All conditions shall be shown on the final plat.
3. The Developer shall submit a combination plat to the City of Duluth for review and approval combining all land shown on the rezoning site plan (Exhibit “E”).
4. All requirements imposed under this Ordinance shall meet or exceed the minimum standards of the Unified Development Code, unless modified by the conditions contained herein, regardless of any change in ownership.
5. The PUD has been specifically rezoned in regards to the Transitional Housing use that Rainbow Village offers to its clients. Should the use of this property change, an amendment to the PUD would have to be heard by the Planning Commission and voted upon by the Mayor and Council.
6. All Phase II construction traffic shall access the site via an approved construction exit on Duluth Highway. No Phase II construction equipment or traffic shall traverse through any portion of Phase I during any point of Phase II development. Failure to abide by this condition will result in an immediate stop work order.
7. Knot Street shall not be utilized during construction or after completion of the development without first paving the existing gravel road.

Uses and Intensities

8. The use shall be limited to a maximum of thirty-six (36) multi-family residential units. No units shall exceed three (3) bedrooms.
9. The residential portion of the project shall be served by parking spaces at a ratio of no less than 1 space per unit.
10. Residential building height shall not exceed three stories or forty-five (45) feet as measured from the mean elevation of the finished lot grade at the front of the building to the highest point on the roof.

Architecture and Neighborhood Design

11. The buildings within the development shall be designed in substantial accordance with the elevations shown in Exhibit “D” except as modified by the conditions contained herein. All buildings with common access points and corridors shall be enclosed and conditioned. Architectural wall packs shall be installed and operated on all multi-family buildings to cast lighting up and down illuminating walkways, streets, and driveways adjacent to buildings and to provide aesthetic value to the buildings.
12. Final building plans, including elevations and materials, for the development shall be submitted to and approved by the Community Development & Engineering Department

prior to the issuance of any building permits.

13. All retaining walls, as needed, shall be constructed of interlocking masonry block, brick or other decorative material as approved by the Community Development & Engineering Department. Timber walls are prohibited. All walls shall meet all City design standards and must be included in the site development plans. All walls require separate review and permit.
14. The Developer shall provide underground utilities throughout the entire development. Utility meters, power transformers, air conditioner units, etc. shall be located in the rear or side of buildings and not visible from the right-of-way. Placement of utilities shall be designed to maximize the quality and quantity of landscaping visible from the street and in no case should utility placement be designed to limit opportunities for improved streetscapes.

Landscape & Fencing

15. Developer shall submit an overall landscape plan consistent with Exhibit “E” for review and approval by the Planning and Development Department prior to the issuance of any development permits. Plan shall include the following: the installation of trees along all streets (outside of right-of-way); plan shall identify the location, type and width of all landscaped buffers. Specimen and caliper of all trees shall be approved by the Planning and Development Department.
16. The Developer shall install sod within all front, side and rear yards as well in areas labeled passive amenity area and greenspace.

Transportation, Roadways & Parking

17. The streets within the development shall be private. All roads, alleys, parking spaces and curbs shall be privately owned and maintained by the owner and kept in good repair, free from defects in paving or striping at all times. All streets and alleys shall be constructed to public street and alley standards found in the City of Duluth Unified Development Code.
18. Sidewalks shall be constructed by the Developer consistent with the locations as shown in the Master Concept Plan attached hereto as Exhibit “E”. Specifically, internal sidewalks shall be a minimum of five feet (5') in width.

Street Lighting and Signage

19. Developer shall install decorative street lighting within the development. A lighting plan showing placement of lights and elevations of lighting equipment must be approved by the Community Development & Engineering Department prior to the issuance of any development permits. The owner shall be responsible for the purchase and installation of all lighting equipment and infrastructure.
20. A master signage plan shall be submitted to and approved by the Community Development & Engineering Department prior to the issuance of any building permits.
21. All street signs and light poles shall be decorative in nature as determined by the Community Development & Engineering Department. Details and specifications for all signs shall be incorporated into the land development plans for review and approval prior to the issuance of a land development permit.

Exhibit "D"
Proposed Building Elevations



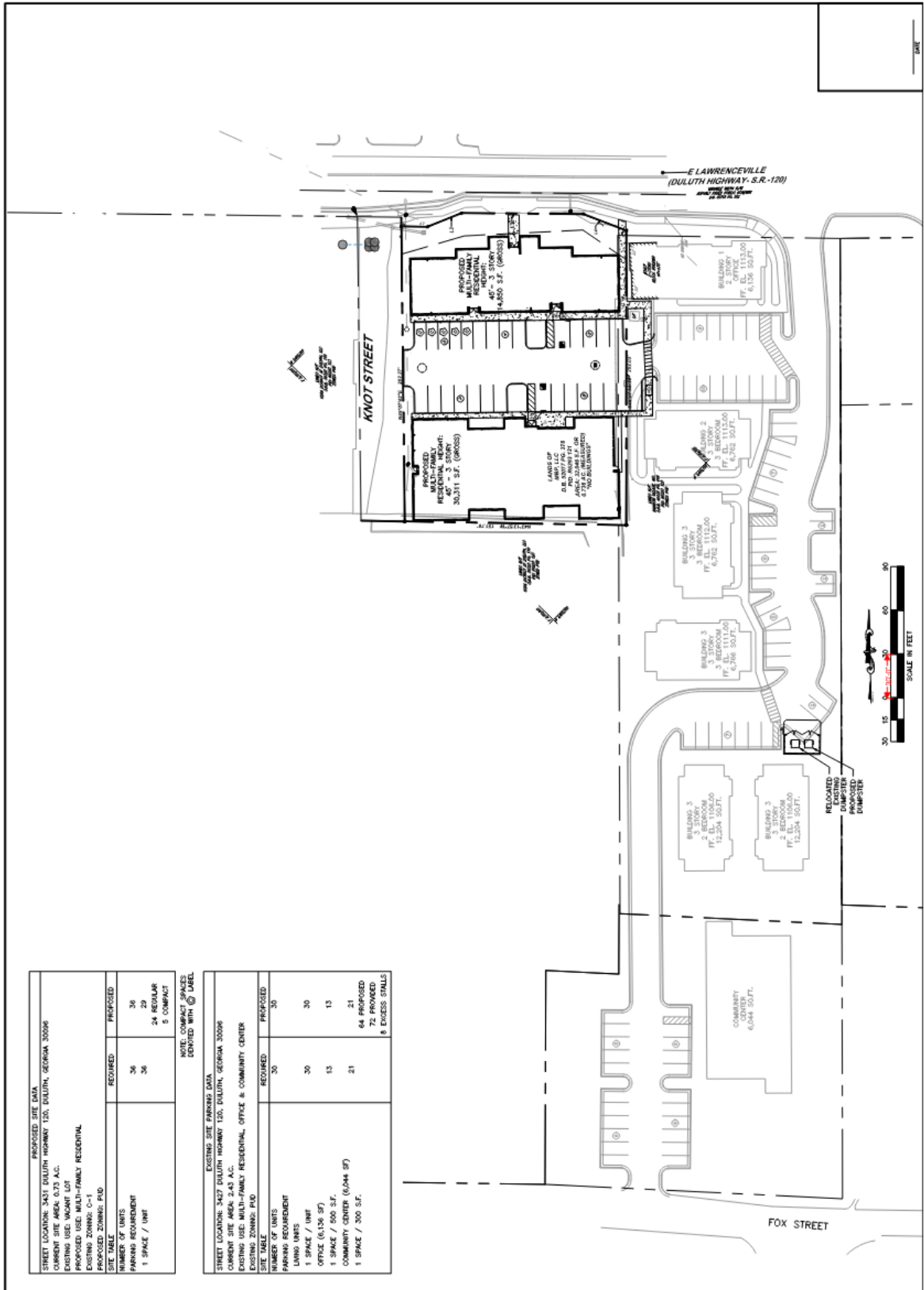
Duluth Highway 200986
Duluth, Georgia

This drawing is a preliminary concept and is not for construction. It is intended to provide a general impression of the proposed building and is not to be used for any other purpose. The design is subject to change without notice. The client is responsible for obtaining all necessary permits and approvals. The architect is not responsible for any errors or omissions in this drawing.



Exhibit "E"

Master Concept Plan

[illegible]

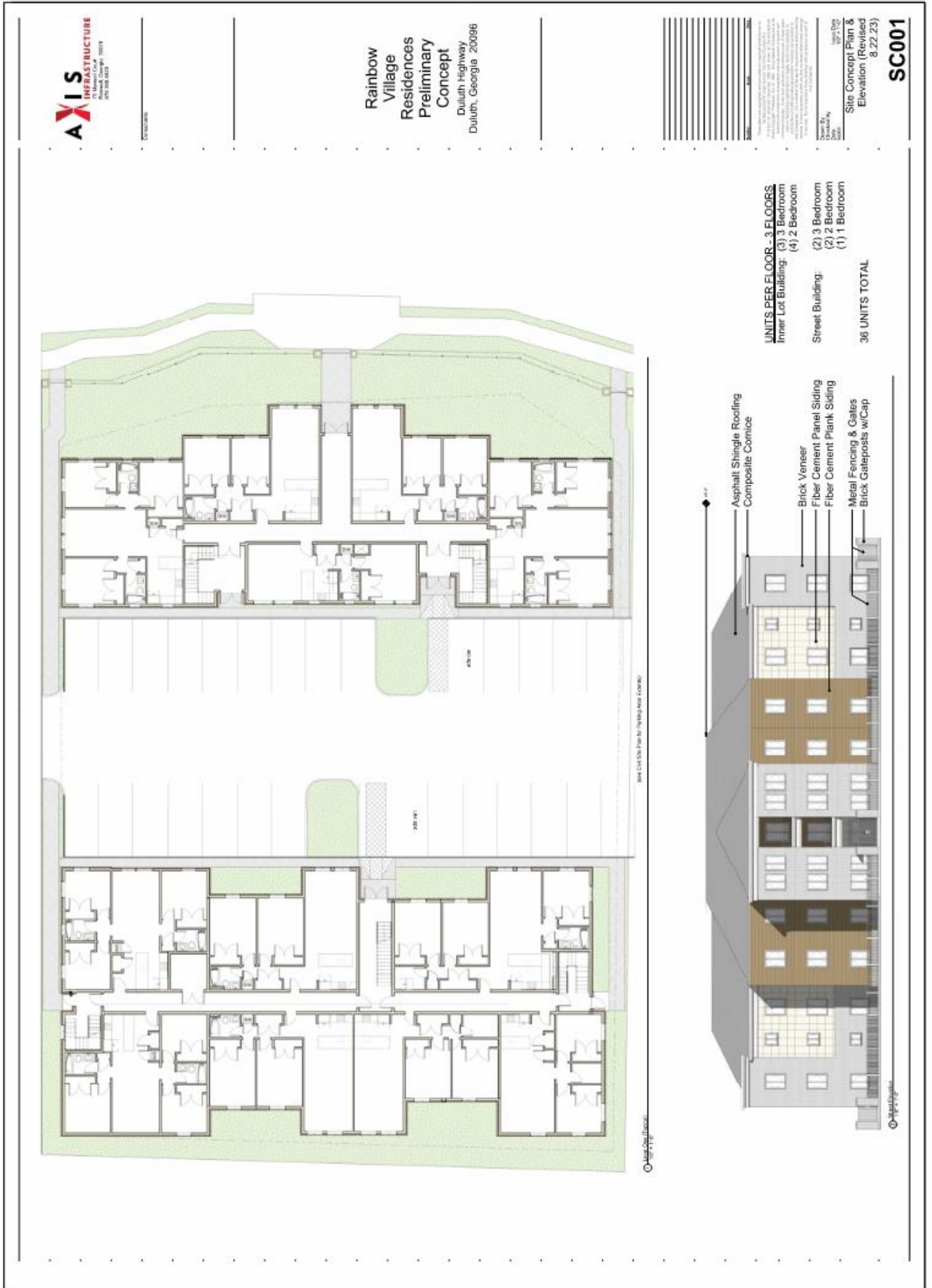


Exhibit "F"**Applicant's Response to the Standards Governing Exercise of Zoning Power**

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

The rezoning request for this property will permit a use that is suitable in view of the use and development of adjacent and nearby property.

2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.

The rezoning request for this property will not adversely affect the existing use or usability of the adjacent or nearby property.

3. Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

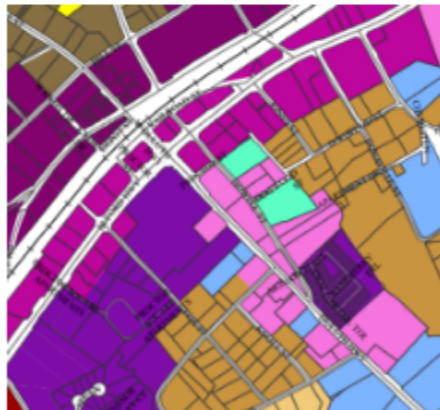
The rezoning request for this property will not result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools.

4. Whether the zoning proposal is consistent with the Land Use Policy Plan, Comprehensive Plan, transportation plans, or other plans adopted for guiding development within the City of Duluth.

The rezoning request for this property is consistent with the Land Use Policy Plan, Comprehensive Plan, transportation plans or other plans adopted for guiding development within the city of Duluth.

5. Whether there are other existing or changing conditions affecting the use and development of property that give supporting grounds for either approval or disapproval of the zoning or special use proposal.

This parcel is currently zoned C-1 Commercial but is bounded on 3 sides by PUD. We are requesting that this isolated parcel be rezoned to PUD and become incorporated into the larger PUD that surrounds it.



6. Whether the property to be affected by a proposed rezoning has a reasonable economic use as currently zoned.

It would be difficult to develop this parcel as a standalone commercial development. Cross access to the adjacent Rainbow Village is ideal in lieu of another driveway access onto Duluth Highway. In addition it's only 0.736 acres that would limit the uses that would fit on the parcel with the required setbacks, parking requirements, etc as required by Code.

Exhibit "G"
Applicant's Letter of Intent



October 16, 2023

City of Duluth
3167 Main Street
Duluth, GA 30096

Re: Letter of Intent
Rainbow Village Rezoning
3431 Duluth Highway
Duluth, GA 30096

To whom it may concern,

The subject property is a 0.736 acre vacant, commercial lot located at 3431 Duluth Highway. The site is situated on the West side of Duluth Highway currently surrounded by (3) Planned Unit Development (PUD) properties.

The applicant is proposing to rezone the property from Commercial (C-1) to Planned Unit Development (PUD) zoning district to allow for multifamily dwelling units. If approved, the requested rezoning will allow the applicant to use the 0.736 acres efficiently as it will tie into the adjacent, existing Rainbow Village property.

The application provides a response to the rezoning proposal questions as required by the city. The rezoning request for this property is consistent with the Land Use Policy Plan, Comprehensive Plan, transportation plans or other plans adopted for guiding development within the City of Duluth.

Thank you for your time and consideration of this matter. If any further information is required, I can be reached via phone at 678.237.2764 or by email at teresacurry@axiscompanies.com.

Thank you,

A handwritten signature in blue ink, appearing to read "Teresa Curry".

Teresa Curry, P.E.
Partner

70 Mansell Ct., Suite 200, Roswell, GA 30076 | 678.395.4920 | axiscompanies.com

Exhibit "H"

Public Notice

Public Notice Printed in Gwinnett Daily Post 10/08/2023

GDP5938 99n16 CITY OF DULUTH NOTICE OF PUBLIC HEARING
<p>NOTICE IS HEREBY GIVEN that a public hearing will be held before Planning Commission to consider a Rezoning request from Teresa Curry, on approximately 0.79 acres of property in Land Lot 293, 6th District, Gwinnett County, located at 3431 Duluth Highway, consisting of tax parcel 6293-121, case number Z2023-002. The request is to rezone from C-1 to PUD district to allow for apartment units with parking.</p> <p>The public is invited to attend this hearing before the Planning Commission on the proposed rezoning. The meeting date, place and time regarding this matter are as follows:</p> <p>WHEN: November 6th, 2023 - 6:00 p.m.</p> <p>WHERE: City Hall Council Chambers 3167 Main Street Duluth, GA 30096</p> <p>PERSONS INTERESTED IN THIS MATTER are invited to review the proposed Rezoning, which is on file with the Department of Planning & Development of the City of Duluth and to attend the public hearing at the date, time and place provided in this notice, to express their opinion on this matter. Written comments may also be received in lieu of testimony during the public hearing. Written comments may be sent to the following address:</p> <p>City of Duluth ATTN: Planning Department 3167 Main Street Duluth, GA 30096</p> <p style="text-align: center;">OR</p> <p>Email: Planning@duluth-ga.net</p> <p>For more information, contact Planning & Development, at (770)476-1790.</p> <p>*****</p> <p>In compliance with the Americans with Disabilities Act of 1990, the City of Duluth is committed to providing reasonable accommodations for a person with a disability. Please contact Teresa Lynn at (770) 476-3434 if special program accommodations are necessary and/or if program information is needed in an alternative format. Special requests must be made in a reasonable amount of time in order that accommodations can be arranged.</p> <p style="text-align: center;">10:8,2023</p>



ORDINANCE NO. O-2023-29

AN ORDINANCE FOR THE SPECIAL USE OF A STOREFRONT MEASURING 1,280 SQ FT CONTAINED WITHIN ± 6.531 ACRES OF PROPERTY ON LAND LOT 296, 6TH DISTRICT, GWINNETT COUNTY CONSISTING OF TAX PARCEL R6296 035 IS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT “A”. THE ORDINANCE PROVIDES FOR FINDINGS, ESTABLISHES CONDITIONS OF APPROVAL AS SHOWN ON ATTACHED EXHIBIT “B”, PROVIDES FOR SEVERABILITY, REPEALS CONFLICTING ORDINANCES, ESTABLISHES AN EFFECTIVE DATE, AND IS FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, the applicant, MHN, LLC, and the following property owner: DF Duluth, LLC/David Fried have filed a complete applications (SU2023-008) with the City of Duluth seeking a special use. Said special use would for the sales of Tobacco and Tobacco products (Cigar, Tobacco and Vape Products) within C-2 (General Business District).

WHEREAS, per Article 11 of the Duluth Unified Development Code, a rezoning and/or special use must be approved by the Governing Body; and

WHEREAS, the City of Duluth Planning Commission held a public hearing at the meeting of November 6, 2023, duly noticed as prescribed by law and published in the Gwinnett Daily Post, regarding the application. At that meeting, the Planning Commission recommended approval with conditions of the special use as is set forth in the minutes of said meeting; and

WHEREAS, the City Council held a public hearing at the meeting of December 11, 2023, duly noticed as prescribed by law and published in the Gwinnett Daily Post, regarding said application, as shall be set forth in the minutes of said meeting.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS.

Pursuant to Article 11 of the Duluth Unified Development Code, the City Council finds that it is appropriate to approve a special use at 3585 Peachtree Industrial Boulevard, Suite 157, for the following reasons:

- A. The rezoning is suitable given the use and development of adjacent and nearby properties. The suite in which the applicant would like to place the business is a 1,280 sf space out of the twenty-seven (27) retail spaces totaling 64,623 sf of retail space (1.48 acres). The property is north of a medical park, daycare and auto-supplies store, all of which are also zoned C-2 (General Business District); west of Bank of America (on the same side of Peachtree Industrial Blvd) zoned C-2, as well. Across Peachtree Industrial Blvd is all zoned C-2 consisting of a family medical practice, a restaurant and a bicycle sales and service retailer; to the north of the property is another large retail parcel zoned C-2.
- B. Likewise, a special use is suitable given the use and development of adjacent and nearby properties.
- C. The proposed special use is not anticipated to adversely affect the existing use or usability of adjoining or nearby properties as conditions will be imposed on the development that address uses and intensities, architecture and design, landscape and screening, transportation and parking,

Ordinance No. O-2023-29

roadways, stormwater facilities, street lighting and signage.

- D. The proposed special use is not anticipated to cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
- E. While every section of FORWARDuluth (Duluth Comprehensive Plan, 2040) is central to implementing the City's vision and goals, the Character Areas and Future Land Use Maps are the most influential in terms of daily decision-making and land use changes. Commercial-retail has been envisioned on this property through the Comprehensive Plan and the Future Land Use Map.

In February of 2019, the City adopted FORWARDuluth, the 2040 update to the Comprehensive Plan. The subject property is located within the Medical Triangle District character area. The aspiration for this area is to be a regional center of activity, but supported locally by nearby mixed-use developments and redeveloped commercial properties. The Future Land Use Map (FLUM) envisions the uses to be commercial/retail/office.

SECTION 2. LEGAL DESCRIPTION.

The property that is subject to this ordinance consists of ± 6.531 acres and is legally described on Exhibit "A", attached hereto. Said Exhibit is incorporated by reference as if fully set forth herein.

SECTION 3. CONDITIONS OF APPROVAL

Conditions of approval attached hereto as Exhibit "B". Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 4. SEVERABILITY.

Should any section or provision of this Ordinance or any Ordinance pertaining to the companion applications as identified above be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon approval by the City Council of the City of Duluth, Georgia.

SECTION 6. REPEALER.

All conflicting ordinances and conditions are hereby repealed and replaced with the conditions of approval set forth in this Ordinance, No. O-2023-29.

ATTACHMENTS:

- Exhibit "A": Legal Description
- Exhibit "B": Conditions of Approval
- Exhibit "C": Maps
- Exhibit "D": Applicant's Response to the Standards Governing Special Use Consideration
- Exhibit "E": Public Hearing Advertisement/Public Notice

{Signatures on the Following Page}

IT IS SO ORDAINED this 9th Day of October, 2023.

Those councilmembers voting in favor:

Nancy Harris, Mayor

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST

Teresa Lynn, City Clerk

Exhibit "A"
Legal Description

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 296 of the 6th District of Gwinnett County, Georgia, and being more particularly described as follows:

To reach the True Point of Beginning, commence at a point being the intersection of the westerly right of way of Peachtree Industrial Boulevard (150-foot right of way) and the northerly right of Howell Ferry Road (variable right of way – 30 feet from the centerline at this point), thence along said right of way of Howell Ferry Road, south 70 degrees 32 minutes 14 seconds west a distance of 200.00 feet to the True Point of Beginning; from thus established and continuing along said right of way of Howell Ferry Road, south 70 degrees 32 minutes 14 seconds west a distance of 212.53 feet to a point; thence along a curve to the left an arc distance of 118.21 (said curve having a radius of 5369.60 feet, a chord distance of 118.21 feet and a chord bearing of south 69 degrees 54 minutes 28 seconds west) to a point; thence leaving said right of way of Howell Ferry Road and running north 28 degrees 20 minutes 05 seconds west a distance of 555.78 feet to a point; thence north 62 degrees 10 minutes 39 seconds east a distance of 565.11 feet to a point on the westerly right of way of aforementioned Peachtree Industrial Boulevard; thence along said right of way, south 27 degrees 45 minutes 36 seconds east a distance of 191.99 feet to a point; thence along a curve to the right an arc distance of 216.42 feet (said curve having a radius of 2789.79 feet, a chord distance of 216.37 feet and a chord bearing of south 25 degrees 39 minutes 21 seconds east) to a point; thence leaving said right of way of Peachtree Industrial Boulevard and running south 70 degrees 32 minutes 26 seconds west a distance of 200.00 feet to a point; thence south 21 degrees 03 minutes 56 seconds east a distance of 225.00 feet to the True Point of Beginning. Said tract containing 6.531 acres, more or less.

Exhibit "B"
Conditions of Approval

General

1. The Special Use (SU2023-008) is hereby approved for MHN, LLC, and their successors, for the operation of a tobacco and tobacco supply (tobacco, vape, cigars, etc.). The Special Use shall not be used for securing early zoning for conceptual proposals that may not be undertaken for some time. Therefore, an occupational tax certificate shall be secured within 90 days from the date of Special Use approval or 90 days from building permit approval if interior modifications to the space are proposed. The clock starts with the latter of the two. The Special Use shall be revoked if no occupational tax certificate is obtained.

Once established:

- A. If the use changes, the Special Use is hereby terminated.
 - B. If the use is discontinued or abandoned for a period of ninety (90) days, regardless of the intent of the owner or occupier to resume the use, the Special Use is hereby terminated.
 - C. If the use is extended in any way, either on the same or adjoining leasable space, the Special Use is terminated.
2. The subject suite shall be utilized in accordance with conditions contained herein. Interior buildout shall conform to all applicable City codes and be approved by the Director of Community Development and Engineering prior to the issuance of a certificate of occupancy. Minor modifications may be approved by the Director consistent with the spirit and intent of this approval. Any changes that result in a use of such intent and character that has not been conceptually approved by the City Council shall require additional approval in accordance with procedures established in the Procedures and Permits Article of the Unified Development Code for a revision of conditions of special use approval.
3. The approval of the special use allows MHN, LLC and their successors to operate a tobacco and tobacco supply business. The approval does not, however, permit the deviation from the UDC as it relates to signage. Signage must follow Article 6, and includes but is not limited to Section 604.
4. Neon signs shall be prohibited from being placed on any wall or window facing toward the front entrance.
5. There shall be no signs, stickers or advertisements for products sold within the store on any wall or window facing toward the front entrance.
6. The property shall be maintained in a state of good repair at all times, free from any violations of the Property Maintenance Code; Unified Development Code; License and Business Regulations; Nuisance Codes, and any other codes adopted by the City of Duluth. Failure to maintain the property at or above the minimum standards adopted in the City of

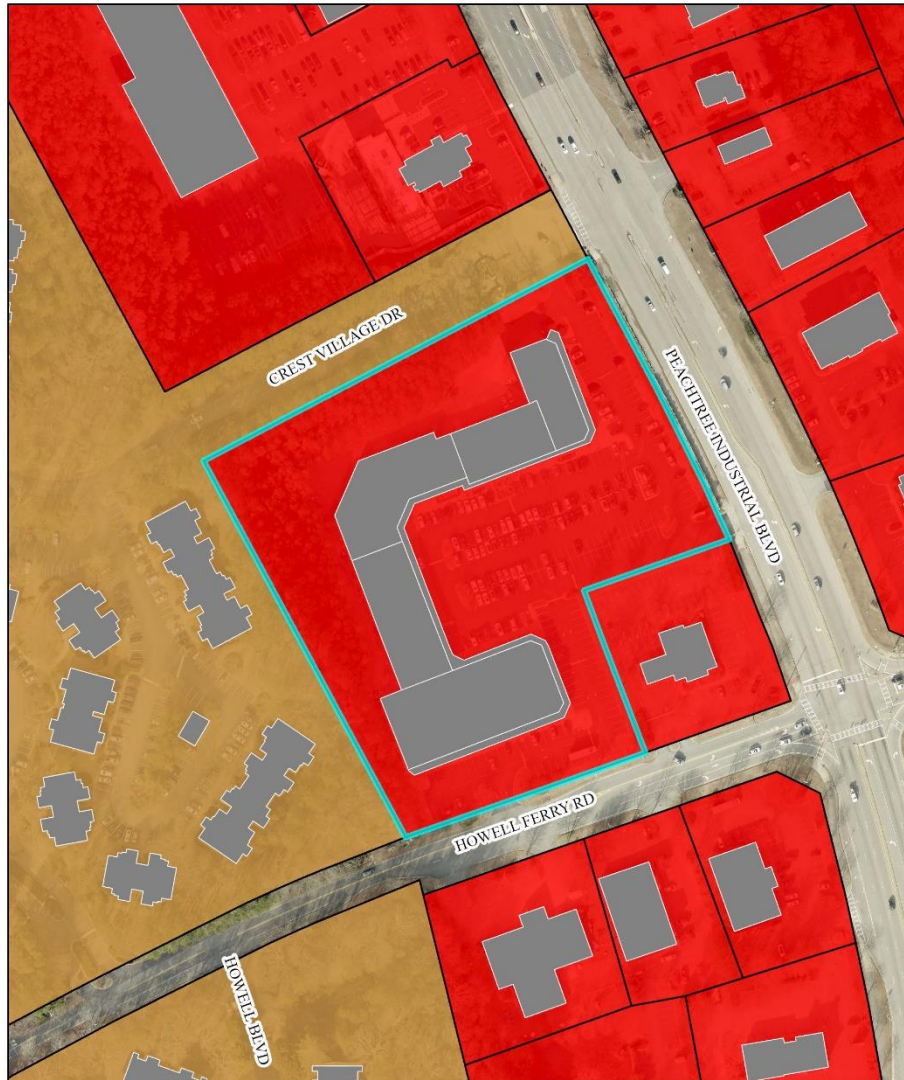
Duluth codes and ordinance shall be cause for revocation of the Special Use.


7. The privilege of a Special Use is subject to all conditions that have been attached to it. The City Council may revoke any Special Use approval after it has been proven that the conditions have been violated. Revocation of the Special Use shall cause the use to become an illegal nonconformity, the continuation of which is strictly prohibited.
8. **Compliance & Violations** - The Community Development and Engineering Department shall have the right to periodically examine the operation of the Special Use to determine compliance with the requirements and any conditions. If the Director determines that the requirements and conditions are being violated, a written notice shall be issued to the owner of the property outlining the nature of the violation and giving the owner of the property a maximum of ten (10) days to come into compliance. If after ten (10) days the violations continue to exist, the Director shall forward a report to the City Council through the Planning Commission who may recommend that action be taken to remove the Special Use from the property. Notwithstanding, repeat violations within a period of sixty (60) days of the same nature shall not be required to give additional notice or time to correct prior to initiating revocation procedures outlined herein.

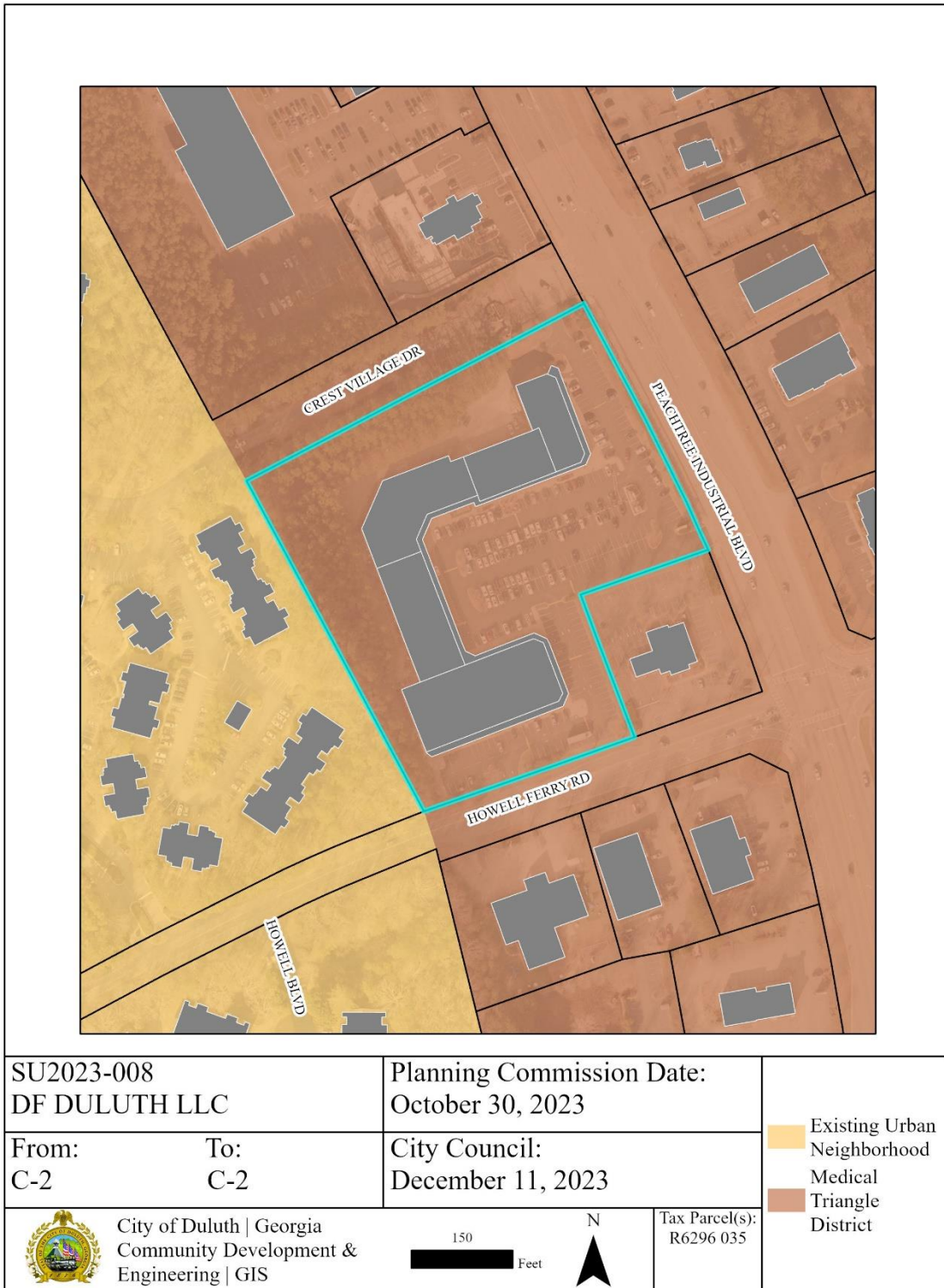
If violations are not corrected within the stated time frame, the City will notify the property owner and publish a public hearing notice for a public hearing to consider revocation of the Special Use, pursuant to O.C.G.A. § 36-66-4.

The Director of Community Development and Engineering shall notify the Planning Commission of the violation of conditions of the Special Use at the next regular Planning Commission meeting, and revocation of the Special Use Permit shall be considered at that time. The Planning Commission shall review the city staff report(s), take testimony from the property owner, and public testimony, and make a recommendation on the Special Use revocation to be forwarded to City Council. Following the Planning Commission recommendation, the City Council shall review the city staff report(s), take testimony from the property owner, and public testimony, and make a decision on the Special Use revocation. The City Council may approve a resolution to revoke the Special Use and include authorization for the Director to order the Special Use to cease. In the case of a terminated or revoked Special Use, the operations shall cease immediately.

Exhibit "C"
Maps



SU2023-008 DF DULUTH LLC		Planning Commission Date: October 30, 2023		<div><div></div> RM</div> <div><div></div> C-2</div>
From: C-2	To: C-2	City Council: December 11, 2023		
<div><div></div><div>City of Duluth Georgia Community Development & Engineering GIS</div></div> <div><div>150</div><div></div><div>Feet</div></div> <div><div>N</div><div></div></div>		Tax Parcel(s): R6296 035		







SU2023-008 DF DULUTH LLC		Planning Commission Date: October 30, 2023	<p>Streets</p> <p>Address Outline</p> <p>Parcel</p>
From: C-2	To: C-2	City Council: December 11, 2023	
 City of Duluth Georgia Community Development & Engineering GIS		150 Feet 	Tax Parcel(s): R6296 035

Exhibit "D"

Applicant's Response to the Standards Governing Special Use Consideration

I. How the proposed special use will allow a use that is suitable in view of the use and development of adjacent and nearby property.

My business, MHN LLC dba Feature Vape, is an upscale retailer of tobacco products. I'm looking to establish a new store location at the Duluth Village shopping center at 3585 Peachtree Industrial Boulevard, Suite 157. The center is zoned C2 and is the appropriate zoning classification for a business such as mine, so the special use permit that I'm seeking will allow a use that is suitable in view of the use and development of adjacent and nearby properties.

II. How the proposed special use will adversely affect the existing use or usability of adjacent or nearby property.

I don't anticipate that my proposed special use will adversely affect the existing use or usability of adjacent or nearby property. The Duluth Village shopping center is home to a variety of other retail business types including restaurants, medical service providers, a liquor store, and a national retail bank, Bank of America.

III. Whether the property to be affected by a proposed special use has a reasonable economic use as currently zoned.

I believe that my business has a reasonable and valuable use to the Duluth Village shopping center. The City of Duluth requires that retail tobaccos sales businesses locate within properties that are zoned C2, so this location seems to be the most appropriate property for my proposed special use.

IV. Whether the proposed special use will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The Duluth Village shopping center is home to 27 other retail businesses and has adequate parking to support each of their customers. I don't anticipate that the proposed special use will result in or cause an excessive or burdensome use of the existing streets, transportation facilities, utilities, or schools.

V. Whether the proposed special use is in conformity with the policy and interest of the Comprehensive Plan; Land Use Plan; transportation plans and other plans adopted for guiding development within the City of Duluth.

The proposed use to operate a retail tobacco business within the C2 zoning classification is in conformity with the policy and interest of the Comprehensive Plan; Land Use Plan; transportation plans and other plans adopted for guiding development within the City of Duluth.

VI. Whether there is other existing or changing conditions affecting the use and give grounds for either approval or disapproval of the special use.

Exhibit "E"
Public Notice
Public Notice Printed in Gwinnett Daily Post 10/08/2023

GDP5940
gpn16
CITY OF DULUTH
NOTICE OF PUBLIC
HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held before Planning Commission to consider a special use request from MHN LLC, on approximately 6.531 acres of property in Land Lot 296, 6th District, Gwinnett County, located at 3585 Peachtree

Industrial Boulevard, consisting of tax parcels 6296-035, case number SU2023-008. The special use request is to operate a vape store in the C-2 district.

The public is invited to attend this hearing before the Planning Commission on the proposed special use. The meeting date, place and time regarding this matter are as follows:

WHEN:
November 6th, 2023 - 6:00 p.m.

WHERE:
City Hall Council Chambers

3167 Main Street
Duluth, GA 30096

PERSONS INTERESTED IN THIS MATTER are invited to review the proposed special use, which is on file with the Department of Planning & Development of the City of Duluth and to attend the public hearing at the date, time and place provided in this notice, to express their opinion on this matter. Written comments may also be received in lieu of testimony during the public hearing. Written comments may be sent to the following address:
City of Duluth
ATTN: Planning Department

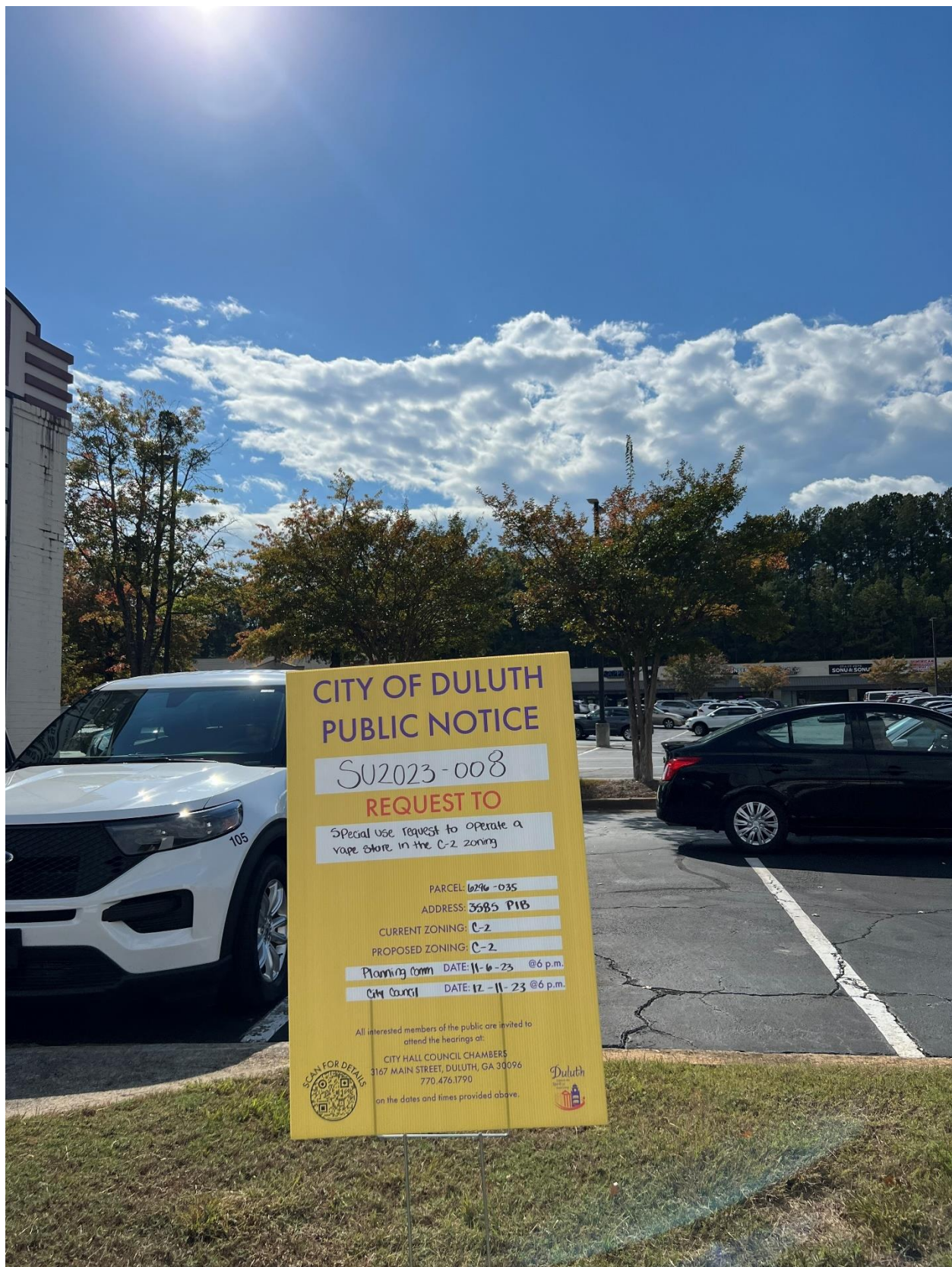
3167 Main Street
Duluth, GA 30096

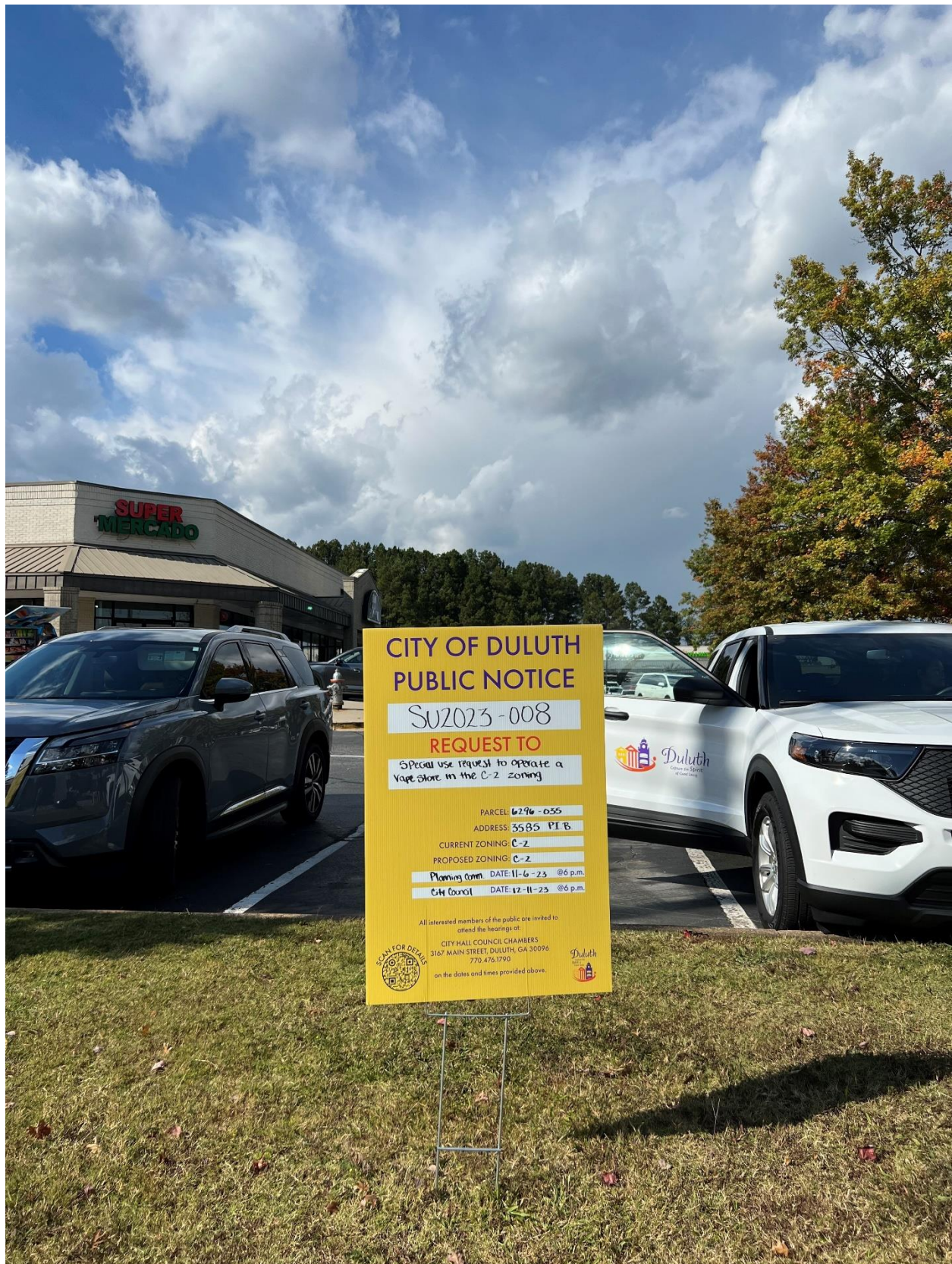
OR
Email: Planning@duluth-ga.net

For more information, contact Planning & Development, at (770)476-1790.

In compliance with the Americans with Disabilities Act of 1990, the City of Duluth is committed to providing reasonable accommodations for a person with a disability. Please contact Teresa Lynn at (770) 476-3434 if special program accommodations are necessary and/or if program information is needed in an alternative format. Special requests must be made in a reasonable amount of time in order that accommodations can be arranged.

10:8,2023





CITY OF DULUTH
Mayor and Council
 Staff Report
 December 11, 2023

CASE NUMBER:	SU2023-008
LOCATION:	3585 Peachtree Industrial Boulevard, Suite 157
PARCEL(S):	R6296 035
CURRENT ZONING:	C-2 (General Business District)
PROPOSED ZONING:	C-2 (General Business District) with Special Use
ACREAGE:	+/- 6.531 acres (1,280 sq ft of retail space)
REQUEST:	Approval of Special Use to allow for the sales of Tobacco and Tobacco products (Cigar, Tobacco and Vape products)
OWNER/APPLICANT:	<p><i>Owner:</i> DF Duluth LLC/David Fried 2700 N Berkeley Lake Road Suite 230 Duluth, GA 30096</p> <p><i>Applicant:</i> MHN LLC dba Lifted Vaped/Haseed Naveed 257 Misty Grove Drive SE Loganville, GA 30052</p>

STAFF RECOMMENDATION SU2023-008:	APPROVAL WITH CONDITIONS
PLANNING COMMISSION RECOMMENDATION 2023-008	APPROVAL WITH CONDITIONS

I. PURPOSE AND DESCRIPTION OF THE REQUEST

The purpose of this Special Use request (SU2023-008) is to allow the sales of Tobacco and Tobacco products (cigars, tobacco, vape products) in the C-2 (General Business) zoning district.

Maps detailing the location, zoning district and character area of the subject property are attached hereto as Exhibit “A”. The legal description of the subject property is attached hereto as Exhibit “B”. Recommended conditions of approval are detailed in Exhibit “C”.

II. EXISTING CONDITIONS

The subject property totals +/- 6.531 acres. The suite in which the applicant would like to place the business is a 1,280 sq ft space out of the twenty-seven (27) retail spaces totaling 64,623 sq ft of retail space (1.48 acres). The property is north of a medical park, daycare and auto-supplies store, all of which are also zoned C-2 (General Business); east of The Crest at Berkley Lake Apartments (zoned RM (Residential Multi-Family District); west of Bank of America (on the same side of Peachtree Industrial Blvd) zoned C-2, as well. Across Peachtree Industrial Blvd is all zoned C-2 consisting of a family medical practice, a restaurant and a bicycle sales and service retailer; to the north of the property is another large retail parcel zoned C-2.

III. REVIEW OF THE REQUEST

1. Literal Interpretation of the Unified Development Code (UDC)

- A. Table 2-C of the UDC allows “Cigar, Tobacco and Other Smoker’s Supply Stores” in the C-2 zoning district by way of Special Use approval from the Duluth City Council.
- B. Section 1101.02 of the UDC states if a proposed use is not allowed by right under the existing zoning on a property, a request for an amendment to the Official Zoning Map (often called a “rezoning”) must be approved prior to development, construction, or occupancy.
- C. Section 1105 of the UDC establishes the Special Use Considerations.

The Special Use is designed to apply under any one of the following circumstances:

- 1. A Special Use listed under the zoning district is desired for development and a more intensive zoning district containing that use, as a use by right would not be appropriate for the property; or
- 2. A Special Use listed under the zoning district is desired for development and no zoning district contains that use as a use by right; or
- 3. A unique use not addressed in any zoning district is desired for development and is not likely to be duplicated within the City of Duluth; or
- 4. The density of development may be affected by the height of a building; or

5. The neighboring properties may be affected by the height of any structure; or
6. The Special Use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood and would not be in conflict with the overall objective of the Comprehensive Plan.

In order to accommodate these particular uses, Special Use approval allows the City Council to approve such a use on a particular parcel without changing the general zoning district. Such approval shall be subject to the requirements set forth below and any additional conditions deemed necessary to ensure the compatibility of the Special Use with the surrounding properties. All Special Use applications shall be for firm development proposals only. The Special Use shall not be used for securing early zoning for conceptual proposals that may not be undertaken for some time. A Special Use application shall be considered only if the application is made by the owner of the property or by his/her authorized agent. The minimum requirements for a Special Use approval are:

1. Any uses allowed under Special Use approval shall also conform to the requirements of this Development Code for all uses as found in the zoning district.
2. The application and review process for a Special Use shall be the same as for the zoning district under which the Special Use is found. In addition to the information and/or site plans which are required to be submitted for the proposed development, additional information deemed necessary by the Director in order to evaluate a proposed use and its relationship to the surrounding area shall be submitted. In the review process, particular emphasis shall be given to the evaluation of the characteristics of the proposed use in relationship to its immediate neighborhood and the compatibility of the proposed use with its neighborhood.
3. In the approval process for a Special Use approval application, the City Council shall consider the policies and objectives of the Comprehensive Plan, particularly in relationship to the proposed site and surrounding area and shall consider the potential adverse impacts on the surrounding area, especially in regards but not limited to traffic, storm drainage, land values and compatibility of land use activities.
4. If an application is approved and a Special Use approval is granted, all conditions that may have been attached to the approval are binding to the property. All subsequent development and use of the property shall be in accordance with the approved plan and conditions.
5. Changes to a Special Use or development of a site for the Special Use, shall be treated as an amendment to the Special Use Permit and shall be subject to the same application and review process as a new application.
6. An application for Special Use approval in a residential district and which use is proposed to operate in a dwelling or as an accessory use to a dwelling is subject to the following additional requirements:
 - a. The Special Use shall operate within the dwelling on the property or, if approved by the City Council, in an accessory structure.

- b. The exterior character of the dwelling shall be preserved in its residential state and there shall be no outside evidence of the operation of a Special Use to the neighborhood, except for any accessory structure approved by the City Council.
- 7. The owner of the property approved for a Special Use may voluntarily request termination of the Special Use by notifying the Director in writing. The Director shall notify the City Council through the Planning Commission of the voluntary termination. The approval of a Special Use for a specific use which may be operated by a lessee under a private agreement with a lessor in any non-residential district shall not obligate the City Council to be responsible for or be required to resolve any disputes which may arise out of the voluntary termination of the Special Use by the property owner.
- 8. The Community Development and Engineering Department shall have the right to periodically examine the operation of the specific use to determine compliance with the requirements and any conditions. If the Director determines that the requirements and conditions are being violated, a written notice shall be issued to the owner of the property outlining the nature of the violation and giving the owner of the property a maximum of ten days to come into compliance. If after ten days the violations continue to exist, the Director shall forward a report to the City Council through the Planning Commission who may recommend that action be taken to remove the Special Use from the property.
- 9. Upon approval by the City Council, a Special Use shall be identified on the official zoning maps.
- 10. Upon approval by the City Council of a Special Use, the owner of the property shall be issued a notice from the Director that states the specific use permitted, the requirements of this Section and any conditions attached to the approval.
- 11. The Community Development and Engineering Department shall not issue a Certificate of Occupancy for the specific use unless all requirements and conditions of the Special Use approval have been fulfilled by the owner of the property.

2. Standards Governing the Exercise of Zoning Power

Section 1104.02 of the UDC establishes the standards governing the exercise of zoning power. The following standards are relevant in balancing the interest and promoting the public health, safety, morality, and general welfare against the right to the unrestricted use of property:

- A. How the proposed Special Use will permit a use that is suitable in view of the use and development of adjacent and nearby property.
- B. How the proposed Special Use will adversely affect the existing use or usability of adjacent or nearby property.
- C. Whether the property to be affected by a proposed Special Use has a reasonable

economic use as currently zoned.

- D. Whether the proposed Special Use will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
- E. Whether the proposed Special Use is in conformity with the policy and interest of the Comprehensive Plan; Land Use Plan; transportation plans and other plans adopted for guiding development within the City of Duluth.
- F. Whether there are other existing or changing conditions affecting the use and give grounds for either approval or disapproval of the Special Use.

The Applicant has provided written responses to the above Special Use standards as part of the application. That document is attached hereto as Exhibit “F”.

3. Literal Interpretation of FORWARDuluth, Plan 2040 (Comprehensive Plan)

The subject property is located in the Medical Triangle District. FORWARDuluth envisions this Character Area to serve as a large medical and office center for Gwinnett County and the City with multiple new Class-A medical office buildings. It will be a regional center of activity, but supported locally by nearby mixed-use developments and redeveloped commercial properties. The Future Land Use Map (FLUM) envisions the uses to be commercial/retail/office.

IV. PLANNING STAFF REVIEW

Between an amendment to the UDC on April 11, 2016 and today’s current iteration of the UDC, Cigar and Tobacco Stores as a use went from being allowed by right in C-2, HC-Retail and HC-Auto, to only being allowed by special use in the C-2 zoning district. Since that change, the City of Duluth has not had a single application for a tobacco or tobacco product retail store until now.

The Vision & Aspirations chapter and supporting Character Area Map of FORWARDuluth (also known as the Comprehensive Plan) identifies the Character Area of this property as the Medical Triangle District. The Medical Triangle District is currently developed as a regional medical hub with a mix of uses surrounding the hospital and ancillary uses of the hospital. There are individual stand-alone commercial establishments as well as strip commercial centers, all anchored by Northside Hospital Duluth. In the case of the subject property, a tobacco and tobacco product retailer is compatible with this character area of the City. The use creates relatively small amounts of trips and should not disturb the surrounding uses.

V. RECOMMENDATION

Staff recommends **Approval with Conditions** of case SU2023-008. The Conditions of Approval are attached hereto as Exhibit “C”.

Planning Commission recommends **Approval with Conditions** of case SU2023-008.

ATTACHMENTS:

Exhibit "A": Maps

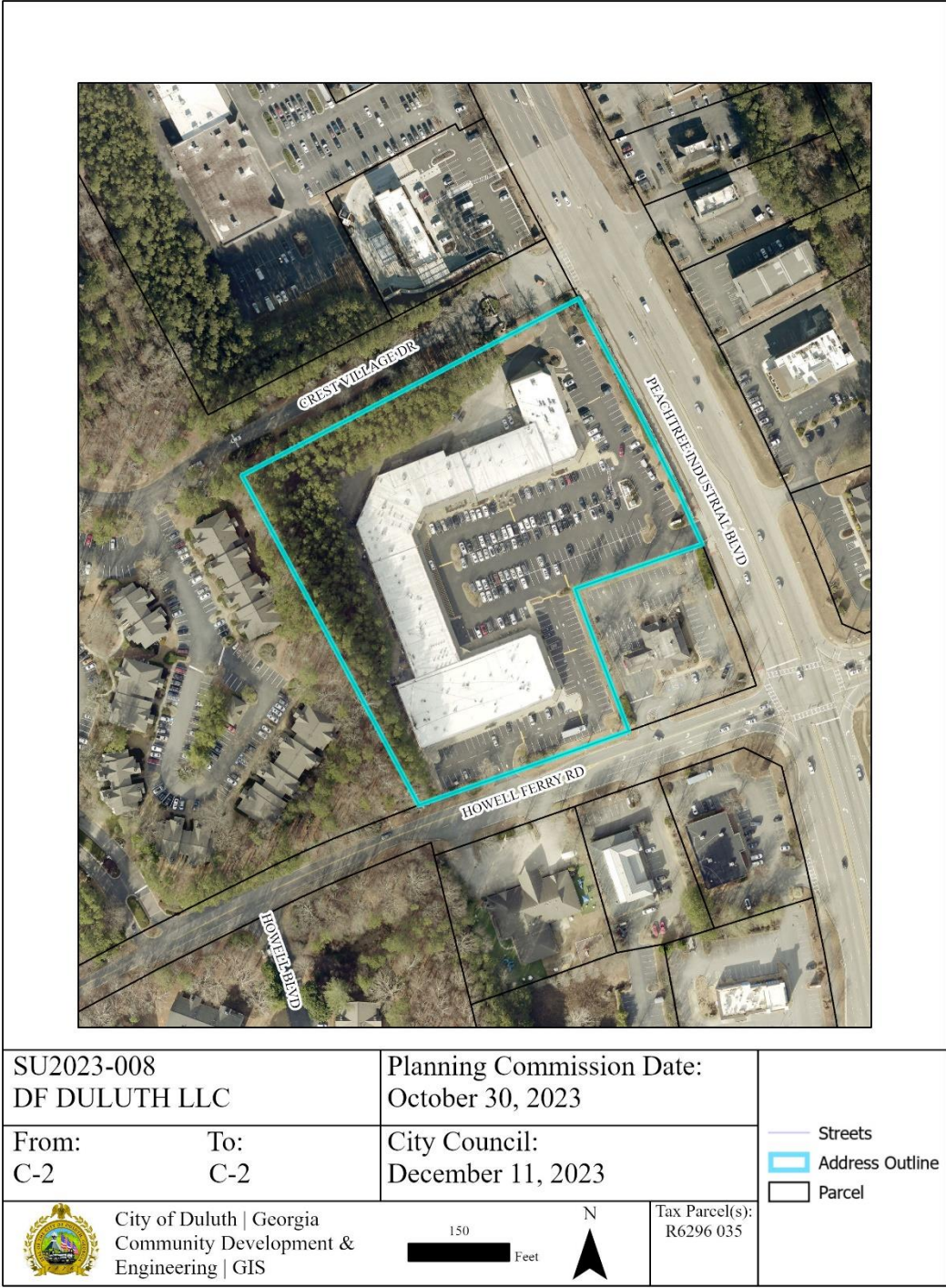
Exhibit "B": Legal Description

Exhibit "C": Conditions of Approval

Exhibit "D": Applicant's Responses to the Standards Governing Special Use Consideration

Exhibit "E": Public Hearing Advertisement/Public Notice

Exhibit "A"
Maps
Location Map



Zoning Map



Character Map

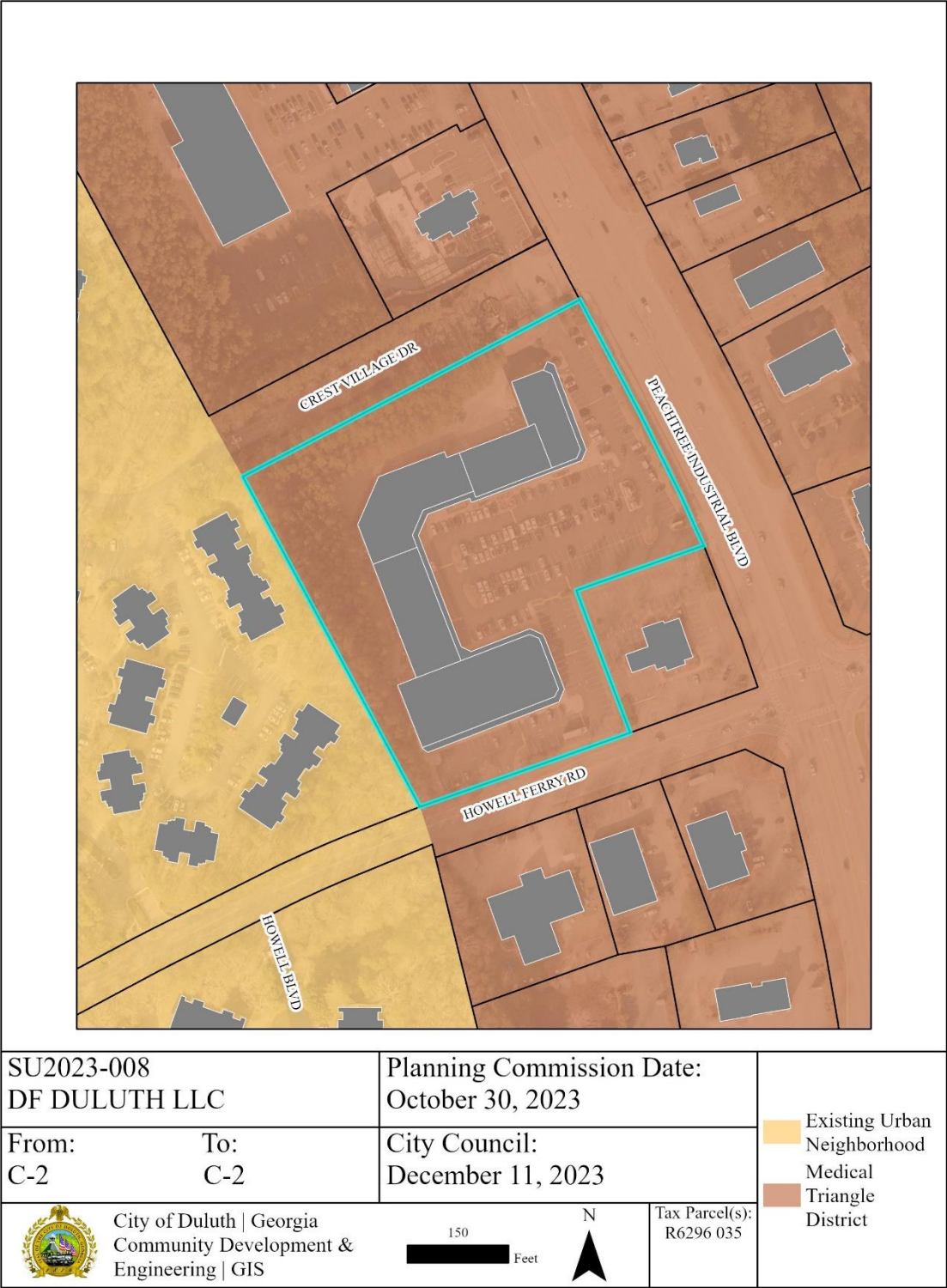


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Exhibit “C” Conditions of Approval

General

1. The Special Use (SU2023-008) is hereby approved for MHN, LLC, and their successors, for the operation of a tobacco and tobacco supply (tobacco, vape, cigars, etc.) . Notwithstanding, all Special Use applications shall be for firm development proposals only. The Special Use shall not be used for securing early zoning for conceptual proposals that may not be undertaken for some time. Therefore, a land development permit shall be obtained within 12 months from the date of Special Use approval. The Special Use shall be revoked if no land development permit is obtained.

Once established:

- A. If the use changes, the Special Use is hereby terminated.
- B. If the use is discontinued or abandoned for a period of ninety (90) days, regardless of the intent of the owner or occupier to resume the use, the Special Use is hereby terminated.
- C. If the use is extended in any way, either on the same or adjoining property, the Special Use is terminated.

- 1R. The Special Use (SU2023-008) is hereby approved for MHN, LLC, and their successors, for the operation of a tobacco and tobacco supply store (tobacco, vape, cigars, etc.). The Special Use shall not be used for securing early zoning for conceptual proposals that may not be undertaken for some time. Therefore, an occupational tax certificate shall be secured within 90 days from the date of Special Use approval or 90 days from building permit approval if interior modifications to the space are proposed. The clock starts with the latter of the two. The Special Use shall be revoked if no occupational tax certificate is obtained.

Once established:

- A. If the use changes, the Special Use is hereby terminated.
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 - C. If the use is extended in any way, either on the same or adjoining leasable space, the Special Use is terminated.
2. The subject property shall be developed in accordance with the Master Concept Plan, Building Elevations, and all applicable exhibits contained herein except as modified by the conditions contained herein on file in the office of Community Development and Engineering. Final architectural design shall meet all applicable City codes and be approved by the Director of Community Development and Engineering prior to the issuance of a development permit. Minor modifications may be approved by the Director consistent with the spirit and intent of this approval. Any changes that result in a development of such intent and character that has not been conceptually approved by the City Council shall require additional approval in accordance with procedures established in the Procedures and Permits Article of the Unified Development Code for a revision of conditions of special use approval.

- 2R. The subject suite shall be utilized in accordance with the conditions contained herein. Interior buildout shall conform to all applicable City codes and be approved by the Director of Community Development and Engineering prior to the issuance of a certificate of occupancy. Minor modifications may be approved by the Director consistent with the spirit and intent of this approval. Any changes that result in a use of such intent and character that has not been conceptually approved by the City

Council shall require additional approval in accordance with procedures established in the Procedures and Permits Article of the Unified Development Code for a revision of special use approval.

3. The approval of the special use allows MHN, LLC and their successors to operate a tobacco and tobacco supply business. The approval does not, however, permit the deviation from the UDC as it relates to signage. Signage must follow Article 6, and includes but is not limited to Section 604.
4. Neon signs shall be prohibited from being placed on any wall or window facing toward the front entrance.
5. There shall be no signs, stickers or advertisements for products sold within the store on any wall or window facing toward the front entrance.
6. The property shall be maintained in a state of good repair at all times, free from any violations of the Property Maintenance Code; Unified Development Code; License and Business Regulations; Nuisance Codes, and any other codes adopted by the City of Duluth. Failure to maintain the property at or above the minimum standards adopted in the City of Duluth codes and ordinance shall be cause for revocation of the Special Use.
7. The privilege of a Special Use is subject to all conditions that have been attached to it. The City Council may revoke any Special Use approval after it has been proven that the conditions have been violated. Revocation of the Special Use shall cause the use to become an illegal nonconformity, the continuation of which is strictly prohibited.
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If violations are not corrected within the stated time frame, the City will notify the property owner and publish a public hearing notice for a public hearing to consider revocation of the Special Use, pursuant to O.C.G.A. § 36-66-4.

The Director of Community Development and Engineering shall notify the Planning Commission of the violation of conditions of the Special Use at the next regular Planning Commission meeting, and revocation of the Special Use Permit shall be considered at that time. The Planning Commission shall review the city staff report(s), take testimony from the property owner, and public testimony, and make a recommendation on the Special Use revocation to be forwarded to City Council. Following the Planning Commission recommendation, the City Council shall review the city staff report(s), take testimony from the property owner, and public testimony, and make a decision on the Special Use revocation. The City Council may approve a resolution to revoke the Special Use and include authorization for the Director to order the Special Use to cease. In the case of a terminated or revoked Special Use, the operations shall cease immediately.

Exhibit “D”
Applicant’s Response to the Standards Governing Special Use Consideration

A. How the proposed special use will allow a use that is suitable in view of the use and development of adjacent and nearby property.

My business, MHN LLC dba Feature Vape, is an upscale retailer of tobacco products. I’m looking to establish a new store location at the Duluth Village shopping center at 3585 Peachtree Industrial Boulevard, Suite 157. The center is zoned C2 and is the appropriate zoning classification for a business such as mine, so the special use permit that I’m seeking will allow a use that is suitable in view of the use and development of adjacent and nearby properties.

B. How the proposed special use will adversely affect the existing use or usability of adjacent or nearby property.

I don’t anticipate that my proposed special use will adversely affect the existing use or usability of adjacent or nearby property. The Duluth Village shopping center is home to a variety of other retail business types including restaurants, medical service providers, a liquor store, and a national retail bank, Bank of America.

C. Whether the property to be affected by a proposed special use has a reasonable economic use as currently zoned.

I believe that my business has a reasonable and valuable use to the Duluth Village shopping center. The City of Duluth requires that retail tobaccos sales businesses locate within properties that are zoned C2, so this location seems to be the most appropriate property for my proposed special use.

D. Whether the proposed special use will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The Duluth Village shopping center is home to 27 other retail businesses and has adequate parking to support each of their customers. I don’t anticipate that the proposed special use will result in or cause an excessive or burdensome use of the existing streets, transportation facilities, utilities, or schools.

E. Whether the proposed special use is in conformity with the policy and interest of the Comprehensive Plan; Land Use Plan; transportation plans and other plans adopted for guiding development within the City of Duluth.

The proposed use to operate a retail tobacco business within the C2 zoning classification is in conformity with the policy and interest of the Comprehensive Plan; Land Use Plan; transportation plans and other plans adopted for guiding development within the City of Duluth.

F. Whether there is other existing or changing conditions affecting the use and give grounds for either approval or disapproval of the special use.

There don’t appear to be any existing or changing conditions affecting the use and give grounds for either approval or disapproval of the special use.

Exhibit "E"
Public Notice

Public Notice Printed in Gwinnett Daily Post 10/08/2023

GDP5940
gpn16
CITY OF DULUTH
NOTICE OF PUBLIC
HEARING
NOTICE IS HEREBY
GIVEN that a public
hearing will be held be-
fore Planning Commis-
sion to consider a special
use request from MHN
LLC, on approximately
6.531 acres of property in
Land Lot 296, 6th Dis-
trict, Gwinnett County,
located at 3585 Peachtree

Industrial Boulevard,
consisting of tax parcels
6296-035, case number
SU2023-008. The special
use request is to operate
a vape store in the C-2
district.
The public is invited to
attend this hearing be-
fore the Planning Com-
mission on the proposed
special use. The meeting
date, place and time re-
garding this matter are
as follows:
WHEN:
November 6th, 2023 - 6:00
p.m.
WHERE:
City Hall Council Cham-
bers
3167 Main Street
Duluth, GA 30096
PERSONS INTEREST-
ED IN THIS MATTER
are invited to review the
proposed special use,
which is on file with the
Department of Planning
& Development of the
City of Duluth and to at-
tend the public hearing
at the date, time and
place provided in this no-
tice, to express their
opinion on this matter.
Written comments may
also be received in lieu
of testimony during the
public hearing. Written
comments may be sent
to the following address:
City of Duluth
ATTN: Planning Depart-
ment
3167 Main Street
Duluth, GA 30096
OR
Email: [Planning@duluth-
ga.net](mailto:Planning@duluth-ga.net)
For more information,
contact Planning & De-
velopment, at (770)476-
1790.

In compliance with the
Americans with Disabili-
ties Act of 1990, the City
of Duluth is committed
to providing reasonable
accommodations for a
person with a disability.
Please contact Teresa
Lynn at (770) 476-3434 if
special program accom-
modations are necessary
and/or if program infor-
mation is needed in an
alternative format. Spe-
cial requests must be
made in a reasonable
amount of time in order
that accommodations
can be arranged.
10:8,2023



CITY OF DULUTH
PUBLIC NOTICE

SU2023-008

REQUEST TO

Special use request to operate a
vape store in the C-2 zoning

PARCEL: 6296-035

ADDRESS: 3585 PIB

CURRENT ZONING: C-2

PROPOSED ZONING: C-2

Planning Comm DATE: 11-6-23 @6 p.m.

City Council DATE: 12-11-23 @6 p.m.

All interested members of the public are invited to
attend the hearings at:

CITY HALL COUNCIL CHAMBERS
3167 MAIN STREET, DULUTH, GA 30096
770.476.1790

on the dates and times provided above.





CITY OF DULUTH
PUBLIC NOTICE

SU2023-008

REQUEST TO

Special use request to operate a
Vape store in the C-2 zoning

PARCEL: 6296-055

ADDRESS: 3585 PEB

CURRENT ZONING: E-2

PROPOSED ZONING: C-2

Planning Comm. DATE: 11-6-23 @ 6 p.m.

City Council DATE: 12-11-23 @ 6 p.m.

All interested members of the public are invited to
attend the hearings at:

CITY HALL COUNCIL CHAMBERS
3167 MAIN STREET, DULUTH, GA 30096
770.476.1790

on the dates and times provided above.



ORDINANCE TO AMEND THE CITY CHARTER

PART I

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by amending Number 23 – Specific Penalties of Section 1.13 of the Charter to read as follows:

SECTION 1.13 -Examples of Powers, Number 23

(23) *Specific penalties.* To provide penalties for violation of any ordinances adopted pursuant to the authority of this Charter and the laws of the State of Georgia.

PART II

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Number 40 – “Taxicabs” of Section 1.13 of the Charter in its entirety.

PART III

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 2.18 Organizational meetings in its entirety and replacing same with a new Section 2.18 Organizational meetings to read as follows:

SECTION 2.18. - Organizational meetings.

The city council shall hold an organizational meeting on the second Monday in January. The meeting shall be called to order by the mayor or city clerk and the oath of the office shall be administered to the newly elected members as follows:

"I do solemnly (swear) (affirm) that I will faithfully perform the duties of (mayor) (councilmember) of this city and that I will support and defend the Charter thereof as well as the Constitution and laws of the State of Georgia and of the United States of America."

PART IV

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 4.14 – “Certiorari” of the Charter in its entirety.

PART V

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 4.15 – “Rules for Court” of the Charter in its entirety.

PART VI

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 5.10 Applicability of general law in its entirety and replacing same with a new Section 5.10 to read as follows:

SECTION 5.10. - Applicability of general law.

All primaries and elections shall be held and conducted in accordance with Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Election Code,' as now or hereafter amended.

PART VII

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 5.14 Special elections; interim appointments; vacancies in its entirety and replacing same with a new Section 5.14 to read as follows:

SECTION 5.14. - Special elections; interim appointments; vacancies.

In the event that the office of mayor or council member shall become vacant for any cause whatsoever, the city council or those remaining shall appoint a successor who shall serve until the next regularly scheduled election. Should the office which became vacant not be scheduled for election at the next regularly scheduled election, then the city council shall order a special election at the time of the regularly scheduled election to fill the balance of the unexpired term of the vacant position. The special election to fill the unexpired term shall be held and conducted in accordance with Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code," as now or hereafter amended.

PART VIII

The Council of the City of Duluth hereby ordains that pursuant to the provisions of O.C.G.A. Section 36-35-3, the Charter of the City of Duluth, as amended (Ga. L. 2003, P. 4048) is hereby amended by deleting Section 5.15 – Other provisions in its entirety and replacing same with a new Section 5.15 to read as follows:

SECTION 5.15- Other provisions.

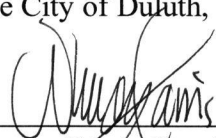
Except as otherwise provided by this Charter, the city council shall, by ordinance, prescribe such rules and regulations it deems appropriate to fulfill any options and duties under Chapter 2 of Title 21 of the O.C.G.A., the "Georgia Election Code."

The remaining provisions of the charter of the City of Duluth, Georgia shall remain in full force and effect.

This Ordinance amending the charter of the City of Duluth, Georgia is adopted pursuant to the provisions of O.C.G.A. 36-35-3 and shall become effective upon its approval at a second meeting of the mayor and council and following publication as required by law.

FIRST ADOPTION

Approved and adopted by the mayor and council of the City of Duluth, Georgia this 13th day of November 2023.

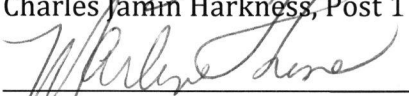


Mayor Nancy Harris

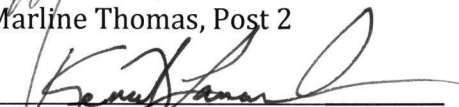
Those councilmembers voting in favor:



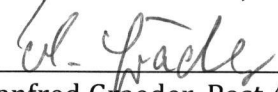
Charles Jamin Harkness, Post 1



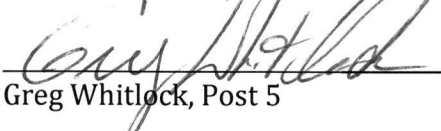
Marline Thomas, Post 2



Kenneth Lamar Doss, Post 3

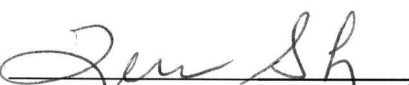


Manfred Graeder, Post 4



Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: 

Teresa Lynn, Asst. City Mgr/City Clerk

SECOND ADOPTION

Approved and adopted the second time by the mayor and council of the City of Duluth, Georgia this 11th day of December, 2023.

Those councilmembers voting in favor:

Mayor Nancy Harris

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa Lynn, Asst. City Mgr/City Clerk

Gwinnett Daily Post

"Local News For Local People"

P.O.Box 603
Lawrenceville, Georgia 30046

Phone (770) 963-9205
Fax (770) 339-8082

PUBLISHER'S AFFIDAVIT

STATE OF GEORGIA
COUNTY OF GWINNETT

Personally appeared before the undersigned, a notary public within and for said county and state, Douglas W. Crow, Vice President of Operations, Times Journal Inc., which published the Gwinnett Daily Post, published at Lawrenceville, County of Gwinnett, State of Georgia, and being the official organ for the publication of legal advertisements for said county, who being duly sworn, states on oath that the report of

Ad No.: **368620**

Name and File No.: **GDP5864 CHARTER AMENDMENT**

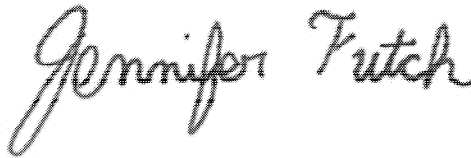
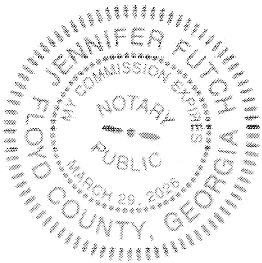
a true copy of which is hereto attached, was published in said newspaper on the following date(s):

10/29/2023 11/05/2023 11/12/2023 11/26/2023



Douglas W. Crow, Vice President of Operations, Times Journal Inc.

Sworn and subscribed to me 11/27/2023



Notary Public
My commission expires 03/29/2026

Ad text :
GDP5864

gpn14

NOTICE OF INTENTION TO AMEND THE CHARTER OF THE
CITY OF DULUTH, GEORGIA

The public is hereby notified that an ordinance to amend to the municipal charter of the City of Duluth, Georgia (Ga. L. 2003, P. 4048) has been proposed and will be considered for adoption at two (2) consecutive regular meetings of the Mayor and Council of the City of Duluth scheduled for November 13 and December 11 2023, at 6:00 P.M. at Duluth City Hall, 3167 Main Street, Duluth, Georgia 30096. Said ordinance being captioned as follows:

An ordinance to amend the Charter of the City of Duluth, Georgia, to repeal all laws or ordinances in conflict wherewith, and for other purposes.

Synopsis of Proposed Amendment

? Section 1.13 (40)- Examples of Powers Taxicabs - regulations removed from under municipal and placed under State.

? Section 1.13 (23) Examples of Powers Specific penalties, remove reference to Gwinnett County Health & Sanitation Ordinance.

? Section 2.18 inserting Mayor or City Clerk.

? Section 4.14 Certiorari - Superior and State court appellate act effective July 1, 2023, which now governs all appeals from Municipal Courts to State or Superior Court which in the past was handled by the Writ of Certiorari.

? Section 4.15 - Rules for Court. The Uniform Municipal Court Rules were approved by the Supreme Court of Georgia in 2010, and now govern all of the Municipal Court procedures.

? Removing where referenced Georgia Municipal Election Code and replacing with Georgia Election Code Annotated.

A copy of the proposed ordinance amending the Charter is on file in the Office of the Clerk of Superior Court for Gwinnett County and in the Office of the City Clerk for the purpose of examination and inspection by the public.

This 29th day of October 2023.

Teresa S. Lynn, Asst. City Manager/City Clerk

10:29;11:5,12,26,2023

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2024 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2024 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2024 fiscal year as follows:

Total Revenues:	<u>84,664,474</u>
Operations Expenditures:	<u>42,133,405</u>
Capital Improvement Expenditures:	<u>42,531,069</u>
Total Expenditures:	<u>84,664,474</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth approved awarding a contract to IP Construction for the Main Street Enhanced Sidewalk Phase II including contingency, materials testing and construction administration for \$3,800,000; and

WHEREAS this project is part of the 2017 SPLOST Intergovernmental Agreement between Gwinnett County and the City with expenditure funded 81% by Gwinnett and 19% by the City; and

WHEREAS it is requested the following be add to the Main St Multi-Use Trail capital project budget line items: \$1,248,044 in Gwinnett County Joint funds; \$296,149 in unallocated 2017 SPLOST Transportation funds, and \$2,000,000 in unallocated 2023 SPLOST Transportation funds, including associated transfers; and

NOW THEREFORE, the City of Duluth 2024 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>88,208,667</u>
Operations Expenditures:	<u>42,133,405</u>
Capital Improvement Expenditures:	<u>46,075,262</u>
Total Expenditures:	<u>88,208,667</u>

IT IS SO ORDAINED this _____ day of _____, **2023**.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, City Clerk