



CITY
OF
DULUTH

**PROCEEDINGS OF THE
CITY COUNCIL
2011**

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, January 6, 2011, 6:45 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Hartman, Stauber and President Anderson -- 8

Absent: None -- 0

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0106-01 The following communications regarding the proposed Fourth District city councilor appointment (11-0008R): (a) Jason Beckman; (b) Scot Bol; (c) Mary Butler; (d) Laura Maki Cole; (e) Anna G. Cook; (f) Mary Day; (g) Anni Friesen; (h) Anne Harala; (i) Shawn Herhusky; (j) Mark Howard; (k) Dan O'Neill; (l) Sarah Sawinski; (m) Travis Stejskal; (n) Dean Talbott; (o) Jordan Unseth; (p) Rondi Watson. -- Received

MOTIONS AND RESOLUTIONS

Resolution 11-0008, by Councilor Boyle, appointing _____ to fill the vacant fourth district city council seat, was introduced for discussion.

Councilors Stauber and Fosle stated that if the constituents of the Fourth District were able to vote on a candidate at this meeting, they would choose Garry Krause as they have in the past.

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Councilor Hartman supported Jacqueline Halberg for the fourth district council seat as she is a good listener and active in her district.

Councilor Gardner supported Jacqueline Halberg since she will run for the position in the Fall, citing that if it is important enough for her to do now, it is important enough for her to do in the Fall.

To Councilor Fosle's questioning, City Attorney Gunnar Johnson stated that conflicts of interest for any council candidate would have to be addressed on a case-by-case basis.

Balloting proceeded as follows:

Councilor Boyle - Jacqueline Halberg
Councilor Cuneo - Jacqueline Halberg
Councilor Fedora - Garry Krause
Councilor Fosle - Garry Krause
Councilor Gardner - Jacqueline Halberg
Councilor Hartman - Jacqueline Halberg
Councilor Stauber - Garry Krause
President Anderson - Jacqueline Halberg

President Anderson moved to amend the resolution to insert the name "Jacqueline L. Halberg" into the blanks, which motion was seconded and unanimously carried.

Resolution 11-0008, as amended, was adopted as follows:

BY COUNCILOR BOYLE:

WHEREAS, Fourth District City Councilor Kerry Gauthier has resigned his city council seat effective January 1, 2011; and

WHEREAS, the Duluth City Charter requires the city council to fill a vacancy in a council seat by appointment of an eligible person to serve until the next municipal election.

NOW, THEREFORE, BE IT RESOLVED, that the city council hereby appoints Jacqueline L. Halberg to fill the vacant Fourth District city council seat for the term expiring January 9, 2012, effective immediately.

Resolution 11-0008 was unanimously adopted.

Approved January 6, 2011

DON NESS, Mayor

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The meeting was adjourned at 7:00 p.m.

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, January 10, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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President Anderson stated that there would be a brief moment of silence in honor of those victims of the senseless shooting in Arizona.

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At this time, the city clerk swore in Jacqueline Halberg as the recently selected city councilor for the Fourth Council District.

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ELECTION OF OFFICERS

Councilor Hartman nominated Councilor Gardner for the office of president of the Duluth City Council for the year 2011, which motion was seconded and unanimously carried.

Councilor Gardner nominated Councilor Hartman for the office of vice president of the Duluth City Council for the year 2011, which motion was seconded and unanimously carried.

Outgoing President Anderson commented on the past year, noting the professionalism of the council and its accomplishments.

Incoming President Gardner thanked the councilors for their support and commented on her goals for the coming year.

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The minutes of council meetings held on August 16 and 30, 2010, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0110-01 Minnesota state auditor Spirit Mountain recreation area authority audit report for the years ended April 30, 2010 and 2009. -- Received

11-0110-02 The following communications regarding the proposed parks and recreation master plan (10-0644R): (a) Kyle and Wendy Burke; (b) Lisa R. Chester-Wormuth; (c) Jeanine Dahl; (d) Grey Doffin; (e) Gary-New Duluth Community Club; (f) David Gunderson; (g) Mona Johnson-Cheslak; (h) Todd Kuusisto; (i) Christine Lemker; (j) Joseph J. Martinelli; (k) Parks and recreation commission; (l) Volunteers Caring and Patrolling, Inc. -- Received

11-0110-09 The following communications regarding the proposed intent to improve Ivanhoe Street (11-0003R): (a) Pam Anderson; (b) Scott Anderson; (c) Yvonne Anderson; (d) Paul Belsito and Stacy Radosevich; (e) Douglas Carlson; (f) Allen and Bonnie Frielund; (g) Pam Griffin; (h) Tom Griffin; (i) Wayne and Kathy Hencz; (j) Julie Hendrickson; (k) John Hummel; (l) Diane Irving; (m) Mark Irving (including communication supported by 52 signatures); (n) Ralph and Mary Johnson; (o) Roger and Connie Joppa; (p) Lynn Kiesel; (q) Rick Lattimer; (r) Jim Mainella; (s) Chuck and Lynn Meister; (t) Jim and Evie Pollock; (u) John and Susan Rogge; (v) Phillip M. Sher; (w) Jane Stauber Wilson; (x) Patty Swanson; (y) Dand and Mindy Traylor; (z) Alok Vidyarthi; (aa) Sohn Wehseler; (bb) Michael and Pamela Wendling. -- Received

11-0110-10 The following communications regarding the removal of the Lincoln Park

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business district metered parking zone (10-0665R): (a) Randy Brody; (b) Pennie Turcott. -- Received

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REPORTS FROM OTHER OFFICERS

11-0110-03 Clerk applications for exempt permits (raffles) to the Minnesota gambling control board from: (a) Lake Superior College Foundation on September 15, 2011; (b) Lake Superior Marine Museum Association on November 5, 2011; (c) Lakehead Racing Association on July 17, 2011; (d) Rotary Club of Duluth Harbortown Minnesota USA on April 6, 2011. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-0110-08 Alcohol, gambling and tobacco commission minutes of September 1, 2010, meeting. -- Received

11-0110-04 Duluth airport authority: (a) Minutes of November 16, 2010, meeting; (b) October 31, 2010, unaudited balance sheet. -- Received

11-0110-05 Duluth public arts commission minutes of November 15, 2010, meeting. -- Received

11-0110-06 Duluth transit authority: (a) Minutes of October 27, 2010, meeting; (b) September 2010 income statement. -- Received

11-0110-07 Entertainment and convention center authority minutes of December 21, 2010, meeting. -- Received

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At this time the public hearing on the issuance of general obligation capital improvement bonds not to exceed \$2,275,000 and capital improvement plan for the years 2011-2015 began. No one appeared who wished to be heard and the public hearing was declared closed.

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MOTION FOR RECONSIDERATION

Councilor Fosle moved to reconsider Resolution 10-0665, removing designation of portions of Lincoln Park Business District as a metered parking zone, which motion was seconded and carried as follows:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Stauber and President Gardner -- 7

Nays: Councilor Hartman -- 1

Abstention: Councilor Halberg -- 1

Councilor Fosle moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Penny Turcott, business owner, supported: keeping the meters on Superior Street, because it only costs \$.75 to park at them for two hours; they are conveniently located and if they were removed, there would not be any available spaces to park; the meters on 20th and 21st avenues West could be removed and there is also a free city lot there.

Mark Howard, business owner, supported a free two hour limit on parking if the meters are covered up and it being enforced and no overnight parking on 19th, 20th and 21st avenues West.

Steve Goman, city traffic engineer, responded to councilor questions, noting that nearly every business that he talked to did not want the meters removed and there are approximately

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60 meters that generate approximately \$18,000 a year.

Councilors Hartman, Stauber and President Gardner supported the resolution for reasons of: there were businesses that wanted this change, but if there are concerns, there needs to be an open public hearing to gather input and look at different options; former Councilor Gauthier had received a lot of input from individuals on this and wanted to help them out and with only about a dollar a day revenue from each meter on the average, it appears that the public are either not parking at meters or not plugging them.

Councilors Fosle and Cuneo expressed concerns of: if this was a serious problem with the businesses, the councilors would have heard directly from a lot of businesses and maybe there is a compromise solution, instead of a wholesale removal.

Chief Administrative Officer David Montgomery suggested that the council repeal this resolution and then refer it back to the parking commission for a full open public hearing to gather input and make a report to the council.

Resolution 10-0665 failed upon the following vote (Public Document No. 11-0110-11):

Yeas: Councilors Hartman, Stauber and President Gardner -- 3

Nays: Councilors Anderson, Boyle, Cuneo, Fedora and Fosle -- 5

Abstention: Councilor Halberg -- 1

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RESOLUTION TABLED

Councilor Cuneo moved to remove Resolution 10-0644, adopting the parks and creation master plan for the city of Duluth, from the table to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Councilor Cuneo moved to suspend the rules to hear a speaker, which motion was seconded and unanimously carried.

Grey Doffin expressed concern about the recommendation to replace the small community center at Observation Park with an event venue of a large grass field with a parking lot, suitable for a wedding. He felt that by doing this: it would destroy the whole park; this is the only flat park area for youth activities between Hillside Sport Court at Fifth Avenue East and Lincoln Park at 25th Avenue West.

Councilor Anderson moved to retable the resolution, which motion was seconded and unanimously carried.

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MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the assessment roll levied for reassessment of a canceled permanent alley (#5347 – Fund 325) and canceled garbage assessment (#2007420, 2008420 and 2009420 - Fund GARBAGE) at the following location is set forth below:

Plat 4510 Parcel 01660 – total assessable alley: \$667.43; total assessable garbage: \$1,376.06.

The total assessable amount is \$2,043.49 and this assessment roll is hereby confirmed.

Resolution 11-0004 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved January 10, 2011
DON NESS, Mayor

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RESOLVED, that the assessment roll levied for reassessment of a canceled razing (#4900 – Fund 110) at the following location is set forth below:

Plat 0280 Parcel 01115 – total assessable: \$1,091.32.

The total assessable amount is \$1,091.32 and this assessment roll is hereby confirmed. Resolution 11-0005 was unanimously adopted.

Approved January 10, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute Amendment No. 1 to the long-term rental agreement bearing City Contract No. 20049, a copy of which amendment is on file in the office of the city clerk as Public Document No. 11-0110-12, with Caterpillar Financial Services Corporation, extending the city's option to purchase 12 graders currently under lease from them at no cost to either party.

Resolution 11-0014 was unanimously adopted.

Approved January 10, 2011
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an assignment of purchase option, a copy of which is on file in the office of the city clerk as Public Document No. 11-0110-13, with Ziegler, Inc., assigning to them the city's rights to purchase 12 graders from Caterpillar Financial Services Corporation under City Contract No. 20049 at no cost to either party.

Resolution 11-0015 was unanimously adopted.

Approved January 10, 2011
DON NESS, Mayor

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BE IT RESOLVED, that the Duluth City Council approves of the Minnesota gambling control board issuing a premise permit to the following organization.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Licensee	Gambling site
Irving Community Club	Kom On Inn, 332 North 57th Avenue West

Resolution 11-0016 was unanimously adopted.

Approved January 10, 2011
DON NESS, Mayor

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BE IT RESOLVED, by the governing body of the city of Duluth, St. Louis County, Minnesota, as follows:

Section 1. Recitals.

1.01 The city of Duluth, the town of Duluth and the town of Lakewood, all in St. Louis

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County, Minnesota, in 1999 submitted a petition to the Minnesota pollution control agency (the "MPCA") requesting creation of the Duluth/North Shore Sanitary District (the "sanitary district") pursuant to Minnesota Statutes, Sections 115.18 through 115.37 (the "act"). (The city of Duluth, the town of Duluth and the town of Lakewood are herein referred to collectively as the "municipalities.")

1.02 On January 25, 2000, the MPCA issued an order approving creation of the sanitary district (the "order"). The order was published in the *State Register* on January 31, 2000.

1.03 On March 1, 2000, the time for appeal of the order having expired, a certified copy of the order was duly filed with the Minnesota Secretary of state, and creation of the sanitary district was thereupon deemed complete under the act.

1.04 the act requires that the municipalities elect a board of managers for the sanitary district (the "board of managers") as soon as practicable after creation of the sanitary district.

1.05 Pursuant to Section 115.23, subdivision 7 of the act, the municipalities may elect a board member or members by resolutions adopted by all of them separately, concurring in the election of the same person or persons.

Section 2. Findings. It is in the best interests of the municipalities and of the sanitary district that the following person, who is a voter residing in the area of the sanitary district, be nominated for election to the board of managers for the term indicated:

Angela Braud, of the town of Duluth, Minnesota, whose term shall commence upon passage of the necessary election documents and shall expire on the first business day of January, 2014.

Section 3. Election of board of managers. Election of the above-named person to the board of managers of the sanitary district is approved and such person is elected for the terms indicated.

Section 4. Authorization and direction to clerk. Upon receipt of concurring resolutions from the town of Duluth and the town of Lakewood, the clerk is directed to certify the results of this election to the secretary of the MPCA and to the auditor of St. Louis County and make and transmit to the board member elected a certificate of the board member's election

Resolution 11-0012 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

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RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the portion of Birch Avenue located between the southwest line of Garfield Avenue and the southwest line of the alley west of Garfield Avenue (legal description subject to survey); and

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (FN 10102) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petitioned street is useless for vehicular and pedestrian purposes, but that portions of the street are needed for utility purposes as noted in (c) below; and

(c) Minnesota Power has requested a utility easement be retained over the northwest half of the vacation area to preserve access to an existing power distribution line and the city engineer has requested a utility easement for a portion of the requested vacation

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area to preserve access to a sanitary sewer force main running approximately in the alley; and
(d) The city planning commission, at its October 12, 2010, regular meeting, recommended approval of the vacation petition and easement reservation; and

(e) The city council of the city of Duluth approves the vacation of the following-described portion of platted Birch Avenue as more particularly described below and as described and depicted on Public Document No. 11-0110-14:

All that part of the northwesterly 74.90 feet of Birch Avenue in the plats of RICE'S POINT and NORTH ALBERT POSEY TRACT which lies between Line A and Line B, described as follows:

Line A: Beginning at the most easterly corner of Lot 80, Second Street, NORTH ALBERT POSEY TRACT, thence southeasterly on the southeasterly extension of the northeasterly line of said Lot 80, to the most northerly corner of Block 25, RICE'S POINT, and there terminating;

Line B: Beginning at the most easterly corner of Block 26, RICE'S POINT, thence southeasterly on the southeasterly extension of the southwesterly right-of-way of Garfield Avenue (formerly Third Street) to the most northerly corner of Block 27, RICE'S POINT, and there terminating;

Subject to the retention of an easement for utility purposes over the following-described parts of said portion of platted Birch Avenue as more particularly described below and as described and depicted on Public Document No. 11-0110-14:

The northwesterly 37.50 feet of Birch Avenue in the plat of RICE'S POINT and NORTH ALBERT POSEY TRACT which lies between Line A and Line B, as described hereinbefore;

AND

The southwesterly 20.00 feet of the northwesterly 37.40 feet of the southeasterly 37.50 feet of that portion of Birch Avenue in the plat of RICE'S POINT which lies between Line A and Line B, as described hereinbefore; and

(f) That the city clerk is, pursuant to Section 100 (b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-0110-14 showing the portion of the street to be vacated and utility easements retained.

Resolution 11-0006 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a service agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0110-15, with Duluth Sister Cities International, Inc. (DSCI) in an amount not to exceed \$20,000, payable from Fund 258, Agency 030, Account 5436-05.

Resolution 11-0002 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0534 awarding a contract to Belair Builders, Inc., dba Belair Excavating, for construction of the 2009 watermain replacement project in Congdon Boulevard, 40th Avenue East and West Marble Street be amended to increase the amount by

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\$135,068.24 for a new total of \$540,583.12, payable out of Water Fund 510, Department/Agency 500, Organization 1905, Object 5536, City Project No. 0738WA.

Resolution 11-0007 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Hawkins, Inc., for the purchase and delivery of 150 tons of hydrofluorisilicic acid in accordance with specifications and the vendor's low bid of \$760 per ton for a total of \$114,000 plus 6.875 percent sales tax of \$7,837.50, for a combined total amount of \$121,837.50, terms net 30, FOB destination, payable from the Water Fund 510, Department/Agency 500, Organization 1955, Object 5216-03.

Resolution 11-0009 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Thunder Bay Chemicals, Ltd., for the purchase and delivery of 125,000 gallons of liquid aluminum sulfate in accordance with specifications and the vendor's low bid of \$1.247 per gallon for a total of \$155,875 plus 6.875 percent sales tax of \$10,716.41, for a combined total amount of \$166,591.41, terms net 30, FOB destination, payable from the Water Fund 510, Department/Agency 500, Organization 1955, Object 5216-04.

Resolution 11-0010 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Hawkins, Inc., for the purchase and delivery of 85,000 gallons of caustic soda in accordance with specifications and the vendor's low bid of \$1.7421 per gallon for a total amount of \$148,078.50 plus 6.875 percent sales tax of \$10,180.40 for a combined total amount of \$158,258.90, terms net 30, FOB destination, payable from the Water Fund 510, Department/Agency 500, Organization 1955, Object 5216-05.

Resolution 11-0011 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. 11-0110-16, with the state of Minnesota department of transportation to relocate a natural gas main located south of Interstate Highway 35 near Recycle Way for the benefit of the Interstate Highway 35 reconstruction project and to receive reimbursement therefor in an amount not to exceed \$167,510, payable to the Gas Fund 520, Agency 500, Organization 1905, Object 5533.

Resolution 11-0013 was unanimously adopted.

Approved January 10, 2011

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DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement with MSA Professional Services, Inc., for engineering services related to the increase of pumping capacity at Lift Station No. 45 and reconstruction of the forcemain. MSA Professional Services, Inc., has submitted a proposal for engineering services in connection with this project. The cost of said engineering services, estimated at \$161,464, is payable from the Clean Water Fund 532, Department 500, Object 5533, City Project No. 0892SN.

Resolution 11-0021 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

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The following resolutions were also considered:

BE IT RESOLVED, by the city council (the "council") of the city of Duluth, Minnesota (the "city"), as follows:

Section 1. Under and pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 475.521 (collectively the "act"), the city is authorized to issue general obligation capital improvement bonds to provide funds for capital improvements pursuant to a capital improvement plan approved by the council on December 6, 2010 (the "plan").

Section 2. The city council held a public hearing on January 10, 2011, on the city's intention to issue bonds in 2011 in an amount not to exceed \$2,275,000 for the purposes set forth in the notice of public hearing. All persons who desired to speak at the public hearing were heard and written comments were accepted.

Section 3. The council hereby finds and determines that it is necessary, expedient, and in the best interests of the city's residents that the city issue, sell and deliver its general obligation capital improvement bonds, Series 2011 (the "bonds"), in an amount not to exceed \$2,275,000, for the purpose of providing funds for the acquisition and betterment of the following projects: improvements to eligible facilities under the act, to buildings citywide including furnace and boilers, a storage building, security and entry systems and facility needs priorities related to energy improvements; improvements to City Hall including remodeling projects and window replacements; improvements to fire department facilities including remodeling and window replacements; a new public safety communications system; an upgrade of the library's mechanical systems; and payment of discount and costs of issuance of the bonds.

Section 4. A. The city clerk shall publish a notice of intent to issue capital improvement bonds in substantially the form on file as Public Document No. 11-0110-17 as soon as practicable following the public hearing in the official newspaper of the city;

B. If, within 30 days after the date of adoption of this resolution, a valid petition is filed with the city clerk calling for a vote on the proposition of issuing the bonds signed by voters residing within the boundaries of the city equal to five percent of the votes cast in the city in the last general election, the bonds shall not be issued until the question of their issuance has been authorized by a majority of the voters voting on the question at the next general or special election called to decide the question.

Resolution 11-0001 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman and President Gardner -- 7

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Nays: Councilors Fosle and Stauber -- 2
Approved January 10, 2011
DON NESS, Mayor

- - -

Resolution 11-0017, amending Resolution 10-0579 adopting license, permit and fee charges for 2011; amending street lighting system utility fees, was introduced by Councilor Fedora for discussion.

Councilor Fedora moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Roger Wedin, director of policy and education at the Duluth Area Chamber of Commerce, expressed concerns about: how the structure and methodology of the fee is spread across properties; what services can rightfully be expected from the payment of real estate taxes as opposed to new or increased fees and that there is a perception that businesses can more easily take on more expenses as compared to residents.

Councilor Fosle expressed concerns that the city, prior to 2008, had been funding the street lighting fund by adding on to all utility bills a 1.2 percent franchise fee and a one percent sales tax and that with this fee it is double taxation.

Councilor Cuneo moved to table the resolution, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

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RESOLVED, that city officials are hereby authorized to contract with Building Restoration Corporation for Phase I of the masonry restoration of Enger Tower, in accordance with the city-approved specifications and the contractor's low bid of \$372,226, payable from 450-030-5520 Project CP2011-ENGTR. Funding will be provided as follows: \$100,000 from the existing 2011 tourism tax appropriation as approved by council; and \$272,226 to come from 2010 unallocated tourism tax revenues.

Resolution 11-0022 was unanimously adopted.

Approved January 10, 2011
DON NESS, Mayor

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The city council finds as follows:

(a) The city administration and council wish to establish a clear set of priorities with respect to legislative priorities which the city supports in the 2011 legislative session;

(b) The city administration and council have devoted meeting time and discussion to the city legislative priorities;

(c) The city administration and council choose to express support for the top legislative priorities that are of vital interest to the community;

(d) The city administration and council have established priorities among legislative issues designating certain items as the city's top priorities.

NOW, THEREFORE, BE IT RESOLVED, that the city staff and elected officials will take the lead role in advancing the following legislative initiatives as top city priorities for the 2011 legislative session.

(a) The city supports maintenance of state funding for local government aid, with

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special attention to mitigating reductions during the current economic downturn which has already forced cities to make dramatic budget reductions;

(b) The city supports an allocation of bonding funds to the following state-wide funds:

(1) The public facilities authority drinking and wastewater infrastructure programs;

(2) The Minnesota department of transportation's port development assistance program;

(3) The Minnesota housing finance agency's public housing rehabilitation program;

(4) The Minnesota department of transportation's state airports fund;

(c) The city requests support for the Duluth jobs agenda, which includes advocacy for equity investment by the state board of investment into Minnesota companies, restoring our community's ability to grant variances to the pre-Kurmmenacher v. Minnetonka standard, supporting the 148th Active Association, restoring the functionality of tax increment financing as an economic development tool, and supporting economic development projects in Northeastern Minnesota.

Resolution 11-0019 was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

- - -

Resolution 11-0020, setting legislative initiatives for the 2011 legislative session, was introduced by Councilor Anderson for discussion.

Councilor Anderson moved to amend the resolution by adding following to the list of projects receiving city support: "Support legislation to grant cities the ability to offer benefits to the domestic partners of employees," which motion was seconded and carried as follows:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman, Stauber and President Gardner -- 7

Nays: Councilors Fedora and Fosle -- 2

Councilor Anderson moved to amend the resolution by adding the following to the list of projects receiving city support: "Support the Safe Schools for All Act," which motion was seconded and carried unanimously.

Councilor Anderson moved to amend the resolution by adding the following to the list of projects receiving city support: "Support off-sale of micro-brew beer and growlers on Sundays," which motion was seconded and discussed.

Councilor Fedora expressed concerns that: off-sale Sunday liquor is a much larger issue, given that Wisconsin allows it and what is good for the liquor stores is good for the microbrewers.

The amendment carried as follows:

Yeas: Councilors Anderson, Boyle, Cuneo, Hartman, Stauber and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Halberg -- 3

Councilor Stauber moved to amend the resolution by adding the following to the list of projects receiving city support: "Support comprehensive indoor air quality standards for commercial buildings," which motion was seconded and unanimously carried.

Councilor Stauber moved to amend the resolution by adding the following to the list of projects receiving city support: "Support more comprehensive regulation of assisted living facilities, which motion was seconded and unanimously carried.

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President Gardner moved to amend the resolution by adding the following to the list of projects receiving city support: "Support tougher penalties and enforcement of sexual trafficking and related crimes," which motion was seconded and unanimously carried.

Resolution 11-0020, as amended, was adopted as follows:

The city council finds as follows:

- (a) The city administration and council wish to establish a clear set of legislative initiatives which the city supports in the 2011 legislative session;
- (b) The city administration and council have devoted meeting time and discussion to the city legislative initiatives;
- (c) The city administration and council choose to express support for legislative initiatives that are of vital interest to the community.

NOW, THEREFORE, BE IT RESOLVED, that the city staff and elected officials express city support for the following projects of regional significance:

- (a) If there is a Viking's stadium bill, support for up to \$3 million in state bond proceeds for the renovation of Wade Stadium;
- (b) Other council priorities:
 - (1) Support legislation to grant cities the ability to offer benefits to the domestic partners of employees;
 - (2) Support the Safe Schools for All Act;
 - (3) Support off sale of micro-brew beer and growlers on Sundays;
 - (4) Support comprehensive indoor air quality standards for commercial buildings;
 - (5) Support more comprehensive regulation of assisted living facilities;
 - (6) Support tougher penalties and enforcement of sexual trafficking and related crimes.

Resolution 11-0020, as amended, was unanimously adopted.

Approved January 10, 2011

DON NESS, Mayor

- - -

Resolution 11-0003, of intent to improve Ivanhoe Street and to assess a portion of the costs thereof, was introduced by Councilor Anderson for discussion.

Councilor Anderson moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Mark Irving, John Hummel, Wayne Hencz, Ryan Stauber and Phillip Sher objected to the inclusion of a sidewalk as part of the project, for reasons of: over 89 percent of the property owners have expressed their opposition to sidewalks and boulevards on the petition submitted, at the two public meetings and through e-mails; this project will cost less without the sidewalks and boulevards; the initial purpose of this reconstruction was to repair failing watermains and sewer drains, which the residents support; this is a dead end street with low traffic volume; the council has the authority to listen to citizens and represent the majority desire; the street is 36 feet wide and provides plenty of space for parking, walking and cycling; reducing the street to 26 feet will cause congestion and safety hazards, where none now exists; this neighborhood has six streets which are five blocks or less in length and dead ends on both ends; 52nd Avenue East, a major artery, bisects all of these streets and it has sidewalks; in these tight budget times, the money for these sidewalks and boulevards should be used where it is needed, for community policing, parks and libraries; councilors when they campaigned stated that they would work with and represent the residents; by not supporting

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

the residents, it shows everyone how much the council responds to citizens and reflects negatively on potential new businesses considering moving to Duluth and all neighborhoods are different and have their own flavor and charm.

Councilor Fedora moved to amend the resolution by adding the following paragraphs to the beginning of the resolution:

“WHEREAS, the Duluth City Council acknowledges, recognizes and respects the numerous communications from residents of Ivanhoe Street; and

WHEREAS, the overwhelming majority of these residents have expressed opposition to the installation of new sidewalks on this five block long street which terminates without further connection at both 49th Avenue East and 54th Avenue East,” which motion was seconded and discussed.

Councilor Fedora noted that while the council voted to support the complete streets initiative, the council needs to be careful and look at all streets on a case-by-case basis, noting that streets on Ivanhoe are different than streets on Glenwood, Woodland Avenue, etc., and that this five block street is dead ended on both ends and almost all residents are requesting no sidewalks.

Councilors discussed at length with City Attorney Gunnar Johnson and Mr. Montgomery the aspects of the amendment and its effect of repairing the water and sewer mains.

Councilors Anderson, Boyle and Cuneo did not agree with the amendment for reasons of: that while complete streets concept does not dictate a specific design, councilors need to think of this issue in the greater context of everything that the city is attempting to do in building a better network for the entire city; the future residents of Ivanhoe Street, like a young couple pushing a stroller or an elder that is disabled, need to be considered, so they do not have to use the street and safety is the primary issue that needs to be considered here.

Mr. Montgomery reviewed: the approval of the complete streets concept that was approved by the council; that the city listened to the residents and proposed a sidewalk only on one side of the street and with some small changes in the alignment it would minimize the effect on the last two westerly blocks. He requested direction from the council prior to other future street designs.

Councilor Fedora’s amendment carried as follows:

Yeas: Councilors Fedora, Fosle, Halberg, Hartman and Stauber -- 5

Nays: Councilors Anderson, Boyle, Cuneo and President Gardner -- 4

Resolution 11-0003, as amended, was adopted as follows:

WHEREAS, the Duluth City Council acknowledges, recognizes and respects the numerous communications from residents of Ivanhoe Street; and

WHEREAS, the overwhelming majority of these residents have expressed opposition to the installation of new sidewalks on this five block long street which terminates without further connection at both 49th Avenue East and 54th Avenue East.

RESOLVED, that pursuant to Section 61 of the City Charter, the city council hereby expresses its intent to cause the following portion of the street named below to be improved as part of the city’s 2011 street improvement project, and hereby requests that the mayor prepare or cause to have prepared plans, specifications and estimates therefor, and file such plans and estimates with the special assessment board, together with a recommendation as to what portion of the cost should be paid by special assessment and what part, if any, should be a general obligation of the city, the number of installments in which assessments may be paid, and the lands which should include the special assessments:

Ivanhoe Street from 49th Avenue East to 54th Avenue East.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0003, as amended, was unanimously adopted.
Approved January 10, 2011
DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR CUNEO

11-001 - AN ORDINANCE AMENDING SECTION 11-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO INCORPORATE CURRENT STATUTORY DEFINITIONS.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

10-073 (10073) - AN ORDINANCE AMENDING SECTION 41-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PURCHASING.

Councilor Fedora moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

10-072 (10074) - AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN PROPERTY IN WEST DULUTH FROM THE DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY AT NO COST AND THE CONVEYANCE OF THE SAME TO THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AT NO COST RELATED TO THE TITLE CLEARANCE OF THE PLAT OF ONEOTA INDUSTRIAL PARK FIRST ADDITION.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

BY COUNCILOR ANDERSON (introduced by Councilor Gauthier)

10-071 - AN ORDINANCE AMENDING SECTION 34-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO SMOKING PROHIBITIONS IN CITY PARKS.

Councilor Anderson moved to suspend the rules to hear a speaker on the ordinance, which motion was seconded and unanimously carried.

Jill Rogers noted that the parks and recreation division currently has a tobacco free policy and that is the norm throughout the country.

Councilor Anderson moved to remove the ordinance from the agenda, which motion was seconded and unanimously carried.

- - -

The meeting was adjourned at 9:33 p.m.

JEFFREY J. COX, City Clerk

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

ORDINANCE NO. 10073

AN ORDINANCE AMENDING SECTION 41-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PURCHASING.

The city of Duluth does ordain:

Section 1. That Section 41-1 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 41-1. Definitions.

For purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Contractual services. An agreement entered into by a municipality for the sale or purchase of equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property. The term shall not include professional and other contractual services which are in their nature unique or noncompetitive.

Supplies. All supplies and materials.

Using agency. Any department, agency, commission, bureau or other unit in the city government using supplies or procuring contractual services, as provided for in this Chapter.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: February 13, 2011)

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed January 10, 2011
Approved January 10, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10074

AN ORDINANCE AUTHORIZING THE ACQUISITION OF CERTAIN PROPERTY IN WEST DULUTH FROM THE DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY AT NO COST AND THE CONVEYANCE OF THE SAME TO THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY AT NO COST RELATED TO THE TITLE CLEARANCE OF THE PLAT OF ONEOTA INDUSTRIAL PARK FIRST ADDITION.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to acquire at no cost from the Duluth, Winnipeg and Pacific Railway Company (DW&P) by quit claim deed the following described property in St. Louis County, Minnesota, related to the title clearance of the plat of Oneota Industrial Park First Addition:

All parts of Block 58, Addition to Oneota; Lots 4 and 5, Block 25, Oneota; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Lots 7 and 8, Block 183, West Duluth Seventh Division; shown within the plat of Oneota Industrial Park First Addition including railroad right-of-way (the property).

Section 2. The city council hereby finds that the Duluth economic development authority (DEDA) requires a conveyance of the above-described property from the city to DEDA in order to resolve title registration issues related to the plat of Oneota Industrial Park First Addition and further finds that the need of DEDA to acquire the property is greater in importance than the need of the city to retain said property and that the best interests of the citizens of the city will be best served by accomplishing such conveyance.

Section 3. That the proper city officials are hereby authorized to convey at no cost the above-described property in St. Louis County, Minnesota, by quit claim deed to DEDA and to execute all documents necessary with regard to said conveyance.

Section 4. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: February 13, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed January 10, 2011
Approved January 10, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, January 24, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

The minutes of council meetings held on September 13 and 27, and October 11 and 25, 2010, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0124-05 Janice Cohen communication regarding the proposed rezoning at 1000 Minnesota Avenue (11-004-O). -- Received

11-0124-01 The following communications regarding the proposed parks and recreation master plan (10-0644R): (a) Jon Aamodt; (b) Duluth Amateur Hockey Association; (c) Todd W. Langdon; (d) RJ Larson; (e) Piedmont Hockey and Softball Associations. -- Received

11-0124-06 The following communications regarding the proposed street lighting system utility fees (11-0017R): (a) Jim Beaulier; (b) Duluth Chamber of Commerce; (c) David Sorenson; (d) Barbara Walcome. -- Received

- - -

REPORTS FROM OTHER OFFICERS

11-0124-02 Purchasing agent emergency purchase order awarded to Groebner & Associates, Inc., for installation of two replacement valves mandated by the Minnesota department of transportation for the gas main relocation project prior to start up reconstruction of I-35 at a cost of \$53,416.13, pursuant to Section 41-27 of the Duluth City Code. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-0124-03 Commission on disabilities minutes of December 1, 2010, meeting. -- Received

11-0124-04 Duluth public utilities commission minutes of: (a) November 10; (b) December 8, 2010, meetings. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Rose St. John, Catie Heath, Ashley Simmons, Samantha Cotton and Kim Crawford, executive director of Life House, commented: by thanking the city for supporting the Life House to keep it open, which helps the youth of Duluth by helping them to get a job, housing and schooling; the staff is great to work with and very helpful, and they give youth hope to achieve their goals.

- - -

Loren Martell apologized for taking a part of an incident at the school board protesting the red plan that was made public in the newspaper and television but feels that his right to speak at the meeting was denied.

- - -

RESOLUTIONS TABLED

Councilor Fedora moved to remove Resolution 11-0017, amending Resolution 10-0579 adopting license, permit and fee charges for 2011; amending street lighting system utility fees, from the table, which motion was seconded and unanimously carried.

Councilor Fedora moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Dean Casperson, representing the Duluth Area Chamber of Commerce, appreciated the opportunity for the chamber to propose an alternative plan, where the total cost of the lighting utility, minus the infrastructure improvements, are divided among all of the households and businesses, which would bring the fee up to \$5.80. He continued by saying that the chamber then took the infrastructure cost and divided that among 3,820 businesses, which cost would be added to the previous \$5.80 fee for a total of \$15.25 per month for all businesses. Mr. Casperson hoped that, with efficiencies, costs would be reduced and business fees would be reduced with improved infrastructure.

Joyce Lusnia stated that she protests the raising of her water bill to pay for more street lighting for the reasons of: this increased fee is out of line for fixed incomes; senior citizens have a limited budget and limited expenditures; the chamber does not speak for the citizens and that the council should listen to the people and not tell us they know better.

Mike Akervik stated that he does not agree with the options presented. He stated that he does not support a flat fee based on residency versus based on the value of the property. Additionally, Mr. Akervik felt that this is nothing more than a new venue to create a revenue stream and that fixed fees on the water and gas bill, whether the service is used or not, is a way of getting around calling it a tax. He added that the city should make it equal for everyone by adding it to the property taxes so people are paying their fare share.

Chief Administrative Officer David Montgomery reviewed in detail the background and purpose of this issue and the relationship with Minnesota Power of cost sharing on the maintenance of light poles.

Councilor Hartman introduced an amendment to the rate amounts that he said was a compromise between the city's proposal and the chamber's proposal, as follows:

< 4 Equivalent Residential Units	"\$8.50"
4 to 49.99 Equivalent Residential Units	"\$25.50"
50+ Equivalent Residential Units	"\$51.00"
Single Family Residential Unit	"\$5.65."

Councilor Anderson introduced the amendment to the rate amounts as follows:

< 4 Equivalent Residential Units	"\$15.25"
4 to 49.99 Equivalent Residential Units	"\$15.25"
50+ Equivalent Residential Units	"\$15.25"
Single Family Residential Unit	"\$6.15."

Councilor Cuneo introduced an amendment to the rate amounts which he stated was a fair balance between businesses and residential customers as follows:

< 4 Equivalent Residential Units	"\$16.50"
4 to 49.99 Equivalent Residential Units	"\$16.50"
50+ Equivalent Residential Units	"\$16.50"
Single Family Residential Unit	"\$4.50."

Councilors discussed at length the merits of the original proposed rates and the proposed amendments and asked questions of the administration.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Fosle expressed a concern that the city already receives dollars from the Minnesota Power franchise fee and the one percent sales tax that goes into general fund and that, that was the funding source prior to the current street lighting fee.

Councilor Cuneo's amendment was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman, Stauber and President Gardner -- 7

Nays: Councilors Fedora and Fosle -- 2

Councilors Stauber and Fedora opposed the amended resolution for reasons of: the general fund increases because of the sales taxes collected on the franchise fee; this should not be a fee because it is a tax, and if it has to be, it should be on the property taxes, so it can be tax deductible; efficiencies in government operation should be done instead of this; individuals are having to make tough personal financial decisions and government should also and this should belong in the general fund.

Resolution 11-0017, as amended, was adopted as follows:

RESOLVED, that Resolution 10-0579 adopting license, permit and fee charges for 2011 be amended by amending the street lighting system utility fees as listed on Public Document No. 11-0124-07, pursuant to Section 45-108(a) of the Duluth City Code, effective February 1, 2011.

Resolution 11-0017, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved January 24, 2011

DON NESS, Mayor

- - -

Councilor Fedora moved to remove Resolution 10-0644, adopting the parks and recreation master plan for the city of Duluth, from the table, which motion was seconded and unanimously carried.

Councilor Fedora moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Todd Kuusisto reviewed the history of Piedmont Community Club and the involvement of the community youth sports and recreational activities in the Piedmont area. He noted that moms and dads perform general maintenance and the fees are used to maintain the facility there. Mr. Kuusisto further felt that the future of the youth is at risk by closing down the facility and that consolidating community clubs is not always the answer.

Councilor Anderson moved to retable the resolution, which motion was seconded and unanimously carried.

- - -

MOTIONS AND RESOLUTIONS

The following entitled resolution was read for the first time, pursuant to City Council Standing Rule No. 15:

BY COUNCILOR HARTMAN

11-0039 - RESOLUTION AMENDING THE STANDING RULES - AMENDMENTS.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following temporary on sale 3.2 percent malt liquor license, subject to departmental approvals with any specific restrictions:

College of St. Scholastica, 1200 Kenwood Avenue, for February 12, 2011, with Luke Moravec, manager.

Resolution 11-0026 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Waste Management of Northern Minnesota the final ten months of a 36-month extension (expiring October 31, 2011) for the garbage/refuse removal and recycling pickup in accordance with city specifications and the vendor's fees as quoted for a total estimated amount of \$160,000, terms net 30, FOB job sites, and payable from various funds, agencies, organizations and objects.

Resolution 11-0031 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to renew the existing Contract No. 20352 with Inter-City Oil Company, Inc., the final year of a five-year contract, for the purchase and delivery of both bulk and service station fuels as needed during year 2011 for an amount not to exceed \$1,080,000, payable from Fleet Services Fund 660, Department/Agency 015, Object 5212.

Resolution 11-0038 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Maney International, Inc., for the purchase and delivery of OEM (original equipment manufacturer) parts, supplies and labor as needed during year 2011 for the fleet services division in accordance with existing specifications at an estimated amount of \$56,000, terms net 30, discount 35 percent current price list for parts, FOB destination, payable as follows:

(a) \$48,000 (labor) Fleet Services Fund 660, Department/Agency 015, Object 5221;

(b) \$8,000 (other) Fleet Services Fund 660, Department/Agency 015, Object 5404.

Resolution 11-0042 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute the second addendum to the administrative services agreement with RTW, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0124-08, for third party

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

administration of the city's self-funded workers' compensation program effective February 1, 2011; payable from Fund 605, Agency 036, Organization 1651, Object 5441.

Resolution 11-0043 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of operations coordinator, parks and recreation division, which were approved by the civil service board on November 3, 2010, and which are filed with the city clerk as Public Document No. 11-0124-09, are approved; that said classification shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that pay range for said classification shall be Range 1070. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0018 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the reappointments by Mayor Ness of Robert Reichert and John Ivey Thomas to the housing and redevelopment authority of Duluth for terms expiring on January 4, 2016, are confirmed.

Resolution 11-0027 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

The council finds:

(a) The city is required to submit a pay equity implementation report to the Minnesota department of employee relations by January 31, 2011; and

(b) Such report is required to be approved by the Duluth City Council.

THEREFORE, BE IT RESOLVED, that the city's pay equity implementation report has been submitted to the city council (Public Document No. 11-0124-10) and the council has received such report.

Resolution 11-0035 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the Duluth City Council does hereby approve the surveyor's certificate of plat correction in the form of that on file in the office of the city clerk as Public Document No. 11-0124-11, relating to the Plat of Oneota Industrial Park First Addition.

Resolution 11-0028 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the 20 foot wide alley located between blocks 36 and 40 of the Portland Division of Duluth; and

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (FN 10111) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petitioned alley will be useless for vehicular, utility and pedestrian purposes when replacement alley easement and utility easement are dedicated as noted in (c) below; and

(c) The city engineer has requested that the alley vacation be conditioned upon the relocation of utilities, including, but not limited to, sanitary sewer, water, storm sewer, electric power and telephone communication lines, impacted by the proposed vacation, the location of which to be approved by the city engineer and in a manner approved by the city engineer; and

(d) The city engineer has requested the alley vacation be conditioned upon dedication of an alley easement connecting the remaining portion of the alley to East Second Street near 11th Avenue East to provide for vehicular and pedestrian circulation, the final location and width to be approved by the city engineer; and

(e) The vacation will not be official until the relocation of utilities is complete and the applicant has dedicated the alley easement and the utility easement to the public; and

(f) The city planning commission, at its January 11, 2011, regular meeting, recommended approval of the vacation petition, condition upon the dedication of replacement alley easement and utility easement; and

(g) The city council of the city of Duluth approves the vacation of the following-described alley described below and as described and depicted on Public Document No. 11-0124-12:

That part of the 20 foot alley located between Blocks 36 and 40 as platted in the Portland Division of Duluth that lies between the easterly line of Tenth Avenue East and the centerline of the former right-of-way of 11th Avenue East; and

(h) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-0124-12 showing the alley to be vacated and utility easements retained.

Resolution 11-0040 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

WHEREAS, based on the recent history of actual sewer system overflows and the estimated flow of clear groundwater to the city's sanitary sewer system originating in each of its sewer basins, the availability of city resources to reduce such flows under the city's I&I program and the results anticipated from so allocating such resources, the director of public works and utilities has recommended that a portion of Sewer Basin Number 28 in the Riverside community from Manitou Street to the north, Viewcrest Avenue to the south, East Penton Boulevard to the east and St. Louis Court to the west be added to sewer basins 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, and parts of 13, 14, 15, 16, 17, 22, 25 and 26 as a basin designated for inspection as provided for in Section 43-33 of the Code; and

WHEREAS, the council accepts said recommendation.

RESOLVED, that pursuant to the provisions of Section 43-33 of the Code, that portion of Sanitary Sewer Basin Number 28 described above is hereby designated as one of the districts in the city wherein the city can best utilize its available resources to reduce the amount of unpolluted water entering or infiltrating the city's wastewater collection system and said basin is therefore designated as a district within which the city shall focus its enforcement efforts under Chapter 43 of the Code.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, that the director of public works and utilities is hereby directed to notify, in writing, the owners and persons in control of premises connected with the sanitary sewer within said district to disconnect any prohibited drain or device within 90 days after the date of such notice in the manner prescribed for such notices in said Section 43-33.

Resolution 11-0023 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into the second amendment to City Contract No. 21070, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0124-13, with Infor Global Solutions (Michigan), Inc., to purchase an additional 15 EAM user licenses, with maintenance, decreasing the annual escalation percentage applicable to maintenance from six percent to three percent for three years and increasing the amount of the contract by the amount of not to exceed \$98,027.23, which shall be payable from the following funds in the following amounts:

510 - 500 - 1915 - 5201 \$24,506.81;

520 - 500 - 1915 - 5201 \$24,506.81;

530 - 500 - 1915 - 5201 \$24,506.81;

535 - 500 - 1915 - 5201 \$24,506.80.

Resolution 11-0033 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a first amendment to management agreement (City Contract No. 20554), substantially the same as that on file in the office of the city clerk as Public Document No. 11-0124-14, with Duluth Steam Cooperative Association, amending certain termination provisions.

Resolution 11-0036 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. 11-0124-15, with the housing and redevelopment authority of Duluth accepting dedication of easements for emergency road access and stormwater drainage facilities and providing for maintenance thereof, all pertaining to the development of Hawk Ridge Estates and Hawk Ridge Estates First Addition at no cost to the city.

Resolution 11-0037 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. 2010-SHSP-00685 from the Minnesota department of public safety, homeland security and emergency management division, a copy of which agreement is on file in the office of the city clerk as Public Document No. 11-0124-16, in the amount of \$55,000, said funds to be deposited in Fund 210, Agency, 030, Organization 3176, Revenue Source 4210-02, for the purpose of supporting the Duluth fire department's chemical assessment team.

Resolution 11-0024 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved January 24, 2011
DON NESS, Mayor

- - -

The following resolutions were also considered:

WHEREAS, the city of Duluth desires to offer up-to-date payment options and to electronically deliver invoices to its customers; and

WHEREAS, the city of Duluth proposes to enter into a banking services arrangement with M & I Marshall & Ilsley Bank to perform these services.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves the terms and conditions for banking services, listed in Public Document No. 10-0614-21 on file in the office of the city clerk, to include receivable automation and consolidation, credit card processing, lock box services ACH (automated clearing house) transactions and online payment processing for an estimated amount of \$82,506, payable as follows:

(a) \$21,451.56 - Water Fund 510, Department/Agency 500, Organization 1940-2400, Object 5310;

(b) \$32,177.34 - Gas Fund 520, Department/Agency 500, Organization 1940-2400, Object 5310;

(c) \$18,976.38 - Sewer Fund 530, Department/Agency 500, Organization 1940-2400, Object 5310;

(d) \$9,900.72 - Stormwater Fund 535, Department/Agency 500, Organization 1940-2400, Object 5310.

Resolution 11-0030 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved January 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. 11-0124-17, with J & S Partnership, LLP, J & S V, LLC, and Glen and Sally Pratt, accepting various utility easements from them in furtherance of J & S's redevelopment of property below Grand Avenue from 44th Avenue West to 46th Avenue West at a cost of not to exceed \$50,000, payable from Fund 255.

Resolution 11-0034 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved January 24, 2011

DON NESS, Mayor

- - -

Resolution 11-0032, approving budget and cost sharing formula of Minneapolis - Duluth/Superior passenger rail alliance and authorizing payment of city's cost share of \$38,000, was introduced by Councilor Fedora for discussion.

Councilor Fedora moved to suspend the rules to hear a speaker on the resolution,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

which motion was seconded and unanimously carried.

Jerry Schlafer opposed the resolution for reasons of: no passenger train can pay for itself without a subsidy; why did the city pay \$200,000 to study if it is feasible; the supporters of this do not want to invest in it; it will take longer to take the train than to drive you car from home to your final destination and a family of four will not save by taking the train.

Councilors Fedora and Fosle reviewed articles from a Minneapolis newspaper and the *Wall Street Journal* on how high speed rail lines lack ridership and have massive overruns.

Resolution 11-0032 was adopted as follows:

RESOLVED, that the city council hereby approves the 2011 budget and cost sharing formula for the Minneapolis - Duluth/Superior passenger rail alliance, a copy of which is on file in the office of the city clerk as Public Document No. 11-0124-18, as provided for in paragraph V-E. of that certain joint powers agreement on file as City Agreement No. 20580.

FURTHER RESOLVED, that the proper city officials are hereby authorized to pay the city's share of said alliance's 2011 budget in the amount of \$38,000 in conformance with Section VI-A. of City Agreement No. 20580, said sum to be payable from Fund 258-030-5436-09.

Resolution 11-0032 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved January 24, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On October 6, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Pizza Luce III, Inc. d/b/a Pizza Luce, 11 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0124-19;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 24, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0124-19 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Pizza Luce III, Inc. d/b/a Pizza Luce, 11 East Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action.

Resolution 11-0025 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

Resolution 11-0041, amending Resolution 09-0059 retaining Frank Madden & Associates for service related to labor contracts beginning in 2011, increasing the amount by \$50,000 for a new total amount not to exceed \$100,000, was introduced by President Gardner for discussion.

Councilor Stauber opposed the resolution for reasons of: it doubles the amount that was previously paid; it is overkill with our city attorneys also attending negotiations and with

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

other financial responsibilities this is not needed.

Mr. Montgomery noted that Mr. Madden's services go far beyond the negotiation sessions on other labor issues.

Resolution 11-0041 was adopted as follows:

RESOLVED, that the city council hereby amends Resolution 09-0059, retaining Frank Madden & Associates, to provide legal services to the city related to labor contracts beginning in 2011, increasing the amount by \$50,000 for a new total amount not to exceed \$100,000 for both the 2010 and 2011 contract negotiations, and authorizes the proper city officials to execute a first amendment to professional services agreement substantially the same as that on file in the office of the city clerk as Public Document No. 11-0124-20; funds shall be payable from Fund 110, Department 700, Organization 1407, Object 5304.

Resolution 11-0041 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Hartman and President Gardner -- 6

Nays: Councilors Fosle, Halberg and Stauber -- 3

Approved January 24, 2011

DON NESS, Mayor

- - -

Resolution 11-0045, authorizing the city to enter into a joint powers agreement and trust agreement with the Duluth Entertainment Convention Center, housing and redevelopment authority of Duluth and Duluth airport authority to form and implement a joint powers enterprise, along with approval of the bylaws of the joint powers enterprise, was introduced by President Gardner for discussion.

Councilor Hartman moved to table the resolution for a committee meeting, which motion was seconded and unanimously carried.

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0124-21, with the Grant Community School Collaborative for the operation of the Grant Community Recreation Center.

Resolution 11-0029 was unanimously adopted.

Approved January 24, 2011

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR STAUBER

10-068 (10075) - AN ORDINANCE AMENDING SECTIONS 50-18.1, 50-36.6 AND 50-41.269 OF CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO SHORELAND STANDARDS.

Councilor Stauber moved to remove the ordinance from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

11-002 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, RESIDENTIAL-URBAN, TO MU-I, MIXED USE-INSTITUTIONAL, THE PROPERTY THAT CONSTITUTES THE CAMPUS OF THE COLLEGE OF SAINT SCHOLASTICA (CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER

11-003 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM I-W, INDUSTRIAL WATERFRONT, AND MU-N, MIXED USE NEIGHBORHOOD, TO MU-W, MIXED USE WATERFRONT, THE WESTERN BAYFRONT DISTRICT PROPERTY BETWEEN SIXTH AND TENTH AVENUES WEST SOUTH OF RAILROAD STREET (CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER

11-004 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM I-W, INDUSTRIAL WATERFRONT, TO MU-W, MIXED USE WATERFRONT, PROPERTY AT 1000 MINNESOTA AVENUE (LAKEHEAD BOAT BASIN, INC.).

- - -

BY PRESIDENT GARDNER

11-005 - AN ORDINANCE AMENDING SECTIONS 29A-27 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PROVIDING FOR DEFINITIONS, AND ADDING A NEW SECTION 29A-32.1 PROVIDING AUTHORITY FOR A RENTAL CONVERSION FEE.

President Gardner, along with councilors Anderson and Boyle, moved to amend the ordinance by:

(a) Adding a new subsection 29A-27(i) to read as follows:

“(i) For purposes of this Article, and except as otherwise provided herein, “protection zone” means any parcel of land, lot or part thereof within or abutting the area described as follows: a point beginning at the point of intersection of the centerline of North Sixth Avenue East and the centerline of East Fifth Street, thence northwesterly along the centerline of North Sixth Avenue East to its point of intersection with Central Entrance Drive, thence westerly along the centerline of Central Entrance Drive to its point of intersection with the centerline of Rice Lake Road, thence northerly along the centerline of Rice Lake Road to its point of intersection with the centerline of West Arrowhead Road, thence easterly along the centerline of West Arrowhead Road to its point of intersection with the centerline of Blackman Avenue, thence northerly along the centerline of Blackman Avenue to its point of intersection with the centerline of MacFarlane Road, thence easterly along the centerline of MacFarlane Road to its point of intersection with the centerline of Howard Gnesen Road, thence southeasterly along the centerline of Howard Gnesen Road to its point of intersection with the centerline of Old Howard Gnesen Road, thence north/northeasterly along the centerline of Old Howard Gnesen Road to its point of intersection with the centerline of South Road, thence easterly along the centerline of South Road in a straight line to its point of intersection with the northwest corner of the Third Glen Avon Division of Duluth, thence north in a straight line to its

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

point of intersection with the centerline of Anoka Street, thence easterly along the centerline of Anoka Street to its point of intersection with the centerline of St. Paul Avenue, thence south along the centerline of St. Paul Avenue to its point of intersection with the centerline of Carlisle Avenue, thence easterly along the centerline of Carlisle Avenue to its point of intersection with the centerline of Grove Street, thence northeasterly along the centerline of Grove Street to its point of intersection with the centerline of Princeton Place, thence northeasterly along the centerline of Princeton Place to its point of intersection with the southerly boundary of Park Hill Cemetery, thence easterly along the southern boundary of Park Hill Cemetery until its point of intersection with the western easement line of Livingston Avenue, thence easterly in a straight line to its point of intersection with the centerline of Livingston Avenue, thence northerly along the centerline of Livingston Avenue to its point of intersection with the centerline of Everett Street, thence easterly along the centerline of Everett Street to its point of intersection with the centerline of Jean Duluth Road, thence southwesterly along the centerline of Jean Duluth Road to its point of intersection with the centerline of Lakeview Drive, thence southwesterly along the centerline of Lakeview Drive to its point of intersection with the centerline of Vermilion Road, thence southerly along the centerline of Vermilion Road to its point of intersection with the centerline of Congdon Park Drive, thence southeasterly along the centerline of Congdon Park Drive to its point of intersection with the centerline of South 32nd Avenue East, thence southeasterly along the centerline of South 32nd Avenue East to its point of intersection with the centerline of Jefferson Street, thence southeasterly along the centerline of Jefferson Street to its point of intersection with the centerline of North 21st Avenue East, thence, northwesterly along the centerline of North 21st Avenue East to its intersection with the centerline of East Fifth Street, thence southeasterly along the centerline of East Fifth Street to the point of beginning, and as depicted on the map on file with the city clerk as Public Document No. _____;

(1) The following described area located within the protection zone defined in Section 29A-27(h) is excluded from the zone: any parcel of land, lot or part thereof within or abutting the area described as follows: a point beginning at the point of intersection of the centerline of Carver Avenue and the centerline West St. Marie Street, thence south in a straight line to its point of intersection with a straight line extending west from the point of intersection of Woodland Avenue and Elizabeth Street, thence east in a straight line to its point of intersection with the centerline of Woodland Avenue and the centerline of Elizabeth Street, thence northeasterly along the centerline of Woodland Avenue to its point of intersection with the centerline of West St. Marie Street, thence westerly along the centerline of West St. Marie street to the point of beginning, and as depicted on the map on file with the city clerk as Public Document No. _____”;

(b) Add the following language to subsection 29A-29(h):

“No new multi-tenant rental license may be issued for any one-family dwelling in areas zoned traditional residential or urban residential and located within the protective zone. The restriction on new multi-tenant licenses shall expire on the earlier of the date a campus area small neighborhood plan is adopted by the city council or January 1, 2012,” which motion was seconded and discussed.

Councilor Fedora moved to amend President Gardner’s amendment by adding the sentence, “The restriction on multi-tenant licenses shall not apply to a rental unit that was currently licensed on March 14, 2011,” which motion was seconded and unanimously carried.

Councilor Fedora moved to amend the ordinance amending subsection 29A-32(f) to read as follows:

“(f) Except as otherwise provided in this Section, all rental units

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

licensed on March 13, 2011, and subsequently relicensed as a multi-tenant licensed one family or two family dwellings shall provide a minimum of two off-street parking spaces. In addition, for each additional bedroom in excess of three, there shall be provided one additional off-street parking space. Failure to comply with these requirements will result in an additional nonconformance fee per parking space. All one family or two family dwellings that were unlicensed on March 14, 2011, and subsequently converted to a multi-tenant licensed rental unit shall provide the off-street parking spaces required in this Section, and the licensee shall not be entitled to tender payment of the nonconformance fee in lieu of providing the required off-street parking;

(1) The code official may grant a variance from the nonconformance fee when a hardship, as defined by in Section 29A-27, exists. The decision of the code official is appealable to the building appeal board pursuant to Section 29A-5. The board may grant a variance from all or a portion of the nonconformance fee requirement when a hardship exists;

(A) The city council shall establish a parking nonconformance variance application fee pursuant to Section 29A-30,"

which motion was seconded and carried as follows:

- Yeas: Councilors Anderson, Boyle, Fedora, Fosle, Halberg, Hartman and Stauber -- 7
Nays: President Gardner -- 1
Abstention: Councilor Cuneo -- 1

Councilor Hartman moved to amend the ordinance by deleting sub-subsection 29A-32(f)(1) dealing with the appeals process for parking, which motion was seconded and discussed.

City Attorney Gunnar Johnson reviewed how this amendment and the previously passed Fedora amendment create a conflict and extensive council discussion ensued.

Councilor Hartman removed his amendment.

Councilor Fedora stated that he opposes the ordinance because: behaviors should be targeted with the social host and front yard ordinances; there are individuals that cannot sell their homes and do not want to be landlords and this is doing more harm than good.

The original amendment proposed by President Gardner and councilors Anderson and Boyle carried as follows:

- Yeas: Councilors Anderson, Boyle, Halberg, Hartman, Stauber and President Gardner -- 6
Nays: Councilors Fedora and Fosle -- 2
Abstention: Councilor Cuneo -- 1

- - -

The following ordinance was read for the second time:

INTRODUCED BY COUNCILOR CUNEO
11-001 - AN ORDINANCE AMENDING SECTION 11-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO INCORPORATE CURRENT STATUTORY DEFINITIONS.

Councilor Fosle moved to table the ordinance for more information, which motion was seconded and carried as follows:

- Yeas: Councilors Fosle, Halberg, Hartman, Stauber and President Gardner -- 5
Nays: Councilors Anderson, Boyle, Cuneo and Fedora -- 4

- - -

The meeting was adjourned at 9:55 p.m.

JEFFREY J. COX, City Clerk

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

ORDINANCE NO. 10075

AN ORDINANCE AMENDING SECTIONS 50-18.1, 50-36.6 AND 50-41.269 OF CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO SHORELAND STANDARDS.

The city of Duluth does ordain:

Section 1. That Section 50-18.1 of Chapter 50 be amended to read as follows:

Sec. 50-18.1. Natural Resources Overlay (NR-O) (formerly Chapter 51 *Water Resource Management*).

A. General.

1. Purpose statement.

The purpose of this overlay is to promote, preserve and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development. It is intended to implement the Minnesota Wetland Conservation Act (WCA), federal emergency management agency (FEMA) rules, and the Minnesota department of natural resources (DNR) shoreland regulations. In accordance with this regulatory framework, wetlands, flood plains and shorelands are protected by regulating developments that would have an adverse or potentially irreversible impact on unique and fragile land, by minimizing conflicts and encouraging compatibility between environmentally sensitive lands, and by requiring detailed review standards and procedures for developments proposed for such areas, thereby achieving a balance between urban growth and development and protection of natural areas;

2. NR-O map.

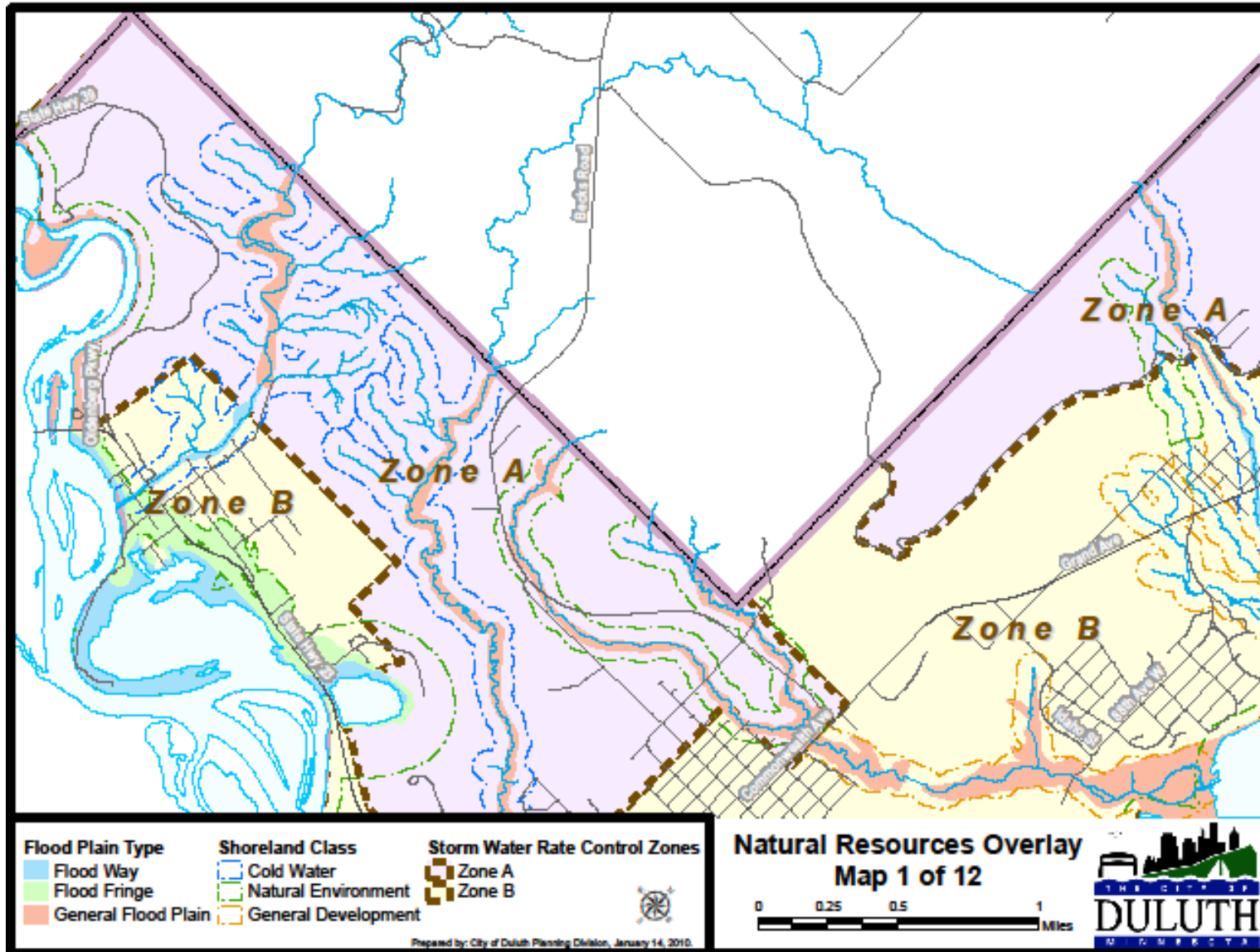
The NR-O map included in this Section contains data from the following sources:

- (a) For wetlands, there is no official wetlands map. All lands in the city that meet the definition of wetlands in Article 6 are considered wetlands for the purposes of this Section;
- (b) For flood plains, the flood boundary and floodway map for Duluth, Minnesota, published with an effective date of February 1, 1980, by the U.S. department of housing and urban development, and all subsequent amendments thereto. Determinations of flood plain status on individual properties shall be made based on the official version of this map on file with the city;
- (c) For shorelands, boundaries shall be based on (i) waters shown as protected on the map and inventory of protected waters in Duluth prepared by the DNR commissioner pursuant to Chapter 199, Laws of Minnesota, 1979, and (ii) selected waters that the city has added to the commissioner's survey as being worthy of shoreland protection. All of these waters are shown on the NR-O map as currently revised as of

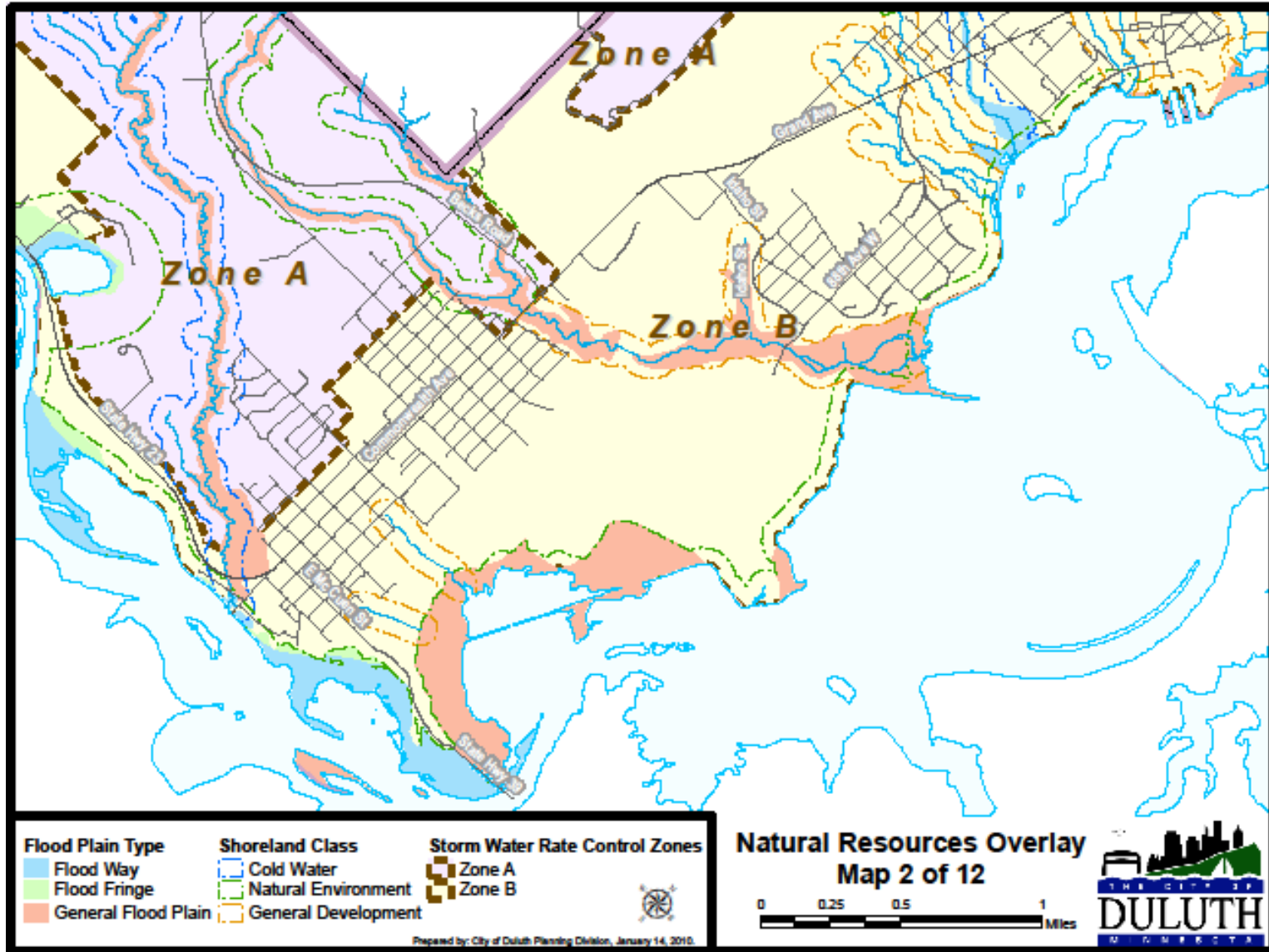
November 19, 2010;

- (d) Where interpretation is needed as to the exact location of any boundary as shown on an official map, the city engineer shall make the necessary interpretation based on available technical data, and, in the case of flood plains, based particularly on elevations on the regional flood profile or hydraulic modeling data;
- (e) The NR-O map may be amended in the future, and any revisions shall become effective upon adoption of the revised NR-O map as an amendment to this Chapter.

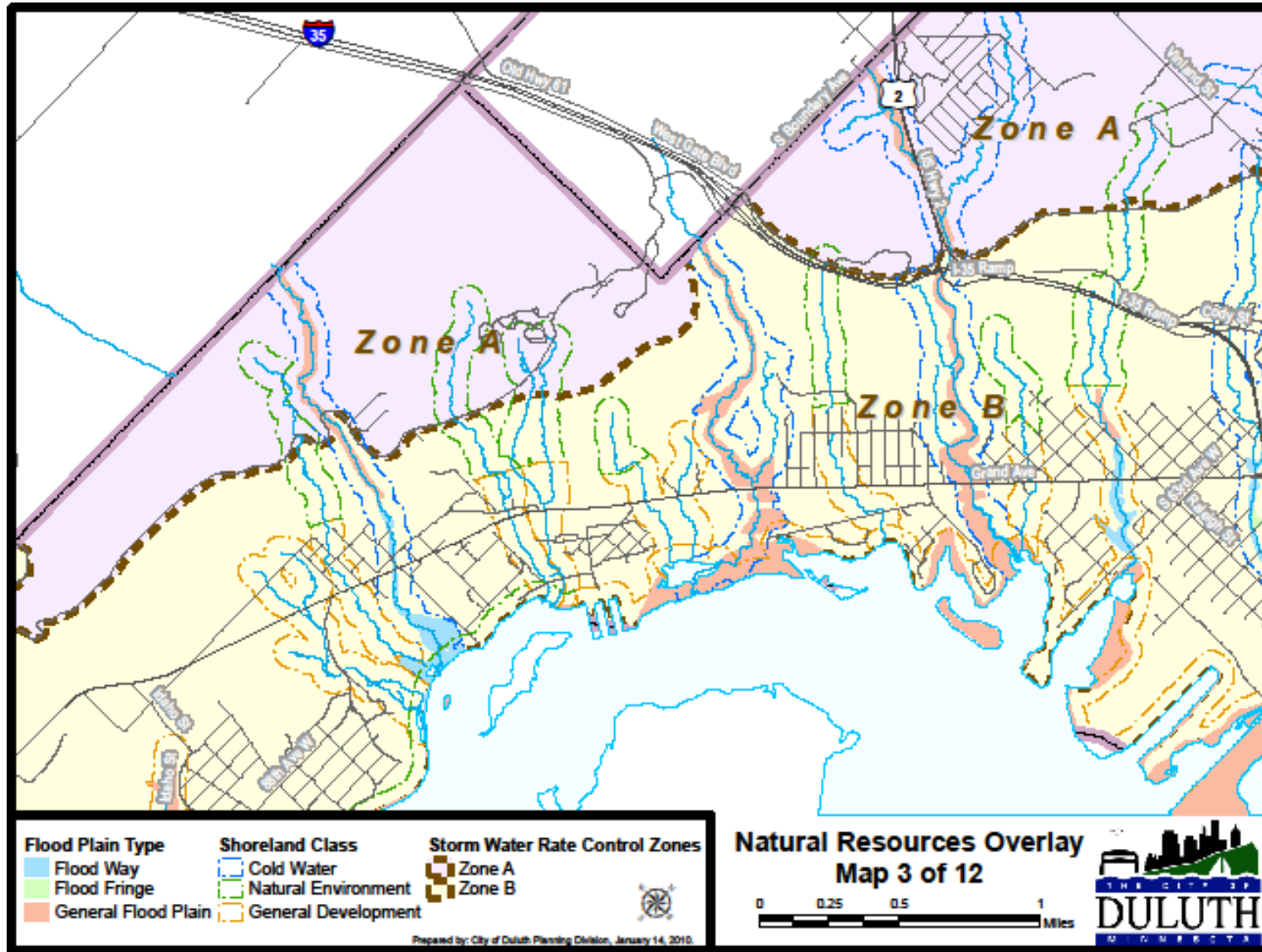
PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011



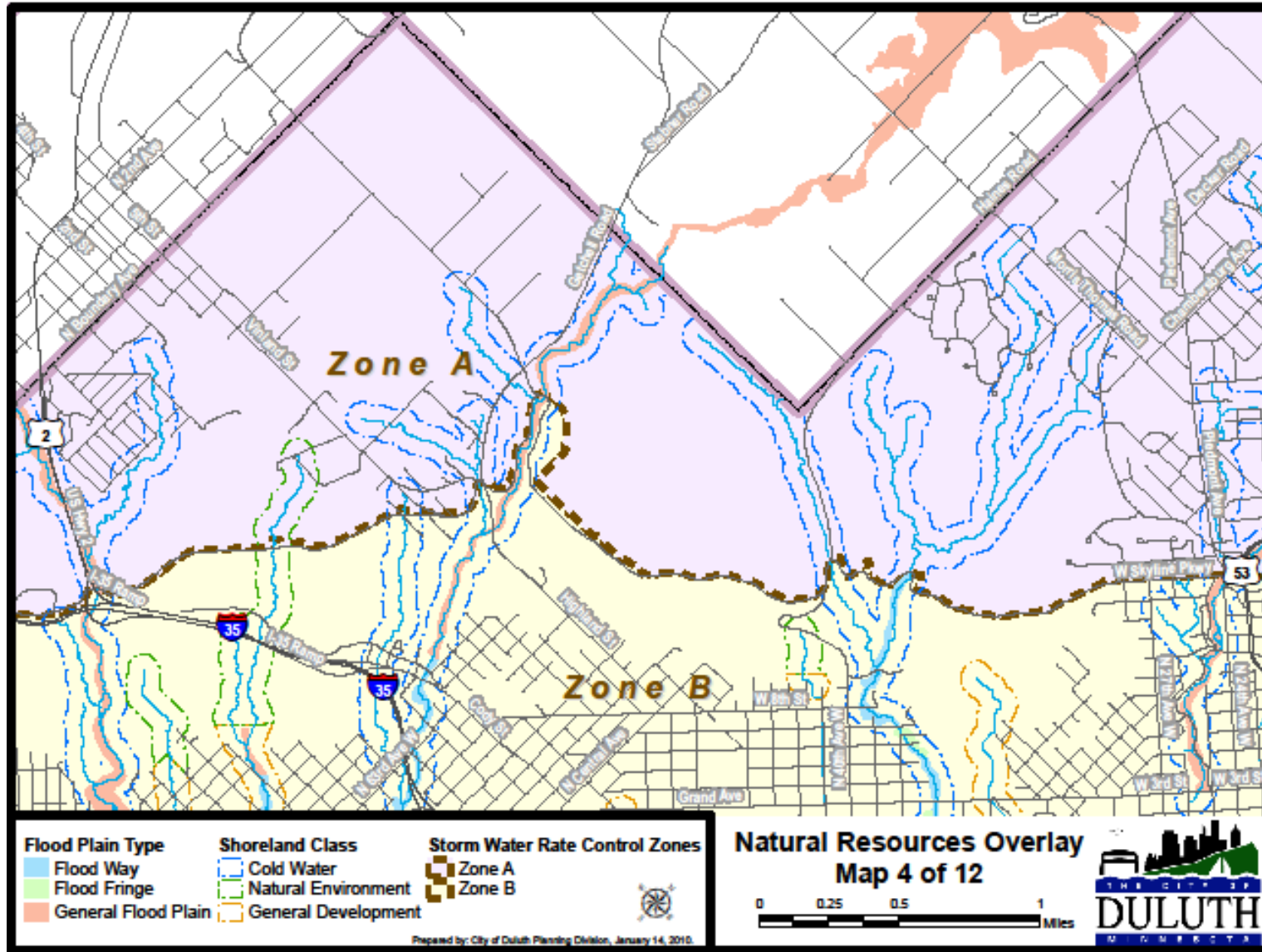
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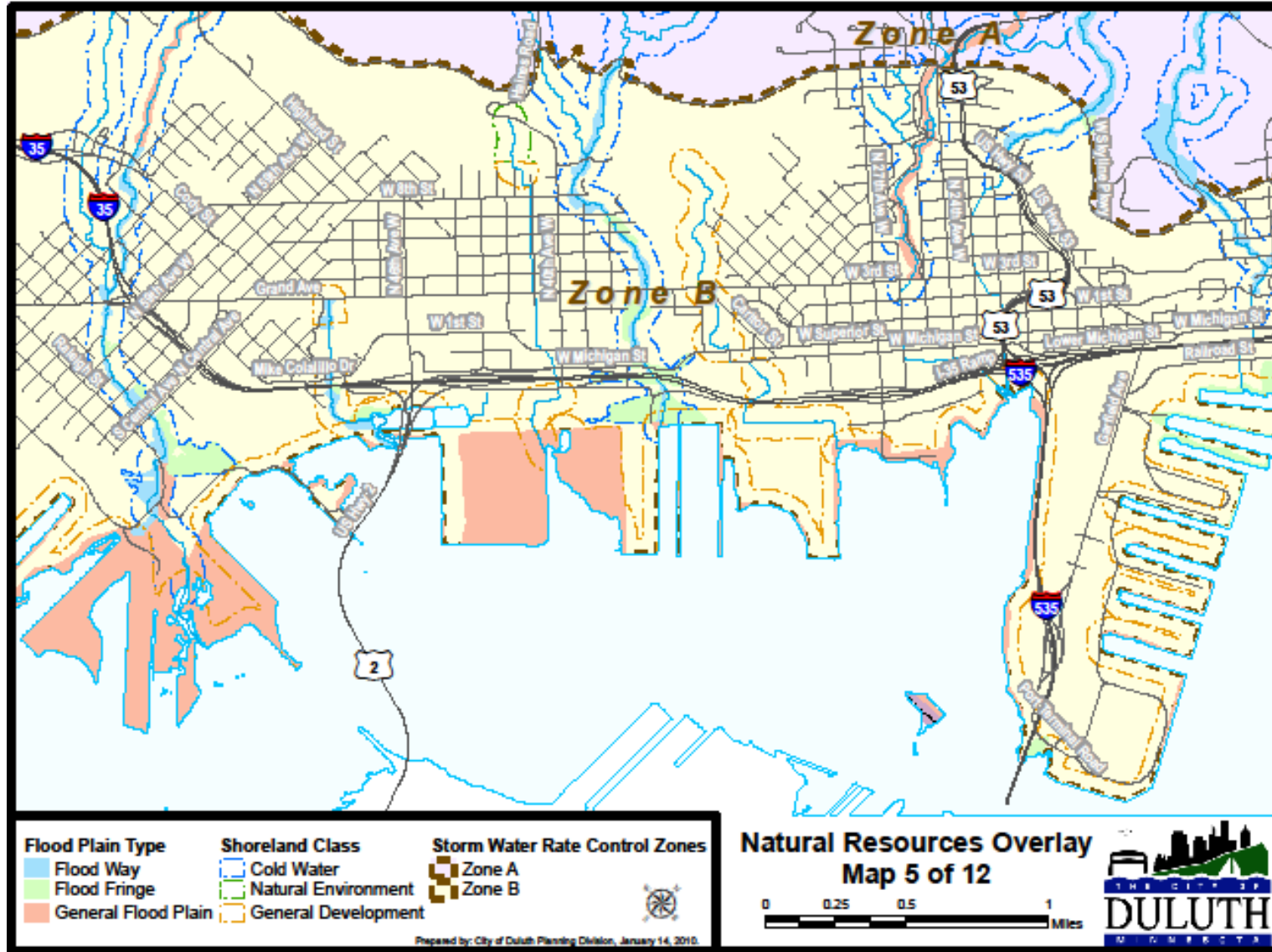
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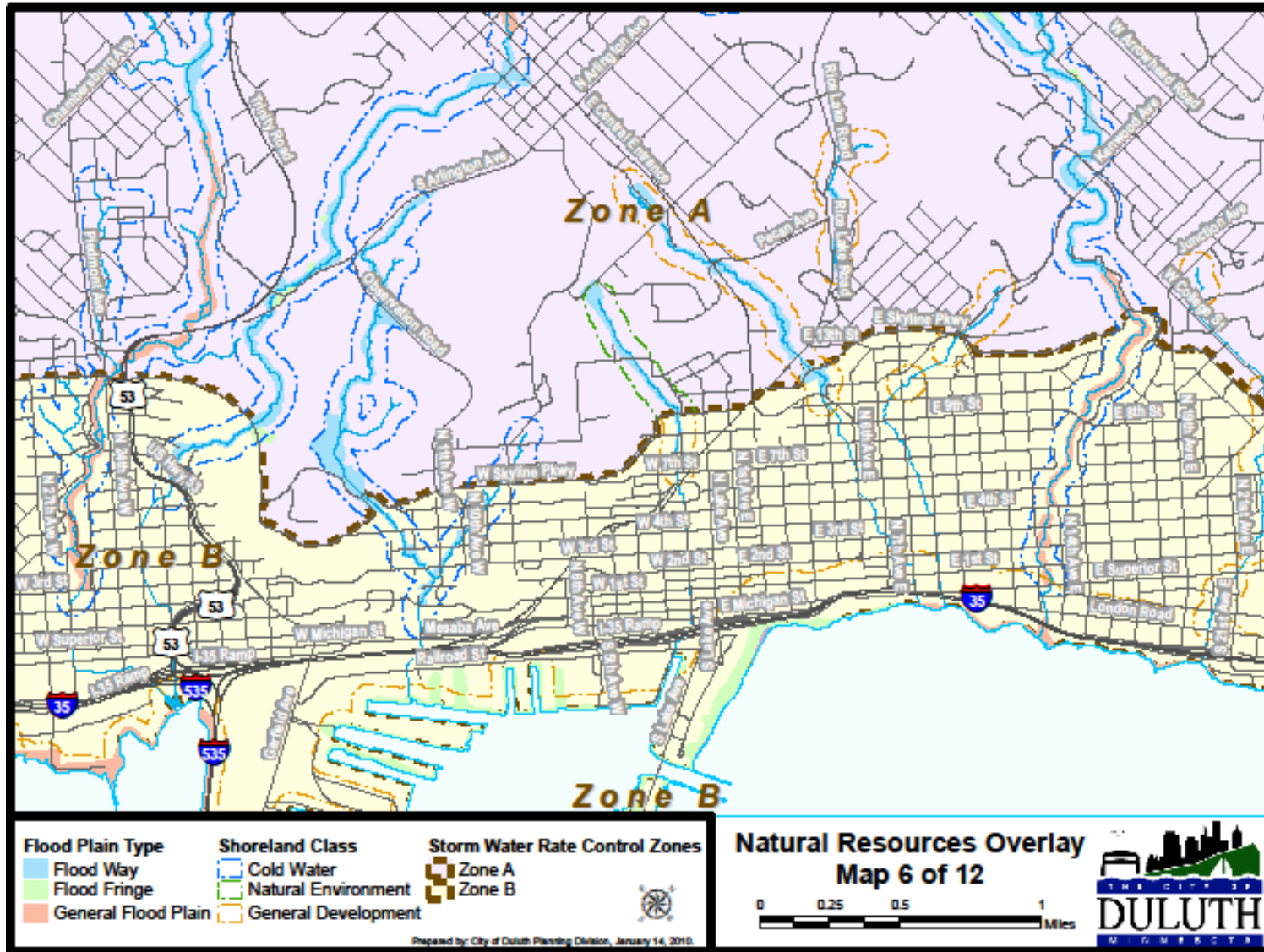
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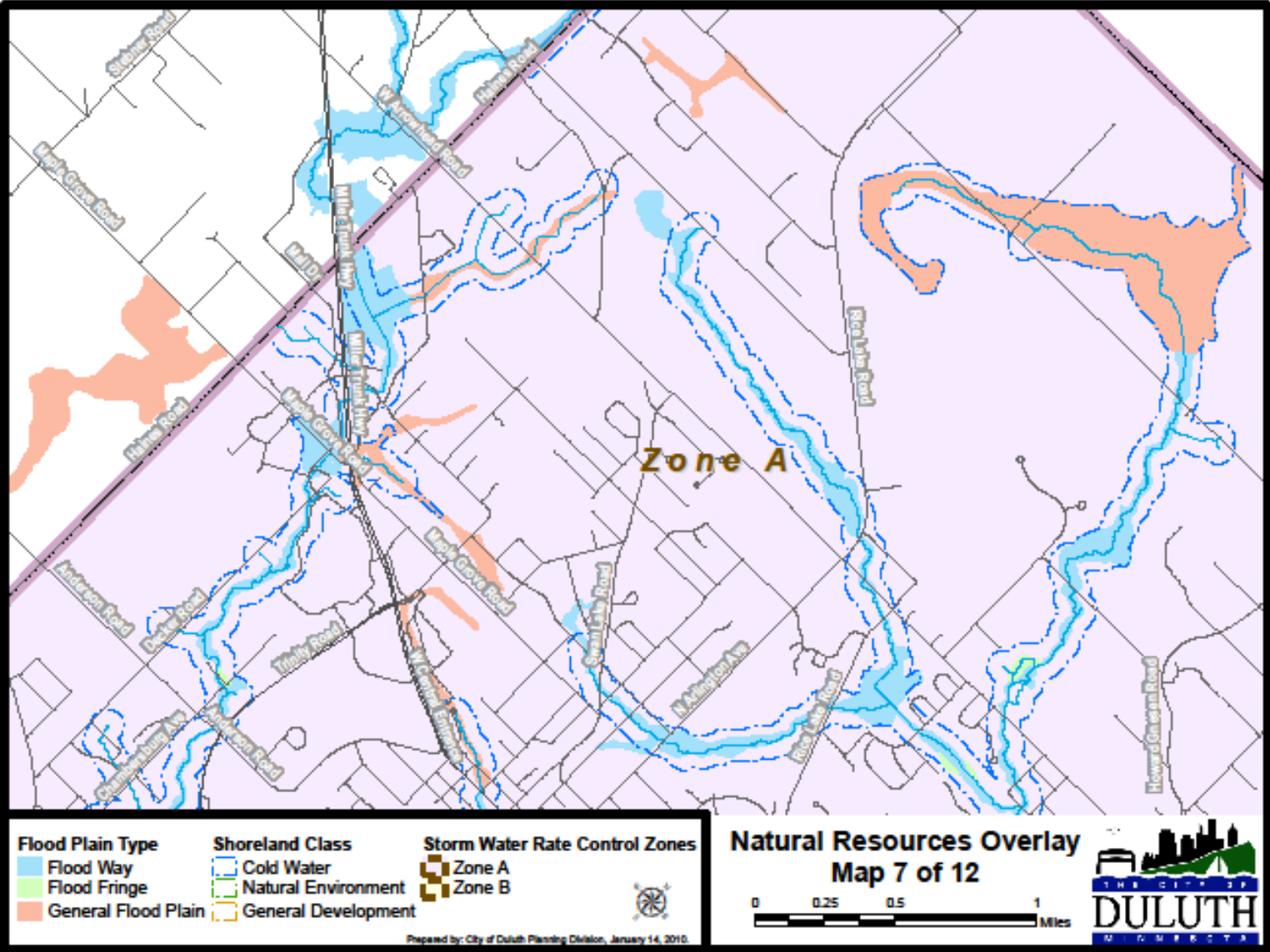
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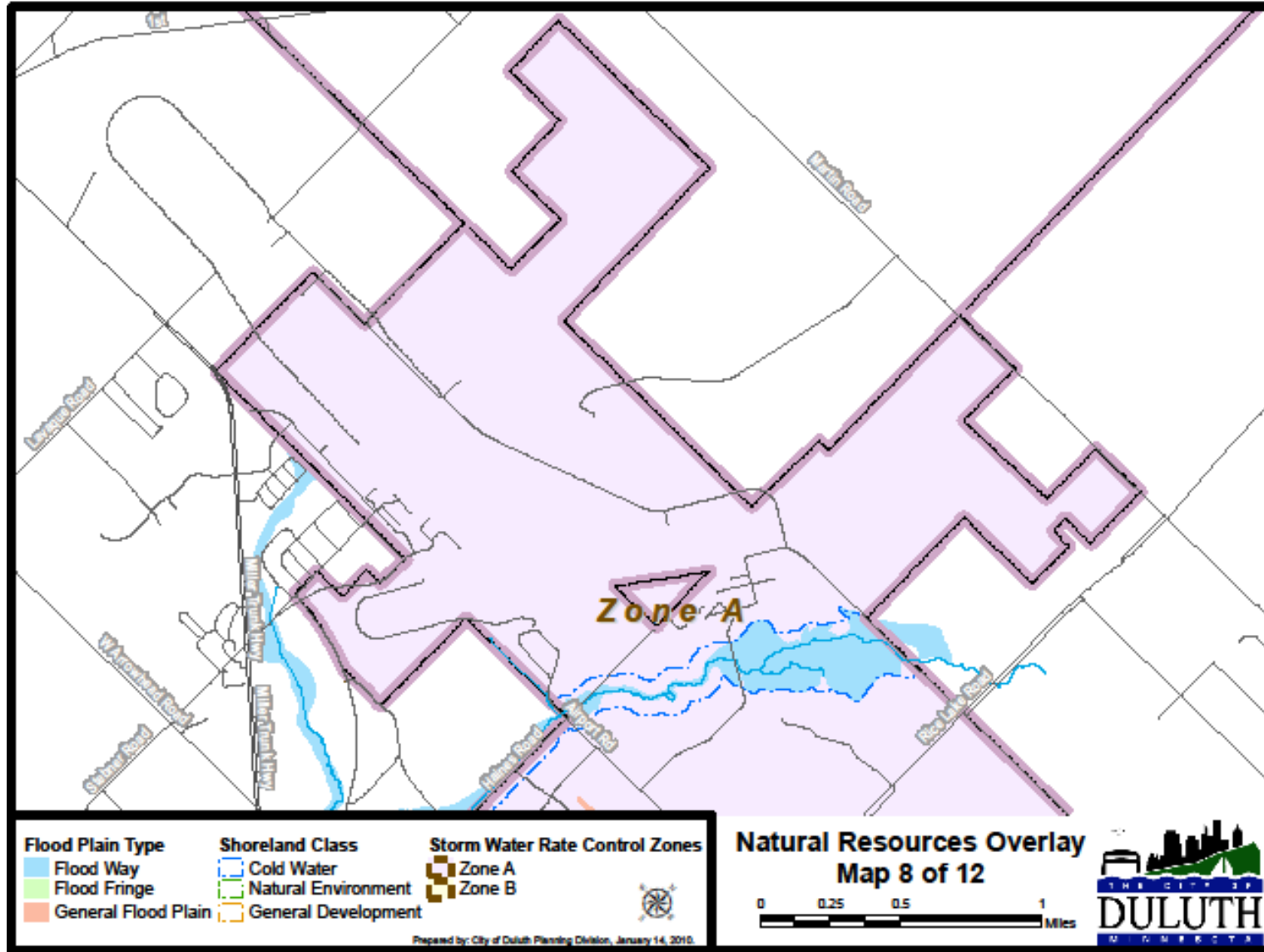
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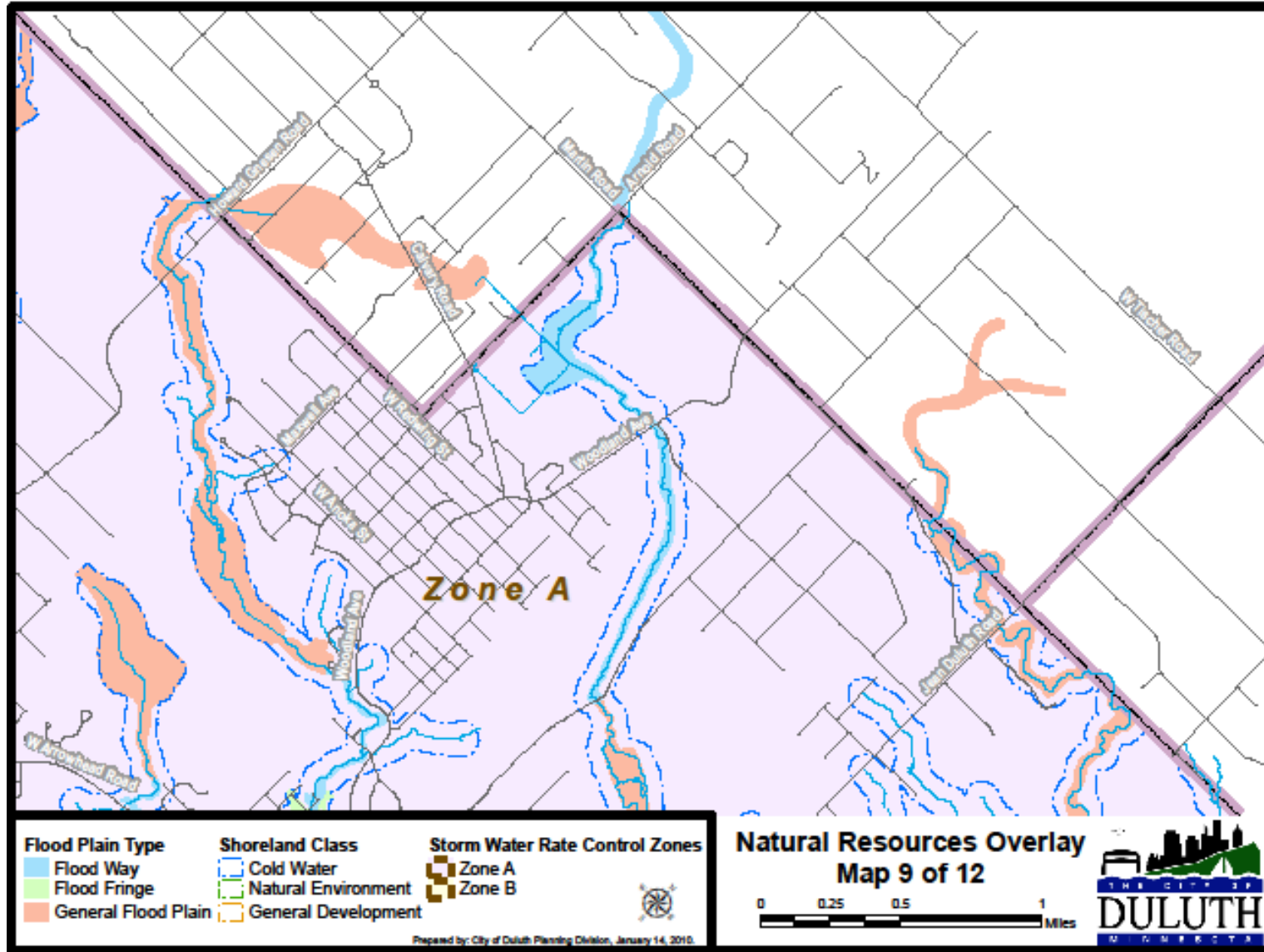
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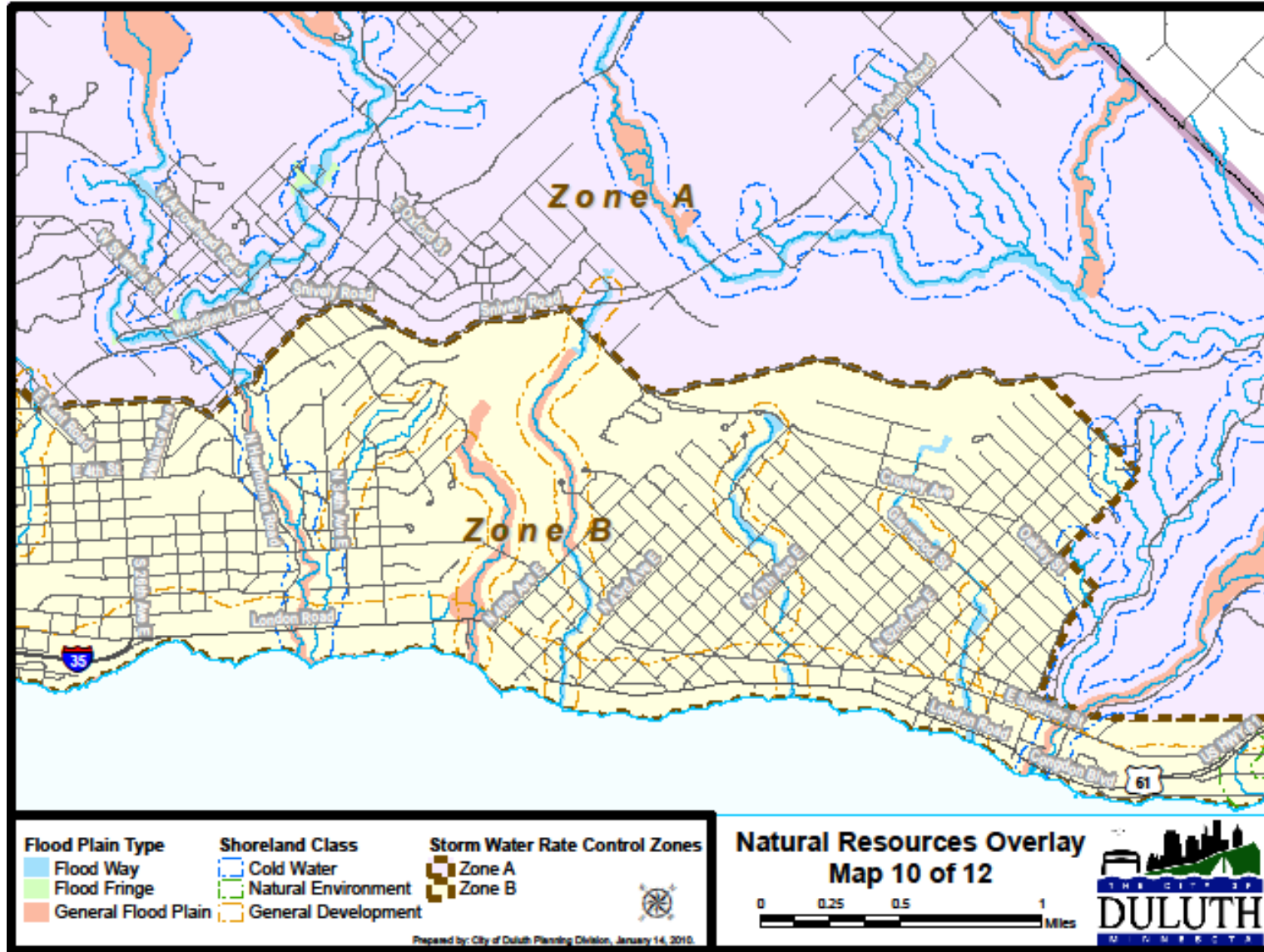
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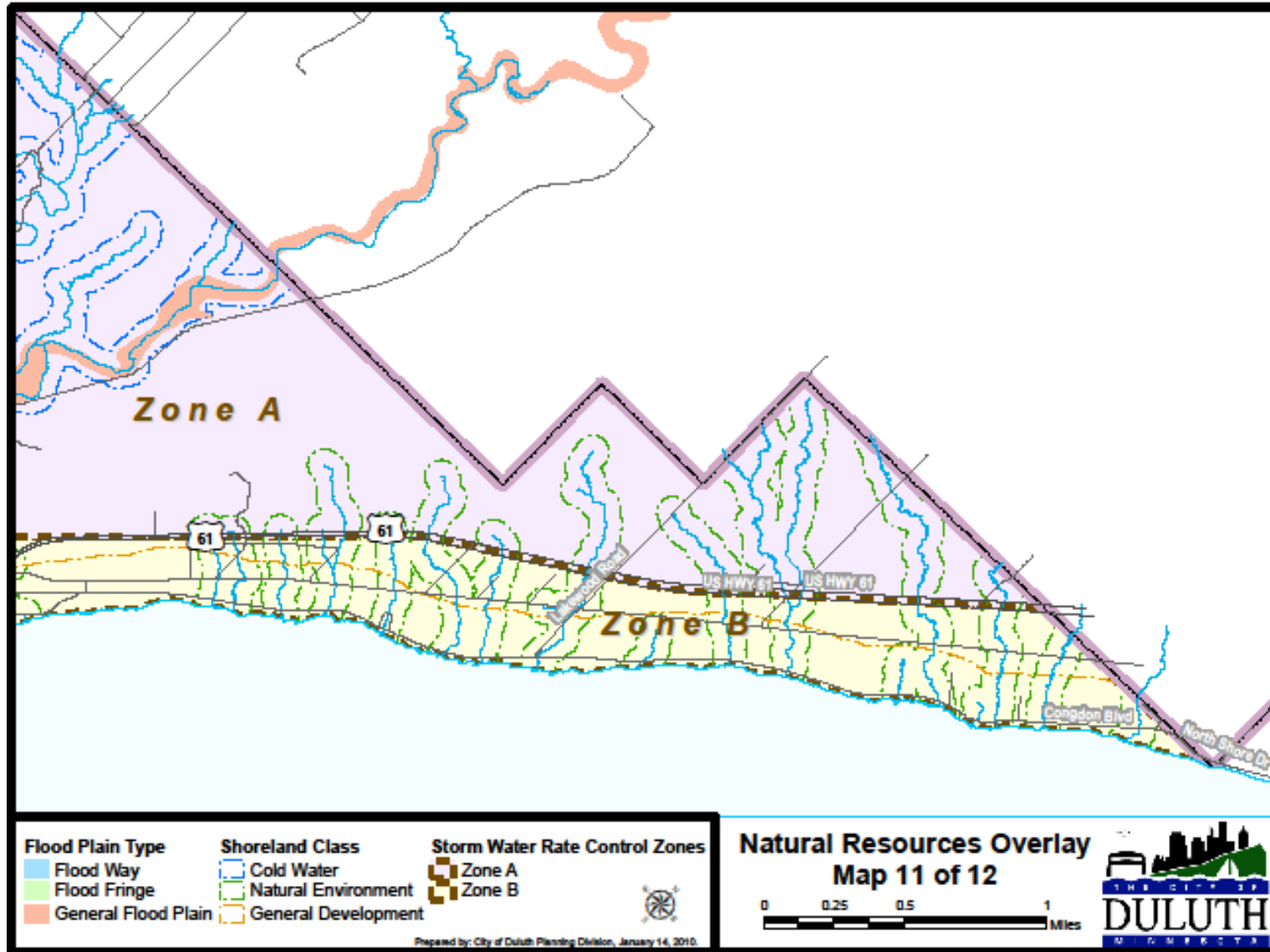
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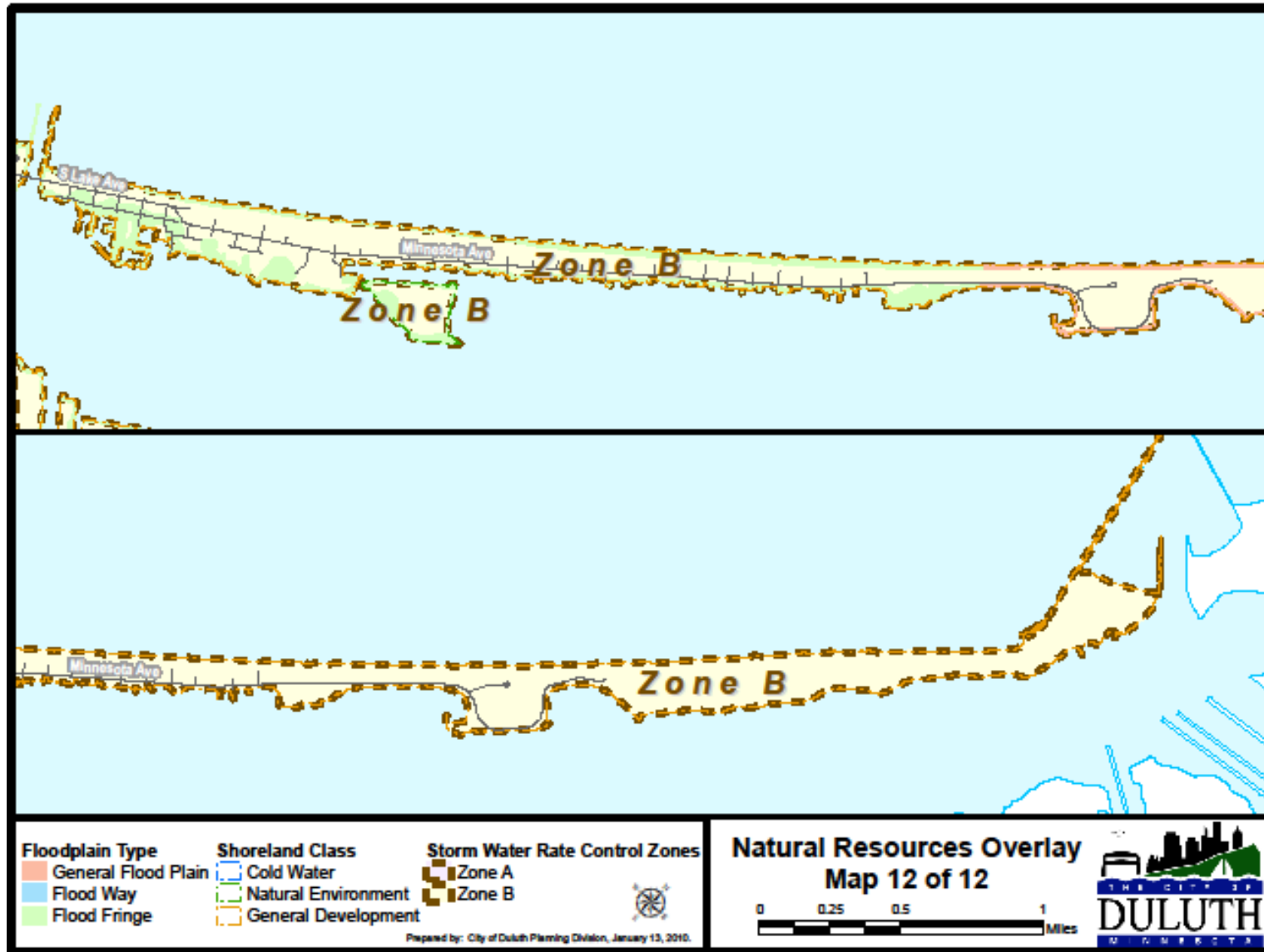
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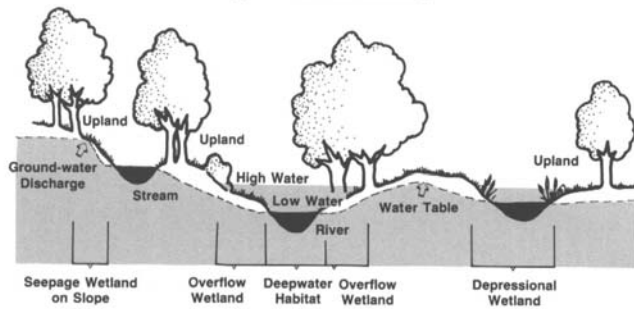


PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011



B. Wetlands.

This Section 50-18 shall apply to all wetlands within the city. All development in the city shall comply with state statutes and regulations. In addition, any development impacting wetlands requires formal approval by the designated city wetland representative.



Graphic taken from *Floodplain Management in the United States: An Assessment Report*, prepared for the Federal Interagency Floodplain Management Task Force 1992.

Figure 50-18.1-1: Typical Inland Wetland

1. The building official shall require each permit applicant to specify on the permit application whether or not the proposed site contains wetlands. Regardless of the answer given, if the building official has reasonable grounds to believe the site contains wetlands, the official shall make a determination as to the existence of wetlands. In making that determination, the building official may require any of the following:
 - (a) Require the applicant to submit to submit a complete wetland delineation as outlined in WCA and performed by a professional wetland delineator, including information such as soil analysis, surveys of vegetation and engineering or hydrological data, to aid in the determination;
 - (b) Conduct a site inspection and evaluation;
 - (c) Consult with the city engineer, St. Louis County Soil and Water Conservation District, Board of Water and Soil Resources, and other available wetland experts;
 - (d) Use any other reasonable method to determine if the site contains wetlands;

C. Flood plains.

This Section shall apply to all lands within the city that are shown as flood plains on the NR-O map. All lands within flood plains shall be divided into floodway districts, flood fringe districts, or general flood plain districts. For purposes of relating those districts to plats and lots within the city, the NR-O map shall be used as a working

map in the administration of the flood plain controls unless it is clearly shown that there is an inconsistency between the flood boundary and floodway map and said NR-O Map, in which case the flood boundary and floodway map shall control.

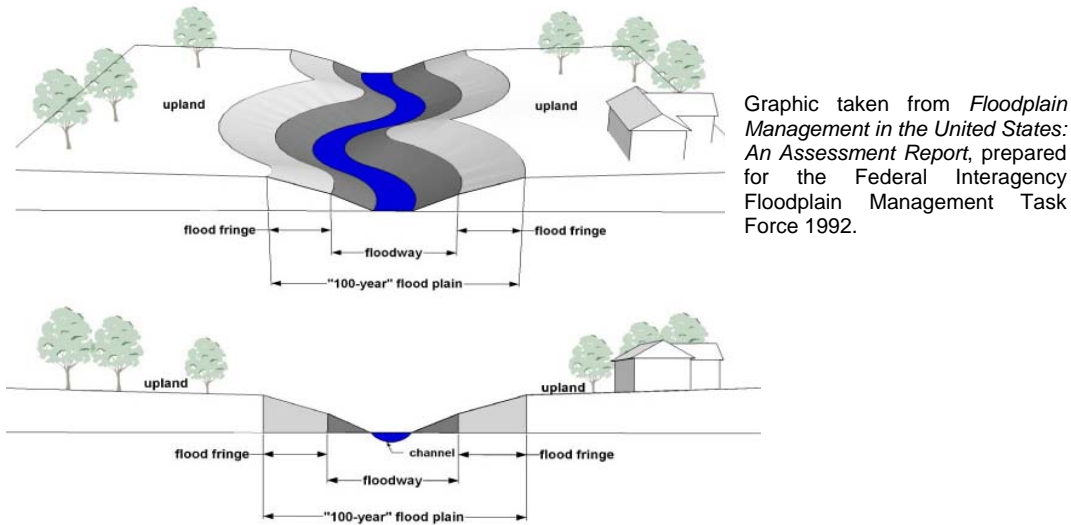


Figure 50-18.1-2: Flood plain, floodway, and flood fringe

1. Compliance.

On or after January 28, 1980, no new structure or land shall be used and no structure shall be constructed, located, extended, converted or structurally altered without full compliance with the terms of this Section 50-18.1.C. Within the floodway, flood fringe and general flood plain districts, all uses not listed as permitted uses or special uses are prohibited;

2. Uses and special use permits – floodway.

(a) Permitted uses.

Only the following uses shall be permitted within the floodway, and only if the land use supervisor determines that (a) the use is shown as a permitted use in the underlying zone district in Table 50-19.8, (b) the use has a low flood damage potential, (c) the use will not obstruct flood flows or increase flood elevations, and (d) the use does not involve structures, fill, obstructions, excavations or storage of materials or equipment:

- (i) Agriculture;
- (ii) Industrial, commercial and mixed use loading areas, parking areas and airport landing strips;
- (iii) Outdoor recreation and entertainment facilities that do not include temporary or permanent residences or occupied structures;
- (iv) Residential lawns, gardens, parking areas and play areas.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) Special uses.

The following uses involving accessory structures or fill or storage of materials or equipment may be permitted only after the issuance of a special use permit pursuant to Article 5:

- (i) Structures accessory to a permitted use;
- (ii) Mining, extraction and storage of sand, gravel and other materials;
- (iii) Marina or yacht club or accessory residential boat dock;
- (iv) Railroad yard or shipyard and related facilities, electric power transmission lines, major utilities or wireless communication towers and minor utilities and accessory wireless antennas attached to existing structures;
- (v) Bulk storage not listed elsewhere;
- (vi) Placement of fill or construction of fences;
- (vii) Tourist trailer or camp;
- (viii) Water-dependent manufacturing, light or heavy, and water-dependent bulk storage or wholesaling not listed elsewhere;
- (ix) Structural works for flood control such as levees, dikes, and floodwalls constructed to any height where the intent is to protect individual structures;
- (x) Other uses consistent with the stated purposes and provisions of this Section 50.18.1.C;

(c) Standards for special use permits.

A special use permit for uses and structures listed in subsection (b) above shall only be issued if the following standards are met:

- (i) The proposed use or structure will not cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected;
- (ii) Any fill deposited in the floodway shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;
- (iii) Accessory structures are not designed for human habitation, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters, shall be constructed whenever possible with the longitudinal axis parallel to the direction of flood flow, shall be placed approximately on the same flood flow lines as those of adjoining structures and shall be floodproofed to the flood protection elevation in accordance with the State Building Code;

- (iv) The building official may require that floodproofed accessory structures meet the following additional standards, if the building official determines that compliance is necessary to carry out the stated purposes of this Section 50-18.1.c:
 - (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
 - (2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed;
 - (3) The structure must be constructed to allow water to flow through it in case of flooding;
 - (v) The use will not include the storage or processing of materials that are, in time of flooding, flammable, explosive or injurious to human, animal or plant life. All materials or equipment stored shall be readily removable from the area within the time available after a flood warning;
 - (vi) Any structural works for flood control that will change the course, current, or cross-section of wetlands or public waters shall comply with state standards and regulations;
 - (vii) Any levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood, based on technical analysis that assumes equal conveyance or storage loss on both sides of a waterway.
3. Uses and special use permits – flood fringe.
- (a) Permitted uses.

Those uses listed in Table 50-19.8 as permitted uses in the zone district where the property is located, provided that the building official determines that:

 - (i) All structures, including accessory structures, shall be elevated so that a structure's lowest floor is above the regulatory flood protection elevation. The structure's design and as-built condition in relation to the regulatory flood protection elevation must be certified by a professional engineer or architect licensed in Minnesota;
 - (ii) Any non-residential basements below the regulatory flood protection elevation will be structurally dry floodproofed in accordance with the State Building Code;
 - (iii) As an alternative to elevation, accessory structures that constitute a minimal investment and that do not exceed 500 square feet may be internally floodproofed in accordance with Section C.2(c)(iv) and (v) above;

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- (iv) Any placement of fill with a cumulative volume in excess of 1,000 cubic yards at any one time may only be used to elevate a structure in accordance with this subsection (a);
 - (v) Any stored materials or equipment shall be elevated on fill to the regulatory flood protection elevation;
- (b) Special uses.

The placement of more than 1,000 cubic yards of fill or other similar material, other than for the purpose of elevating a structure to the regulatory flood protection elevation, or the storage of materials and equipment below the regulatory flood protection elevation, may be permitted only after the issuance of a special use permit as provided in Article 5. In addition, this use is subject to the limitations on flood plain variances in Article 5 and the following requirements:

- (i) Any fill deposited in the floodway shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;
 - (ii) The use will not include the storage or processing of materials that are, in time of flooding, flammable, explosive or injurious to human, animal or plant life. All materials or equipment stored shall be readily removable from the area within the time available after a flood warning;
- (c) Standards for all flood fringe uses.
- (i) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation. If a variance to this requirement is granted, limitations on the period of use or occupancy of the structure for times of flooding may be specified;
 - (ii) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain;

4. General flood plain district.

(a) Permitted uses.

- (i) The uses listed in subsection 50-18.1.C.2(a) above shall be permitted uses;
- (ii) All other uses shall be subject to the floodway/flood fringe evaluation criteria below and the resulting designation shall be used in determining uses;
- (iii) Land determined to be in the floodway pursuant to subsection (a)(ii) shall have those permitted and special uses listed in Section 50-18.C.2 above;

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- (iv) Land determined to be in the flood fringe pursuant to subsection (a)(ii) shall have those permitted and special uses listed in Section 50-18.C.3 above;
- (b) Procedures for floodway and flood fringe determinations within the general flood plain district:
 - (i) The applicant shall submit appropriate information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe district and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, parts 6120.5000 – 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective DNR Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
 - (1) Estimate the peak discharge of the regional flood;
 - (2) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas;
 - (3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 feet. A lesser stage increase than 0.5 feet shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries;
 - (ii) The city engineer shall present the technical evaluation and findings to the city council. The city council must formally accept the technical evaluation and the recommended floodway and/or flood fringe district boundary and that the proposed use is allowed in the area where it is proposed, or deny the permit application. Prior to official action the city council may submit the application and all supporting data and analyses to FEMA, the DNR or the planning commission for review and comment. Once the floodway and flood fringe district boundaries have been determined, and assuming the proposed use is allowed in the area where it is proposed, the city council shall refer the matter to staff who shall process the permit application consistent with the applicable provisions of this Section 50-18.1.C;

5. Public utilities, railroads, roads and bridges.

- (a) All public utilities and facilities such as gas, electrical, sewer and water supply systems, with the exception of sumps and wet wells, to be located in the floodway or flood fringe shall be floodproofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation;
- (b) Railroad tracks, roads and bridges to be located within the floodway or flood fringe shall comply with subsections 2 and 3 above, as applicable. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety;

D. Shorelands.

In furtherance of the policies declared by the state legislature, waters in the city have been classified as general development waters (GD), natural environment waters (NE) or coldwater rivers (CW). The shoreland overlay applies to lands within 1,000 feet of Lake Superior or within 300 feet of rivers, creeks, streams and tributaries and floodplains, as designated on the NR-O map. If a parcel or development lies only partially within a shoreland area, only the portion of the property within the shoreland is subject to these provisions;

1. Shoreland permit required.

The following activities and structures require a shoreland permit if located within a shoreland:

- (a) All structures;
- (b) All grading, filling and excavating;
- (c) All construction of impervious surfaces, including roads, driveways, parking areas and trails;
- (d) All removal of natural vegetation;
- (e) Any construction activity that removes or disturbs natural beach grasses on Park Point;

2. Standards for shoreland permit.

- (a) Erosion and sediment control technologies shall be required for any land disturbing activity that disrupts a surface area of 3,000 square feet or more;
- (b) Grading and filling of more than 250 square feet or placement of more than ten cubic yards of material within the shore impact zone shall only be permitted if a plan for erosion control, storm water management and

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shoreline buffer restoration is approved by the city and effectively implemented;

- (c) Impervious surfaces shall be designed and constructed to minimize and control runoff and erosion into the regulated waters;
- (d) Any removal of natural vegetation shall be designed to prevent erosion into regulated waters and to preserve shoreland aesthetics;
- (e) Removal of trees or shrubs in a contiguous patch, strip, row or block is prohibited in shore impact zones;
- (f) The project does not result in the proposed building being located in a shore or bluff impact zone;
- (g) Natural vegetation shall be restored to the extent feasible after any project is complete;

3. Dimensional standards.

(a) No shoreland permit shall be approved unless the standards in Table 50-18.1.D-1 are met or a variance obtained pursuant to Article 5;

(b) Exceptions to dimensional standards.

i. Commercial, mixed use, & industrial structures in the harbor, shown in Figure 50-18.1.-3: 0 feet setback for grain elevators, cranes, loading bins, and other equipment necessary for loading and unloading, including impervious surface necessary to support these activities;

ii. Public trails no more than ten feet wide may be constructed within these setbacks, provided that a minimum amount of natural vegetation is removed and provided that permits are obtained from the DNR and MPCA, if required;

iii. Properties in Stormwater Zone B, as defined in Section 50-18.1E.3(f), that have been previously developed with 75 percent or greater impervious surface may use one of the following methods to determine building setback:

- Use the impervious surface setback for the shoreland classification as the building setback.
- When principal structures exist on the adjoining lots on both sides of the proposed building site, the structure setbacks can be altered to conform to the adjoining setbacks, provided the proposed building site is not located within the setback required for the naturally vegetative buffer;

iv. Park equipment such as playground structures and ball fields (but not including structures such as garages, storage buildings, toilets or warming houses) may be placed closer than the required structure setback provided they lie outside the area required for the native vegetative buffer;

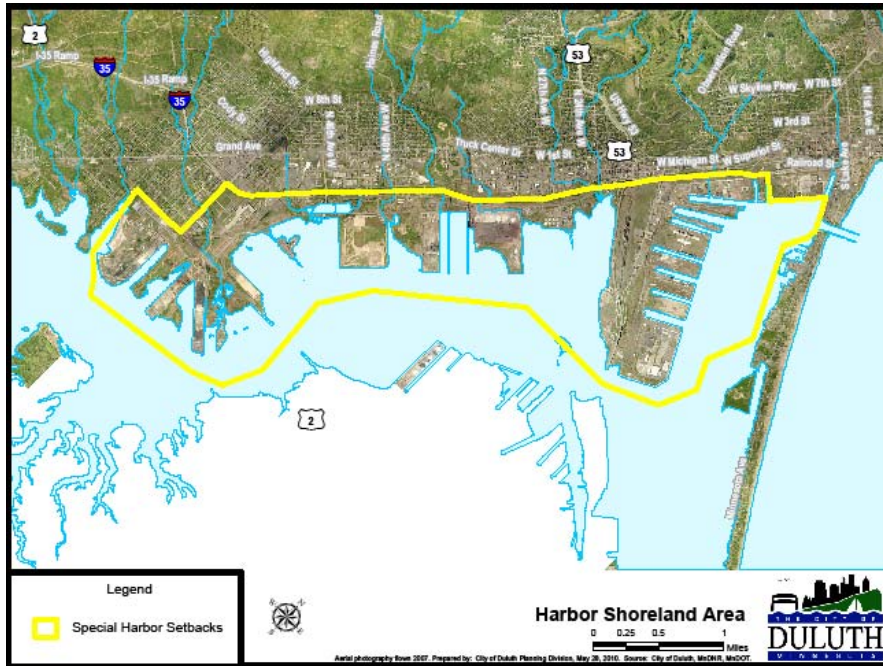
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4. Uses and special use permits.

- (a) Those permitted and special uses shown in Table 50.19.8, subject to the issuance of any shoreland permit required by subsection D.1 and compliance with the standards of subsection D.2, except as listed below. Agricultural uses are not permitted in the shore impact zone. Within shoreland areas that are outside of the shore impact zone, agricultural uses are permitted if steep slopes are maintained in permanent vegetation or the land is operated under an approved conservation plan from the St. Louis County Soil and Water Conservation District;
- (b) All industrial uses, including mining, extraction and storage, on coldwater rivers or natural environmental waters require a special use permit pursuant to Article 5. The application for a special use permit must include a thorough evaluation of the topographic, vegetation and soils conditions on the site;

Table 50-18.1.D-1: Minimum Shoreland Area Standards

Standards	General Development Waters ^[1]	Natural Environmental Waters	Coldwater River
Minimum setbacks from Ordinary High Water Level or highest known water level, whichever is higher			
<i>Residential structures</i>	75 ft.	150 ft.	200 ft.
<i>Public, institutional, and civic; commercial; and industrial structures</i>	200 ft.	200 ft.	200 ft.
<i>Commercial, mixed use, & industrial structures in the harbor, shown in Figure 50-18.1.-3</i>	25 ft.	N/A	N/A
<i>Impervious surfaces</i>	50 ft.	75 ft.	100 ft.
Lowest floor elevation above Ordinary High Water Level or highest known water level, whichever is higher	3 ft.		
Width of naturally vegetative buffer	50 ft.		
[1] All Lake Superior shoreland is classified as general development waters.			



(c) Standards for special use permit:

- (i) Compliance with all development requirements for shorelands in this Section 50-18.1.D;
- (ii) Prevention of soil erosion, storm water runoff or other possible pollution of public waters, both during and after construction or use;
- (iii) Restoration of the shoreline buffer to a natural state;
- (iv) Screening of structures and other facilities as viewed from regulated waters, as shown on the NR-O map;

5. Subdivisions.

New subdivisions in the shoreland area shall meet the following requirements:

- (a) The land shall not be subdivided until the land has been rezoned into the R-P zone district, and the concept and detailed development plans required in the R-P districts shall be designed to comply with the provisions of this Section 50-18.1.D;
- (b) A buffer at least 50 feet in width, consisting of trees, shrubs and ground cover of plants and understory in a natural state, is required within a line parallel to the ordinary high water level or highest known water level, whichever is higher, and as close to the ordinary high water level as topography and the health of the plants will permit;

6. Nonconforming lots of record.

Lots of record in the office of the county recorder on November 19, 2010, may be allowed an exception from the structure setback requirement in subsection D.3. If the lot of record cannot be developed under the setback requirements of subsection D.3, then:

- (a) The lot may be developed without a variance if (1) principal structures exist on the adjoining lots on both sides of a proposed building site, and (2) the proposed structure will be located no closer to the protected shore than the principal structure on either adjoining site, and (3) the resulting adjusted setback does not result in the proposed building being located in a shore impact zone; or
- (b) The lot may be developed if a variance is obtained pursuant to Article 5;

E. Stormwater management and erosion control.

1. Goals and purpose.

- (a) The federal Clean Water Act (CWA) requires that municipal storm water discharges be authorized under the national pollution discharge elimination system (NPDES). The city is allowed to discharge its stormwater under coverage provided by a CWA municipal separate storm sewer system general permit (MS4 permit). As part of the requirements of the permit, the city is required to develop a stormwater pollution prevention program (MS4 program) with specific goals requiring:
 - (i) Non-degradation of all city waters;
 - (ii) Restrictions to special designated waters in the city, including:
 - (a) Lake Superior (which is an MPCA designated outstanding value resource water with both restricted discharge and impaired water designations);
 - (b) St. Louis River (which is an MPCA designated impaired water and area of concern);
 - (c) 16 trout streams designated by the DNR;
- (b) The goals described in the city's MS4 program pertaining to illicit discharge detection and elimination, construction-site runoff controls, and post-construction runoff treatment are incorporated into this Chapter by reference;
- (c) The purpose of this Section 50-18.1.E is to establish regulations to comply with the federal CWA and the city's MS4 permit and to achieve the goals stated in the city's MS4 program;

2. Temporary erosion and sediment controls.

(a) Applicability.

This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this Section and those

subject to a superseding or preemptive state or federal law. This Section shall be deemed to supplement, but not to conflict with, the applicable provisions of the State Building Code;

(b) Requirements.

All proposed development and redevelopment and all subdivision plats and re-plats shall include drainage system and temporary erosion and sediment best management practices (BMPs) in compliance with the city’s MS4 program and the requirements shown in Table 50-18.1.E-1 below. Plans, engineering analysis and calculations, diagrams, drainage reports and other data shall be submitted, as required by the city engineer or designee with each development proposal or application for permit;

Table 50-18.1.E-1: Temporary Erosion and Sediment Controls

Land Area Disturbed ▶	≤ 3,000 sq. ft. ^[1]	> 3,000 and ≤ 10,000 sq. ft. ^[2]	> 10,000 sq. ft. and < 1 acre	≥ 1 acre
Development Plan Measures Required ▼				
Temporary erosion and sediment controls to prevent any off-site migration of sediment	✓			
Site specific Erosion and Sediment Control Plan (ESCP) and ESCP Permit from city engineer		✓	✓	
Site specific Storm Water Pollution Prevention Plan (SWPPP) meeting MPCA NPDES Permit requirements for Construction Activity				✓
MPCA NPDES/State Disposal System Construction Storm Water Permit				✓
MS4 Statement of Compliance from city engineer			✓	✓

[1] If the city engineer determines that the proposed development is in a vulnerable area and may cause the degradation of the waters connected to the city’s stormwater system, then the provisions applicable to land disturbance areas between 3,000 and 10,000 sq. ft. shall apply.

[2] If land disturbed is within a mapped shorelands zone, an MS4 Statement of Compliance from the city engineer is also required.

(c) Authority to waive.

The city engineer has authority to waive the requirements in Table 50-18.1.E.1 in accordance with the city’s MS4 permit. If storm water and erosion controls required by this subsection 2 are demonstrated to be technically feasible, provisions of subsection 2 must be met to the maximum extent practicable;

3. Permanent water quality and discharge rate controls.

(a) Applicability.

(i) This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this Section and those subject to a superseding or preemptive state or federal

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law. This Section shall be deemed to supplement, but not to conflict with provisions of the State Building Code;

- (ii) This Section does not apply to pavement resurfacing and pavement rehabilitation projects where: no new impervious surface is created, there is no change to the configuration of the site and there is no change to the land use;

(b) General requirements.

All proposed development and redevelopment and all subdivision plats and re-plats shall include drainage system and storm water runoff rate controls and water quality treatment in compliance with the city’s MS4 program and the requirements shown in Table 50-18.1.E-2 below. Plans, engineering analysis and calculations, diagrams, drainage reports and other data shall be submitted, as required by the city engineer with each project (referred to as the “development plan” below);

Table 50-18.1.E-2: Permanent Water Quality and Discharge Rate Controls [See additional requirements for land in shorelands below]			
Development Plan Measures required ▼	Total New Impervious Area Created or the Impervious Area Redeveloped ^{[1][2]}		
	≤ 3,000 sq. ft.	> 3,000 sq. ft. and < 1 acre ^[3]	≥ 1 acre ^[4]
Water quality treatment	NONE	✓	✓
Runoff rate controls		✓	✓
Drainage report		✓	✓
Site specific SWPPP			✓
MS4 Statement of Compliance from city engineer		✓	✓

[1] The total area is the sum of both the new and redeveloped impervious areas that are part of the common plan of development or sale.

[2] A pavement resurfacing or pavement rehabilitation project is exempt where: (a) no new impervious surface is created; and (b) no change to configuration of the site occurs; and (c) no change to land-use occurs.

[3] An individual one-family or two-family residence (that is not part of a common plan of development) with less than 10,000 sq. ft. of disturbed area and less than 7,500 sq. ft. of new impervious area is exempt.

[4] If the site contains an existing impervious surface area greater than 1 acre, the drainage report must include an evaluation of the feasibility of 50% total suspended solids removal on an annual basis across the entire site.

(c) Authority to waive.

The city engineer has authority to waive the requirements in Table 50-18.1.E-2 in accordance with the city’s MS4 permit. If storm water and erosion controls required by this subsection 3 are demonstrated to be technically feasible, provisions of subsection 3 must be met to the maximum extent practicable;

(d) Shoreland requirements.

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- (i) In addition to the requirements in subsection (b) above, no residential development or redevelopment within a shoreland shall result in impervious surface area exceeding 25 percent of the lot area unless the owner (a) submits a development plan including water quality treatment and (b) obtains an MS4 statement of compliance by the city engineer;
- (ii) In addition to the requirements in subsection (b) above, no commercial, mixed use, institutional or industrial development or redevelopment within a shoreland shown on the NR-O map shall create new impervious surface area unless the owner (a) submits a development plan including water quality treatment and (b) obtains an MS4 statement of compliance issued by the city engineer;
- (e) Water quality treatment requirements.

Where subsection (b) requires that a development plan include water quality treatment, the development or redevelopment must be designed to provide the following treatment, volume reduction and pollutant removal:

Treatment requirements.

- (i) The development or redevelopment must provide at least the minimum treatment shown in Table 50-18.1.E.3;

Table 50-18.1.E-3: Treatment Requirements		
Development Type	New and Existing Impervious surface	Required Treatment
New	< 1 acre	The first 1-in. Water Quality Volume (WQV) of rainfall or 80% Total Suspended Solids (TSS) removal ^[1]
New	> 1 acre	The first 1-in. WQV of rainfall ^[1]
Redevelopment	< 1 acre	10% reduction in impervious surface or 50% TSS removal
Redevelopment	> 1 acre	50% TSS removal

[1] Refer to additional requirements under Section 3(e)(iii) Pollutant Removal

- (ii) Stormwater flow volume reduction.
Stormwater flow volume reduction shall be provided to the maximum extent practicable. Refer to the Minnesota Storm Water Manual. Volume reduction techniques may include:
 - (1) Infiltration into the ground;
 - (2) Evaporation or transpiration;
 - (3) Storage for re-use;
 - (4) Enhanced infiltration swales, filter strips, or disconnected impervious area;

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(5) Other demonstrable methods that reduce volume;

(iii) Pollutant removal.

Projects able to provide volume reduction for the first 1/2 inch of rainfall from newly created impervious surface shall have met city pollution abatement requirements and are exempt from this paragraph. Projects that do not meet the requirements of subsection (ii) above are required to complete computer modeling to show that water quality treatment shall provide 85 percent total suspended solids (TSS) removal, and the applicant shall also be required to describe and provide additional BMPs for temperature control;

(f) Runoff rate control.

Where subsection (b) requires that a development plan include runoff rate control, the development or redevelopment must be designed to provide the controls as follows. Runoff rate control is beneficial in the upper, flatter part of the watershed above the bluff line. Below the bluff line, the topography is relatively steep and storm water flows quickly to Lake Superior and the St. Louis River. This bluff line designation is shown on the NR-O map. The storm water rate control requirements for development and redevelopment are shown in Table 50-18.1.E-4;

Table 50.18.1.E-4: Discharge Rate Limits		
Location ►	Post-Development Peak Flow Rates at Each Discharge Point Shall Not Exceed	
Type of Activity ▼	Zone A -- Above Bluff Line	Zone B -- Below Bluff Line
New Development	75% of predevelopment peak flow rates for 10 and 100 year events; and 90% of predevelopment peak flow rate for 2 year event	Predevelopment peak flow rates for all storm events
Redevelopment	Predevelopment peak flow rates for all storm events	Predevelopment peak flow rates for all storm events

(g) General design criteria.

- (i) New minor system drainage systems shall be designed to efficiently convey the peak discharge rates for a ten-year flow;
- (ii) New major system drainage systems shall be designed to efficiently convey the peak discharge rates for a 100-year flow;
- (iii) The 100-year rainfall event or 100-year peak flow shall be evaluated to ensure that no damage occurs to adjacent properties for all systems;
- (iv) The stormwater management systems for any new or redevelopment project shall maintain at least three feet of

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freeboard between the anticipated 100-year high water elevation and the minimum building opening;

- (v) Consideration may be given for treating existing untreated impervious areas diverted to the site and included in the control area for analysis if it is in the best interest of the city;
- (vi) All impervious areas shall be considered connected and curve numbers shall not be weighted for impervious areas except under special circumstances;
- (vii) 95 percent of all newly added impervious surface shall be directed to the water quality treatment area. If it is impractical to direct 95 percent of the added impervious surface to water quality area, alternate methods may be used in combination so long as 95 percent is treated and all peak flow requirements are fulfilled;
- (viii) Flow shall not be diverted from one major or minor system to another major or minor system;
- (ix) When stormwater management plans involve directing runoff from a site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other property interests concerning flowage of water to a point where the stormwater enters a major system;
- (x) Adequate measures shall be taken to prevent uncontrolled drainage across lot lines;

4. General storm water restrictions.

- (a) Applying fertilizer, pesticides or any chemicals on impervious surfaces, within any part of stormwater drainage system or any drainage way, within 25 feet of any wetland edge or ordinary high water level or bank edge of any drainage course, or within any water resource buffer area is prohibited;
- (b) Sweeping, raking, blowing or otherwise placing yard waste, unless the yard waste is securely contained, in the street, ditch, gutter, storm inlet, catch basin or any part of any drainage way or other area that would allow yard waste to enter the storm drainage system is prohibited;
- (c) Yard waste segregated for pickup must be securely contained until removed;
- (d) Topsoil and erodible soil stockpiles shall be distributed within three days or covered to prevent erosion of the stockpile;

5. Ownership and maintenance.

- (a) Maintenance of temporary erosion and sediment control practices.

During the period of a land disturbing activity, the person engaging in the construction shall be responsible for installing and maintaining erosion and sediment control practices. After construction is

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completed, the owner of the property shall be responsible for installing and maintaining erosion and sediment control practices;

(b) Ownership.

(i) All components of the storm water management system shall be constructed, owned, operated and maintained by the developer or owner(s) to their confluence with the major system or city owned minor system;

(ii) In the case of developments in which right-of-way is transferred to public ownership, the storm drain system within the city right-of-way shall be owned and maintained by the city. Stormwater treatment facilities and ponds shall be in common space and shall be owned and maintained by the developer or the owners of the development. Stormwater treatment facilities shall not be located in the public right-of-way;

(c) Owner inspection and maintenance.

(i) Stormwater management facilities shall be designed to minimize maintenance and provide maintenance access. All facilities shall have a plan of operation and maintenance that assures continued effective removal of runoff pollutants and accumulated sediment. The developer or the owner(s) shall be responsible for inspection, maintenance and reporting for all non-publicly owned stormwater management facilities associated with the development. Copies of the inspection records shall be maintained by the developer or owner for a period of six years. Copies of all inspection records shall be provided to the city upon request;

(ii) For the purposes of inspection during construction monitoring, the permittee shall:

Submit an inspection log to the city on the first day of each month during the entire duration of construction;

(iii) For the purposes of ongoing monitoring and maintenance after construction is complete, the owner shall conduct inspections on all non-publicly owned structural components and all non-structural components (including swales and pond areas) of the storm water management system;

(1) Submit a written report approved by an engineer summarizing findings and maintenance needs;

(2) Submit a written report of work completed to maintain stormwater facilities. Work must be completed within three months of annual inspection.

Section 2. That Section 50-36.6 of Chapter 50 be amended to read as follows:
Sec. 50-36.6. Other departments.

Additional departments of the city may be consulted regarding any application under this Chapter, or regarding the potential impacts of the proposed

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activities or structures covered by an application, at the discretion of the building official, the land use supervisor, the historic preservation commission, the planning commission or council.

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

A copy of approved amendments and plats, and final decisions granting variances or special uses under shoreland standards will be sent to the DNR commissioner or the commissioner's designated representative within ten days of final action.

Section 3. That Section 50-41.269 of Chapter 50 be amended to read as follows:
269. Shore impact zone.

Land located between the Ordinary High Water level of public waters and a line parallel to it at setback of 50 percent of the required structure setback, but not less than 50 feet.

Section 4. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: February 27, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed January 24, 2011
Approved January 24, 2011
DON NESS, Mayor

- - -

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OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, February 10, 2011, 5:10 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Stauber and Vice President Hartman -- 8

Absent: President Gardner -- 1

- - -

Vice President Hartman presided in the absence of President Gardner.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0210-01 The following communications regarding proposed amendments to the housing, property maintenance and rental chapter of the Duluth City Code (11-005-O): (a) Mary Austin; (b) Barbara Montee; (c) Rilla Opelt. -- Received

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

BY PRESIDENT GARDNER

11-005 - AN ORDINANCE AMENDING SECTIONS 29A-27 AND 29A-29 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PROVIDING FOR DEFINITIONS AND LICENSING, AND ADDING A NEW SECTION 29A-32.1 PROVIDING AUTHORITY FOR A RENTAL CONVERSION FEE.

Councilor Hartman moved to amend the amended ordinance as follows:

(a) That Section 29A-27(h) providing for a definition of hardship be stricken in its entirety and that Section 29A-27(i) be renumbered 29A-27(h);

(b) That Section 29A-32(f)(1) providing for hardship variances from the nonconformance fee be stricken in its entirety;

(c) That Section 5 of the ordinance be amended to read as follows: "That this ordinance shall take effect 30 days after its passage and publication," which motion was seconded for discussion.

Chief Administrative Officer David Montgomery explained that the amendment being brought forward under Councilor Hartman's name is to revoke or eliminate the hardship provision under the existing language of the ordinance as previously amended. He continued saying that currently in the ordinance there is a hardship provision for a situation where a pre-existing landlord with pre-existing rental properties is dealing with the off street parking requirement to be able to either build parking spaces for the vehicles on their properties, or in lieu of that, to pay the off street parking fee which is \$100 per three year license period, but does not apply to any new rental after the enactment of the ordinance. Mr. Montgomery went on to say that the way it works now is if they currently do not have off street parking and it is a three bedroom rental, they have one gratis on street parking spot allowed and they are required to have two off street parking spots, which they can either construct and get a multi-tenant license, or they can pay the \$100 fee for the two nonconforming spots over a three year period for each of the nonconforming spots. He explained that Councilor Fedora previously has raised the case where someone has a property that they find it impossible to construct

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parking spaces on because of physical limitations, they then would go to an appeal process and be able to get the requirement for off street parking waived either through the building official and/or subsequently the building appeal board. Mr. Montgomery further explained that when the ordinance was drafted, the process to have an off street alternative was the hardship provision so that if the landlord could not, or chose not to put parking on the site, they had the alternative of paying the \$100 for three years per spot. He concluded saying that the administration supports this amendment and feels that it is reasonable, and that the hardship mechanism is already, in effect, laid out in that process.

To questioning from Councilor Fedora, Mr. Montgomery replied that someone who owns rental property on which it is physically impossible to build on site parking spaces has two options; they can pay the on street parking fee or they can go to a single family license. If they pay the on street fee, they can still have a multi-tenant rental license.

The rules were suspended upon a unanimous vote to hear from speakers on the ordinance.

Gary Kalligher stated that since 2007, the rental industry has been the most legislated issue in the city of Duluth with over 35 pieces of legislation levied upon the rental industry, and now with the new ordinances that are going into effect, the rental industry has gotten a lot more expensive. He expressed concern that the city is using economics as a fair reason to do this and to take somebody's right to appeal away when they physically do not have the ability to do something does not seem right. Mr. Kalligher stated that there is nothing wrong with landlords and with the people that run real estate as a business.

Peter Langer stated that landlords who maintain rentals without enough parking should pay the fees so there would be a financial incentive for landlords to supply enough parking for the tenants. He stated that under Councilor Fedora's proposal, those landlords who rent homes with insufficient parking actually have a financial incentive to maintain those inappropriate homes as rentals and promotes the exact opposite of what the city wants to happen.

Jonathan Thornton voiced concern that when there is a property that does not have an opportunity to get a rental license based on the parking ordinance, or the change here, and then not be able to appeal that parking provision and proceed with paying the fees to get their rental license. He continued saying that properties with smaller lots are going to be in the lower price category, so this will be affecting lower priced real estate in Duluth even more than it already has. Mr. Thornton also voiced concern that there will be less green space if the intent is to add additional off street parking.

Scott Thompkin stated that there are more issues going on with this rental ordinance than just parking and this piecemeal approach is not the right way to deal with it. He continued saying the city needs a comprehensive plan that includes the landlords, students, administration and the city council, and they should sit down and work out all the problems.

Barbara Monty stated this ordinance targets landlords of multi-tenant properties citywide, so the city needs a plan that looks at all properties to solve this long-standing problem with parking. She urged the council to table this to grandfather in previously licensed properties, to vote for a reasonable appeal process for new licensed properties and to vote to create some sort of planning committee that has landlords and tenants on it to address these issues.

Councilor Fedora reviewed that most of the properties that are going to be impacted by this particular ordinance are going to be in the hillsides where the properties were built many,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

many years ago and there is no physical way that they can comply with the off street parking requirements. He explained that other appeals that various boards and commissions consider are part of due process and levying a fine for people who have no physical way of complying with this new law is not proper due process.

Councilor Hartman's amendment carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Halberg, Stauber and Vice President Hartman -- 5

Nays: Councilors Fedora and Fosle -- 2

Abstention: Councilor Cuneo -- 1

Absent: President Gardner -- 1

[Editor's Note: Due to the substantial amendment, the ordinance was considered to have had a new first reading at this time.]

- - -

The meeting was adjourned at 5:46 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, February 14, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

The minutes of council meetings held on November 4, 8 and 22, and December 6 and 20, 2010, were unanimously adopted as amended.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0214-14 The following communications regarding the proposed reclassification of property at 1000 Minnesota Avenue (11-004-O): (a) Jan Karon; (b) Vicki McNabney. -- Received

11-0214-01 The following communications regarding the proposed parks and recreation master plan (10-0644R): (a) Bob O'Hara; (b) Darcy and Todd Redenbaugh. -- Received

11-0214-13 The following communications regarding the proposed amendments to the housing, property maintenance and rental chapter of the Duluth City Code (11-005-O): (a) David Burress; (b) Peter S. Mattson. -- Received

11-0214-15 The following communications regarding the proposed joint powers and trust agreements with various city authorities to form and implement a joint powers enterprise (11-0045R): (a) City of Duluth Supervisory Association; (b) Entertainment and convention center authority. -- Received

11-0214-16 The following communications regarding the proposed creation of a tourism attraction reinvestment and investment fund (11-007-O): (a) Canal Park Business Association; (b) Canal Park Lodge; (c) Grandma's Restaurant Company; (d) Holiday Inn Hotel and Suites; (e) Bryant Johnson; (f) Lake Superior Port Cities, Inc.; (g) Minnesota Lodging Association; (h) Trailfitters; (i) Upper Minnesota Film Office. -- Received

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REPORTS FROM OTHER OFFICERS

11-0214-02 Clerk applications for exempt permits (raffles) to the Minnesota gambling control board from: (a) Holy Family Catholic Church for September 17, 2011; (b) St. Mary's Duluth Clinic Foundation for April 2, 2011. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-0214-31 Alcohol, gambling and tobacco commission minutes of: (a) October 6; (b) November 3; (c) December 1, 2010, meetings. -- Received

11-0214-03 Building appeal board minutes of December 8, 2010, meeting. -- Received

11-0214-04 Civil service board minutes of December 7, 2010, meeting. -- Received

11-0214-05 Commission on disabilities minutes of January 5, 2011, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- 11-0214-06 Duluth airport authority: (a) Minutes of December 21, 2010, meeting; (b) Unaudited balance sheet of November 30, 2010. -- Received
- 11-0214-07 Duluth economic development authority minutes of December 15, 2010, meeting. -- Received
- 11-0214-08 Duluth public arts commission minutes of December 20, 2010: (a) Regular; (b) Special meetings. -- Received
- 11-0214-09 Duluth transit authority: (a) Minutes of December 1, 2010, meeting; (b) October 2010 income statement. -- Received
- 11-0214-10 Entertainment and convention center authority minutes of January 25, 2011, meeting. -- Received
- 11-0214-11 Library board minutes of November 23, 2010, meeting. -- Received
- 11-0214-12 Seaway Port authority of Duluth budget summary for December 2010. -- Received
- 11-0214-17 Special assessment board minutes of January 24, 2011, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Stanley Hendrickson expressed his displeasure with an inflow and infiltration situation at his residence. He went through the details of the documentation that he felt reflects what that the city owes him for.

- - -

Loren Martell expressed his concerns that the school district's "Red Plan": is too expensive; families would pull their children out of the district because they do not want large schools; the taxpayers would be paying the burden; a financial mess is starting to spin downward, with savings that did not come true and within years it is expected that the school attendance numbers will grow and more schools will have to be built, with the debt on these new schools still being paid for.

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RESOLUTIONS TABLED

Councilor Anderson moved to remove Resolution 10-0644, adopting the parks and recreation master plan for the city of Duluth, from the table, which motion was seconded and unanimously carried.

Councilor Halberg moved to amend the resolution to insert the following language at the beginning of the resolution:

"RESOLVED, that the parks and recreation master plan is a guide map for improving the city's park system in the near term while recommending principles to guide long-term direction.

FURTHER RESOLVED, that the direction mapped by the master plan may lead to changes for a number of community recreation centers.

FURTHER RESOLVED, that the process on file with the city clerk as Public Document No. _____ will be followed so that neighborhoods and community clubs are a part of the planning to determine the future needs of impacted community recreation centers.

FURTHER,"

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

which motion was seconded and carried unanimously.

Resolution 10-0644, as amended, was adopted as follows:

RESOLVED, that the parks and recreation master plan is a guide map for improving the city's park system in the near term while recommending principles to guide long-term direction.

FURTHER RESOLVED, that the direction mapped by the master plan may lead to changes for a number of community recreation centers.

FURTHER RESOLVED, that the process on file with the city clerk as Public Document No. 11-0214-18(a) will be followed so that neighborhoods and community clubs are a part of the planning to determine the future needs of impacted community recreation centers.

FURTHER RESOLVED, that the city council finds the following:

(a) It is in the best interests of the city to adopt a parks and recreation master plan;

(b) The city parks and recreation division along with other city staff, park commissioners and park planning consultants have developed, reviewed and recommended adoption of this master plan;

(c) The city parks and recreation division has, after due public notice, conducted public hearings about this master plan on the following dates: December 2, 2009; December 3, 2009 (including a meeting during the day and one during the evening); December 8, 2009; August 23, 2010, and November 10, 2010;

(d) The parks and recreation commission, at its November 22, 2010, regular meeting, did recommend, unanimously, to adopt the master plan, on file with the city clerk as Public Document No. 11-0214-18(b).

NOW, THEREFORE, BE IT RESOLVED, that the document on file with the city clerk as Public Document No. 11-0214-18(b) is adopted as the parks and recreation master plan for the city of Duluth.

Resolution 10-0644, as amended, was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

UNFINISHED BUSINESS

Resolution 11-0039, by Councilor Hartman, amending the Standing Rules - amendments, was introduced for discussion.

Councilor Hartman moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Ken Hogg, former city councilor, supported the resolution for reasons of: councilors need to remember who their constituents are, the public needs to be informed and that making rules that are more comfortable for the council should not be made at the expense of the public.

Councilors Anderson, Fedora, Stauber, Fosle and Cuneo opposed the resolution for reasons of: no councilor has ever tried to withhold information or confuse the public; this has never been a problem; there are demands on the city attorney's office to get amendments prepared, so they do not always get done by Friday; if an amendment is sent to all the councilors it is also sent to the media; if an amendment is substantial or materially changes the resolution, it can be tabled; there was a situation where there was a deadline and six councilors wished to increase the maximum levy, for police and fire protection, with the amendment being introduced at the council meeting, and with seven councilors needed to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

suspend the rules, it would not have happened; generally speaking, last minute amendments are the exception, not the rule; technically speaking, and actual resolutions do not have to be filed until the Friday before the meeting and at times many late resolutions are given to the council at agenda sessions, therefore, time is needed to prepare amendments; many times constituents contact councilors over the weekend with a good idea for an amendment and the weekend is needed to put forth the best product, which may include amendments;

Councilors Hartman and President Gardner supported the resolution for reasons of: this would reduce last minute amendments, where the council does not see it in advance of the meeting; the public has no prior knowledge of amendments; if a minor noncontroversial amendment is desired, by a 7/9's vote the rules can be suspended to allow it; it is better to error on the side of transparency, than councilor convenience; last minute amendments and at times have had to be redone, refigured and rethought.

Resolution 11-0039 failed upon the following vote (Public Document No. 11-0214-19):

Yeas: Councilors Boyle, Halberg, Hartman and President Gardner -- 4

Nays: Councilors Anderson, Cuneo, Fedora, Fosle and Stauber -- 5

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the assessment roll levied to defray the assessable portion of vault removal (#21171 - Gas Fund 520) at Duluth Proper 3, Lot 104, Block 17, is set. The total assessable amount is \$10,000 and this assessment roll is hereby confirmed.

Resolution 11-0063 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of the Eighth Avenue East sanitary sewer extension (#5440 - Sewer Fund 530) at the following locations is set forth below:

- (a) 729 North Eighth Avenue East (parcels 3490 - 1570);
- (b) 723 North Eighth Avenue East (parcels 3490 - 1590);
- (c) 721 North Eighth Avenue East (parcels 3490 - 1610);
- (d) Vacant land (parcels 2490 - 1630).

The total assessable amount is \$18,847.46 and this assessment roll is hereby confirmed.

Resolution 11-0064 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2010 street preservation (#7114 - Street Improvement/Capital Project Fund 440) at West Eighth

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Street from 40th Avenue West to Central Avenue is set. The total assessable amount is \$60,105.19 and this assessment roll is hereby confirmed.

Resolution 11-0065 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2010 street preservation (#7109 - Street Improvement/Capital Project Fund 440) at Glenwood Street from Snively Road to 43rd Avenue East is set. The total assessable amount is \$92,131.47 and this assessment roll is hereby confirmed.

Resolution 11-0066 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2010 street preservation (#7113 - Street Improvement/Capital Project Fund 440) at Minnesota Avenue is set. The total assessable amount is \$220,484.70 and this assessment roll is hereby confirmed.

Resolution 11-0067 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2010 street preservation (#7112 - Street Improvement/Capital Project Fund 440) at Superior Street from Tenth to 21st avenues East is hereby set. The total assessable amount is \$100,061.19 and this assessment roll is hereby confirmed.

Resolution 11-0068 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2010 street preservation (#7111 - Street Improvement/Capital Project Fund 440) at 43rd Avenue East from Superior Street to Glenwood is set. The total assessable amount is \$78,493.37 and this assessment roll is hereby confirmed.

Resolution 11-0069 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2010 street preservation (#7110 - Street Improvement/Capital Project Fund 440) at Mall Drive is set. The total assessable amount is \$20,918.50 and this assessment roll is hereby confirmed.

Resolution 11-0070 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that city officials are hereby authorized to execute an agreement, substantially the same as that on file with the city clerk as Public Document No. 11-0214-20, with Wagner, Falconer & Judd, Ltd., to provide legal services and represent the city of Duluth in collection actions as requested, with collection matters handled on a contingent fee basis and related services on an hourly fee basis in accordance with its proposal (Attachment A) and payable from various departments/agencies, organizations and objects.

Resolution 11-0071 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On August 4, 2010, October 6, 2010, and November 3, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0214-21;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 24, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0214-21 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$1,000 civil penalty payable within 30 days of final council action with \$500 be stayed for one year and abated if the licensee has no same or similar violations for a period of one year from the date of final council action; and a five day license suspension to occur within 30 days of final council action, four of said five suspension days stayed for a period of one year and abated if the licensee has no same or similar violations for a period of one year from the date of final council action.

Resolution 11-0044 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that Resolution 10-0546 is hereby amended, authorizing city officials to contract with Morton Salt, Inc., for the purchase and delivery of an additional 5,500 tons of road salt for January through April 2011 in accordance with Minnesota State Contract No. 443277, Release S-803 (5), specifications and pricing at \$54.78 per ton for \$301,290 plus sales tax of \$20,713.69 for a total amount of \$322,003.69, terms net 30, FOB destination and payable from General Fund 110, Department/Agency 121 (public administration), Organization 1217-2140, Object 5223-01.

Resolution 11-0062 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale theater liquor license for the period ending August 31, 2011, subject to departmental approvals and the payment of sales and property taxes:

College of St. Scholastica, Mitchell Auditorium, 1200 Kenwood Avenue.

Resolution 11-0073 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to UMD Ducks Unlimited and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0074 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On January 5, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Hacienda Del Sol, Inc., d/b/a Hacienda Del Sol, 319-321 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0214-22;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 14, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0214-22 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Hacienda Del Sol, Inc., d/b/a Hacienda Del Sol, 319-321 East Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the licensee pay a \$500 civil penalty, and that payment of the \$500 penalty be stayed until April 15, 2011, on the condition that the licensee pay both the third and fourth quarter license fees on or before that date. If either the third or fourth quarter installments (together with any late fees) are not paid in full on or before April 15, 2011, then the \$500 penalty will be due and payable within 30 days of April 15, 2011.

Resolution 11-0077 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Midwest Electrical Group, Inc., for the electrical construction and lighting of Enger Tower located in Enger Park, Duluth, Minnesota, in accordance with city-approved specifications completed by Collaborative Design Group, Inc., the project architect, and the vendor's low bid

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

of \$96,353 payable from Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520, Project No. CP2010 - ENGRTR.

Resolution 11-0078 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of warehouse specialist, which were approved by the civil service board on January 11, 2011, and which are filed with the city clerk as Public Document No. 11-0214-23, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 30.

Resolution 11-0048 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of Planner II, which were approved by the civil service board on January 11, 2011, and which are filed with the city clerk as Public Document No. 11-0214-24, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 133.

Resolution 11-0079 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the Duluth economic development authority (DEDA), substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0214-25, pursuant to which certain DEDA property will be insured under the city's property and boiler insurance policies for the period from February 16, 2011, to February 16, 2012, and for which DEDA shall reimburse the city in an amount not to exceed \$14,955, to be deposited in Self Insurance-Liabilities Fund 610-036-1656-4904.

Resolution 11-0053 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0214-26, with Barr Engineering Company, for professional environmental services related to the expansion of the Epicurean and Loll manufacturing companies in West Duluth in an amount not to exceed \$67,500, payable from Fund 255 (economic development).

Resolution 11-0076 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that it is deemed necessary for public convenience and safety, and it is hereby ordered that 36th Avenue East from Superior Street to Fourth Street (City Project No. 0356TR) be improved.

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said project as estimated by the city engineer is \$1,044,000, payable from Permanent Improvement Fund 411-035-5530 (capital projects). The funding sources for this project will be as follows: \$564,000 from municipal state aid funds, \$288,000 from Water Fund 510, \$50,000 from Stormwater Utility Fund 535, \$25,000 from Sanitary Sewer Fund 539, and \$117,000 from Special Assessment Fund 410, assessable to benefitting properties.

FURTHER RESOLVED, that assessments shall be levied upon lands benefitting per the preliminary assessment roll (Public Document No. 11-0214-27) and may be paid in 15 annual installments at prime plus 1.50 percent interest.

Resolution 11-0047 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

WHEREAS, in accordance with the provisions of Section 45-82.6 of the Duluth City Code, 1959, as amended, the city engineer has determined that a sidewalk vault located on the lower side of West Fourth Street on Lot 24, West Fourth Street, Duluth Proper First Division, poses a danger to the public and the owner has received notice from same requesting that repairs be completed within 60 days.

RESOLVED, that pursuant to Section 61 of the City Charter and said Section 45-82.6 of the Duluth City Code, the city council hereby expresses its intent to cause the repair of the sidewalk vault and hereby requests the mayor to prepare or cause to have prepared plans, specifications and estimates therefor, and file such plans and estimates with the special assessment board, together with a recommendation as to what portion of the cost should be paid by special assessment and what portion, if any, should be a general obligation of the city, the number of installments in which assessments may be paid, and the lands which should include the special assessment:

Lot 24, West Fourth Street, Duluth Proper First Division, 114 West Fourth Street.

Resolution 11-0051 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

That the city of Duluth is under consent decree orders to eliminate sanitary sewer overflows.

Sanitary Sewer Basin No. 2 flow contributes to one of the overflow points that the city is mandated to eliminate.

The estimated cost to rehabilitate sanitary sewers in Basin No. 2 by CIPP lining is \$3,150,000, and the public facilities authority (PFA) may have loan and grant monies available to finance the project costs.

To receive this money, the city must submit required information to enter into a loan/grant agreement with the Minnesota public facilities authority.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the proper city officials are hereby authorized to submit an application to enter into a loan/grant agreement with the Minnesota public facilities authority for funding to rehabilitate sanitary sewers in Basin No. 2 as described in the application.

FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for the money, and the financial, technical and managerial capacity to ensure proper construction, operation and maintenance of the project for its design life.

FURTHER RESOLVED, that the city of Duluth estimates the loan/grant amount to be \$3,150,000 or the as-bid costs of the project, and the city's matching funds will be payable from the Clean Water Fund 532, Department/Agency 500, Object 5532, City Project No. 0893SN.

FURTHER RESOLVED, that the city hereby expresses its official intent to use proceeds of this loan to reimburse engineering and construction expenditures made prior to the issuance of its general obligation bond to the public facilities authority.

Resolution 11-0056 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

That the city of Duluth is undertaking a major utility and street improvement project for Duluth's Riverside community.

Studies and history have shown that an area-wide replacement of watermains in Riverside is needed.

The estimated cost of replacement of watermains is \$1,645,155, and the public facilities authority (PFA) may have loan monies available to finance the project costs.

To receive this money, the city must submit required information to enter into a loan agreement with the Minnesota public facilities authority.

RESOLVED, that the proper city officials are hereby authorized to submit an application to enter into a loan agreement with the Minnesota public facilities authority for funding of the riverside water distribution improvements as described in the application.

FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for the money, and the financial, technical and managerial capacity to ensure proper construction, operation and maintenance of the project for its design life.

FURTHER RESOLVED, that the city of Duluth estimates the loan amount to be \$1,645,155 or the as-bid costs of the project, and the city's matching funds will be payable from the Water Bond Fund 511, Department/Agency 500, Object 5532, City Project No. 0699SN/TR.

FURTHER RESOLVED, that the city hereby expresses its official intent to use proceeds of this loan to reimburse engineering and construction expenditures made prior to the issuance of its general obligation bond to the public facilities authority.

Resolution 11-0057 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

That the city of Duluth is undertaking a major utility and street improvement project for Duluth's Riverside community.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Studies and history have shown that an area-wide replacement of sanitary sewers in Riverside is needed.

The estimated cost of replacement of sanitary sewers is \$2,103,660, and the public facilities authority (PFA) may have loan and grant monies available to finance the project costs.

To receive this money, the city must submit required information to enter into a loan agreement with the Minnesota public facilities authority.

RESOLVED, that the proper city officials are hereby authorized to submit an application to enter into a loan agreement with the Minnesota public facilities authority for funding of the Riverside sanitary sewer improvements as described in the application.

FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for the money, and the financial, technical and managerial capacity to ensure proper construction, operation and maintenance of the project for its design life.

FURTHER RESOLVED, that the city of Duluth estimates the loan amount to be \$2,103,660 or the as-bid costs of the project, and the city's matching funds will be payable from the Sanitary Sewer Bond Fund 0531, Department/Agency 500, Object 5532, City Project No. 0699SN/TR.

FURTHER RESOLVED, that the city hereby expresses its official intent to use proceeds of this loan/grant to reimburse engineering and construction expenditures made prior to the issuance of its general obligation bond to the public facilities authority.

Resolution 11-0058 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

That the city of Duluth is under consent decree orders to eliminate sanitary sewer overflows.

Lift Station No. 45 pump station and storage facility is one of the overflow points that the city is mandated to eliminate.

The estimated cost to increase the pumping capacity of Lift Station No. 45 and reconstruct its force main is \$2,261,500, and the public facilities authority (PFA) may have loan and grant monies available to finance the project costs.

To receive this money, the city must submit required information to enter into a loan/grant agreement with the Minnesota public facilities authority.

RESOLVED, that the proper city officials are hereby authorized to submit an application to enter into a loan/grant agreement with the Minnesota public facilities authority for funding of Lift Station No. 45 pumping and force main improvements as described in the application.

FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for the money, and the financial, technical and managerial capacity to ensure proper construction, operation and maintenance of the project for its design life.

FURTHER RESOLVED, that the city of Duluth estimates the loan/grant amount to be \$2,261,500 or the as-bid costs of the project, and the city's matching funds will be payable from the Clean Water Fund 532, Department/Agency 500, Object 5532, City Project No. 0892SN.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, that the city hereby expresses its official intent to use proceeds of this loan to reimburse engineering and construction expenditures made prior to the issuance of its general obligation bond to the public facilities authority.

Resolution 11-0059 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Stack Bros. Mechanical Contractors, Inc., for relocation of 16 inch steel gas main south of I-35 near Recycle Way for the benefit of the I-35 reconstruction project in the amount of \$120,800, payable out of Gas Utility Fund 520-500-1905-5533, City Project No. 0953GS, to be reimbursed by the Minnesota department of transportation.

Resolution 11-0081 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Lake Superior Consulting, LLC, to perform professional engineering services for construction engineering of the Great Lakes gas transmission interconnect regulator station upgrade in the amount of \$56,061, payable out of Gas Utility Fund 520-500-1905-5535, City Project No. 0888GS.

Resolution 11-0082 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to amend and execute joint powers Agreement No. 20604 with the Duluth entertainment and convention center authority for the operation of the Minnesota Slip pedestrian draw bridge for year 2011 for a total amount not to exceed \$35,174, terms net 30, payable from General Fund 110, Department/Agency 500 (public works), Organization 1930-2310, Object 5455.

Resolution 11-0083 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following no parking zone is hereby established:

On both sides of South Street from 19th Avenue East to 20th Avenue East (435 feet).

Resolution 11-0049 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-84 of the Duluth City Code, 1959, as amended, the following 15 minute time limit parking zone is established:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

A 45-foot zone on the south side of First Street west of Seventh Avenue East. The zone shall be signed "15 Minute Parking, 6:00 AM through 7:00 PM Monday through Saturday."

Resolution 11-0050 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following no parking zone is hereby established:

Both sides of 36th Avenue East between Superior Street and Fourth Street.

Resolution 11-0055 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept the donation of unconditional monetary gifts from individuals, civic groups, corporations and other public entities and thank the contributors for their gifts; said gifts to be deposited in Special Projects Fund 210, Agency 030, (finance), Organization 3118 (Enger Park).

Resolution 11-0046 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

(a) That the Minnesota department of natural resources (MNDNR) has grant monies available through the parks and trails legacy grant program that are intended to accelerate the acquisition and development of recreational trails; and

(b) That to receive these monies the city must submit the regional trail legacy grant applications to the MNDNR.

RESOLVED, that the proper city officials are hereby authorized to submit the following applications for these monies:

- (a) The Cross City Trail Phase II (Munger Trail extension);
- (b) The Cross City Trail Phase III (Munger Trail extension); and
- (c) The Duluth Traverse Trail System (bike trail extension throughout the city).

FURTHER RESOLVED, that the city of Duluth estimates the grant amounts to be \$175,000, \$175,000 and \$75,000, respectively, and are available on a 75 percent/25 percent local matching basis.

FURTHER RESOLVED, that the matching funds will be paid from the Capital Improvement Fund 0450 for the Munger Trail projects, and from Special Projects Fund 0210 for the bike trail.

FURTHER RESOLVED, that \$25,000 in matching private funds will be donated by COGGS (Cyclists of the Gitchee Gumees Shores) for the bike trail.

Resolution 11-0054 was unanimously adopted.
Approved February 14, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the proper city officials are hereby authorized to execute an agreement substantially the same as that on file in the office of the city clerk as Public Document No. 11-0214-28 between the city of Duluth and Independent School District No. 709 of Duluth (ISD 709), by which the city and ISD 709 will use community development block grants to jointly plan, develop and make improvements to the Memorial Park and Laura MacArthur School property for school, community and recreation purposes.

Resolution 11-0061 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept the donation of unconditional monetary gifts from the Duluth Library Foundation during 2011 and 2012 for use by the Duluth public library, said gifts to be deposited in Library Special Gifts, Miscellaneous Fund 240-300-SG80-4660, and, on behalf of the city, thank the Duluth Library Foundation for their generous gifts.

Resolution 11-0080 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept the donation of unconditional monetary gifts from the Friends of the Duluth Public Library during 2011 and 2012 for the use by the Duluth public library, said gifts to be deposited in Library Special Gifts, Friends of Library Fund 240-300-SG50-4660, and, on behalf of the city, thank the Friends of the Duluth Public Library for their generous gifts.

Resolution 11-0086 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute Amendment No. 1 to the grant agreement bearing City Contract No. 21216, a copy of which amendment is on file in the office of the city clerk as Public Document No. 11-0214-29, with the Minnesota department of natural resources for cross country ski trail maintenance for fiscal year 2010-2011, increasing the amount of the grant by \$2,000.

Resolution 11-0090 was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 11-0072, approving issuance of a temporary on sale intoxicating liquor license to Marshall School (Marshall Auction), 1215 Rice Lake Road, was introduced by Councilor Cuneo for discussion.

Councilor Fedora moved to amend the resolution by changing the date of May "6" to May "7" due to a conflict with the Elton John concert and this group wishes to change the date of their event, which motion was seconded and unanimously carried.

Resolution 11-0072, as amended, was adopted as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor licenses, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

Marshall School (Marshall Auction), 1215 Rice Lake Road, for May 7, 2011, with Beth Tessier, manager.

Resolution 11-0072, as amended, was unanimously adopted.

Approved February 14, 2011

DON NESS, Mayor

- - -

Resolution 11-0052, requesting detachment of South St. Louis County Fairgrounds from Duluth and annexation to Proctor, was introduced by Councilor Anderson for discussion.

Councilor Anderson moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Jake Benson, Proctor city councilor, reviewed the background on this issue and answered councilors' questions and noted that the Proctor police and fire departments are eight blocks away.

Tony Mancuso, property manager for St. Louis County, noted the involvement of St. Louis County as the owner of the property and felt that this action is a spirit of cooperation between governmental agencies, where improvements could be made and different venues and activities could be planned for this site.

City Attorney Gunnar Johnson reviewed that the state statute sets the process for this to happen, that it is something that will be approved by the state and that the adjoining property owners are not legally required to be notified.

Councilors Anderson, Stauber and Boyle opposed the resolution for reasons of: it is hard to believe that state statute allows for only five councilors and only one resolution to give up part of a city to another city; Duluth residents living close to this area have not been contacted about how they feel about this; these Duluth residents will not be receiving Duluth police and fire protection; this should require a Charter change even if it is just for housekeeping purposes; the resolution should be tabled until adjoining neighbors are notified and there has never been a case in Duluth where the city is giving up property.

Councilors Hartman, Cuneo and Fosle supported the resolution for reasons of: this property is where the Proctor Fairgrounds and Speedway is and is the most "un-Duluth" property in Duluth; there is no loss of tax revenue; this is a common sense issue; Duluth and Proctor should work together; the city of Proctor is not going to use this to increase their tax base - just amusement and recreation; and this has been in the paper in the past and no one has expressed opposition.

Chief Administrative Officer David Montgomery responded to councilors' questions by noting: this property produces no property taxes, because it is owned by the county; sales taxes received are about two to three thousand dollars, which is slightly more than the annual costs for police and fire runs; and water, gas and sewage utilities to this area are supplied by the city of Proctor.

Councilor Anderson moved to send the resolution to the Charter commission for their recommendation, which motion was seconded and failed upon the following vote:

Yeas: Councilors Anderson, Cuneo, Stauber and President Gardner -- 4

Nays: Councilors Boyle, Fedora, Fosle, Halberg and Hartman -- 5

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Fedora moved to table the resolution, which motion was seconded and unanimously carried.

- - -

Resolution 11-0087, by Councilors Anderson and Fedora, establishing a tourism tax task force, was introduced for discussion.

Councilor Anderson moved to table the resolution, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR CUNEO

11-001 (10076) - AN ORDINANCE AMENDING SECTION 11-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO INCORPORATE CURRENT STATUTORY DEFINITIONS.

Councilor Cuneo moved to remove the ordinance from the table, which motion was seconded and unanimously carried.

Councilor Cuneo moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The following entitled ordinance was read for the first time:

BY COUNCILOR FEDORA

11-007 - AN ORDINANCE CREATING TOURISM ATTRACTION REINVESTMENT AND INVESTMENT FUND TO FUND INVESTMENT AND REINVESTMENT IN PUBLIC TOURISM-RELATED INFRASTRUCTURE, PROVIDING FOR FUNDING THEREOF AND FOR EXPENDING FUNDS THEREFROM, ADDING A NEW DIVISION 9 TO ARTICLE II OF CHAPTER 20 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-002 (10077) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, RESIDENTIAL-URBAN, TO MU-I, MIXED USE-INSTITUTIONAL, THE PROPERTY THAT CONSTITUTES THE CAMPUS OF THE COLLEGE OF SAINT SCHOLASTICA (CITY OF DULUTH).

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-003 (10078) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM I-W, INDUSTRIAL WATERFRONT, AND MU-N, MIXED USE NEIGHBORHOOD, TO MU-W, MIXED USE WATERFRONT, THE WESTERN BAYFRONT DISTRICT PROPERTY BETWEEN SIXTH AND TENTH AVENUES WEST SOUTH OF RAILROAD STREET (CITY OF DULUTH).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Stauber moved to suspend the rules to hear from a speaker on the ordinance which motion was seconded and unanimously carried.

Mark Liberte, operations manager North American Salt company, expressed opposition to the rezoning because of the incompatibility of "mixed industry" zoning, because it opens the door to nuisance claims on their existing operations or expansions.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-004 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM I-W, INDUSTRIAL WATERFRONT, TO MU-W, MIXED USE WATERFRONT, PROPERTY AT 1000 MINNESOTA AVENUE (LAKEHEAD BOAT BASIN, INC.).

Councilor Stauber moved to suspend the rules to hear from speakers on the ordinance which motion was seconded and unanimously carried.

Bob Feiro, Brian Grover and Jan Karon opposed the ordinance for reasons of: the other ordinance rezoning the eastern half of Minnesota Avenue was tabled by the planning commission, which was part of the initial plan, and thus by tabling it, it has a number of unintended consequences; this should be considered at the same time as the ordinance tabled by the planning commission; the city administration, by requesting the tabling of the ordinance by the planning commission, has imposed a last minute moratorium on the rezoning of the upper Minnesota Avenue lots between Eighth and 11th streets to an R-1 zone; the city has become a benefactor to private business by endowing a private property holder benefits of a zoning change, resulting in the forfeiture of rights by residents; there is no buffer between the areas of "B" and "R" right across the street (shown in Public Document No. 11-0214-14(a)) and are affected by the decision on this ordinance; it was the intent of the planning commission to rezone area "B" as residential until the administration requested they table it until a small area plan has been completed and delaying this one development will not ruin future construction jobs or development.

Craig Olson, president of the Duluth Building Trades Council, Joel Johnson, developer, Bill Burns, counsel for the developer and Brett Tyren expressed support for the ordinance for reasons of: the city of Duluth is in 108th place in the unemployment listing at 7.4%; the project will put people to work, with the developer agreeing to a project labor agreement; this ordinance was needed because of the new Unified Development Chapter being approved; this has nothing to do with an adjacent property's rezoning because there is a street in between; the property has been a marina for 115 years; this ordinance corrects a rezoning that was a mistake; this has nothing to do with any type of building that could be built on this property; this has the full support of the planning department and the unanimous approval of the planning commission and businesses are not going to want to relocate here with the city in turmoil over developments.

Cindy Petkac, land use supervisor, reviewed the actions of the planning commission and answered councilor questions.

Mr. Montgomery reviewed the position of the administration in the whole rezoning process specific to area "B."

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Fosle supported the ordinance for reasons of: this had the unanimous support of the planning commission; it is a rezoning issue, not a vote on a hotel.

Councilors Anderson and President Gardner expressed concerns about the ordinance in that: more questions have been raised and more information needs to be secured; the small area plan should be completed first; the full staff report on this should be provided to the council before consideration of this ordinance and the deadline for acting on this is March 23 before it is automatically granted, so there is time to put something together that is appropriate for the adjacent property.

Councilor Anderson moved to table the ordinance, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

- - -

BY PRESIDENT GARDNER

11-005 (10079) - AN ORDINANCE AMENDING SECTIONS 29A-27 AND 29A-29 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PROVIDING FOR DEFINITIONS AND LICENSING, AND ADDING A NEW SECTION 29A-32.1 PROVIDING AUTHORITY FOR A RENTAL CONVERSION FEE.

President Gardner moved to suspend the rules to hear a speaker on the ordinance, which motion was seconded and unanimously carried.

Mable Galvin expressed her concerns that it is not fair that another fee be added to the rental fees for not having off street parking for tenants, where those that do not have a multi-rental license, do not have to pay this fee.

Councilors Fedora and Fosle expressed opposition to the ordinance for reasons of: they tried to provide relief to individuals like the speaker, but were turned down; this is likely to be challenged in a lawsuit and the ordinance is discriminatory.

President Gardner moved passage of the ordinance, as amended, and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Halberg, Hartman, Stauber and President Gardner -- 6

Nays: Councilors Fedora and Fosle -- 2

Abstention: Councilor Cuneo -- 1

- - -

The meeting was adjourned at 9:28 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10076

AN ORDINANCE AMENDING SECTION 11-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO INCORPORATE CURRENT STATUTORY DEFINITIONS.

The city of Duluth does ordain:

Section 1. That Section 11-1 of the Duluth City Code, 1959, as amended, be amended to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Sec. 11-1. License to sell-required; definitions.

(a) For the purposes of this Chapter, the terms "tobacco" and "tobacco related devices" shall have the meanings given them in Section 609.685 of the Minnesota Statutes and as the same may from time to time be amended;

(b) No person or any clerk, servant, employee or agent of any such person shall, within the city, directly or indirectly upon any pretense manufacture, sell, exchange, barter or keep for sale any tobacco or tobacco related devices without first having obtained a license therefor.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: March 27, 2011)

Councilor Cuneo moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed February 14, 2011
Approved February 14, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10077

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, RESIDENTIAL-URBAN, TO MU-I, MIXED USE-INSTITUTIONAL, THE PROPERTY THAT CONSTITUTES THE CAMPUS OF THE COLLEGE OF SAINT SCHOLASTICA (CITY OF DULUTH).

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 1. That the subject property, owned by the College of St. Scholastica and the Benedictine Sisters Benevolent Association, which constitutes the campus of the College of St. Scholastica and as more particularly described in Exhibit A, be reclassified from R-2, Residential-Urban, to MU-I, Mixed Use Institutional, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

(Ref. File No. 11-005)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 1, 2011)

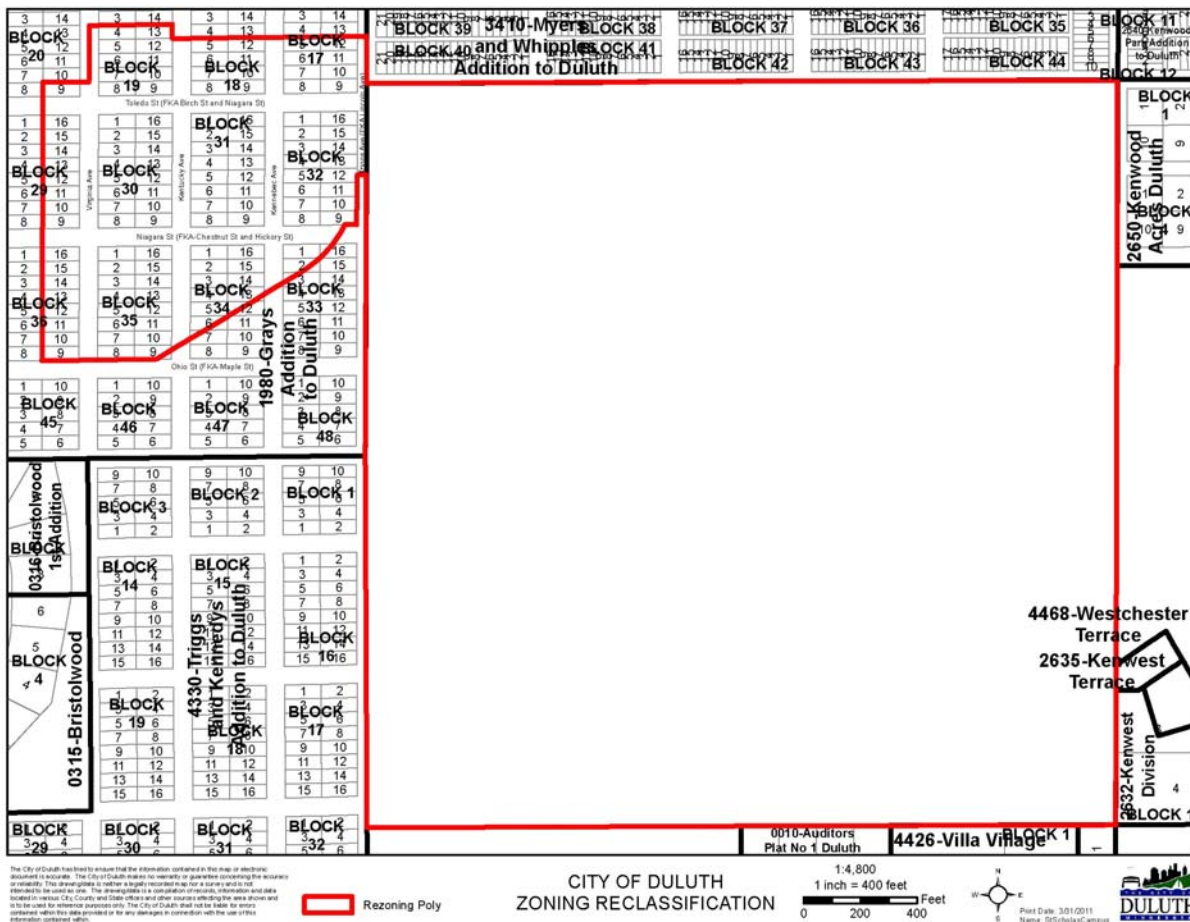
Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed February 14, 2011
Approved February 14, 2011

ATTEST:



JEFFREY J. COX, City Clerk

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

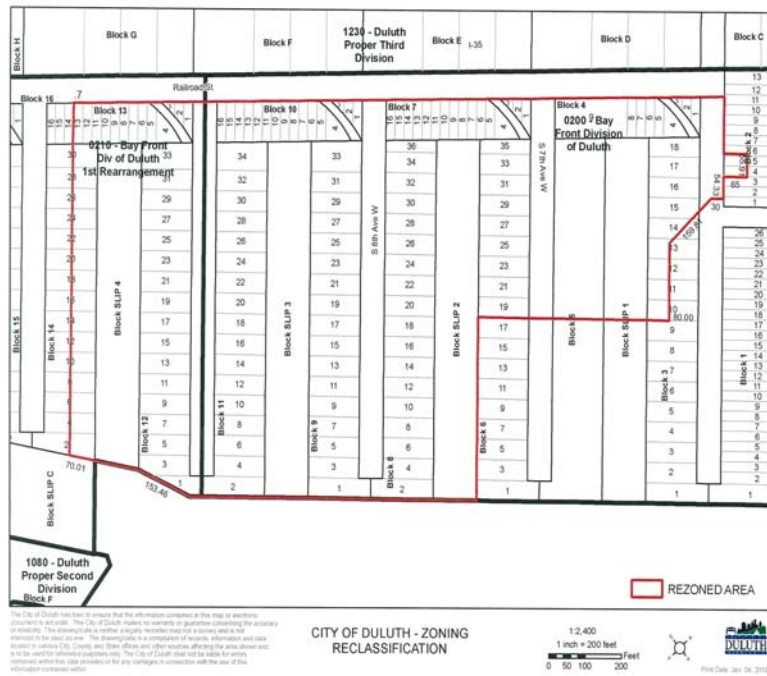
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ORDINANCE NO. 10078

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM I-W, INDUSTRIAL WATERFRONT, AND MU-N, MIXED USE NEIGHBORHOOD, TO MU-W, MIXED USE WATERFRONT, THE WESTERN BAYFRONT DISTRICT PROPERTY BETWEEN SIXTH AND TENTH AVENUES WEST SOUTH OF RAILROAD STREET (CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the subject property, located between Sixth and Tenth avenues West south of Railroad Street and as more particularly described in Exhibit A, be reclassified from I-W, Industrial Waterfront, and MU-N, Mixed Use Neighborhood, to MU-W, Mixed Use Waterfront, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



(Ref. File No. 11-006)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 3, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 14, 2011
Approved February 14, 2011
DON NESS, Mayor

- - -

ORDINANCE NO. 10079

AN ORDINANCE AMENDING SECTIONS 29A-27 AND 29A-29 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PROVIDING FOR DEFINITIONS AND LICENSING, AND ADDING A NEW SECTION 29A-32.1 PROVIDING AUTHORITY FOR A RENTAL CONVERSION FEE.

The city of Duluth does ordain:

Section 1. That Section 29A-27 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-27. Definitions.

(a) The definitions contained in Sections 201 and 202 of the year 2000 edition of the IPMC, as adopted by Section 29A-1 of this Chapter, shall apply to this Article;

(b) For purposes of this Article, the phrase "one-family dwelling" shall have the meaning ascribed by Chapter 50, Article VI;

(c) For purposes of this Article, the phrase "two-family dwelling" shall have the meaning ascribed by Chapter 50, Article VI;

(d) For purposes of this Article, the phrase "multiple-family dwelling" shall have the meaning ascribed by Chapter 50, Article VI;

(e) Rental unit means any dwelling that is occupied by any tenants. For purposes of any fees under this Article, each bedroom in a multi-tenant single-family and multi-tenant two-family dwelling constitutes a rental unit;

(f) Residence means the primary dwelling where an individual lives and usually sleeps;

(g) Except as otherwise provided in Section 29A-27(h)(1)-(2), tenant means any adult person or emancipated minor who is occupying a dwelling under any agreement, lease or contract, whether oral or written, and for a period of seven or more consecutive or nonconsecutive days in any month, whether or not such occupancy requires the payment of rent, the payment of utilities or the provision of services, for the use of the dwelling;

(1) A tenant shall not include any owner of record and an owner's natural children, adopted children, foster children, spouse, other blood relations, any significant other and any other dependent minors, residing with that owner as a family unit; significant other means romantic partner;

(2) A tenant shall not include a tenant's natural children, adopted children, foster children, spouse, other blood relations, any significant other and any other dependent minors, residing with the tenant as a family unit; significant other means romantic partner;

(h) For purposes of this Article, and except as otherwise provided herein, "protection zone" means any parcel of land, lot or part thereof within or

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

abutting the area described as follows: a point beginning at the point of intersection of the centerline of North Sixth Avenue East and the centerline of East Fifth Street, thence northwesterly along the centerline of North Sixth Avenue East to its point of intersection with Central Entrance Drive, thence westerly along the centerline of Central Entrance Drive to its point of intersection with the centerline of Rice Lake Road, thence northerly along the centerline of Rice Lake Road to its point of intersection with the centerline of West Arrowhead Road, thence easterly along the centerline of West Arrowhead Road to its point of intersection with the centerline of Blackman Avenue, thence northerly along the centerline of Blackman Avenue to its point of intersection with the centerline of MacFarlane Road, thence easterly along the centerline of MacFarlane Road to its point of intersection with the centerline of Howard Gnesen Road, thence southeasterly along the centerline of Howard Gnesen Road to its point of intersection with the centerline of Old Howard Gnesen Road, thence north/northeasterly along the centerline of Old Howard Gnesen Road to its point of intersection with the centerline of South Road, thence easterly along the centerline of South Road in a straight line to its point of intersection with the northwest corner of the Third Glen Avon Division of Duluth, thence north in a straight line to its point of intersection with the centerline of Anoka Street, thence easterly along the centerline of Anoka Street to its point of intersection with the centerline of St. Paul Avenue, thence south along the centerline of St. Paul Avenue to its point of intersection with the centerline of Carlisle Avenue, thence easterly along the centerline of Carlisle Avenue to its point of intersection with the centerline of Grove Street, thence northeasterly along the centerline of Grove Street to its point of intersection with the centerline of Princeton Place, thence northeasterly along the centerline of Princeton Place to its point of intersection with the southerly boundary of Park Hill Cemetery, thence easterly along the southern boundary of Park Hill Cemetery until its point of intersection with the western easement line of Livingston Avenue, thence easterly in a straight line to its point of intersection with the centerline of Livingston Avenue, thence northerly along the centerline of Livingston Avenue to its point of intersection with the centerline of Everett Street, thence easterly along the centerline of Everett Street to its point of intersection with the centerline of Jean Duluth Road, thence southwesterly along the centerline of Jean Duluth Road to its point of intersection with the centerline of Lakeview Drive, thence southwesterly along the centerline of Lakeview Drive to its point of intersection with the centerline of Vermilion Road, thence southerly along the centerline of Vermilion Road to its point of intersection with the centerline of Congdon Park Drive, thence southeasterly along the centerline of Congdon Park Drive to its point of intersection with the centerline of South 32nd Avenue East, thence southeasterly along the centerline of South 32nd Avenue East to its point of intersection with the centerline of Jefferson Street, thence southeasterly along the centerline of Jefferson Street to its point of intersection with the centerline of North 21st Avenue East, thence, northwesterly along the centerline of North 21st Avenue East to its intersection with the centerline of East Fifth Street, thence southeasterly along the centerline

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

of East Fifth Street to the point of beginning, and as depicted on the map on file with the city clerk as Public Document No. 11-0214-30;

(1) The following described area located within the protection zone defined in Section 29A-27(h) is excluded from the zone: any parcel of land, lot or part thereof within or abutting the area described as follows: a point beginning at the point of intersection of the centerline of Carver Avenue and the centerline West St. Marie Street, thence south in a straight line to its point of intersection with a straight line extending west from the point of intersection of Woodland Avenue and Elizabeth Street, thence east in a straight line to its point of intersection with the centerline of Woodland Avenue and the centerline of Elizabeth Street, thence northeasterly along the centerline of Woodland Avenue to its point of intersection with the centerline of West St. Marie Street, thence westerly along the centerline of West St. Marie street to the point of beginning, and as depicted on the map on file with the city clerk as Public Document No. 11-0214-30.

Section 2. That Section 29A-29 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-29. Licenses--application, procedure, type.

(a) Applications for rental licenses shall be filed with the code official by the owner or the owner's agent and shall be accompanied by the required license fee. The code official may reject any incomplete application;

(1) Applications for license renewals shall be filed at least 90 days prior to license expiration;

(2) Upon receipt of a complete application and fees the code official may issue a license if the rental unit is eligible for licensure;

(3) Rental units which comply with the State Building Code and have been constructed and certified for occupancy within one year prior to date of application and are otherwise eligible for licensure shall be issued a license for the initial licensing period without further inspection;

(b) All other rental units shall be inspected before a license is issued. No license shall be issued unless the rental unit complies with the provisions of this Chapter and all other applicable laws;

(c) Except as otherwise provided in this Article, any application for the renewal of an expired license shall be processed as a new license application and the rental unit must comply with all applicable laws;

(d) If a rental license lapses as a result of the failure to comply with this Section, the license may be administratively reissued without regard to the provisions of paragraphs (a) through (c) of this Section if within 180 days of the expiration of the license the owner complies with all other requirements of this Section 29A-29;

(e) The applicant shall identify a managing agent or contact person who resides within a 25 miles radius of the city and who has the authority to act for the owner;

(f) Except as otherwise provided, all new rental license, short term license, change of license type and rental license renewal applications shall be completed and applicable fees paid for a specified maximum number of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

bedrooms that can be occupied by tenants. The maximum allowable number of bedrooms that can be occupied by tenants in a rental unit is determined by Section 29A-32;

(1) The fee per bedroom structure shall not apply to the single-tenant license. A single fee for the dwelling unit shall be established as provided in Section 29A.30;

(g) A single-tenant rental license may be issued to a one-family or two-family dwelling. The license limits the number of tenants that may occupy the rental unit to one tenant;

(h) A multi-tenant rental license authorizes the occupancy of the rental unit by more than one tenant. No new multi-tenant rental license may be issued for any one-family dwelling in areas zoned traditional residential or urban residential and located within the protective zone. The restriction on new multi-tenant licenses shall expire on the earlier of the date a campus area small neighborhood plan is adopted by the city council or January 1, 2012. The restriction on multi-tenant licenses shall not apply to a rental unit that was currently licensed on March 14, 2011;

(i) Except as otherwise provided, a short term rental license, whether single-tenant or multi-tenant, may be issued for a period not to exceed 12 consecutive months for any single-family or two-family dwelling under the following circumstances and pursuant to the following conditions:

(1) The owner is the occupant of the dwelling unit at the time of application or the code official finds that the owner was the occupant within 30 days before the date of application; and

(2) For professional, educational, medical, or military service reasons the owner intends to reside in another community located at least 50 miles from the city; and

(3) The owner provides sufficient evidence of such intention to temporarily relocate. Such evidence may include, but is not limited to written offers of employment, employment transfer directives, a letter of acceptance from an educational institution, or military orders; and

(4) The license may not be issued more frequently than once in any three year period; and

(5) The license shall be applied for in the same manner as other rental licenses; and

(6) Except as otherwise provided in this Article, the rental unit shall comply with all applicable rental licensing standards; and

(7) A short term license may be extended for additional six months periods provided that an application for extension is received prior to the expiration of the short term license or six-month extension and adequate evidence justifying the extension is submitted.

Section 3. That Chapter 29A, Article II of the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 29A-32.1 to read as follows:

Sec. 29A-32.1. Conversion fee.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Any one-family dwelling, not currently licensed pursuant to this Article on March 13, 2011, shall be subject to a rental conversion fee at the time it is initially licensed as a rental unit. The conversion fee shall not apply to a license renewal.

Section 4. That Section 29A-32 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

Sec. 29A-32. License conditions.

All rental units are subject to the following conditions:

(a) No license shall be transferred to another rental unit;
(b) At the principal exterior entrance to a rental unit an informational notice shall be posted that complies with the following requirements:

(1) The notice shall be displayed in a conspicuous place;
(2) The notice shall indicate the name, e-mail address and telephone number of the owner or managing agent;

(c) If there is a change in ownership of a rental unit, the new owner shall apply for a transfer of the license within 30 days of the change and pay the license transfer fee. If the rental unit is sold pursuant to a contract for deed, the purchaser shall be responsible for applying for the license transfer and providing a recorded copy of said contract for deed from the St. Louis County records office. A new license shall be issued for the remainder of the license period;

(d) If there is a change in managing agent, the new managing agent shall notify the code official in writing within ten days of the change;

(e) If there is a change in type of license, an application for change of license type is required. The application shall be filed with the code official as required by Section 29A-29;

(f) Except as otherwise provided in this Section, all rental units licensed on March 13, 2011, and subsequently relicensed as a multi-tenant licensed one family or two family dwellings shall provide a minimum of two off-street parking spaces. In addition, for each additional bedroom in excess of three, there shall be provided one additional off-street parking space. Failure to comply with these requirements will result in an additional nonconformance fee per parking space. All one family or two family dwellings that were unlicensed on March 14, 2011, and subsequently converted to a multi-tenant licensed rental unit shall provide the off-street parking spaces required in this Section, and the licensee shall not be entitled to tender payment of the nonconformance fee in lieu of providing the required off-street parking;

(1) The city council shall establish a parking nonconformance variance application fee pursuant to Section 29A-30;

(g) All off-street parking spaces shall comply with the standards for off-street parking provided for in Chapter 50 of this Code. The number of required off-street parking spaces shall be determined by the code official at the time of licensure. Failure to comply with these requirements will result in an additional nonconformance fee per parking space. The owner shall ensure that all required off-street parking spaces are cleared of snow to at least the required dimension of off-street parking spaces within 72 hours after the end of every snowfall;

(1) All one-family or two-family dwellings, licensed on September 1, 2007, may continue to be licensed even though the property does

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

not conform to the off-street parking provisions of this Section. The rental unit shall be treated as a lawful nonconforming use; however, the nonconformance parking fees provided for in this Section shall apply. If the number of bedrooms, or number of rooms occupied as bedrooms, is increased, the off-street parking requirements of this Section shall apply to the entire licensed property. If the license for the nonconforming use is revoked or lapses for any period of time, all nonconforming use rights related to off-street parking requirements shall terminate;

(2) The off-street parking requirements shall not apply to a short-term single-tenant license;

(h) The maximum number of bedrooms in a multi-tenant rental unit that can be occupied by any tenant under new rental licenses, short-term licenses, and rental license renewals shall be based on the number of bedrooms on record in the city assessor's office on the date of rental application;

(1) The number of tenants cannot exceed the number of bedrooms applied for and paid for in the license application;

(2) In no case shall a bedroom be allowed that does not comply with all applicable state and city building and housing codes.

Section 5. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: March 20, 2011)

President Gardner moved passage of the ordinance, as amended, and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Halberg, Hartman, Stauber and President Gardner -- 6

Nays: Councilors Fedora and Fosle -- 2

Abstention: Councilor Cuneo -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 14, 2011
Approved February 14, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, February 28, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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The minutes of council meetings held on January 6 and 10, 2011, were approved unanimously.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0228-08 Alison Clarke communication regarding the replacement of City Hall windows (11-0100R). -- Received

11-0228-09 Peter Dane communication regarding the proposed detachment of South St. Louis County Fairgrounds from Duluth and annexation to Proctor (11-0052R, 11-0105R and 11-0107R). -- Received

11-0228-01 Jeff Stuermer communication regarding the proposed reclassification of Park Point from Eighth Street to 11th Street, from Minnesota Avenue to the rear property line (11-008-O). -- Received

11-0228-10 The following communications regarding the proposed establishment of a tourism tax task force (11-0087R) and tourism attraction reinvestment and investment fund (11-007-O): (a) Alison Clarke; (b) Andy Goldfine; (c) Grandma's, Inc. (2); (d) Jack LaVoy. -- Received

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REPORTS FROM OTHER OFFICERS

11-0228-02 Clerk applications for exempt permits (raffles) to the Minnesota gambling control board from: (a) St. Margaret Mary Church for April 17, 2011; (b) United Northern Sportsmen Club for April 8, 2011. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-0228-03 Duluth public utilities commission minutes of January 12, 2011, meeting. -- Received

11-0228-04 Duluth transit authority: (a) Minutes of January 5, 2011, meeting; (b) November 2010 income statement. -- Received

11-0228-05 Parks and recreation commission minutes of January 12, 2011, meeting. -- Received

11-0228-06 Planning commission minutes of January 11, 2011, meeting. -- Received

11-0228-07 Spirit Mountain recreation area authority minutes of January 20, 2011, meeting. -- Received

Jonathan Lee and Katie Krikorian, president and vice president of the Duluth public arts commission, showed information that the first award of the one percent requirement of public art expenditure, on new public building construction has been made.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell commented on the complexity of the school board paperwork in tracking the funding of the Red Plan and trying to be an informed citizen.

- - -

Jerry Schlafer felt that: the federal debt is slowly crushing the people of the country; citizens will end up paying for it through taxes or unemployment; government keeps spending and that we have to readjust thinking and pay as we go and spend less.

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RESOLUTION TABLED

Councilor Anderson moved to remove Resolution 11-0052, requesting detachment of South St. Louis County Fairgrounds from Duluth and annexation to Proctor, from the table, which motion was seconded and unanimously carried.

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MOTIONS AND RESOLUTIONS

At this time, Councilor Anderson moved to suspend the rules to consider Resolution 11-0105, opposing detachment of South St. Louis County Fairgrounds from Duluth and supporting annexation to Proctor, referring issue to Charter commission and planning commission and committing to reconsideration; and Resolution 11-0107, requesting detachment of property from Proctor for annexation to Duluth, which motion was seconded and unanimously carried.

- - -

Councilor Anderson moved to suspend the rules to hear from speakers on these resolutions, which motion was seconded and unanimously carried.

Howard Gregory noted that: his property borders the Proctor Fairgrounds and urged the council to pass the resolution; Duluth does not offer any services to the area; he has had problems getting Duluth to fix the road, but Proctor has been more helpful and that Proctor will do a better job of patrolling the area and helping with issues.

Jake Benson, city of Proctor councilor, expressed support for Resolution 11-0052.

Dave Brenna, mayor of Proctor, noted that: the agreement with the county would be to keep it as a fairground, just with improvements and the land the city is requesting is 84 acres of prime real estate and worth a lot more than the 80 acre fairground.

Tony Mancuso, property manager for St. Louis County, confirmed that the agreement requires the continued public use as fairgrounds and that, with ownership, it will solve their problems of paying for liability insurance.

Councilor Anderson felt that originally the Charter commission should examine this issue as the boundaries are included in the Charter and with Resolution 11-0107, the city is asking Proctor to allow the 80 acres of land that Duluth owns in Proctor to be annexed by the city of Duluth, in essence a land swap as they are close in size.

Councilor Stauber opposed Resolution 11-0052 for the reasons of: the county was not actively looking to sell this property; the county never previously approached the city; people do not need to drive through Proctor to get to this property; no city staff or commission has reviewed this; Bayview Heights, which includes this property, asked to be incorporated into the city of Duluth in 1891; the city of Duluth provides utilities to the city of Proctor, thus all the more reason for annexing all or parts of the city of Proctor; the city of Proctor has had the purchase

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

agreement for 18 months and has not signed it; and the requirement that is used for “public use” is different than “public purpose,” with a lot of different potential uses.

Councilors Fosle, Hartman and Boyle noted that notices have been sent out, with no one objecting and that only one person responded, supporting it.

Councilor Anderson moved to retable Resolution 11-0052, which motion was seconded and failed upon the following vote:

Yeas: Councilors Anderson, Halberg and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Fedora, Fosle, Hartman and President Gardner -- 6

Councilor Anderson felt that there is a need to negotiate a fair deal and a need for a bargaining chip to detach the 80 acres in Proctor back to Duluth.

Chief Administrative Officer David Montgomery stated that the administration just assisted Proctor in bringing this to the council and supported good, neighborly relationships with St. Louis County and the city of Proctor.

Resolution 11-0052 was adopted as follows:

RESOLVED, that pursuant to the authority contained in Minnesota Statutes Section 414.061, subd. 1., the city council of the city of Duluth hereby requests that the South St. Louis County Fairgrounds property, sometimes referred to as the Proctor raceway/fairgrounds property, and legally described on Public Document No. 11-0228-11 on file in the office of the city clerk, be detached from the city of Duluth by order of the state of Minnesota chief administrative law judge for the purpose of concurrently annexing the same to the city of Proctor.

Resolution 11-0052 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Halberg and Hartman -- 6

Nays: Councilors Anderson, Stauber and President Gardner -- 3

Approved February 28, 2011

DON NESS, Mayor

- - -

Councilor Anderson, as the sponsor of Resolution 11-0105, requested that it be removed, which was approved.

- - -

Resolution 11-0107 was adopted as follows:

BY COUNCILOR ANDERSON:

RESOLVED, that pursuant to the authority contained in Minnesota Statutes, Section 414.061, subd. 1, the city council of the city of Duluth hereby requests that the city of Proctor request the detachment of the property owned by the city of Duluth lying within the boundaries of the city of Proctor, legally described on Public Document No. 11-0228-12 on file in the office of the city clerk, from the city of Proctor for the purpose of securing, concurrently, an order of the state of Minnesota chief administrative law judge ordering its annexing to the city of Duluth.

Resolution 11-0107 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Fedora, Halberg, Hartman, Stauber and President Gardner -- 7

Nays: Councilors Cuneo and Fosle -- 2

Approved February 28, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLUTION TABLED

Councilor Anderson moved to remove Resolution 11-0087, establishing a tourism tax task force, from the table, which motion was seconded and unanimously carried.

Councilor Fedora moved to suspend the rules to consider Ordinance 11-007 at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

BY COUNCILOR FEDORA

11-007 - AN ORDINANCE CREATING TOURISM ATTRACTION REINVESTMENT AND INVESTMENT FUND TO FUND INVESTMENT AND REINVESTMENT IN PUBLIC TOURISM-RELATED INFRASTRUCTURE, PROVIDING FOR FUNDING THEREOF AND FOR EXPENDING FUNDS THEREFROM, ADDING A NEW DIVISION 9 TO ARTICLE II OF CHAPTER 20 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

Councilor Fedora moved to suspend the rules to hear speakers on this issue, which motion was seconded and unanimously carried.

Tony Bronson, representing the Canal Park Merchants Association, Karen Pionk, general manager of the Sheraton Duluth Hotel, David Ross, executive director of the Duluth Area Chamber of Commerce and Andy Goldfine noted their support for the tourism tax task force, for reasons of: this will allow for representatives of the industry to have a spot at the table to offer information, shared ideas and experiences; this will show the 18,000 individuals in business that the council wants to hear their voice; there are three general managers in the Council Chamber tonight, who have 65 years of experience and want to help; the hospitality industry in Duluth, which competes with each other, is pulling together in supporting this; while the task force should be done now, the proposed ordinance should wait until the task force has met and offered recommendations; ten percent, or 109 individuals, of chamber members are in the hospitality business; this is a complex, challenging issue with no simple answers; this needs a sustained and comprehensive evaluation; this task force is a very positive move and there is an inherent conflict of interest if any individuals or entities potentially receiving tourism taxes are allowed to be on this task force.

Councilor Fedora moved to amend the second paragraph of the resolution by adding the words "and ratified by the city council. No member of the task force shall be an employee, board member, officer, director or member of any organization which currently receives tourism tax monies," which motion was seconded and discussed.

Councilors and City Attorney Gunnar Johnson discussed "legal conflict" versus "perceived" legal conflicts.

Councilors Anderson and Hartman opposed the amendment for reasons of: with the composition of the task force, the council should want individuals who have a background in the tourism/hospitality industry; certain councilors would not be able to serve because of their connection to various entities and it will strictly be a recommendation to the council.

Councilor Fedora's amendment failed as follows:

Yeas: Councilors Fedora and Fosle -- 2

Nays: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman, Stauber and President Gardner -- 7

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Hartman distributed and explained information outlining the history of Duluth's special tourism taxes (Public Document No. 11-0228-24).

- - -

Resolution 11-0087 was adopted as follows:

BY COUNCILORS ANDERSON AND HARTMAN:

RESOLVED, that the city council shall establish a tourism tax task force for the purpose of identifying and defining the current status of tourism tax dollar allocation for Duluth. The task force shall examine industry standards in regard to tourism tax collections and uses; review current state statutes, city ordinances, and allocation policies and procedures, and recommend annual allocation of tourism tax dollars.

FURTHER RESOLVED, that the task force shall consist of nine members, with up to three of the members being city councilors, a minimum of three members of the tourism, restaurant or hospitality industry in Duluth, and a minimum of one citizen member with no professional connection to the tourism, restaurant or hospitality industry. All nine members shall be appointed by the Duluth City Council president.

FURTHER RESOLVED, that the task force shall produce a report containing its findings and recommendations to the Duluth City Council no later than 60 days after the task force members are appointed. The report shall be delivered to the council by way of the clerk. The members shall serve without compensation. Reasonable expenses, approved by the Duluth City Council president and finance director, within the existing budget, shall be paid.

Resolution 11-0087 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman, Stauber and President Gardner -- 7

Nays: Councilors Fedora and Fosle -- 2

Approved February 28, 2011

DON NESS, Mayor

- - -

Councilor Fedora reviewed the merits of the ordinance as follows: it would set up a reserve fund with the city putting in a minimum of \$50,000 annually; the fund would build up over time for future reinvestment in publically owned tourist attractions and that it would maintain the city's existing tourism entities that bring tourists to the city.

Councilors Stauber and Cuneo supported the concept of the ordinance, but felt that it would be better to consider it after the task force has made their recommendations.

Councilor Fedora moved passage of the ordinance and the same failed upon the following vote (Public Document No. 11-0228-23):

Yeas: Councilors Fedora, Fosle, Halberg and President Gardner -- 4

Nays: Councilors Anderson, Boyle, Cuneo, Hartman and Stauber -- 5

- - -

RESOLUTION TABLED

Councilor Anderson moved to remove Resolution 11-0045, authorizing the city to enter into a joint powers agreement and trust agreement with the Duluth entertainment convention center, housing and redevelopment authority of Duluth and Duluth airport authority to form and implement a joint powers enterprise, along with approval of the bylaws of the joint powers enterprise, from the table, which motion was seconded and unanimously carried.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Anderson moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Eric Simonson, representing the Duluth Firefighters Union, and Tom Maida, president of the Duluth Police Union, noted that: this issue belongs at the bargaining table; nothing has happened since the recent committee of the whole meeting and the administration did not understand what the unions' issues might be and passing this resolution would be direct violation of the contract.

Mr. Montgomery noted: that the administration has not received from these unions any language recommendation changes; as per the department of commerce actions, with or without council action, the city is in violation of state law and he went into detail about the history of the issue with the bargaining units.

Mr. Johnson reviewed at length the legal aspects and procedures on this issue and answered councilor questions.

Resolution 11-0045 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into a joint powers agreement and trust agreement to form and implement the joint powers enterprise relating to the operation of a self-insurance pool under Minnesota law, substantially in the form of the copies on file in the office of the city clerk as Public Document Nos. 11-0228-13(a) and 11-0228-13(b), with the Duluth Entertainment Convention Center, housing and redevelopment authority of Duluth and Duluth airport authority, along with approval of the bylaws of the joint powers enterprise, substantially in the form of the copy on file in the office of the city clerk as Public Document No. 11-0228-13(c).

Resolution 11-0045 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

Approved February 28, 2011

DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that city officials are hereby authorized to contract with Nelson Auto Center for the purchase and delivery of five 2011 GMC Sierra 3500HD 4WD cab and chassis units for the fleet services division in accordance with Minnesota State Contract No. 443944, Release No. T-642(5), specifications and pricing in the amount of \$162,592.55 plus \$10,568.52 sales tax plus \$625 registration, title and tax exempt plates, for a combined total amount of \$173,786.07, terms net 30, FOB destination, payable from the Capital Equipment Fund 250, Department/Agency 015 (administrative services)-2011, Object 5580, Project No. CE250-V1104.

Resolution 11-0084 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Liscomb Hood Mason Company for property insurance from February 16, 2011, through February 16, 2012, the final contract renewal year, covering 49 city-owned structures, miscellaneous equipment and business personal property in accordance with its quote of \$84,110.99, terms due upon receipt, payable as follows:

Amount	Self Insurance Fund	Department/ Agency Insurance Accounts	Organization	Object
\$1,423.47	0610	036	1650 - Administration	5360
\$60,497.51	0610	036	1651 - General city	5360
\$7,117.35	0610	036	1652 - Water and gas	5360
\$1,423.47	0610	036	1653 - Sewer	5360
\$711.74	0610	036	1654 - Stormwater	5360
\$12,937.45	0610	036	1656 - DEDA (Duluth economic development authority)	5360

Resolution 11-0094 was unanimously adopted.

Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that Agreement 20890 with Architecture Advantage, LLP, is hereby amended to provide for additional professional architectural services in connection with the Phase I and Phase II replacement of City Hall windows, for an increase of \$33,500, payable from the Capital Improvement Fund 450, Department/Agency 030 (finance), Object 5520, Project No. CP2011-1104B; said Additional Services Directive No. 1 to be substantially in the form of Public Document No. 11-0228-14 on file in the office of the city clerk.

Resolution 11-0100 was unanimously adopted.

Approved February 28, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Ruffed Grouse Society and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0103 was unanimously adopted.

Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of corrosion technician, which were approved by the civil service board on February 1, 2011, and which are filed with the city clerk as Public Document No. 11-0228-15,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 32.

Resolution 11-0089 was unanimously adopted.

Approved February 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of trails coordinator, which were approved by the civil service board on January 11, 2011, and which are filed with the city clerk as Public Document No. 11-0228-16, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that pay range for said classification shall be Range 28. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0101 was unanimously adopted.

Approved February 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of that contract on file in the office of the city clerk as Public Document No. 11-0228-17, with, and accept funds from, St. Louis County to provide Minnesota family investment program and diversionary work program employment and training services in an amount not less than \$1,010,207 for the period January 1, 2011, through December 31, 2011. Monies received under this agreement will be deposited in Fund 268 (workforce development), Agency 031 (grants division), Organization 6235 (MFIP) and 6236 (DWP).

Resolution 11-0093 was unanimously adopted.

Approved February 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of that contract on file in the office of the city clerk as Public Document No. 11-0228-18, with, and accept funds from, St. Louis County to provide Minnesota innovation fund 2011 transportation in an amount not less than \$14,853.86 for the period January 1, 2011, through December 31, 2011. Monies received under this agreement will be deposited in Fund 268 (workforce development), Agency 031 (grants division), Organization 6228 (miscellaneous workforce development grants).

Resolution 11-0095 was unanimously adopted.

Approved February 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with HD Supply Waterworks, Ltd., for the purchase and delivery of Waterous Pacer fire hydrants during year 2011 in accordance with city-approved specifications and the vendor's low bid of \$64,428 plus \$4,429.43 sales tax for a total amount of \$68,857.43, terms net 30, FOB destination, payable

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

from the Water Fund 510, Department/Agency 500 (public works and utilities), Organization 1945, Object 5227.

Resolution 11-0085 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that resolutions 08-0497, 09-0123 and 09-0530 awarding a contract to Salo Engineering, Inc., for professional engineering services for the 2009 municipal state aid project located on Woodland Avenue from Kent Road to Arrowhead Road, City Project No. 0243TR, be amended to increase the amount by \$44,085.40 for a new total of \$643,106.68, payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530.

Resolution 11-0088 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to renew the contract with Waste Management of Minnesota, Inc., (Canyon) for landfill tipping fees in the disposal of boiler ash in accordance with city-approved specifications and the vendor's bid of \$55,125, terms net 30, payable from the Steam Fund 540, Department/Agency 920 (steam), Organization 1490, Object 5388.

Resolution 11-0096 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Lake Superior Consulting, LLC, to perform professional engineering services to develop a distribution integrity management plan for the city's natural gas distribution system in the amount of \$23,404, payable out of Gas Utility Fund 520-500-1930-2330-5303, City Project No. 0988GS.

Resolution 11-0102 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to enter into a communications facility use agreement with the state of Minnesota, department of transportation, allowing the city of Duluth police department to lease space on the communications tower located at 329 West Tenth Street, which tower is owned by the state of Minnesota; agreement to be substantially in the form of Public Document No. 11-0228-19 on file in the office of the city clerk.

Resolution 11-0097 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to execute an agreement in year 2011 with St. Louis County for four quarters of shield maintenance software associated with NEMESIS (Northeastern Minnesota Enforcement Safety Information System) in the amount of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

\$66,975, terms net 30, payable from General Fund 110, Department/Agency 160 (police), Organization 1610, Object 5404.

Resolution 11-0099 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a third amendment to City Contract No. 21014, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0228-20, with LHB Engineers and Architects, Inc., for services to assist the city in planning, designing, bidding and providing for installation of the new furniture needed for the new police headquarters facility, increasing the amount payable thereunder by \$34,087.

Resolution 11-0106 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a five-year lease purchase agreement with MTI Distributing, Inc., for assorted golf course maintenance equipment in accordance with Minnesota State Contract No. 442585, Release No. M-448(5), specifications and pricing in the amount of \$541,508.79 plus sales tax of \$37,228.73 plus interest of \$50,118.68 for a contract total of \$628,856.20, payable as an annual amount of \$125,771.24 for years 2011, 2012, 2013, 2014 and 2015, from Golf Fund 503, Department/Agency 400 (parks and recreation), Object 5415.

Resolution 11-0075 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the department of natural resources 2010 to 2012 community forest bonding grant in the amount of \$25,000 for the Planting for Tomorrow project for planting of shade trees on Duluth's boulevards and in parks, funds to be deposited in Special Projects Fund 210-030-3119-4220-02, and to execute any documents required to be executed to accept such grant to be substantially in the form of Public Document No. 11-0228-21 on file in the office of the city clerk.

Resolution 11-0092 was unanimously adopted.
Approved February 28, 2011
DON NESS, Mayor

- - -

At this time, President Gardner moved to suspend the rules to hear from speakers on Ordinance 11-008, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the first time:

BY PRESIDENT GARDNER

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

11-008 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-B, MIXED USE-BUSINESS PARK, TO R-1, RESIDENTIAL TRADITIONAL, THAT AREA OF PARK POINT FROM EIGHTH STREET TO 11TH STREET, FROM MINNESOTA AVENUE TO THE REAR PROPERTY LINE (CITY OF DULUTH).

President Gardner moved to suspend the rules to hear speakers on the ordinance, which motion was seconded and unanimously carried.

Bob Fiero, Jeff Stuermer and Jan Karon expressed support and concerns of: this is a unique location with residential areas and a variety of businesses, activities and water barriers; this plan takes into consideration the existing businesses keeping their operations to a defined purpose; the problem is with developers' ambiguity of what the future developments will consist of and look like coming down the road; there is no barrier between the residential areas and developments; expansion dreams are not property rights; Minnesota Avenue should be the buffer between future commercial development and the residents; changes to the existing commercial activities could likely be more adverse to residents and the approval of the comprehensive plan means the implementation of the City Legislative Code's United Development Chapter through this specific ordinance.

- - -

MOTIONS AND RESOLUTIONS

The following resolutions were also considered.

RESOLVED, that the proper city officials are hereby authorized to execute and implement a collective bargaining agreement with Local 66 of AFSCME, represented by AFSCME Minnesota Council 5, containing the same terms and conditions, and being in the same form (except for typographic or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 11-0228-22, covering the year 2011.

Resolution 11-0091 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

Approved February 28, 2011

DON NESS, Mayor

- - -

Resolution 11-0104, by President Gardner and Councilor Anderson, expressing opposition to the addition of photo identification requirements in elections, was introduced for discussion.

Councilor Anderson moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Angie Miller, director of Community Action Duluth, noted that their organization has a long history of participating in nonpartisan voter registration activities and candidate forums. She noted their support of this resolution and opposition to this issue because: many eligible voters do not have the types of identification required by this legislation; elderly, disabled, those earning less than \$35,000, African Americans and college students do not have either this ID or an ID with their current address; the legislation would only provide for one location in a county that would issue this identification and this is a solution in search of a problem.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilors Anderson, Boyle, Cuneo, Halberg and Hartman supported the resolution for reasons of: it is the council's purview to express their thoughts on state legislation; voting is a right that is protected by the Minnesota and the United States constitutions; this legislation would chip away at the voting right; there has been no conviction on voter fraud; Minnesota has a long, proud tradition of high voter turnout and clean elections; there has only been 26 felony voter convictions out of 2.9 million voters; the less roadblocks to vote, the better; it would be a shame to make voting more difficult and a step in the wrong direction; this will increase the barriers to voting and this will disenfranchise voters.

Councilors Fosle and Fedora opposed the resolution for reasons of: disabled, elderly and young voters all have photo identifications; this is a legislative issue and not a city issue; these identification cards will be available at no charge; 19 states require voter photo identification; a Rasmussen poll showed that 80 percent of polling data showed support that voters should be required to show an identification; the Indiana Supreme Court declared that no one had been harmed by that state's voter identification law; in 2008 there were 17,000 ballots cast that could not be reconciled with the state voter registration system; there were 30,000 postal verification cards that were returned as "undeliverable" and this issue should be put on the ballot as a constitutional question for the voters to decide.

Resolution 11-0104 was adopted as follows:

BY PRESIDENT GARDNER AND COUNCILOR ANDERSON:

WHEREAS, many eligible voters do not have photo identification; and

WHEREAS, eligible voters who do not have photo identification include the elderly, low-income persons, persons with disabilities and students; and

WHEREAS, voters who are least likely to have photo identification are more likely to experience barriers that would prevent them from obtaining photo identification; and

WHEREAS, the supporting documents needed to obtain an identification card, such as birth certificates and marriage licenses, can be costly and time-consuming to track down; and

WHEREAS, for the reasons set forth above, photo identification requirements will suppress the vote; and

WHEREAS, the asserted basis for requiring photo identification is voter fraud; and

WHEREAS, voter fraud is rare; and

WHEREAS, photo identification requirements are not necessary to maintain election integrity; and

WHEREAS, photo identification requirements create an additional layer of costly bureaucracy in elections; and

WHEREAS, the cost of providing photo identification for persons not able to afford it would ultimately be paid by the taxpayer and would provide limited benefit to the community.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council does hereby express opposition to the addition of photo identification requirements in elections.

Resolution 11-0104 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved February 28, 2011

DON NESS, Mayor

- - -

The meeting was adjourned at 10:05 p.m.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 14, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0314-10 John Hummel, et al. (supported by four signatures), communication regarding the proposed Ivanhoe Street improvement project (11-0131R). -- Received

11-0314-01 The following communications regarding proposed Park Point reclassifications (11-004-O and 11-008-O): (a) Janice K. Cohen; (b) Janet Draper; (c) Brian and Mary Grover; (d) Warren Howe; (e) Lakehead Boat Basin and Cornerstone Construction, by William M. Burns, attorney; (f) W. Michael Medlin; (g) Janet and Karl Olson; (h) John Pegg; (i) Shirley Reiersen; (j) Jeff Stuermer; (k) Carolyn Sundquist. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-0314-02 Civil service board minutes of January 11, 2011, meeting. -- Received

11-0314-03 Commission on disabilities minutes of February 2, 2011, meeting. -- Received

11-0314-04 Duluth airport authority minutes of January 11, 2011, meeting. -- Received

11-0314-05 Duluth economic development authority minutes of January 26, 2011, meeting. -- Received

11-0314-06 Duluth public arts commission minutes of: (a) January 24; (b) February 13, 2011, meetings. -- Received

11-0314-07 Entertainment and convention center authority minutes of February 22, 2011, meeting. -- Received

11-0314-08 Housing and redevelopment authority minutes of: (a) December 28, 2010; (b) January 25, 2011: (1) Annual; (2) Regular, meetings. -- Received

11-0314-09 Parking commission recommendation regarding parking meters in the Lincoln Park business area, pursuant to Resolution 10-0576. -- Received

--

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martel spoke of his concerns regarding the Duluth School District's Red Plan, noting: a discrepancy on cost estimates and actual costs associated for the pool and locker rooms with the new school construction.

--

Wendy Braun expressed concerns about the Anderson Road reconstruction project and that the residents prefer the sidewalk versus the shared use path option (Public Document No. 11-0314-24).

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLUTION FOR RECONSIDERATION

Councilor Fosle moved to reconsider Resolution 11-0101, approving proposed specifications for the civil service classification of trails coordinator and specifying contract benefits for same, which motion was seconded and failed upon the following vote:

Yeas: Councilor Fedora, Fosle and Stauber -- 3

Nays: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the assessment roll levied to defray the assessable portion of the 2009 Lakeside Lower Central street improvement contract (#7098 – Street Improvement Fund 440) is set. The total assessable amount is \$361,790 and this assessment roll is hereby confirmed.

Resolution 11-0120 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of the 2009 Woodland Avenue MSA Kent Road to Arrowhead Road Contract (#7107 – Street Improvement Fund 440) is set. The total assessable amount is \$258,847.98 and this assessment roll is hereby confirmed.

Resolution 11-0121 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following temporary on sale 3.2 percent malt liquor license and temporary dance license, subject to departmental approvals with any specific restrictions:

Hermantown Volunteer Fire Department, 4015 Airpark Boulevard, for April 2, 2011, with Daniel Peterson, manager, from 8:00 p.m. to midnight.

Resolution 11-0111 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor licenses by the liquor control commissioner, and issues three one day dance licenses, subject to departmental approvals

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

and any specific restrictions:

Grandma's Marathon - Duluth, Inc., Canal Park Drive and Buchanan Street, for June 17-19, 2011, with Scott Kennan, manager, with the music and serving ending at 1:00 a.m.

Resolution 11-0112 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor licenses by the liquor control commissioner, subject to departmental approvals and any specific restrictions:

Northland Vietnam Veterans Association, Bayfront Park, for August 12, 13 and 14, 2011, the serving ceasing at 10:00 p.m. with Kathy Camps, manager.

Resolution 11-0113 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. 11-0314-11, with E.O. Johnson Company, Inc., for professional services related to the inventorying and analysis of the city's needs for printing and other image reproduction services and for developing a comprehensive plan to meet the city's needs for such facilities along with recommendations for implementing that plan in the amount of not to exceed \$29,500, payable from Fund 110-117-1107-5319 (general fund, management information services, MIS).

Resolution 11-0137 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of assistant city auditor, including a title change to financial systems administrator, which were approved by the civil service board on March 1, 2011, and which are filed with the city clerk as Public Document No. 11-0314-12, are approved. This classification shall be subject to the city's collective bargaining agreement with its supervisory employees; and that pay range for said classification shall be Range 1085. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0119 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the abolishment of 29 obsolete and inactive job classifications, which was approved by the civil service board on March 1, 2011, and which is filed with the city clerk as Public Document No. 11-0314-13, is approved.

Resolution 11-0122 was unanimously adopted.
Approved March 14, 2011

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of safety and training specialist, which were approved by the civil service board on March 1, 2011, and which are filed with the city clerk as Public Document No. 11-0314-14, are approved. This classification shall be subject to the city's collective bargaining agreement with its basic employees; and that pay range for said classification shall be Range 135. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0123 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of project engineer, which were approved by the civil service board on March 1, 2011, and which are filed with the city clerk as Public Document No. 11-0314-15, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 36.

Resolution 11-0133 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of permit process supervisor, which were approved by the civil service board on January 11, 2011, and which are filed with the city clerk as Public Document No. 11-0314-16, are approved; that said classification shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that pay range for said classification shall be ranges 1080-1085. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0134 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a joint powers agreement pertaining to the housing tax credit program, substantially in the form of the copy on file in the office of the city clerk as Public Document No. 11-0314-17, with the Minnesota housing finance agency (Minnesota housing) for the year 2012.

Resolution 11-0118 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth hereby accepts \$5,000 from James and Lori Rock, Classic Boats, and \$4,000 from Brad Nelson, Ripsaw News, in settlement of the debts owed to the revolving loan fund formerly operated by North Star Community Development Corporation, payable into Fund 263, community development small business revolving loan fund, and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

authorizing the city's manager of community development to execute releases.

Resolution 11-0124 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth hereby discharges the following loans from the revolving loan fund formerly operated by North Star Community Development Corporation, Fund 263, community development small business revolving loan fund, and authorizes the city's manager of community development to execute a release:

Loan Name	Principal Balance	Write Off
Duluth Preschool of Fine Arts	\$ 12,048.74	\$ 12,048.74
Ashuntae Cultural Wares	\$ 19,013.73	\$ 19,013.73
Candlelight Limousine Service	\$ 15,520.35	\$ 15,520.35
Z's Deli and Restaurant	\$ 9,833.92	\$ 9,833.92
All Brand Mr. Fixit	\$ 12,677.98	\$ 12,677.98
Larson Family Realty	\$ 7,386.19	\$ 7,386.19
TJM Construction	\$ 4,986.43	\$ 4,986.43
The Cleaning Specialist	\$ 13,703.00	\$ 13,703.00
Gracious Spaces Interiors	\$ 7,192.63	\$ 7,192.63
Wee Waddles Family Daycare	\$ 318.87	\$ 318.87
Big Lures/Little Lures	<u>\$ 2,558.92</u>	<u>\$ 2,558.92</u>
	\$105,240.76	\$105,240.76

Resolution 11-0125 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a license agreement substantially in the form of that on file with the city clerk as Public Document No. 11-0314-18 with the United States Department of the Army, Corps of Engineers, to extend and amend a temporary easement needed for the city to make repairs to the Duluth Aerial Lift Bridge under City Project No. 0792TR, at no cost to the city.

Resolution 11-0108 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Arrowhead Concrete Works, Inc., for the purchase and delivery of approximately 750 cubic yards of ready-mix concrete as needed during year 2011 by street maintenance crews in accordance with city-approved bid specifications and the vendor's bid of \$101.80 per cubic yard of type 3A32 high early concrete, for \$76,350 plus \$5,249.06 sales tax, for an estimated total of \$81,599.06, terms net 30, FOB destination, payable from the General Fund 110, Department/Agency 121 (public administration), Organization 1217-2140 (maintenance operations-street maintenance), Object 5224.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0109 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Vessco, Inc., for the purchase and delivery of two ProMinent Polyrex 1.0 dry polymer make-down systems for the city's Lakewood water treatment plant on 8130 Congdon Boulevard, in accordance with city-approved specifications and the vendor's base quote of \$67,570 plus \$4,500 start-up/onsite fee plus \$4,500 freight, plus \$4,645.44 sales tax (6.875% of base) for a combined total amount of \$81,215.44, payable from the Water Fund 510, Department/Agency 500 (public works and utilities), Organization 1905 (capital), Object (capital equipment).

Resolution 11-0126 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 61 of the City Charter, the city council hereby expresses its intent to cause the following portions of the streets named below to be improved as part of the city's 2011 street preservation project and hereby requests that the mayor prepare or cause to have prepared plans, specifications and estimates therefor, and file such plans and estimates with the special assessment board, together with a recommendation as to what portion of the costs should be paid by special assessment and what part if any should be a general obligation of the city, the number of installments in which assessments may be paid, and the lands which should be included in the special assessment.

- Arrowhead Road from Kenwood Avenue to Rice Lake Road;
- 88th Avenue West (Loop) from TH23 to TH23;
- First Street from Tenth Avenue East to 21st Avenue East;
- Fourth Avenue West from Second Street Alley to Fourth Street;
- Swan Lake Road from Basswood Avenue to Arrowhead Road.

Resolution 11-0129 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Woolpert, Inc., for professional services to provide a service upgrade of higher density light detection and ranging (LiDAR) data and to provide three inch pixel imagery of the city of Duluth in the amount of \$118,750, payable out of Stormwater Fund 535-500-1915-5310, City Project No. 0994ST.

Resolution 11-0135 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places in the areas bounded by Canal Park Drive and Lake Avenue between the Aerial Lift Bridge and Railroad Street during the marathon on June 18, 2011, to coincide with Grandma's Marathon special events license, provided that all alcoholic beverages consumed outside of the desig-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

nated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 11-0114 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Duluth City Code Chapter 12, Civil Offenses, the revised administrative enforcement program penalty schedule, on file in the office of the city clerk as Public Document No. 11-0314-19, is hereby adopted.

Resolution 11-0117 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. EMW-2010-FO-04997 from the U.S. department of homeland security, federal emergency management agency, assistance to firefighters grant program, operations and safety grant, a copy of which is on file in the office of the city clerk as Public Document No. 11-0314-20, in the amount of \$152,640, said funds to be deposited in Fund 210-special projects fund, Agency 030-finance, Organization 3174-FEMA grant, Revenue Source 4209-02, for the purpose of purchasing 66 portable radios, 15 sets of firefighter turnout gear and firefighter emergency bail-out kits, and committing \$38,160 as the city's local share cost of said grant, \$16,380 of said sum to be paid from Fund 110-general, Agency 0150-fire, Organization 1502-operations, Revenue Source 5241-small equipment and \$21,780 of said sum to be payable from Fund 450-capital improvements fund; Department 030-finance; Object 5520-improvements; Project Number CP2011-1116b-communication system.

Resolution 11-0132 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0314-21, with the Arrowhead Economic Opportunity Agency for the provision of the senior dining and meals on wheels programs.

Resolution 11-0060 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to enter into an agreement with Meyer Group of Duluth, PC, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0314-22, for professional architectural, project management and engineering services related to mechanical system and building envelope upgrades at the Duluth main public library, 520 West Superior Street, for a total of \$56,160, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

and structures), Project CP2010-1010B.

Resolution 11-0115 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 11-0116, awarding a contract to Nelson Auto Center, Inc., for the purchase and delivery of three 2011 GMC Sierra 2500HD 4WD extended cab work trucks for a total of \$104,930.07, was introduced by Councilor Cuneo for discussion.

Councilor Stauber commented that he would not be supporting this resolution and the next two because he did not feel that new vehicles needed to be purchased when used vehicles work fine for many cities and money will have to be borrowed to acquire them.

Resolution 11-0116 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Nelson Auto Center, Inc., for the purchase and delivery of three GMC Sierra 2500HD 4WD extended cab work trucks for the fleet services division in accordance with Minnesota State Contract 443944, Release T-642(5), specifications and pricing in the amount of \$98,173.77, plus \$6,381.30 sales tax, plus \$375 registration for title and tax exempt plates, for a combined total amount of \$104,930.07, payable as follows:

(a) \$61,209.21 from Water Fund 510, Department/Agency 500-1905 (public works and utilities-capital), Object 5580 (capital equipment);

(b) \$43,720.86 from Gas Fund 500, Department/Agency 500-1905 (public works and utilities-capital), Object 5580 (capital equipment).

Resolution 11-0116 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

Approved March 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Thane Hawkins Polar Chevrolet for the purchase and delivery of four 2011 Chevrolet Express 3500 RWD cargo vans for the fleet services division in accordance with Minnesota State Contract 44342, Release A-175(5), specifications and pricing in the amount of \$84,061 plus \$5,463.97 sales tax, plus \$500 license, registration and tax exempt plates, for a combined total amount of \$90,024.97, payable as follows:

(a) \$13,503.75 from Water Fund 510, Department/Agency 500-1905 (public works and utilities-capital), Object 5580 (capital equipment);

(b) \$76,521.22 from Gas Fund 520, Department/Agency 500-1905 (public works and utilities-capital), Object 5580 (capital equipment).

Resolution 11-0127 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Nays: Councilor Stauber -- 1
Approved March 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Northstar International, Inc., dba Astleford International Trucks, for the purchase and delivery of three 2011 International Model 7500 single axle cab and chassis units for the fleet services division in accordance with Minnesota State Contract 443428, Release T-467(5), specifications and pricing in the amount of \$230,559.57 plus \$14,986.37 sales tax, plus \$375 for license, registration and tax exempt plates, for a combined total amount of \$245,920.94, payable from the Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2011 (fiscal year), Object 5580 (capital equipment), Project CE250-V1104.

Resolution 11-0128 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1
Approved March 14, 2011
DON NESS, Mayor

- - -

BY COUNCILORS ANDERSON AND HARTMAN:

WHEREAS, since 1858 Sunday liquor sales have been prohibited in the state of Minnesota; and

WHEREAS, due to the current law, border cities such as Duluth lose thousands of dollars in possible tax revenue generated by Sunday liquor sales to cities like Superior, Wisconsin; and

WHEREAS, State Senator Roger Reinert has introduced legislation, on file in the Minnesota senate as S.F. No. 197, which would permit Sunday liquor sales in Minnesota; and

WHEREAS, the senate will hear this bill in committee on March 16, 2011;

THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby expresses its support for S.F. No. 197 permitting Sunday liquor sales in Minnesota.

Resolution 11-0140 was unanimously adopted.

Approved March 14, 2011
DON NESS, Mayor

- - -

BY PRESIDENT GARDNER:

RESOLVED, that the council hereby confirms the following appointments made by the city council president to the tourism tax task force created by Resolution 11-0087.

NAME	TITLE
Jeff Anderson	city councilor
Dan Hartman	city councilor
Jackie Halberg	city councilor
Jack LaVoy	industry representative
Todd Torvinen	industry representative
Karen Pionk	industry representative

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Debbie Isabell-Nelson	private citizen
Doug Britton	private citizen
Linda Krug	private citizen

Resolution 11-0138 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

- - -

Resolution 11-0130, amending Resolution 10-0422 awarding a contract for a professional engineering services agreement with Salo Engineering, Inc. for the development and final design and construction plans for the reconstruction of Ivanhoe Street from 49th Avenue East to 54th Avenue East in the amount of \$11,014 for a new total of \$90,534.52; and Resolution 11-0131, ordering the improvement of Ivanhoe Street from 49th Avenue East to 54th Avenue East at an estimated cost of \$1,369,200, were introduced by Councilor Hartman for discussion.

Councilor Hartman moved to suspend the rules to hear speakers on the resolutions, which motion was seconded and unanimously carried.

Mark Irving and Ryan Stauber expressed support for retaining the 36 foot width on the two blocks between 49th and 51st avenues East.

Councilor Stauber moved to amend Resolution 11-0131 by adding at the end of the first paragraph the following: "provided however that the plans for such project shall be modified to restore the width of Ivanhoe Street between 49th and 51st avenues East to 36 feet, from 26 feet as shown in the said project plans," which motion was seconded and discussed.

Councilors Fedora and Stauber supported the amendment for reasons of: in this two block section there are no potholes, cracks or bumps, thus, if it was not for the needed underground work, this street would not need to be touched at all; this is the only access to the building at the western end of this street and this is a stately street with mature trees and the residents should have their street restored to 36 feet.

Chief Administrative Officer David Montgomery, to councilor questions, stated that the 26 foot wide street will meet the fire requirements; the need to have this street 36 feet wide no longer exists with the closure of the Rockridge School; if that site is redeveloped, they will have to meet the new on-site parking and access requirements and there should be a consistent street width on this street to aid with maintenance and snow plowing.

Councilor Stauber's amendment failed upon the following vote:

Yeas: Councilors Fedora and Stauber -- 2

Nays: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7

Resolutions 11-0130 and 11-0131 were adopted as follows:

RESOLVED, that Resolution 10-0422 to Salo Engineering, Inc., for professional engineering services for the reconstruction of Ivanhoe Street from 49th Avenue East to 54th Avenue East be amended by an amount of \$11,014 for a new total of \$90,534.52. The increase will be payable from Street Improvement Fund 440-038-5530.

Resolution 11-0130 was unanimously adopted.
Approved March 14, 2011
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- - -

RESOLVED, that it is deemed necessary for public convenience and safety and it is hereby ordered that Ivanhoe Street from 49th Avenue East to 54th Avenue East (City Project No. 0851TR) be improved.

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said project as estimated by the city engineer is \$1,369,200, payable from Street Improvement Fund 440-038-5530. The funding sources for this project will be as follows: \$834,000 from Street Improvement Fund 440, \$235,200 from Water Fund 510, \$100,000 from Stormwater Utility Fund 535, \$200,000 from Sanitary Sewer Fund 530, and of these project costs \$211,500 will be assessed to benefitting properties.

FURTHER RESOLVED, that assessments shall be levied upon lands benefitting per the preliminary assessment roll (Public Document No. 11-0314-23) and may be paid in 15 annual installments at municipal bond index fund rate plus 1.50 percent interest.

Resolution 11-0131 was unanimously adopted.

Approved March 14, 2011

DON NESS, Mayor

- - -

At this time, Councilor Fosle left his seat.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR STAUBER

11-004 (10080) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM I-W, INDUSTRIAL WATERFRONT, TO MU-W, MIXED USE WATERFRONT, PROPERTY AT 1000 MINNESOTA AVENUE (LAKEHEAD BOAT BASIN, INC.).

Councilor Stauber moved to remove the ordinance from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to hear speakers on the ordinance, which motion was seconded and unanimously carried.

Ken Kolledge felt that a new hotel being proposed for this site is going to be a monstrosity and that the council should represent the residents' wishes by not approving this.

Andrew Slade stated that this ordinance and the next one need to be considered together because they are a balanced approach that allows the developer to build his hotel and protects the neighborhood.

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fosle -- 1

- - -

At this time, Councilor Fosle returned to his seat.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The following entitled ordinance was read for the second time:

BY PRESIDENT GARDNER

11-008 (10081) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-B, MIXED USE-BUSINESS PARK, TO R-1, RESIDENTIAL TRADITIONAL, THAT AREA OF PARK POINT FROM EIGHTH STREET TO 11TH STREET, FROM MINNESOTA AVENUE TO THE REAR PROPERTY LINE (CITY OF DULUTH).

Councilor Stauber moved to suspend the rules to hear speakers on the ordinance, which motion was seconded and unanimously carried.

Justin Medlin, Deborah Medlin and Jodie Johnson-Dahl, business owners on Park point, expressed concerns over: the comprehensive plan is not being followed; this is taking away an existing business owner's plans for expansion on property that is properly zoned and owned by them; this traditional neighborhood has been a unique mix use of business and neighborhood; the reference to a buffer zone in practicality is not doable, because by changing it to residential, thereby negating any future business expansions; those that live in this commercial area have lived in this area next to a business for years; this is anti-business and this change of zoning will lower the property value and the opportunity to sell a business.

Elizabeth Hooper, Kevin Kelleher, Jeff Stuermer and Jan Karon supported the ordinance for reasons of: this areas does not need a hotel as high as the Sheraton; this area is primarily residential; the existing business should be grandfathered in; the vision from the comprehensive plan correctly recognized the zoning line down the middle of the block was not a sufficient barrier between the two zones; this can be a win-win situation for the developer and the residents; not following the comprehensive plan has been determined as arbitrary and capricious by the court; the comprehensive plan concluded that Park Point should primarily retain its residential nature; this ordinance will not prohibit the owner of Lakehead Boat Basin from building a hotel on his property and he will be allowed to build townhouses on this residential zone.

Joel Johnson, Park Point developer, opposed the ordinance for reasons of: his family owns six lots on one side of the block and thus serves as a buffer and does not need to be rezoned; some individuals like to live next to an industrial area and no buffer or changes are needed.

Bill Burns, counsel for the developers, reviewed the contents a letter (Public Document No. 11-0314-01(e)) that he previously sent to the council.

Councilors Fedora, Fosle and Stauber opposed the ordinance for reasons of: this is a down zoning, which creates legal liability on the city; many of the lots affected by this are owned by the developer; there are attractive areas in other parts of the county that have residential next to a hotel; the developer is reputable and will do a good job on this project; an existing business owner will not be allowed to substantially expand their operations; this will restrict a property owner from using their property as they wish; the planning commission initially passed this 8-0 on January 11 to allow the opposite of what this ordinance will do.

Councilor Stauber moved to table the ordinance to receive an opinion from the city attorney as to what an existing property owner can or cannot be allowed to do, which motion was seconded and failed upon the following vote:

Yeas: Councilors Anderson, Fedora, Halberg and Stauber -- 4

Nays: Councilors Boyle, Cuneo, Fosle, Hartman and President Gardner -- 5

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

President Gardner moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

- - -

The meeting was adjourned at 9:17 p.m.

JEFFREY J. COX, City Clerk

- - -

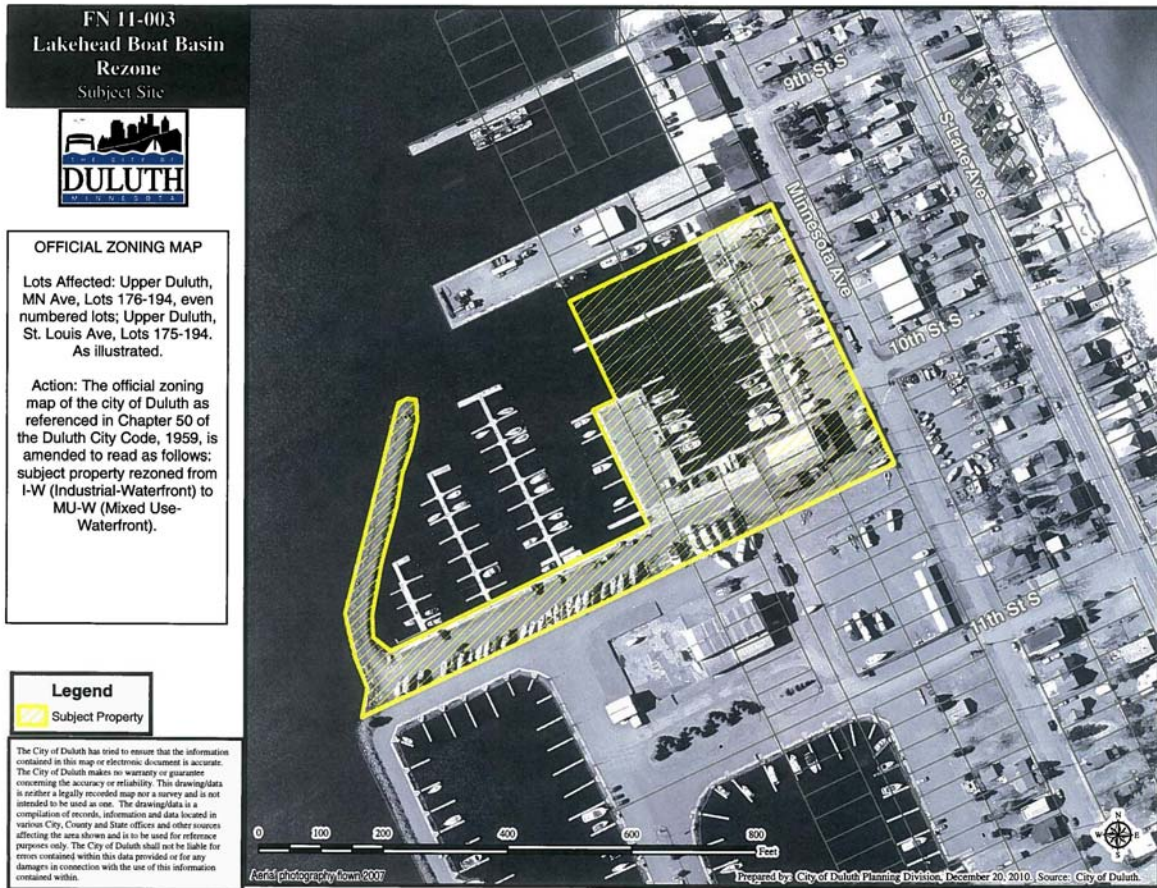
ORDINANCE NO. 10080

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM I-W, INDUSTRIAL WATERFRONT, TO MU-W, MIXED USE WATERFRONT, PROPERTY AT 1000 MINNESOTA AVENUE (LAKEHEAD BOAT BASIN, INC.).

The city of Duluth does ordain:

Section 1. That the subject property, Tax Parcel No. 010-4400-02200, being Lots 176, 178, 180, 182, 184, 186, 188, 190, 192 and 194, Upper Duluth, Minnesota Avenue, St. Louis County, Minnesota, and Tax Parcel No. 010-4400-00890, being Lots 175-194, St. Louis Avenue, Upper Duluth, St. Louis County, Minnesota, located at 1000 Minnesota Avenue, be reclassified from I-W, Industrial Waterfront, to MU-W, Mixed Use Waterfront, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011



(Ref. File No. 11-003)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 4, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fosle -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed March 14, 2011
Approved March 14, 2011
DON NESS, Mayor

ORDINANCE NO. 10081

BY PRESIDENT GARDNER:

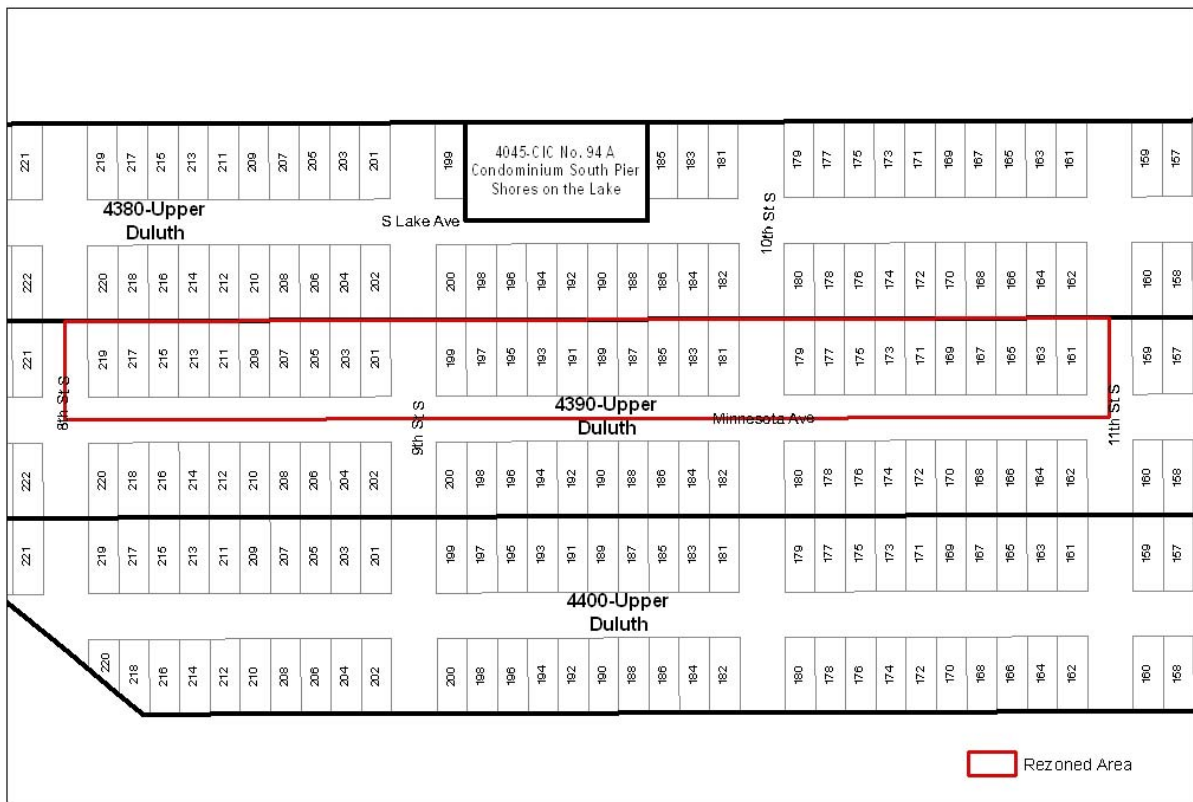
AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-B, MIXED USE-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BUSINESS PARK, TO R-1, RESIDENTIAL TRADITIONAL, THAT AREA OF PARK POINT FROM EIGHTH STREET TO 11TH STREET, FROM MINNESOTA AVENUE TO THE REAR PROPERTY LINE (CITY OF DULUTH).

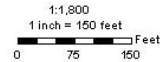
The city of Duluth does ordain:

Section 1. That the subject property, located on Park Point between Eighth Street to 11th Street, from Minnesota Avenue to the rear property line, and as more particularly described in Exhibit A, be reclassified from MU-B, Mixed Use-Business Park, to R-1, Traditional Neighborhood, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



The City of Duluth has used its best efforts to ensure that the information presented in this map is accurate and complete. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability of the information presented in this map. The information is provided for informational purposes only. The City of Duluth does not assume any liability for any errors or omissions in this map. The City of Duluth does not assume any liability for any damages or losses resulting from the use of this map.

CITY OF DULUTH
ZONING RECLASSIFICATION



(Ref. File No. 11-015)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 23, 2011)

President Gardner moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

ATTEST:
JEFFREY J. COX, City Clerk

Passed March 14, 2011
Approved March 14, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 28, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Absent: Councilor Anderson -- 1

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0328-06 Barbara Brooks communication regarding the proposed 2011 street preservation project (11-0147R). -- Received

11-0328-07 The following communications regarding proposed Minnesota House File 3830 pertaining to immigration policy (11-0110R): (a) Marsha Edgerton; (b) Arthur Germaine; (c) John M. Glendenning, Jr.; (d) Jim Herman; (e) Jerome E. Kwako; (f) Dory Sjoblom; (g) Debra L. Taylor; (h) Scott West. -- Received

11-0328-08 The following communications regarding the proposed dissolution of the Minneapolis-Duluth/Superior passenger rail alliance (11-0156R): (a) Ken Buehler; (b) Sue Connor. -- Received

11-0328-09 The following communications regarding the proposed Anderson Road reconstruction project (11-0160R): (a) Jeremy Carlson; (b) Thomas Ehle (2). -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-0328-01 Commission on disabilities 2010 year end report. -- Received

11-0328-02 Duluth airport authority minutes of February 15, 2011, meeting. -- Received

11-0328-03 Duluth human rights commission minutes of February 9, 2011, meeting. -- Received

11-0328-04 Duluth public utilities commission minutes of February 9, 2011, meeting. -- Received

11-0328-05 Library board minutes of January 13, 2011, meeting. -- Received

- - -

At this time, 7:10 p.m., the public hearing on Northstar Machine & Tool Company, Inc., dba Northstar Aerospace, loan agreement amendment began.

Kevin Snider, vice president of Northstar Aerospace, reviewed the history of the company and employment, how the recession affected their business and the company's plan for the future.

At this time, 7:15 p.m., the public hearing was declared closed and the regular order of business resumed.

- - -

At this time, 7:16 p.m., the public hearing on the DEDA spending plan - *Building in Duluth 2011*, began.

Councilor Stauber noted that the council had not received the spending plan and thus the hearing was rescheduled for the following meeting.

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Judy Gordon expressed her concerns about a timeshare issue with the condominium that she lives in at Beacon Point. She noted that her building is also used as a timeshare and hotel and they are being required to pay part of the expenses and high dues. Ms. Gordon felt that the city should ban and/or regulate condo hotels and fractional resorts.

- - -

Loren Martel commented on issues associated with the construction being done by Independent School District No. 709 and how Johnson Controls' cost estimates vary by up to 40 percent from the costs currently being submitted.

- - -

Bevin Schraw commented on his concerns over the issue of the new high additional costs associated with the rental housing operations.

- - -

Jerry Schlafer felt that it is foolish to think that bringing more people into the community will improve the community and quality of life. He further commented that more people means more crime, public services, pollution and problems.

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that pursuant to Section 2-68 of the Duluth City Code, 1959, as amended, the appointments and reappointments by Mayor Ness to city boards and commissions for terms expiring on March 31 of various years, as listed on Public Document No. 11-0328-10, are confirmed.

Resolution 11-0142 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

BY COUNCILOR BOYLE:

RESOLVED, that the city council hereby reappoints Patrick Boyle (city councilor) and John Bruggeman (at large) to the Duluth public utilities commission for terms expiring on March 31, 2014.

Resolution 11-0143 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation of the slope easements located on the Second Street Alley between Block 40 and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Block 36, Portland Division of Duluth, and the slope easements on Second Street affecting Block 40, Portland Division of Duluth; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (FN 11-025) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petitioned slope easements are useless for the initial intended purpose; and

(c) The city planning commission, at its Tuesday, March 8, 2011, regular meeting, recommended approval of the easement vacation petition, with no conditions; and

(d) The city council of the city of Duluth approves the vacation of the following-described slope easements described below and as described and depicted on Public Document No. 11-0328-11:

Slope easements on Second Street Alley affecting Block 36 and Block 40, Portland Division of Duluth, from the southeast lines of Blocks 36 and 40 to the centerline of North 11th Avenue East and its extension, according to the condemnation proceedings, plat of which was recorded in the office of the register of deeds, July 12, 1890, in Book C of Plats, page 261; and

Slope easements on Second Street affecting Block 40, Portland Division of Duluth, from the southeast line of Block 40 to the centerline of North 11th Avenue East and its extension, according to the Condemnation Plat for Easement of Slopes on Second Street from Sixth Avenue West to 13th Avenue East, recorded in the office of the register of deeds on February 7, 1891, in Book C of Plats, page 321;

(e) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-0328-11 showing the alley to be vacated and utility easements retained.

Resolution 11-0149 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to execute an agreement between the city of Duluth and the Regents of the University of Minnesota (Public Document No. 11-0328-12) for professional and technical services needed in conjunction with the city's stream monitoring program in an amount not to exceed \$60,000, to be paid from Fund 535 (stormwater), Agency 500 (public works and utilities), Organization 1915 (utility general expense), Object 5441.

Resolution 11-0152 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth hereby finds that:

(a) There is a need for all energy consumers to work to conserve valuable energy resources;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) It is in the best interests of the citizens of the city, both as the owner of a natural gas utility and as a part of the greater Minnesota community, to encourage such conservation;

(c) Based on these determinations, pursuant to Resolution 10-0537, the city and Minnesota Power, a division of ALLETE, Inc., ("MP") joined together to create the pilot home performance audit program for the purpose of offering, at no cost, basic energy auditing services to users of natural gas and electrical services in the city;

(d) The aforesaid program has proven valuable and effective in assisting customers of city and MP in reducing energy consumption and therefore there is a need to offer such more comprehensive home audit services on a longer term basis to those consumers;

(e) It is in the best interests of the citizens of the city and of the state of Minnesota and therefore a public purpose for the city to join with MP in establishing and funding a more comprehensive and longer term energy audit program to encourage the conservation of energy resources, especially natural gas resources, in the city, and create an infrastructure of home performance auditors, air sealing contractors and insulation contractors.

FURTHER RESOLVED, that the city of Duluth does hereby establish the advanced home performance audit program as described in the program guidelines.

FURTHER RESOLVED, that said program guidelines are hereby approved.

FURTHER RESOLVED, that the director of public works and utilities is hereby authorized to implement and administer the advance home energy audit program under the terms and conditions set forth in said program guidelines for up to 200 customers of the city's natural gas utility by April 1, 2012, at a cost of not to exceed \$40,000, payable from Fund 555-500-5441 (home energy conservation, public works and utilities).

Resolution 11-0153 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to Dougherty Funeral Home the sum of \$15,891.92 in full and final settlement of the claim which arose as a result of a city employee capping the private sanitary sewer lateral in error during the Second Street renovation project which occurred near 600 East Second Street on December 6, 2010; payment to be made from Fund 610-036-1653-5841 (self insurance-liabilities, insurance accounts, insurance - sewer).

Resolution 11-0161 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Haldeman-Homme, Inc., for purchase, delivery and installation of high density storage for the new police headquarters in accordance with city-approved specifications and the vendor's low bid in the amount of \$319,812 (material and labor) plus \$15,740 (a Synco wheel system) plus \$20,386.30 (sales tax based only on units) for a total combined amount of \$355,938.30, terms net 30, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2009-0928B.

Resolution 11-0145 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- - -

RESOLVED, that city officials are hereby authorized to contract with Motorola, Inc., for the purchase and delivery of 66 portable radios and associated equipment for the Duluth fire department in accordance with Minnesota State Contract 437255, Release R-651(5), specifications and pricing in the amount of \$94,421.58 plus \$6,491.48 sales tax for a total combined amount of \$100,913.06, payable as follows:

(a) \$80,730.45 from Special Projects Fund 210, Department/Agency 030 (finance), Organization 3174 (FEMA grant SCBA), Object 4209-2 (direct federal grants operating); and
(b) \$20,182.61 from Capital Improvements Fund 450, Department/Agency 030 (finance), Organization 2011, Object 5520 (buildings and structures), Project No. CP 2011-1116b (communication system).

Resolution 11-0157 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with BigBelly Solar, Inc., for the purchase and delivery of ten two-unit solar powered trash/recycling kiosks in accordance with city-approved specifications and the vendor's quote of \$57,373.80 plus \$3,944.45 sales tax for a combined total amount of \$61,318.25, payable from the Energy Management Fund 257, Department/Agency 015 (administrative services), Object 5580 (capital equipment).

Resolution 11-0158 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 11-0155, approving the *Building in Duluth 2011* spending plan, was introduced by Councilor Stauber for discussion.

Councilor Stauber moved to table the resolution so that the plan could be supplied, which motion was seconded and unanimously carried.

- - -

Resolution 11-0139, granting a special use permit to Nsighttel, LLC, d/b/a Cellcom, for a 345 foot telecommunications tower in an R-1 district at approximately 1500 East Orange Street, was introduced by Councilor Stauber.

Councilor Stauber moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Robert Sobieck, director of engineering of Cellcom, reviewed the history of the company and stated that they have been working with the planning division for the proper approvals.

Resolution 11-0139 was adopted as follows:

RESOLVED, that:

(a) The city council grants the request for a special use permit submitted by James Cheshire, representing Nsighttel Wireless, LLC, d/b/a Cellcom, for wireless communications facility including a 345 foot tall monopole, 75 foot by 75 foot fenced compound, and 15 foot by 28 foot communications equipment building on property owned by WDIO-TV, LLC, at

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

approximately 1500 East Orange Street and legally described as Lots 1, 2 and 3 of Block 19 of Duluth Heights First Division; and

(b) Pursuant to Section 50-32 and Section 50-35(ff) of the Duluth City Code, 1959, as amended, and in effect on the date of this application (June 25, 2010), such request was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing; and

(c) The city planning commission, at their regular meeting on March 8, 2011, considered the petition's effect on the comprehensive plan and property values in the neighborhood and voted to recommend approval of the petition for a wireless communications facility, with conditions; and

(d) The approval was made because of the city planning commission finding that appropriate safeguards will exist to protect the comprehensive plan and to conserve and to protect property values in the neighborhood if conditions are observed (FN 10-068).

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for a wireless communications facility including a 345 foot tall monopole, 75 foot by 75 foot fenced compound and 15 foot by 28 foot communications equipment building subject to the following conditions:

(a) That the project be constructed and maintained according to the documents titled "Tower Hill BTAC119-02-08 Construction Drawings 345 Self Support October 2010" prepared by Edge Consulting Engineers, received October 25, 2010, and shown on Public Document No. 11-0328-13;

(b) Any future co-location or modification of the facility will require compliance with all current applicable rules;

(c) That the applicant secure all permits required by federal, state, county or city laws and regulations (including, but not limited to, building permits);

(d) Applicant submit a copy of the structural analysis indicating capacity for the existing and future antennas, including a geotechnical report and calculations for the foundation capacity;

(e) The owner signs an agreement to petition for street improvement to allow the city to assess in the event of future public improvements.

Resolution 11-0139 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a fifth amendment to the MIF loan agreement and a fifth promissory note modification agreement substantially in the form of those on file in the office of the city clerk as Public Document No. 11-0328-14 with Northstar Machine and Tool, Inc., d.b.a Northstar Aerospace, allowing Northstar to make payments of interest plus an amount equal to one-half of the principal payment provided for under the note for an additional six-month period, from April 1, 2011, through September 30, 2011.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute a fifth amendment to the grant agreement with the state of Minnesota, such amendment to reflect the fifth amendment to the MIF loan agreement and fifth promissory modification agreement.

Resolution 11-0141 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved March 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Northstar International, Inc., d.b.a. Astleford International Trucks, for the purchase and delivery of one 2011 International Model 7500 single axle cab and chassis unit for the fleet services division in accordance with Minnesota State Contract 443428, Release T-467(5), specifications and pricing in the amount of \$76,853.19 plus \$4,995.46 sales tax, plus \$125 for license, registration and tax exempt plates, for a combined total amount of \$81,973.65, payable from Street Improvement Program Fund 440, Department/Agency 038 (special assessment contracts), Object 5580 (capital equipment), Project No. SIP 2011-Roads.

Resolution 11-0146 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Halberg, Hartman and President Gardner -- 5

Nays: Councilors Fedora, Fosle and Stauber -- 3

Absent: Councilor Anderson -- 1

Approved March 28, 2011

DON NESS, Mayor

- - -

Resolution 11-0144, by Councilor Boyle, appointing _____ to the civil service board, was introduced for discussion.

Councilor Cuneo moved amend the resolution by inserting the name "Robert Zallar" into the blanks, which motion was seconded and unanimously carried.

Resolution 11-0144, as amended, was adopted as follows:

BY COUNCILOR BOYLE:

RESOLVED, that the Duluth City Council hereby appoints Robert Zallar to the civil service board for a term expiring on March 31, 2017.

Resolution 11-0144, as amended, was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

Resolution 11-0110, by Councilor Boyle and President Gardner, in opposition to Minnesota House File 3830 regarding immigration policy, was introduced for discussion.

Councilor Boyle moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Adam Pine, Joie Lee, Lynn Clark Pegg, Gail Schoenfelder, League of Woman Voters board of directors, Robert Grytdahl, Malee Ketelsen, immigration attorney, Xavier Bell, Robert Powless, Beatrice Larson, Ariell Schnaur. Scott Bol, Brian Thorbjornsen, Ivory Jones, Susana Pelayo Woodward, Angie Miller, Sara Thomsen, Charlotte Frantz, Brooks Anderson, Chad McKenna and Carl Sack spoke in support of the resolution for reasons of: over 500 individuals and over 30 groups have signed on to the Duluth, Minnesota, 2010 immigration resolution (Public Document No. 11-0328-18); Minnesota House File 3830 enforcement actions are costly, unjust and hampers the ability of the local police to foster positive relationships with the immigrant communities; immigrants for hundreds of years have come to make Duluth their home; immigrants pay property taxes, join unions open businesses and run for public offices; the League of Woman Voters have studied this issue and support the resolution; the Duluth Immigration Coalition was formed to offer the community a dialogue with facts; this issue is

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

very broad and complex; failed immigration laws have impacted communities and families; misinformed rhetoric has unintended consequences; this country's immigration laws are broken; state and local involvement will undermine community policing; normally opposing entities have come together on this issue; the belief that Duluthians will not condone or participate in the racial profiling of its residents is what it is all about; this whole nation is a nation of immigrants; if you have come here as an immigrant, you have hurdles of having financial means to live for ten years and it will take approximately a decade to become a citizen; this proposed law sanctions racial profiling which will teach a distrust of the police department; the only way to suspect an illegal immigrant is by racial profiling; all individuals need to be treated fairly; immigrants are Americans and should be treated that way; Americans treat others with dignity, justice and respect regardless of creed, appearance or religion; we should be thanking and welcoming immigrants for coming here; this is an issue of decency that we should care about; organized labor is opposed to any anti-immigrant law; local law enforcement personnel are not trained or paid to enforce immigration laws and individuals come to this country because of economic necessity.

John Conley and Jerry Schlafer opposed the resolution for reasons of: state legislatures should be contacted on this issue, because they are the ones dealing with this; laws are there to protect immigrants also; the issue here is the states upholding federal laws and this resolution says to ignore the federal law, which should not be done, but work to change it.

Police Chief Gordon Ramsay stated that the Minnesota and International Chiefs of Police organizations oppose this type of legislation because they do not have access to immigration information, police officers receive no training on immigration issues or fake visa's and tourists or students come here with pass ports and thus are not immigrants. He added that the police should not be detaining individuals just on the way they look or talk. Chief Ramsay felt that this bill would encourage racial profiling and the police oppose it because they work very hard to build trust with the community of color.

Councilors Fedora, Stauber and Fosle opposed the resolution for reasons of: this bill deals with illegal immigrants only; this is a 2010 bill that never had a senate companion or committee meeting; this issue is not germane to city of Duluth issues; the bill also addresses improper medical benefits received that are not being administered correctly; the bill specifically prohibits stopping someone because of the way they look or talk; law enforcement officers enforce all kinds laws: for any lawful stop, reasonable suspicion must exist and a reasonable attempt shall be made when practical; there is already coordination with law enforcement, such as recently in Cloquet, the police officers stopped someone for a traffic violation and the individual admitted to being in the country illegally and was turned over to immigration officers; there are many other good aspects of this bill that affect other illegal business hiring; those opposing this legislation should be addressing their concerns to their legislators; this legislation has nothing to do with racial profiling, it deals with the legality of being a citizen; by supporting this resolution, you are supporting illegal activity and the city receives funding for homeland security in the form of grants.

Other councilors commented at length and reiterated the comments of supporters of the resolution.

Resolution 11-0110 was adopted as follows:

BY COUNCILOR BOYLE AND PRESIDENT GARDNER:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

WHEREAS, the city council recognizes that the government of the United States, the state of Minnesota and of Duluth were founded by indigenous peoples and immigrants who traveled here seeking safety for their families and a better way of life; and

WHEREAS, the council recognizes that while there is a need for federal legislation to correct failures within our current immigration system, any legislation should support the contributions that immigrants continue to make to our community and nation, should protect all workers from mistreatment, should support the reunification of families and restore due process protections to all; and

WHEREAS, Minnesota House File 3830 wrongfully places our law enforcement officers on the front line in matters of federal immigration enforcement and threatens relationships of trust between law enforcement and citizens.

THEREFORE, BE IT RESOLVED, that the council hereby supports and calls for meaningful federal immigration policies that are consistent with civil rights for all people, with the Constitution and Bill of Rights of the United States, and that all residents be treated with dignity and respect regardless of appearance, creed or religion, and that humane and inclusive policies for all be implemented.

FURTHER RESOLVED, that the council hereby stands in opposition to Minnesota House File 3830.

Resolution 11-0110 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Halberg, Hartman and President Gardner -- 5

Nays: Councilors Fedora, Fosle and Stauber -- 3

Absent: Councilor Anderson -- 1

Approved March 28, 2011, pursuant to Section 12 of the Duluth City Charter.

- - -

Resolution 11-0156, by councilors Stauber, Fedora and Fosle, supporting the dissolution of the Minneapolis-Duluth/Superior passenger rail alliance, was introduced for discussion.

Councilor Stauber moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Ken Buehler, executive director of Lake Superior Railroad Museum/Historic Union Depot, and Steve O'Neil, St. Louis County board chairperson, spoke in opposition to the resolution for reasons of: the feasibility study, the technical feasibility study, the environmental study, the routes alternative analysis and Burlington Northern Santa Fe modeling have been completed; this is a data driven multi-year process; it takes time to accomplish what the federal railroad administration tells you that you have to do; this process will insure the right questions are answered and the required data is presented so that, at the end of the day, a logical and qualified decision can be made; the St. Louis County board supports this project and rail transportation is the most energy efficient means of transportation.

Councilor Stauber supported the resolution for reasons of: federal, state and city governments are all in financial trouble; our local government aid is going to be severely affected; the city has spent over \$191,000, not counting staff time, on this already; this will not be a high speed rail traveling at 150 miles per hour, but more likely an average of 49 miles per hour; commercial trains will have the priority on this rail; Amtrak only has a 74 percent reliability and 24 different labor contracts; the federal government has had to subsidize Amtrak at the rate of seven cents a mile; private industry would be doing this if it was economically feasible and when there are at least two individuals in an automobile, the carbon impact is greater by train.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilors Cuneo and Hartman opposed the resolution and noted: this is an opportunity to make a great impact on our city; this is an investment; one train is the equivalent of 280 trucks; the dollars expended have come out of the tourism tax not the general fund and St. Cloud and Rochester are also pushing for a rail connection and Duluth could be the only major metro area outside of the Twin Cities not connected.

Resolution 11-0156 failed upon the following vote (Public Document No. 11-0328-15):

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Halberg, Hartman and President Gardner -- 5

Absent: Councilor Anderson -- 1

- - -

Resolution 11-0162, by Councilor Anderson, Councilor Hartman and President Gardner, in opposition to HF42 regarding cuts to local government aid, was introduced for discussion.

Councilor Hartman moved to amend the resolution as follows:

(a) Add the following text at the end of the first paragraph: "and represents nearly 40% of our general fund; and

WHEREAS, the deep and unanticipated LGA cuts to Duluth in 2011 would severely impact city services that citizens have come to expect";

(b) Delete paragraphs 2, 3, 4, 5, 6, 7 and 9;

(c) In paragraph 8, delete the word "strongly";

which motion was seconded and carried unanimously.

Councilor Hartman presented information relative to general fund revenues, expenses and forecasting (Public Document No. 11-0328-19).

Resolution 11-0162, as amended, was adopted as follows:

BY COUNCILOR ANDERSON, COUNCILOR HARTMAN AND PRESIDENT GARDNER:

WHEREAS, the Minnesota house tax committee recently took up HF42 which would reduce local government aid (LGA) funding by roughly \$74.5 million, with all of the reduction coming from the cities of Minneapolis, St. Paul and Duluth; all other cities, including suburban metro cities will receive their certified 2011 LGA amounts with no reduction; HF42 would phase out and eliminate Duluth's LGA by 2014, a \$30.9 million reduction from current authorized amounts and represents nearly 40% of our general fund; and

WHEREAS, the deep and unanticipated LGA cuts to Duluth in 2011 would severely impact city services that citizens have come to expect.

THEREFORE, BE IT RESOLVED, that the Duluth City Council opposes HF42.

Resolution 11-0162, as amended, was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council hereby approves the settlement agreement between Johnson Controls, Inc., the city of Duluth and Duluth steam cooperative association, substantially in the form of that agreement on file with the city clerk as Public Document No. 11-0328-16; funds to be deposited in Fund No. 540 (Steam District #1).

Resolution 11-0151 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- - -

RESOLVED, that it is deemed necessary for public convenience and safety and it is hereby ordered that the following streets (City Project 0828TR) be improved:

Arrowhead Road from Kenwood Avenue to Rice Lake Road;
88th Avenue West (Loop) from TH23 to TH23;
First Street from Tenth Avenue East to 21st Avenue East;
Fourth Avenue West from Second Street Alley to Fourth Street;
Swan Lake Road from Basswood Avenue to Arrowhead Road.

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said project as estimated by the city engineer is \$3,640,000, payable from Street Improvement Fund 440-038-5530. The funding sources for this project will be as follows: \$3,600,000 from Street Improvement Fund 440, \$40,000 from Stormwater Utility Fund 535, and of these project costs, \$776,365 will be assessed to benefitting properties.

FURTHER RESOLVED, that assessments shall be levied upon lands benefitting per the preliminary assessment roll and may be paid in five annual installments at municipal bond index fund rate plus 1.50 percent interest.

Resolution 11-0147 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Anderson -- 1

Approved March 28, 2011

DON NESS, Mayor

- - -

Resolution 11-0150, increasing the contract with Brock White Company, LLC, authorizing the purchase of an additional crack sealing trailer for \$52,422.01, for a total contract amount of \$104,844.02, was introduced by Councilor Hartman for discussion.

Councilors Stauber and Fosle expressed their opposition, for reasons of: the city should not be getting into the road construction business, with a number of local firms that have historically done this and this equipment could have been leased instead of purchased, because of the fast depreciation and amount of months during the year that this work can be done.

Resolution 11-0150 was adopted as follows:

RESOLVED, that the existing contract with Brock White Company, LLC, is hereby increased, authorizing the purchase and delivery of an additional Crafcro EZ Series II 1000 base unit crack sealing trailer with options for the fleet services division in accordance with 2010 Minnesota State Contract 44112, Release C810(5), specifications and pricing for a total of \$49,049.83 plus \$3,372.18 sales tax for a combined total amount of \$52,422.01, terms net 30, FOB destination, payable from the Street Improvement Program Fund 440, Department/Agency (special assessment contracts), Object 5580 (capital equipment), Project No. SIP 2011 (roads).

Resolution 11-0150 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Absent: Councilor Anderson -- 1
Approved March 28, 2011
DON NESS, Mayor

- - -

RESOLVED, that there is hereby established by the city of Duluth the 2011 pothole reduction program (the "program") in the amount of \$1,200,000 and the guidelines (the "guidelines") therefore, on file in the office of the city clerk as Public Document No. 11-0328-17, are hereby adopted and approved.

FURTHER RESOLVED, that the director of administration is hereby authorized to implement the program in accordance with the provisions of the guidelines.

RESOLVED FURTHER, that the city council hereby expresses its intent to approve the expenditure of \$960,000 from Street Improvement Capital Project Fund 440 and \$240,000 from unanticipated MSA maintenance allotment funds in the general fund to fund the costs of implementing the program.

Resolution 11-0154 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Anderson -- 1

Approved March 28, 2011

DON NESS, Mayor

- - -

Resolution 11-0160, authorizing a second amendment to Contract No. C21221 with Ayres Associates, Inc., for professional engineering services for design and construction engineering for the Anderson Road reconstruction project in the amount of \$119,536 for a new total of \$551,537, was introduced by Councilor Hartman for discussion.

Councilor Hartman moved to suspend the rules to hear from a speaker, which motion was seconded and unanimously carried.

Mark Wick spoke in favor of the resolution and presented photos (Public Document No. 11-0328-20) showing the elimination of a proposed bike path on personal property and putting it in the roadway. He also spoke on sidewalk placement and supported an amendment to eliminate the boulevard and narrow the footprint of the project on the neighborhood.

Resolution 11-0160 was adopted as follows:

RESOLVED, that Contract No. C21221 with Ayres Associates, Inc., for professional engineering services for the reconstruction of Anderson Road from Haines Road to Chambersburg Avenue be amended by an amount of \$119,536 for a new total of \$551,537, payable from Permanent Improvement Fund 411, Department 035, Object 5530, City Project No. 0357TR.

Resolution 11-0160 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

BY COUNCILORS HARTMAN AND ANDERSON:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

WHEREAS, every citizen in our participatory government has an inherent right to access government meetings and public records; and

WHEREAS, an open and accessible government is vital to establishing and maintaining the people's trust and confidence in government and in the government's ability to effectively serve its citizens; and

WHEREAS, the protection of the right of the public to access public records and government meetings is a priority of the Duluth City Council; and

WHEREAS, the Duluth City Council is committed to openness and transparency in all aspects of its operation and seeks to set a standard in this regard.

THEREFORE, BE IT RESOLVED, that the Duluth City Council is committed to working diligently to enhance the public's access to government records and information, to increase information provided electronically and online, and to ensure that all meetings of deliberative bodies under its jurisdiction are fully noticed and open to the public.

Resolution 11-0163 was unanimously adopted.

Approved March 28, 2011

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

11-010 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH LEGISLATIVE CODE TO PROVIDE FOR THE REMOVAL OF A PORTION OF GREY'S CREEK DESIGNATED AS GENERAL DEVELOPMENT SHORELAND FROM THE NATURAL RESOURCES OVERLAY DISTRICT LOTS 13, 14, 15 AND 16 OF BLOCK 26, LAKEVIEW DIVISION OF DULUTH.

- - -

BY PRESIDENT GARDNER AND COUNCILOR HARTMAN

11-011 - AN ORDINANCE AMENDING SECTION 34-17 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PREDATORY OFFENDER RESIDENCY RESTRICTIONS.

- - -

The meeting was adjourned at 10:12 p.m.

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, April 11, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

At this time, 7:05 p.m., the public hearing regarding the Duluth economic development authority spending plan - *Building in Duluth 2011* (11-0155R), was opened.

No one appeared who wished to be heard and the public hearing was closed at 7:07 p.m.

- - -

The minutes of council meetings held on January 24, February 10 and 14, 2011, were unanimously approved.

- - -

REPORTS FROM OTHER OFFICERS

11-0411-07 Budget manager submitting 2010 general fund reconciled budget report, pursuant to Ordinance No. 10007. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-0411-08 Alcohol, gambling and tobacco commission minutes of: (a) January 5; (b) February 2; (c) March 2, 2011, meetings. -- Received

11-0411-01 Civil service board minutes of February 1, 2011, meeting. -- Received

11-0411-02 Duluth economic development authority minutes of March 2, 2011, meeting. -- Received

11-0411-03 Duluth public arts commission minutes of February 28, 2011, meeting. -- Received

11-0411-04 Duluth transit authority: (a) Minutes of January 26, 2011, meeting; (b) December 2010 income statement. -- Received

11-0411-05 Housing and redevelopment authority of Duluth minutes of February 22, 2011, meeting. -- Received

11-0411-06 Seaway Port authority of Duluth February 2011 financial summary. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell explained that the public needs to pay more attention and hold the school district accountable for the building costs of the Red Plan, as the figures given out by the school district do not necessarily reflect the accurate cost of the projects going on in all the schools, such as the aquatic center.

- - -

RESOLUTION TABLED

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Stauber moved to remove Resolution 11-0155, approving the *Building in Duluth 2011* spending plan, from the table, which motion was seconded and unanimously carried.

Resolution 11-0155 was adopted as follows:

BE IT RESOLVED, by the city council (the "council") of the city of Duluth, Minnesota (the "city"), as follows:

Section 1. Pursuant to the authority contained in Minnesota Statutes, Section 469.176, Subd. 4m (the "act"), the Duluth economic development authority ("DEDA") is authorized to use certain existing tax increment cash balances for purposes set out in a spending plan approved by the city after a public hearing on the matter.

Section 2. The city council held a public hearing on April 11, 2011, on the *Building in Duluth 2011* spending plan on file in the office of the city clerk as Public Document No. 11-0411-09 (the "spending plan"). All persons who desired to speak at the public hearing were heard and written comments were accepted.

Section 3. The city council hereby approves the spending plan providing for the use of certain existing tax increment cash balances for the purposes set out in the spending plan.

Resolution 11-0155 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

Approved April 11, 2011

DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the budget for the fiscal year May 1, 2011, to April 30, 2012, in the amount of \$5,787,409 and the 2012 repair and replacement budget as set out in the budget on file with the city clerk as Public Document No. 11-0411-10, for the Spirit Mountain recreation area authority is hereby approved.

FURTHER RESOLVED, the city acting through the city treasurer, shall make available a line of credit up to \$350,000, to be drawn upon as needed, to assist in the management of cash flow within the budget as approved, same to be repaid in full (to a zero balance) by October 31 of that year. Interest at a rate of 4.00 percent per annum shall be charged on drawn funds. The city treasurer shall determine the forms, procedures and supporting documentation that will be required to draw on the line of credit. Such transactions shall be subject to audit and public disclosures.

Resolution 11-0182 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor license, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

Lake Superior Brewing Company, LLC (Respect Your Mother Earth), Leif Erickson Park, for April 30, 2011.

Resolution 11-0176 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following 3.2 percent malt liquor license for the period beginning May 1, 2011, and ending April 30, 2012, and approves issuance of the following on sale wine license for the period ending August 31, 2011, subject to departmental approvals and further subject to approval of the liquor control commissioner:

Vitta Pizza, Inc. (Vitta Pizza), 307 Canal Park Drive, license premises main floor and front and rear patios, with Bradley Erickson, president and 50 percent stockholder, and Christie Erickson, treasurer and 50 percent stockholder.

Resolution 11-0177 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council of the city of Duluth hereby issues on sale 3.2 percent malt liquor license renewals for the period beginning May 1, 2011, and ending April 30, 2012, subject to departmental approvals and the payment of sales and property taxes, as provided for in the Duluth City Code, to the applicants listed on Public Document No. 11-0411-11.

Resolution 11-0178 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council of the city of Duluth hereby issues off sale 3.2 percent malt liquor license renewals for the period beginning May 1, 2011, and ending April 30, 2012, subject to departmental approvals and the payment of sales and property taxes, as provided for in the Duluth City Code, to the applicants listed on Public Document No. 11-0411-12.

Resolution 11-0179 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following consumption and display licenses by the liquor control commissioner for the period beginning April 1, 2011, and ending March 31, 2012, subject to departmental approvals and the payment of sales and property taxes:

Order of Owls, Nest #1200, 118 East Second Street.

Duluth Woman's Club, 2400 East Superior Street.

Resolution 11-0180 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved April 11, 2011
 DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Lincoln Park Business Group and St. James Catholic Church and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0181 was unanimously adopted.

Approved April 11, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the appointment to the entertainment and convention center authority by Mayor Ness of David Ross for a term expiring on June 30, 2013, replacing Marsha Signorelli, is confirmed.

Resolution 11-0166 was unanimously adopted.

Approved April 11, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to make the following fund transfers in the Federal Program Fund 262, Agency 020, Object 5434, HUD-funded community development accounts as set forth below:

2010 CDBG Program - Fund 262 - Project CD10CD Account Revised 2010					
Sub-project	Activity	Project	Amount	New Grant	Difference
ADMC	AD10	Lincoln Park business loan plan	10,000	-0-	(10,000)
2011 CDBG Program - Fund 262 - Project CD11CD Account Revised 2011					
Sub-project	Activity	Project	Amount	New Grant	Difference
ECDV	2264	Growing Neighborhood Businesses	66,500	76,500	10,000

Resolution 11-0167 was unanimously adopted.

Approved April 11, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to execute and implement a memorandum of understanding (Public Document No. 11-0411-13) between the city and the U.S. department of housing and urban development providing for enforcement of federal civil

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

rights laws and processing of related complaints by the city human rights office and other related matters for a period of five years.

Resolution 11-0164 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that Contract No. C20060 with MSA Professional Services, Inc., for professional engineering services related to the gas, water and sanitary sewer utilities SCADA system be hereby amended to include additional engineering services for design and construction of the SCADA system in the estimated amount of \$154,900 for a new total of \$477,613.59. \$25,000 of this increase will be payable from the Gas Fund 520, \$40,000 will be payable from the Water Fund 510, and \$89,900 will be payable from the Sanitary Sewer Fund 530, Agency 500, Division 1905, Object 5536, City Project No. 0047GS.

Resolution 11-0159 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 61 of the City Charter, the city council hereby expresses its intent to cause the construction of a sanitary sewer in Columbia Street beginning at North Central Avenue and extending 600 feet westerly, and hereby requests that the mayor prepare or cause to have prepared plans, specifications and estimates therefor, and file such plans and estimates with the special assessment board, together with a recommendation as to what portion of the costs should be paid by special assessment, the number of installments in which assessments may be paid, and the properties which should include the special assessment:

5618 Columbia Street;

5612 Columbia Street.

Resolution 11-0170 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to apply for and, if selected, implement a grant from the Great Lakes Basin program in an amount anticipated to be \$30,000 for a project entitled: *Miller Creek Disc Golf Course Demonstration Project*, funds to be deposited in Fund 210-030-3146-4209-02 (special projects fund - erosion control disc golf course), and to execute any documents required to accept and/or execute such grant.

Resolution 11-0173 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0411-14, with the organized crime drug enforcement task forces program under the direction of the United States bureau of alcohol, tobacco, firearms and explosives enforcement (ATF) to reimburse the city for its costs in providing criminal investigative services from October 1, 2010, through September 30, 2011, in an amount not to exceed \$25,000,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

funds received payable to Fund 110-160-1610-4209-02 (general, police, administration and investigation).

Resolution 11-0171 was unanimously adopted.
Approved April 11, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept the donation of unconditional monetary gifts from individuals, civic groups, corporations and other public entities and thank the contributors for their gifts; said gifts to be deposited in Special Projects Fund 210, Agency 030, (finance), Organization 3129 (Harrison Miracle Field), Donations 4660.

Resolution 11-0169 was unanimously adopted.
Approved April 11, 2011
DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that city officials are hereby authorized to enter into a contract with Duluth Coating Solutions, Inc., for the cleaning, repair and re-coating of the concrete flooring in the fleet services building at 4825 Mike Colallilo Drive, Duluth, Minnesota, in accordance with specifications prepared by the Duluth city architect and the vendor's low bid of \$117,406, terms net 30, payable from the Fleet Services Fund 660, Department/Agency 015 (administrative services), Object 5580 (capital equipment).

Resolution 11-0148 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8
Nays: Councilor Stauber -- 1
Approved April 11, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Bert's Truck Equipment, Inc., for the purchase and delivery of three nine-foot Crysteel S/S dump bodies for 84-inch chassis units; one nine-foot Crysteel S/S dump body with tommy gate and lift and dump tailgate; one nine-foot Scott 2-yard aluminum dump body; one Boss v-plow; and miscellaneous equipment in accordance with Minnesota State Contract 443302, Release T-699(5), specifications and pricing for a total of \$67,456 plus \$4,637.60 sales tax for a total combined amount of \$72,093.60, terms net 30, payable from the Capital Equipment Fund 250, Department/Agency 015-2011 (administrative services-Fiscal Year 2011), Object 5580 (capital equipment), Project No. CE250-V1104.

Resolution 11-0165 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7
Nays: Councilors Fedora and Stauber -- 2
Approved April 11, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the city council hereby accepts \$1,144,684 in lead-based paint hazard control grant program funds from the U.S. department of housing and urban development's office of healthy homes and lead hazard control to address lead-based paint in Duluth residential properties and authorizes proper city officials to enter into contracts (Public Document No. 11-0411-15) for implementing the city's program with the Duluth housing and redevelopment authority for \$1,014,684 and the American Lung Association in Minnesota for \$100,000, contingent upon the completion of the environmental review process, and payable from 2011 Community Development Fund 262-020-5434.

Resolution 11-0168 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Stauber -- 1

Approved April 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that it is deemed necessary for public convenience and safety and it is hereby ordered that the following street (City Project No. 0357TR) be improved: Anderson Road from Haines Road to Chambersburg Avenue.

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said project as estimated by the city engineer is \$2,880,000, payable from Permanent Improvement Fund 411-035-5530. The funding sources for this project will be as follows: \$2,100,000 from municipal state aid, \$230,000 from Stormwater Utility Fund 535, \$270,000 from Sanitary Sewer Fund 530, \$280,000 from Water Fund 510, and of these project costs, \$394,800 will be assessed to benefitting properties.

FURTHER RESOLVED, that assessments shall be levied upon lands benefitting per the preliminary assessment roll and may be paid in 15 annual installments at municipal bond index fund rate plus 1.50 percent interest.

Resolution 11-0174 was unanimously adopted.

Approved April 11, 2011

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR STAUBER

11-012 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-N, MIXED USE-NEIGHBORHOOD, TO FORM DISTRICTS, MID-RISE COMMUNITY SHOPPING (F-3) AND MID-RISE COMMUNITY MIX (F-4), WEST DULUTH/SPIRIT VALLEY BUSINESS DISTRICT ALONG GRAND AVENUE FROM CODY STREET TO NORTH 59TH AVENUE WEST, CENTRAL AVENUE FROM CODY STREET TO ROOSEVELT AND BETWEEN ROOSEVELT STREET AND GRAND AVENUE (CITY OF DULUTH).

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-010 (10082) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH LEGISLATIVE CODE TO PROVIDE FOR THE REMOVAL OF A PORTION OF GREY'S CREEK DESIGNATED AS GENERAL DEVELOPMENT SHORELAND FROM THE NATURAL RESOURCES OVERLAY DISTRICT LOTS 13, 14, 15 AND 16 OF BLOCK 26, LAKEVIEW DIVISION OF DULUTH.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

BY PRESIDENT GARDNER AND COUNCILOR HARTMAN

11-011 (10083) - AN ORDINANCE AMENDING SECTION 34-17 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PREDATORY OFFENDER RESIDENCY RESTRICTIONS.

President Gardner moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

COUNCILOR QUESTIONS AND COMMENTS

The councilors congratulated the University of Minnesota-Duluth Bulldog hockey team for being NCAA Division I Champions.

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The meeting was adjourned at 7:35 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

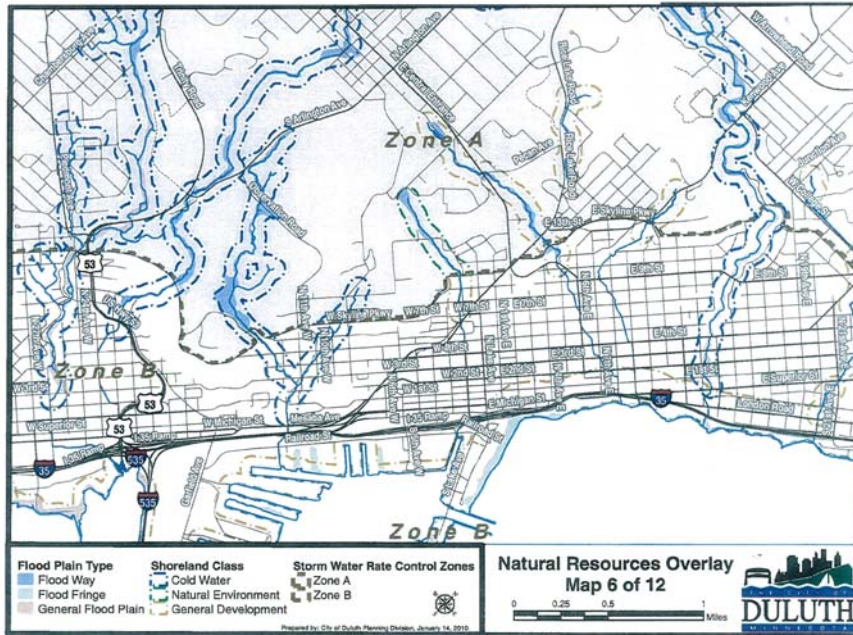
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ORDINANCE NO. 10082

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH LEGISLATIVE CODE TO PROVIDE FOR THE REMOVAL OF A PORTION OF GREY'S CREEK DESIGNATED AS GENERAL DEVELOPMENT SHORELAND FROM THE NATURAL RESOURCES OVERLAY DISTRICT LOTS 13, 14, 15 AND 16 OF BLOCK 26, LAKEVIEW DIVISION OF DULUTH.

The city of Duluth does ordain:

Section 1. That the general development shoreland within 300 feet of Grey's Creek crossing Lots 13, 14, 15 and 16 of Block 26, Lakeview Division, be removed from the NR-O map identified in Section 50-18.1.A.2(a).



(Ref. File No. 11-023)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 20, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 11, 2011
Approved April 11, 2011
DON NESS, Mayor

ORDINANCE NO. 10083

BY PRESIDENT GARDNER AND COUNCILOR HARTMAN:

AN ORDINANCE AMENDING SECTION 34-17 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PREDATORY OFFENDER RESIDENCY RESTRICTIONS.

The city of Duluth does ordain:

Section 1. That the Duluth City Code, 1959, as amended, is hereby amended by amending Section 34-17 as follows:

Sec. 34-17. Predatory offenders residency--prohibited conduct.

(a) Findings and intent:

(1) Repeat predatory offenders present an extreme threat to the public safety. Predatory offenders are likely to use physical violence and to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

repeat their offenses, and most predatory offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of predatory offender victimization to society at large, while incalculable, unmistakably steep;

(2) It is the intent of this Section to serve the city's compelling interest to promote, protect and improve the health, safety, and welfare of Duluth citizens by creating areas around locations where children regularly congregate in concentrated numbers wherein certain predatory offenders are prohibited from establishing temporary or permanent residence;

(b) Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning;

(1) Designated predatory offender. Any person who has been categorized as a Level III predatory offender under Minnesota Statutes Section 244.052, a successor statute, or a similar statute from another state in which that person's risk assessment indicates a high risk of reoffense;

(2) Permanent residence. A place where a person abides, lodges, or resides for 14 or more consecutive days;

(3) Temporary residence. A place where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person's permanent residence;

(4) School. A public or nonpublic elementary or secondary school;

(5) Licensed child care center. A group child care center currently licensed by the St. Louis County, Minnesota, public health and human services department;

(6) Public playground. A city-owned, improved outdoor area designed, equipped, and set aside for children's play and includes in that area such facilities as play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation and related structures;

(c) Predatory offenders prohibition; penalties; exceptions.

(1) Prohibited location of residence. It is unlawful for any designated predatory offender to establish a permanent residence or temporary residence within 2,000 feet of any school, licensed child care center or public playground;

(2) Measurement of distance. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of the school, licensed child care center, or public playground;

(3) Penalties. A person who violates this Section shall be punished by a fine of not exceeding \$1,000 or confinement for a term not exceeding 90 days, or be both such fine and confinement. Each day a person

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

maintains a residence in violation of this ordinance constitutes a separate violation;

(4) Exceptions. A designated predatory offender residing within a prohibited area as described in Section 34-17(c)(1)-(2) does not commit a violation of this Section if any of the following apply:

(A) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statutes sections 243.166 and 243.167, or a successor statute, prior to June 10, 2010;

(B) The person was a minor when he/she committed the offense and was not convicted as an adult;

(C) The person is a minor;

(D) The school, licensed child care center or public playground within 2,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statutes sections 243.166 and 243.167, or a successor statute;

(E) The residence is also the primary residence of the person's parents, grandparents, siblings or spouse;

(F) The residence is a property purchased, leased, or contracted with and licensed by the Minnesota department of corrections prior to June 10, 2010.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 13, 2011)

President Gardner moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 11, 2011
Approved April 11, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, April 25, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0425-01 The following communications regarding the annual deer control hunt (11-0172R): (a) Karen Moore; (b) Harland and Arlene Nelson; (c) John and Diane Powers; (d) Branden Robinson; (e) Matt Smith. -- Received

- - -

REPORTS FROM OTHER OFFICERS

11-0425-02 Assistant city attorney event agreement with Marshall School, pursuant to Section 2-35 of the Duluth City Code. -- Mayor for execution

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-0425-03 Commission on disabilities minutes of March 2, 2011, meeting. -- Received

11-0425-04 Duluth airport authority minutes of March 15, 2011, meeting. -- Received

11-0425-05 Duluth public arts commission minutes of March 21, 2011, meeting. -- Received

11-0425-06 Duluth public utilities commission minutes of March 9, 2011, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell commented on issues associated with Independent School District No. 709's facility construction budget and expenditure level, noting that the school district has had a net loss of 2,119 students from the last six years and that the district has spent \$7,228,320 to buy up and tear down buildings for their purposes and thus removing the properties from the tax rolls.

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MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that Resolution 10-0579 adopting license, permit and fee charges for 2011 be amended by adding the following fee, pursuant to Section 31-6(a) of the Duluth City Code:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Department	Fee Name	2011 Fee
Fire	Candidate physical assessment testing fee	\$100.00

Resolution 11-0197 was unanimously adopted.
 Approved April 25, 2011
 DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses and dance license, subject to departmental approvals, with any specific restrictions:

PDL of Duluth, Inc. (Club Saratoga), 331 Canal Park Drive, for June 18, 2011, from 8:00 a.m. until 3:00 p.m.

The Lake Effect Restaurant, Inc. (Lake Avenue Café), 394 Lake Avenue South, for June 17 and 18, 2011, with music and serving ceasing at 1:00 a.m.

Resolution 11-0184 was unanimously adopted.
 Approved April 25, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with DSC Communications, Inc., for the purchase and delivery of 88 NX-700 HK (50-watt) mobile radios (dash mount), software and related equipment in accordance with city-approved specifications and the vendor's low bid of \$47,802.13 plus \$2,138.56 in options plus \$3,433.42 sales tax for a combined total amount of \$53,374.11, terms net 10, FOB destination, payable from various funds, departments/agencies, organizations and objects.

Resolution 11-0189 was unanimously adopted.
 Approved April 25, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to make the following fund transfer in the Federal (ARRA) Program Fund 262, Agency 025, Object 5434, HUD-funded HPRP accounts as set forth below:

2009 HPRP Program - Fund 262 - Project HPRP				
Account Revised 2009				
Sub-Project	Project	Amount	New Grant	Difference
RRCA	Center for Alcohol and Drug Treatment flex administration	150,000	24,448.93	(125,551.07)
RRS2	Salvation Army flex fund administration	542,404	667,955.07	125,551.07

Resolution 11-0198 was unanimously adopted.
 Approved April 25, 2011
 DON NESS, Mayor

- - -

RESOLVED, that:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(a) The city council finds a sufficient petition was filed with the city planning division requesting the vacation of the 33 foot wide Kentucky Avenue located between Blocks 11 and 10 of Clague and Prindle's Addition to Duluth, and the 16 foot wide alley located within Block 10 of Clague and Prindle's Addition to Duluth; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (FN 11033) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petitioned avenue and alley will be useless for vehicular, utility and pedestrian purposes; and

(c) The city planning commission, at its April 12, 2011, regular meeting recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the following-described avenue and alley described below and as described and depicted on Public Document No. 11-0425-07:

The south half of Davis Street lying between the centerline of Rice Lake Road and the extended centerline of Kentucky Avenue; and

The east half of Kentucky Avenue adjacent to Lots 1, 3, 5, 7, 9, 11, 13 and 15, Block 10, Clague and Prindle's Addition to Duluth; and

Block 10 Alley laying between the centerline of Rice Lake Road and the extended southerly lines of Lots 15 and 16, Block 10, Clague and Prindle's Addition to Duluth; and

(e) That the city clerk is, pursuant to Section 100 (b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-0425-07 showing the alley to be vacated and utility easements retained.

Resolution 11-0204 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council makes the following findings:

(a) The city council adopted the Duluth comprehensive land use plan on June 26, 2006, via Resolution 06-0491, which outlined the desired arrangement of land uses for the next 20 years; and

(b) The city planning division, which is implementing the comprehensive land use plan by developing new zoning regulations, looked at how zoning could encourage the development and redevelopment of the community; and

(c) Local residents have expressed a strong desire to maintain the viability and character of their neighborhood; and

(d) Independent School District 709 is proposing to close Morgan Park School as part of its long range facilities plan; and

(e) The community development division held a public meeting on June 29, 2010, on the proposed amendments to the comprehensive land use plan - future land use map in which over 25 people attended; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(f) Based on public comments received, the city planning division recommended to the city planning commission that the future land use map be amended for the Morgan Park School site from institutional to general mixed use; and

(g) The city planning commission has reviewed the future land use amendment, conducted a public hearing on April 12, 2011, at their regular planning commission meeting and recommends adoption of the proposed future land use map amendments.

BE IT FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map, is amended as identified in Public Document No. 11-0425-08.

Resolution 11-0208 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth ("city") act as the legal sponsor for the Duluth Dump #5 project as contained in the contamination cleanup grant program application to be submitted on May 1, 2011, and that the mayor and clerk are hereby authorized to apply to the department of employment and economic development (DEED) for a grant in the amount of \$50,000 for funding of this project.

FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

FURTHER RESOLVED, that the city hereby commits to provide no less than \$16,667 in a qualified match contribution to be provided by the city, payable from Fund 255 (economic development), Department 020 (planning).

FURTHER RESOLVED, that the city has not violated any federal, state or local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practice.

FURTHER RESOLVED, that upon approval of its application by the state, the mayor and clerk may enter into a grant agreement with the state of Minnesota for the above referenced project and receive said grant payable into Fund 255 (economic development fund), Department 020 (planning), Source 4220-02 (state of Minnesota), and that the city certifies that it will comply with all applicable laws and regulations as stated in all contract agreements.

FURTHER RESOLVED, the mayor and the clerk are hereby authorized to execute such documents as are necessary to implement the project on behalf of the city.

Resolution 11-0209 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth ("city") act as the legal sponsor for the Hawks Boots project as contained in the contamination cleanup grant program application to be submitted on May 1, 2011, and that the mayor and clerk are hereby authorized to apply to the department of employment and economic development (DEED) for a grant in an amount not to exceed \$1,377,919 for funding of this project.

FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, that the city hereby commits to provide 25% of the project costs, up to \$459,306, in a qualified match contribution to be provided by Hawks Boots, LLC.

FURTHER RESOLVED, that the city has not violated any federal, state and local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices.

FURTHER RESOLVED, that upon approval of its application by the state, the mayor and clerk may enter into a grant agreement with the state of Minnesota for the above referenced project and receive said grant payable into Fund 255 (economic development fund), Department 020 (planning), Source 4220-02 (state of Minnesota), and that the city certifies that it will comply with all applicable laws and regulation as stated in the grant agreement.

FURTHER RESOLVED, the mayor and the clerk are hereby authorized to execute such documents as are necessary to implement the project on behalf of the city.

Resolution 11-0211 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept grant funds from the National Center for Civic Innovation in the amount of \$1,500, to develop a customer satisfaction survey system for services identified by the national citizen's surveys and through focus groups as being in need of improvement, funds to be deposited in Special Projects Fund 210-030-3150-4270 other grants, and to execute any documents required to be executed to accept such grant.

Resolution 11-0188 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Duluth Ready Mix, Inc., the first year of a three-year contract, for the purchase and delivery of Class 5 gravel and washed sand in year 2011, based on city-approved specifications and the vendor's low bid for an estimated \$160,000 in Class 5 gravel (material and delivery) and an estimated \$100,000 in washed sand (material and delivery) plus \$17,875 sales tax for an estimated total of \$277,875, terms net 30, FOB destination, and payable from the following accounts:

Amount	Fund	Department/Agency	Division	Object
		Public Works and Utilities	Utility Operations	Gravel and Other Maintenance Materials
\$55,404	Water 510	500	1945	5224
\$12,312	Gas 520	500	1945	5224
\$36,936	Sewer 530	500	1945	5224
\$18,468	Stormwater 535	500	1945	5224
		Public Administration	Maintenance Operations	
\$154,755	General Fund 110	121	1217-2140	5224

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0183 was unanimously adopted.
Approved April 25, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. 2008-PSGP-00799 from the Minnesota department of public safety, homeland security and emergency management division, a copy of which agreement is on file in the office of the city clerk as Public Document No. 11-0425-09(a), in the amount of \$128,125, said funds to be deposited in Fund 210-030-3177-4210-01 (special projects, finance, 2008 port security grant, pass through federal grant) for the purpose of purchasing and installing mobile data communications equipment on city fire apparatus, and committing \$42,708 from Fund 250-030-5580 (capital equipment, finance, capital equipment), Project No. 2010-E1001-fire mobile data computers as the city's local matching cost.

FURTHER RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. 2010-HMEP-00793 from the Minnesota department of public safety, homeland security and emergency management division, a copy of which agreement is on file in the office of the city clerk as Public Document No. 11-0425-09(b), in the amount of \$4,760, said funds to be deposited in Fund 210-030-3166-4210-02 (special projects, finance, Haz Mat emergency preparedness, pass through federal grant) for the purpose of hazardous material response training and committing \$1,190 from Fund 110-150-1505 (general fund, fire, hazardous materials [Haz Mat]) as the city's local matching cost.

Resolution 11-0192 was unanimously adopted.
Approved April 25, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a first amendment to City Contract No. 21020, substantially in the form of Public Document No. 11-0425-10, on file in the office of the city clerk, with Domestic Abuse Intervention Programs, a private nonprofit corporation under the laws of the state of Minnesota as operator of the domestic abuse intervention project, for services related to the continuation of projects under the U.S. department of justice, office of violence against women, grants to encourage arrest policies and enforcement of protection orders program, which first amendment includes the budgeted amount of \$61,958, for a total contract amount not to exceed \$86,917, payable from Fund 215-200-2280-5310 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0193 was unanimously adopted.
Approved April 25, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, department of public safety, homeland security and emergency management in the amount of \$50,000 with matching funds in the amount of \$16,667 from Fund 250-015-2010-5580 (capital equipment, administrative services, Fiscal Year 2010), Project No. CE250-E1001, and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0425-11, for the purpose of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

enhancing the surveillance system in the Duluth/Superior port area expanding on the port security project initiated in 2007, funds to be deposited in Fund 210-030-3177-4210-01 (special projects, finance, homeland security grant 2008 port security grant).

Resolution 11-0206 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Dodge of Burnsville for the tax-exempt purchase and delivery of eight 2011 Dodge Charger V-6 vehicles with options for use by the Duluth police department as fully-marked police squads in accordance with Minnesota Contract 444320, Release A-228(5), specifications and pricing for a total amount of \$181,664.00 and payable as follows:

(a) \$94,295.17 from Capital Equipment Fund 250, department/agency (administrative services), Division 2010 (Fiscal Year 2010), Object 5580 (capital equipment), Project CE250-V1001;

(b) \$87,368.83 from Capital Equipment Fund 250, department/agency (administrative services), Division 2011 (Fiscal Year 2011), Object 5580 (capital equipment), Project CE250-V1102.

Resolution 11-0207 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council makes the following findings of fact:

(a) The city of Duluth shall act as the legal sponsor for the project contained in Laws of Minnesota for 2010, Chapter 189, Sec. 21, Subd. 13 for asset preservation and exhibit renewal at the Duluth zoo; and

(b) City of Duluth has the legal authority to receive financial assistance and the institutional, managerial and financial capability to ensure adequate project administration; and

(c) The amount of \$200,000 for the project shall be deposited in Fund 200 (zoo), Agency 130, Revenue Source 4220-01 (state of MN capital); and

(d) City of Duluth has not violated any federal, state or local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice; and

(e) Upon approval of its development proposal by the state, city of Duluth may enter into an agreement with the state of Minnesota for the above-referenced project, and that city of Duluth certifies that it will comply with all applicable laws and regulations as stated in all contract agreements.

FURTHER RESOLVED, that the mayor is hereby authorized to execute such agreements as are necessary to implement the projects on behalf of the city of Duluth.

Resolution 11-0195 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that city officials are hereby authorized to contract with Northland Constructors of Duluth, LLC, for the purchase of bituminous material, hot mix (fine), as needed during year 2011 for public works and utilities and street maintenance in accordance with the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

St. Louis County's bid specifications, the vendor's bid of \$44 per ton, and the city's estimated tonnage of 13,643, for a total of \$600,292 plus \$41,270.08 sales tax for a total combined amount of \$641,562.08 payable from the following accounts:

(a) \$243,793.59 - General Fund 110, Department/Agency 121 (public administration), Organization 1217-2140 (maintenance operations - street maintenance), Object 5222 (blacktop);

(b) \$275,871.69 - Street Improvement Program Fund 440, Department/Agency 038 (special assessment contracts), Object 5222 (blacktop); Project SIP2011-0974TR-2011;

(c) \$76,987.45 - Street Improvement Program Fund 440, Department/Agency 038 (special assessment contracts), Object 5222 (blacktop), Project SIP2011-0943TR-2011;

(d) \$44,909.35 - Street Improvement Program Fund 440, Department/Agency 038 (special assessment contracts), Object 5222 (blacktop), Project SIP2011-0944TR-2011.

Resolution 11-0186 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved April 25, 2011

DON NESS, Mayor

- - -

Resolution 11-0190, authorizing a professional services agreement with SEH, Inc., for electrical and lighting engineering services associated with the West Duluth lighting improvements project for an amount not to exceed \$26,800, was introduced by Councilor Cuneo.

Councilor Halberg moved amend the title, body and statement of purpose of the resolution by changing the wording "West Duluth" to "Lincoln Park," which motion was seconded and unanimously carried.

Resolution 11-0190, as amended, was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement, substantially in the form on file in the office of the city clerk as Public Document No. 11-0425-12, with SEH, Inc., for electrical and lighting engineering services associated with the Lincoln Park lighting improvements project for an amount not to exceed \$26,800, payable from the Street Lighting Utility Fund 550, Department/Agency 120 (public administration), Object 5580 (capital equipment).

Resolution 11-0190, as amended, was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

Resolution 11-0191, authorizing a contract with Citon Computer Corporation for the purchase and delivery of Lenovo computer hardware (laptops) and related equipment as needed in year 2011, not to exceed the budget allocation of \$150,000; Resolution 11-0194, authorizing a contract with Insight Public Sector, Inc., for computer hardware and related products as needed in year 2011 not to exceed the budget allocation of \$100,000; and Resolution 11-0196 authorizing a contract with Software House International (SHI), Inc., for computer software and hardware as needed in year 2011, not to exceed the budget allocation of \$200,000, were introduced by Councilor Cuneo.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Hartman moved to table the resolutions to allow the administration to do more work on them, which motion was seconded and unanimously carried.

- - -

Resolution 11-0199, approving proposed amendments to the specifications for the civil service classification of customer relations supervisor; Resolution 11-0200, approving proposed amendments to the specifications for the civil service classification of water plant supervisor; Resolution 11-0201, approving proposed amendments to the specifications for the civil service classification of chief gas controller; and Resolution 11-0202, approving proposed specifications for the civil service classification of library supervisor and specifying contract benefits for same, were introduced by Councilor Boyle for discussion.

Chief Administrative Officer David Montgomery answered at length various councilor questions about: pay range/step and possible pay raises and job audit procedures (Public Document No. 11-0425-19).

Resolutions 11-0199, 11-0200, 11-0201 and 11-0202 were adopted as follows:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of customer relations supervisor, which were approved by the civil service board on November 3, 2010, and which are filed with the city clerk as Public Document No. 11-0425-13, are approved. This classification shall remain subject to the city's collective bargaining agreement with its supervisory unit employees and compensated at pay ranges 1055-1085.

Resolution 11-0199 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Hartman and President Gardner -- 5

Nays: Councilors Anderson, Fosle, Halberg and Stauber -- 4

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of water plant supervisor, which were approved by the civil service board on November 3, 2010, and which are filed with the city clerk as Public Document No. 11-0425-14, are approved. This classification shall remain subject to the city's collective bargaining agreement with its supervisory unit employees and compensated at pay ranges 1075-1085.

Resolution 11-0200 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Hartman and President Gardner -- 5

Nays: Councilors Anderson, Fosle, Halberg and Stauber -- 4

Approved April 25, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of chief gas controller, which were approved by the civil service board on November 3, 2010, and which are filed with the city clerk as Public Document No. 11-0425-15, are approved. This classification shall remain subject to the city's collective bargaining agreement with its supervisory unit employees and compensated at pay ranges 1080-1090.

Resolution 11-0201 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Hartman and President Gardner -- 5

Nays: Councilors Anderson, Fosle, Halberg and Stauber -- 4

Approved April 25, 2011

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of library supervisor, which were approved by the civil service board on February 1, 2011, and which are filed with the city clerk as Public Document No. 11-0425-16, are approved; that said classification shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that pay range for said classification shall be ranges 1055-1075. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0202 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman and President Gardner -- 7

Nays: Councilors Fosle and Stauber -- 2

Approved April 25, 2011

DON NESS, Mayor

- - -

Resolution 11-0210, requesting the free conveyance of tax forfeited land for park, recreation and utility purpose at Riverside, was introduced by Councilor Stauber for discussion.

Councilor Stauber moved to table the resolution to be considered with the companion ordinance, which motion was seconded and unanimously carried.

- - -

Resolution 11-0205, by President Gardner, of support for Students for the Future and Rachel's Challenge, was introduced for discussion.

President Gardner moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Alex Livesay, representing Students for the Future, spoke on their support for the resolution.

Resolution 11-0205 was adopted as follows:

BY PRESIDENT GARDNER:

RESOLVED, that the Duluth City Council hereby supports Students for the Future and recognizes and supports their initiative to bring the Rachel's Challenge program to Duluth's local schools.

FURTHER RESOLVED, that the city council hereby supports the goals of the Rachel's Challenge program which includes creating a safe learning environment and an environment of kindness and compassion for all students.

Resolution 11-0205 was unanimously adopted.

Approved April 25, 2011

DON NESS, Mayor

- - -

Resolution 11-0172, approving agreement with Arrowhead Bowhunter's Alliance for management of the annual deer control hunt, was introduced by Councilor Halberg for discussion.

Councilor Fosle moved to table the resolution so more amendments could be prepared, which motion was seconded and failed upon the following vote:

Yeas: Councilors Cuneo, Fosle, Halberg and President Gardner -- 4

Nays: Councilors Anderson, Boyle, Fedora, Hartman and Stauber -- 5

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilors discussed at length the resolution and a potential amendment.
Resolution 11-0172 was adopted as follows:

RESOLVED, that the proper city officials are authorized to execute and implement an agreement, substantially the same as that on file with the city clerk as Public Document No. 11-0425-17, between the city and Arrowhead Bowhunters Alliance for conducting the annual deer control hunt in 2011, with options to renew for three additional years, at no net cost to the city and establishing the rules to be applied to participants in management of the hunt.

Resolution 11-0172 was unanimously adopted.
Approved April 25, 2011
DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER
11-014 - AN ORDINANCE AUTHORIZING THE CONVEYANCE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO HILLSIDE APARTMENTS DULUTH, LLLP, AT NO COST.

- - -

INTRODUCED BY COUNCILOR STAUBER
11-015 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, RESIDENTIAL URBAN, TO MU-I, MIXED USE INSTITUTIONAL, PROPERTY AT 1001 TO 1025 EAST SECOND STREET (ST LUKE'S HOSPITAL).

- - -

INTRODUCED BY COUNCILOR STAUBER
11-016 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION OF THE PLAZA AREA BUSINESS DISTRICT, FROM TENTH AVENUE EAST TO 15TH AVENUE EAST, FROM MIXED USE-NEIGHBORHOOD (MU-N) TO FORM DISTRICT MID-RISE COMMUNITY MIX (F-4) AND THE LONDON ROAD BUSINESS DISTRICT AREA FROM 14TH AVENUE EAST TO 21ST AVENUE EAST FROM THE UTILITY EASEMENT ABOVE LONDON ROAD TO SOUTH STREET, FROM MIXED USE-NEIGHBORHOOD (MU-N) AND MIXED USE-BUSINESS PARK (MU-B) TO FORM DISTRICT LOW-RISE NEIGHBORHOOD MIX (F-2), RESPECTIVELY (CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER
11-017-O - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE RIVERSIDE ADDITION TO THE STATE OF MINNESOTA SO THAT THE CITY CAN REQUEST FREE CONVEYANCE FOR PARK, RECREATION AND UTILITY PURPOSES.

- - -

INTRODUCED BY COUNCILOR HARTMAN

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

11-013-O - AN ORDINANCE DEDICATING TO THE PUBLIC CERTAIN MESABA AVENUE RIGHT-OF-WAY.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-012 (10084) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-N, MIXED USE-NEIGHBORHOOD, TO FORM DISTRICTS, MID-RISE COMMUNITY SHOPPING (F-3) AND MID-RISE COMMUNITY MIX (F-4), WEST DULUTH/SPIRIT VALLEY BUSINESS DISTRICT ALONG GRAND AVENUE FROM CODY STREET TO NORTH 59TH AVENUE WEST, CENTRAL AVENUE FROM CODY STREET TO ROOSEVELT AND BETWEEN ROOSEVELT STREET AND GRAND AVENUE (CITY OF DULUTH).

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 8:04 p.m.

JEFFREY J. COX, City Clerk

- - -

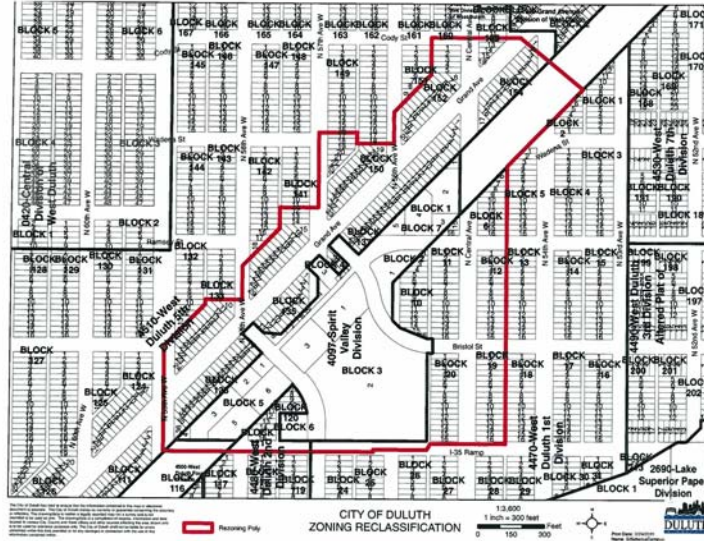
ORDINANCE NO. 10084

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-N, MIXED USE-NEIGHBORHOOD, TO FORM DISTRICTS, MID-RISE COMMUNITY SHOPPING (F-3) AND MID-RISE COMMUNITY MIX (F-4), WEST DULUTH/SPIRIT VALLEY BUSINESS DISTRICT ALONG GRAND AVENUE FROM CODY STREET TO NORTH 59TH AVENUE WEST, CENTRAL AVENUE FROM CODY STREET TO ROOSEVELT AND BETWEEN ROOSEVELT STREET AND GRAND AVENUE (CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the subject property, located in West Duluth's Spirit Valley Business District, described above, and as more particularly described in Exhibit A (Public Document No. 11-0425-18), be reclassified from its current designation as Mixed Use-Neighborhood (MU-N) to Form Districts, Mid-Rise Community Shopping (F-3) and Mid-Rise Community Mix (F-4), and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011



(Ref. File No. 11-020)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 28, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 25, 2011
Approved April 25, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, May 9, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0509-01 Duluth Affordable Housing Coalition communication regarding the proposed intent to support the request by Hillside Apartments Duluth, LLLP, for low income housing tax credits and other funding (11-0219R). -- Received

- - -

REPORTS FROM OTHER OFFICERS

11-0509-02 Clerk applications to the Minnesota gambling control board for: (a) Excluded bingo from Order of Ahepa, Sam G. Solon Chapter #267, on May 22, 2011, and November 20, 2011; (b) Exempt raffle permit from St. Luke's Foundation on July 18, 2011. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-0509-03 Duluth economic development authority minutes of March 23, 2011, meeting. -- Received

11-0509-04 Duluth seaway port authority: (a) February 2011 financial statement; (b) Minutes of: (1) August 26, 2010; (2) October 22, 2010; (3) January 27, 2011, meetings. -- Received

11-0509-05 Duluth transit authority: (a) January 2011 income statement; (b) Minutes of February 23, 2011, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell stated that the article in the *Duluth News Tribune* inaccurately reported the number of students who have come into the school district and who have left the district and stated that the main reason students are leaving is because of the Red Plan.

- - -

RESOLUTIONS TABLED

Councilor Cuneo moved to remove Resolution 11-0194, authorizing a contract with Insight Public Sector, Inc., for computer hardware and related products as needed in year 2011 not to exceed the budget allocation of \$100,000, from the table, which motion was seconded and unanimously carried.

Resolution 11-0194 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Insight Public Sector, Inc., for the purchase and delivery of computer hardware and related products as

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

needed in year 2011 in accordance with Minnesota State Contract 436388, Release C-813(5), specifications and pricing, not to exceed the budget allocation of \$100,000, payable from various funds, departments/agencies, organizations, objects.

Resolution 11-0194 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

Councilor Cuneo moved to remove Resolution 11-0196, authorizing a contract with Software House International (SHI), Inc., for computer software and hardware as needed in year 2011, not to exceed the budget allocation of \$200,000, from the table, which motion was seconded and unanimously carried.

Resolution 11-0196 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Software House International (SHI), Inc., for the purchase and delivery of computer software and hardware as needed in year 2011 in accordance with Minnesota State Contract 436392, Release C-816(5), specifications and pricing, not to exceed the budget allocation of \$200,000, terms net 30, FOB destination, payable from various funds, departments/agencies, organizations, objects.

Resolution 11-0196 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

Councilor Stauber moved to remove Resolution 11-0210, requesting the free conveyance of tax forfeited land for park, recreation and utility purpose at Riverside, from the table, which motion was seconded and unanimously carried.

At this time, Councilor Stauber moved to consider Ordinance 11-017, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-017 (10088) - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE RIVERSIDE ADDITION TO THE STATE OF MINNESOTA SO THAT THE CITY CAN REQUEST FREE CONVEYANCE FOR PARK, RECREATION AND UTILITY PURPOSES.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

Resolution 11-0210 was adopted as follows:

RESOLVED, that the Saint Louis County Board of Commissioners is hereby requested to free convey to the city of Duluth the following tax forfeited parcel for park, recreation and utility purposes.

Legal Description	Parcel ID
Portion of Outlot 4, Riverside Addition, as described: the southwesterly 65 feet of Outlot 4, Riverside Addition	010-3970-02090

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0210 was unanimously adopted.
Approved May 9, 2011
DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale intoxicating dance license for the period ending August 31, 2011, subject to departmental approvals:

Hospitality Associates of Duluth, LLC (Aces on First), 113 West First Street.
Resolution 11-0175 was unanimously adopted.
Approved May 9, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Crysteel Truck Equipment for the purchase and delivery of four Monroe Vee-Box sanders for the fleet department in accordance with Minnesota State Contract 444179, Release No. S-863(5), specifications and pricing in the amount of \$65,356.08 plus \$4,493.23 sales tax for a combined total amount of \$69,849.31, terms net 30, FOB destination, payable from Capital Equipment Fund 250, Department/Agency 015 (administrative services), fiscal year (Division 2011), 5580 capital equipment, Project No. CE250-V1104.

Resolution 11-0187 was unanimously adopted.
Approved May 9, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Bert's Truck Equipment of Moorhead, Inc., for the purchase and delivery of four Falls TER 11A3 trip edge plow and TDL9 wing plow packages for the fleet services division in accordance with Minnesota State Contract No. 444029, Release No. S-863(5), specifications and pricing in the amount of \$62,352 plus \$4,286.70 sales tax, for a combined total amount of \$66,638.70, terms net 30, FOB destination, payable from the from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2011 (fiscal year), Object 5580 (capital equipment), CE250-V1104.

Resolution 11-0215 was unanimously adopted.
Approved May 9, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following 2:00 a.m. beverage license for the period ending August 31, 2011, by the liquor control commissioner and subject to departmental approvals:

The Lake Effect Restaurant, Inc. (Lake Avenue Café), 394 Lake Avenue South.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0228 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor licenses, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

Marshall School (All Class Reunion), 1215 Rice Lake Road, for July 15, 2011, with Michael Ehrhardt, manager.

College of St. Scholastica, (John Baggs Memorial Scholarship Golf Tournament), 1200 Kenwood Avenue, for June 11, 2011, with Ken Kolquist, manager.

Resolution 11-0229 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Northern Lights Foundation and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0230 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Towmaster, Inc., for the purchase and delivery of four complete Force America hydraulic component systems for the outfitting of single axle plow trucks in accordance with Minnesota State Contract 444042, Release S-863(5), specifications and pricing in the amount of \$92,000 plus \$6,325 sales tax for a total amount of \$98,325, terms net 30, FOB destination, payable as follows:

(a) \$73,743.75 from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2011 (fiscal year), Object 5580 (capital equipment), Project No. CE250-V1104;

(b) \$24,581.25 from Street Improvement Fund 440, Department/Agency 038 (special assessment contracts), Object 5580 (capital equipment), Project SIP 2011-roads.

Resolution 11-0235 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Engle Fabrication, Inc., for the refurbishing of water tanks and sheet metal on two flushers 3750 and 3751 for the fleet services division in accordance with city-approved specifications and the vendor's quote of \$97,730 plus \$6,718.94 sales tax for a total amount of \$104,448.94, payable from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2011 (fiscal year), Object 5580, Project No. CE250-V1104.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0236 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On April 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of the Order of the Owl's, Nest #1200, (Owl's Club), 118 East Second Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0509-06;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 9, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0509-06 regarding any suspension, revocation and/or civil penalty relating to the on sale consumption and display liquor license of the Order of the Owl's, Nest #1200, (Owl's Club), 118 East Second Street are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action, and that payment of \$250 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar violations.

Resolution 11-0237 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On April 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Kegler's Inc. (Incline Station), 601 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0509-07;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 9, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0509-07 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Kegler's Inc. (Incline Station), 601 West Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action, and that payment of \$250 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar violations.

Resolution 11-0238 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to St. Mary's Duluth Clinic Foundation and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0239 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0509-08, with Midwest EAP Solutions to provide employee assistance program services for a period of five years at an estimated average annual cost of \$9,910, payable from Fund 110-700-1431-5441 (general, transfers and other functions, benefits administration/citywide HR, other services and charges).

Resolution 11-0212 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to make the following fund decrease in the federal HOME investment partnerships program, Fund 260, Agency 020, Object 5434, 2011 HUD-funded community development account as set forth below:

2011 HOME Program - Fund 260, Project CD11HM					
Sub-Project	Activity	Project	Amount	New Grant	Difference
GN11	1736	Tenant-Based Rental Assistance	\$121,500	\$104,500	(\$17,000)
GN11	1737	Tenant-Based Rental Assistance administration	\$19,400	\$18,396	(\$1,004)
GN11	1738	Duluth property rehabilitation	\$200,000	\$180,000	(\$20,000)
GN11	AD01	Program administration	\$61,600	\$53,600	(\$8,000)
CH11	2270	Pre-development - Northern Communities Land Trust (NCLT)	\$20,000	\$17,999	(\$2,001)
CH11	1226	Pre-development - Center City Housing Corporation	\$20,000	\$17,999	(\$2,001)
CH11	227A	Rehabilitation/resale - NCLT	\$367,500	\$327,467	(\$40,033)

Resolution 11-0216 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED that the proper city officials are authorized to make the following fund decreases in the Federal Community Development Block Grant (CDBG) Program Fund 262, Agency 020, Object 5434, HUD-funded community development account as set forth below:

2011 CDBG Program - Fund 262 - Project CD11CD	
Account Revised 2011	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Sub-project	Activity	Project	Amount	New Grant	Difference
2007 CDBG Program - Fund 262 - Project CD07CD Account Revised 2007					
ECDV	1244	Lifecyclers	\$40,000	-0-	(\$40,000)
2009 CDBG Program - Fund 262 - CD09CD Account Revised 2009					
HOUS	1734	Property rehabilitation - HRA	\$1,224,217	\$1,054,217	(\$170,000)
2011 CDBG Program - Fund 262 - Project CD11CD Account Revised 2011					
HOUS	1734	Property rehabilitation - HRA	\$705,253	\$655,253	(\$50,000)
PSVC	1244	Duluth Hunger Project - CHUM	\$75,000	\$72,600	(\$2,400)
PSVC	1929	Primary health care services - Lake Superior Community Health Center	\$77,000	\$74,536	(\$2,464)
PSVC	1348	Clothes that Work - Damiano Center	\$20,000	\$19,360	(\$640)
PSVC	2511	Emergency heating assistance - Salvation Army	\$25,000	\$24,200	(\$800)
PSVC	1974	Lifeline Expressway - Life House	\$35,000	\$33,880	(\$1,120)
PSVC	1226	Permanent supportive housing - Salvation Army	\$20,000	\$19,360	(\$640)
PSVC	2509	Battered Women's Shelter - Safe Haven/CCHC	\$32,000	\$30,976	(\$1,024)
PSVC	251A	Transitional housing program - Salvation Army / AICHO	\$54,000	\$52,272	(\$1,728)
PSVC	1168	Youth Development Collaborative - YMCA	\$93,000	\$84,422	(\$8,578)
PSVC	251A	Housing support program - Salvation Army	\$30,000	-0-	(\$30,000)
PSVC	1226	JumpStart vehicle loan - Community Action	\$26,500	-0-	(\$26,500)
PFAC	PF03	Curb ramp/sidewalks	\$132,000	\$61,495	(\$70,505)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

2011 CDBG Program - Fund 262 - Project CD11CD Account Revised 2011					
Sub-project	Activity	Project	Amount	New Grant	Difference
ADMC	AD01	Program administration	\$507,000	\$441,300	(\$65,500)
ADMC	2805	Skills2Success	\$20,000	-0-	(\$20,000)
ADMC	AD09	Developing housing support - Salvation Army	\$10,000	-0-	(\$10,000)

Resolution 11-0217 was unanimously adopted.
 Approved May 9, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the city council of Duluth hereby accepts \$500,000 in showcase communities program funding from the United States environmental protection agency for the Duluth energy efficiency program (DEEP), which will assist Duluth's property owners to reduce energy costs through home performance assessment, education or energy savings improvements to their homes. Grant funds to be deposited into Federal Program Fund 262 - community development - Agency 020, Revenue Source 4209-02.

FURTHER RESOLVED, that the city council authorizes a contract for implementing DEEP with Northern Communities Land Trust (NCLT) for \$500,000, payable from Federal Program Fund 262 - community development - Agency 020, Object 5434, Project CDEPA.

Resolution 11-0218 was unanimously adopted.
 Approved May 9, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the Duluth City Council hereby expresses its support for the Northern Communities Land Trust's request for funding to the Minnesota housing finance agency for low-income housing tax credits and other funding for the Hillside Apartment project.

Resolution 11-0219 was unanimously adopted.
 Approved May 9, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. 11-0509-09, between the Duluth economic development authority (DEDA) and Old City Hall, LLC, relating to the historic renovation of the old city hall building and subsequent historic renovation of a portion of the exterior of the Lange Motors building in an amount not to exceed \$350,000.

Resolution 11-0232 was unanimously adopted.
 Approved May 9, 2011
 DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. 11-0509-10, between the Duluth economic development authority (DEDA) and Miller Dwan Foundation Amberwing, LLC, related to the construction of a mental health and wellness center for area youth and families in an amount not to exceed \$350,000.

Resolution 11-0234 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Ziegler, Inc., for the purchase and delivery of one Caterpillar 311D RR track excavator with options for public works and utilities in accordance with Minnesota State Contract 443265, Release E95(5), specifications and pricing in the amount of \$112,332.71 (includes \$22,000 trade-in of Unit No. 2715) plus \$7,722.87 sales tax plus \$3,930 tax exempt warranty for a total amount of \$123,985.58, terms net 30, FOB destination, payable from the following accounts:

(a) \$83,070.34 from Water Fund 510, Department/Agency 500 (public works and utilities), Organization 1905 (capital), Object 5580 (capital equipment);

(b) \$40,915.24 from Gas Fund 520, Department/Agency 500 (public works and utilities), Organization 1905 (capital), Object 5580 (capital equipment).

Resolution 11-0203 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Lunda Construction Company for the rehabilitation of Bridge No. 69812 in the amount of \$1,438,837.52, payable out of permanent improvement fund, Department/Agency 035, Object 5530, City Project No. 0496TR, S.A.P. 118-115-006.

Resolution 11-0220 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with NPL Construction Company for construction of high pressure gas mains and services in various locations in the amount of \$460,739.82. NPL Construction Company was the lowest responsible bidder of the three companies that responded; payable out of Gas Fund 520, Department/Agency 500, Division 1905, Object 5533, City Project No. 0904GS.

Resolution 11-0221 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council makes the following findings:

The city has received the following grants of easement, in trust for the general public, from the following persons and entities:

(a) A temporary construction easement from the Board of Education over a portion of vacated Ivanhoe Street, Crosley Park Addition, as shown on Public Document No. 11-0509-11(a), a copy of which is on file in the office of the city clerk;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) An easement for roadway and utility purposes from the Board of Education over a portion of vacated Ivanhoe Street, Crosley Park Addition, as shown on Public Document No. 11-0509-11(b), a copy of which is on file in the office of the city clerk;

(c) A temporary construction easement for utility purposes from Independent School District No. 709 over a portion of vacated Ivanhoe Street, Crosley Park Addition, as shown on Public Document No. 11-0509-11(c), a copy of which is on file in the office of the city clerk;

(d) An easement for roadway and utility purposes from Independent School District No. 709 over a portion of vacated Ivanhoe Street, Crosley Park Addition, as shown on Public Document No. 11-0509-11(d), a copy of which is on file in the office of the city clerk.

FURTHER RESOLVED, that the city council accepts, on behalf of the general public, the dedication of those easements described above and as shown on Public Document No. 11-0509-11(e).

FURTHER RESOLVED, that the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution and Public Document Nos. 11-0509-11(a)-(e) showing the portions of the easements to be retained and the acceptance of dedication of new easements, all as authorized hereunder.

Resolution 11-0222 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Ulland Brothers, Inc., for the reconstruction of 36th Avenue East in the amount of \$910,540.60, payable out of Permanent Improvement Fund 411, Department/Agency 038, Object 5530, City Project No. 0356TR.

Resolution 11-0223 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a supplemental justice assistance grant from the American Recovery and Reinvestment Act through the Minnesota department of public safety, office of justice programs, in the additional amount of \$88,000 and extending the termination date to December 31, 2012, for the project entitled *Blight and Nuisance Crimes, A Project to Improve Public Safety*, funds to be deposited in Fund 215-025-2289-4210-02 (Duluth police grant programs, stimulus act (ARRA), 2009-blight and nuisance crimes), and to execute an amended grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0509-12.

Resolution 11-0213 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a joint powers agreement with the state of Minnesota, department of public safety, bureau of criminal apprehension, providing for the continued participation by the city of Duluth police department in the Minnesota internet crimes against children task force program. The state of Minnesota

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

is the recipient of a federal grant to assist law enforcement in investigating and combating the exploitation of children which occurs through the use of computers by providing funding for equipment, training and expenses incurred by law enforcement as a result of these investigations. The city of Duluth police department, by participating in this program, will be eligible to seek reimbursement of training and equipment expenses incurred in the investigation of such crimes.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute a joint powers agreement for the current grant cycle as well as the grant cycle that will commence June 1, 2011 (the 2011-2012 ICAC grant cycle).

FURTHER RESOLVED, that said joint powers agreement shall be substantially in the form of Public Document No. 11-0509-13, on file in the office of the city clerk.

Resolution 11-0226 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to enter into an agreement with National Golf Foundation Consulting, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0509-14, for the review and assessment of operations of city-owned Enger Park and Lester Park golf courses for an amount not to exceed \$28,500, payable from the General Fund 110, Department/Agency 121 (public administration), Organization 1219 (parks and recreation), Object 5441 (other services and charges).

Resolution 11-0214 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0509-15, with the Welsh Center, Inc., d/b/a Copeland Valley, a Minnesota nonprofit corporation, for the provision of youth programming and related services at the Memorial Community Recreation Center.

Resolution 11-0224 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept \$47,002 from the Arrowhead Library System for use in 2011 by the Duluth public library to purchase library materials, said sum to be deposited in Fund 110-121-1218-4654-02 (general, public administration, library services).

Resolution 11-0227 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. 11-0509-16, between the Duluth economic development authority (DEDA) and Cedar Bay North, LLC, related to the construction of an industrial building to house showroom and development activities of Moline Machinery, LLC, in an amount not to exceed \$350,000.

Resolution 11-0231 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. 11-0509-17, between the Duluth economic development authority (DEDA) and Duluth Minerals, LLC, relating to the construction of a building to enclose its mineral grinding plant in an amount not to exceed \$180,000.

Resolution 11-0233 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved May 9, 2011

DON NESS, Mayor

- - -

Resolution 11-0225, authorizing a contract with Precise MRM, LLC, for the purchase and installation of a GPS/AVL system for a total amount not to exceed \$462,153, was introduced by Councilor Cuneo for discussion.

Councilor Fosle explained that the cost each year for the GPS system is estimated to be \$170,000 and questioned if the savings from the system will be enough each year to pay for this expense.

Resolution 11-0225 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Precise MRM, LLC, for the purchase and installation of a GPS/AVL (global positioning/automatic vehicle location) system for fleet services in accordance with city-approved specifications and based on the following costs for year 2011 - an initial amount not to exceed \$332,401 (vendor's base price) plus \$22,853 (sales tax) plus \$44,390 (one year of network access) plus \$62,509 (six months of cellular data) for a total amount of \$462,153, payable as follows:

Amount	Energy Management Fund	Department/ Agency	Object	Project No.
\$56,945	257	Administrative Serv- ices 015	Contract Serv- ices 5310	DOE Match -GPS Match

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

\$49,954	257	Stimulus Act (ARRA) 025	Contract Serv- ices 5310	DOE Grant-GPS
\$355,254	257	Stimulus Act (ARRA) 025	Capital Equip- ment 5580	DOE Grant-GPS

In addition, the following costs for year 2012 and beyond are hereby authorized: ongoing data and network costs not to exceed \$169,408 per year, payable from various funds and departments as included in the annual budget. Actual costs will depend on the number of GPS-equipped vehicles.

Resolution 11-0225 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

Approved May 9, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0509-18 with Tower Optical Company for three coin operated opticals, two located at Lake Park Place and one located at Enger Tower, under which agreement the city shall receive 60 percent of all generated revenues, funds to be deposited in Fund 110-121-1219-4644 (general, public administration, parks and recreation).

Resolution 11-0244 was unanimously adopted.

Approved May 9, 2011

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-014 (10085) - AN ORDINANCE AUTHORIZING THE CONVEYANCE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO HILLSIDE APARTMENTS DULUTH, LLLP, AT NO COST.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-015 (10086) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, RESIDENTIAL URBAN, TO MU-I, MIXED USE INSTITUTIONAL, PROPERTY AT 1001 TO 1025 EAST SECOND STREET (ST. LUKE'S HOSPITAL).

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

11-016 (10087) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION OF THE PLAZA AREA BUSINESS DISTRICT, FROM TENTH AVENUE EAST TO 15TH AVENUE EAST, FROM MIXED USE-NEIGHBORHOOD (MU-N) TO FORM DISTRICT MID-RISE COMMUNITY MIX (F-4) AND THE LONDON ROAD BUSINESS DISTRICT AREA FROM 14TH AVENUE EAST TO 21ST AVENUE EAST FROM THE UTILITY EASEMENT ABOVE LONDON ROAD TO SOUTH STREET, FROM MIXED USE-NEIGHBORHOOD (MU-N) AND MIXED USE-BUSINESS PARK (MU-B) TO FORM DISTRICT LOW-RISE NEIGHBORHOOD MIX (F-2), RESPECTIVELY (CITY OF DULUTH).

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR HARTMAN

11-013 (10089) - AN ORDINANCE DEDICATING TO THE PUBLIC CERTAIN MESABA AVENUE RIGHT-OF-WAY.

Councilor Hartman moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 7:35 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10085

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO HILLSIDE APARTMENTS DULUTH, LLLP, AT NO COST.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the "Code"), the manager of the city's physical planning division has reviewed this proposed conveyance and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for conveyance and pursuant to Article XXXIII of Chapter 2 of the Code;

(c) As per Section 2-177.4 of the Duluth City Code, 1959, as amended, and in furtherance of important city interests in the establishment of transitional housing for homeless families with children, which meets or exceeds both the city's consolidated plan for community development and the St. Louis County ten year plan to end homelessness, and also to take advantage of the low income tax credit, this property is conveyed at no cost.

Section 2. That the proper city officials are hereby authorized to convey the following described property, by quit claim deed, to Hillside Apartments Duluth, LLLP, at no cost and further to execute all documents necessary with regard to said conveyance:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

West one half of Lot 27, West Fourth Street, DULUTH PROPER FIRST DIVISION.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 10, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed May 9, 2011
Approved May 9, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

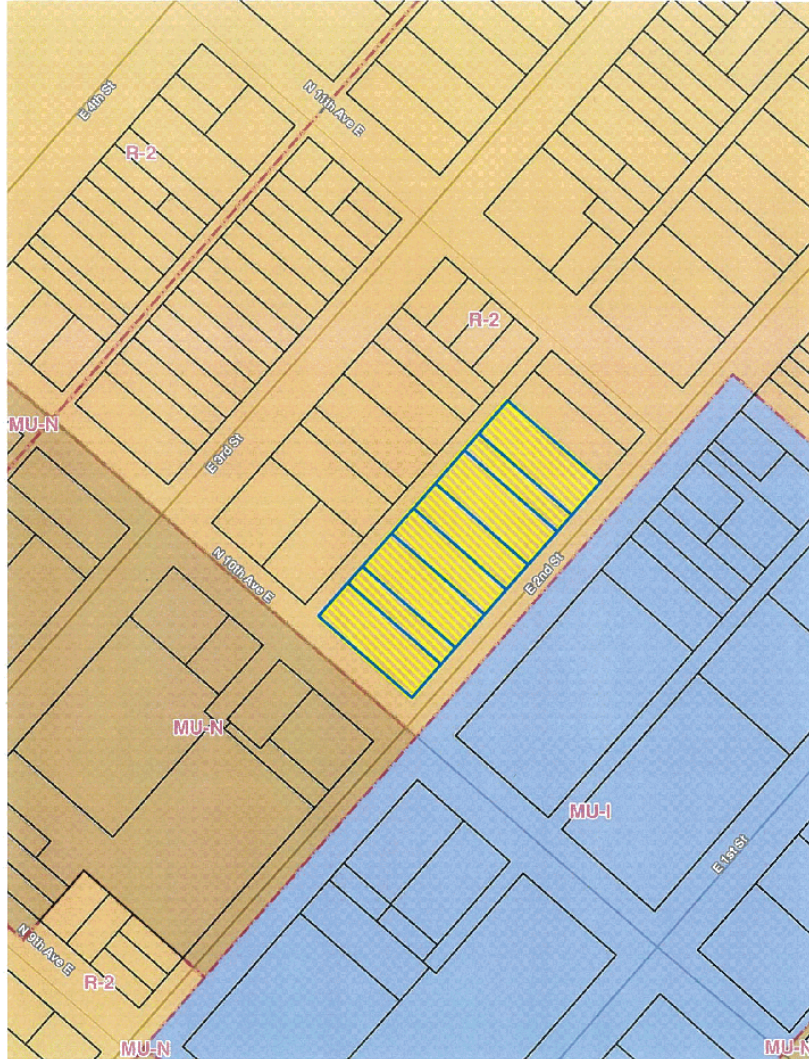
ORDINANCE NO. 10086

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, RESIDENTIAL URBAN, TO MU-I, MIXED USE INSTITUTIONAL, PROPERTY AT 1001 TO 1025 EAST SECOND STREET (ST. LUKE'S HOSPITAL).

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 1. That the subject properties, Lots 1 through 13, Block 56, of Portland Division of Duluth, be reclassified from R-2, Urban Residential, to MU-I, Mixed Use Institutional, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



(Ref. File No. 11-026)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: June 10, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 9, 2011
Approved May 9, 2011
DON NESS, Mayor

- - -

ORDINANCE NO. 10087

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION OF THE PLAZA AREA BUSINESS DISTRICT, FROM TENTH AVENUE EAST TO 15TH AVENUE EAST, FROM MIXED USE-NEIGHBORHOOD (MU-N) TO FORM DISTRICT MID-RISE COMMUNITY MIX (F-4) AND THE LONDON ROAD BUSINESS DISTRICT AREA FROM 14TH AVENUE EAST TO 21ST AVENUE EAST FROM THE UTILITY EASEMENT ABOVE LONDON ROAD TO SOUTH STREET, FROM MIXED USE-NEIGHBORHOOD (MU-N) AND MIXED USE-BUSINESS PARK (MU-B) TO FORM DISTRICT LOW-RISE NEIGHBORHOOD MIX (F-2), RESPECTIVELY (CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the subject property, located in Plaza and London Road business districts, described above, and as more particularly described in Exhibit A (Public Document No. 11-0509-19), be reclassified from its current designation as Mixed Use-Neighborhood (MU-N) and Mixed Use-Business Park (MU-B) to form districts Low-Rise Neighborhood Mix (F-2) and Mid-Rise Community Mix (F-4), and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(Ref. File No. 11-028)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: June 10, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed May 9, 2011
Approved May 9, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10088

AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE RIVERSIDE ADDITION TO THE STATE OF MINNESOTA SO THAT THE CITY CAN REQUEST FREE CONVEYANCE FOR PARK, RECREATION AND UTILITY PURPOSES.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to reconvey the below-described property in St. Louis County, Minnesota, previously free-conveyed to the city, to the state of Minnesota:

The southwesterly 65.00 feet of Outlot 4, Riverside Addition (PIN 010-3970-002090).

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: June 10, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed May 9, 2011

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

ATTEST:
JEFFREY J. COX, City Clerk

Approved May 9, 2011
DON NESS, Mayor

- - -

ORDINANCE NO. 10089

AN ORDINANCE DEDICATING TO THE PUBLIC CERTAIN
MESABA AVENUE RIGHT-OF-WAY.

The city of Duluth does ordain:

Section 1. That the city of Duluth does hereby dedicate to the general public those portions of the right-of-way on and adjacent to Mesaba Avenue, described and shown on Public Document No. 11-0509-20 on file in the office of the city clerk, for public street and roadway purposes.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 10, 2011)

Councilor Hartman moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 9, 2011
Approved May 9, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, May 23, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0523-01 Minnesota state auditor Duluth transit authority (DTA) audit report for the years ended December 31, 2010 and 2009. -- Received

11-0523-02 The following communications regarding the proposed reclassification of the parcel at the northwestern corner of Kenwood Avenue and Arrowhead Road (11-019-O): (a) Barbara Brooks; (b) Mary Gallegos; (c) St. Louis County; (d) John and Diane Sorensen. -- Received

- - -

REPORTS FROM OTHER OFFICERS

11-0523-03 Clerk application for exempt permit to the Minnesota gambling control board from Duluth Amateur Hockey Association for raffle on January 9, 2012. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-0523-04 Commission on disabilities minutes of April 6, 2011, meeting. -- Received

11-0523-05 Duluth human rights commission minutes of April 13, 2011, meeting. -- Received

11-0523-06 Duluth public utilities commission minutes of April 13, 2011, meeting. -- Received

11-0523-07 Library board minutes of February 22, 2011, meeting. -- Received

- - -

REPORTS OF COUNCIL OPEN ISSUES

11-0523-08 Tourism tax task force minutes of: (a) May 3; (b) May 10, 2011, meetings. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell commented on Duluth School District No. 709 issues of families pulling their children out of the district's schools for reasons of: the new superintendent; increased classroom crowding and bussing with school consolidations; losing neighborhood schools; large high schools; far east and west configurations and not buying the corporate spin about facilities. He noted that the department of education projects a 14,500 student enrollment jump in the next two years and that the census figures show that Duluth has a younger and more vibrant population than many other cities in the state.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Dave Barsdorf expressed his concerns that the city of Duluth is not fixing and maintaining properties that it owns.

- - -

Karen Lewis expressed concerns that: the snow shoveling laws need "teeth" and clarifications are needed about the need for gravel with ice conditions when shoveling does not work, how wide a cut needs to be in plowed snowbanks and city-owned properties need to be cleared.

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

WHEREAS, the use and management agreement between the city of Duluth, Minnesota (the city), and Spirit Mountain recreation area authority (the authority), dated as of March 28, 2003, provides that the authority shall not enter into any lease purchase agreement without the written approval of the city council; and

WHEREAS, the authority proposes to enter into a lease purchase agreement for the purchase, design and installation of a tubing park facility, a zip line facility, a miniature golf course facility and parking lot (the project).

RESOLVED, that the city council hereby approves the authority entering into a lease purchase agreement with Beacon Bank in the approximate amount of \$600,000 for the purchase, design and installation of the project and costs of issuance for the lease purchase agreement.

Resolution 11-0256 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0523-09, with WLSSD for the collection of its capacity availability fee in exchange for payment of a commission to be deposited in Fund 110-132-1304-4359 (general, planning and construction services, construction services and inspection).

Resolution 11-0273 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following temporary on sale 3.2 percent malt liquor licenses, subject to departmental approvals:

Duluth Softball Players Association (Copasetic Classic), Wheeler Field, for July 30 and 31, 2011, with John Vaydich, manager.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Duluth Softball Players Association (Beerhunters Tournament), Wheeler Field, for August 6 and 7, 2011, with John Vaydich, manager.

Duluth Softball Players Association (North Shore Classic), Wheeler Field, for August 27 and 28, 2011, with John Vaydich, manager.

Duluth Police Softball Team (Minnesota State Police and Fire Softball Tournament), Wheeler Field, for July 30-31, 2011, with Matt McShane, manager.

Resolution 11-0245 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals, with any specific restrictions:

Grandma's Angie's, Inc. (Little Angie's Cantina), 11 East Buchanan Street, for June 18, 2011, with the serving ceasing at 2:00 a.m.

Grandma's, Inc. (Grandma's Saloon & Grill), 522 Lake Avenue South, for June 18, 2011, with the serving and music ceasing at 1:00 a.m.

Lemon Reef, Inc. (Reef Bar), 2002 London Road, for June 18, 2011, with the serving ceasing at 3:00 p.m.

Resolution 11-0246 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to Community Action Program and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0247 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to increase the original purchase order issued to Twin Port Mailing and to extend the city's current contract until approximately August 1, 2011, for a total estimated contract amount of \$111,000 to include \$48,000 (Purchase Order No. 1) and \$63,000 (increase), payable as follows:

(a) Mailing Services \$22,600

Amount	Fund	Dept./Agency (Public Wks. & Utilities)	Div./Cost Ctr. (Customer Svcs./ Customer Accounts)	Object (Contract Svcs.)
\$5,876	510 Water	500	1940-2400	5310
\$8,814	520 Gas	500	1940-2400	5310
\$5,198	530 Sewer	500	1940-2400	5310

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

\$2,712	535 Stormwater	500	1940-2400	5310
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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) Postage \$88,400

Amount	Fund	Dept./Agency (Public Wks. & Utilities)	Div./Cost Ctr. (Customer Svcs./ Customer Accounts)	Object (Postage)
\$22,984	510 Water	500	1940-2400	5322
\$34,476	520 Gas	500	1940-2400	5322
\$20,332	530 Sewer	500	1940-2400	5322
\$10,608	535 Stormwater	500	1940-2400	5322

Resolution 11-0269 was unanimously adopted.
 Approved May 23, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness of Ronald Boshey to the housing and redevelopment authority of Duluth for a term expiring on January 6, 2014, replacing Maureen Booth who resigned, is confirmed.

Resolution 11-0249 was unanimously adopted.
 Approved May 23, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness of Scot Bol to the Duluth human rights commission for a term expiring on March 31, 2012, replacing Xavier Bell who resigned, is confirmed.

Resolution 11-0250 was unanimously adopted.
 Approved May 23, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of senior safety and training specialist, which were approved by the civil service board on May 3, 2011, and which are filed with the city clerk as Public Document No. 11-0523-10, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that the pay range for said classification shall be Range 136. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0265 was unanimously adopted.
 Approved May 23, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the appointed classification of assessor are approved; the said position shall remain subject to the city's collective bargaining agreement with its supervisory unit employees; that the pay range will remain Pay Range 1135. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0266 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of system administrator, which were approved by the civil service board on April 5, 2011, and which are filed with the city clerk as Public Document No. 11-0523-11, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that the pay range for said classification shall be Range 137. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0267 was unanimously adopted.

Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of water plant operator D, which were approved by the civil service board on May 3, 2011, and which are filed with the city clerk as Public Document No. 11-0523-12, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 24.

Resolution 11-0268 was unanimously adopted.

Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the city council objects to the reclassification to non-conservation and sale of the following tax forfeited parcel (FN 11-052) by the board of county commissioners of Saint Louis County:

Parcel ID and legal description	Location	Reason
010-3260-00090 Lots 9 through 13	Adjacent to Skyline Parkway and north of Keene Creek and Superior Hiking Trail	Trail preservation and park purposes

Resolution 11-0260 was unanimously adopted.

Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the board of commissioners of St. Louis County is hereby requested to withhold from sale for the public interest and to classify as conservation the following parcels from the county auditor's list of properties which have been declared tax forfeited and title thereto vested in the state:

Parcel ID and Legal Description	Location	Reason
010-2710-04626 6.03 acres (Public Document No. 11-0523-22)	Adjacent to and southwest of Mall Drive	Stormwater management, stream preservation and conservation easement management

Resolution 11-0261 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to execute agreements, substantially the same as those on file with the city clerk as Public Document No. 11-0523-13, with the state of Minnesota, department of natural resources, authorizing the city to perform certain maintenance at the Clyde Avenue (Munger Access) and Rice's Point boat launch sites, in consideration of \$1,500 to be paid by the department of natural resources to the city. Reimbursements received shall be deposited into public administration department, maintenance operations division, General Fund 110, Department 121, Division 1217-2140, Revenue Source 4220-02 (general, public administration, maintenance operations, street maintenance).

Resolution 11-0241 was unanimously adopted.

Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0523-14, with Great Northern Services, Inc., for design, planning and project management services for the Novell to Microsoft migration project and the assessment and development of help desk services, in an amount not to exceed \$106,000, which shall be payable from Fund 110-117-1107-5319 (general, management information services, MIS).

Resolution 11-0275 was unanimously adopted.

Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an first amendment to agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0523-15 with University of Minnesota Natural Resources Research Institute extending the term of the agreement to June 30, 2011, for services related to stormwater collection and analysis.

Resolution 11-0242 was unanimously adopted.

Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that Resolution 07-0230 amending Contract 20237 with LHB, Inc. for professional engineering services for a condition and rehabilitation study for Bridge No. 69812 at 27th Avenue West over the BNSF Railroad be amended in the amount of \$168,520 for the construction administration and inspection for the rehabilitation of Bridge No. 69812 for a new total of \$263,285. This increase is eligible for MSA funding and will be payable from Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0496TR, SAP 118-115-006.

Resolution 11-0252 was unanimously adopted.

Approved May 23, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that Resolution 08-0061 amending Contract 20238 with LHB, Inc., for professional engineering services for construction administration and inspection for replacement of Bridge No. L8476 over Miller Creek at Lincoln Park Drive be amended to increase the amount by \$94,591 for a new total of \$143,858. This increase is to include the construction engineering phase for the bridge replacement project. This increase is payable from the Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0622TR, S.A.P. 118-080-037.

Resolution 11-0253 was unanimously adopted.
Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Utility Systems of America, Inc., for the reconstruction of Ivanhoe Street from 49th Avenue East to 54th Avenue East in the amount of \$1,440,979.78, payable out of Street Improvement Fund 440, Department/Agency 038, Object 5530, City Project No. 0851TR.

Resolution 11-0258 was unanimously adopted.
Approved May 23, 2011
DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth (city) act as the legal sponsor for the rehabilitation of Stewart Creek Bridge project as contained in the grant program application to be submitted prior to June 3, 2011, and that the mayor and clerk are hereby authorized to apply to the U.S. department of transportation, federal highway administration, for a grant in the amount of \$800,000 for funding of this project;

FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance and the institutional, managerial and financial capability to ensure adequate project administration;

FURTHER RESOLVED, that the city hereby commits to provide no less than \$200,000 (or 20 percent of the \$1,000,000 project cost) in a qualified match contribution to be provided by the city of Duluth.

FURTHER RESOLVED, that the city has not violated any federal, state and local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices.

FURTHER RESOLVED, that upon approval of its application by the state, the mayor and clerk may enter into a grant agreement with the state of Minnesota for the above referenced project and receive said grant payable into Permanent Improvement Fund 411, Department 035, Object 5530, and that the city certifies that it will comply with all applicable laws and regulations.

FURTHER RESOLVED, the mayor and clerk are hereby authorized to execute such documents as are necessary to implement the project on behalf of the city.

Resolution 11-0262 was unanimously adopted.
Approved May 23, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that pursuant to Section 33-125 of the Duluth City Code, 1959, as amended, the city council hereby indicates that on Monday, June 13, 2011, at 7:00 PM in the Council Chamber on the third floor of City Hall, the council will conduct a public hearing regarding whether to designate various streets in the vicinity of the new East High School as a resident permit parking zone, as manifested by the map on Public Document No. 11-0523-16.

FURTHER RESOLVED, that the city clerk is hereby directed to mail notice of such hearing by addressing such notice to the occupant at each address within or abutting the parking areas of the streets proposed to be so designated.

Resolution 11-0243 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages on the sidewalk in front of Little Angie's Cantina, 11 East Buchanan Street, starting approximately at 4:00 p.m. until 2:00 a.m. in conjunction with Grandma's Marathon on June 18, 2011, to coincide with the Greater Downtown Council's special events license, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 11-0248 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to enter into a proprietary maintenance contract with Pierce Midwest Refurbishment Center (Pierce Manufacturing, Inc.) for the tax-exempt repair of corrosion on the Duluth fire department's 100 foot aerial bucket apparatus in accordance city-approved specifications and the vendor's estimate of \$97,607, plus \$2,500 pick up and delivery, for a total estimate of \$100,107, terms net 30, payable from the Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2011 (fiscal year), Object 5580 (capital equipment), Project No. CE250-V1101.

Resolution 11-0251 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 33-84 of the Duluth City Code, 1959, as amended, the parking areas on both sides of Superior Street west of 54th Avenue East for 400 feet on the south side and 150 feet on the north side have a time limit of two hours for parking.

FURTHER RESOLVED, that all no parking zones and other parking restrictions previously established by the city council which pertain to any part of the street described above shall remain in effect.

Resolution 11-0257 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- - -

RESOLVED, that city officials are hereby authorized to enter into an agreement with Elert & Associates Networking Division, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0523-17, for technical consulting services related to the expansion of the city of Duluth surveillance video camera system, to be funded through the 2008 port security grant, for an amount not to exceed \$31,000, payable as follows:

(a) \$23,250 from the Special Projects Fund 210, Department/Agency 030 (finance), Division 3177 (2008 port security grant program), Object 5580 (capital equipment);

(b) \$7,750 from the Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2010 (fiscal year), Object 5580 (capital equipment), Project No. CE250-E1001.

Resolution 11-0270 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0523-18, with the Duluth economic development authority (DEDA), to allow police training in emergency vehicle operations on the ramp of the Northwest Airlines Airbus Maintenance Base.

Resolution 11-0279 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0523-19, with the Duluth airport authority (DAA), to allow police training in emergency vehicle operations on taxiway bravo at the Duluth International Airport.

Resolution 11-0280 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

WHEREAS, pursuant to Section 5(e) of the Laws of Minnesota, Chapter 327 (the "act"), certain construction work affecting the property on the Spirit Mountain recreation area (the "area") is subject to receiving a permit from the city council after hearings and recommendations from the planning commission and the parks and recreation board; and

WHEREAS, on March 21, 2011, the Spirit Mountain recreation area authority board of directors approved a project consisting of a 700 foot zip line facility, a six lane snow tubing park, a miniature golf course facility and an overflow parking facility (the "project") to be constructed and installed on the area; and

WHEREAS, on April 13, 2011, the parks and recreation board conducted a public hearing on the proposed construction and installation of the project on the area and after said hearing unanimously recommended approval of the project; and

WHEREAS, on May 10, 2011, the Duluth planning commission conducted a public hearing on the proposed construction and installation of the project on the area and after said hearing unanimously recommended approval of the project.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the city council of the city of Duluth hereby grants a permit for the construction and installation of the project on the area in conformance with those documents on file in the office of the city clerk as Public Document No. 11-0523-20.

Resolution 11-00255 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that Resolution No. 11-0075 is hereby amended by substituting PNCEF LLC, d/b/a PNC Equipment Finance, for MTI Distributing, Inc., as the vendor/lessor for assorted golf course maintenance equipment, the acquisition of which by lease purchase was authorized by said resolution.

Resolution 11-0271 was unanimously adopted.

Approved May 23, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Northland Constructors of Duluth, LLC, for the construction of Bridge No. 69679 (Old Bridge No. L8476) in the amount of \$835,504.50, payable out of Permanent Improvement Fund 411, Department/Agency 038, Object 5530, City Project No. 0622TR, S.A.P. 118-080-037.

Resolution 11-0263 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Ulland Brothers, Inc., for the 2011 street preservation project in the amount of \$3,012,583.01, payable out of Street Improvement Fund 440, Department/Agency 038, Object 5530, City Project No. 0828TR.

Resolution 11-0264 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved May 23, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Ulland Brothers, Inc., for the purchase of bituminous material, hot mix (fine and regular), as needed during year 2011 for the city's pothole reduction program in accordance with St. Louis County's bid specifications and the vendor's bid of \$43.60 per ton for 11,268 tons of hot fine mix and \$42.70

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

per ton for 2,000 tons of hot regular mix, for a total of \$576,684.80 plus \$39,647.08 sales tax for a total combined amount of \$616,331.88, payable from the following accounts:

(a) \$525,060.63 - Street Improvement Program Fund 440, Department/Agency 038 (special assessment contracts), Object 5222 (blacktop), SIP 2011-roads;

(b) \$59,326.31 - Street Improvement Program Fund 440, Department/Agency 038 (special assessment contracts), Object 5222 (blacktop), SIP 2011-0943TR;

(c) \$31,944.94 - Street Improvement Program Fund 440, Department/Agency 038 (special assessment contracts), Object 5222 (blacktop), SIP2011-0944TR.

Resolution 11-0277 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved May 23, 2011

DON NESS, Mayor

- - -

Resolution 11-0254, by Council Fedora, adding an initiative to support the banning of the sale and use of the substance commonly referred to as bath salts to the city's legislative agenda for 2011, was introduced.

Councilor Fedora moved to remove the resolution from the agenda because the state legislature bill banning the substance should be signed by the state governor shortly and this is not now needed locally, which motion was seconded and unanimously carried.

- - -

Resolution 11-0276, by Councilor Fedora, requesting the administration change the current design for the placement of sidewalks along Glenwood and remove the sidewalks along the northern yards of Glenwood Street from 45th Avenue East to 51st Avenue East, was introduced for discussion.

Councilor Fedora moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Richard Amundson, JoAnn Kovach, Alice LeFrance, Roland Wickstrom, Kristen Spehar-Stenberg, Paul Nordberg and Annette Page supported the resolution for reasons of: the existing one sidewalk on the southern portion has been more than efficient to handle pedestrian traffic; all the neighbors present at this meeting support this resolution; a year ago, the city asked residents if sidewalks were desired and it was unanimous that no one wanted them on the upper side of the street; this will produce an 11 foot loss to driveways and yards; the homes were built close to the street without sidewalks in mind; rarely are there walkers on the existing sidewalk; it will be a cost savings in construction if the upper side does not have a sidewalk; there has never been a problem with occasional pedestrians crossing the street to the existing sidewalk; with a sidewalk next to the curb it will be covered with snow or, if it is set back and trees planted, they will be damaged by the snowplow; the voices of the residents are not being listened to and individuals are using streets instead of existing sidewalks.

Councilors Fedora, Stauber and Fosle supported the resolution for reasons of: the residents have been consistent through all the meetings in that they did not want this new sidewalk; the residents know their neighborhood better than anyone else; these homes are built close to the street and the council is now being put in the position as the "bad guys" by either wasting \$150,000 altering the street design or infuriating a lot of residents.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilors Anderson, Boyle, Cuneo, Hartman and President Gardner opposed the resolution for reasons of: there was a full process allowing for input; the council unanimously supported the sidewalks on both sides of the street initially, when the assessment resolution was considered there were no objections; sidewalks on both sides are part of the complete streets policy; streets and sidewalks belong to all citizens; it will be costly to change the contract at this time; had this issue come forth earlier, there might have been a possibility to support this request; Glenwood is a major connector to a lot of the other systems in the community; the city will clear sidewalks on a major road when it plows a large amount of snow unto the sidewalk.

Resolution 11-0276 failed upon the following vote (Public Document No. 11-0523-21):

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

- - -

Resolution 11-0259, vacating a portion of the alley on Norton's Duluth Outlots Lot 14 that is the easterly extension of the alley in Block 1, Johnson's Addition (Semper Development), was introduced by Councilor Stauber.

Councilor Stauber moved to table the resolution, in order for it to be considered with the companion ordinance on this issue, which motion was seconded and unanimously carried.

- - -

Resolution 11-0272, by Councilor Anderson, repealing and replacing council Resolution 10-0375 authorizing full-time permanent firefighters employed by the city while on duty to solicit charitable contributions from motorists, was introduced for discussion.

Councilors Fedora and Stauber opposed the resolution for reasons of: this resolution also repeals a resolution which had a very specific process outline of a "public call" for charities to be selected and if the city is going to allow firefighters to do this, then public works employees and police officers should also be allowed to do this; taxpayers are paying employees to do city work on their behalf and now the city is allowing them to do fundraising, which the city does not allow other employees to do; other city employees do not feel that this is fair, to allow charitable solicitation during their work hours and the process which was approved last year allows other organizations to qualify for this benefit.

Resolution 11-0272 was adopted as follows:

BY COUNCILOR ANDERSON:

RESOLVED, that council Resolution 10-0375 is hereby repealed in its entirety.

FURTHER RESOLVED, that pursuant to Chapter 227 - H.F. No. 3017 of the Laws of Minnesota for 2010 (codified as Minn. Stat. §465.90), the city by resolution hereby permits that full-time permanent firefighters employed by the city while on duty may solicit charitable contributions from motorists when the following conditions are met:

(a) The solicitation complies with Minn. Stat. §465.90 and is conducted pursuant to policies and procedures set forth by the city fire chief;

(b) The solicitation results in no additional costs to the city, including but not limited to, overtime costs;

(c) The solicitation is for one charitable organization selected by the city council;

(d) Said charitable organization shall be the Muscular Dystrophy Association (MDA);

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(e) The MDA shall remain the designated charitable organization until otherwise designated by council resolution or it ceases to be in compliance with the requirements of Minn. Stat. §465.90 which include:

(1) The charitable organization is qualified under Section 501(c)(3) of the Internal Revenue Code;

(2) The charitable organization provides to the city proof of commercial general liability insurance against all claims for bodily injury and property damage if the injury or damage occurs (i) on public streets, roads or rights-of-way, or (ii) as a result of the solicitor's activities. The insurance must have a limit of no less than \$1,500,000 per occurrence and an endorsement to the policy naming the municipality as an additional insured.

FURTHER RESOLVED, that all charitable donations for said charitable organization collected by the city during said solicitation period shall be deposited directly into a financial account created and controlled exclusively by said charitable organization.

Resolution 11-0272 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilors Fedora and Stauber -- 2

Approved May 23, 2011

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

11-018 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO R-2, RESIDENTIAL-URBAN, THE PROPERTY ALONG THE NORTH SIDE OF ARROWHEAD ROAD FROM 1413 WEST ARROWHEAD ROAD TO THE EXTENDED LINE (NORTHERLY) MYERS AVENUE (CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER

11-019 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO MU-N, MIXED USE NEIGHBORHOOD, THE ENTIRE PARCEL AT THE NORTHWESTERN CORNER OF KENWOOD AVENUE AND ARROWHEAD ROAD (CITY OF DULUTH).

Councilor Stauber moved to suspend the rules to hear speakers on the ordinance, which motion was seconded and unanimously carried.

Cheryl Behling expressed concerns associated with the vacation of the alleyway and traffic safety issues. She opposed the vacation because the city would be plowing and maintaining an alley for one homeowner. Ms. Behling also stated that this intersection is the second most dangerous one in the city and that this road needs significantly improved road design changes to accommodate the heavy traffic flow.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Dave Barsdorf expressed concerns that this proposal has been repeatedly before the council and that the neighbors do not want this project.

- - -

The meeting was adjourned at 8:23 p.m.

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, June 9, 2011, 5:15 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

MOTIONS AND RESOLUTIONS

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor license subject to departmental approvals, with any specific restrictions:

Player's Grandstand, Inc. (Player's Grandstand), 4024 Grand Avenue, for June 11, 2011, from 7:00 p.m. until 1:00 a.m.

Resolution 11-0302 was unanimously adopted.

Approved June 9, 2011

DON NESS, Mayor

- - -

The meeting was adjourned at 5:17 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, June 13, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

The minutes of council meetings held on February 28, March 14 and 28, 2011, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0613-01 Ski Hut, et al. (two signatures), petition for street improvement of 11th Avenue East from Third to Fourth streets. -- Assessor

11-0613-02 Minnesota state auditor audit report for Duluth entertainment and convention center for the years ended December 31, 2010 and 2009. -- Received

11-0613-04 T-Mobile Central, LLC, appeal of planning commission decision regarding replacement antennas and related telecommunications equipment upgrades at various locations in Duluth. -- Committee of the whole

11-0613-03 The following communications regarding the proposed reclassification of the parcel at the northwestern corner of Kenwood Avenue and Arrowhead Road (11-019-O): (a) Nancy and Stan Beckman; (b) Barbara Brooks; (c) Joe Kleiman; (d) Don Letourneau. -- Received

11-0613-05 The following communications regarding the proposed new East High School resident permit parking zone (11-0309R): (a) Donald Andresen; (b) Mike and Cindy Bayer; (c) Thomas and Mary Bell; (d) Terry and Donna Churchill; (e) O. David Dezell; (f) Ruth Ann Eaton; (g) Sue Finstick and Dale Smith; (h) Dick Halligan and Mary Churchill; (i) Kelcey Joki; (j) Jerome Kwako; (k) Whitney LeFebvre; (l) Marjorie McKee; (m) Diana and Charles Moore; (n) Amy Jo Swing; (o) Pat Trachte --- Received

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REPORTS FROM OTHER OFFICERS

11-0613-07 Assessor letter of sufficiency for petition to reconstruct 11th Avenue East from Third to Fourth streets. -- Received

11-0613-08 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license (raffle) from St. Margaret Mary Church on September 18, 2011. -- Received

11-0613-06 Community development manager communication regarding a request for waivers to HUD conflict of interest rules. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-0613-09 Civil service board minutes of April 5, 2011, meeting. -- Received

11-0613-10 Duluth airport authority minutes of April 12, 2011, meeting. -- Received

11-0613-11 Duluth economic development authority minutes of April 27, 2011, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

11-0613-12 Duluth transit authority: (a) February 2011 income statement; (b) Minutes of March 30, 2011, meeting. -- Received

11-0613-13 Housing and redevelopment authority of Duluth minutes of: (a) March 22; (b) April 26, 2011, meetings. -- Received

11-0613-14 Special assessment board report, findings and recommendations for street reconstruction in the Riverside neighborhood. -- Received

11-0613-15 Special board of review minutes of May 17, 2011, meeting. -- Received

11-0613-16 Spirit Mountain recreation area authority minutes of April 21, 2011, meeting. -- Received

- - -

REPORTS OF COUNCIL OPEN ISSUES

11-0613-17 Tourism tax task force minutes of May 24, 2011, meeting. -- Received

- - -

At this time, 7:03 p.m., the public hearing regarding the Firehouse #1 tax increment financing (TIF) plan began.

Rick Ball reviewed that a charrette had been held in the Central Hillside neighborhood and it had identified a need for housing. He added that the council had passed a resolution of intent last year for this project.

Ron McCrady, developer of the project, explained that this project was invited by the state into a case study where some of the best architects and planners from around the country came and looked at the concept plans and came up with suggestions and ideas on how to improve the project, with the main change being the converting of the larger building into townhomes instead of a single apartment building. He continued saying the new concept plan has been shown to the neighborhood group. Mr. McCrady thanked the council for their past support and explained that the TIF district lowered the financing gap and made the project more financially feasible.

Stacy Korvang, representing Ehlers and Associates, reviewed the TIF financing plan on the project.

Pam Kramer, executive director of Duluth Local Initiative Support Corporation (LISC) and representing both LISC and the ad hoc neighborhood collaborative, urged support for the project as it would invest in the redevelopment of the neighborhood through affordable housing, blight removal, job creation, and really creating a mix of housing that supports homeless individuals and workforce housing.

At this time, 7:12 p.m., no one else appeared who wished to be heard and the public hearing was closed.

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At this time, 7:13 p.m., the public hearing regarding the new East High School resident permit parking zone began.

Michelle Benson voiced concern that with after school activities there will be no where for the neighborhood residents to park on the street and requested the city council change the daily ending time of the zone to 6:00 p.m. She continued saying that the neighborhood strongly feels the zone should be from 8:00 a.m. to 8:00 p.m., but a compromise would be from 8:00 a.m. to 6:00 p.m.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Donald Andresen suggested that Greysolon Road be removed from the zone to see if there will be a problem with the students parking there, and if so, the street could be included in the zone at a later date.

Dale Pagenkopf urged the council to consider the residents who live near the school and extend the parking zone hours until 6:00 p.m. as it would allow people to park in front of their own homes after work since there will be many more vehicles in the neighborhood.

Ralph Mertz, representing Duluth Congregational Church, questioned how overflow parking onto Superior Street from the church's parking lot will be handled if there is an event such as a funeral.

Joe Hasch stated that the parking zone will help prevent students from parking in front of his house on Superior Street as his house is on a curve which has a restricted view when pulling in and out of the driveway. He urged the council to extend the parking time to 6:00 p.m. to allow people to get home from work.

Laurie Korich and Wayne Lepak expressed frustration that the new high school is being built in this location without listening to the people and added that it is not fair that the neighborhood will have to deal with the parking issues from the high school.

Robert Thompson voiced concern that there are not enough parking spots for the students driving to school and questioned if the parking zone time has to be from 8:00 a.m. to 4:00 p.m. because of a lack of police enforcement after 4:00 p.m.

At this time, 7:38 p.m., the public hearing was closed and the regular order of business was resumed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell expressed frustration that the school district's consolidation and construction has been an under-reported issue in the city and that there is not very much factual information available to the public.

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RESOLUTION TABLED

Councilor Fedora moved to remove Resolution 11-0259, vacating a portion of the alley on Norton's Duluth Outlots, Lot 14, that is the easterly extension of the alley in Block 1, Johnson's Addition (Semper Development), from table, which motion was seconded and unanimously carried.

At this time, President Gardner moved to also consider ordinances 11-018 and 11-019.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-018 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO R-2, RESIDENTIAL-URBAN, THE PROPERTY ALONG THE NORTH SIDE OF ARROWHEAD ROAD FROM 1413 WEST ARROWHEAD ROAD TO THE EXTENDED LINE (NORTHERLY) MYERS AVENUE (CITY OF DULUTH).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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INTRODUCED BY COUNCILOR STAUBER

11-019 (10090) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO MU-N, MIXED USE NEIGHBORHOOD, THE ENTIRE PARCEL AT THE NORTHWESTERN CORNER OF KENWOOD AVENUE AND ARROWHEAD ROAD (CITY OF DULUTH).

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The rules were suspended upon a unanimous vote to hear from speakers on the issue.

John Kohler, architect for the developer, explained he has worked with planning staff since last November to create a project at the corner of Arrowhead Road and Kenwood Avenue that improves traffic flow and addresses the safety concerns of the neighborhood by eliminating the number of curb cuts, which will improve pedestrian flow, and replacing and building sidewalks on all three streets. He added that he will be working with St. Louis County for an easement along Kenwood Avenue that will allow for the future widening of through lanes, which will save the city money when it is time to widen the road.

Earl Richards, property owner of the apartment buildings west of the proposed development, voiced concern that he will be losing 45 parking spots with this development. He also explained that he is requesting to rezone the property west of the development so he can develop that property for an assisted living center.

Don Letourneau stated that the corner improvement to be done by the developer will save the city money, the project will be using union labor, it will increase the future tax base, reduce traffic, and thanked the council for listening and looking to improve safety in the neighborhood.

Father Hastings urged the council to listen to the concerns of the neighborhood which will create reasonable and responsible development.

Barbara Brooks stated that the council should not vote for the rezoning until the proper channels have been put in place, as taxpayers should not have to pay for any safety precautions put in the intersection.

Resolution 11-0259 was adopted as follows:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation of a portion of the alley on Norton's Duluth Outlots Lot 14, that is easterly extension of the alley in Block 1 of Johnson's Addition; and

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (FN 11-027) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petitioned alley will be useless for vehicular, utility, and pedestrian purposes when the proposed replacement alley easement are dedicated as noted in (c) below; and

(c) The city engineer has requested that the alley vacation be conditioned upon the relocation of the alley, with an alley easement granted to the city and the proposed alley constructed to city standards and in a manner approved by the city engineer, unless and until the time such as the city engineer determines there is no longer a public purpose for the replacement alley; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(d) The city planning commission, at its May 10, 2011, regular meeting, recommended approval of the alley vacation and proposed replacement alley and easement dedication, with conditions; and

(e) The city council of the city of Duluth approves the vacation of the following-described alley and as described and depicted on Public Document No. 11-0613-18:

Generally described in Misc. Book 60, Page 300, filed August 29, 1934, as being 16.00 feet in width lying northerly of the easterly extension of the north line of Lot 8, Block 1, Johnson's Addition, and which lies southerly of the easterly extension of the south line of Lot 1, Block 1, Johnson's Addition; and

(f) The city council of the city of Duluth approves the dedication of the following-described alley easement and as described and depicted on Public Document No. 11-0613-18:

An easement for public alley purposes over, under and across the west 24.00 feet of Lot 14, Norton's Duluth Outlots, St. Louis County, Minnesota, which lies northerly of the easterly extension of the north line Lot 8, Block 1, Johnson's Addition, and which lies southerly of the easterly extension of the north line of Block 1, Johnson's Addition; and

(g) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-0613-18 showing the alley to be vacated and the alley easement to be dedicated.

Resolution 11-0259 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

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Councilor Stauber moved passage of Ordinance 11-019 and the same was adopted upon a unanimous vote.

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Councilor Stauber stated that until the property owner spoke tonight, he had not heard from city staff the reason for the zoning change on this land.

Councilor Fedora stated that the rezoning of this property is in line with the comprehensive plan and fits into the neighborhood.

To questioning from President Gardner, Chief Administrative Officer David Montgomery replied that the work on the intersection could start this summer to deal with the traffic issues, which would give the city time to study the rezoning ordinance and how the potential development would fit with the area. He also stated that tabling Ordinance 11-018 would not stop the work on the Walgreen's development.

Councilor Anderson moved to remove the ordinance from the agenda, which motion was seconded and failed upon the following vote:

Yeas: Councilors Anderson, Boyle and Hartman -- 3

Nays: Councilors Cuneo, Fedora, Fosle, Halberg, Stauber and President Gardner -- 6

Councilor Anderson moved to table the ordinance, which motion was seconded and passed upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the assessment roll on file in the office of the city clerk as Public Document No. 11-0613-19, which is levied against property to collect delinquent property violation administrative penalty citations for the period of March 1, 2010, to March 1, 2011, as authorized in Chapter 12 of the Duluth City Code, 1959, as amended, is hereby confirmed.

Resolution 11-0240 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute and implement a collective bargaining agreement with Local 101 International Association of Firefighters, containing the same terms and conditions, and being substantially the same as that on file in the office of the city clerk as Public Document No. 11-0613-20, covering the year 2010.

Resolution 11-0320 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to enter into a contract with Tierney Brothers, Inc., for the Phase II technology upgrade of the city council chamber - covering both equipment and implementation - in accordance with Minnesota State Contract 442629, Release A-203(5), specifications and pricing and the vendor's prior work on this project, for a total of \$66,550.60, payable from as follows:

(a) \$23,447.50 from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2008 (fiscal year), Object 5580 (capital equipment), Project CE250-E801;

(b) \$43,103.10 from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2010 (fiscal year), Object 5580 (capital equipment), Project CE250-E1003).

Resolution 11-0288 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following temporary on sale intoxicating liquor license for the period ending August 31, 2011, subject to departmental approvals and the payment of sales and property taxes:

Dubh Linn, Inc. (Dubh Linn Pub & Billiards), 109 West Superior Street, with Mike Maxim, Sr., 50 percent stockholder and Mike Maxim, Jr., 50 percent stockholder, transferred from Dubh Linn, LLC (Dubh Linn Pub & Billiards), same address.

Resolution 11-0297 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved June 13, 2011
DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following bed and breakfast wine license for the period ending August 31, 2011, subject to departmental approvals, and the payment of sales and property taxes:

A.G. Thomson House Historic Bed and Breakfast Inn (A.G. Thomson House), 2617 East Third Street, with Timothy Allen, 50 percent stockholder and Angela Allen, 50 percent stockholder.

Resolution 11-0298 was unanimously adopted.

Approved June 13, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor license, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

Lake Superior Brewing Company, LLC (Twin Ports Bridge Fest), Bayfront Park, for July 9, 2011, from Noon until 10:00 p.m. with Dale Kleinschmidt, manager.

Resolution 11-0300 was unanimously adopted.

Approved June 13, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals, with any specific restrictions:

Chasers of Duluth, Inc. (Bedrock Bar), 2023 West Superior Street, for June 18, 2011, from 5:00 p.m. to 9:00 p.m.

Alpine Bar & Lounge, Inc. (Alpine Bar & Lounge), 1308 Commonwealth Avenue, for June 25, 2011, from 8:00 p.m. to Midnight.

Resolution 11-0301 was unanimously adopted.

Approved June 13, 2011
DON NESS, Mayor

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RESOLVED, that the appointment to the entertainment and convention center authority by Mayor Ness of Roger Reinert for a term expiring on June 30, 2014, replacing Yvonne Prettner Solon, is confirmed.

Resolution 11-0285 was unanimously adopted.

Approved June 13, 2011
DON NESS, Mayor

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RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. 11-0613-21, between the Duluth economic development authority (DEDA) and Dewitt-Seitz Marketplace, LLC, related to the renovation of warehouse space in the Dewitt-Seitz Building for lease to GeaCom, Inc., in an amount not to exceed \$200,000.

Resolution 11-0304 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved June 13, 2011
DON NESS, Mayor

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The city council of the city of Duluth hereby finds the following:

- (a) Involta, LLC, (developer) has been attracted to consider locating a data center (project) in Duluth by APEX and other development partners; and
- (b) The developer has indicated that the availability of JOBZ benefits and tax increment financing for the project are required in order to locate its project in Duluth; and
- (c) The project would build the technology infrastructure that can be utilized to serve the information technology and data storage needs of several local businesses and also attract additional quality jobs to the city of Duluth; and
- (d) The project further diversifies the local economy by strengthening the information technology sector and creates employment options for employees in the high tech sectors; and
- (e) Developer has expressed a willingness to develop a Phase I 24,000 square foot data center facility providing high end office space and critical data storage and services for major employers in this region; and
- (f) The project will also attract corporate clients from outside the area, creating both corporate presence and high quality employment opportunities; and
- (g) The facility represents a private sector investment for Phase I up to \$10.5 million; and
- (h) Upon the successful completion of Phase I, developer has expressed interest in additional expansions of up to approximately \$40 million; and
- (i) Phase I will initially create direct employment of eight highly skilled positions with the strong potential for an additional indirect construction and contracted employment of approximately 40 - 80 jobs; and
- (j) Phase II – IV will create additional direct and indirect employment; and
- (k) Developer commits to exploring opportunities for sustainable building design and operational efficiencies; and
- (l) Both local and non-local businesses as well as nationally-based companies will utilize the data center; and
- (m) The project meets the stated JOBZ criteria for both state of Minnesota and city of Duluth public purpose benefits including creating jobs which offer high wages; encouraging businesses to undertake expansions to add and retain jobs; enhancing regional economic growth; supporting businesses which make a long-term commitment to employment in the community; mitigating barriers to development of sites with constraints; and encouraging growth consistent with good planning; and
- (n) The project presents a key investment in critical infrastructure in support of our regional businesses and creates an environment for future job creation; and
- (o) The project is different from others for which the city has provided economic development assistance in that it is more beneficial to the community by its development of a technology infrastructure component needed for further high tech business development than in its actual job creation; and
- (p) This is akin to having appropriate utility services, schools and other infrastructure available to prospective employers and businesses; and
- (q) The job creation economic development model of counting jobs directly created by the project would cause this project to be rated quite low and therefore it is desired that the

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city council make a policy decision on whether a substantial economic development business subsidy (nearly \$1,400,000 present value [an estimated \$950,000 through JOBZ and \$435,000 in tax increment financing]) will be considered; and

(r) The Duluth economic development authority indicated conceptual support for this project at the May 22, 2011, meeting; and

(s) The city council has duly considered this matter and has determined that it is appropriate for an economic development project to receive a substantial public business subsidy if it provides substantial benefits to the community other than job creation.

NOW, THEREFORE, BE IT RESOLVED, by the city council of the city of Duluth, Minnesota, as follows:

(a) The city council hereby determines that it will consider providing substantial business subsidy assistance to an economic development project that provides substantial benefits to the community other than direct job creation;

(b) The city council hereby determines that it will consider making JOBZ benefits and tax increment financing available to the project;

(c) Nothing in this resolution shall constitute any approval of any aspect of the project or of any economic development assistance. Such approval can be provided only after public hearings, full consideration of the project and an approving vote of the city council.

Resolution 11-0318 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

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The city council of the city of Duluth hereby finds the following:

(a) The Duluth City Council adopted Resolution No. 03-0731 which authorized the Arrowhead Regional Development Commission to act as job opportunity building zone (JOBZ) zone sponsor and administrator and to make program commitments on behalf of the city of Duluth;

(b) The Minnesota department of employment and economic development (DEED) approved the Northeast Minnesota regional JOBZ application for 4,031 acres including 351.12 acres within the city of Duluth;

(c) The Duluth City Council adopted Resolution No. 04-0236 designating those 351.12 acres within the city of Duluth into 11 subzones, including 40.0 acres in the Canadian National Subzone #100;

(d) The Duluth City Council adopted Resolution No. 08-0259 approving the modification of JOBZ subzone #100 and forming a new 12.35 acre JOBZ subzone #100.1 on April 14, 2008, on behalf of a data center project with VISI, Incorporated;

(e) The VISI, Incorporated, project did not occur;

(f) The final modification of JOBZ subzone #100 and the formation of JOBZ #100.1 was never requested of DEED and therefore, never occurred;

(g) A new data center project has been identified which requires JOBZ subzone 100.1 to be larger than 12.35 acres;

(h) The city of Duluth wishes to reallocate 14.4 acres from Subzone #100 and form a new subzone of 14.4 acres which will be called the Duluth Technology Park Subzone #100.1 and further wishes to provide for the possibility of providing JOBZ benefits to businesses whose expansion or relocation may occur on the 14.4 acre project site;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(i) The JOBZ program created in Minnesota Session Laws 2003, First Special Session, Chapter 21, Article 1, allows for the formation of tax free zones and for subzone boundaries to be amended with the approval of all taxing authorities.

NOW, THEREFORE, BE IT RESOLVED, that City Council Resolution No. 08-0259 adopted April 14, 2008, related to the VISI, Incorporated, project is hereby rescinded in its entirety.

BE IT FURTHER RESOLVED, that the city of Duluth approves a modification to the Canadian National Subzone #100 by removing a total of 14.4 acres from said subzone having the following parcel identification number: 010-2746-1330.

BE IT FURTHER RESOLVED, that the city of Duluth does hereby approve the creation of a new subzone of 14.4 acres called the Duluth Technology Park Subzone #100.1 (Parcel Identification #010-1356-00010, -00020 and -00030), approves the use of tax exemptions and tax credits within said subzone (subject to proper review and approval by the Minnesota department of employment and economic development (DEED) and other appropriate taxing authorities with the zones) and agrees to provide all of the local tax exemptions and credits required and provided for under the JOBZ legislation and agrees to forgo the tax benefits resulting from the same.

Resolution 11-0319 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to execute a 25 year cooperative maintenance agreement filed with the city clerk as Public Document No. 11-0613-22 with the state of Minnesota, department of natural resources, for the removal of the existing fishing pier and replacement with a new fishing pier at Boy Scout Landing, all at no cost to the city.

Resolution 11-0287 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

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BE IT RESOLVED, by the city council (the council) of the city of Duluth, Minnesota (the city), as follows:

Section 1. Recitals.

1.01. The Board of Commissioners of the Housing and Redevelopment Authority of Duluth (the HRA) has heretofore established Project Area No. 1 and adopted a redevelopment plan/housing development plan therefor. It has been proposed by the HRA that the city adopt a modification to the redevelopment plan/housing development plan for Project Area No. 1 (the redevelopment plan/housing development plan modification) and establish the Firehouse Redevelopment Tax Increment Financing District (the district) therein and adopt a tax increment financing plan (the TIF plan) therefor (the redevelopment plan/housing development plan modification and the TIF plan are referred to collectively herein as the plans), said plans on file in the office of the city clerk as Public Document No. 11-0613-23(a); all pursuant to and in conformity with applicable law, including Minnesota Statutes, Sections 469.001 to 469.047 and Sections 469.174 to 469.1799, all inclusive, as amended, (the act) all as reflected in the plans, and presented for the council's consideration.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

1.02. The HRA has investigated the facts relating to the plans and have caused the plans to be prepared.

1.03. The HRA and/or city have performed all actions required by law to be performed prior to the establishment of the district and the adoption and approval of the proposed plans, including, but not limited to, notification of St. Louis County and Independent School District No. 709 having taxing jurisdiction over the property to be included in the district, a review of and written comment on the plans by the city planning commission on May 10, 2011, approval of the plans by the HRA on May 24, 2011, and the holding of a public hearing upon published notice as required by law.

1.04. The city is not modifying the boundaries of Project Area No. 1, but is however, modifying the redevelopment plan/housing development plan therefor.

Section 2. Findings for the adoption and approval of the redevelopment plan/housing development plan modification.

2.01. The council approves the redevelopment plan/housing development plan modification, and finds, based on information contained in the plans, that:

(a) The land on the project area would not be made available for redevelopment without the financial aid to be sought;

(b) The redevelopment plan/housing development plan, as modified, will afford maximum opportunity, consistent with the needs of the city as a whole, for the development of the areas by private enterprise; and

(c) That the redevelopment plan/housing development plan, as modified, conforms to the general plan for the development of the city as a whole.

Section 3. Findings for the establishment of the Firehouse Redevelopment Tax Increment Financing District.

3.01. The council hereby finds that the Firehouse Redevelopment Tax Increment Financing District is in the public interest and is a "housing district" under Minnesota Statutes, Section 469.174, Subd. 11 of the act.

3.02. The council further finds, based on information contained in the Plans, that the proposed development would not occur solely through private investment within the reasonably foreseeable future; that the plans conform to the general plan for the development or redevelopment of the city as a whole; and that the plans will afford maximum opportunity consistent with the sound needs of the city as a whole, for the development or redevelopment of the district by private enterprise.

3.03. The council further finds, declares and determines that the city made the above findings stated in this section and has set forth the reasons and supporting facts for each determination in writing set forth in Public Document No. 11-0613-23(b).

Section 4. Public purpose.

4.01. The adoption of the plans conforms in all respects to the requirements of the act and will help fulfill a need to develop an area of the city which is already built up, to provide housing opportunities, to improve the tax base and to improve the general economy of the state and thereby serves a public purpose. For the reasons described in Public Document No. 11-0613-23(b), the city believes these benefits directly derive from the tax increment assistance provided under the TIF plan. A private developer will receive only the assistance needed to make this development financially feasible. As such, any private benefits received by a developer are incidental and do not outweigh the primary public benefits.

Section 5. Approval and adoption of the plans.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

5.01. The plans, as presented to the council on this date, including without limitation the findings and statements of objectives contained therein, are hereby approved, ratified, established, and adopted and shall be placed on file in the office of the executive director of the HRA.

5.02. The staff of the city, the city's advisors and legal counsel are authorized and directed to proceed with the implementation of the plans and to negotiate, draft, prepare and present to this council for its consideration all further plans, resolutions, documents and contracts necessary for this purpose.

5.03 The auditor of St. Louis County is requested to certify the original net tax capacity of the district, as described in the plans, and to certify in each year thereafter the amount by which the original net tax capacity has increased or decreased; and the Housing and Redevelopment Authority of Duluth is authorized to forthwith transmit this request to the county auditor in such form and content as the auditor may specify, together with a list of all properties within the district, for which building permits have been issued during the 18 months immediately preceding the adoption of this resolution.

5.04. The executive director of the HRA is further authorized to file a copy of the plans with the commissioner of the Minnesota department of revenue and the office of the state auditor pursuant to Minnesota Statutes 469.175, Subd. 4a.

Resolution 11-0321 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

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BE IT RESOLVED, that pursuant to Minnesota Statutes 204B.16, the following locations are designated as polling places for the September 13, 2011, municipal and school board primary election and November 8, 2011, for the municipal and school board general election:

POLLING PLACE LIST

	POLLING PLACE	ADDRESS
1.	St. Michael's Catholic Church (lower level)	4901 East Superior Street
2.	Lakeside Presbyterian Church (lower level)	4430 McCulloch Street
3.	Lutheran Church of the Good Shepherd (lower level)	1325 North 45th Avenue East
4.	Faith Lutheran Church (lower level)	1814 North 51st Avenue East
5.	Lakeview Covenant Church (lower level)	1001 Jean Duluth Road
6.	Woodland Community Club	3211 Allendale Avenue
7.	Glen Avon Presbyterian Church	2105 Woodland Avenue
8.	Duluth Congregational Church	3833 East Superior Street
9.	Pilgrim Congregational Church	2310 East Fourth Street
10.	U.M.D. Kirby Student Center	1120 Kirby Drive
11.	Kenwood Lutheran Church	324 West Cleveland Street
12.	Chester Park United Methodist Church (lower level)	819 North 18th Avenue East
13.	Mt. Olive Lutheran Church (lower level)	2010 East Superior Street
14.	Temple Israel	1602 East Second Street
15.	Trinity Lutheran Church	1108 East Eight Street
16.	Peace Church (Tenth Avenue entrance)	1015 East 11th Street
17.	First United Methodist Church (Lakeview social hall)	230 East Skyline Parkway
18.	Central Hillside Community Center	12 East Fourth Street

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POLLING PLACE LIST

	POLLING PLACE	ADDRESS
19.	Rainbow Senior Center (auditorium)	211 North Third Avenue East
20.	Lafayette Square (upper level)	3026 Minnesota Avenue
21.	Duluth Public Library (Green Room)	520 West Superior Street
*22.	Duluth Gospel Tabernacle Church (lower level)	1515 West Superior Street
23.	Lincoln Park Senior Center (lower level)	2014 West Third Street
24.	Holy Cross Lutheran Church (lower level)	410 North Arlington Avenue
25.	Duluth Heights Community Club	33 West Mulberry Street
26.	Christ Lutheran Church	2415 Ensign Street
27.	St. Lawrence Church	2410 Morris Thomas Road
28.	Holy Family Catholic Church	2430 West Third Street
29.	Harrison Community Club	3002 West Third Street
30.	City Center West	5830 Grand Avenue
31.	Faith Haven (recreation room)	4901 Grand Avenue
32.	Elim Lutheran Church (social hall)	6101 Cody Street
33.	Bayview Heights School (gym)	8702 Vinland Street
34.	Asbury United Methodist Church	6822 Grand Avenue
35.	Goodfellowship Community Center (warming area)	1242-88th Avenue West
36.	Stowe School (Room 27)	715-101st Avenue West

* New polling site

BE IT FURTHER RESOLVED, that under the authority of Ordinance 8728, that an absentee ballot board shall be in effect and utilized as allowed for under Minnesota Statutes, for the September 13, 2011, and November 8, 2011, elections.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to establish and post temporary handicapped parking zones for the September 13, 2011, and November 8, 2011, elections.

BE IT FURTHER RESOLVED, that the city agrees to indemnify and hold harmless any organization allowing the city to use its building for a polling place from any claims or damages for bodily injury or property damage that are not covered by the insurance of the property owner or property operator, and arise out of the claimants' activities in the polling place for the purpose of voting, but subject to municipal liability limits contained in state law.

Resolution 11-0274 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that Resolution 02-0304 amending Contract 19206 with LHB, Inc., for professional engineering services for construction administration and inspection for rehabilitation of Bridge No. 93402 on Second Street at Chester Creek be amended to increase the amount by \$102,464 for a new total of \$160,202. This increase is to include the construction engineering phase for the bridge rehabilitation project. This increase is eligible for MSAS funding and is payable from the Permanent Improvement Fund 411, Department/Agency 035, City Project 0068TR, S.A.P. 118-130-005.

Resolution 11-0278 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- - -

RESOLVED, that it is deemed necessary for public convenience and safety and it is hereby ordered that the following streets (City Project No. 0699SN/TR) be improved:

St. Louis Court from Industrial Avenue to Industrial Avenue;
Industrial Avenue from St. Louis Court to Riverside Drive;
Riverview Avenue from Industrial Avenue to Marine Court;
Viewcrest Avenue from Marine Court to dead end;
Marine Court from Riverview Avenue to Spring Street;
Spring Street from Penton Boulevard to Grand Avenue (second entrance);
Riverside Drive from Spring Street to Manitou Street;
Manitou Street from Riverside Drive to Cato Avenue;
Sunnyside Street from Riverside Drive to East Penton Boulevard Alley;
Union Street from Riverside Drive to East Penton Boulevard Alley;
England Avenue from Penton Boulevard to Sunnyside Street;
Cato Avenue from East Penton Boulevard Alley to Manitou Street;
Penton Boulevard from Spring Street to England Avenue;
East Penton Boulevard Alley from England Avenue to Calais Street.

FURTHER RESOLVED, that said work be done by contract and that the estimated total cost of said improvement as estimated by the city engineer is \$6,933,208, with Street Improvement Fund 440 being the working fund; with \$1,928,920 payable from Sanitary Sewer Bond Fund 531, Department 500, Object 5532; with \$1,508,454 payable from Water Bond Fund 511, Department 500, Object 5532; with \$527,484 payable from Stormwater Utility Fund 535, Department 500, Organization 1905, Object 5533; with \$138,510 payable from Gas Utility Fund 520, Department 500, Organization 1905, Object 5533; with \$2,829,840 payable from Street Improvement Fund 440, Department 038, Object 5530; and of these project costs \$557,460 will be assessed to benefitting properties.

FURTHER RESOLVED, that assessment shall be levied upon lands benefitting per the primary assessment roll and may be paid in 15 annual installments at the bond fund index rate plus 1.5 percent.

FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 61 of the City Charter, and that said improvement be hereby ordered.

Resolution 11-0282 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the construction of Bridge No. 69679 (Old Bridge No. L8476) over Miller Creek at Lincoln Park Drive, City Project No. 0622TR.

RESOLVED, that the grant has been approved, and the amount of the grant has been determined to be \$727,242.50.

FURTHER RESOLVED, that the city of Duluth agrees to the terms and conditions of the grant consistent with Minnesota Statutes, Section 175.40, subdivision 5, clause (30), and will pay any additional amount by which the cost exceeds the estimate, and will return to the Minnesota state transportation fund any amount appropriated for the bridge but not required. The proper city officials are hereby authorized to execute a grant agreement, on file in the office of the city clerk as Public Document No. 11-0613-24, concerning the above referenced

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

grant. Grant monies received hereunder shall be deposited into the Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0622TR, S.A.P. 118-080-037.

Resolution 11-0283 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the rehabilitation of Bridge No. 69812 at 27th Avenue West, City Project No. 0496TR.

RESOLVED, that the grant has been approved and the amount of the grant has been determined to be \$627,298.75.

FURTHER RESOLVED, that the city of Duluth agrees to the terms and conditions of the grant consistent with Minnesota Statutes, Section 175.40, subdivision 5, clause (30), and will pay any additional amount by which the cost exceeds the estimate, and will return to the Minnesota state transportation fund any amount appropriated for the bridge but not required. The proper city officials are hereby authorized to execute a grant agreement, on file in the office of the city clerk as Public Document No. 11-0613-25, concerning the above referenced grant. Grant monies received hereunder shall be deposited into Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0496TR, S.A.P. 118-115-006.

Resolution 11-0284 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Insituform Technologies USA, Inc., for the cured-in-place pipe (CIPP) rehabilitation of sanitary sewers at various locations in the amount of \$485,806.70, with \$383,106.30 payable from Sanitary Sewer Fund 530 and \$102,700.40 payable from Stormwater Utility Fund 535, Department 500, Division 1905, Object 5533, City Project No. 0982SN.

Resolution 11-0292 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Crysteel Truck Equipment for the outfitting of four International plow trucks in accordance with city-approved specifications and the vendor's low bid of \$106,202.88 plus \$7,301.45 sales tax for a combined total amount of \$113,504.33, terms net 30, payable from the following accounts:

(a) \$85,128.25 from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2011 (fiscal year), Object 5580 (capital equipment) Project CE250-V1104;

(b) \$28,376.08 from Street Improvement Program Fund 440, Department/Agency 038 (special assessment contracts), Object 5580 (capital equipment), Project SIP-2011 Roads.

Resolution 11-0293 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- - -

The city council finds as follows:

(a) The municipality of Duluth implemented municipal state aid LBRP and local projects in 2011; and

(b) Said municipality is proceeding with the construction of said projects with local and state aid funds and proposes to complete said projects through the use of an advance from the local bridge replacement program to supplement the available funds in its permanent improvement fund; and

(c) The advance is based upon the following determination of estimated expenditures:

Project #118-115-006	\$ 627,298.75
Project #118-080-037	\$ 727,242.50
Project #118-030-005	\$ 480,276.50
Advance amount (amount in excess of account balance)	\$1,834,817.75;

(d) Repayment of the funds so advanced will be made in accordance with the provisions of Minnesota Statutes 162.08, subd. 7, and Minnesota Rules, Chapter 8820.1500, subp. 8; and

(e) The municipality acknowledges that advance funds are released on a first-come, first-serve basis, and that this resolution does not guarantee the availability of funds.

RESOLVED, that the commissioner of transportation be and hereby is requested to approve this advance for financing approved municipal state aid projects of the municipality of Duluth in an amount up to \$1,834,817.75. The city of Duluth hereby authorizes payments from subsequent accruals. Repayment from entire future year allocation until fully repaid: \$1,834,817.75 paid from year 2012.

Resolution 11-0305 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to enter into an agreement with Woodland Hills providing for the use of property for police training purposes; said agreement to be substantially in the form of Public Document No. 11-0613-26 on file in the office of the city clerk.

Resolution 11-0281 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept Amendment No. 1 to grant CFMS Contract No. B49124 from Minnesota department of public safety, state fire marshal's office, a copy of which amendment is on file in the office of the city clerk as Public Document No. 11-0613-27, increasing the amount thereof by up to \$1,200, said funds to be deposited in Fund 110, Agency 150, Organization 1501, Revenue Source 4220 (general fund, fire, administration), to reimburse the fire department for emergency medical services costs.

Resolution 11-0286 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0613-28, with the state of Minnesota, office of state court administration, to enable the police department to access court records and data.

Resolution 11-0303 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a donation in the amount of \$8,000 from the Police Welfare Association and accept \$2,000 from the Duluth police gym fund to be used towards the purchase of gym equipment for the Duluth police gym, said amounts to be deposited in Fund 450-030-4660, Project CP2009-0928B (capital improvement fund, finance, donations, public safety building).

FURTHER RESOLVED, the city council hereby recognizes and thanks the Police Welfare Association for its generous gift.

Resolution 11-0306 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-125 of the Duluth City Code, 1959, as amended, the following resident permit parking zone is rescinded:

The area around the old East High School, located at 2900 East Fourth Street.

All resident permit parking signs shall be removed and salvaged where possible and used on the new resident permit parking zone which is to be established around the new East High School located at 40th Avenue East and Superior Street. This resolution shall take effect on June 15, 2011.

Resolution 11-0315 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on the 1300 block of Commonwealth Avenue on June 25, 2011, to coincide with the Far West Fest special events license, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 11-0317 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a donation in the amount of \$40,000 from the Julia Newell Marshall Fund to be used towards the construction of a new gazebo and accessible trails in Enger Park, said amount to be deposited in Fund 210-030-3118-4660 (special projects fund, finance, Enger Park, gifts and donations).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, the city council hereby recognizes and thanks the Julia Newell Marshall Fund for its generous gift.

Resolution 11-0290 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that this amendment to Agreement 21244 (additional services directive one) with Collaborative Design Group, Inc., is hereby approved, said amendment to be substantially in the form of Public Document No. 11-0613-29 on file in the office of the city clerk, to include additional architectural services associated with Phase III of the Enger Tower reconstruction and Enger Park master plan, thereby authorizing an increase of \$46,800, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project CP 2010 ENGTR.

Resolution 11-0294 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

WHEREAS, in 2006, the Lake Superior Zoological Garden (zoo) lost its accreditation status with the American Association of Zoos and Aquariums (AZA) due to a long, slow decline in the overall upkeep and operation of the zoo; and

WHEREAS, in 2006, a national planning firm recommended the operations of the zoo be shifted to a nonprofit; and

WHEREAS, on January 26, 2009, the city council authorized the city of Duluth to enter into an agreement with the Arrowhead Zoological Society, Inc., (zoo society) for operation of the zoo (Resolution 09-0764); and

WHEREAS, the purpose of the agreement was to rejuvenate the zoo as a quality attraction and resource for people of all ages and to make the zoo a source of pride for the entire region with the ultimate goal of regaining accreditation from the AZA; and

WHEREAS, as part of the agreement, the parties agreed to cooperate in financing Zoo improvements and to explore non-city financing opportunities, which has occurred with a number of projects, including state bonding for the Polar Shores exhibit and bridge repairs; and

WHEREAS, as part of the agreement, the city provides the zoo society \$680,000 a year provided from tourism taxes and state grant funds; and

WHEREAS, in addition to the routine costs of operating the zoo, the AZA identified more than \$800,000 in deficiencies that needed to be addressed at the facility before it could be considered for re-accreditation; and

WHEREAS, during 2009, the zoo society consciously did not spend the full amount of funds appropriated by the city as the society wanted to ensure that repairs and upgrades to the zoo were done in an efficient and strategic manner to maximize the limited funds available to the society for that purpose; and

WHEREAS, it was the understanding of the zoo society that the unspent funds from 2009 could be carried forward for re-accreditation related projects as long as the council authorized the spending of those funds as that expenditure was not expressly provided for in the zoo agreement; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

WHEREAS, the zoo is now poised for re-accreditation by the AZA and has presented the city with a list of projects necessary for re-accreditation, a copy of which is on file with the city clerk as Public Document No. 11-0613-30; and

WHEREAS, the city council recognizes that the zoo society has been diligent in leveraging non-city funding for the operation and upgrade of the zoo.

THEREFORE, BE IT RESOLVED, that city officials are hereby authorized to use up to \$142,488 of unspent zoo funds from 2009 to reimburse the zoo society for 2011 re-accreditation related expenses in accordance with the reimbursement process provided for in Section V of the zoo agreement; funds to be paid from Fund 200 (zoo), Account 2530 (unreserved fund balance).

Resolution 11-0296 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Northeast Minnesota statewide health improvement program in the amount of \$6,500 for the purchase of bicycle racks, funds to be deposited in Fund No. 110-121-1219-4270 (general, public administration, parks and recreation) and to execute a grant agreement substantially the same as that on file in the office of the city clerk as Public Document No. 11-0613-31.

Resolution 11-0308 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that city officials are hereby authorized to enter into a contract with Enventis Telecom, Inc., for the purchase and delivery of Cisco infrastructure equipment to support the city's voice and data network in accordance with approved specifications and the vendor's quote of \$1,204,282.95, terms net 30, payable as follows:

Amount	Fund Capital Equipment	Department/ Agency	Division	Object	Project No.
		Administrative Services	Fiscal Year	Capital Equipment	
\$66,376.00	250	015	2009	5580	CE250- E910
\$155,838.00	250	015	2010	5580	CE250- E1005
\$982,068.95	250	015	2011	5580	CE250- E1106

Resolution 11-0291 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the permanent expansion of the designated serving area of the following on sale intoxicating liquor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

license for the period ending August 31, 2011, subject to departmental approvals, with any specific restrictions:

Zeitgeist Arts, LLC (Teatro/Zinema/Za Café), 222 East Superior Street.

Resolution 11-0299 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Cuneo -- 1

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Ulland Brothers, Inc., for the purchase of fine cold mix asphalt during the contract period of June 1, 2011, through May 31, 2012, in accordance with approved specifications and the vendor's bid of \$54.85 per ton for 850 tons, for a total of \$46,622.50 plus \$3,205.30 sales tax, for a combined total amount of \$49,827.80, payable as follows:

Amount	Fund	Department/Agency (public works and utilities)	Organization (utility operations)	Object (blacktop)
\$19,931.12	Water Fund 510	500	1945	5222
\$ 9,965.56	Gas Fund 520	500	1945	5222
\$ 9,965.56	Sewer Fund 530	500	1945	5222
\$ 9,965.56	Stormwater 535	500	1945	5222

Resolution 11-0295 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved June 13, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Northland Constructors of Duluth, LLC, for the rehabilitation of Bridge No. 93402 in the amount of \$1,119,891, payable out of Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0068TR, S.A.P. 118-130-005.

Resolution 11-0307 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved June 13, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0309, designating portions of certain streets in the vicinity of Duluth East High School as resident permit parking zones, was introduced by Councilor Fosle for discussion.

Councilor Stauber voiced concern that there will be misbehavior by the students around their cars, the residents will have a hard time parking after work and, that the police department should be able to answer any calls regarding the parking after 4:00 p.m.

Councilor Stauber moved to amend the resolution so that the resident permit parking zone hours would be from 8:00 a.m. to 8:00 p.m., which motion was seconded for discussion.

Councilor Fosle stated that all of the resident permit parking zones should be for the same time span, and pointed out that Denfeld High School has taken on the activities for all of the high schools at the Public School Stadium without a problem.

Councilor Stauber's amendment failed upon the following vote:

Yeas: Councilors Anderson, Fedora and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 6

Resolution 11-0309 was adopted as follows:

RESOLVED, that pursuant to Section 33-125 of the Duluth City Code, 1959, as amended, the parking areas of the sides of streets designated on the map of that portion of the city, which is filed with the city clerk as Public Document No. 11-0613-32, are hereby designated as resident permit parking zones during each period from and including September 1 to and including June 15, between the times of 8:00 AM and 4:00 PM of any Monday to Friday therein.

FURTHER RESOLVED, that all no parking zones and other parking restrictions previously established by the city council which pertain to any parking area of any street designated as a resident permit parking zone or a no parking zone by this resolution shall remain in effect.

Resolution 11-0309 was unanimously adopted.

Approved June 13, 2011

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the first time:

BY COUNCILOR FEDORA

11-021 - AN ORDINANCE REPEALING CHAPTER 34, SECTION 42, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE SALE AND POSSESSION OF SYNTHETIC CANNABINOIDS.

- - -

The meeting was adjourned at 9:00 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10090

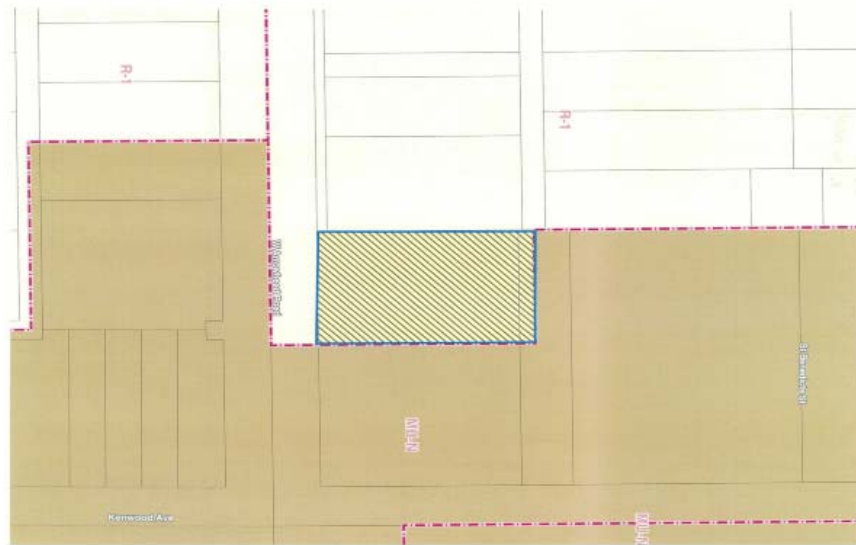
AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO MU-N, MIXED USE NEIGHBORHOOD, THE ENTIRE PARCEL AT THE NORTHWESTERN CORNER OF KENWOOD AVENUE AND ARROWHEAD ROAD (CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the subject property, located on the northwest corner of the intersection of Kenwood Avenue and Arrowhead Road and as more particularly described in Exhibit A (Public Document No. 11-0613-33), be reclassified from R-1, Residential-Traditional, to MU-N, Mixed Use Neighborhood, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



(Ref. File No. 11-042)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: July 15, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 13, 2011
Approved June 13, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, June 27, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

The minutes of council meetings held on April 11 and 25, and May 9, 2011, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0627-01 Minnesota state auditor:

(a) Duluth airport authority audit report for the years ended December 31, 2010, and 2009;

(b) Western Lake Superior Sanitary District management and compliance report for the year ended December 31, 2010. -- Received

11-0627-10 Barbara Brooks communication regarding the proposed reclassification of property along the north side of Arrowhead Road from 1413 West Arrowhead road to the extended line (northerly) of Myers Avenue (11-019-O). -- Received

11-0627-14 Grey Doffin communication regarding the proposed agreement with Jungle Boy Boxing Gym the operation of the Observation Community Recreation Center (11-0289R). -- Received

11-0627-02 T-Mobile Central, LLC, by Larkin Hoffman Daly and Lindgren, Ltd., law firm, communications regarding the appeal and of the planning commission decision regarding replacement antennas and related telecommunications equipment upgrades at various locations in Duluth: (a) Appeal; (b) Postponement (11-0337R and 11-0338R). -- Received

11-0627-11 The following communications regarding the proposed amendments to the city bowhunt regulations (11-0349R and 11-020-O): (a) Shane Bubacz; (b) Kent Goble; (c) Kevin Peterson; (d) Scott Shovein; (e) Mark Wasbotten. -- Received

- - -

REPORTS FROM OTHER OFFICERS

11-0627-03 Clerk application for exempt permit to the Minnesota gambling control board from St. Michael's Church for raffle on September 24, 2011. -- Received

11-0627-04 Parks and recreation division manager notice of intent to close the following parks at 10:00 p.m., pursuant to Section 35-9.3 of the Duluth City Code: Lafayette Community Recreation Area Park, Morgan Park Community Recreation Area and Duluth Heights Community Recreation Area. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-0627-12 Alcohol, gambling and tobacco commission minutes of April 6, 2011, meeting. -- Received

11-0627-05 Commission on disabilities minutes of May 4, 2011, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

11-0627-06 Duluth human rights commission minutes of May 11, 2011, meeting. -- Received

11-0627-07 Duluth public utilities commission of May 11, 2011, meeting. -- Received

11-0627-08 Duluth transit authority: (a) Minutes of April 27, 2011, meeting; (b) March 2011 income statement. -- Received

11-0627-09 Special assessment board minutes of May 10, 2011, meeting. -- Received

- - -

REPORTS OF COUNCIL OPEN ISSUES

11-0627-13 Tourism tax task force minutes of: (a) May 31; (b) June 7 and 10, 2011, meetings. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell commented on Independent School District No. 709, noting his concerns of: the Duluth News Tribune (DNT) receives about \$10,000 in revenue each month from the school district and does not ever do articles critical of the Red Plan; the DNT distorting survey results in the school district's favor; a large portion of the city feels disenfranchised in the decision making of the district; there have been too many dirty tricks and financial mismanagement.

- - -

Andres Sparrow expressed concern that he was in an automobile accident 1-1/2 years ago and the police report has not been completed and finalized yet.

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the proper city officials are hereby authorized to enter into a first amendment to Contract No. 21,196 with CRW Systems, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0627-15, increasing the scope of services provided for therein, modifying time lines required thereunder and increasing the amount payable thereunder by \$19,500, payable from Fund 250, Agency 015, Division 2010, Object 5580 (capital equipment, administrative services, Fiscal Year 2010).

Resolution 11-0339 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0417 be amended to increase the line of credit amount by \$2,000,000 for a new line of credit total of \$4,000,000. The line of credit shall be available for use as needed for operations and construction of the new airport terminal project. Interest at a rate of 4.00 percent per annum shall be charged on drawn funds. The city treasurer shall determine the forms, procedures and supporting documentation that will be required to draw on the line of credit. Such transactions shall be subject to audit and public disclosures.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0347 was unanimously adopted.
Approved June 27, 2011
DON NESS, Mayor

- - -

BY COUNCILOR FEDORA:

RESOLVED, that the city council hereby requests the administration review the feasibility of installing stop signs and/or stop lights at the intersection of 43rd Avenue East and Superior Street, potentially creating a four way stop at that intersection.

Resolution 11-0351 was unanimously adopted.
Approved June 27, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Amendola Builders, Inc., for the modernization of two and decommissioning two City Hall elevators in accordance with city-approved specifications and the vendor's low bid of \$657,743, payable as follows:

Amount	Capital Improvements Fund	Department/Agency (finance)	Object (buildings and structures)	Project No.
\$25,851.27	450	030	5520	CP2008-OT0802
\$289,427.00	450	030	5520	CP2009-0907B
\$342,464.73	450	030	5520	CP2010-1007B

Resolution 11-0322 was unanimously adopted.
Approved June 27, 2011
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Bedrock Flint, Inc., for tuckpointing at various zoo locations in accordance with city-approved specifications and the vendor's prior bid, thereby increasing the original Purchase Order 10-0479 by \$190,882, terms net 30, payable Lake Superior Zoo Fund 200, Department/Agency 130 (community resources), and Object 5530 (improvements other than buildings).

Resolution 11-0324 was unanimously adopted.
Approved June 27, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following on sale wine license for the period ending August 31, 2011, subject to departmental approvals and further subject to approval of the liquor control commissioner:

Minnesota Wine Exchange, LLC (Minnesota Wine Exchange), 1330 East Superior Street, premises main floor, with Debra Fellman, owner.

Resolution 11-0327 was unanimously adopted.
Approved June 27, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals, with any specific restrictions:

Clyde Industrial Park, Inc. (Clyde Iron Works Restaurant & Bar), 2920 West Michigan Street, for July 13, 2011, from 4:00 p.m. to 11:00 p.m.

Hospitality of Duluth, LLC (Aces of First), 113 West First Street, for July 8, 2011, with music and serving ceasing at midnight (rain date July 15, 2011).

Rossberg, Inc. (Roscoe's Pioneer Bar), 323 West First Street, for July 8, 2011, with music and serving ceasing at midnight.

Resolution 11-0328 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the reappointments to the Duluth airport authority by Mayor Ness of Suzanne Ross and Roger Wedin for terms expiring on July 1, 2014, are confirmed.

Resolution 11-0310 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the appointment to the library board by Mayor Ness of Frank Jewell for a term expiring on March 31, 2012, replacing Martha Watson who resigned, is confirmed.

Resolution 11-0312 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the reappointment to the sanitary sewer board of the Western Lake Superior Sanitary District by Mayor Ness of Albert M. Katz for a term expiring on July 1, 2014, is confirmed.

Resolution 11-0314 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of maintenance operations manager, which were approved by the civil service board on November 3, 2010, and which are filed with the city clerk as Public Document No. 11-0627-18, are approved; that said classification shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that pay range for said classification shall be ranges 1115-1130. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0348 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the appointment to the parks and recreation commission by Mayor Ness of Edwin K. Hall (at large) for a term expiring on March 31, 2014, replacing Nicholas Lansing who resigned, is confirmed.

Resolution 11-0350 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council makes the following findings:

(a) The city council adopted the Duluth comprehensive land use plan on June 26, 2006, via Resolution 06-0491, which outlined the desired arrangement of land uses for the next 20 years; and

(b) Independent School District 709 is proposing to close Rockridge Elementary School in 2011 as part of its long range facilities plan; and

(c) The Rockridge Elementary School site will no longer be used for school purposes and therefore the future land use map designation as Institutional is no longer necessary; and

(d) The city planning division held a public meeting on May 25, 2011, on the proposed amendment to the comprehensive land use plan - future land use map, to discuss the opportunities for the Rockridge Elementary School site and to gather feedback from the community; and

(e) Based on public comments received and the review of the area completed by planning staff, the city planning division recommended to the city planning commission that the future land use map be amended for the Rockridge Elementary School site from Institutional to Traditional Neighborhood; and

(f) The city planning commission has reviewed the future land use amendment, conducted a public hearing on June 14, 2011, at their regular planning commission meeting, and recommends adoption of the proposed future land use map amendment.

BE IT FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map, is amended as identified in Public Document No. 11-0627-19.

Resolution 11-0340 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council makes the following findings:

(a) The city council finds that a sufficient petition for the vacation of a 120 foot portion of an alley westerly end of alley in Johnson's Addition between Lots 1 and 5, 2 and 6, westerly of Lots 3 and 7; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission; and

(c) Such commission gave due notice of public hearing and did consider same in public hearing (FN 11048); and

(d) The city planning commission found that the petition for the vacation of a public alley does meet the standard of uselessness as an alley; and

(e) The planning commission, at its June 14, 2011, regular meeting, recommended approval of the petition for the alley vacation.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED that the city council of the city of Duluth approves the petition for the vacation of the alley described in paragraph (a) above and depicted on Public Document No. 11-0627-20.

Resolution 11-0344 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a first amendment to agreement with Miller-Dwan Foundation Hospice House LLC modifying design parameters for the entry drive to address engineering and construction issues.

Resolution 11-0345 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds that a sufficient petition for the vacation of a portion of Railroad Street (renamed Commerce Street and now renamed Lake Place Drive) adjoining Lots 17, 19 and 21, Block 2, Industrial Division of Duluth, and a portion of St. Croix Avenue (renamed South First Avenue and now renamed Canal Park Drive) adjoining Lots 31, 32, 33 and 34, Block 1, Industrial Division of Duluth, was filed with the city;

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing (FN 11056) and the city planning commission found that the petition for the vacation of a street does meet the standard of uselessness as a street;

(c) The planning commission, at its June 14, 2011, regular meeting, recommended approval of the petition for the street vacation.

FURTHER RESOLVED, that the city council of the city of Duluth approves the petition for the vacation of the street described in paragraph (a) above and depicted on Public Document No. 11-0627-21.

Resolution 11-0353 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council hereby adopts the model performance measures for cities as developed by the council on local results and innovation pursuant to Laws of Minnesota 2010, Chapter 389, Article 2, sections 1 and 2, and on file in the office of the city clerk as Public Document No. 11-0627-22, for city participation in the state of Minnesota performance measurement program.

Resolution 11-0334 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with JMF Construction, Inc., for the 2011 sanitary and storm manhole adjustment program for

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

the apparent low bid of \$73,921.08, payable out of Sanitary Sewer Fund 530 and Stormwater Fund 535, Agency 500, Organization 1905, Object 5535, City Project No. 0603SN/0604ST.

Resolution 11-0331 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the rehabilitation of Bridge No. 93402 at Second Street over Chester Creek, City Project No. 0068TR.

RESOLVED, that the grant has been approved and the amount of the grant has been determined to be \$559,945.

FURTHER RESOLVED, that the city of Duluth agrees to the terms and conditions of the grant consistent with Minnesota Statutes, Section 175.40, subdivision 5, clause (30), and will pay any additional amount by which the cost exceeds the estimate, and will return to the Minnesota state transportation fund any amount appropriated for the bridge but not required. The proper city officials are hereby authorized to execute a grant agreement, on file in the office of the city clerk as Public Document No. 11-0627-25, concerning the above referenced grant. Grant monies received hereunder shall be deposited into Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0068TR, S.A.P. 118-130-005.

Resolution 11-0332 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. 11-0627-26, with the state of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Lake Superior College to authorize the college and its agents to construct and maintain improvements on city-owned property to handle surface water drainage from property owned by the state at no cost to the city.

Resolution 11-0335 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. 11-0627-27, with Independent School District No. 709 pursuant to which the district will construct certain turn lane, turn signal, sidewalk, retaining wall and parking lot-related improvements as part of the redevelopment of the new East High School facility at 40th Avenue East and Superior Street at no cost to the city.

Resolution 11-0336 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

WHEREAS, based on the recent history of actual sewer system overflows and the estimated flow of clear groundwater to the city's sanitary sewer system originating in each of its sewer basins, the results of prior work in the previously designated basins, the availability of city resources to reduce such flows under the city's I&I program and the results anticipated from so allocating such resources, the director of public works and utilities has recommended that all previously undesignated sewer basins in the city of Duluth and all undesignated portions of any previously designated basin be designated as basins designated for inspection as provided for in Section 43-33 of the Code; and

WHEREAS, the council accepts said recommendation.

RESOLVED, that pursuant to the provisions of Section 43-33 of the Code, that all previously undesignated sanitary sewer basins and any previously undesignated portion of all such basins are hereby designated as basins wherein the city can best utilize its available resources to reduce the amount of unpolluted water entering or infiltrating the city's wastewater collection system and said basins are therefore designated as a basin within which the city shall focus its enforcement efforts under Chapter 43 of the Code.

FURTHER RESOLVED, that the director of public works and utilities is hereby directed to notify, in writing, the owners and persons in control of premises connected with the sanitary sewer within said basins to disconnect any prohibited drain or device within 90 days after the date of such notice in the manner prescribed for such notices in said Section 43-33.

Resolution 11-0341 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Tierney Brothers, Inc., for the purchase and delivery of audio visual equipment, including related design and installation services, for the new police headquarters building in accordance with Minnesota State Contract 442629, Release A-203(5), specifications and pricing and the vendor's quote of \$52,907.84 plus \$2,205.12 sales tax, for a total amount of \$55,112.96, terms net 30, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2009-0928B.

Resolution 11-0323 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on First Street between First and Second avenues West and between Third and Fourth avenues West on July 8, 2011, from 6:00 p.m. to 12:00 a.m., and on Saturday, July 9, 2011, between First and Second avenues West from 6:00 p.m. to 12:00 a.m., in conjunction with the Downtown Sidewalk Days, provided that all alcoholic beverages consumed outside of designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 11-0333 was unanimously adopted.

Approved June 27, 2011

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

DON NESS, Mayor

- - -

RESOLVED, that Additional Services Directive 1 (ADS-1) to Agreement 21312 is hereby approved, said amendment to be substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0627-28, for additional interior design services associated with the main library mechanical system and building envelope upgrades, an increase of \$17,250, payable from the Capital Equipment Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures).

Resolution 11-0316 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 11-0329, in the matter of the on sale intoxicating liquor license of TC, Inc. (Duluth India Palace), 319 West Superior Street, was introduced by Councilor Cuneo for discussion.

Councilor Cuneo moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Lho Lama noted that he has taken the training class for serving alcoholic beverages and requested that the council take that into account in considering this resolution. He also noted that he has already paid a fine in court on this matter.

Councilor Cuneo noted that the alcohol, gambling and tobacco commission only recommended this training and that the council could take that into consideration when acting on this resolution.

Resolution 11-0329 was adopted as follows:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On May 4, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of TC, Inc., d/b/a Duluth India Palace, 319 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0627-16;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on June 27, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0627-16 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of TC, Inc., d/b/a Duluth India Palace, 319 West Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action.

Resolution 11-0329 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(a) On May 4, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Zeitgeist Arts, LLC (Teatro/Zinema/Za Café), 222 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0627-17;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on June 27, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0627-17 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Zeitgeist Arts, LLC, d/b/a Teatro/Zinema/Za Café, 222 East Superior Street are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 penalty, but reduce the penalty to \$300, based on the mitigating circumstances stated in the report to the council, and that payment of the \$300 penalty be made within 30 days of final council action.

Resolution 11-0330 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Cuneo -- 1

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 48-214(b) of the Duluth City Code, 1959, as amended, the city council does hereby create the northern expansion area to facilitate the expansion of natural gas service in areas of the city of Duluth and Rice Lake Township within said area and does hereby approve the establishment of capital funding mechanisms, including a two-tiered natural gas rate structure to facilitate the funding of the costs thereof, all as set forth in the program description on file in the office of the city clerk as Public Document No. 11-0627-23.

Resolution 11-0325 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 48-214(b) of the Duluth City Code, 1959, as amended, the city council does hereby create the Fond du Lac expansion area to facilitate the expansion of natural gas service in Fond du Lac neighborhood of the city of Duluth and does hereby approve the establishment of capital funding mechanisms, including a two-tiered natural gas rate structure to facilitate the funding of the costs thereof, all as set forth in the program description on file in the office of the city clerk as Public Document No. 11-0627-24.

Resolution 11-0326 was unanimously adopted.

Approved June 27, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0352, authorizing long term loan agreement with the St. Louis County historical society for display and preservation of the two city-owned stained glass Tiffany windows, was introduced by Councilor Anderson for discussion.

Councilor Hartman stated that he would not be discussing or voting on this issue, because he works for the St. Louis County historical society.

Councilor Anderson moved to table the resolution for the board of directors of the St. Louis County historical society to review this, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Hartman -- 1

- - -

Resolution 11-0289, authorizing the city to enter into an agreement with Jungle Boy Boxing Gym, a Minnesota nonprofit corporation, for the operation of the Observation Community Recreation Center, was introduced by Councilor Halberg for discussion.

To councilor concerns, Chief Administrative Officer David Montgomery noted that this is only for the use of the facility and the playground area will not be affected by this operation or be allowed to be used for parking, and that this fits into the facility use plans, because this allows for a facility that would otherwise be closed to be used for community purposes.

President Gardner expressed concerns that neighbors wanted to keep this facility open for community use and they have questions about this use.

Councilor Boyle moved to table the resolution for neighborhood comments, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman, Stauber and President Gardner -- 7

Nays: Councilors Fedora and Fosle -- 2

- - -

Resolutions 11-0337 and 11-0338, affirming and reversing, respectively, the decision of the planning commission requiring T-Mobile Central, LLC, to obtain special use permits for equipment upgrades at various telecommunication facilities, were introduced by Councilor Stauber.

Councilor Stauber moved to remove the resolutions from the agenda since the applicant has redrawn their appeal, which motion was seconded and unanimously carried.

- - -

Resolution 11-0342, approving first amendment to the *Building in Duluth 2011* spending plan, was introduced by Councilor Stauber for discussion.

Councilor Anderson moved to table the resolution for a public hearing at the next council meeting, which motion was seconded and unanimously carried.

- - -

Resolution 11-0346, denying a request for a concurrent use of streets permit on the northeast corner of Grand Avenue and 58th Avenue West (Duluth Transit Authority), was introduced by Councilor Stauber.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Fosle moved to table the resolution in order for it to be considered with companion Ordinance 11-024 at the July 11, 2011, council meeting, which motion was seconded and unanimously carried.

- - -

Resolution 11-0343, designating "no parking here to corner" on sections of Superior Street, Second Street and Third Street in the vicinity of 12th Avenue East and 14th Avenue East, was introduced by Councilor Hartman.

Councilor Boyle moved to table the resolution for further information, which motion was seconded and unanimously carried.

- - -

Resolution 11-0349, by Councilor Fosle, adding a new requirement for archery hunters participating in the annual deer management hunt, was introduced.

Councilor Fosle moved to table the resolution, in order for it to be considered with companion Ordinance 11-020 at the July 11, 2011, council meeting, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

11-022 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION OF THE CANAL PARK AREA BUSINESS DISTRICT, FROM RAILROAD STREET TO THE DULUTH SHIP CANAL, FROM MIXED USE-NEIGHBORHOOD (MU-N) TO FORM DISTRICTS, (F-3) MID-RISE COMMUNITY SHOPPING, (F-5) MID-RISE COMMUNITY SHOPPING AND OFFICE, AND (F-9) CANAL PARK LAKEFRONT (CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER

11-023 - AN ORDINANCE GRANTING TO ODYSSEY DEVELOPMENT A CONCURRENT USE PERMIT FOR PARKING IN THE RIGHT-OF-WAY LOCATED ON AN 18 FOOT STRIP ON THE NORTH SIDE OF SOUTH STREET ADJACENT TO PROPERTY AT 431 SOUTH 23RD AVENUE EAST.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-024 - AN ORDINANCE APPROVING A REQUEST FOR A CONCURRENT USE OF STREETS PERMIT ON THE NORTHEAST CORNER OF GRAND AVENUE AND 58TH AVENUE WEST, DULUTH TRANSIT AUTHORITY.

- - -

BY COUNCILORS FOSLE AND HALBERG

11-020 - AN ORDINANCE AMENDING SECTION 6-77 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HUNTING DEER BY BOW AND ARROW.

- - -

The following entitled ordinance was read for the second time:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BY COUNCILOR FEDORA

11-021 (10091) - AN ORDINANCE REPEALING CHAPTER 34, SECTION 42, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE SALE AND POSSESSION OF SYNTHETIC CANNABINOIDS.

Councilor Anderson stated that he would be abstaining from discussing or voting on this because of a professional contract.

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Anderson -- 1

The meeting was adjourned at 8:01 p.m.

JEFFREY J. COX, City Clerk

ORDINANCE NO. 10091

BY COUNCILOR FEDORA:

AN ORDINANCE REPEALING CHAPTER 34, SECTION 42, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE SALE AND POSSESSION OF SYNTHETIC CANNABINOIDS.

The city of Duluth does ordain:

Section 1. That Chapter 34, Section 42, of the Duluth City Code, 1959, as amended, relating to the sale and possession of synthetic cannabinoids is hereby repealed in its entirety.

Section 2. This ordinance shall take effect 30 days after its passage and publication. (Effective date: July 29, 2011)

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Anderson -- 1

Passed June 27, 2011

Approved June 27, 2011

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, July 11, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

The minutes of the council meeting held on May 23, 2011, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0711-01 Darrin Garner, et al. (three signatures) petition for reconstruction of a portion of the Seventh Street Alley from approximately 90 feet to 140 feet westerly of the centerline of 13th Avenue East. -- Assessor

11-0711-02 Minnesota state auditor: (a) Comprehensive annual financial report of the Western Lake Superior Sanitary District for the year ended December 31, 2010; (b) Management and compliance report of the city of Duluth for the year ended December 31, 2010; (c) Management and compliance report of the Duluth economic development authority for the year ended December 31, 2010. -- Received

11-0711-03 Minnesota state office of administrative hearings findings and fact conclusions of law and order regarding the matter of the detachment and annexation of certain land between the cities of Duluth and Proctor pursuant to Minnesota Statutes 414. -- Received

11-0711-04 Daniel H. Mundt submitting communication regarding the display and preservation of the two city-owned Tiffany windows (11-0352R). -- Received

11-0711-05 The following submitting communications regarding the proposed agreement with Jungle Boy Boxing Gym for the operation of Observation Community Recreation Center (11-0289R): (a) Lisa A. Abrahams; (b) Elizabeth Adams; (c) Darren Anderson; (d) Skúli Ármannsson; (e) Jon R. Bolander; (f) Seth Carpenter; (g) Damon Chapman; (h) Brett DeFoe; (i) Carlos J. González; (j) Brad Hasbrouck; (k) Jeanne Lassard; (l) TC Leveille; (m) Desirae Marchand; (n) Trevor Marmon; (o) Wesley Minkkinen; (p) Sherry Minor; (q) Scot Moe; (r) Veid Muiznieks; (s) Judith Munson; (t) Jorey Olson; (u) Adam Palan; (v) Hung Pham; (w) Richard Quigley; (x) Miranda Schahczinski; (y) Jesse Smith; (z) Jessica Ruth Smith; (aa) Michael Wagener; (bb) Darren Williams; (cc) Linda Woodruff-Thompson; (dd) Bobby Brunette; (ee) Anita Schlank. -- Received

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REPORTS FROM OTHER OFFICERS

11-0711-06 Auditor comprehensive annual financial report for the city of Duluth for the year ended December 31, 2010. -- Received

11-0711-07 Clerk application for exempt permit to the Minnesota gambling control board from Program for Aid to Victims of Sexual Assault, Inc., for raffle on November 10, 2011. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- 11-0711-08 Civil service board minutes of May 3, 2011, meeting. -- Received
11-0711-09 Duluth airport authority: (a) Minutes of May 25, 2011, meeting;
(b) Unaudited balance sheet of April 30, 2011. -- Received
11-0711-10 Duluth economic development authority minutes of May 25, 2011,
meeting. -- Received
11-0711-11 Housing and redevelopment authority of Duluth: (a) Audit report for the
year ended September 30, 2010; (b) Minutes of May 31, 2011, meeting. -- Received
11-0711-12 Library board minutes of May 24, 2011, meeting. -- Received

- - -

At this time, President Gardner opened the public hearing regarding a proposed amendment to the *Building in Duluth 2011* spending plan.

Brian Hanson, director of the Duluth economic development authority (DEDA), reviewed the projects during 2010 and that \$11 million in private construction was done during the year with projects planned for 2011.

No one else appeared who wished to be heard and the public hearing was closed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Dean Casperson, representing the library board and Friends of the Library, impressed upon the council that libraries are essential as 95 percent of Duluth households use the library for many reasons including the public use of the Internet for education and job searches, and urged the council to include in next year's budget money to restore the hours to full time status.

- - -

Loren Martell reviewed that the local newspaper inaccurately reported the financial state of the school district by believing what the superintendent said without researching the facts and figures themselves, and that the last amount of money imposed for more upgrades to the school by the superintendent before he left his job has left an even bigger division with the public.

- - -

KL Lewis stated there is a need for more hours at the library, that work on Sixth Avenue East is a good thing, and urged the council to fix the snow shoveling ordinance so that it actually works and helps pedestrians.

- - -

Deb Fjetland asked the council to reconsider and repeal the long term disability parking ordinance as it adversely affects the handicapped workers in Downtown Duluth, and if businessmen are complaining that people are illegally using handicap stickers to park Downtown, then the police should be writing tickets instead of restricting the disabled.

- - -

RESOLUTIONS TABLED

Councilor Stauber moved to remove Resolution 11-0342, approving first amendment to the *Building in Duluth 2011* spending plan, from the table, which motion was seconded and unanimously carried.

Resolution 11-0342 was adopted as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, by the city council (the "council") of the city of Duluth that after holding a public hearing in accordance with the requirements of Minnesota Statutes, Section 469.176 Subd. 4m (the "act"), the city council hereby approves the first amendment to the *Building in Duluth 2011* spending plan, a copy of which is on file in the office of the city clerk as Public Document No. 11-0711-13 approved by the Duluth economic development authority at its meeting of June 22, 2011, pursuant to its Resolution No. 11D-34.

Resolution 11-0342 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

Councilor Stauber moved to remove Resolution 11-0346, denying a request for a concurrent use of streets permit on the northeast corner of Grand Avenue and 58th Avenue West (Duluth Transit Authority), from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to also consider Ordinance 11-024 at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-024 (10092) - AN ORDINANCE APPROVING A REQUEST FOR A CONCURRENT USE OF STREETS PERMIT ON THE NORTHEAST CORNER OF GRAND AVENUE AND 58TH AVENUE WEST, DULUTH TRANSIT AUTHORITY.

The rules were suspended upon a unanimous vote to hear from speakers on the issue.

Donald Forneris explained that his apartment building is close to the bus stop shelter on Grand Avenue and 58th Avenue West, and people have been using the alcove to the apartment building as a place to urinate, which is staining the tile in the floor and producing a very bad odor. He stated his family should not have to be exposed to this to get into their home and requested that another bus stop shelter 25 yards further down Grand Avenue be used.

Drew Digby, president of the planning commission, explained the commission opposed the concurrent use permit because businesses further down the block did not want the problem to follow the bus stop. He continued saying the second reason for voting no was that the main reason behind a concurrent use permit is safety, and the bus stop would not have a crosswalk at the new location, which would be a safety concern for pedestrians.

To questioning from councilors, Chief Administrative Officer David Montgomery replied that the city is hesitant to put crosswalks in uncontrolled intersections as it implies a false sense of security to the pedestrians.

Dennis Jensen, director of the Duluth Transit Authority (DTA), stated that he was aware of this problem and has had many conversations with Mr. Forneris. He continued saying that they have discussed various options to fix the problem including putting a security door at the foyer - but the city's building safety division said no, looking for a future transit center for the area and working with the local businesses in that area.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

[Editor's Note: Ordinance 10092 was reconsidered, amended and re-adopted at the July 18, 2011, council meeting.]

- - -

Resolution 11-0346 failed unanimously (Public Document No. 11-0711-14).

- - -

Councilor Hartman moved to remove 11-0343, designating "no parking here to corner" on sections of Superior Street, Second Street and Third Street in the vicinity of 12th Avenue East and 14th Avenue East, from the table, which motion was seconded and unanimously carried.

Resolution 11-0343 was adopted as follows:

RESOLVED, that pursuant to Section 33-97 of the Duluth City Code, 1959, as amended, the parking area on the upper side of Second Street west of 12th Avenue East for 144 feet be designated as "no parking here to corner." Also, that the upper side of Third Street east of 14th Avenue East for 95 feet and the upper side of Superior Street east of 14th Avenue East for 80 feet be so designated.

Resolution 11-0343 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

Councilor Fosle moved to remove Resolution 11-0349, adding a new requirement for archery hunters participating in the annual deer management hunt, from the table, which motion was seconded and unanimously carried.

Councilor Fosle moved to also consider Ordinance 11-020 at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

BY COUNCILORS FOSLE AND HALBERG

11-020 (10093) - AN ORDINANCE AMENDING SECTION 6-77 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HUNTING DEER BY BOW AND ARROW.

The rules were suspended upon a unanimous vote to hear from speakers on the issue.

Phillip Lockett and Brian Borgholder encouraged the council to vote down the resolution but pass the ordinance for the following reasons: currently most hunters average two antlerless deer and less than one buck; Duluth has the most successful urban deer hunt in the nation and has been highlighted in many national publications; the Minnesota department of natural resources (DNR) likes the process in place and does not see a need for change; the large license fee for nonresident hunters and if the resolution passes there may be a higher wounded rate to get the antlerless deer so that hunters can get their buck.

Councilor Fosle stated these hunters are professionals and have four months to get two deer without registering the deer and the numbers cannot be verified. He explained that this issue was brought to him from constituents who had safety concerns, and also stated the city should be in charge of this hunt and issue the licenses as other surrounding cities do.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Halberg also voiced her concern on the safety and health issues for citizens and, by requiring the taking of two antlerless deer first, the change could eliminate more does which would help reduce the size of the deer herd.

Resolution 11-0349 failed upon the following vote (Public Document No. 11-0711-15):

Yeas: Councilors Fosle and Halberg -- 2

Nays: Councilors Anderson, Boyle, Cuneo, Fedora, Hartman, Stauber and President Gardner -- 7

- - -

Councilor Fosle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

Councilor Halberg moved to remove Resolution 11-0289, authorizing the city to enter into an agreement with Jungle Boy Boxing Gym, a Minnesota nonprofit corporation, for the operation of the Observation Community Recreation Center, from the table, which motion was seconded and unanimously carried.

Resolution 11-0289 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0711-16, with Jungle Boy Boxing Gym, a Minnesota nonprofit corporation, for the operation of the Observation Community Recreation Center.

Resolution 11-0289 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the assessment roll levied to defray the assessable portion of demolitions (Contract #5441 - Fund 110) at the following locations, is set forth below:

(a)	308 103rd Avenue West	2260-07490	\$12,212.33
(b)	27 North 23rd Avenue West	1120-04465	16,128.61
(c)	531 South 64th Avenue West	2340-00510	24,148.06

The total assessable amount is \$52,489 and this assessment roll is hereby confirmed.

Resolution 11-0374 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that Change Order 1 for \$21,822.00 and Change Order 2 for \$19,645.03 to Contract 21313 with Midwest Electrical Group, Inc., are hereby approved, authorizing additional expenses related to the electrical lighting upgrades at Enger Tower in Duluth, Minnesota, for a total increase of \$41,467.03, payable from the Capital Improvements Fund

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2010 ENGTR.

Resolution 11-0358 was unanimously adopted.
Approved July 11, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council approves of the Minnesota gambling control board issuing a premise permit to the following organization.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Licensee	Gambling site
Irving Community Association	Tappa Keg Inn, 7036 Grand Avenue

Resolution 11-0361 was unanimously adopted.
Approved July 11, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the North Shore Wrestling Club and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0362 was unanimously adopted.
Approved July 11, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor license, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

Ridgeview Country Club, 700 West Redwing, for July 28-31, 2011, with Steve Anderson, manager.

Resolution 11-0363 was unanimously adopted.
Approved July 11, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of stock of the following off sale intoxicating liquor license, for the period ending August 31, 2011, subject to departmental approvals, the payment of sales and property taxes, and further subject to approval of the liquor control commissioner:

Mallow Enterprises, Inc. (Big Bottle Shop), 2401 West Superior Street, with Brittany Mallow, 100 percent stockholder, transferred from Kenneth Mallow, 50 percent stockholder and Karen Mallow, 50 percent stockholder.

Resolution 11-0364 was unanimously adopted.
Approved July 11, 2011
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Swanson & Youngdale, Inc., for the exterior painting of Superior Street skywalks including the:

- (a) Holiday Center-Beal Building;
- (b) Maurices-Hunter Building;
- (c) Palladio Building-Phoenix Building; and
- (d) Holiday Center-North Shore Bank of Commerce;

for the city architect division in accordance with approved specifications on the vendor's low bid of \$58,513, terms net 30, FOB job site, payable from General Fund 110, Department/Agency 700 (transfers and other functions), Organization 1420 (capital program), Object 5530 (improvements other than buildings), Project No. CM100 skywalks - \$40,000; Greater Downtown Council (GDC) private funds - \$18,513.

FURTHER RESOLVED, that the city accepts a contribution of \$18,513 toward project costs from the Greater Downtown Council (GDC) on behalf of adjoining property owners; contribution to be deposited in General Fund 110, Department/Agency 700 (transfers and other functions), Organization 1420 (capital program), Revenue Source 4660 (gifts and donations).

Resolution 11-0369 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the reappointment to the Duluth transit authority by Mayor Ness of Alexis Livadaros (at large) for a term expiring on June 30, 2013, is confirmed.

FURTHER RESOLVED, that the appointment to the Duluth transit authority by Mayor Ness of Brandon Maurisak (District 4) for a term expiring on June 30, 2014, replacing Dennis Birchland, is confirmed.

FURTHER RESOLVED, that the appointment to the Duluth transit authority by Mayor Ness of David Schaeffer (District 2) for a term expiring on June 30, 2013, replacing Aaron Bransky, is confirmed.

FURTHER RESOLVED, that the appointment to the Duluth transit authority by Mayor Ness of Donald Simons (District 5) for a term expiring on June 30, 2014, replacing Yvonne Harvey who resigned, is confirmed.

Resolution 11-0311 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the reappointments to the Spirit Mountain recreation area authority by Mayor Ness of David Kohlhaas and Todd Torvinen for terms expiring on June 30, 2014, are confirmed.

FURTHER RESOLVED, that the appointment to the Spirit Mountain recreation area authority by Mayor Ness of Dan O'Neill for a term expiring on June 30, 2014, replacing Alan Johnson who resigned, is confirmed.

Resolution 11-0313 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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RESOLVED, that the city council hereby authorizes the proper city officials to execute a settlement agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0711-17, between BNSF Railway Company, the city and Lake Superior Zoological Society, for payment by BNSF in the amount of \$69,895.99, funds to be deposited in Fund 200-130-4654 (zoo, community resources, other reimbursements.)

Resolution 11-0365 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept assistance from the League of Minnesota Cities to help cover expenses related to broad-based community dialogue which will address the city services residents expect to receive in their communities, how those services can best be delivered and how those services should be paid for.

Resolution 11-0366 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials and Duluth Steam Utility District No. 1 are hereby authorized to contract with Stack Brothers Mechanical Contractors, Inc., for the construction of a steamline extension to St. Luke's Hospital and St. Luke's new clinic in accordance with city-approved bid specifications and the contractor's low bid of \$154,600, payable from the Steam Fund 540, Department/Agency 920 (steam department), Organization 1499 (steam-nonoperating), Object 5530 (improvements other than buildings).

Resolution 11-0357 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that it is deemed necessary for public safety and it is hereby ordered that the sidewalk vault located at 114 West Fourth Street (City Project No. 0878TR) be repaired.

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said project as estimated by the city engineer is \$14,000, payable from Special Assessment Fund 410.

FURTHER RESOLVED, that 100 percent of the project cost shall be levied as an assessment upon the land benefitting, Parcel 1000-00440, easterly 46 feet of Lot 24, Duluth Proper First Division, West Fourth Street, (Kurt Peters, 4440 Carey Road, Duluth, MN 55803) and may be paid in 15 annual installments at municipal bond index fund rate plus 1.5 percent interest.

Resolution 11-0368 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 11-0711-18, with the Regents of the University of Minnesota, accepting grant funds in the amount

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

of \$10,000 from the University's Minnesota Local Road Research Board to fund local Operational Research Assistant Program (OPERA) Project No. 2010-12: *Sustainable Pavement Rehabilitation Using Thin Bonded Overlay Constructed with High Taconite and Recycled Asphalt Shingle Mix*, to develop specifications for the described mix and to study its effectiveness in comparison to typical asphalt mix, said funds to be deposited in Fund 411 (permanent improvement), Agency 035 (capital projects accounts), Revenue Source 4220, City Project No. PIMISCXX-0997TR for the purpose of completing a pavement design, study and final report.

Resolution 11-0375 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the NE MN statewide health improvement program (SHIP) in the amount of \$9,000 for the purchase of two radar speed control signs, funds to be deposited in Fund Number 110-160-1640-2233-4270 (general, police, police special accounts, DWI forfeitures), and to execute a grant agreement substantially the same as that on file in the office of the city clerk as Public Document No. 11-0711-19.

Resolution 11-0355 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

BY COUNCILOR FOSLE:

RESOLVED, that the city council hereby requests the administration work with the Minnesota department of transportation to review the feasibility of installing stop lights at the intersection of 75TH Avenue West and Grand Avenue/ Highway 23.

Resolution 11-0367 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 11-0711-20, with the state of Minnesota commissioner of public safety–fire marshal division to perform fire code compliance inspection of public schools in the city with inspection fees related thereto to be paid to Fund 110, Agency 150, Organization 1501, Revenue 4154 (general fund, fire, administration).

Resolution 11-0371 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to enter into a second amendment to Agreement No. 19606, a copy of which is on file in the office of the city clerk as Public Document No. 11-0711-21, with the Superior Hiking Trail Association, correcting property descriptions to "as-built" conditions and incorporating Mn/DOT requirements for use of Mn/DOT ROW.

Resolution 11-0354 was unanimously adopted.

Approved July 11, 2011

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to award \$15,000 from Fund 110-700-1420-5530-2011 (general, transfers and other functions, capital program) to the Junior League of Duluth for equipment at Playfront Park pursuant to the matching provision in the city's neighborhood playground equipment revitalization program (formed under Council Resolution 09-0439).

Resolution 11-0356 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a donation in the amount of \$12,500 from the Hank Jensen Memorial Golf Tournament to be used towards the construction of a new tournament pavilion structure at the Enger Park Golf Course, said amount to be deposited in Fund 503-400-ENGR-4660 (golf fund, parks and recreation, Enger Golf Course, gifts and donations).

FURTHER RESOLVED, the city council hereby recognizes and thanks the Hank Jensen Memorial Golf Tournament Board for its generous gift.

Resolution 11-0372 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR HARTMAN:

WHEREAS, the city of Duluth has pledged to take a leadership role in increasing energy efficiency and reducing greenhouse gas emissions from municipal operations (Resolution 01-0350); and

WHEREAS, the city recognizes the need to reduce dependency on fossil fuel based energy sources; and

WHEREAS, the city wants to demonstrate that energy efficiency and conservation practices can be applied to the daily government operations and infrastructure projects; and

WHEREAS, the city seeks to find methods of service delivery and operations that conserve energy and resources, reduce use of unsustainable energy resources, saving taxpayer dollars and protecting and preserving the environment; and

WHEREAS, the city recognizes that sound energy efficiency and conservation practice can reduce government costs over the long term; and

WHEREAS, Minnesota Power and Comfort Systems offer rebates and incentives to encourage the city to deliver energy efficiency.

NOW, THEREFORE BE IT RESOLVED, that the city council of the city of Duluth endorses the Duluth city operations energy action plan for years 2011-2015, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0711-22, to pursue reductions in energy and resource use in city operations and practices.

Resolution 11-0359 was unanimously adopted.

Approved July 11, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the city council hereby authorizes the disbursement of grant funds under the public facility and program fund pursuant to Duluth City Code Section 10A-18 to the following organizations in the following amounts, and further authorizes the proper city officials to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0711-23, with each organization receiving funds, amounts to be payable from Fund 259-400-5439 (Duluth public facility and program fund, parks and recreation, special projects and events):

Grantee	Grant Amount
Duluth Amateur Youth Basketball Association	\$1,000.00
Duluth YMCA Camp Kitchigami	\$1,751.44
Duluth Superior Charges Lacrosse Club	\$2,000.00
COGGS	\$2,000.00
Salvation Army/Rookie Baseball	\$2,000.00
Chester Bowl Improvement Club	\$1,300.00
Superior Hiking Trail Association	\$925.00
Morgan Park Community Club	\$2,000.00
Kids Café Damiano Center	\$2,000.00
Northwood Children’s Services	\$1,227.00
Hartley Nature Center	\$1,650.00
Portman Recreation Association	\$2,000.00

Resolution 11-0370 was unanimously adopted.
Approved July 11, 2011
DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR STAUBER

11-027 - AN ORDINANCE AMENDING SECTIONS 50-1, 50-2, 50-3, 50-7, 50-9.4, 50-11.1, 50-14.5, 50-14.6, 50-14.7, 50-15.2, 50-15.4, 50-16.5, 50-18.1, 50-18.3, 50-19, 50-20.1, 50-20.3, 50-20.4, 50-20.5, 50-20.6, 50-21.2, 50-21.3, 50-22.2, 50-22.7, 50-23.2, 50-24.1, 50-24.2, 50-24.4, 50-24.5, 50-24.6, 50-25.1, 50-25.2, 50-25.3, 50-25.4, 50-25.9, 50-26.1, 50-26.4, 50-27.5, 50-30, 50-30.1, 50-30.2, 50-30.5, 50-31.1, 50-33.2, 50-33.4, 50-35, 50-36.3, 50-36.4, 50-37.1, 50-37.4, 50-37.7, 50-37.10, 50-37.11, 50-37.12, 50-37.13, 50-38.5, 50-39.2, AND 50-41 OF CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO REVISIONS OF THE UNIFIED DEVELOPMENT CHAPTER.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-022 (10094) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION OF THE CANAL PARK AREA BUSINESS DISTRICT, FROM RAILROAD STREET TO THE DULUTH SHIP CANAL, FROM

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

MIXED USE-NEIGHBORHOOD (MU-N) TO FORM DISTRICTS, (F-3) MID-RISE COMMUNITY SHOPPING, (F-5) MID-RISE COMMUNITY SHOPPING AND OFFICE, AND (F-9) CANAL PARK LAKEFRONT (CITY OF DULUTH).

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-023 (10095) - AN ORDINANCE GRANTING TO ODYSSEY DEVELOPMENT A CONCURRENT USE PERMIT FOR PARKING IN THE RIGHT-OF-WAY LOCATED ON AN 18 FOOT STRIP ON THE NORTH SIDE OF SOUTH STREET ADJACENT TO PROPERTY AT 431 SOUTH 23RD AVENUE EAST.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 8:45 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10092

AN ORDINANCE APPROVING A REQUEST FOR A CONCURRENT USE OF STREETS PERMIT ON THE NORTHEAST CORNER OF GRAND AVENUE AND 58TH AVENUE WEST, DULUTH TRANSIT AUTHORITY.

The city of Duluth does ordain:

Section 1.

(a) The city council finds that a petition for the concurrent use of streets was filed with the city by the Duluth Transit Authority for a bus stop zone and shelter at the northeast corner of Grand Avenue and 59th Avenue West was filed with the city; and

(b) Pursuant to Section 100 of the City Charter and Sec. 50-37.7 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing (FN 11060) and, the city planning commission found that the petition for the concurrent use of a street does not meet the standard to protect the health, safety and welfare of the city as the concurrent use will compel a potentially hazardous midblock crossing of pedestrians; and

(c) The planning commission, at its June 14, 2011, regular meeting did recommend denial of the petition for the concurrent use of streets; and

(d) That the city council of the city of Duluth denies the petition for a concurrent use of street at the northeast corner of Grand Avenue and 58th Street West as the proposed concurrent use of streets does not protect the health safety and welfare of the city as stated above in paragraph (b).

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

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9
Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 11, 2011
Approved July 11, 2011
DON NESS, Mayor

[Editor's Note: Ordinance 10092 was reconsidered, amended and re-adopted at the July 18, 2011, council meeting.]

- - -

ORDINANCE NO. 10093

BY COUNCILORS FOSLE AND HALBERG:

AN ORDINANCE AMENDING SECTION 6-77 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HUNTING DEER BY BOW AND ARROW.

The city of Duluth does ordain:

Section 1. That Section 6-77 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 6-77. Hunting deer by bow and arrow.

(a) Findings and policy. The city council finds that the peace and safety of the community, and the health of the forest, are threatened by the overabundance of wild deer within the city. Therefore, the population of wild deer must be regulated and managed. The method for the regulation shall be an annual harvesting of wild deer by use of bow and arrow;

(b) State laws. The conduct of any authorized deer hunting within the city must be in compliance with all applicable laws and regulations of the state of Minnesota. This Section is supplemental to the laws of Minnesota, as they may be amended or changed from time to time;

(c) Enforcement officers. The conduct of any authorized deer hunting within the city shall be regulated by the chief administrative officer or his or her designee or his or her agents, and any state or federal agents with jurisdiction. The council has authority to, by contract approved by resolution, designate the chief administrative officer or his or her designee's agent for the purpose of managing the hunt;

(d) Allowed hunting areas. Deer harvesting will be prohibited in all areas of the city except the following:

(1) Any area designated by the council, by resolution, as a designated hunting area (DHA) or an area determined by the hunt agent to be in special need of deer removal (hot spot) and approved by the chief administrative officer or his or her designee or council approved contract;

(2) Any privately-owned property within a DHA that is not owned by the hunter, but that is owned or controlled by a party from whom the hunter

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

has obtained written permission, dated and signed within 12 months of the time of the hunting, to hunt deer on the property;

(A) In a duly designated hunting area, hunting will not be allowed:

1. Within 400 feet of any occupied dwelling or active commercial structure, or structure accessory thereto, without written permission from all property owners with said structure(s) located within 400 feet of the hunting location;

2. Any place posted "no hunting" in compliance with the laws of Minnesota;

(e) Authorized hunters. Any person hunting deer by bow and arrow within the city must meet all of the following criteria:

(1) Be qualified to hunt deer by bow and arrow under all the laws and regulations of the state of Minnesota and be licensed to do so by the state;

(2) Be certified to be qualified to harvest deer within the city by the chief administrative officer or his or her designee or the designated agent approved by council resolution. The council has authority to, by contract approved by resolution, designate the chief administrative officer or his or her designee's agent for the purpose of managing the hunt, regulating the hunters, and collecting fees due to the city and giving such fees to the city. Application for a deer hunting qualification certificate shall be made to the chief administrative officer or his or her designee. The agent designated by the council may act for the chief administrative officer or his or her designee to collect the fee. The fee shall be set in accordance with Section 31-6(a) of this Code. The standards and requirements of the program shall be set by resolution of the council. The program shall include each hunter's agreement to behavior and ethical standards, proficiency standards, and a waiver of rights for any liability of the city, its contract agent or landowners;

(f) Conduct of the hunt.

(1) Harvesting of deer shall only be done in compliance with this ordinance, state law, any resolution passed by the council setting standards for conduct of the hunt or contracting for the services of the city's agent for that purpose, the city's hunt agent's rulebook for hunters, and any deer management plan for Duluth adopted by the city council;

(2) Carcasses and entrails must be removed from the site of the kill immediately and completely;

(3) Only hunting by bow and arrow is allowed, except for hunting by the disabled with crossbow, as it is allowed under state rules of the department of natural resources, provided that written proof of disability is provided to the city's hunt agent before hunting;

(4) No permanent stand is allowed on public property;

(5) No hunter may harvest more than one antlered deer. Party hunting, as defined by state law, is limited to antlerless deer only;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(6) No hunter may attempt to shoot or harvest a deer that is beyond the effective range of the hunter;

(7) Each hunter must repair or pay for any damage to the property of another that arises out of the hunting activities;

(g) Violations. A violation of this Section is punishable as set out in Section 1-7, as it may be amended or changed from time to time. In addition, any person convicted of or administratively found to have violated this Section, or any other law, or the rules of the hunt set by the council or the hunt agent's rulebook, as a result of actions related to deer harvesting authorized by this Section, shall be disqualified, for a period determined to be appropriate by the hunt agent, but not greater than 40 years from the date of conviction, or violation, whichever is later, from being certified as qualified to harvest deer within the city. The city or the city's hunt agent may, by due process, determine the commission of a violation and impose an appropriate period of disqualification, which decision can, within 15 days, be appealed, by written notice, to the city's chief administrative officer;

(h) Each year, the chief administrative officer or his or her designee shall report to the city council about the conduct of the previous year's harvest, including the number of participants, the number of deer taken, any problems encountered and any recommendations.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: August 12, 2011)

Councilor Fosle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed July 11, 2011
Approved July 11, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

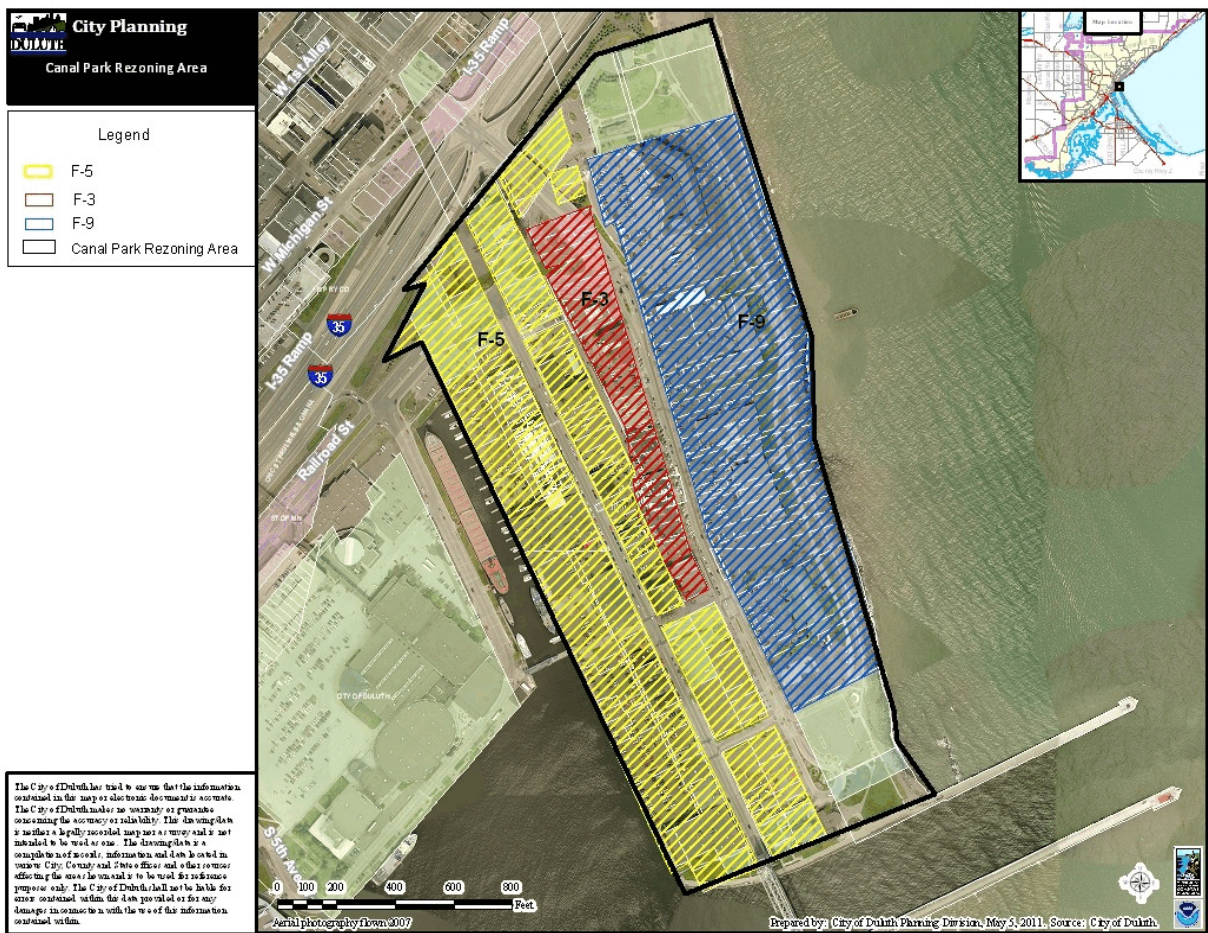
ORDINANCE NO. 10094

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION OF THE CANAL PARK AREA BUSINESS DISTRICT, FROM RAILROAD STREET TO THE DULUTH SHIP CANAL, FROM MIXED USE-NEIGHBORHOOD (MU-N) TO FORM DISTRICTS, (F-3) MID-RISE COMMUNITY SHOPPING, (F-5) MID-RISE COMMUNITY SHOPPING AND OFFICE, AND (F-9) CANAL PARK LAKEFRONT (CITY OF DULUTH).

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 1. That the subject property, located in Canal Park business districts, described above, and as more particularly described in Exhibit A (Public Document No. 11-0711-24), be reclassified from its current designation as Mixed Use-Neighborhood (MU-N) to Form Districts; (F-3) Mid-Rise Community shopping, the area south of Railroad Street to just north of Buchanan Street and West from Canal Park Drive to the alley between Canal Park Drive and Lake Avenue, (F-5) Mid-Rise Community Shopping and Office, the area south of Railroad Street to the Duluth Ship Canal and West from the Alley between Canal Park Drive and Lake Avenue to the Easterly edge of Minnesota Slip, (F-9) Canal Park Lakefront, the area from Lake Place Park to the Duluth Ship Canal and East of Canal Park Drive to the Lakewalk and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:



(Ref. File No. 11-062)

Section 2. That this ordinance shall take effect and be in force 90 days from and after its passage and publication. (Effective date: October 11, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 11, 2011
Approved July 11, 2011
DON NESS, Mayor

- - -

ORDINANCE NO. 10095

AN ORDINANCE GRANTING TO ODYSSEY DEVELOPMENT A CONCURRENT USE PERMIT FOR PARKING IN THE RIGHT-OF-WAY LOCATED ON AN 18 FOOT STRIP ON THE NORTH SIDE OF SOUTH STREET ADJACENT TO PROPERTY AT 431 SOUTH 23RD AVENUE EAST.

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations, and restrictions hereinafter set forth, permission is granted to Odyssey Development and its successor(s) in interests, referred to herein as the permittee, to construct and maintain parking on and provide an easement for public sidewalk on the south ten feet of Lots 9 and 10 referred to herein as private improvements, upon or within the following described areas of the public easement and temporarily occupy such easement for such purpose:

an 18 foot strip in the right-of-way of South Street abutting from the west line of Lot 10 to the east line of Lot 9, Block 26, Endion Division, as shown in Public Document No. 11-0711-25.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance and a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in the amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its employees, agents or contractors; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that may not be cancelled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be pre-2004 edition.

Permittee shall cause a current version of the required insurance certificate to be filed with the city clerk while permission granted by this ordinance is exercised.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to save harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engage in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2, above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days' written notice, delivered as provided in Section 3, above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3. above.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public easement shall be limited to the designated area shown on page III E8 FN11-055 of the June 14, 2011 staff report to the planning commission (Public Document No. 11-0711-25); and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement; and

(c) Permittee agrees to convey to the city a pedestrian easement ten feet wide along the southerly portion of Lots 9 and 10, Block 26, Endion Division.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file acceptance of this ordinance as specified in Section 2 within 30 days after this ordinance takes effect; or

(b) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(c) The failure of the permittee to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect; or

(d) The failure of the permittee to convey the pedestrian easement described in Section 8, paragraph (c), above within 60 days of the effective date of this ordinance.

Section 10. This ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 12, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 11, 2011
Approved July 11, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, July 18, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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REPORTS FROM OTHER OFFICERS

11-0718-01 Assessor:

(a) Assessment roll of delinquent solid waste collecting expenses during the period of March 1, 2010, to June 1, 2011, for which the licensed collector has not been reimbursed;

(b) Letter of sufficiency of petition to reconstruct a portion of the Seventh Street alley, originating approximately 90 feet westerly of the centerline of 13th Avenue East and terminating approximately 140 feet westerly of the centerline of 13th Avenue East. -- Received

- - -

At this time, 7:02 p.m., President Gardner adjourned the council meeting to open the public hearing on a JOBZ business subsidy agreement with Involta, LLC.

Heidi Timm-Bijold, city assistant business developer, reviewed the details of establishing the geography for the project and a previous resolution that approved the land swap to create a JOBZ zone. She stated that the state has determined that Involta is qualified to receive the benefits of the JOBZ program and tonight the public hearing and resolution approves this JOBZ subsidy with Involta.

Jeff Quint, Involta chief financial officer, reviewed that with the city council approval of the business subsidy, their company will be retaining local counsel and engineers to get the project started this year.

At this time, 7:07 p.m., the public hearing was declared closed and the council meeting resumed.

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MOTION FOR RECONSIDERATION OF ORDINANCE

Councilor Fosle moved to reconsider Ordinance 11-024, to correct an error that was made in the original ordinance, which motion was seconded and unanimously carried.

BY COUNCILOR FOSLE

11-024 (10092) - AN ORDINANCE APPROVING A REQUEST FOR A CONCURRENT USE OF STREETS PERMIT ON THE NORTHEAST CORNER OF GRAND AVENUE AND 58TH AVENUE WEST, DULUTH TRANSIT AUTHORITY.

Councilor Fosle moved to amend Section 1 of the ordinance by:

(a) Inserting a new subsection (d), to read as follows:

"(d) That the city council finds that the current safety concerns at the bus shelter location at the northwest corner of 57th Avenue West and Grand Avenue outweigh the potentially hazardous midblock crossing of pedestrians at the northeast corner of Grand Avenue and 58th Avenue West"; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- (b) Renumber the old subsection (d) to (e);
- (c) In subsection (e), delete the word "denies" and insert the word "approves";
- (d) In subsection (e) delete the phrase "as the proposed concurrent use of streets does not protect the health safety and welfare of the city as stated above in paragraph (b)," which motion was seconded and unanimously carried.

Councilor Fosle moved passage of the ordinance, as amended, and the same was adopted upon a unanimous vote.

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MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On June 1, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Thai Mia, Inc., d/b/a Thai Krathong Restaurant, 308 South Lake Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0718-04;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on July 18, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0718-04 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Thai Mia, Inc., d/b/a Thai Krathong Restaurant, 308 South Lake Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action, and that payment of \$250 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar violations.

Resolution 11-0378 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals, with any specific restrictions:

D&D Enterprises of Cloquet, Inc. (Mr. D's Bar and Grill), 5622 Grand Avenue, for August 3 and 4, 2011, from 6:00 p.m. to 11:00 p.m., and on August 5, 2011, from 6:00 p.m. to 1:00 a.m. with the music and serving ceasing at 1:00 a.m.

Rustic Bar, Inc. (Rustic Bar), 401 North Central Avenue, for August 5, 2011, with the serving starting at 6:00 p.m. and the music and serving ceasing at 1:00 a.m.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

JMMP Enterprises, LLC (Kom on Inn), 332 North 57th Avenue West, for August 3 and 4, 2011, from 6:00 p.m. to 11:00 p.m., and on August 5, 2011, from 6:00 p.m. to 1:00 a.m. with the music and serving ceasing at 1:00 a.m.

Sir Benedicts III, Inc. (Sir Benedict's Tavern), 805 East Superior Street, for July 30, 2011, from 10:00 a.m. to 6:00 p.m.

Player's Grandstand, Inc. (Player's Grandstand), 4024 Grand Avenue, for August 6, 2011, from 7:00 p.m. to 1:00 a.m.

Historic Union Depot, Inc. (The Depot), 506 West Michigan Street, for July 30, 2011, from 10:00 a.m. to 5:00 p.m., and on September 1, 2011, from 4:00 p.m. to 8:00 p.m.

Clyde Industrial Park, Inc. (Clyde Iron Works Restaurant & Bar), 2920 West Michigan Street, for July 30, 2011, from 12:00 p.m. to 10:00 p.m.

Resolution 11-0384 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the permanent expansion of the designated serving area of the following on sale intoxicating liquor license for the period ending August 31, 2011, subject to departmental approvals, with any specific restrictions:

The Wick (Pickwick Restaurant), 508 East Superior Street, to include the east parking lot.

Resolution 11-0385 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On April 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of RRR Restaurants, Inc., d/b/a R Bar, 21 North Fourth Avenue West, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0718-05;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on April 25, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0718-05 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of RRR Restaurants, Inc., d/b/a R Bar, 21 North Fourth Avenue West, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: revoke the liquor license of the licensee due to failure to maintain liquor liability insurance if the licensee does not have such insurance in place by the time the city council reviews this matter.

Resolution 11-0389 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BY COUNCILOR BOYLE:

WHEREAS, the city has been blessed with generations of hardworking and dedicated employees, but due to national and regional workforce trends including the end of the baby boom and a wave of retirements, the city will face significant challenges in finding and recruiting employees; and

WHEREAS, a recruitment task force was convened to review and evaluate the city's recruiting and selection processes; and

WHEREAS, the task force presented their findings to the council at its meeting on June 27, 2011, with the overall findings that:

- The city is not always able to recruit and hire the best candidates;
- The process is slow, regularly taking several months to fill open positions;
- The number of candidates to be interviewed is restrictive; and

WHEREAS, the task force identified several challenges and issues with the city's current recruiting and selection process, including:

• There will be a significant workforce shortage and a skills gap developing over the next five to ten years;

- The selection process is inefficient;
- The city lacks a comprehensive recruitment and talent acquisition plan;
- The Civil Service Code was written in the 1940's and needs to be modernized;
- The current recruitment system did not contemplate the development of

professional human resources departments and federal and state employment laws, leading to redundancy and potential legal and discriminatory issues; and

WHEREAS, it is important for the city to be the choice employer for the best, brightest and most talented workers; and

WHEREAS, the council recognizes the need for the city to use the best hiring and recruiting practices that balance the benefits of the civil service process with the efficiency of modern state, federal and municipal hiring systems.

THEREFORE, BE IT RESOLVED, that the council hereby requests the administration and recruitment task force review and address the issues brought forward by the task force and provide recommendations for addressing these issues to the council by August 15, 2011.

Resolution 11-0392 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a JOBZ business subsidy agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0718-06 with Involta, LLC, (qualified business) related to property located at Rice Lake Road.

Resolution 11-0382 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. 11-0718-07, between the Duluth economic development authority (DEDA) and Involta,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

LLC, related to the construction of a building to house its Tier III data processing, storage and recovery facility, in an amount not to exceed \$350,000.

Resolution 11-0383 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

RESOLVED, that proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file with the office of the city clerk as Public Document No. 11-0718-08, with Senior Service America, Inc. (SSAI) to serve Duluth residents age 55 and older with work experience training and services in the amount of \$263,676 for the period of July 1, 2011, through June 30, 2012. Monies received shall be deposited into Senior Programs Fund 270, Grants Division Agency 031, SCSEP SSAI Federal Organization 6330.

Resolution 11-0391 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

RESOLVED, that the council finds as follows:

(a) The building official of the city of Duluth duly issued condemnation orders for structures located upon the below described parcels of land located within the city of Duluth after determining that the criteria of Section 10-3 of the city of Duluth Legislative Code was met in each case:

Parcel 1: 25 North 58th Avenue West, legally described as Lot 4, Block 105, West Duluth Second Division, notice by registered mail to EH Pooled 411, LP, 1901 West Braker Lane, Suite D-200, Austin TX 78757, signed by Bethany Pratt on May 31, 2011; and

Parcel 2: 1501 - 99th Avenue West, legally described as Lot 30, Block 7, Gary First Division, notice by registered mail to State of Minnesota Chapter 278, c/o St. Louis County Land Department, 607 Government Services Building, 320 West Second Street, Duluth MN 55802, signed by Stacy M. Caldwell on July 15, 2010; and

Parcel 3: 2917 West Third Street, legally described as Lot 2, Block 3, Walbanks Third Street Rearrangement Duluth, notice by registered mail to Mark H. Wick, 2218 Anderson Rd., Duluth MN 55811, signed by Judy Wick on July 16, 2010, notice to Thomas Nimitz, P.O. Box 16983, Duluth MN 55816-0983 returned marked "UNCLAIMED" and advertised in the Duluth News-Tribune on August 6, 2010, and August 13, 2010; and

Parcel 4: 1117 North 46th Avenue East, legally described as south 23-1/3 feet and south 1/2 of north 23-1/3 feet of south 46-2/3 feet of Lots 7 and 8, Block 99, London Addition, notice to Roger F. Larson, 1117 North 46th Avenue East, Duluth MN 55804, signed by James A. Larson on September 24, 2010; and

Parcel 5: 1017 East Sixth Street, legally described as Lot 9, Block 130, Portland Division of Duluth, notice by registered mail to Sharon L. Witherspoon, P.O. Box 585, Duluth, MN 55801, returned marked "UNCLAIMED" and hand delivered by personal service to Sharon Witherspoon on July 28, 2009; and

Parcel 6: 2224 West 11th Street, legally described as easterly five feet of Lot 9, all of Lot 10 and westerly ten feet of Lot 11, Block 61, Harrisons Brookdale Division, notice by registered mail to Douglas R. Gault, 2224 West 11th Street, Duluth MN 55806, returned marked "UNCLAIMED" and advertised in the Duluth News-Tribune on August 6, 2010 and August 13, 2010; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Parcel 7: 8721 Vinland Street, legally described as Lot 5, Block 2, Bayview Gardens City, notice by registered mail to Tayebi Real Estate LLC, 2238 Lands End Drive, Glenbrook, NV 89413, signed by Tayebi on April 6, 2011; and

Parcel 8: 1130 East Sixth Street, legally described as Lot 15, Block 121, Portland Division, notice by registered mail to Richard O. Jackson, 1907 Rice Lake Road, Duluth MN 55803, returned marked "UNCLAIMED" and advertised in the Duluth News-Tribune on May 27, 2011 and May 30, 2011; and

Parcel 9: 411 South 71st Avenue West, legally described as Lot 6, and N'ly 1/2 of Lot 7, Block 31, Carlton Place Addition, notice by registered mail to Dept. of HUD, 920 Second Avenue South #1300, Minneapolis, MN 55402-4012, signed by Luann Bartech of July 15, 2010 and notice by registered mail to Secretary of HUD, 220 South Second Street, Minneapolis, MN 55401, returned marked "return to sender" and advertised in the Duluth News-Tribune on August 6, 2010, and August 13, 2010; and

(b) All such orders are now final; and

(c) The cost for demolition of the structures has been estimated to not exceed \$108,000, and there is a current unobligated balance in Fund 110-132-1304-5453 of \$99,638.28; and

(d) Fire escrow monies are being held for the removal of structures on Parcel 5 the amount of \$15,446.18.

BE IT FURTHER RESOLVED, that pursuant to Section 10-3(b) of the city of Duluth Legislative Code the building official is authorized to:

(a) Proceed with the work ordered, or to contract to have the work done, payable from Fund 110-132-1304-5453 and from the fire escrow monies; and

(b) Should the sale of the salvage from such work exceed the cost of the demolition, the balance in excess of the cost shall be paid to the owner of said building or to such other persons as may by law be entitled thereto; and

(c) Submit to the city council a statement of the cost of such work for its further determination of the manner by which such costs shall be recouped as provided by Section 10-3(b) of the city of Duluth Legislative Code.

Resolution 11-0373 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Financial Crimes Services, LLC (FCS), substantially the same as that on file in the office of the city clerk as Public Document No. 11-0718-09, for the administration of the driving diversion pilot program for the city of Duluth, said program established by Laws of Minnesota 2009, c. 59, art. 3, section 4, and recently extended by Laws of Minnesota 2011, c. 87, funds generated by the program and collected by FCS pursuant to the terms of the agreement shall be deposited in Fund 110-110-1104-4644 (general, legislative and executive, attorney and human rights, miscellaneous fees).

Resolution 11-0379 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the proper city and fire department officials are hereby authorized to contract with SHI International Corporation for the purchase and installation of mobile data computers and related hardware equipment in accordance with Minnesota State Contract No. 436392, Release No. C-816(5), specifications and pricing for \$156,803 plus \$10,780.21 sales tax for a combined total amount of \$167,583.21, terms net 30, FOB destination and payable as follows:

- (a) \$125,687.40 from Special Projects Fund 210, Department/Agency 030 (finance), Division 3177 (2008 port security grant program), Object 5580 (capital equipment); and
- (b) \$41,895.81 from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2010 (fiscal year), Object 5580 (capital equipment), Project No. CE250-E1001.

Resolution 11-0380 was unanimously adopted.
Approved July 18, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on Michigan Street, between Fifth and Sixth avenues West on July 30, 2011, in conjunction with the Depot Summer Arts Festival and on September 1, 2011, in conjunction with the Mayor's Pride Reception at the Historic Union Depot, provided that all alcoholic beverages consumed outside of designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 11-0387 was unanimously adopted.
Approved July 18, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on portions of Ramsey Street, Bristol Street and 57th Avenue West between Grand Avenue and Central Avenue from August 3 - 5, 2011, in conjunction with Spirit Valley Days, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 11-0388 was unanimously adopted.
Approved July 18, 2011
DON NESS, Mayor

- - -

RESOLVED, that Resolution 11-0244, approved by council on May 9, 2011, which authorized the proper city officials to enter into an agreement with Tower Optical Company for three coin operated opticals, two located at Lake Place Park and one located at Enger Tower, is hereby amended to clarify that the city shall receive 40 percent of all generated revenues.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0381 was unanimously adopted.
Approved July 18, 2011
DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that the proper city officials are hereby authorized to execute and implement a collective bargaining agreement with the city of Duluth Supervisory Association, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as that on file in the office of the city clerk as Public Document No. 11-0718-02, covering the year 2011.

Resolution 11-0390 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Stauber -- 1

Approved July 18, 2011

DON NESS, Mayor

- - -

Resolution 11-0377, in the matter of the on sale intoxicating liquor license of J&J Miller, Inc. (Copasetic Lounge), 332 East Central Entrance, was introduced by Councilor Cuneo for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Charles Flaig, co-owner of the Copasetic Lounge, noted that they had a misunderstanding of the law where there is no state law on this aspect but it is a city law issue. He noted that they stopped sales and closed at 8:00 p.m. on Christmas Eve, and were just having a staff and family Christmas party. He noted that he did not intend to violate the law as they were closed and no sales were being made.

Resolution 11-0377 was adopted as follows:

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On June 1, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of J&J Miller, Inc., d/b/a Copasetic Lounge, 322 East Central Entrance and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0718-03;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on July 18, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0718-03 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of J&J Miller, Inc., d/b/a Copasetic Lounge, 322 East Central Entrance, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action, and that payment of \$250 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar violations.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0377 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

Approved July 18, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following temporary on sale 3.2 percent malt liquor license, subject to departmental approvals:

Nifty 50 Cruisers Car Club (Kia of Duluth Car Show and Time Trials), 350 Garfield Avenue, for September 10, 2011, from 5:00 p.m. to midnight, and for September 11, 2011, from 10:00 a.m. to 6:00 p.m.

Resolution 11-0386 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Halberg -- 1

Approved July 18, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0718-10, with Bayfront Blues Festival, Inc., (promoter) pursuant to which the promoter agrees to produce, promote and manage the Blues Festival at Bayfront Festival Park, rental and fees to be deposited in Fund 0237, Agency 015, Revenue Source 4623 (Bayfront Festival Park, administrative services, rent of land).

Resolution 11-0376 was unanimously adopted.

Approved July 18, 2011

DON NESS, Mayor

- - -

MOTION FOR RECONSIDERATION OF RESOLUTION

Councilor Hartman moved to reconsider Resolution 11-0377, in the matter of the on sale intoxicating liquor license of J&J Miller, Inc. (Copasetic Lounge), 332 East Central Entrance, which motion was seconded and discussed.

Councilors Hartman and Stauber felt that reconsideration and tabling should be considered for the reasons of: considering staff perspective and the council has the authority now to waive all penalties due to the circumstances.

Councilors Anderson, Cuneo, Fosle and President Gardner opposed the reconsideration for the reasons of: the law was broken; the council does not know if there might have been patrons of the business also allowed in; there was an allowable reduction in the penalty, which addresses the mitigating circumstances, from the normal prescribed sentencing guidelines and if this is only a city law, then in the future the council can look at changing it.

The motion for reconsideration failed upon the following vote:

Yeas: Councilors Halberg, Hartman and Stauber -- 3

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Nays: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle and President Gardner -- 6

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR STAUBER

11-018 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO R-2, RESIDENTIAL-URBAN, THE PROPERTY ALONG THE NORTH SIDE OF ARROWHEAD ROAD FROM 1413 WEST ARROWHEAD ROAD TO THE EXTENDED LINE (NORTHERLY) MYERS AVENUE (CITY OF DULUTH).

Councilor Fedora moved to remove the ordinance from the table, which motion was seconded and discussed.

Councilors Fedora and Fosle felt that the ordinance should be removed for the reasons of: this has languished on the agenda for three to four council meetings; the council will be going into a month-long break; the council is looking to rezone this to be consistent with the United Development Chapter of the City Code; this has been a busy intersection for years; the city should not hold up progress on land that could be added to the tax base; there are similar issues, like at 46th Avenue West and Grand Avenue and the Duluth-Superior Metropolitan Interstate Council (MIC) has been looking at this for four years now.

Councilors Boyle, Cuneo opposed the consideration now because discussions are continuing with all the parties and the intersection safety consideration needs to resolve first.

Chief Administrative Officer David Montgomery noted that: Walgreens will be part of the solution; the MIC staff is doing an intersection study, which will supply needed data; what will go into the undeveloped corner also needs to be known and when the council comes back from break, the administration hopes to have more information for the council to consider.

Councilor Fedora's motion for removing the ordinance from the table failed upon the following vote:

Yeas: Councilors Fedora and Fosle -- 2

Nays: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman, Stauber and President Gardner -- 7

- - -

The following entitled ordinance was read for the first time:

BY COUNCILOR ANDERSON

11-026 - AN ORDINANCE ADDING A NEW SECTION 34-26 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING LOITERING IN PUBLIC PLACES WITH THE INTENT TO ENGAGE IN PROSTITUTION OR THE SALE OF ILLEGAL DRUGS.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-027 (10096) - AN ORDINANCE AMENDING SECTIONS 50-1, 50-2, 50-3, 50-7, 50-9.4, 50-11.1, 50-14.5, 50-14.6, 50-14.7, 50-15.2, 50-15.4, 50-16.5, 50-18.1, 50-18.3, 50-19, 50-20.1, 50-20.3, 50-20.4, 50-20.5, 50-20.6, 50-21.2, 50-21.3, 50-22.2, 50-22.7, 50-23.2, 50-24.1, 50-

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24.2, 50-24.4, 50-24.5, 50-24.6, 50-25.1, 50-25.2, 50-25.3, 50-25.4, 50-25.9, 50-26.1, 50-26.4, 50-27.5, 50-30, 50-30.1, 50-30.2, 50-30.5, 50-31.1, 50-33.2, 50-33.4, 50-35, 50-36.3, 50-36.4, 50-37.1, 50-37.4, 50-37.7, 50-37.10, 50-37.11, 50-37.12, 50-37.13, 50-38.5, 50-39.2, AND 50-41 OF CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO REVISIONS OF THE UNIFIED DEVELOPMENT CHAPTER.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 7:55 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10092

AN ORDINANCE APPROVING A REQUEST FOR A CONCURRENT USE OF STREETS PERMIT ON THE NORTHEAST CORNER OF GRAND AVENUE AND 58TH AVENUE WEST, DULUTH TRANSIT AUTHORITY.

The city of Duluth does ordain:

Section 1.

(a) The city council finds that a petition for the concurrent use of streets was filed with the city by the Duluth Transit Authority for a bus stop zone and shelter at the northeast corner of Grand Avenue and 59th Avenue West was filed with the city; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.7 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing (FN 11060) and, the city planning commission found that the petition for the concurrent use of a street does not meet the standard to protect the health, safety and welfare of the city as the concurrent use will compel a potentially hazardous midblock crossing of pedestrians; and

(c) The planning commission, at its June 14, 2011, regular meeting did recommend denial of the petition for the concurrent use of streets; and

(d) That the city council finds that the current safety concerns at the bus shelter location at the northwest corner of 57th Avenue West and Grand Avenue outweigh the potentially hazardous midblock crossing of pedestrians at the northeast corner of Grand Avenue and 58th Avenue West; and

(e) That the city council of the city of Duluth approves the petition for a concurrent use of street at the northeast corner of Grand Avenue and 58th Avenue West.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective Date: August 19, 2011)

Councilor Fosle moved passage of the ordinance, as amended, and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed July 18, 2011

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

ATTEST:
JEFFREY J. COX, City Clerk

Approved July 18, 2011
DON NESS, Mayor

- - -

ORDINANCE NO. 10096

AN ORDINANCE AMENDING SECTIONS 50-1, 50-2, 50-3, 50-7, 50-9.4, 50-11.1, 50-14.5, 50-14.6, 50-14.7, 50-15.2, 50-15.4, 50-16.5, 50-18.1, 50-18.3, 50-19, 50-20.1, 50-20.3, 50-20.4, 50-20.5, 50-20.6, 50-21.2, 50-21.3, 50-22.2, 50-22.7, 50-23.2, 50-24.1, 50-24.2, 50-24.4, 50-24.5, 50-24.6, 50-25.1, 50-25.2, 50-25.3, 50-25.4, 50-25.9, 50-26.1, 50-26.4, 50-27.5, 50-30, 50-30.1, 50-30.2, 50-30.5, 50-31.1, 50-33.2, 50-33.4, 50-35, 50-36.3, 50-36.4, 50-37.1, 50-37.4, 50-37.7, 50-37.10, 50-37.11, 50-37.12, 50-37.13, 50-38.5, 50-39.2, AND 50-41 OF CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO REVISIONS OF THE UNIFIED DEVELOPMENT CHAPTER.

The city of Duluth does ordain:

Section 1. That Section 50-1 of Chapter 50 be amended as follows:

50-2 How to use this Unified Development Chapter.

1. Consult the zoning map. Consult the zoning map to identify the base zone district for your property. There are four types of base zone districts: Residential (R), Mixed Use (MU), Form (F) and Special Purpose (SP);
2. Review your base zone district. Find the description of that base zone district in Article 2. In some cases there are special controls or procedures that apply to the base zone district;
3. Review the overlay zone districts. Also review Section 50-18 in Article 2 to determine if your property is included in any of the city's four overlay zone districts – the Natural Resources Overlay (NR-O), Airport Overlay (AO), Historic Resources Overlay (HR-O), or Skyline Parkway Overlay (SP-O). Each overlay includes additional development regulations that modify the base district regulations. It is particularly important that you review the Natural Resources Overlay in Section 50-18.1, because federal, state, or local environmental controls may determine what parts of the property may be developed;
4. Find permitted uses of property. Review the permitted use table in Article 3 to determine whether your proposed use of the property is permitted by right, or available as a special use, or is prohibited in your base zone district. Article 3 also contains use-specific standards that control how some uses may be developed or operated;
5. Review what development standards apply. Review Article 4 to determine what type and size of structure may be constructed on your property and what quality standards will apply to the development. If your property is located in a Form District (one that begins with an "F"), only specific types of structure will be allowed, and those structure types are explained in Section 50-22. If your property is located in an R, MU,

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or SP district, the basic lot and building requirements are found in Section 50-21. The remaining provisions of Article 4 apply to all zone districts.

6. Find what procedures may be required. If your proposed use requires a special use permit, you will need to follow the process for obtaining that permit as described in Article 5. If your proposed development requires any other types of approvals (for example, a variance from setback requirements), those procedures are also described in Article 5.

Section 2. That Section 50-2 of Chapter 50 be amended as follows:

50-2. Purpose.

The purpose of this unified development chapter is to protect public health, safety, and welfare and to implement the goals and objectives of the comprehensive land use plan using those authorities over the development, redevelopment, use, and occupancy of land and structures, and over the protection of the environment, granted to the city by the state. This general purpose includes, but is not limited to, the following:

- (a) To provide for more sustainable development within the city by reducing carbon emissions, vehicle miles travelled, energy consumption, and water consumption, and by encouraging production of renewable energy and food production;
- (b) To control or eliminate soil erosion and sedimentation within the city;
- (c) To protect and enhance the city's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry;
- (d) To enhance the visual and aesthetic character, diversity and interest of the city;
- (e) To promote the use and preservation of historic landmarks and districts for the educational and general welfare of the people of the city;
- (f) To regulate erection and maintenance of signs in the city in order that signs might fulfill their necessary and useful function in such a way to preserve the public welfare and safety;
- (g) To preserve the integrity of residential areas and the character and dignity of public structures, parks and other open spaces;
- (h) To enhance property values and the general appearance and natural beauty of the city;
- (i) To protect the public investment in streets and highways;
- (j) To assure creation of an attractive business environment and to promote the orderly and effective display of outdoor advertising;
- (k) To promote, preserve, and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development in wetlands, shorelands and floodplains.

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Section 3. That Section 50-3 of Chapter 50 be amended as follows:

50-3 Findings of fact.

The council hereby finds that:

- (a) In order to implement the comprehensive land use plan and to promote the orderly development and redevelopment of property in the city, several ordinances related to land use, permitted construction, and environmental protection need to be consolidated into a single unified development chapter;
- (b) Regulation of permitted uses in each zone district, and the designation of uses that require the issuance of a special use permit, are necessary to protect the comprehensive land use plan and to conserve and protect property and property values in neighborhoods;
- (c) The regulation of the creation of subdivision plats and the creation of individual building lots in the city is necessary to ensure accuracy and consistency in legal descriptions of land, to ensure that all created lots have adequate access to roads, to ensure that adequate public services are available to serve new development, and to protect the environment;
- (d) The provision of a residential-planned zone district is necessary to encourage a variety of housing types within established neighborhoods while maintaining the character and vitality of such neighborhoods, and to allow variation in the relationship of uses and required yards in developments compatible with the massing, use and scale of structures within established neighborhoods;
- (e) The provision of a mixed use-commercial zone district is necessary to ensure orderly and attractive commercial growth in areas of the city that exhibit sensitive environmental problems, traffic congestion or other characteristics of urban sprawl, and that individualized review of the design of development within the zone district is necessary in order to minimize blighting influences on surrounding uses and neighborhoods, reduce adverse effects of development on the natural environment, enhance the visual and aesthetic quality of development and ensure the provision of adequate and cost efficient public facilities;
- (f) The provision of a mixed use-business zone district is necessary in order to provide for modern light industrial developments of attractive integrated design and function while also accommodating older light industrial developments in the city;
- (g) Regulation of land disturbance activities is necessary to control or eliminate soil erosion and sedimentation within the city. It establishes standards and specifications for conservation practices and planning activities that minimize soil erosion and sedimentation and provides a permit system to secure the enforcement of these standards and specifications;
- (h) The preservation, protection, perpetuation and use of areas, places, structures, lands, districts and other objects having a special historical, cultural or aesthetic interest or value is a public necessity and is required in the interest of public health, prosperity, safety and welfare of the people of the city;

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- (i) Protection of the water resources found within the city is necessary for the public good. These water resources relate strongly to other valuable natural resources that include, but are not limited to, air, soil, plants, animals and scenic and aesthetic values. Uncontrolled and inadequately planned use of natural resources adversely affects the public health, safety and general welfare by contributing to pollution, erosion, flooding and other environmental problems, and by creating nuisances, impairing other beneficial uses of environmental and natural resources or destroying the resources themselves, impairing the quality of life of the community, impairing the local tax base and hindering the ability of the city to provide adequate water, flood and fire protection and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in areas that may be affected by unplanned land usage;
- (j) Regulation of the erection and maintenance of signs is necessary to ensure that signs fulfill their function in such a way to preserve the public welfare and safety; to preserve the integrity of residential areas and the character and dignity of public structures, parks and other open spaces; to enhance property values and the general appearance and natural beauty of the city; to protect the public investment in streets and highways; to assure creation of an attractive business environment and to promote the orderly and effective display of outdoor advertising;
- (k) Regulation of the use of private rights-of-way, or portions of public rights-of-way, by nearby private development is necessary to protect the public health, safety, and welfare of auto and bicycle users as well as pedestrians, and to avoid congestion of streets, sidewalks and walkways;
- (l) Wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the city and its inhabitants. The city also recognizes that facilitating the development of wireless service technology can be an economic development asset to the city and of significant benefit to the city and its residents. This Chapter intends to minimize impacts of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the city.

Section 4. That Section 50-7 of Chapter 50 be amended as follows:

50-7 Effect of Chapter.

50-7.1. Compliance required.

Following the adoption of this Chapter, (1) no land shall be used, and (2) no structure shall be erected, converted, enlarged, reconstructed, moved, structurally altered, or used, and (3) no platted lot or tract of land shall be created or modified, and (4) the minimum yards, parking spaces, and open spaces, including lot area per family existing on July 14, 1958, or for any structure constructed after that date shall not be encroached upon or considered as part of the yard or parking space or open space required of any other lot or structure, except in accordance with all provisions of this ordinance that apply in the zone district where the property is located and to the type of use, structure, or development in question and in

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accordance with all provisions and conditions attached to any approval or permit granted for the use, structure, activity, or development.

50-7.2. One principle structure per lot.

Except as specifically provided in this Chapter, every structure erected or altered after November 19, 2010, shall be located on a lot as defined in this Chapter. There shall be only one principle structure on one lot unless a specific exception is stated in this UDC.

50-7.3. Permits and approvals required.

Following the adoption of this Chapter, no person shall use land, or erect or modify a structure, or create or modify a platted lot within the city without first receiving any approvals or permits required by this Chapter for such use, structure or lot.

Section 5. That Section 50-9.4 of Chapter 50 be amended as follows:

50-9.4. Third-party private agreements. This Chapter is not intended to interfere with, abrogate, or annul any easements, covenants or other private agreements between parties. However, where this Chapter imposes a greater restriction or higher standards or requirements upon the use of land, structures or premises than those imposed or required by other easements, covenants or agreements, the provisions of this Chapter shall govern. Nothing in this Chapter shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this Chapter. In no case shall the city be obligated to enforce the provisions of any easements, covenants or agreements between private parties.

Section 6. That Section 50-11.1 of Chapter 50 be amended as follows:

50-11.1. Approved projects.

A. Validity.

Permits and approvals that are valid on November 19, 2010, shall remain valid until their expiration date. Projects with valid approvals or permits may be carried out in accordance with the development standards in effect at the time of approval, provided that the permit or approval is valid and has not lapsed;

B. Changes.

Nothing in this Chapter shall require any change in the plans, construction, size or designated use of a structure or part of a structure for which a building permit has been granted or for which plans were on file with the building official before November 19, 2010, provided that construction pursuant to the building permit begins before the building permit expires. If any of these requirements have not been fulfilled or if the building operations are voluntarily discontinued for a period of 90 days, any further construction shall be in conformity with the provisions of this Chapter;

C. Extensions and re-application.

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The decision-making body that granted the original approval may renew or extend the time of a previous approval if the required standards or criteria for approval remain valid. Any extension granted shall not exceed the time specified for the extension of the specific permit approval in this Chapter. Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.

Section 7. That Section 50-14.5 of Chapter 50 be amended as follows:

50-14.5. Residential-Traditional (R-1).

A. Purpose.

The R-1 district is established to accommodate traditional neighborhoods of single-family detached residences, duplexes and townhouses on moderately sized lots. This district is intended to be used primarily in established neighborhoods. Many of the dimensional standards in this district require development and redevelopment to be consistent with development patterns, building scale, and building location of nearby areas. Uses are allowed as shown in Table 50-19.8;

TABLE 50-14.5-1 R-1 DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area per family (One-family)		The larger of 4,000-sq. ft. or average of developed 1-family lots on the block face
Minimum lot area per family (Two-family)		The larger of 3,000 sq. ft. or average of developed 2-family lots on the block face
Minimum lot area per family (Townhouse)		2,500 sq. ft.
Minimum lot frontage (one-family, two-family, and townhouses)		The larger of 30 ft. or average of developed lots with similar uses on the block face
STRUCTURE SETBACK		
Minimum depth of front yard		The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard (one- and two-family)	General	6 ft.
	Lots with less than 50 ft. frontage and garage	Combined width of side yards must be at least 12 ft.
Minimum width of side yard (Townhouse)		10 ft. if adjacent to another lot
		25 ft. if adjacent to platted street
Corner Lot: width of front side yard	Dwelling	15 ft.
	Detached accessory building	20 ft.
	Permitted non-residential building	25 ft.
Minimum depth of rear yard		25 ft.
STRUCTURE HEIGHT		
Maximum height of building		30 ft.
[1] Minimum lot area is determined using "lots on the block face" definition.		
[2] Minimum lot frontage is determined using "block face" definition.		
Section 50.21 <i>Dimensional standards</i> contains additional regulations applicable to this district.		

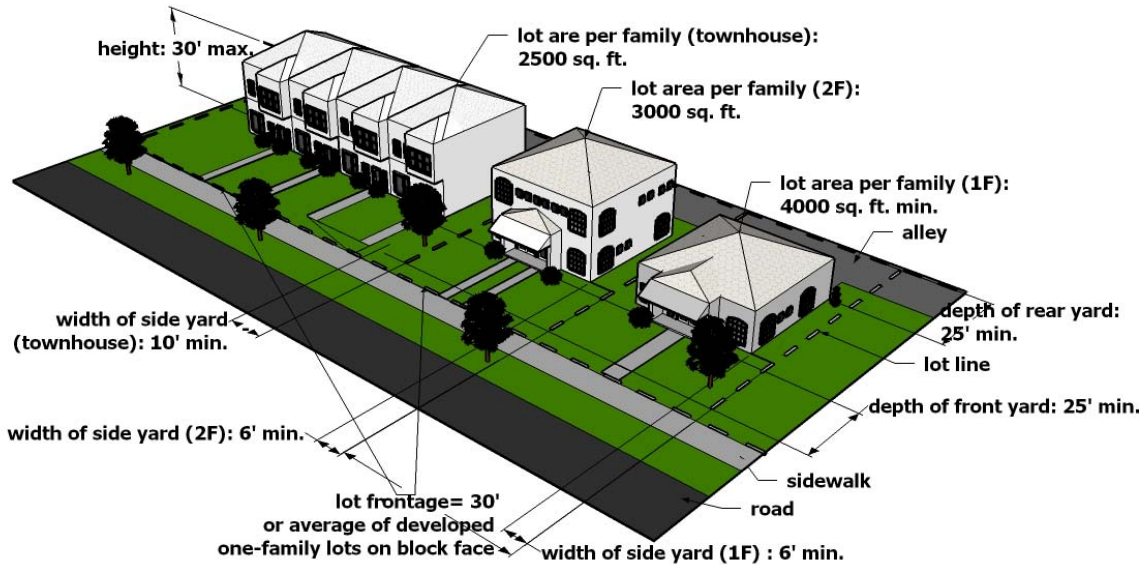
B. Example.

R-1 Example Building Forms



C. Illustration.

R-1 Example Lot Layout



Section 8. That Section 50-14.6 of Chapter 50 be amended as follows:

50-14.6. Residential-Urban (R-2).

A. Purpose.

The R-2 district is established to accommodate multi-family apartments and townhouses, in an urban setting. This district also allows for single-family detached dwellings, duplexes and group living accommodations as shown in Table 50-19.8.

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The district is intended primarily for locations closer to commercial and mixed use activity centers, and may serve as a transition between lower-density residential areas and more intense commercial and mixed use neighborhoods;

TABLE 50-14.6-1 R-2 DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area per family	One-family	4,000 sq. ft.
Minimum lot area per family	Two-family	2,500 sq. ft.
Minimum lot area per family	Multi-family	1,500 sq. ft.
Minimum lot area per family	Townhouse	2,200 sq. ft.
No lot of record containing 5,000 sq. ft. or less shall be used except for a one-family dwelling or a permitted non-dwelling use.		
Minimum lot frontage	One-family, two-family, and townhouse	30 ft.
	Multi-family and non-residential	50 ft.
STRUCTURE SETBACK		
Minimum depth front yard		The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard for buildings less than 3 stories		6 ft.
Minimum width of side yard for building 3 stories or more		10 ft.
Corner Lot: width of front side yard	Dwelling	15 ft.
	Detached accessory building	20 ft.
	Permitted non-residential building	25 ft.
Minimum depth of rear yard		25 ft.
STRUCTURE HEIGHT		
Maximum height of building		45 ft.
Section 50.21. <i>Dimensional standards</i> contains additional regulations applicable to this district.		

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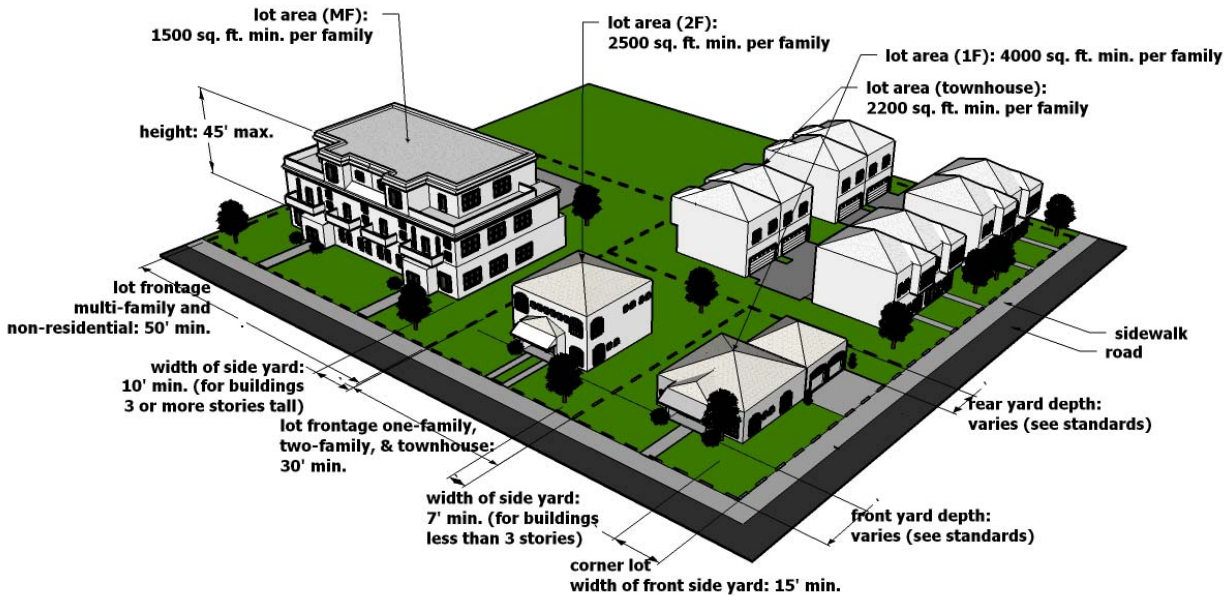
B. Example.

R-2 Example Building Form



C. Illustration.

R-2 Example Lot Layout



D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all residential development or residential redevelopment on land zoned R2 and located within one and one-half (1.5) mile of land occupied, owned or related to a college or university and zoned MU-1, as shown on the following map, except for (1) one-family and two-family dwellings, and (2) any residential development

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where all of the dwelling units are restricted by development agreement or covenant for occupancy by those aged 50 and over or for occupancy by those individuals and households protected by the federal Fair Housing Act amendments of 1988. The planning review is intended to mitigate the impacts of potential student use on the adjacent residential neighborhood. Development may not proceed until the planning commission has approved the project through planning review;

E. Development standards.

The plan for the development shall be approved only if the planning commission finds that it meets the following criteria:

1. Resident parking spaces shall be provided at the ratio of one space per bedroom;
2. Visitor parking spaces shall be provided at the rate of 15 percent of required resident parking spaces;
3. If the residential development or redevelopment is determined to have mitigated the impacts of potential student use in the adjacent residential neighborhood as provided in Section 50-14.6.D above, the development or redevelopment may adjust the above parking requirements as provided in 50-24.3.A, if so eligible;
4. No residential balcony, patio or deck shall be located on any side of the property facing and within 200 feet of an R-1 district;
5. Vehicle ingress and egress shall be located in a manner that avoids or minimizes impacts to residents in adjacent R-1 district and that reduces the potential for pedestrian-vehicular conflicts.

Section 9. That Section 50-14.7 of Chapter 50 be amended as follows:

50-14.7. Residential-Planned (R-P).

A. Purpose.

The R-P district is established to provide a flexible development option for residential projects that integrate creative site design, provide a variety of housing types, provide unique on-site amenities, conserve natural features, increase pedestrian connectivity, or otherwise result in a final product that provides a greater level of public benefit than would be required under the existing zone district. Each R-P district requires approval of an R-P regulating plan that includes the location, type, intensity of proposed development and a description of public amenities or benefits included. Different R-P standards are required for projects in identified high-density and low-density residential areas. Single-family residences, two-family residences, townhouses, group living and apartments, as well as accessory uses, are permitted, as shown in Table 50-19.8, provided projects are compatible in scale and character with the surrounding neighborhood and are included in the approved district plan;

B. Dimensional standards.

The dimensional standards in the R-P District, including but not limited to maximum building heights, minimum or maximum building setbacks, and yard requirements, shall

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be established on a project-specific basis through the UDC text or zoning map amendment process in Section 50-37.3. However, all shoreland setbacks and other setbacks and dimensional requirements from Section 50-18.1 (NR-O overlay) shall continue to apply and cannot be varied through the R-P district plan approval process;

C. Examples.

R-P Low Density Example Building Forms



R-P High Density Example Building Forms



D. Rezoning approval required.

The establishment of an R-P district requires rezoning the property from a current zone district to R-P and the approval of a regulating plan that governs the uses, location, density, dimensional standards and character of the proposed project. The regulating plan shall cover all of the land in the proposed R-P district;

E. Applicability.

An R-P district shall only be established in the R-C, RR-1, RR-2, R-1, R-2, and MU-N districts provided the property meets the requirements in Table 50-14.7-1;

TABLE 50-14.7-1: Characteristics of High-Density and Low-Density in R-P Areas		
Characteristic	Low Density	High Density
Current zoning	R-C, RR-1, RR-2	R-1, R-2, MU-N
Minimum lot size	4 acres	2 acres

F. Development standards.

1. General development standards.
 - (a) The development standards of the zone district(s) where the property is located shall apply to any R-P zoned land unless waived or varied by the terms of an approved R-P regulating plan. The ordinance approving an R-P district and the approved regulating plan shall identify the previous base zone districts for each portion of the property;
 - (b) Maximum building height within 200 feet of an R-1 district is 35 feet;
 - (c) Maximum building height within 200 feet of an R-2 district is 50 feet;

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2. Low density.

Development in low density R-P zones shall comply with the following standards:

- (a) A natural resources inventory is required;
- (b) Common open space. Adequate provisions shall be made for the permanent preservation and maintenance of useable active or passive open space. Common open space shall not be less than 30 percent of the area of the project and shall comply with the following requirements:
 - (i) Common open space shall include the shore and bluff impact zones;
 - (ii) Common open space shall include, where possible, lands within the Skyline Overlay;
 - (iii) Common open space shall include, where possible, wetlands, floodplains, wildlife areas, steep slopes, rock outcrops, tree stands and areas unsuitable for development in their natural state;
 - (iv) No more than one-quarter of the required common open space shall consist of wetlands;
 - (v) Common open space shall not include area within 25 feet of any structure, any impervious surface, or the area between buildings within an individual cluster of buildings;
 - (vi) At least 50 percent of the common open space shall be retained in a contiguous area;
 - (vii) Where possible, the design should utilize features such as vegetation, fences, topography, roads or trails to delineate the boundary of the common open space to minimize potential physical encroachments into the common open space by adjacent homeowners;
- (c) Ownership of common open space. Common open space shall be owned and managed by a homeowners association and shall be encumbered through an easement, restrictive covenant or other instrument suitable to the city;

3. High density.

Development in high density R-P zones shall comply with the following standards:

- (a) The development shall encourage walkable, bikeable communities through the use of complete streets, alleys, sidewalks and trails, interconnected street networks, small blocks, front porches, and buildings that are sited adjacent to streets;
- (b) A traffic impact analysis is required;

G. Required regulating plan contents.

The regulating plan for an R-P zone district shall include the following information:

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1. General layout of development areas and building parcels in relation to the natural features to be protected and the proposed road, trail and bicycle circulation systems;
2. Lot sizes and widths and building setbacks for all proposed development parcels;
3. A road, trail and bicycle circulation plan (including how the circulation may intersect with transit use) and a description of proposed road, trail and bike route widths, trail surfaces, a proposal for maintenance of each road and trail (which may include dedication to and maintenance by the city), and a statement as to whether public access will be permitted on each road, trail, and bicycle route;
4. Natural site features to be protected;
5. Common open space to be provided, the location of that open space, a calculation of proposed open space as a percentage of the total land area in the R-P zone, a proposal for protection and maintenance of the open space over time and a statement as to whether public access to the open space shall be provided;
6. Permitted and special uses for the site, which shall be consistent with those shown in Table 50-19.8;
7. A plan describing the demand for and location of water, sewer, and utility service to the property, including any additional right-of-way needed to accommodate those utilities. In addition, the plan shall indicate all utilities that will be owned or maintained by the public, and if any of those services are to be provided by the city or a public or quasi-public district, and provide a statement as to whether the proposed facilities will meet the engineering and maintenance standards of that entity;
8. A plan for stormwater collection and treatment that includes a summary of land use and technical methods used to minimize stormwater run-off from the site;
9. Off-street parking to be provided in driveways, surface lots and garages;
10. Any public amenities, other than common open space, to be provided by the applicant, together with a statement as to whether those amenities shall be available for public use.
11. Any required building types, form-based regulation or architectural design requirements, as well as a description of how those standards will be maintained and enforced over time.

H. Previously approved developments.

All residential developments approved prior to November 19, 2010, as low-density planned developments pursuant to Sections 50-36.1 through 50-36.3 of the previous zoning code shall be treated as approved low density R-P developments, and will be rezoned to the R-P zone district. In addition, the Harbor Highlands TND plan and the Ramsey Village TND plan, approved pursuant to the TND zone district codified as Article XXIV of the previous zoning code, shall be treated as approved high density R-P developments, and will be rezoned to the R-P zone district.

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Section 10. That Section 50-15.2 of Chapter 50 be amended as follows:

50-15.2. Mixed Use-Neighborhood (MU-N).

A. Purpose.

The MU-N district is established to accommodate a mix of neighborhood-scale, neighborhood serving non-residential uses and a range of residential uses located in close proximity. This district accommodates both horizontal (uses located in separate structures) and vertical (uses located in the same building) types of mixed use. Non-residential uses may include small-scale retail, service and professional offices that provide goods and services to the residents of the surrounding neighborhood, as shown in Table 50-19.8.

TABLE 50-15.2-1 MU-N DISTRICT DIMENSIONAL STANDARDS		
		LOT STANDARDS
Minimum lot area per family	One-family	4,000 sq. ft.
	Two-family	2,500 sq. ft.
	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
	Townhouse or live-work dwelling	2,200 sq. ft.
No lot of record containing 5,000 sq. ft. or less shall be used except for a one-family dwelling or a permitted non-dwelling use		
Minimum lot frontage	One-family, two-family, or townhouse dwelling	30 ft.
	Multi-family or non-residential	50 ft.
STRUCTURE SETBACKS		
Minimum depth of front yard	One-family, non-residential, and mixed use	The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard	Non-residential use adjacent to residential district or use	15 ft.
	Non-residential use adjacent to non-residential district or use	0 ft.
	Multi-family adjacent to single-family district or use	10 ft.
	Multi-family adjacent to multi-family district or use	0 ft.
Minimum depth of rear yard		25 ft.
STRUCTURE HEIGHT		
Maximum height of building	Non-residential use	35 ft.
	Residential or mixed use (general)	75 ft.
	Residential or mixed use (within 200 ft. of R-1)	35 ft.
	Residential or mixed use (within 200 ft. of R-2)	50 ft.

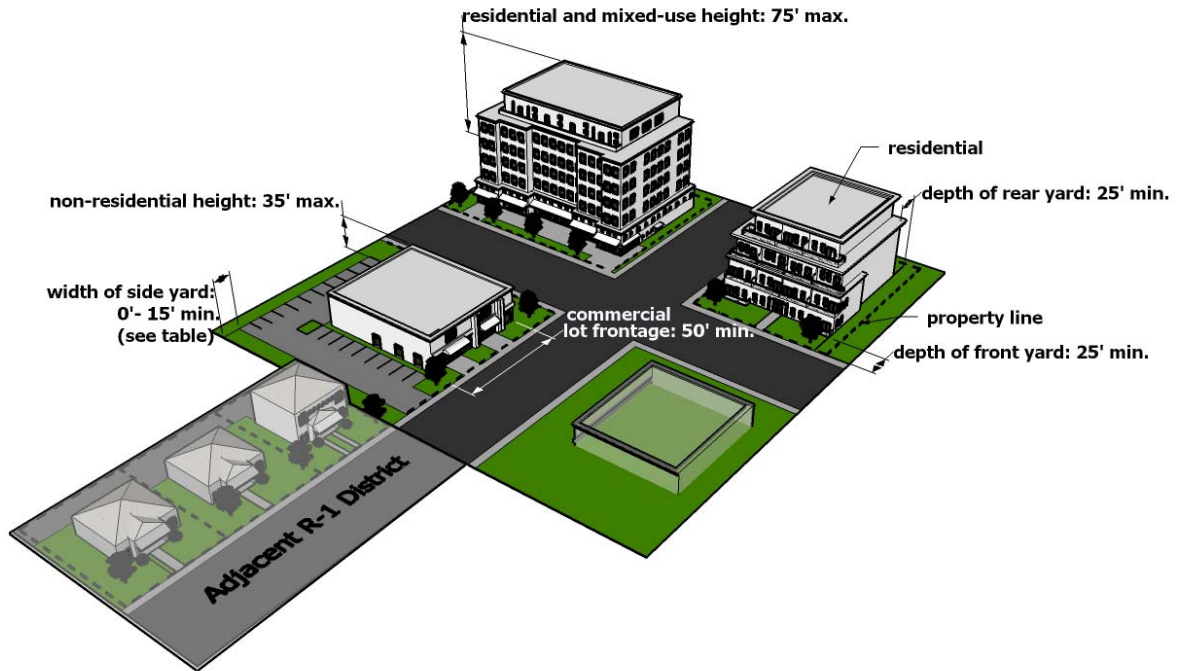
Section 50.21. *Dimensional standards* contains additional regulations applicable to this district.

B. Example.

MU-N Example Building Form



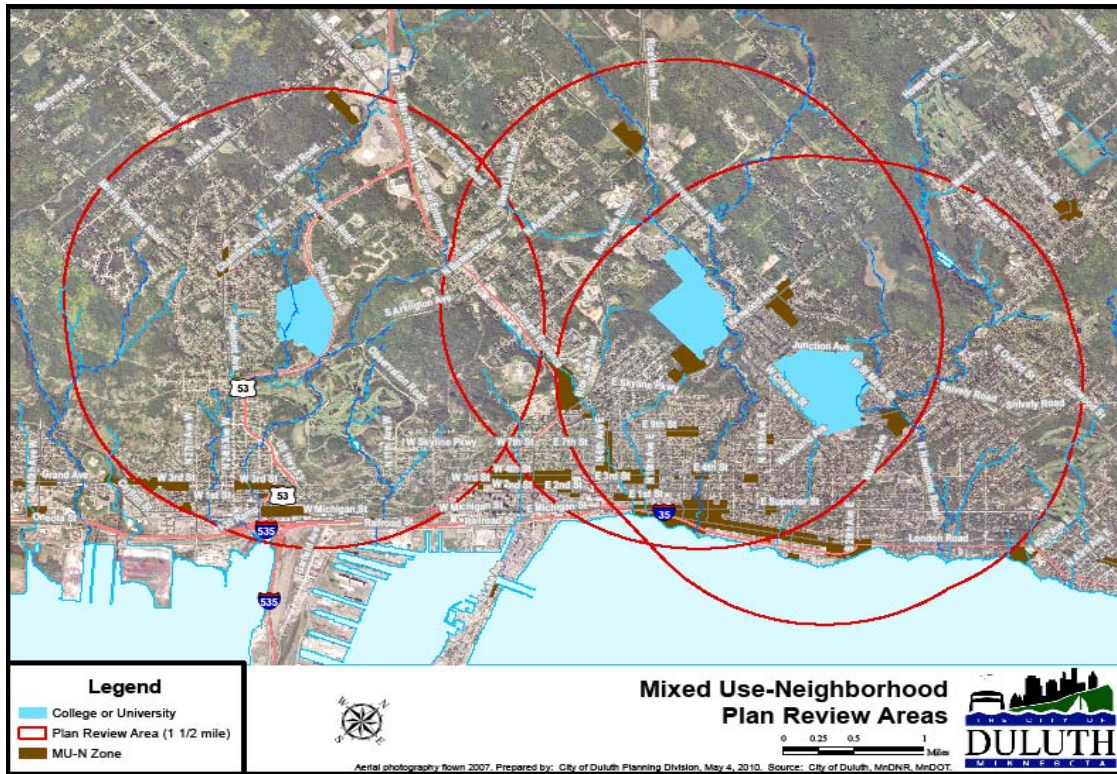
C. Illustration.



D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all residential development or residential redevelopment on land zoned MU-N and located within one and one-half (1.5) mile of land occupied, owned or related to a college or university and zoned MU-I, as shown on the following map, except for (1) one-family and two-family dwellings, and (2) any residential development where all of the dwelling units are restricted by development agreement or covenant for occupancy by those aged 50 and over or for affordable housing development projects funds by federal or state housing funds. The planning review is intended to mitigate the

impacts of potential student use on the adjacent residential neighborhood. Development may not proceed until the planning commission has approved the project through planning review;



E. Development standards.

The plan for the development shall be approved only if the planning commission finds that it meets the following criteria:

1. Resident parking spaces shall be provided at the ratio of one space per bedroom;
2. Visitor parking spaces shall be provided at the rate of 15 percent of required resident parking spaces;
3. No residential balcony, patio or deck shall be located on any side of the property facing and within 200 feet of an R-1 or R-2 district;
4. Vehicle ingress and egress shall be located in a manner that avoids or minimizes impacts to residents in adjacent R-1 and R-2 districts and that reduces the potential for pedestrian-vehicular conflicts;
5. Commercial development shall be concentrated on major roads, not on streets intended primarily for neighborhood traffic;
6. If the residential development or residential redevelopment is determined to have mitigated the impacts of potential student use in the adjacent residential neighborhood as provided in 50-15.2.D, the development or redevelopment may adjust the parking requirements as provided in either 50-24.3.A or 50-24.3.B if eligible, but may not utilize both adjustments.

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Section 11. That Section 50-15.4 of Chapter 50 be amended as follows:

50-15.4. Mixed Use-Institutional (MU-I).

A. Purpose.

The MU-I district is established to provide for the unique development needs and impacts of major medical, educational and research institutional development. The intent is to give institutional landowners the flexibility to plan and develop their facilities while ensuring that surrounding neighborhoods are protected from adverse impacts, such as traffic, overshadowing buildings, noise, and unexpected expansion of institutional uses into residential areas;

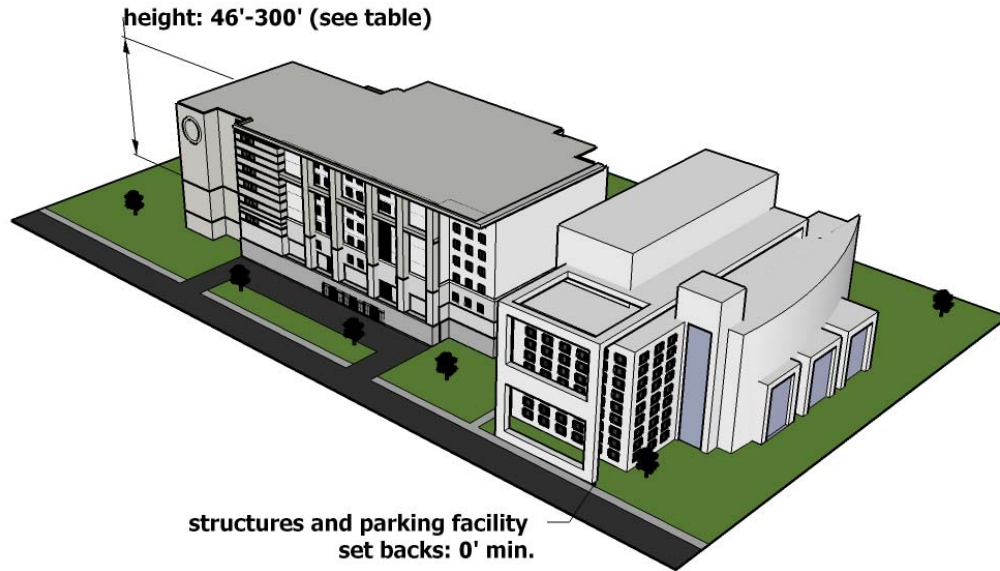
TABLE 50-15.4-1 MU-I DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area per family	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
STRUCTURE SETBACK		
Structures and parking facility setbacks		0 ft.
STRUCTURE HEIGHT		
Maximum height of building	Generally	120 ft.
	On development sites totaling not more than 15% of developable area of the zone district, but not within those areas where a lower maximum is noted below.	300 ft.
	Within 200 ft. of R-1	46 ft.
	Within 200 ft. of R-2	66 ft.
	Within 200 ft. of MU-N	91 ft.
Section 50.21. <i>Dimensional standards</i> contains additional regulations applicable to this district.		

B. Example.

MU-I Example Building Forms



C. Illustration.



D. Planning commission approval required.

1. A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all development and redevelopment, unless the applicant chooses to use the district plan option described below. Development may not proceed until the planning commission has approved the project through planning review or the district plan option;

2. Any proposed rezoning of land from an R district into the MU-I district shall require the preparation of a plan addressing how traffic, parking, and view impacts from the proposed redevelopment will be minimized for those lands on nearby R district properties or mitigated within existing MU-I lands, and planning review shall be based on that plan. The plan shall include any land and facilities within the current MU-I district that will be used to support the use or development of the property to be rezoned, and shall demonstrate how the rezoned and existing institutional properties will functionally relate in terms of parking, circulation, noise, visual impacts, and other applicable development standards;

3. Applicants that do not opt for approval of a district plan shall obtain separate approval for each future expansion or development project through the planning review procedures pursuant to Section 50-37.11, which may include requirements for special use permits or variances. Such approval will require review of vehicle circulation and building scale;

E. District plan option.

1. In an MU-I zone district that contains ten acres or more of land and multiple buildings owned or operated by a single institution, the institution may

choose to obtain approval of a district plan from the city as set forth in Article 5;

2. After a district plan that complies with this Section 50-15.4 is approved, all subsequent development proposed by the institution that substantially complies with the density, location and uses of the approved district plan shall be administratively approved by the land use supervisor through the planning review process in Section 0 without the need for additional planning commission review or public hearings;

F. Optional district plan requirements.

1. Planning area.

The planning area for the optional district plan shall include all the contiguous areas and properties under the ownership and control of the institution. All maps submitted under this Section also shall depict properties within 500 feet of the planning area boundaries;

2. Plan requirements.

An optional district plan shall, at a minimum, include the following information unless the land use supervisor determines that some elements are not necessary to evaluate the institution's future impacts on surrounding neighborhoods:

(a) A statement as to whether the institution intends to acquire any additional properties in the surrounding area for conversion to institution uses over the ten year period, and, if so, the general direction of that proposed expansion;

(b) A plan and description of the maximum amount of development of land and buildings expected to occur within the planning area boundaries within over the next ten years, including:

(viii) Location of each potential new building or significant expansion of or addition to existing buildings;

(ix) Maximum floor area and height of potential new buildings and additions to and expansions of existing buildings;

(x) Any setbacks and buffering from the external planning area boundaries;

(xi) Total number and location of parking spaces that will be developed to serve any new development;

(xii) A statement of any sensitive natural areas or site features that will be protected from development, and the measures to be taken to protect them;

(xiii) A statement as to any public improvements anticipated to be required from the city or any public or quasi-public entity to serve the proposed development;

(c) A transportation and parking management element that identifies traffic circulation patterns, entry and exit points for traffic at the planning area boundaries, any anticipated increases or decreases in traffic entering or exiting the planning area, how parking needs and transit service will be accommodated within the planning area and any measures to be used to mitigate traffic and parking impacts on surrounding areas. If the district plan reflects an increase of ten percent or more in building gross square

footage or an increase of ten percent or more of employment or enrolled students within the planning areas, the city may require that the institution base this element on a traffic and parking study prepared by a qualified consultant;

(d) An open space, trail and pedestrian/bicycle circulation element that describes how those features will be integrated into the proposed development and connected to similar features in the surrounding area;

(e) A massing plan showing the locations of all existing and planned buildings more than 20 feet taller than the maximum height allowed in any adjacent residential zone district, together with any design standards to be applied on those buildings to reduce the degree to which those buildings obstruct views of Lake Superior from adjacent residential neighborhoods;

(f) A description of any requested variation from the development standards in Article 4 that would otherwise apply to the planning area. Unless varied by the district plan, the provisions otherwise applicable to the MU-I zone district will apply;

G. Community meeting.

The applicant shall hold at least one community meeting to discuss the district plan before submitting the plan for review and approval by the city. Notice of the public meeting shall be mailed to all property owners within 350 feet outside the planning area boundaries, and the city shall provide the applicant with the names and address of those property owners upon request. The applicant shall submit with the application documentation that the community meeting has taken place, the date and time of the meeting, the number of attendees, any issues raised regarding the district plan and any responses to those concerns incorporated in the district plan;

H. Approval criteria.

The city shall approve an optional district plan if it finds that the application meets all of those district plan approval criteria in Section 50-30C and in addition meets the following criteria:

1. The district plan complies with all applicable standards of this Chapter, or offers sound reasons for variations from those standards;
2. The district plan mitigates any potential significant adverse impacts to surrounding areas – including but not limited to traffic, parking, and visual obstruction of views of Lake Superior and the St. Louis River to the extent reasonable;
3. Sufficient public safety, transportation and utility facilities and services are available to serve the planning area at the proposed level of development, while maintaining sufficient levels of service to existing and anticipated development in surrounding areas.

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Section 12. That Section 50-16.5 of Chapter 50 be amended as follows:

50-16.5. Form District 4 (F-4) mid-rise community mix.

A. Purpose.

Portions of the London Road and West Duluth (Grand Avenue and Central Avenue) study areas either contain auto-oriented development or a mixture of different building types. The F-4 District was created for those areas that are not strictly comprised of mixed use buildings. These areas are often transitional in nature, as the study area switches from commercial to residential. The integration of Corridor Building II and Cottage Commercial II will assist in stepping down the intensity as the district approaches residential neighborhoods. Permitted and special uses are shown in Table 50-19;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•			•	

B. Example.

F-4 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-4 district.

Section 13. That Section 50-18.1 of Chapter 50 be amended as follows:

50-18.1 Natural Resources Overlay (NR-O).

A. General.

1. Purpose statement.

The purpose of this overlay is to promote, preserve and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development. It is intended to implement

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the Minnesota Wetland Conservation Act (WCA), federal emergency management agency (FEMA) rules, and the Minnesota department of natural resources (DNR) shoreland regulations. In accordance with this regulatory framework, wetlands, flood plains and shorelands are protected by regulating developments that would have an adverse or potentially irreversible impact on unique and fragile land, by minimizing conflicts and encouraging compatibility between environmentally sensitive lands, and by requiring detailed review standards and procedures for developments proposed for such areas, thereby achieving a balance between urban growth and development and protection of natural areas;

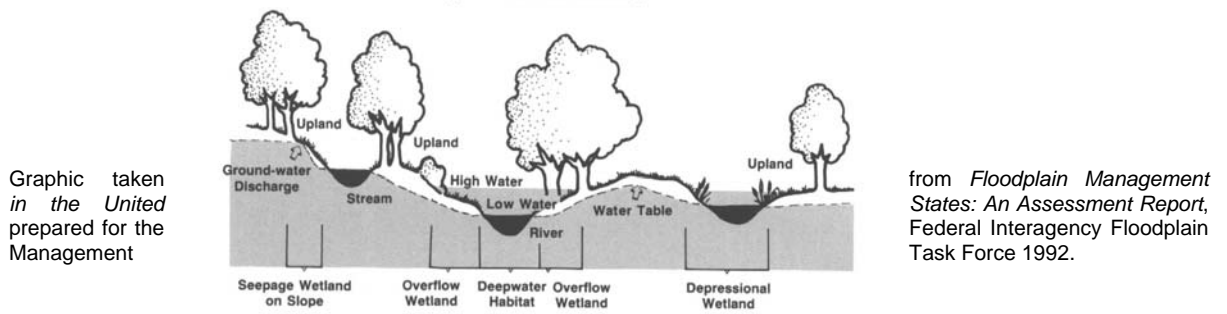
2. NR-O map.

The NR-O map contains data from the following sources:

- (a) For wetlands, there is no official wetlands map. All lands in the city that meet the definition of wetlands in Article 6 are considered wetlands for the purposes of this Section;
- (b) For flood plains, the flood boundary and floodway map for Duluth, Minnesota, published with an effective date of February 1, 1980, by the U.S. department of housing and urban development, and all subsequent amendments thereto. Determinations of flood plain status on individual properties shall be made based on the official version of this map on file with the city;
- (c) For shorelands, boundaries shall be based on (i) waters shown as protected on the map and inventory of protected waters in Duluth prepared by the DNR commissioner pursuant to Chapter 199, Laws of Minnesota, 1979, and (ii) selected waters that the city has added to the commissioner's survey as being worthy of shoreland protection. All of these waters are shown on the NR-O map as currently revised as of November 19, 2010;
- (d) Where interpretation is needed as to the exact location of any boundary as shown on an official map, the city engineer shall make the necessary interpretation based on available technical data, and, in the case of flood plains, based particularly on elevations on the regional flood profile or hydraulic modeling data;
- (e) The NR-O map may be amended in the future, and any revisions shall become effective upon adoption of the revised NR-O map as an amendment to this Chapter.

B. Wetlands.

This Section 50-18 shall apply to all wetlands within the city. All development in the city shall comply with state statutes and regulations. In addition, any development impacting wetlands requires formal approval by the designated city wetland representative.



Graphic taken in the United prepared for the Management

from *Floodplain Management States: An Assessment Report*, Federal Interagency Floodplain Task Force 1992.

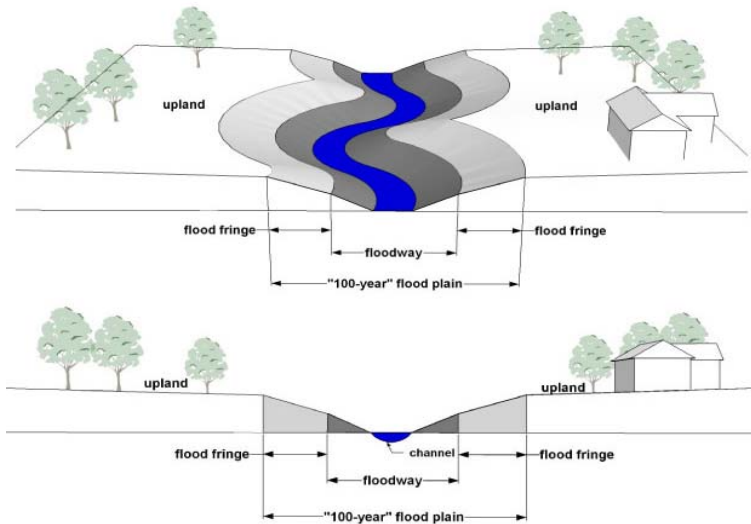
Figure 50-18.1-1: Typical Inland Wetland

1. The building official shall require each permit applicant to specify on the permit application whether or not the proposed site contains wetlands. Regardless of the answer given, if the building official has reasonable grounds to believe the site contains wetlands, the official shall make a determination as to the existence of wetlands. In making that determination, the building official may require any of the following:

- (a) Require the applicant to submit to submit a complete wetland delineation as outlined in WCA and performed by a professional wetland delineator, including information such as soil analysis, surveys of vegetation and engineering or hydrological data, to aid in the determination;
- (b) Conduct a site inspection and evaluation;
- (c) Consult with the city engineer, St. Louis County Soil and Water Conservation District, Board of Water and Soil Resources, and other available wetland experts;
- (d) Use any other reasonable method to determine if the site contains wetlands;

C. Flood plains.

This Section shall apply to all lands within the city that are shown as flood plains on the NR-O map. All lands within flood plains shall be divided into floodway districts, flood fringe districts, or general flood plain districts. For purposes of relating those districts to plats and lots within the city, the NR-O map shall be used as a working map in the administration of the flood plain controls unless it is clearly shown that there is an inconsistency between the flood boundary and floodway map and said NR-O Map, in which case the flood boundary and floodway map shall control.



Graphic taken from *Floodplain Management in the United States: An Assessment Report*, prepared for the Federal Interagency Floodplain Management Task Force 1992.

Figure 50-18.1-2: Flood plain, floodway, and flood fringe

1. Compliance.

On or after January 28, 1980, no new structure or land shall be used and no structure shall be constructed, located, extended, converted or structurally altered without full compliance with the terms of this Section 50-18.1.C. Within the floodway, flood fringe and general flood plain districts, all uses not listed as permitted uses or special uses are prohibited;
2. Uses and special use permits – floodway.
 - (a) Permitted uses.

Only the following uses shall be permitted within the floodway, and only if the land use supervisor determines that (a) the use is shown as a permitted use in the underlying zone district in Table 50-19.8, (b) the use has a low flood damage potential, (c) the use will not obstruct flood flows or increase flood elevations, and (d) the use does not involve structures, fill, obstructions, excavations or storage of materials or equipment:

 - (xiv) Agriculture;
 - (xv) Industrial, commercial and mixed use loading areas, parking areas and airport landing strips;
 - (xvi) Outdoor recreation and entertainment facilities that do not include temporary or permanent residences or occupied structures;
 - (xvii) Residential lawns, gardens, parking areas and play areas;
 - (b) Special uses.

The following uses involving accessory structures or fill or storage of materials or equipment may be permitted only after the issuance of a special use permit pursuant to Article 5:

 - (xviii) Structures accessory to a permitted use;
 - (xix) Mining, extraction and storage of sand, gravel and other materials;
 - (xx) Marina or yacht club or accessory residential boat dock;

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- (xxi) Railroad yard or shipyard and related facilities, electric power transmission lines, major utilities or wireless communication towers and minor utilities and accessory wireless antennas attached to existing structures;
- (xxii) Bulk storage not listed elsewhere;
- (xxiii) Placement of fill or construction of fences;
- (xxiv) Tourist trailer or camp;
- (xxv) Water-dependent manufacturing, light or heavy, and water-dependent bulk storage or wholesaling not listed elsewhere;
- (xxvi) Structural works for flood control such as levees, dikes, and floodwalls constructed to any height where the intent is to protect individual structures;
- (xxvii) Other uses consistent with the stated purposes and provisions of this Section 50.18.1.C;
 - (c) Standards for special use permits.

A special use permit for uses and structures listed in subsection (b) above shall only be issued if the following standards are met:
- (xxviii) The proposed use or structure will not cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected;
- (xxix) Any fill deposited in the floodway shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;
- (xxx) Accessory structures are not designed for human habitation, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters, shall be constructed whenever possible with the longitudinal axis parallel to the direction of flood flow, shall be placed approximately on the same flood flow lines as those of adjoining structures and shall be floodproofed to the flood protection elevation in accordance with the State Building Code;
- (xxxi) The building official may require that floodproofed accessory structures meet the following additional standards, if the building official determines that compliance is necessary to carry out the stated purposes of this Section 50-18.1.c:
 - (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
 - (2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed;
 - (3) The structure must be constructed to allow water to flow through it in case of flooding;

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- (xxxii) The use will not include the storage or processing of materials that are, in time of flooding, flammable, explosive or injurious to human, animal or plant life. All materials or equipment stored shall be readily removable from the area within the time available after a flood warning;
 - (xxxiii) Any structural works for flood control that will change the course, current, or cross-section of wetlands or public waters shall comply with state standards and regulations;
 - (xxxiv) Any levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood, based on technical analysis that assumes equal conveyance or storage loss on both sides of a waterway.
3. Uses and special use permits – flood fringe.
- (a) Permitted uses.
Those uses listed in Table 50-19.8 as permitted uses in the zone district where the property is located, provided that the building official determines that:
 - (xxxv) All structures, including accessory structures, shall be elevated so that a structure's lowest floor is above the regulatory flood protection elevation. The structure's design and as-built condition in relation to the regulatory flood protection elevation must be certified by a professional engineer or architect licensed in Minnesota;
 - (xxxvi) Any non-residential basements below the regulatory flood protection elevation will be structurally dry floodproofed in accordance with the State Building Code;
 - (xxxvii) As an alternative to elevation, accessory structures that constitute a minimal investment and that do not exceed 500 square feet may be internally floodproofed in accordance with Section C.2(c) 18.1.C.2(c)(iii and iv) above;
 - (xxxviii) Any placement of fill with a cumulative volume in excess of 1,000 cubic yards at any one time may only be used to elevate a structure in accordance with this subsection (a);
 - (xxxix) Any stored materials or equipment shall be elevated on fill to the regulatory flood protection elevation;
 - (b) Special uses.
The placement of more than 1,000 cubic yards of fill or other similar material, other than for the purpose of elevating a structure to the regulatory flood protection elevation, or the storage of materials and equipment below the regulatory flood protection elevation, may be permitted only after the issuance of a special use permit as provided in Article V. In addition, this use is subject to the limitations on flood plain variances in Article V and the following requirements:
 - (xl) Any fill deposited in the floodway shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected

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- from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;
 - (xli) The use will not include the storage or processing of materials that are, in time of flooding, flammable, explosive or injurious to human, animal or plant life. All materials or equipment stored shall be readily removable from the area within the time available after a flood warning;
 - (c) Standards for all flood fringe uses.
 - (xlii) All new principal structures must have vehicular access at or above an elevation not more than two feet below the regulatory flood protection elevation. If a variance to this requirement is granted, limitations on the period of use or occupancy of the structure for times of flooding may be specified;
 - (xliii) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain;
- 4. General flood plain district.
 - (a) Permitted uses.
 - (xliv) The uses listed in subsection C.2(a) above shall be permitted uses;
 - (xlv) All other uses shall be subject to the floodway/flood fringe evaluation criteria below and the resulting designation shall be used in determining uses;
 - (xlvi) Land determined to be in the floodway pursuant to subsection (a)(ii) shall have those permitted and special uses listed in Section 50-18.C.2 above;
 - (xlvii) Land determined to be in the flood fringe pursuant to subsection (a)(ii) shall have those permitted and special uses listed in Section 50-18.C.3 above;
 - (b) Procedures for floodway and flood fringe determinations within the general flood plain district:
 - (i) The applicant shall submit appropriate information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe district and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, parts 6120.5000 – 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective DNR Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
 - (1) Estimate the peak discharge of the regional flood;
 - (2) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas;

- (3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 feet. A lesser stage increase than 0.5 feet shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries;
 - (ii) The city engineer shall present the technical evaluation and findings to the city council. The city council must formally accept the technical evaluation and the recommended floodway and/or flood fringe district boundary and that the proposed use is allowed in the area where it is proposed, or deny the permit application. Prior to official action the city council may submit the application and all supporting data and analyses to FEMA, the DNR or the planning commission for review and comment. Once the floodway and flood fringe district boundaries have been determined, and assuming the proposed use is allowed in the area where it is proposed, the city council shall refer the matter to staff who shall process the permit application consistent with the applicable provisions of this Section 50-18.1.C;
5. Public utilities, railroads, roads and bridges.
 - (a) All public utilities and facilities such as gas, electrical, sewer and water supply systems, with the exception of sumps and wet wells, to be located in the floodway or flood fringe shall be floodproofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation;
 - (b) Railroad tracks, roads and bridges to be located within the floodway or flood fringe shall comply with subsections 2 and 3 above, as applicable. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety;

D. Shorelands.

In furtherance of the policies declared by the state legislature, waters in the city have been classified as general development waters (GD), natural environment waters (NE) or coldwater rivers (CW). The shoreland overlay applies to lands within 1,000 feet of Lake Superior or within 300 feet of rivers, creeks, streams and tributaries and floodplains, as designated on the NR-O map. If a parcel or development lies only partially within a shoreland area, only the portion of the property within the shoreland is subject to these provisions;

1. Shoreland permit required.

The following activities and structures require a shoreland permit if located within a shoreland:

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- (a) All structures;
 - (b) All grading, filling and excavating;
 - (c) All construction of impervious surfaces, including roads, driveways, parking areas and trails;
 - (d) All removal of natural vegetation;
 - (e) Any construction activity that removes or disturbs natural beach grasses on Park Point;
2. Standards for shoreland permit.
- (a) Erosion and sediment control measures shall be required for any land disturbing activity;
 - (b) Grading and filling of more than 250 square feet. or placement of more than ten cubic yards of material within the shore impact zone shall only be permitted if a plan for erosion control, storm water management and shoreline buffer restoration is approved by the city and effectively implemented;
 - (c) Impervious surfaces shall be designed and constructed to minimize and control runoff and erosion into the regulated waters;
 - (d) Any removal of natural vegetation shall be designed to prevent erosion into regulated waters and to preserve shoreland aesthetics;
 - (e) Removal of trees or shrubs in a contiguous patch, strip, row or block is prohibited in shore impact zones;
 - (f) The project does not result in the proposed building being located in a shore or bluff impact zone;
 - (g) Naturally vegetative buffers shall be restored to the extent feasible after any project is complete;
3. Dimensional standards.
- (a) No shoreland permit shall be approved unless the standards in Table 50-18.1.D-1 are met or a variance obtained pursuant to Article 5;
 - (b) Exceptions to dimensional standards.
 - i. Commercial, mixed use, & industrial structures in the harbor, shown in Figure 50-18.1-3: 0 feet setback for grain elevators, cranes, loading bins, and other equipment necessary for loading and unloading, including impervious surface necessary to support these activities;
 - ii. Public trails no more than ten feet wide may be constructed within these setbacks, provided that a minimum amount of natural vegetation is removed and provided that permits are obtained from the DNR and MPCA, if required;
 - iii. Properties in Stormwater Zone B, as defined in Section 50-18.1E.3(f), that have been previously developed with 75 percent or greater impervious surface may use one of the following methods to determine building setback:
 - Use the impervious surface setback for the shoreland classification as the building setback.
 - When principal structures exist on the adjoining lots on both sides of the proposed building site, the structure setbacks

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can be altered to conform to the adjoining setbacks, provided the proposed building site is not located within the setback required for the naturally vegetative buffer;

iv. Park equipment such as playground structures and ball fields (but not including structures such as garages, storage buildings, toilets or warming houses) may be placed closer than the required structure setback provided they lie outside the area required for the native vegetative buffer;

4. Uses and special use permits.

(a) Those permitted and special uses shown in Table 50.19.8, subject to the issuance of any shoreland permit required by subsection D.1 and compliance with the standards of subsection D.2, except as listed below. Agricultural uses are not permitted in the shore impact zone. Within shoreland areas that are outside of the shore impact zone, agricultural uses are permitted if steep slopes are maintained in permanent vegetation or the land is operated under an approved conservation plan from the St. Louis County Soil and Water Conservation District;

(b) All industrial uses, including mining, extraction and storage, on coldwater rivers or natural environmental waters require a special use permit pursuant to Article 5. The application for a special use permit must include a thorough evaluation of the topographic, vegetation and soils conditions on the site;

Table 50-18.1.D-1: Minimum Shoreland Area Standards			
Standards	General Development Waters ^[1]	Natural Environmental Waters	Coldwater River
Minimum setbacks from Ordinary High Water Level or highest known water level, whichever is higher			
<i>Structures</i>	<u>50</u> ft.	<u>75</u> ft.	<u>150</u> ft.
<i>Commercial, mixed use, & industrial structures in the harbor, shown in Figure 50-18.1.-3</i>	25 ft.	N/A	N/A
<i>Impervious Surfaces in the Shore Impact Zone</i>	50 ft.	<u>50</u> ft.	<u>75</u> ft.
Lowest floor elevation above Ordinary High Water Level or highest known water level, whichever is higher	3 ft.		
Width of naturally vegetative buffer	50 ft.		
<small>[1] All Lake Superior shoreland is classified as general development waters.</small>			

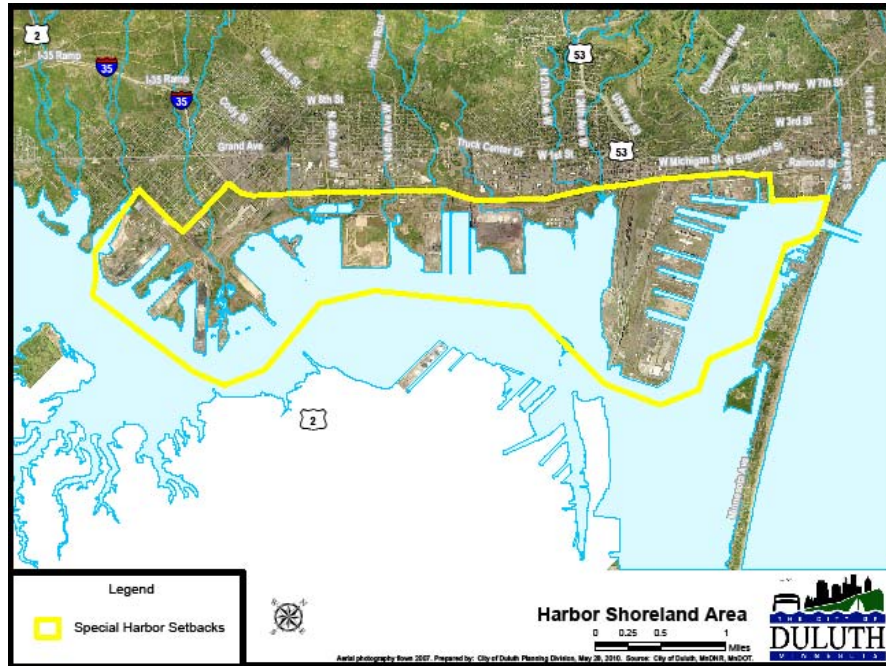


Figure 50-18.1-3

- (c) Standards for special use permit:
 - (xlviii) Compliance with all development requirements for shorelands in this Section 50-18.1.D;
 - (xlix) Prevention of soil erosion, stormwater runoff or other possible pollution of public waters, both during and after construction or use;
 - (i) Restoration of the shoreline buffer to a natural state;
 - (ii) Screening of structures and other facilities as viewed from regulated waters, as shown on the NR-O map;
- 5. Subdivisions.
 New subdivisions in the shoreland area shall meet the following requirements:
 - (a) The land shall not be subdivided until the land has been rezoned into the R-P zone district, and the concept and detailed development plans required in the R-P districts shall be designed to comply with the provisions of this Section 50-18.1.D;
 - (b) A buffer at least 50 feet in width, consisting of trees, shrubs and ground cover of plants and understory in a natural state, is required within a line parallel to the ordinary high water level or highest known water level, whichever is higher, and as close to the ordinary high water level as topography and the health of the plants will permit;
 - (c) After construction is completed, the owner of the property shall be responsible for any continued need for erosion and sediment control and restoration on the property;

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6. Nonconforming lots of record.

Lots of record in the office of the county recorder on November 19, 2010, may be allowed an exception from the structure setback requirement in subsection D.3. If the lot of record cannot be developed under the setback requirements of subsection D.3, then:

- (a) The lot may be developed without a variance if (1) principal structures exist on the adjoining lots on both sides of a proposed building site, and (2) the proposed structure will be located no closer to the protected shore than the principal structure on either adjoining site, and (3) the resulting adjusted setback does not result in the proposed building being located in a shore impact zone; or
- (b) The lot may be developed if a variance is obtained pursuant to Article 5;

E. Stormwater management and erosion control.

1. Goals and purpose.

(a) The federal Clean Water Act (CWA) requires that municipal stormwater discharges be authorized under the national pollution discharge elimination system (NPDES). The city is allowed to discharge its stormwater under coverage provided by a CWA municipal separate storm sewer system general permit (MS4 permit). As part of the requirements of the permit, the city is required to develop a stormwater pollution prevention program (MS4 program) with specific goals requiring:

- (lii) Non-degradation of all city waters;
- (liii) Restrictions to special designated waters in the city, including: (a) Lake Superior (which is an MPCA designated outstanding value resource water with both restricted discharge and impaired water designations); (b) St. Louis River (which is an MPCA designated impaired water and area of concern; and (c) 16 trout streams designated by the DNR;

(b) The goals described in the city's MS4 program pertaining to illicit discharge detection and elimination, construction-site runoff controls, and post-construction runoff treatment are incorporated into this Chapter by reference;

(c) The purpose of this Section 50-18.1.E is to establish regulations to comply with the federal CWA and the city's MS4 permit and to achieve the goals stated in the city's MS4 program;

2. Temporary erosion and sediment controls.

(a) Applicability.

This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this Section and those subject to a superseding or preemptive state or federal law. This Section shall be deemed to supplement, but not to conflict with, the applicable provisions of the State Building Code;

(b) Requirements.

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All proposed development and redevelopment and all subdivision plats and re-plats shall include drainage system and temporary erosion and sediment best management practices (BMPs) in compliance with the city's MS4 program and the requirements shown in Table 50-18.1.E-1 below. Plans, engineering analysis and calculations, diagrams, drainage reports and other data shall be submitted, as required by the city engineer or designee with each development proposal or application for permit;

Table 50-18.1.E-1: Temporary Erosion and Sediment Controls				
Land Area Disturbed ▶	≤ 3,000 sq. ft. ^[1]	> 3,000 and ≤ 10,000 sq. ft. ^[2]	> 10,000 sq. ft. and < 1 acre	≥ 1 acre
Development Plan Measures Required ▼				
Temporary erosion and sediment controls to prevent any off-site migration of sediment	✓			
Site specific Erosion and Sediment Control Plan (ESCP) and ESCP Permit from city engineer		✓	✓	
Site specific Stormwater Pollution Prevention Plan (SWPPP) meeting MPCA NPDES Permit requirements for Construction Activity				✓
MPCA NPDES/State Disposal System Construction Stormwater Permit				✓
MS4 Statement of Compliance from city engineer		✓	✓	✓

[1] If the city engineer determines that the proposed development is in a vulnerable area and may cause the degradation of the waters connected to the city's stormwater system, then the provisions applicable to land disturbance areas between 3,000 and 10,000 sq. ft. shall apply.

[2] If land disturbed is within a mapped shorelands zone, an MS4 statement of compliance from the city engineer is also required.

(c) Authority to waive.

The city engineer has authority to waive the requirements in Table 50-18.1.E.1 in accordance with the city's MS4 permit. If stormwater and erosion controls required by this subsection 2 are demonstrated to be technically feasible, provisions of subsection 2 must be met to the maximum extent practicable;

3. Permanent water quality and discharge rate controls.

(a) Applicability.

(i) This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this Section and those subject to a superseding or preemptive state or federal law. This Section shall be deemed to supplement, but not to conflict with provisions of the State Building Code;

(ii) This Section does not apply to pavement resurfacing and pavement rehabilitation projects where: no new impervious surface is created, there is no change to the configuration of the site and there is no change to the land use;

(b) General requirements.

All proposed development and redevelopment and all subdivision plats and re-plats shall include drainage system and stormwater runoff rate

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controls and water quality treatment in compliance with the city’s MS4 program and the requirements shown in Table 50-18.1.E-2 below. Plans, engineering analysis and calculations, diagrams, drainage reports and other data shall be submitted, as required by the city engineer with each project (referred to as the “development plan” below);

Table 50-18.1.E-2: Permanent Water Quality and Discharge Rate Controls [See additional requirements for land in shorelands below]			
Development Plan Measures required ▼	Total New Impervious Area Created or the Impervious Area Redeveloped^{[1][2]}		
	≤ 3,000 sq. ft.	> 3,000 sq. ft. and < 1 acre^[3]	≥ 1 acre^[4]
Water quality treatment	NONE	✓	✓
Runoff rate controls		✓	✓
Drainage report		✓	✓
Site specific SWPPP			✓
MS4 Statement of Compliance from city engineer		✓	✓

[1] The total area is the sum of both the new and redeveloped impervious areas that are part of the common plan of development or sale.

[2] A pavement resurfacing or pavement rehabilitation project is exempt where: (a) no new impervious surface is created; and (b) no change to configuration of the site occurs; and (c) no change to land-use occurs.

[3] An individual one-family or two-family residence (that is not part of a common plan of development) with less than 10,000 square feet of disturbed area and less than 7,500 square feet of new impervious area is exempt.

[4] If the site contains an existing impervious surface area greater than one acre, the drainage report must include a determination of the current total suspended solids removal across the entire site. If the current TSS removal is below 50 percent, the drainage report must include an evaluation of the feasibility of increasing the TSS removal to 50 percent on an annual basis across the entire site.

(c) Authority to waive.

The city engineer has authority to waive the requirements in Table 50-18.1.E-2 in accordance with the city’s MS4 permit. If stormwater and erosion controls required by this subsection 3 are demonstrated to be technically feasible, provisions of subsection 3 must be met to the maximum extent practicable;

(d) Shoreland requirements.

(i) In addition to the requirements in subsection (b) above, no residential development or redevelopment within a shoreland shall result in impervious surface area exceeding 25 percent of the lot area unless the owner (a) submits a development plan including water quality treatment and (b) obtains an MS4 statement of compliance by the city engineer;

(ii) In addition to the requirements in subsection (b) above, no commercial, mixed use, institutional or industrial development or redevelopment within a shoreland shown on the NR-O map shall create new impervious surface area unless the owner (a) submits a

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development plan including water quality treatment and (b) obtains an MS4 statement of compliance issued by the city engineer;

(e) Water quality treatment requirements.

Where subsection (b) requires that a development plan include water quality treatment, the development or redevelopment must be designed to provide the following treatment, volume reduction and pollutant removal:

(i) Treatment requirements.

The development or redevelopment must provide at least the minimum treatment shown in Table 50-18.1.E.3;

Table 50-18.1.E-3: Treatment Requirements		
Development Type	New and Existing Impervious surface	Required Treatment
New	< 1 acre	The first 1-in. Water Quality Volume (WQV) of rainfall or 80% Total Suspended Solids (TSS) removal ^[1]
New	> 1 acre	The first 1-in. WQV of rainfall ^[1]
Redevelopment	< 1 acre	10% reduction in impervious surface or 50% TSS removal
Redevelopment	> 1 acre	50% TSS removal

[1] Refer to additional requirements under Section 3(e)(iii) Pollutant Removal

(ii) Stormwater flow volume reduction.

Stormwater flow volume reduction shall be provided to the maximum extent practicable. Refer to the Minnesota Stormwater Manual. Volume reduction techniques may include:

- (1) Infiltration into the ground;
- (2) Evaporation or transpiration;
- (3) Storage for re-use;
- (4) Enhanced infiltration swales, filter strips, or disconnected impervious area;
- (5) Other demonstrable methods that reduce volume;

(iii) Pollutant removal.

Projects able to provide volume reduction for the first 1/2 inch of rainfall from newly created impervious surface shall have met city pollution abatement requirements and are exempt from this paragraph. Projects that do not meet the requirements of subsection (ii) above are required to complete computer modeling to show that water quality treatment shall provide 85 percent total suspended solids (TSS) removal, and the applicant shall also be required to describe and provide additional BMPs for temperature control;

(f) Runoff rate control.

Where subsection (b) requires that a development plan include runoff rate control, the development or redevelopment must be designed to provide the controls as follows. Runoff rate control is beneficial in the upper, flatter part of the watershed above the bluff line. Below the bluff line, the

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topography is relatively steep and stormwater flows quickly to Lake Superior and the St. Louis River. This bluff line designation is show on the NR-O map. The stormwater rate control requirements for development and redevelopment are shown in Table 50-18.1.E-4;

Table 50.18.1.E-4: Discharge Rate Limits		
Location ▶	Post-Development Peak Flow Rates at Each Discharge Point Shall Not Exceed	
Type of Activity ▼	Zone A -- Above Bluff Line	Zone B -- Below Bluff Line
New Development	75% of predevelopment peak flow rates for 10 and 100 year events; and 90% of predevelopment peak flow rate for 2 year event	Predevelopment peak flow rates for all storm events
Redevelopment	Predevelopment peak flow rates for all storm events	Predevelopment peak flow rates for all storm events

- (g) General design criteria.
 - (i) New minor system drainage systems shall be designed to efficiently convey the peak discharge rates for a ten-year flow;
 - (ii) New major system drainage systems shall be designed to efficiently convey the peak discharge rates for a 100-year flow;
 - (iii) The 100-year rainfall event or 100-year peak flow shall be evaluated to ensure that no damage occurs to adjacent properties for all systems;
 - (iv) The stormwater management systems for any new or redevelopment project shall maintain at least two feet of freeboard between the anticipated 100-year high water elevation and the minimum building opening;
 - (v) Consideration may be given for treating existing untreated impervious areas diverted to the site and included in the control area for analysis if it is in the best interest of the city;
 - (vi) All impervious areas shall be considered connected and curve numbers shall not be weighted for impervious areas except under special circumstances;
 - (vii) 95 percent of all newly added impervious surface shall have its runoff directed to the water quality treatment area. If it is impractical to direct 95 percent of the added impervious surface to water quality area, alternate methods may be used in combination so long as 95 percent is treated and all peak flow requirements are fulfilled;
 - (viii) Flow shall not be diverted from one major or minor system to another major or minor system;
 - (ix) When stormwater management plans involve directing runoff from a site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other property interests concerning flowage of water to a point where the stormwater enters a major system;

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- (x) Adequate measures shall be taken to prevent uncontrolled drainage across lot lines;
- 4. General stormwater restrictions.
 - (a) Applying fertilizer, pesticides or any chemicals on impervious surfaces, within any part of stormwater drainage system or any drainage way, within 25 feet of any wetland edge or ordinary high water level or bank edge of any drainage course, or within any water resource buffer area is prohibited;
 - (b) Sweeping, raking, blowing or otherwise placing yard waste, unless the yard waste is securely contained, in the street, ditch, gutter, storm inlet, catch basin or any part of any drainage way or other area that would allow yard waste to enter the storm drainage system is prohibited;
 - (c) Yard waste segregated for pickup must be securely contained until removed;
 - (d) Topsoil and erodible soil stockpiles shall be distributed within three days or covered to prevent erosion of the stockpile;
- 5. Ownership and maintenance.
 - (a) Maintenance of temporary erosion and sediment control practices. During the period of a land disturbing activity, the person engaging in the construction shall be responsible for installing and maintaining erosion and sediment control practices. After construction is completed, the owner of the property shall be responsible for installing and maintaining erosion and sediment control practices;
 - (b) Ownership.
 - (i) All components of the stormwater management system shall be constructed, owned, operated and maintained by the developer or owner(s) to their confluence with the major system or city owned minor system;
 - (ii) In the case of developments in which right-of-way is transferred to public ownership, the storm drain system within the city right-of-way shall be owned and maintained by the city. Stormwater treatment facilities and ponds shall be in common space and shall be owned and maintained by the developer or the owners of the development. Stormwater treatment facilities shall not be located in the public right-of-way;
 - (c) Owner inspection and maintenance.
 - (i) Stormwater management facilities shall be designed to minimize maintenance and provide maintenance access. All facilities shall have a plan of operation and maintenance that assures continued effective removal of runoff pollutants and accumulated sediment. The developer or the owner(s) shall be responsible for inspection, maintenance and reporting for all non-publicly owned stormwater management facilities associated with the development. Copies of the inspection records shall be maintained by the developer or owner for a period of six years. Copies of all inspection records shall be provided to the city upon request;

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- (ii) For the purposes of inspection during construction monitoring, the permittee shall:
 - (1) Submit an inspection log to the city on the first day of each month during the entire duration of construction;
- (iii) For the purposes of ongoing monitoring and maintenance after construction is complete, the owner shall conduct inspections on all non-publicly owned structural components and all non-structural components (including swales and pond areas) of the stormwater management system;
 - (1) Submit a written report approved by an engineer summarizing findings and maintenance needs;
 - (2) Submit a written report of work completed to maintain stormwater facilities. Work must be completed within three months of annual inspection.

Section 14. That Section 50-18.3 of Chapter 50 be amended as follows:

50-18.3. Historic Resources Overlay (HR-O).

A. Purpose.

The purpose of this Section 50-18.3 is to preserve, protect and promote any areas, places, buildings, structures, lands, districts and other objects having a special historical, community or aesthetic interest or value. The Historic Resources Overlay:

1. Safeguards the heritage of the city by preserving properties that reflect elements of the city's cultural, social, economic, political, engineering, visual or architectural history;
2. Protects and enhances the city's appeal and attraction to residents, visitors and tourists, while enhancing its economic viability through the protection and promotion of its unique character as related to its history and heritage;
3. Enhances the visual and aesthetic character, diversity and interest of the city;
4. Fosters civic pride in the beauty and notable accomplishments of the past;
5. Promotes the preservation and continued use of historic properties for the education and general welfare of the people of the city;

B. Designation of historic resources.

1. Through the process for designating historic resources in Section 50-37.8, or its predecessor ordinance previously codified as Chapter 28A of the City Code, the historic preservation commission has designated:
 - (a) Two historic preservation districts: the Duluth Civic Center Historic District, and the Duluth State Normal School Historic District, whose boundaries are shown on Exhibits 50-18.3-1 and 50-18.3-2; and
 - (b) Those designated historic preservation landmarks listed on Exhibit 50-18.3-3;

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2. The historic preservation commission and planning commission may from time to time recommend, and the council may approve, additional historic preservation districts or landmarks pursuant to Section 50-37.8;

C. Review of construction/demolition activities.

Within those designated historic preservation districts shown on Exhibit 50-18.3-1 and those historic preservation landmarks listed on Exhibit 50-18.3-2:

1. Construction and demolition activities, including all street and utility activities, shall be approved pursuant to Section 50-37.14;
2. The issuance of city permits to do any of the following shall be approved pursuant to Section 50-37.14:
 - (a) Remodel, repair or alter in any manner that will change the exterior appearance;
 - (b) New construction, including parking facilities;
 - (c) Move a building;
 - (d) Change the nature or appearance of a designated historic preservation landmark or district, including landscape features;
 - (e) Demolition in whole or in part;

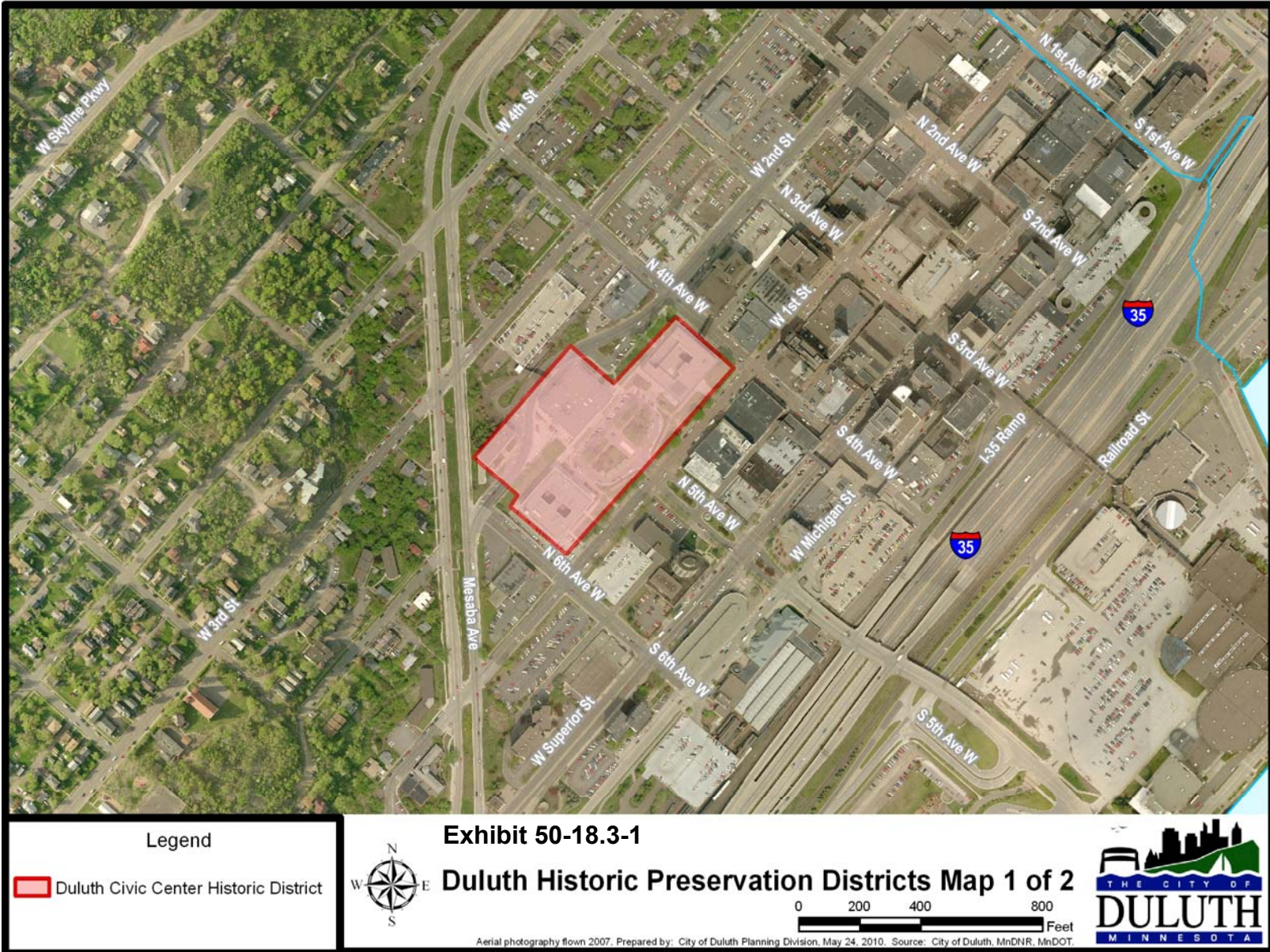
D. Emergency repair.

In emergency situations where immediate repair is needed to protect the safety of the structure and its inhabitants, the building official may approve the repair of only those items needed to ensure safety. Such repairs shall be limited to those necessary to correct the safety emergency. In the case of a permit issued pursuant to this subsection D, the building official shall require that the repairs be made in conformance with the U.S. secretary of interior's recommended standards for historic preservation projects and adopted historic preservation guidelines for the landmark or district to the extent possible. In addition, the building official shall immediately notify the historic preservation commission of the action and specify the facts or conditions constituting the emergency situation;

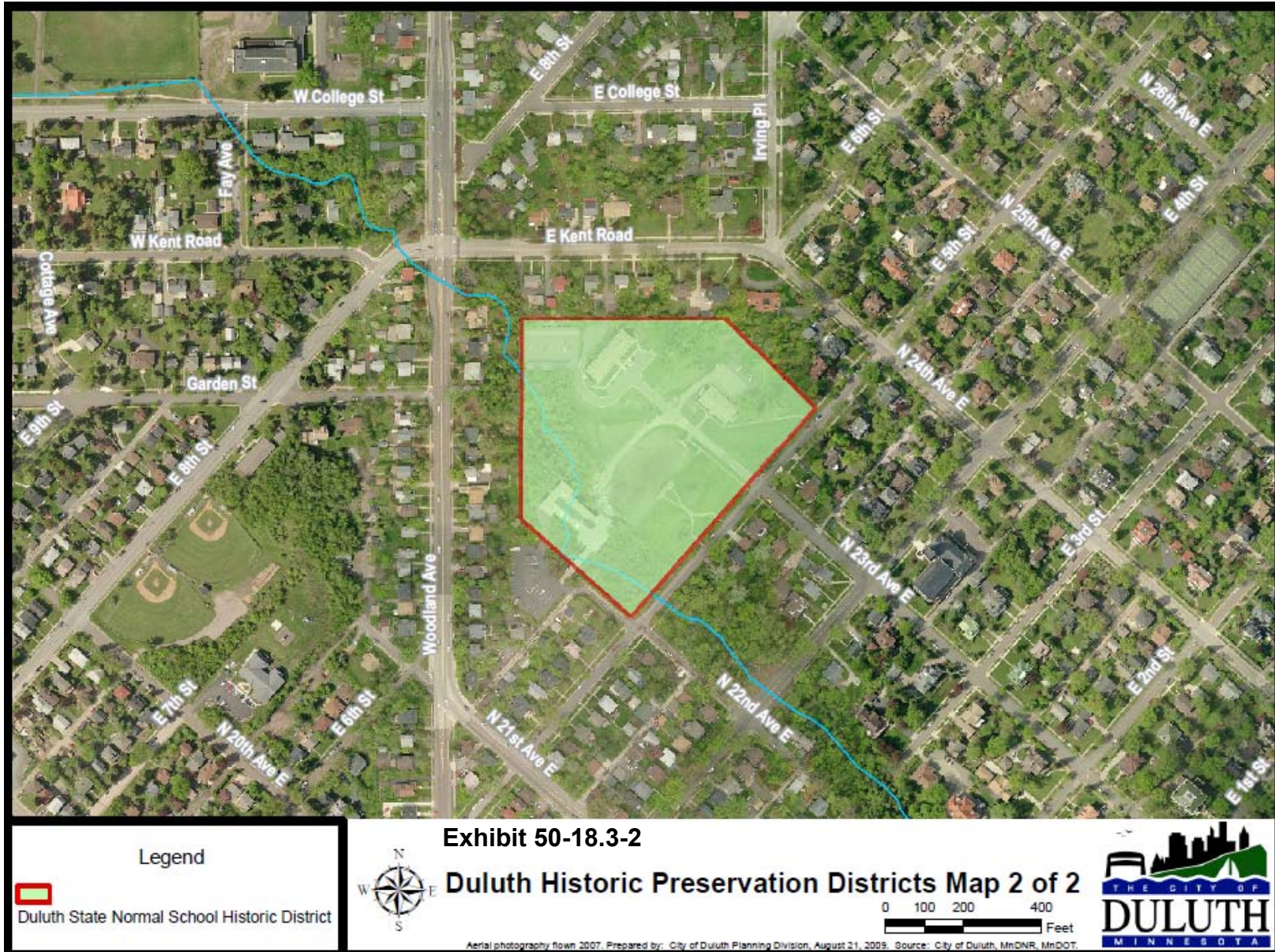
E. Building code enforcement.

This Section 50-18.3 is also intended to encourage the sensitive rehabilitation, restoration, stabilization and preservation of historic buildings throughout the city. These rehabilitation and preservation efforts should provide for the upgrading and maintenance of the safety features of the building or structure to provide a practical level of safety to the public and surrounding properties. While ensuring this increased level of public safety, the enforcement authorities are encouraged to be open to acceptable alternative solutions and alternative compliance concepts, where practical, that will permit the continued use of existing buildings and structures without creating overly restrictive financial burdens on owners or occupants. Nothing in this Section shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any building or structure.

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Exhibit 50-18.3-3. Local Designated Historic Landmarks			
Name	Location	Type	Designation Date
			Duluth
Aerial Lift Bridge	Lake Ave over Duluth Ship Canal	Bridge	4/11/1993
Building for Women	32 East First Street	Building	7/21/1999
Dandrea Building	102-108 East Superior Street	Building	2/11/1998
Duluth Central High School	Lake Avenue and Second Street	Building	4/11/1993
Duluth City Hall (Former)	132 East Superior Street	Building	6/27/1997
Duluth City Police Headquarters & Jail (Former)	126 East Superior Street	Building	6/27/1997
Duluth Public Library	101 West Second Street	Building	11/02/1991
Duluth Union Depot	Fifth Avenue West & Michigan Street	Building	11/02/1991
East College Street and East Seventh Street & Irving Place	East College Street and East Seventh Street & Irving Place	Streets	7/3/2000
Former Lester Park/Lakeside Branch Library (Lakeside Lester Park Community Club)	106 North 54th Avenue East	Building	9/18/1998
Former Lincoln Library	2229 West Second Street	Building	1/28/1996
Former KBJR Building	230 East Superior Street	Building	6/9/1999
Former Woodland Branch Library	3732 Woodland Avenue	Building	7/22/1998
Hacienda del Sol	319 East Superior Street	Building	7/21/1999
Harry C & Marjory Congdon Dudley Residence	3600 London Road	Building	6/09/1996
Independent School District #709	215 North First Avenue East	Building	6/4/1999
Irving School	101 North 56th Avenue West	Building	4/11/1993
Killorin Residence	2708 Branch Street	Building	11/27/2000
Lakewood Pumping Station	8130 Congdon Boulevard	Building	9/18/1998
Masonic Temple Building (Orpheum)	203 East Superior Street	Building	11/02/1991
Minnesota Point Lighthouse	Minnesota Point	Building	8/27/1995
Music Centers Inc.	132 East Superior Street	Building	10/13/1999
Sacred Heart Cathedral	211 West Fourth Street	Building	8/27/1995
Shel/Don Reproduction Center	124 East Superior Street	Building	8/11/1999
St. Louis Co. Heritage and Arts Center	506 West Michigan Street	Building	4/28/1999

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Section 15. That Section 50-19 of Chapter 50 be amended as follows:

50-19 Permitted use table.

50-19.1. General.

Table 50-19.8, use table, lists land uses and indicates whether they are allowed by right or with a special use permit, or prohibited in each base zone district. The use table also includes references to any additional regulations applicable to that use.

50-19.2. Permitted uses.

A "P" in a cell of the use table indicates that the land use is allowed by right in that base zone district, subject to compliance with the use-specific standards referenced in the final column of the use table. A "U" in a cell of the use table indicates that the land use is allowed by right in that base district on any floor of the structure other than the ground floor, subject to compliance with the use-specific standards referenced in the final column of the table. A "P" in the R-P zone district column indicates that the use is permitted only if it is included in a plan or plan amendment for the R-P district. Permitted uses are subject to all other applicable requirements of this UDC, including those set forth in Article 4, *Development Standards*.

50-19.3. Special uses.

An "S" in a cell of the use table indicates that the land use is allowed in that base zone district only upon approval of a special use permit as described in Section 50-37.10 and compliance with any use-specific standards referenced in the final column of the use table. Uses subject to a special use permit are subject to all other applicable requirements of this UDC, including those set forth in Article 4, *Development Standards*. In addition, council may approve interim uses through the procedure described in Section 50-37.10.

50-19.4. Prohibited uses.

A blank cell in the use table indicates that the land use is prohibited in that base zone district.

50-19.5. Overlay districts provisions govern.

When a property is located within the boundaries of an overlay district, the provisions for that overlay district prevail over those in the base zone district. For example, if a use is prohibited in the base zone district where the property is located, but is a permitted use in an overlay district applicable to the same property, then the use is allowed on that property. On the other hand, if a use is listed as a permitted use in the base zone district but is listed as a special use in an overlay zone district applicable to the same property, then the use is a special use for that property. Where a property is located in more than one overlay district, then the most restrictive use provision in those overlay zone districts shall apply to the property.

50-19.6. Use-specific standards.

When a land use is a permitted or a special use in a zone district, there may be additional standards that apply to that specific use. Those additional standards are cross-referenced in the last column of the use table (use-specific standards). The cross-referenced standards appear in subsection 50-20 immediately following the use table.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

50-19.7. Unlisted uses.

When a proposed land use is not explicitly listed in the use table, the land use supervisor shall determine whether or not it is included in the definition of a listed use or is so consistent with the size, scale, operating characteristics and external impacts of a listed use that it should be treated as the same use. Any such interpretation shall be made available to the public and shall be binding on future decisions of the city until the land use supervisor makes a different interpretation.

50-19.8. Permitted use table.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use

U = Upper Story

S = Special Use

A = Accessory Use

Zone District Name	Residential						Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W	P-1		
LAND USE CATEGORY																									
RESIDENTIAL USES																									
Household Living																									
Dwelling, one-family	P	P	P	P	P	P	P					U	U	U	U	U	U	U	U	U					
Dwelling, two-family				P	P	P	P					U	U	U	U	U	U	U	U	U				Error! Reference source not found.	
Dwelling, townhouse				S	P	P	P			P														Error! Reference source not found.	
Dwelling, multi-family					P	P	P	P		P	U	P	U	P	P	U	U	P	P					50-20.1.C	
Dwelling, live-work					P		P	P	P	P	P	P	P	P	P	P		P	P						
Group Living																									
Co-housing facility				S	S	P	P																		
Residential care facility/assisted living (6 or fewer)		P	P	P	P	P	P				U	P	U	P	P	U	U	P	P					0.D	
Residential care facility/assisted living (7 or more)				S	P	P	P	P	P	P	U	P	U	P	P	U	U	P	P					0.D	
Rooming house					S	P	P	P	P	P	U	P	U	P	P	U	U	P	P					0.E	
PUBLIC, INSTITUTIONAL AND CIVIC USES																									
Community and Cultural Facilities																									

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TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use

U = Upper Story

S = Special Use

A = Accessory Use

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards		
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1	
LAND USE CATEGORY																									
Bus or rail transit station							P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Cemetery or mausoleum	S	S	S	S	S	P	S	S	S	S														S	
Club or lodge (private)					S	P	P	P	P		P	P	P	P	P	P	P	P	P	P				50.20.2.A	
Government building or public safety facility		P	P	S	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	S	S	S		
Museum, library, or art gallery				S	S	P	P	P		S	P	P	P	P	P	P	P	P	P	P			S		
Park, playground, or forest reserve	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P			P		
Religious assembly		P	P	S	P	P	P	P	P	S	P	P	P	P	P	P	P	P	P				50.20.2.C		
Educational Facilities																									
Business, art, or vocational school							P	P	P	P	P	P	P	P	P	P	P	P	P						
School, elementary		P	P	P	P	P	P	P				U	P	U	P	P	U	U	U				50.20.2.D		
School, middle or high		S	S	S	S	P	S	S				U	P	U	P	P	U	U	U				50.20.2.D		
University or college									P					U	P	P	U	U	U						
Health Care Facilities																									
Hospital									P																
Medical or dental clinic					S	P	P	P	P	P	P	P	P	P	P	P	P	U	P				50-20.2.B		
Nursing home					P	P	P	P	P		P		P	P											
Other institutional support uses not listed in this table									P																
COMMERCIAL USES																									
Agriculture and Animal-Related																									

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use
 U = Upper Story
 S = Special Use
 A = Accessory Use

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
Agriculture, general	P	P																						0.B
Agriculture, urban		P	P	P	P	P																		
Kennel	S	S					S	S	P															
Riding stable	S	S	S			P				S													S	
Veterinarian or animal hospital	S	S			P	P	P	P	P	P		P		P	P									0.U
Food, Beverage, and Indoor Entertainment																								
Adult entertainment establishment																					P			50-20.3.A
Convention or event center							P		P	P				P	P		P	P	P					50-20.3.H
Indoor entertainment facility							P		P	P		P		P	P		P	P	P					
Restaurant (no drive-in/drive-through)					S	P	P	P	P	P	P	P	P	P	P	P	P	P	P					50-20.3.P
Restaurant (with drive-in/drive-through)							P		P			P		P										0.Q
Theater							P	P		P		P		P	P		P	P	P					
Lodging																								
Hotel or motel						P	P	P	P	P		P		P	P		P	P	P					
Bed and breakfast				S	P	P	P	P	P	P		P		P		P								50-20.3.F
Seasonal camp or cabin	P	P				P				P													S	50.20.3.S
Offices																								
Bank							S	P	P	P	S	P	P	P	P	P	P	P	P					50-20.3.E
Office					S	P	P	P	P	P	P	P	P	P	P	P	U	P	P					50-20.3.M
Data Center							S	P	P	P	S	U	U	U	U	U	U	U	U	U	P			

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TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

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Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
Outdoor Recreation & Entertainment																								
Golf course		S	S																					P
Marina or yacht club										P												S	S	
Tourist or trailer camp	S	S	S							S													S	50.20.3.I
Other outdoor entertainment or recreation use not listed		S					S		S	S														50.20.3.N
Personal Services																								
Business park support activities									P															
Preschool		<u>S</u>	<u>S</u>	<u>S</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>		<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>S</u>	<u>P</u>	<u>S</u>					
Day care facility, small (14 or fewer)	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>		<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>					50-20.3.I
Day care facility, large (15 or more)		S	S	S	S	P	P	P	P	P	P	P	P	P	P	P	S	P	S					50-20.3.I
Funeral home or crematorium					S		S	P	P	P			P	P		P					P			
Mini-storage facility									P												P	P		50-20.3.L
Personal service and repair, small						P	P	P	P	P	P	P	P	P	P	P	P	P	P					
Personal service and repair, large							S	P	P	P	P		P	P		P		P			P			
Retail Sales																								
Adult book store																						P		Chapter 5
Building materials sales								S		P														50-20.3.G
Garden material sales		S						P						P										
Grocery store, small						P	P	P		P		P		P	P	<u>P</u>	P	P						50-20.3.K

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TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: Uses listed in the R-P district are only allowed if included in an approved regulating plan for the area

P = Permitted Use

U = Upper Story

S = Special Use

A = Accessory Use

Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards		
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1	
LAND USE CATEGORY																									
Grocery store, large								P																	50-20.3.K
Retail store not listed, small					S	P	P	P	P		P	P	P	P	P	P	P	P	P	P					50-20.3.R
Retail store not listed, large.								P			P		P		P	P		P	P						50-20.3.R
Vehicle-Related																									
Automobile and light vehicle repair and service							S	P		P			P		P	P					P				0.C
Automobile and light vehicle sales, rental, or storage								P		P											P				0.D
Filling station					S	P	P	P		P	P		P		P	P				P	P				50-20.3.J
Parking lot or parking structure (primary use)								P	P	P	P	S	S	S	S	S	S	S	S	S	P	P			50.20.3.Q
Truck, or heavy vehicle sales, rental, repair, or storage										P											P				
INDUSTRIAL USES																									
Industrial Service																									
Contractor's shop and storage yard										P						P					P	P			50-20.4.B
Dry cleaning or laundry plant										P											P				
Research laboratories									P	P											P	P			
Industrial services										P											P	P			
Manufacturing and Mining																									
Manufacturing, light									P	P						P					P				50-20.4.F
Manufacturing, heavy																					P				

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TABLE 50-19.8: USE TABLE

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Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
Manufacturing, hazardous or special																						S		
Mining, extraction and storage																						S	S	
Water-dependent manufacturing, light or heavy																							P	
Transportation-Related																								
Airport and related facilities	S																					P		
Railroad yard or shipyard and related facilities																						P	P	
Truck freight or transfer terminal										P												P	P	
Utilities																								
Electric power or heat generation plant																						P	P	
Electric power transmission line or substation	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Major utility or wireless telecommunication facility	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Radio or television broadcasting tower		S								S												S	S	
Solar, geothermal, or biomass power facility (primary use)		S				P		S	S	P												P	S	
Water or sewer pumping stations/reservoirs	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Water or sewer treatment facilities																						P	P	
Wind power facility (primary use)		S							S	S												P	S	
Waste and Salvage																								

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LAND USE CATEGORY																								
Junk and salvage services																						S	S	
Recycling collection point (primary use)							S	S	S													P	P	
Solid waste disposal or processing facility		S							S													S	S	
Wholesale Distribution and Storage																								
Storage warehouse										P					P							P		
Wholesaling									P						P							P		
Bulk storage not listed elsewhere																						P		
Water-dependent bulk storage or wholesaling not listed elsewhere																							P	
ACCESSORY USES																								
Accessory agriculture roadside stand	A	A																					A	
Accessory bed and breakfast	A	A	A	A	A	A	A		A		A													
Accessory boat dock, residential	A	A	A	A	A	A	A	A	A		A													
Accessory caretaker quarters									A													A	A	A
Accessory communications tower for private use	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Accessory day care facility	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A				
Accessory dwelling unit	A	A	A	A	A	A	A																	
Accessory heliport	A								A													A		
Accessory home occupation	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A	A	A	A				
Accessory recycling collection point					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		

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Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
LAND USE CATEGORY																								
Accessory sidewalk dining area					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A				50-20.5.G
Accessory solar or geothermal power equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.H
Accessory uses and structures not listed elsewhere	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.I
Accessory wind power equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.J
Minor utilities and accessory wireless antennas attached to existing structures	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.K
TEMPORARY USES																								
Temporary construction office or yard	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Temporary event or sales	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Temporary moveable storage container	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		50-20.6.A
Temporary real estate sales office				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A					
Temporary use not listed in this table	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	

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Section 16. That Section 50-20.1 of Chapter 50 be amended as follows:

50-20.1. Residential uses.

A. Dwelling, two-family.

In the R-1, R-2 and R-P districts, two-family dwellings shall be designed to protect and reflect the character of one-family residences as set forth below:

1. Minimum size. A two-family dwelling shall contain at least 1,800 square feet of floor area (not including garages or utility rooms or basement or attic space not used for living quarters);
2. Exterior stairways. No exterior stairways with a total vertical rise greater than five feet shall be permitted;

B. Dwelling, townhouse.

In the R-1 district each dwelling shall exhibit the characteristics of a series of one-family dwellings that are arranged in an attached side by side fashion and shall be designed to protect the character of one-family residences as set forth below:

1. Dwelling fronting street. Townhouse dwellings shall be located on lots in such a way that each individual dwelling unit has a minimum of 15 feet of street frontage;
2. Variation of exterior walls. No more than two adjacent townhouse units may have front facades in the same vertical plane. Where a variation in front façade plane is required, the variation shall be a minimum of three feet;
3. Landscaping. Prior to the occupancy and use of a townhouse dwelling, coniferous or evergreen trees meeting the minimum size requirements of Section 50-25.2 shall be planted in required front and back yard areas on an average spacing of 20 feet;
4. Screening of refuse areas. Where refuse storage areas are directly viewable from any exterior lot line at a height of six feet above grade, they shall be screened by wood, brick, or stone fences, or by vegetative materials, with a minimum height of six feet, designed so that at least 75 percent of the refuse area is obscured by opaque materials when viewed at an angle perpendicular to the screening materials;

C. Dwelling, multi-family.

In the F-2, F-4, F-5 and F-8 districts, this use is permitted on the ground floor of the corridor building type only. In other building types it is only permitted above the ground floor;

D. Residential care facility/assisted living.

In the F-2, F-4, F-5, and F-8 districts, this use is permitted on the ground floor of the corridor building type only. In other building types it is only permitted above the ground floor;

E. Rooming house.

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In the F-2, F-4, F-5 and F-8 districts, this use is permitted on the ground floor of the corridor building type only. In other building types it is only permitted above the ground floor.

Section 17. That Section 50-20.3 of Chapter 50 be amended as follows:

50-20.3. Commercial uses.

A. Adult entertainment establishment.

All adult entertainment establishments shall comply with MSA 617.242 and Chapter 5 of this Code;

B. Agriculture, general.

1. No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 feet from any lot line;
2. All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 feet from any lot line;

C. Automobile and light vehicle repair and service.

1. No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;
2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;
3. All areas for outdoor storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property;

D. Automobile or light vehicle sales, rental or storage.

In the MU-C district, the use is permitted when located at least 100 feet from any R district;

E. Bank.

1. In the MU-N district, banks are limited to no more than two drive-through windows and one drive-through lane for ATM services on the premises;
2. Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;
3. Banks in the F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities;

F. Bed and breakfast.

This is a primary use of land, and the owner need not reside in the use. The use shall:

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1. Have no more than 12 habitable units;
2. If located in a residential zone district, the use shall appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
3. If located in a residential zone district, the use shall have no greater impact on surrounding public areas or infrastructure or natural resources than a fully occupied private home with house guests;
4. Be located on a lot or tract containing a minimum of 0.6 acre;
5. Contain a minimum of 1,500 square feet of area on the first floor of the main building;
6. Dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For-profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;
7. Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;
8. Shall limit each guest stay to a maximum of 21 consecutive days;

G. Building materials sales.

1. Outdoor storage is limited to ten percent of the parcel's land area, and shall not be permitted in any required front yard area;
2. Each such area shall be screened from view from any ground floor window or door on any adjacent property, and from all adjacent rights-of-way, by an opaque fence or wall between six feet and eight feet in height. The fence may exceed eight feet in height where the difference in grade between the property line or right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area;
3. A landscaped earth berm may be used instead or in combination with a required fence or wall;

H. Convention center.

A convention center may not exceed 50,000 square feet if it is within 500 feet of a multi-family use, or 15,000 square feet if it is within 500 feet of a one or two family use;

I. Day care facility, small and large.

In the RR-1 and RR-2 districts this use and related parking facilities and structures other than driveways are limited to no more than 20 percent of the lot or parcel area;

J. Filling station.

1. No displays or storage of merchandise, parts or refuse may be located closer than ten feet from any public right-of-way;

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2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;

K. Grocery store, small and large.

1. Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas;
2. Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock;

L. Mini-storage facility.

This use shall comply with the following standards:

1. The use shall be contained within an enclosed building or buildings;
2. If the use abuts a residential zone district on any property line, building architecture shall employ sloped roofs and shall display wall relief features and colors commonly found in residential construction;
3. The use shall be designed so that doors to individual storage units do not face any abutting street frontage;
4. At least 50 percent of the wall surface area of any wall facing an abutting public street shall be faced with brick or split-block materials. Exposed concrete masonry unit (CMU) construction is not permitted on those facades;
5. Hours of public access to mini-storage units abutting one or more residential zone districts shall be restricted to the period from 6:00 a.m. to 10:00 p.m.;
6. Signage shall be limited to one 40 square feet illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;
7. In the RR-1 district, there shall be a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;
8. In the R districts a dense urban screen shall be installed along all side and rear property lines;

M. Office.

1. In the MU-I district, offices are limited to those in support of the permitted institutional uses in the district; general offices unrelated to the activities of those institutions are not permitted;
2. In the MU-B district, offices are limited to those in support of the permitted industrial uses in that zone district; general offices unrelated to the activities of those institutions are not permitted;
3. In the F-6 district, offices may not have drive-through facilities.

N. Other outdoor entertainment or recreation use not listed.

1. No circus ground, carnival ground, event ground, or amusement park shall be approved within 300 feet of an R-C, RR-2 or R district;

O. Parking lot or parking structure (primary use).

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1. In the MU-C district, any parking structure shall be located at least 50 feet from any RC, RR or R district;
2. In F-1, F-2, F-3, F-4, F-6, F-8 and F-9 districts, only parking lots are allowed as primary uses. In F-7, only parking structures are allowed as primary uses. In F-5, parking lots and parking structures are allowed as primary uses;

P. Restaurant (no drive-in/ drive-through).

In the R-2 district, no use shall exceed 5,000 square feet in gross floor area;

Q. Restaurant (with drive-in/drive-through).

Drive through lanes must be located at least 25 feet from the boundary of any RR or R district and impacts along the boundary with those districts shall be buffered through the use of a dense urban screen;

R. Retail Sales, small and large.

1. Merchandise shall not be located within or obstruct required parking and pedestrian and vehicular circulation areas;
2. Outdoor display is for the temporary display of merchandise and not for the permanent storage of stock;
3. Retail stores are limited to one drive-through window;
4. Any drive-through lane that is located between a retail store and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;

S. Seasonal camp or cabin.

1. In the R-C and RR-1 districts, buildings shall be located not less than 200 feet from any R district;
2. In the R-C district, the design of the site shall preserve the rural character by:
 - (a) Separating each camp or cabin site by at least 50 feet, measured from the closest points on each tent or cabin area;
 - (b) Preserving all natural vegetation not required to be removed for access roads, trails or public safety;
 - (c) Using gravel or pervious paving, rather than impervious materials, for all access road and driveways serving fewer than 25 camp or cabin sites;

T. Tourist or trailer camp.

When located in a flood plain, this use is limited to trailers without foundations that can be easily moved should flooding occur;

U. Veterinarian or animal hospital.

1. In the R-C and RR-1 districts, this use is permitted provided that service is limited to large livestock/large animal care and any building or enclosure so used shall be located not less than 100 feet from any lot line;

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2. In the R-2, R-P, MU-N and MU-C districts, this use is permitted provided that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, that are ordinarily permitted in the house for company) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a soundproof building with adequate ventilation.

Section 18. That Section 50-20.4 of Chapter 50 be amended as follows:

50-20.4. Industrial uses.

A. Airport and related facilities.

1. In the R-C district, airport and related facilities are permitted only on land owned by the public or airport authority that is used for the exclusive purpose as an airport and only on land on which an airport was established on November 19, 2010;
2. In the I-G district, airport and related facilities are permitted only on land owned by the public or airport authority that is used for the exclusive purpose as an airport;

B. Contractor's shop and storage yard.

In the F-5 zone, this use is permitted only in the West Superior study area;

C. Electric power transmission line or substation.

The following standards shall apply, in addition to regular requirements of the special use permit process:

1. General corridor criteria:
 - (a) The public need for the route and facility as specifically proposed shall be demonstrated;
 - (b) Where possible, lines shall avoid existing and potential urban density residential neighborhoods;
 - (c) The applicant shall provide an evaluation of the future needs for additional transmission lines in the same general area as the proposed route and the advisability of utilizing structures capable of expansion of transmission capacity through multiple circuiting or design modification;
 - (d) When routing transmission lines, the following shall be avoided unless no reasonable alternative exists: slopes of 20 percent grade or greater; intrusions into scenic areas such as streams, open water, valleys, overviews, ridge crests and high points; wetlands; forests, by running along the fringe rather than through the forests, and by utilizing open areas in order to minimize cutting, although leaving a strip at the outside for screening purposes; soils susceptible to erosion that would create sedimentation and pollution problems; areas of unstable soils that would be subject to extensive slippages; areas with high water tables, especially if construction requires excavation; open space recreation areas, including parks, golf courses, etc.; long views of lines parallel to highways and trails; airports; and parkways;

- (e) Routes shall utilize or parallel existing railroads and highway rights-of-way if possible. If such highway rights-of-way are developed the line and structures shall be sufficiently set back and screened in order to minimize view of the line and structures from the highway;
- 2. Design criteria:
 - (a) If a proposal would unduly harm adjacent property or property values, alternatives must be evaluated to determine whether a feasible alternative to the proposal exists. Such consideration of alternatives shall include the underground placement of the line. Any consideration of feasibility of such underground lines shall include economic, technological or land characteristic factors. Economic considerations alone shall not render underground placement not feasible;
 - (b) All structures shall be located and designed in such a way that they are compatible with surrounding land uses, scenic views and existing transmission structures with regard to height, scale, material, color and design;
 - (c) Lines shall meet or exceed the National Electric Safety Code;
 - (d) Electromagnetic noise and interference with radio and television reception, as well as audible hum outside the line right of way, shall be minimized;
 - (e) The cleared portion of the right-of-way shall be kept to a minimum and where vegetation will be removed, new vegetation consisting of native grasses, shrubs and low growing trees shall be planted and maintained. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements;

D. Junk and salvage services.

- 1. Junk and salvage service operations and facilities shall comply with all state and Western Lake Superior Sanitary District requirements;
- 2. No junk or salvage service facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as these are defined or shown in Section 50-18.1, *Natural Resources Overlay*;
- 3. There shall be no burning of materials;

E. Major utility or wireless telecommunications facility.

- 1. Policy.

Overall policy and desired goals for special use permits for wireless telecommunications facilities. In order to ensure that the placement, construction and modification of wireless telecommunications facilities protects the city's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Section 50-20.4.E, the city has adopted an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- (a) Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility;

- (b) Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities;
 - (c) Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;
 - (d) Promoting and encouraging, wherever possible, the sharing and co-location of wireless telecommunications facilities among service providers;
 - (e) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;
 - (f) That in granting a special use permit, the city has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the city;
2. Applicability and exemptions.
- (a) Except as otherwise provided by subsection (b) below, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities after July 25, 2010, without having first obtained a special use permit for wireless telecommunications facilities. All legally permitted wireless telecommunications facilities, constructed as permitted, existing on or before July 25, 2010, shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility will require the complete facility and any new installation to comply with this Section 50-20.4.E. Any repair and maintenance of a wireless facility does not require an application for a special use permit;
 - (b) The following shall be exempt from the requirements of this Section 50-20.4.E:
 - (i) The city's fire, police, department of transportation or other public service facilities owned and operated by the city or those owned and operated by county, the state or federal government;
 - (ii) Any facilities expressly exempt from the city's siting, building and permitting authority;
 - (iii) Over-the-air reception devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception;

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- (iv) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications;
 - (v) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower;
- 3. Location standards.
 - (a) Wireless telecommunications facilities shall be located, sited and erected in accordance with the following priorities, (i) being the highest priority and (vi) being the lowest priority:
 - (i) On existing towers or other structures on city owned properties;
 - (ii) On existing towers or other structures on other property in the city;
 - (iii) A new tower on city owned properties;
 - (iv) A new tower on properties in special purpose districts;
 - (v) A new tower on properties in mixed use or form districts;
 - (vi) A new tower on properties in residential districts;
 - (b) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site;
 - (c) An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the city why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship;
 - (d) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application;
 - (e) The city may approve any site located within an area in the above list of priorities, provided that the city finds that the proposed site is in the best interest of the health, safety and welfare of the city and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood;
- 4. Other standards and requirements.

The following requirements are applicable to all wireless telecommunications facilities.

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- (a) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt from appropriate state or federal agency rules or regulations, then the holder of such special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards;
- (b) To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security are changed or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed or modified rule, regulation, standard or provision, or sooner as may be required by the issuing entity;
- (c) The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings; this shall include the utilization of stealth or concealment technology as may be required by the city. Facilities located within the migratory bird flight path shall utilize stealth or concealment technology;
- (d) All utilities at a wireless telecommunications facilities site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the city, including specifically, but not limited to, the city and state building and electrical codes, where appropriate;
- (e) At a telecommunications site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion;
- (f) All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or federal government, including but not limited to the most recent editions of the ANSI Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In

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the event of a conflict between or among any of the preceding, the more stringent shall apply;

(g) A holder of a special use permit granted under this Section 50-20.4.E shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the city or other governmental entity or agency having jurisdiction over the applicant;

(h) The holder of a special use permit shall notify the city of any intended modification of a wireless telecommunication facility and shall apply to the city to modify, relocate or rebuild a wireless telecommunications facility;

(i) All new towers shall be structurally designed to accommodate at least four additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

- (i) The foreseeable number of FCC licenses available for the area;
 - (ii) The kind of wireless telecommunications facilities site and structure proposed;
 - (iii) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
 - (iv) Available space on existing and approved towers;
- (j) New guyed towers are prohibited;
- (k) Tower condition inspections shall be conducted every three years for a guyed tower and five years for monopoles and self-supporting towers. All inspections shall be documented in a report such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report shall be provided to the building official within two days of a request by the city for such records;
- (l) The owner of a proposed new tower, and the owner's successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
- (i) Respond within 60 days to a request for information from a potential shared-use applicant;
 - (ii) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
 - (iii) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower

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- or equipment to accommodate a shared user without causing electromagnetic interference;
- (m) No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed a height that shall permit operation without required artificial lighting of any kind in accordance with city, state or federal statute, law, code, rule or regulation;
- (n) No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed 75 feet in height within the migratory bird flight path;
- (o) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law;
- (p) Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section 50-20.4.E;
- (q) Wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them;
- (r) Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted;
- (s) All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the following distances: A distance equal to the height of the proposed tower or wireless telecommunications facility structure plus ten percent of the height of the tower or structure, or the existing setback requirement of the underlying zone district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated;
- (t) The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the city a bond, or other form of security acceptable to the city as to type of security and the form and

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manner of execution, in an amount that shall be set in accordance with Section 31-6(a) of the City Code, and with such sureties as are deemed sufficient by the city to assure the faithful performance of the terms and conditions of this Section 50-20.4.E and conditions of any special use permit issued. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit;

(u) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain for the duration of the special use permit commercial general liability insurance for personal injuries, death and property damage, and umbrella insurance coverage in the following amounts: \$1,000,000 per occurrence/\$2,000,000 aggregate;

- (i) For a wireless telecommunications facility on city property, the policy shall specifically include the city and its officers, employees, agents and consultants as additional insureds. The amounts of such coverage shall be established as a condition of the special use permit and shall be consistent with the liability limits provided in MSA 466.04;
- (ii) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A;
- (iii) The insurance policies shall contain an endorsement obligating the insurance company to furnish the building official with at least 30 days prior written notice in advance of the cancellation of the insurance;
- (iv) Renewal or replacement policies or certificates shall be delivered to the building official at least 15 days before the expiration of the insurance that such policies are to renew or replace;
- (v) No permit necessary to the site preparation or construction of a permitted wireless telecommunications facilities may be issued until the holder of the special use permit shall file with the city building official a copy of the required policies or certificates representing the insurance in the required amounts;
- (vi) Notwithstanding the requirements noted in this subsection no insurance shall be required in those instances where the city, county, state or a federal agency applies for and secures a special use permit for wireless telecommunications facilities.
- (v) All special use permits approved for wireless telecommunication facilities located on city property after July 25, 2010, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the city, and its officers, employees, agents and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes

of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the city, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city. An indemnification provision will not be required in those instances where the city itself applies for and secures a special use permit for wireless telecommunications facilities;

5. Additional provisions for special use permit review.

In addition to those standards and criteria in Section 50-37.1 *Common procedures* and Section 50-37.10 *Special and interim use permits*, each application for a special use permit for a wireless telecommunications facility shall comply with the following additional standards:

(a) The city may hire any consultant or expert necessary to assist the city in reviewing and evaluating an application for a special use permit for a wireless telecommunications facility, including the construction and modification of the site, once permitted, and any site inspections. An applicant shall deposit with the city funds sufficient to reimburse the city for all reasonable costs of consultant and expert evaluation and consultation to the city in connection with the review of any application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be set in accordance with Section 31-6(a) of the City Code;

(b) The placement of the deposit with the city shall precede the pre-application meeting. The city will maintain a separate escrow account for all such funds. The city's consultants shall invoice the city for its services related to the application. The total amount of the funds needed for the review of the application may vary depending on the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the city, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the city before any further action or consideration is taken on the application. In the event that the amount held in escrow by the city is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be refunded to the applicant;

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- (c) The land use supervisor may administratively approve an application to co-locate on an existing tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the tower or structure or attachments to the tower or structure;
 - (d) At any stage prior to issuing a special use permit the city may require such additional information as it deems necessary to confirm compliance with this UDC;
 - (e) The city may refer any application or part of an application to any advisory, other committee or commission for a non-binding recommendation;
 - (f) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the city may disapprove an application for any of the following reasons:
 - (i) Conflict with safety and safety-related codes and requirements;
 - (ii) Conflict with the historic nature or character of a neighborhood or historical district;
 - (iii) The use or construction of wireless telecommunications facilities that is contrary to an already stated purpose of a specific zoning or land use designation;
 - (iv) The placement and location of wireless telecommunications facilities that would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the city or employees of the service provider or other service providers;
 - (v) Conflicts with the provisions of this Section 50-20.4.E;
 - (vi) The failure of the applicant to provide additional requested information in sufficient time for the city to comply with the requirements of MSA 15.99;
 - (g) Except for necessary building permits, once a special use permit has been granted, no additional zoning approvals shall be required by the city for the wireless telecommunications facilities covered by the special use permit;
 - (h) In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters and licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the city may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site;
6. Relief and appeal.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Section 50-20.4.E may request relief, waiver or exemption in the submitted application for either a special use permit, or in the case of an existing or

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previously granted special use permit a request for modification of its tower and/or facilities. The requested relief, and any relief granted by the city, may be temporary or permanent, partial or complete. The burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the city in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the city, its residents and other service providers;

F. Manufacturing, light.

In the MU-I district, this use is permitted provided it is related to and incidental to a permitted institutional primary use on the property;

G. Manufacturing, hazardous or special.

1. In permitting any such uses, the city may impose appropriate conditions and safeguards, including performance bonds, to protect the health, safety and welfare of the residents of the community and the environment;
2. All future use of the land and structures erected on the land shall be governed by and limited to the approved plans and conditions imposed by the city. Any subsequent change or addition to the plan or use shall be submitted for approval as if it were a new use;
3. Without limitation on other valid reasons for denying approval for such a use, the city may deny approval if it finds that the use would have negative environmental, health or safety impacts on the community or have little or no contiguity with existing or programmed development in the affected area;

H. Mining, extraction, and storage.

1. No special use permit for this use shall be issued until the city determines that:
 - (a) The city engineer has certified that the proposed extraction, removal or processing, and the proposed finished grades on the property, will not endanger the function of any public highway or utility easement of the city. If the city engineer proposes conditions and safeguards that are necessary to protect adjoining property, both city and privately owned, those conditions and safeguards have been included in the application or agreed to in writing by the applicant;
 - (b) The proposed excavation, removal or processing shall not result in the creation of any hazardous sharp pits, steep banks, soil erosion, drainage or sewerage problems or other conditions that would ultimately impair the use of the property in accordance with the general purpose and intent of the zoning regulations for that district;
 - (c) Finished slopes in the excavated area shall not exceed one foot vertical rise to two feet of run except in the case of dams or swimming

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- pools, or where specifically approved in writing by the planning commission;
- (d) No stagnant water shall be permitted to result from such removal, excavation or processing;
2. No earthmoving, processing or excavating equipment or trucks that are inoperative for more than 30 days shall be stored in the open on the property;
 3. Upon completion of the excavation, processing or removal of earth materials in accordance with the approved proposed contour lines, the premises shall be cleared of all debris and, unless the excavated area is beneath water, a top layer of soil that will sustain the growth of turf shall be spread over the premises and shall be seeded with perennial rye or grasses;
 4. All excavation, removal and processing, and the extent, limits, and time limits of each activity, shall comply with all terms and conditions in the approved special use permit;
 5. The applicant shall post financial security pursuant to Section 50-37.1.P to ensure compliance with the terms and conditions of the permit, including but not limited to remediation of the site following excavation, removal and processing operations;

I. Radio or television broadcasting tower.

All radio or television broadcasting towers shall be located in the area of the city known as the tower farm within Section 28, Township 50, Range 14, so as to place the visual and safety impacts of the structure near similar structures, unless the applicant provides a report from a qualified specialist in the type of facility being constructed or the type of service being provided stating that it is technically not possible to construct the required structure or to provide the applicant's service from that area of the city;

J. Solid waste disposal or processing facility.

This use shall comply with the following standards:

1. All aspects of the solid waste disposal operation shall be setback from all property lines a minimum of 150 feet. Natural vegetation shall be retained in such setbacks where practical. All aspects of yard waste composting facilities shall be set back 100 feet from all property lines;
2. All solid waste disposal operations and facilities, including without limitation yard waste composting facilities, medical waste disposal facilities and petroleum soil disposal sites, shall comply with all state and Western Lake Superior Sanitary District requirements;
3. Solid waste disposal facilities for industrial waste shall only be allowed in I-G and I-W zones. Such facilities shall be approved in the special use permit only for specified types of industrial waste;
4. The special use permit shall specify the types of wastes authorized;
5. Solid waste disposal facilities for construction debris shall only be allowed in I-G and I-W zones'
6. Facilities for composting of yard waste shall not accept materials other than yard waste;

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7. No solid waste disposal facilities, except composting facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as defined in Section 50-18.1 or Article 6;
8. All filled areas shall be covered and vegetated in accordance with an approved schedule for filling, covering and vegetating. Further, there shall be an approved plan as part of the special use permit for the vegetation and dust control of stockpiled cover material;
9. There shall be no burning of materials;
10. Facility locations shall have direct access to an arterial street and shall not access through a neighborhood. Increased traffic generated by the facility shall not have an adverse effect on the neighborhood. All roads leading to and from and within facilities located in RR-1 and MU-B zones shall be constructed with an approved dust-free material;
11. All vehicles transporting materials to or from the facility shall be covered;
12. Except for yard waste composting facilities there shall be no processing, separating or sorting of materials outside of covered structures;
13. Noise emanating from a building in which dumping, separating or other processing of material is performed shall not exceed state noise requirements at any property line that abuts property zoned other than I-G and I-W;
14. In the absence of other compliance funding required by state permitting agencies, there shall be a bond, letter of credit or other security (including an account to accept deposits of tipping fees) acceptable to the city, prior to the issuance of a permit to ensure compliance with the terms of the permit and to ensure proper closure of the facility. Such bond, letter of credit or other surety shall provide for the amount of the closure costs estimated and certified by the project engineer for each phase of operation and final closure;

K. Storage warehouse.

In the F-5 district, this use is only permitted in the West Superior portion of the F-5 district;

L. Wholesaling.

In the F-5 district, this use is only permitted in the West Superior portion of the F-5 district;

M. Wind power facility.

In all districts, wind power systems shall comply with the following requirements:

1. The base of the tower shall be set back from all property lines, public rights-of-way, and public utility lines a distance equal to the total extended height. A tower may be allowed closer to a property line than its total extended height if the abutting property owner(s) grants written permission and the installation poses no interference with public utility lines or public road and rail rights-of-way;
2. In the MU-B district, towers that are 50 feet or less in height are permitted by right; taller towers require a special use permit, and no tower shall be approved over 200 feet in height. In other districts where this use is listed as a

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permitted use, towers that are 200 feet or less in height are permitted by right; taller towers require a special use permit;

3. Notwithstanding the provisions of subsection 2 above, no wind power facility shall be taller than 75 feet within any migratory bird flight path;

4. Sound produced by the turbine under normal operating conditions, as measured at the property line of any adjacent property improved with a dwelling unit at the time of the issuance of the zoning certificate, shall not exceed 55 dba for any period of time. The 55 dba sound level may be exceeded during short-term events out of the owner's control such as utility outages or severe wind storms;

5. The turbine and tower shall remain painted or finished in the color that was originally applied by the manufacturer;

6. The blade tip or vane of any small wind energy system shall have a minimum ground clearance of 15 feet as measured at the lowest point of the arc of the blades;

7. All signs on a wind generator, tower, building or other structure associated with a small wind energy system visible from any public road, other than the manufacturer's or installer's identification, appropriate warning signs or owner identification, shall be prohibited;

8. No illumination of the turbine or tower shall be allowed unless required by the FAA;

9. Any climbing feet pegs or rungs below 12 feet of a freestanding tower shall be removed to prevent unauthorized climbing. For lattice or guyed towers, sheets of metal or wood or similar barriers shall be fastened to the bottom tower section such that it cannot readily be climbed;

10. Building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure and stamped engineered drawings of the tower, base, footings and foundation as provided by the manufacturer. Wet stamps shall not be required;

11. No part of this use may project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection;

12. This use shall not be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator;

13. If a wind turbine is inoperable for six consecutive months the owner shall be notified that it must, within six months of receiving the notice, restore their system to operating condition. If the owner(s) fails to restore their system to operating condition within the six month time frame, then the owner shall be required, to remove the wind turbine from the tower for safety reasons, at its expense. If the owner(s) fails to remove the wind turbine from the tower, the city may pursue legal action to have the wind generator removed at the owner's expense.

Section 19. That Section 50-20.5 of Chapter 50 be amended as follows:

50-20.5. Accessory uses.

A. Accessory agriculture roadside stand.

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Only one stand offering for sale farm products produced on the premises is permitted provided that such stand does not exceed an area of 200 square feet and that it is located not nearer than 25 feet to any street or highway;

B. Accessory bed and breakfast.

The owner and operator of an accessory bed and breakfast shall be required to live in the establishment. In addition, the use shall:

1. Have no more than five habitable units;
2. Appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
3. Have no greater impact on surrounding public areas, infrastructure or natural resources than a fully occupied private home with house guests;
4. Be located on a lot or tract containing a minimum of 0.6 acre;
5. Contain a minimum of 1,500 square feet of area on the first floor of the main building;
6. Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;
7. Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;
8. Shall limit each guest stay to a maximum of 21 consecutive days;
9. May be subject to other conditions deemed necessary by the city to ensure the use complies with the purpose of this subsection;

C. Accessory boat dock, residential.

This use shall comply with the following standards:

1. Dockage of boats owned and primarily used by a resident of the property is a permitted accessory use to the primary residential use and shall not be limited in number;
2. If there is a residential structure on the property and the property has frontage on an improved street, the owner of the residential structure may rent out boat dockage to a maximum of two boats owned by others. If the property does not have frontage on an improved street, the owner of the residential structure may not rent dockage space to others. Boat dockage use on a property that is not residentially developed is permitted as a principal use provided that the use is limited to one boat for each lot or group of contiguous lots in the same ownership, and the boat is owned and primarily used by the owner of the property;
3. For each new rental boat dock space created or made legal after April 14, 1974, one off street parking space shall be provided in addition to all other off

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street parking spaces required by other legal uses of the property, such spaces to be constructed in accordance with Section 50-24;

4. At the request of the building official, the owner of property shall provide boat registration or other documentary evidence to prove compliance with these standards;

5. No buildings other than residential or residential accessory structures, no winter storage of boats other than those owned by a resident of the property in question, no repair facilities, fuel sales, food or refreshment sales, rentals of boats, boat or parts sales or displays or other commercial uses shall be permitted;

D. Accessory dwelling unit.

An accessory dwelling unit may be created within, or detached from, any one-family dwelling, as a subordinate use, in those districts shown in Table 50-19.8, provided the following standards are met:

1. Only one accessory dwelling unit may be created per lot;

2. No variances shall be granted for an accessory dwelling unit;

3. Only the property owner, which shall include title holders and contract purchasers, may apply for an accessory dwelling unit;

4. One off-street parking space shall be provided in addition to off-street parking that is required for the primary dwelling;

5. Accessory dwelling units shall contain no more than 800 square feet of floor space and shall be consistent in character and design with the primary dwelling;

6. If a separate outside entrance is necessary for an accessory dwelling unit located within the primary dwelling, that entrance must be located either on the rear or side of the building;

E. Accessory heliport.

1. All accessory heliports shall have and maintain in effect at all times all required permits and approvals, if any, for the facility and operation required by the FAA, and shall design and maintain the facility and conduct operations in compliance with those permits and approvals;

2. In the R-C and I-G districts, this use shall be permitted only when it is accessory to an airport as a primary use;

F. Accessory home occupation.

All home occupations not listed separately in Table 50-19.8 must comply with the following standards:

1. The use must be conducted entirely in the residence or accessory buildings and not on outdoor portions of the lot;

2. No business involving retail sales of goods from the premises is permitted;

3. No person not a member of the family residing on the premises shall work on the premises;

4. Not more than 25 percent of the floor area of one story of the dwelling shall be devoted to such home occupation;

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5. The home occupation shall not require external alterations that would change the residential character of the property;
6. No display pertaining to such occupation shall be visible from the street;
7. Only one sign not exceeding one square feet in area is permitted, and that sign may only contain the name and title of the business or proprietor and may not be illuminated;
8. No equipment shall be used that creates offensive noise, vibration, sound, smoke, dust, odors, heat, glare, X-ray or electrical disturbance to radio or television or that otherwise constitutes a nuisance;
9. All home occupations that require a license from the state shall maintain a valid license at all times and shall operate in compliance with the terms of that license and all applicable regulations of the state at all times;
10. No motor vehicle repair is permitted as an accessory home occupation;

G. Accessory sidewalk dining area.

In all districts, this use requires approval of a sidewalk use permit pursuant to Section 50-37.12;

H. Accessory solar or geothermal power equipment.

In all districts, solar collection systems shall comply with the following requirements:

1. Ground-mounted solar system.
 - (a) Solar collectors shall not be located in the front yard between the principal structure and the public right-of-way;
 - (b) Solar collectors shall be located a minimum of six feet from all property lines and other structures;
 - (c) Solar collector areas in any residential district shall not exceed the greater of one-half the footprint of the principal structure or 600 square feet, whichever is greater. The size of solar collector areas in all districts except residential districts shall not exceed one-half of the footprint of the principal structure;
 - (d) Solar collectors shall not exceed five feet in height;
2. Roof-mounted or wall-mounted solar system.
 - (a) A solar collection system shall be located a minimum of six feet from all property lines and other structures except the structure on which it is mounted;
 - (b) Notwithstanding the height limitations of the zoning district, building-mounted solar energy systems shall not extend higher than three feet above the ridge level of a roof on a structure with a gable, hip, or gambrel roof and shall not extend higher than ten feet above the surface of the roof when installed on a flat or shed roof;
 - (c) The solar collector surface and mounting devices for building-mounted solar energy systems shall be set back not less than one foot from the exterior perimeter of a roof for every one foot that the system extends above the parapet wall or roof surface, if no parapet wall exists,

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on which the system is mounted. Solar energy systems that extend less than three feet above the roof surface shall be exempt from this provision;

(d) A solar collection system may be located on an accessory structure;

(e) A development proposed to have a solar collection system located on the roof or attached to a structure, or an application to establish a system on an existing structure, shall provide a structural certification as part of the building permit application.

3. Solar easements.

A property owner who has installed or intends to install a solar collection system shall be responsible for negotiating with other property owners in the vicinity for any necessary solar easement and shall record the easement with the county recorder. If no such easement is negotiated and recorded, the owner of the solar collector shall have no right to prevent the construction of structures permitted by this Chapter on nearby properties on grounds that the construction would cast shadows on the solar collection system;

I. Accessory uses or structures not listed elsewhere.

1. In any residential district, any accessory building that is erected prior to the construction of the principal building shall comply with the following conditions:

(a) The construction of the principal building shall be completed and the certificate of occupancy for such principal use issued within two years of issuance of the building permit for the accessory building;

(b) Prior to issuance of a building permit for such accessory use, a building demolition bond shall be approved by the city and in an amount sufficient to demolish such accessory structure be filed with the building official;

(c) The owner shall execute a license, in a form approved by the city, authorizing the city to enter upon the real property for the purpose of demolishing such accessory structure in the event a principal structure is not completed as required by this Section.

2. In the RR-2 district, business shall not be conducted from a garage;

3. In the R-2 district, accessory building includes a storage garage on a lot occupied by a multi-family dwelling, townhouse or rooming house;

4. In the MU-N district, accessory buildings shall be subject to the following restrictions:

(a) Except for truckload or trailer-load retail sales lasting less than 30 days, no accessory use shall be conducted in or out of a trailer or truck;

(b) Storage of trailers and trucks or storage of goods within trailers and trucks shall not be a permitted accessory use unless (i) the primary use of the lot is a parking lot, parking garage, or filling station, or (ii) the truck or trailer is used on a regular basis for deliveries or the hauling of supplies to or from a business;

5. In the MU-C, MU-I and MU-W districts, accessory buildings shall be erected at the same time or after the construction of the principal building and subject to the following restrictions:

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- (a) Except for truckload or trailer-load retail sales lasting less than 30 days, no accessory use shall be conducted in or out of a trailer or truck;
 - (b) The storage of trailers and trucks or the storage of goods within trailers and trucks shall not be a permitted use unless (i) the primary use of the lot is a parking lot, parking garage, filling station, automobile or light vehicle sales or service, or automobile or light vehicle storage, or (ii) the truck or trailer is used on a regular basis for deliveries or the handling of supplies to or from a business;
6. In the MU-B, I-G, and I-W districts, accessory buildings shall be erected at the same time or after the construction of the building for the principal use;
 7. An accessory building may observe an equal or greater distance to the front property line as provided by a principal structure if the accessory building provides the front and side yards required for dwelling in that district as per Article 2 and Section 50-20;

J. Accessory wind power equipment.

In all districts, accessory wind power systems shall comply with the following requirements:

1. The base of the tower shall be set back from all property lines, public rights-of-way, and public utility lines a distance equal to the total extended height. A tower may be allowed closer to a property line than its total extended height if the abutting property owner(s) grants written permission and the installation poses no interference with public utility lines or public road and rail right-of-ways;
2. Towers that are 50 feet or less in height are permitted by right. Towers exceeding 50 feet in height require approval of a special use permit, provided that in no case shall tower height exceed 130 feet;
3. Notwithstanding the provisions of subsection 2 above, no wind power facility shall be taller than 75 feet within any migratory bird flight path;
4. Sound produced by the turbine under normal operating conditions, as measured at the property line of any adjacent property improved with a dwelling unit at the time of the issuance of the zoning certificate, shall not exceed 55 dba for any period of time. The 55 dba sound level may be exceeded during short-term events out of the owner's control such as utility outages or severe wind storms;
5. The turbine and tower shall remain painted or finished in the color that was originally applied by the manufacturer;
6. The blade tip or vane of any small wind energy system shall have a minimum ground clearance of 15 feet as measured at the lowest point of the arc of the blades;
7. No sign that is visible from any public street shall be permitted on the generator, tower, building or other structure associated with a small wind energy system other than the manufacturer's or installer's identification and appropriate warning signs;
8. No illumination of the turbine or tower shall be allowed unless required by the FAA;

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9. Any climbing feet pegs or rungs below 12 feet of a freestanding tower shall be removed to prevent unauthorized climbing. For lattice or guyed towers, sheets of metal or wood or similar barriers shall be fastened to the bottom tower section such that it cannot readily be climbed;

10. No part of this use may project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection;

11. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement;

K. Minor utilities and accessory wireless antennas attached to existing structures.

The following standards apply to accessory wireless antennas that are attached to existing structures and to minor utilities regardless of whether they are attached to an existing structure:

1. A special use permit is required to allow any antenna to exceed 150 feet in height;

2. All building-mounted antennas shall meet or exceed current standards and regulations of the FAA, FCC and any other state or federal agency with the authority to regulate communications antennae and support structures;

3. The size, design and location of each attached antenna shall reduce visibility from surrounding buildings and from the public rights-of-way adjoining the property to the greatest extent feasible;

4. Building-mounted antennas or disguised antenna support structures shall be of a color identical to or closely compatible with the surface to which they are mounted;

5. Except when a support structure for a building-mounted antenna is an otherwise lawfully permitted sign, the placement of advertising on antennae is prohibited.

Section 20. That Section 50-20.6 of Chapter 50 be amended as follows:

50-20.6. Temporary uses.

A. Temporary construction office or yard.

This use is limited to one month before construction begins to one month after construction is completed, unless extended for good cause by the building official;

B. Temporary event or sales.

This use is limited to no more than 4 events per calendar year, with the combined length of the 4 events limited to 20 days. Requests for more events or longer periods may be reviewed through the temporary use permit procedure in Section 50-37.10;

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C. Temporary moveable storage container.

1. Temporary moveable storage containers for residential uses shall not be located on any public street, and shall not remain on any property in a residential zone district for more than 14 consecutive days;
2. Temporary moveable storage containers for non-residential uses shall not be located on any public street and shall not be located on private property for more than 90 days during any calendar year unless located and buffered from adjoining property to the same extent required for primary or accessory structures;

D. Temporary real estate sales office.

This use is limited to one month before lot or unit sales begin to one month after 90 percent of the lots or units have been sold, unless extended for good cause by the land use supervisor. Requests for longer periods may be reviewed through the temporary use permit procedure in Section 50-37.10.

Section 21. That Section 50-21.2 of Chapter 50 be amended as follows:

50-21.2 Special dimensional standards.

A. Lot without municipal sewer.

Lot areas for properties not provided with municipal sewer shall be at least two acres in size or the minimum lot area for the zone district, whichever is larger, and shall be subject to county ordinances and standards regulating individual sewage treatment systems. Lots with large wetlands or shallow bedrock may be required to be larger than two acres, and shall be determined on a case-by-case basis based on the area needed to fit a sewage treatment system on the site. Lots smaller than two acres may be allowed in areas zoned R-P based on soil and site conditions;

B. Front yards on double frontage lots.

On lots having double frontage and where the first and second frontages are on opposite lot lines, the required front yard shall be provided on the frontage that is the generally established frontage on the block, as determined by the building official;

C. Side yards.

1. Dwelling units above commercial uses.
In all residential and mixed use districts, where dwelling units are erected above commercial establishments, no residential side yard is required, except for any side yard required for the commercial building on the side of a lot adjoining a residential district. in form districts, no side yard is required even if the lot adjoins a residential district;
2. Attached and multi-family dwellings.
For the purpose of side yard regulations, a two-family dwelling, townhouse, or multi-family dwelling shall be considered as one building occupying one lot;

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3. Driveways.

Where no garage facilities are provided and the alley is not developed for access at the time the dwelling is constructed in an R-1 or R-2 district, there shall be provided one side yard of a minimum of nine feet for a driveway and the other side yard shall have a minimum width of five feet;

D. Rear yards.

An accessory structure can not exceed 20 feet in height, and may not occupy more than 30 percent of the rear yard area. All accessory structures on a lot may not occupy more than 60 percent of the rear yard area;

E. Improvements to lot frontage.

Except as provided in Section 50-37.1.L, in addition to the lot frontage requirements contained in Article 2 for development of a previously undeveloped lot, the street frontage shall be improved to the following standards:

1. The street frontage shall be improved to the most current standards on file in the office of the city engineer and shall be designed for the road classification within the zone in which the property is located;

2. The street shall be improved across the entire frontage of the lot proposed to be developed and all other contiguous property owned by the owner of the subject lot;

3. Any street improvement that results in a dead-end street that is greater than 150 feet in length shall require construction of a turn-around for emergency and maintenance vehicles approved by the city fire marshal.

Section 22. That Section 50-21.3 of Chapter 50 be amended as follows:

50.21.3 Exceptions and encroachments.

The following exceptions and encroachments to required yard areas and height limits are allowed. These provisions apply to form districts except as noted.

Table 50-21-3.1: Exceptions and Encroachments	
Structure or Feature	Conditions or Limits
Encroachments into Required Yard Areas	
Architectural features (sills, belt courses, eaves, cornices) awnings and canopies, bay windows, gutters and downspouts	No more than 18 in. into any required yard area
Open sided porch, deck, or paved terrace	No more than 5 ft. into any required rear yard, except as required to comply with applicable fire code or Americans with Disabilities Act
Chimneys and flues	No more than 2 ft. into any required front or side setback.
Open, uncovered porch or paved terrace	Not more than 10 ft. into front yard
Enclosed vestibule or fixed canopy with a floor area of not more than 40 sq. ft.	Not more than 4 ft. into front yard
Fuel pumps or pump islands	Not closer than 15 ft. from any street line or closer than 50 ft. from any residential district boundary
Fences meeting the standards of Section 50-26.4	Fences may not be located closer than 3 ft. to any publicly maintained right-of-way

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Table 50-21-3.1: Exceptions and Encroachments	
Structure or Feature	Conditions or Limits
Porte cochere, carport, or canopy if every part is unenclosed except for necessary structural supports	Permitted in any side setback, but not less than 5 ft. from any side lot line
Accessory Structures	No accessory structure may be located (a) between a street and any façade of a primary building facing that street, or (b) closer than 10 ft. to any principal structure on an adjoining property, or (c) closer than 5 ft. to any rear lot line, or (d) closer than 3 ft. to any side lot line, except as listed for specific accessory structures below.
Accessory boat dock, residential	No setback required from property lines along the water
Accessory clotheslines, play equipment, trash containers, odor-controlled composting bins and rainwater harvesting tanks	Permitted in side and rear yards
Accessory rain garden	Permitted in all (front, side and rear) yards
Accessory wind power equipment	Permitted in side and rear yards except where prohibited by adopted building code
Exceptions to Building Height Limits	
Television and radio towers, accessory communications towers for private use, religious assembly or ornamental spires and towers, belfries, monuments, tanks, water and fire towers, stage tower or scenery lofts, cooling towers, ornamental towers, chimneys, elevator penthouses, air conditioning penthouses, skylights, smokestacks, conveyors, storage elevators and facilities, flagpoles, accessory wind power equipment, or accessory rooftop solar collectors.	Exempt from height limit. The provisions for religious assembly towers and spires only apply if the applicant proposes an Iconic Building in a Form District.

Section 23. That Section 50-22.2 of Chapter 50 be amended as follows:

50-22.2. General building type descriptions.

Four major categories of building types are described in this Section: Main Street Building, Corridor Building, Cottage Commercial Building, and Iconic Building. The building types proposed for the Form Districts include three variations of the Main Street Building, three variations of the Corridor Building, two variations of the Cottage Commercial Building, and one version of the Iconic Building. The building type variations go from least intense (Type I) to most intense (Type III). Main Street Buildings, in general, are pedestrian-oriented, mixed use buildings. This building type typically has a storefront on the ground floor with offices or residential uses on the upper floors. The ground floor of the Main Street Building has a high amount of transparency, so that pedestrians walking by can look into the interior space. Corridor Buildings are primarily meant to house office or multi-family residential uses, with less transparency required on the ground floor. The Cottage Commercial Building is primarily commercial in nature but, unlike the Main Street Building, it is similar in form to single-family residential areas, providing transitions between commercial and residential areas. While the previously mentioned building types are intended to serve as the fabric buildings of the city, the Iconic Building is a unique civic or institutional building that has distinctive character and function within the community;

A. Main street buildings.

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1. Main street building I.

This building type allows for service, retail, and office uses on the ground floor and office or residential above. It is appropriate for commercial uses adjacent to residential neighborhoods, as the intensity of this building type is not as high as the other main street building types. It has a larger build-to zone and a maximum height of two-and-a-half or three stories depending on location;

2. Main street building II.

Main street building II is slightly more intense than main street building I, as it is required to be built up to the right-of-way and may generally be up to four stories tall. This building type also permits service, retail and office uses on the ground floor and office or residential on upper floors;

3. Main street building III.

Main street building III is the most intense of the main street building types, as it is meant to be used in the downtown area. It is located directly adjacent to the sidewalk and should include retail or service uses on the ground floor whenever possible. Main street building III has a maximum height of 15 stories in limited locations;

B. Corridor buildings.

1. Corridor building I.

This building type can house a single category of uses, such as office or residential, or a mix of uses. Corridor building I is the least intensive corridor building, located in the more neighborhood oriented study area locations. It has a larger build-to zone that is set back farther than the other corridor buildings and is permitted to be a maximum of three stories;

2. Corridor building II.

Corridor building II is an intermediary building type between the more neighborhood scale locations and the intensity of Downtown. It is similar to corridor building I in many ways, but is permitted to be built up to the sidewalk and may also be taller, with generally a maximum height of four stories;

3. Lakefront corridor building.

The lakefront corridor building is a variation on corridor building II that was created for use along Lake Superior in Canal Park. These buildings front the lake, but also require some level of frontage on Canal Park Drive. The maximum height is four stories;

4. Corridor building III.

Corridor building III was created for use in Downtown. It is required to be built adjacent to the sidewalk and has a maximum height of 15 stories in specified locations. While the corridor building types are meant to house primarily office and residential uses, commercial uses are also permitted to create a vibrant commercial core for Downtown;

C. Cottage commercial.

1. Cottage commercial I.

The cottage commercial building type is residential in character but commercial in use. At a maximum height of two and a half stories, it is meant to blend in with a surrounding residential neighborhood while at the same time providing

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neighborhood-scale commercial uses. Cottage commercial I is for use as a transition to residential locations, with a larger build-to zone and permitted side aisle of parking. Cottage commercial I may also include multiple principal structures on one lot, provided that each building meets the requirements of the building type;

2. Cottage commercial II.

Cottage commercial II is similar to cottage commercial I but is used in the West Duluth study area, which is a more intense context. This building type may be built to the front property line and must locate parking in the rear;

D. Iconic building.

The iconic building type is a unique building type meant to house community, cultural, civic, educational or governmental uses. The iconic building has more flexible requirements for building location and transparency than the other non-residential building types due to its unique nature.

Table 50-22.2-1: Summary Table of Permitted Building Types by Zone District.

		Building Types										Areas
		Main Street Building I	Main Street Building II	Main Street Building III	Corridor Building I	Corridor Building II	Lakefront Corridor Building	Corridor Building III	Cottage Commercial I	Cottage Commercial II	Iconic Building	
Districts	F1: Low-Rise Neighborhood Shopping	●										East Superior
	F2: Low-Rise Neighborhood Mix	●			●				●		●	East Superior, London Road
	F3: Mid-Rise Community Shopping		●									West Duluth, Canal Park
	F4: Mid-Rise Community Mix		●			●				●	●	West Duluth London Road
	F5: Mid-Rise Community Shopping/Office		●			●					●	West Superior, Canal Park
	F6: Mid-Rise Neighborhood Shopping		●						●		●	Central Hillside
	F7: Downtown Shopping			●								Downtown
	F8: Downtown Mix			●				●			●	Downtown
	F9: Canal Park						●					Canal Park

● Building Type permitted

Section 24. That Section 50-22.7 of Chapter 50 be amended as follows:

50-22.7. Building type summary table.

Table 50-22.7-1: Building Type Summary Table.

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	Street Frontage				Side & Rear Setbacks		Buildable Area	
	Multiple Buildings Permitted on a Lot	Front Yard BTZ or setback (feet)	Corner Side Yard BTZ or setback (feet)	Minimum Coverage of Front Build-to Zone	Minimum Side Yard Setback (feet)	Minimum Rear Yard Setback (feet)	Minimum Landscape Area	Minimum Lot Width (feet)
Main Street Building I	No	0-15	0-15	85%; BTZ may exclude permitted driveway	0	5	10%	30
Main Street Building II	No	0-5	0-5	95%	0	5	0%	20
Main Street Building III	No	0-5	0-5	95%	0	5	0%	20
Corridor Building I	Yes	5-15	5-15	75%	0	5	15%	30
Corridor Building II	Yes	0-15	0-15	75%	0	5	15%	50
Lakefront Corridor Building	Yes	0-25 BTZ on Lakefront; 0-15 BTZ along Canal Park Drive	0-15	33% on street face; 65% on Lakefront	10% of lot width on each side or aggregate on one side	Not applicable	20%	50
Corridor Building III	No	0-5	0-5	85%	0	5	0%	50
Cottage Commercial I	Yes	5-20	5-20	60%	5	5	20%	50
Cottage Commercial II	No	0-15	0-15	60%	0	5	20%	50
Iconic Building	Yes	5' Setback	5' Setback	Not applicable	5	5	20%	50

¹Tower permitted for all Building Types

² 2 driveways may be permitted through [special exception] if frontage exceeds 200'

³15 stories or 188' as measured from W Superior Street; Permitted from Mesaba Ave to N 4th Ave E

⁴Ground floor transparency may be greater depending on base type.

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Parking & Access		Building Height		Transparency		Entrance	Cap & Base Type	
Location of Parking Facilities (yard)	Number of Permitted Driveways	Minimum Principle Building Height (stories)	Maximum Principle Building Height	Minimum Front & Corner Side Façade Transparency per Story ^a	Blank Wall Limitations	Primary Entrance Locations	Allowed Cap Types ¹	Allowed Base Types
Rear	1 driveway permitted per frontage ²	1	2.5 stories / 37' along East Superior Street; 3 stories / 45' along London Road	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Storefront
Rear	If no alley exists, 1 driveway permitted per frontage ²	1	4 stories / 55'; <u>6 stories / 80'</u> on Lake Avenue	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Arcade, Storefront
Rear	If no alley exists, 1 driveway permitted per frontage	1; 2 along Superior Street	6 stories / 80'; 9 stories / 116' on corner parcels only; 15 stories / 188' along Superior Street ³	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof	Arcade, Storefront
Rear, Single side aisle permitted	1 driveway permitted per frontage ²	1	3 stories / 45'	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Stoop, Porch
Rear	If no alley exists, 1 driveway permitted per frontage ²	1	4 stories / 55'; <u>6 stories / 80'</u> on Lake Avenue	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Stoop, Porch
Must be screened from the Lakefront by building	1 driveway permitted per every 140' of frontage	1	4 stories / 55'	20%	Required only on street or Lakefront facades	Visible from street	Parapet, Flat Roof, Pitched Roof	Stoop or Porch on Lake or parking lot face; Storefront or Stoop on street face
Rear	If no alley exists, 1 driveway permitted per frontage	1	6 stories / 80'; 9 stories / 116' on corner parcels only; 15 stories / 188' along Superior Street ³	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof	Stoop
Rear, Single side aisle permitted	1 driveway permitted per frontage ²	1	2.5 stories / 33'	20%	Not required	Front or Corner Side Façade	Pitched Roof	Shopfront, Porch, Stoop
Rear	If no alley exists, 1 driveway permitted per frontage ²	1	2.5 stories / 33'	20%	Not required	Front or Corner Side Façade	Pitched Roof	Shopfront, Porch, Stoop
Rear, Single side aisle permitted	1 driveway permitted per frontage ²	1	4 stories / 55'	10%	Not required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Stoop

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Section 25. That Section 50-23.2 of Chapter 50 be amended as follows:

50-23.2. General circulation requirements.

Applications for subdivision, replatting, RLS, development, or redevelopment shall meet the following standards:

A. Where adopted city plans show a bicycle or pedestrian path or trail or sidewalk, the site design shall provide connections to those paths or trails or sidewalks;

B. Any requests by the city for designation or dedication of land for bicycle or pedestrian trails within a proposed development shall comply with the provisions of subsection 50-33.8, *Land for public purposes*;

C. Unless the city engineer waives the requirement based on concerns of public safety or site/ topography constraints:

1. Each proposed public or private street within the R-1, R-2, R-P, MU-N, MU-C, MU-I or MU-W districts shall include a sidewalk at least five feet wide on both sides of the street;
2. Each proposed public or private street within the MU-B, I-G or I-W districts shall include a sidewalk at least five feet wide on one side of the street;

D. Whenever cul-de-sac streets are created, one ten foot wide pedestrian access/public utility easement shall be provided, between the cul-de-sac head or street turnaround and the sidewalk system of the closest adjacent street or pedestrian sidewalk or pathway, unless the city engineer determines that public access in that location is not practicable due to site or topography constraints (refer to Figure 50-23-A);

E. A pedestrian way at least ten feet in width shall be provided near the middle of any block face longer than 800 feet in order to provide connections with streets on either side of the block;

F. Any use requiring vehicle access from a public street or alley shall be referred to the city engineer for review before any permits are issued. The city engineer shall consider, but not be limited to, the following factors when determining whether to approve the proposal:

1. The consolidation of curb cuts shall be encouraged, and new curb cuts shall be discouraged whenever appropriate, considering safe traffic flow, the objectives of this chapter, and access points needed for the proper function of the use;
2. Functional classification of the road where the curb cut is proposed;
3. The location of driveways shall be at least 100 feet from an intersection. The city engineer may permit driveways closer to an intersection due to limited lot frontage or site/topography constraints;

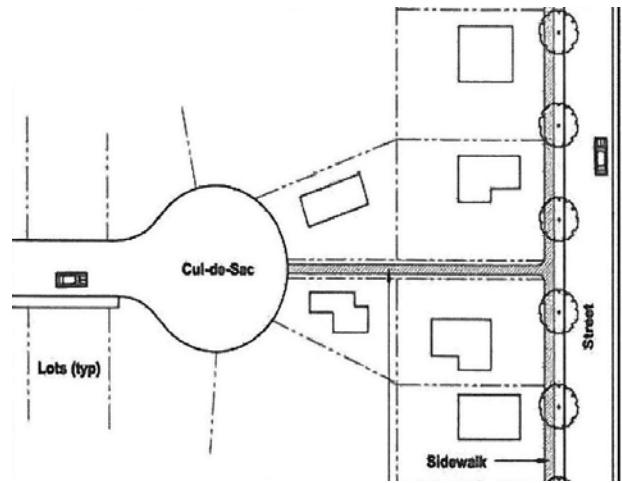


Figure 50-23-A: 10 foot access easement from head of cul-de-sac to nearest street or path

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4. The location of driveways relative to other existing uses is such that street traffic shall not be seriously disrupted and no unnecessary hazards shall be established for pedestrians.

Section 26. That Section 50-24.1 of Chapter 50 be amended as follows:

50-24.1. Applicability.

The standards of this Section 50-24 shall apply to all development and redevelopment, except that:

- A. Development and redevelopment in any of the form districts shall only be required to provide that amount of parking that can be accommodated on the development parcel while allowing the principal building to meet all of the building form standards in Section 50-22;
- B. No off-street parking shall be required for any non-residential use on a lot smaller than 10,000 square feet in any mixed use district or special purpose district;
- C. No off-street parking shall be required for any building with less than 10,000 square feet of gross floor area and with a non-residential primary use in any mixed use district or special purpose district;
- D. No off-street parking shall be required within the boundaries of the Downtown area shown in Exhibit 50-24.1-1;
- E. No off street parking shall be required for any use except (1) hotels or motel, and (2) residential developments with more than ten units, within the boundaries of the Canal Park area shown in Exhibit 50-24.1-1;
- F. Development and redevelopment that is exempt from being required to provide off-street parking but does provide parking, must follow all the provisions of this Section.



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Section 27. That Section 50-24.2 of Chapter 50 be amended as follows:

50-24.2. Required parking spaces.

In all districts there shall be provided, at the time any building or structure is erected, except as provided in Section 50-24.5, *Calculation of parking spaces*, the number of off-street parking spaces shown in Table 50-24-1, unless an exemption from or variation of this requirement is provided in another section of this Chapter.

Table 50-24-1: Off-Street Parking Spaces Required	
Use	Requirement
RESIDENTIAL USES	
Dwelling, one-family	1 space per dwelling unit
Dwelling, two-family	
Dwelling, townhouse	
Dwelling, live-work Co-housing facility	
Dwelling, Multi-family	1 space per dwelling unit
Assisted living facility (elderly)	1 space per 3 habitable units
Residential care facility	1 space per 9 residential care beds, but not less than 2 spaces
Rooming house	1 space per habitable <u>unit</u>
PUBLIC, INSTITUTIONAL, AND CIVIC USES	
Business, art, or vocational school	<u>1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater</u>
Cemetery or mausoleum	No requirement
Club or lodge (private)	<u>1 space per 400 square feet of floor area.</u>
Government building or public safety facility	As determined by land use supervisor based on anticipated use and neighborhood impacts
Hospital	2 spaces per 1,000 sq. ft.
Medical or dental clinic	4 spaces per 1,000 sq. ft. of gross floor area
Museum, library, or art gallery	1 space per 1,000 sq. ft. of gross floor area
Nursing home	1 space per 6 beds
Park, playground, or forest reserve	No requirement
Religious assembly	1 space per <u>4</u> seats or per 100 sq. ft. in main auditorium, whichever is greater
School, elementary	1 parking space for each 10 seats in the auditorium or main assembly room or 1 space for each classroom, whichever is greater
School, middle or high	1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater
University or college	1 space per 500 sq. ft. of office, research, and library area plus 1 space per 1 space per 125 sq. ft. of auditorium space.
Other community facility or institutional support uses not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts
COMMERCIAL USES	
Adult book store	2.5 spaces per 1,000 sq. ft. of gross floor area
Adult entertainment establishment	1 per 200 sq. ft. of gross floor area
Agriculture	No requirement
Automobile filling station	1 per 250 sq. ft. gross floor area plus 1 per service stall
Automobile and light vehicle repair and service	1 per 500 sq. ft. of gross floor area
Automobile and light vehicle sales, rental, or storage	1 per 500 sq. ft. of gross floor area

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Table 50-24-1: Off-Street Parking Spaces Required	
Use	Requirement
Bank	2.5 spaces per 1,000 sq. ft. of gross floor area
Bed and breakfast	1 space for manager plus 1 space per habitable unit
Building material sales	1 per 1,000 sq. ft. of gross floor area
Business park support activities	1 per 500 sq. ft. of gross floor area
Day care facility	1 per 5 persons care capacity
Funeral home or crematorium	1 space per 50 square feet of floor space in slumber rooms, parlors, or individual funeral service rooms
Garden material sales	1 per 1,000 sq. ft. of gross floor area
Golf course	1 space for every 400 square feet of clubhouse area
Hotel or motel	2 per 3 guest rooms plus 1 per 200 sq. ft. of gross floor area in all accessory uses including restaurants and meeting rooms
Indoor entertainment facility	1 space per 400 sq. ft. of gross floor area.
Kennel	1 per 1,000 sq. ft. of gross floor area
Marina or yacht club	1 per 400 sq. ft. of clubhouse area, plus 1 per 10 boat slips
Mini-storage facility	1 per 20 storage units
Office	2.5 per 1,000 sq. ft. of gross floor area
Parking lot or parking structure (primary use)	No requirement
Restaurant (no drive-in/drive-through)	1 per 200 sq. ft. of gross floor area
Restaurant (drive-in/drive-through)	1 per 200 sq. ft. of gross floor area
Retail store not listed elsewhere	3 per 1,000 sq. ft. of gross floor area
Riding Stable	No requirement
Seasonal camp or cabin	1 space for every two beds, or for each cabin or sleeping unit, whichever is greater
Theater	1 space per 6 seats or per 100 sq. ft. in main auditorium, whichever is greater
Tourist or trailer camp	2 per 3 sleeping rooms, suites, or trailer spaces
Truck or heavy vehicle sales, rental, repair, or storage	1 per 1,000 sq. ft. of gross floor area
Veterinarian or animal hospital	1 per 400 sq. ft. of gross floor area
Personal service or repair not listed	1 per 400 sq. ft. of gross floor area
Other commercial use not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts
INDUSTRIAL USES	
Airport and related facilities	As determined by airport management
<ul style="list-style-type: none"> • Electric power or heat generation plant • Electric power transmission line • Junk and salvage services • Major utility or wireless communication tower • Radio or television broadcasting tower • Railroad or shipyard and related facilities • Solar or geothermal power facility (primary use) • Truck freight or transfer terminal • Water or sewer works • Wind power facility (primary use) • Bulk storage not listed 	No requirement

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Table 50-24-1: Off-Street Parking Spaces Required	
Use	Requirement
<ul style="list-style-type: none"> • Contractor's shop and storage yard • Dry cleaning or laundry plant • Recycling collection point (primary use) • Solid waste disposal or processing facility 	1 per 1,000 sq. ft. of gross floor area
<ul style="list-style-type: none"> • Manufacturing, light manufacturing, heavy manufacturing, hazardous or special • Storage warehouse • Water-dependent manufacturing, light or heavy • Wholesaling 	1 per 1,000 sq. ft. of gross floor area
Research laboratory	As determined by land use supervisor based on anticipated use and neighborhood impacts
Other Industrial uses not listed	As determined by land use supervisor based on anticipated use and neighborhood impacts
ACCESSORY USES	
Accessory bed and breakfast	1 space for primary use dwelling; plus 1 space per habitable unit
Accessory caretaker quarters	1 space
All other accessory uses	No requirement
TEMPORARY USES	
Temporary real estate sales office	2 spaces
All other temporary uses	No requirement

Section 28. That Section 50-24.3 of Chapter 50 be amended as follows:

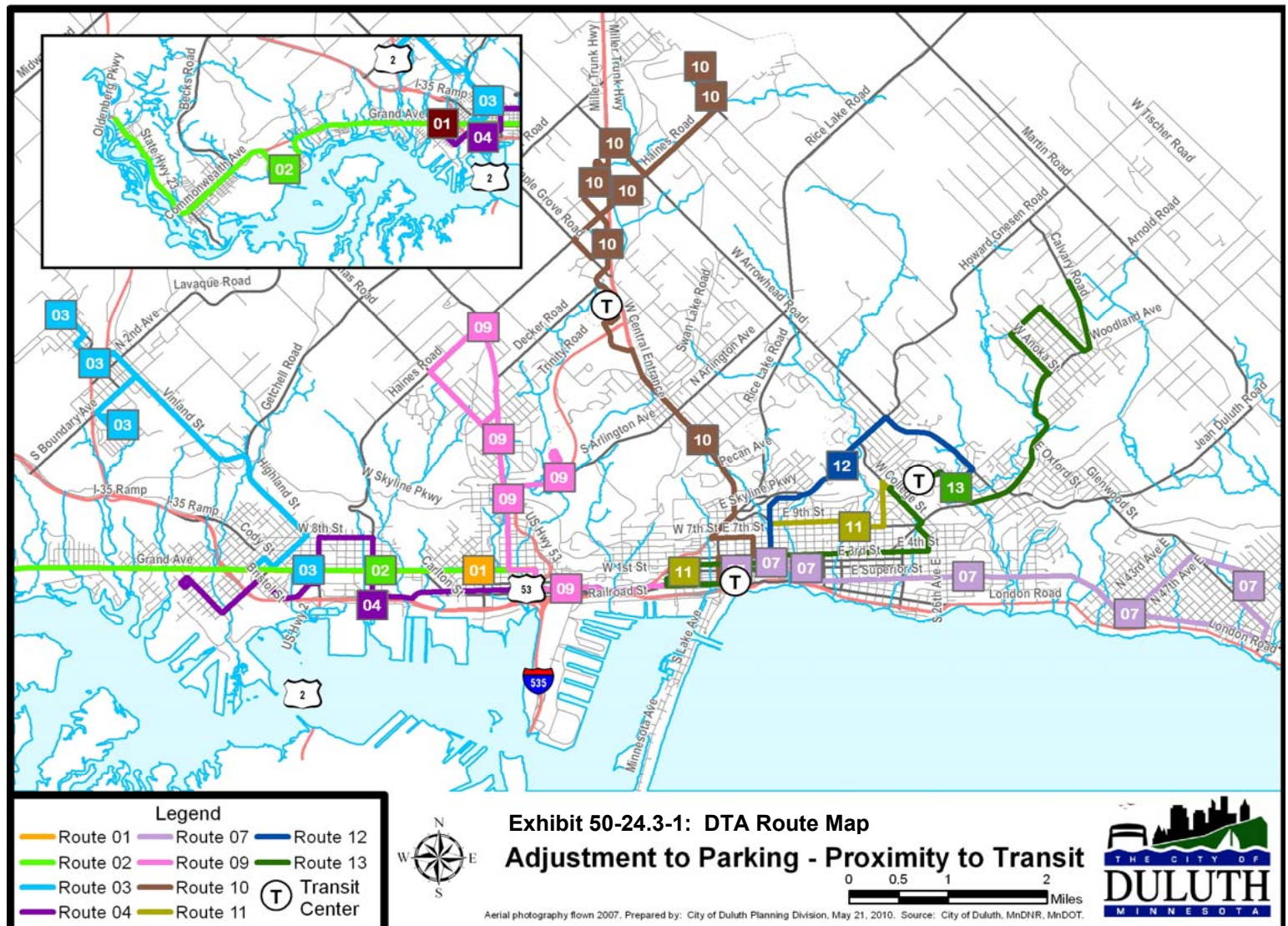
50-24.3. Adjustment to required off-street parking.

The minimum parking requirements listed in Section 50-24.2 above shall be adjusted as follows:

A. Proximity to transit.

1. The minimum number of off-street parking spaces required for any development or redevelopment lands may be reduced by 30 percent if they are located within 1/4 mile of existing Duluth Transit Authority routes in operation for one year, or they may be reduced by 20 percent if located within 1/2 mile of any Duluth Transit Authority transit center, as indicated by a "T" on Exhibit 50-24.3-1;
2. If an existing transit route or center is eliminated or changed in location, any development approved in conformance with this Section 50-24.3 shall not be deemed nonconforming in terms of required parking.

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B. Sharing of parking spaces.

1. General.

Where two land uses listed in separate use categories in Table 50-19.8 share a parking lot or structure, the total off-site parking required for those uses may be reduced by the factors shown in Table 50-24-2. Total off-street parking required shall be the sum of the two parking requirements for the two uses divided by the factors in Table 50-24-2. If uses in three or more categories of Table 50-19.8 share a parking lot or structure, the land use supervisor shall determine the parking reduction based on the relative sizes of the various uses and the reduction factors listed in Table 50-24-2;

Table 50-24-2: Shared Parking Reduction Factors Add the two parking requirements and divide by these factors					
Property Use	Multi-family Residential	Public, Institutional, or Civic	Food, Beverage, Indoor, Entertainment, or Lodging	Retail	Other Commercial
Public, Institutional, or Civic	1.1	1.0			
Food, Beverage, Indoor, Entertainment, or Lodging	1.1	1.2	1.0		
Retail	1.2	1.3	1.3	1.0	
Other Commercial	1.3	1.5	1.7	1.2	1.0

2. Additional sharing permitted for certain uses.

As an alternative to those reduction factors listed in Table 50-24-2, (a) up to 50 percent of the parking spaces required for food, beverage and indoor entertainment uses, and up to 100 percent of parking spaces required for religious assembly uses and elementary, middle, high school, university or college auditoriums may be used jointly by (b) any non-residential use not normally open, used or operated during the same hours as those listed in (a), or any non-residential use that has excess parking capacity based on the minimum off-street parking for that use. A written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit.

Section 29. That Section 50-24.4 of Chapter 50 be amended as follows:

50-24.4. Maximum parking limit.

No more than 150 percent of the minimum required number off-street parking spaces, excluding the adjustments allowed in 50-24.3, shall be provided. This limit does not apply to the following uses: one-family, two-family, townhouse and live-work dwellings.

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Section 30. That Section 50-24.6 of Chapter 50 be amended as follows:

50-24.6. Location of parking spaces.

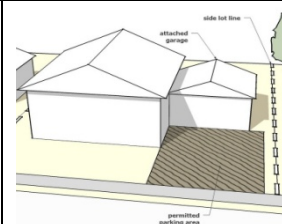
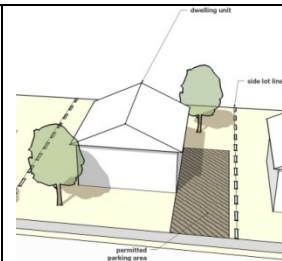
A. On site location and exceptions.

1. All required parking spaces shall be located on the same lot with the principal building or the primary use served; except as provided in subsection 2 below;
2. Where an increase in the number of spaces is required by a change or enlargement of any use other than a single-family dwelling, two-family dwelling, or townhouse, the required spaces may be located and maintained up to 500 feet from the lot containing that use. Where required parking spaces are not provided on site, a written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit;

B. Parking location within the site.

Unless a front yard parking permit was issued for the property on or before June 1, 2009, required parking spaces shall only be provided on those portions of the lot indicated in Table 50-24-3.

Table 50-24-3: Permitted Parking Areas	
Type of Lot	Permitted Parking Area
Residential Districts	
All lots	The rear yard and one side yard
Non-corner lot with dwelling unit and no garage	The area between one side lot line and the nearest side wall of the dwelling unit and its extension to the improved street abutting the front yard. (See diagram to the right)
Non-corner lot with dwelling unit and detached garage	The area between the closest side lot line to the side wall of the dwelling unit nearest to the garage, and its extension to the improved street abutting the front yard. (See diagram to the right)
Non-corner lot with dwelling unit and attached garage	The area between the closest side lot line to the common wall separating the dwelling unit and garage, and its extension to the improved street abutting the front yard. (See diagram to the right)
Corner lot	By variance per Section 50-37.9
Mixed Use and Special Purpose Districts	



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Table 50-24-3: Permitted Parking Areas

All mixed use and special purpose districts	Buildings or projects constructed after November 19, 2010, shall locate no more than 50% of off-street accessory parking within <u>the front yard.</u>
Form districts	Parking only permitted on those portions of the lot permitted for the building type being constructed pursuant to Sections 50-16 and 50-22.

Section 31. That Section 50-25.1 of Chapter 50 be amended as follows:

50-25.1. Applicability.

A. The landscaping provisions of Sections 50-25.2 through 25.9 shall apply to lots and parcels in any zone district that contain (i) more than 10,000 square feet of lot area, and (ii) a primary structure with a multi-family, mixed use, commercial, institutional, industrial, or parking principal use, when any of the following conditions occur:

1. A new primary structure is constructed;
2. The floor area in an existing primary structure(s), taken collectively, is increased by more than 25 percent;
3. An existing primary structure is relocated on the lot or parcel;
4. The primary structure is renovated or redeveloped (including but not limited to reconstruction after fire, flood or other damage), and the value of that renovation or redevelopment, as indicated by building permits, is more than 25 percent of the market value of the land and buildings, as indicated by tax assessor's records;
5. A new primary use parking lot containing 25 or more spaces is constructed;
6. An existing primary use parking lot containing 25 or more spaces is redesigned or reconstructed with significant changes to the layout of parking spaces, driving aisles and access drives;

B. In any form district, landscaping shall not be required on the portion of a lot occupied by a principle structure;

C. The tree preservation provisions of Section 50-25.9 apply to all development or redevelopment on lots and parcels in any zone district that contain (i) more than 10,000 square feet of lot area, and (ii) a primary structure with a multi-family, mixed use, commercial, institutional, industrial or parking principal use, as well as to any new lot of record created after November 19, 2010, regardless of the primary use of the property, in any zone district.

Section 32. That Section 50-25.2 of Chapter 50 be amended as follows:

50-25.2. General landscaping standards.

A. Landscape plan required.

A landscape plan shall be submitted as a part of all development applications for those activities listed in Section 50-25.1.A, unless the land use supervisor determines that compliance with the provisions of Section 50-25 can be demonstrated without the use of a landscape plan. A landscape plan may be combined with other required application materials if compliance with Section 50-25 can be demonstrated in the combined

materials;

B. Plant materials.

Plant materials shall be from the city's approved landscaping plant list as shown in the UDC application manual. All plant material shall be hardy to Northeast Minnesota, suitable for the site, free of disease and insects and conform to the American Standard for Nursery Stock of the American Nursery and Landscape Association;

C. Minimum living materials.

In all areas where landscaping is required, a minimum of 50 percent of the surface area shall be covered by living materials, rather than bark, gravel or other non-living materials;

D. Existing vegetation.

Existing vegetation shall be protected during construction through use of a fence around an area sufficient to protect the health of the vegetation, and shall be incorporated into the landscape plan wherever possible;

E. Vegetation grouping.

Landscaping shall generally incorporate large irregular groupings of the same species of shrub, avoiding rigid or repeated specimen planting except for boulevard trees, and shall introduce multiple varieties within one general area. Except for plantings used for screening, no one species of tree or shrub may make up more than 50 percent of the total amount of landscape plantings;

F. Soil condition.

All required landscaping shall be planted in uncompacted soil with a minimum depth of two feet;

G. Grading and drainage.

All open areas shall be graded, properly drained and maintained according to stormwater standards in Section 50-18.1.E;

H. Raingardens and stormwater management features.

Areas included in raingardens or vegetated site features created to meet stormwater management requirements in Section 50-18.1.E shall be counted towards any required interior site or parking lot landscaping, and if vegetated to meet the requirements for any landscaped buffers shall count towards those buffer requirements;

I. Minimum plant sizes.

Where included as part of the required landscaping, deciduous trees shall have a minimum caliper of 2.5 inches, coniferous trees shall be a minimum of six feet in height,

large shrubs shall be of a minimum five gallon container size and have a height of at least six feet at maturity, small shrubs shall be of a minimum five gallon container size and have a height of less than six feet at maturity, and ground cover shall be of a minimum one gallon container size. The above dimensions apply to sizes at time of planting;

J. Plant material spacing.

Except for buffer zone provisions of Section 50-25.5, *Landscaping between differing land uses*, plant materials shall not be placed closer than four feet from any fence line or property line. Where tree planting requirements are based on linear street frontage, areas occupied by driveways shall be included when calculating the number of trees required to be planted, and any trees that would otherwise be required in driveways shall be planted in other landscaped front yard areas unless prohibited by minimum spacing requirements for that species as recommended by the American Standard for Nursery Stock of the American Nursery and Landscape Association. The land use supervisor may authorize adjustments to these spacing requirements when required due to topography, drainage, utilities or obstructions, provided that the total amount of required landscaping is not reduced;

K. Snow storage areas.

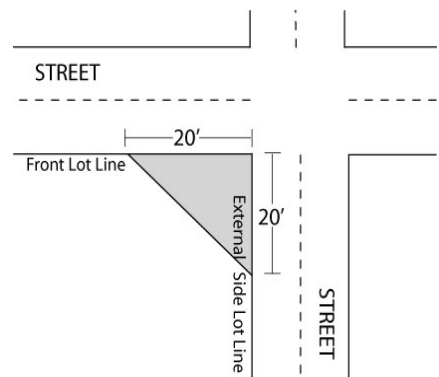
Areas required for snow storage and areas required for landscaping shall not overlap, except that snow may be stored on ground cover landscape areas (e.g., turf) that do not contain required landscape trees or other plantings;

L. City right-of-way.

Tree removal or planting in city rights-of-way shall be done only with the approval of the city forester;

M. Protection of site distances;

On any corner lot on which a front and side yard are required, no wall, fence, structure, sign, or any plant growth that obstructs sight lines at elevations between 2.5 feet and six feet above the driving surface of the adjacent roadway shall be maintained in a triangle formed by measuring from the point of intersection of the front and exterior side lot lines a distance of 20 feet along the front and side lot lines and connecting the points so established to form a right triangle on the area of the lot adjacent to the street intersection;



N. Delay of installation due to season.

Whenever the installation of required landscaping is not possible by the time construction on the primary structure or primary use parking lot has been completed, the city may authorize a delay in installation until no later than the following June 30. As

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a condition of authorizing a delay in installation, the city may require that a surety or other guarantee, in a form acceptable to the city, in the estimated amount of such installation be provided, or the city may issue a temporary certificate of occupancy, with the permanent certificate of occupancy to be issued following installation of all required landscaping;

O. Flexibility for redevelopment.

Where the requirements of this Section 50-25 apply to a redevelopment or reconstruction project, rather than a new development, the land use supervisor may authorize a reduction of minimum off-street parking requirements established in Section 50-24 by up to ten percent if required to accommodate street frontage landscaping required by Section 50-25.3 or parking area landscaping required by Section 50-25.4.

Section 33. That Section 50-25.3 of Chapter 50 be amended as follows:

50-25.3. Street frontage landscaping.

The street frontage of the property shall meet the following landscaping requirements.

A. Minimum average depth: See Table 50-25-1. An average depth allows the width of the landscape area to vary in size along different portions of the property to respond to varying site conditions and allow design flexibility;

Table 50-25-1: Average Depths of Street Frontage Landscaping Required	
Context	Average Depth Required
Lots with no required front setback, and where the primary building abuts the front lot line	Exempt
Lots with less than 10,000 sq. ft. or lot area.	Exempt
Lots with 10,000 to 20,000 sq. ft. of lot area.	5 ft. along all street frontages
<u>Lots over 20,000 sq. ft. of lot area.</u>	<u>15 ft. in front street yards</u> <u>10 ft. in side street yards</u> <u>5 ft. on rear lot lines of double frontage lots</u>

B. Required trees: One tree per 35 feet of linear frontage, planted (a) in alignment with any similar street frontage landscaping on adjacent lots, or if that is not possible or adjacent lots do not contain front yard landscaping then (b) as close to the public right-of-way as the city engineer will permit;

C. Required shrubs: one large shrub per 25 feet of linear frontage;

D. On lots adjacent to city-maintained boulevards, landscaping in the boulevards may be credited towards the landscaping requirements of this Section 50-25.3.



Figure 50-25.4-A: Parking lot screening from public right-of-way

Section 34. That Section 50-25.4 of Chapter 50 be amended as follows:

50-25.4. Parking lot landscaping.

Accessory and primary use parking lots shall provide the following amounts and types of landscaping unless alternative standards for specific situations are required pursuant to Section 50-26, *Screening, walls and fences*, or Section 50-30, *Design standards*. In any case where landscaping required by this Section 50-25.4 overlaps areas required to be landscaped by any other provision of this Section 50-25, the provisions of the section requiring more planting shall apply.

A. Perimeter screening from public streets.

1. Minimum width: five feet;
2. Required trees: one tree per 35 feet of linear frontage;
3. Required shrubs: three large shrubs per 25 feet of linear frontage, or if a berm or an opaque fence or wall at least three feet tall is erected, three small shrubs per 25 feet of linear frontage;

B. Interior landscaping requirements.

Except as provided in this Section, parking lots shall provide the following landscaping internal to the parking lot:

1. Minimum area: 15 percent of the interior parking lot area (excluding any perimeter areas required to be landscaped by Sections 50-25.3, 50-25.4.A or B, or 50-25.5) for parking lots with more than 50 spaces, or ten percent of the interior parking lot area for parking lots between 25 and 50 spaces;

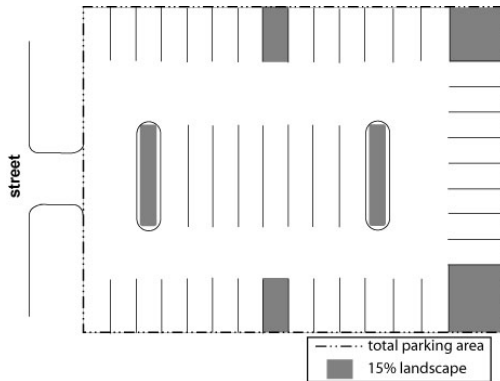


Figure 50-25.4-B: Required interior parking lot landscape areas

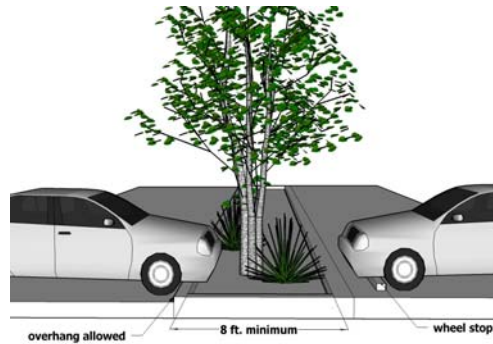


Figure 50-25.4-C: Minimum width of interior parking lot landscape areas

2. Location: Internal landscape areas shall be dispersed on the site to break up the perception of large uninterrupted expanse of pavement (see Figure 50-25.4-B);
3. Required trees: One tree per 300 square feet of internal landscape area. Tree species shall be chosen so that, combined with trees planted under subsections A. and B. above, parking lots will have a minimum tree canopy coverage of 30 percent at maturity;
4. Landscape areas shall be a minimum of eight feet in width (See Figure 50-25.4-C);
5. Curbing: Internal landscape areas shall be curbed for protection of the landscape materials, but planted areas shall be installed at a lower grade than the parking lot pavement, and curbing shall allow drainage from the pavement to enter and percolate through the landscaped areas;
6. Parking areas with less than 25 spaces are exempt from the provisions of 1 through 5 of this Section, but must provide a minimum tree canopy of 30 percent at maturity.

Section 35. That Section 50-25.9 of Chapter 50 be amended as follows:

50-25.9. Tree preservation requirements.

A. Purpose.

The city recognizes that trees provide numerous benefits and services to city residents, including increased property values, reduced storm water runoff and soil erosion with associated cost savings, noise buffering, aesthetic value, reduced energy costs from shade in summer and windbreaks in winter, and removal of greenhouse gases and other pollutants from the air. The city seeks to maintain the tree cover that protects the city's water quality and gives the city its character, while recognizing the need to remove some trees for development, safety, view preservation and other purposes.

B. Tree replacement.

1. Exemptions.

The following activities are not subject to the tree replacement requirement in this Section 50-25.9:

- (a) Forest management activities that maintain pre-existing tree canopy cover, such as minor thinning that eliminates no more than 25 percent of the canopy;
 - (b) Forestry activities that disturb the canopy are exempt if covered by a current forest management plan approved by the city forester;
 - (c) Removal of trees that are an obstruction to traffic or power lines or other utilities;
 - (d) Removal of trees necessary for rescue in an emergency or for clean-up after a natural disaster;
 - (e) Removal of public trees deemed hazardous by the city forester;
 - (f) Removal of trees that are airport hazards;
 - (g) Removal and trimming of trees along Skyline Parkway to preserve views from established or historic overlooks and viewpoints, with approval by the city forester;
 - (h) Installation or replacement of city streets or utilities;
2. Replacement required.
- (a) Tree replacement shall be required pursuant to Table 50-25-3;

TABLE 50-25-3: Tree Replacement Required				
Tree Type	Removal Threshold	Replacement Standards		
		% DBH to be Replaced	Replacement Ratio	
			If Replacing With Special Trees	If Replacing with Other Tree Species
Special Tree > 20 in. DBH	Prohibited unless approved pursuant to subsection (b) below	If approval received, 50% of DBH removed	1 in. DBH per 1.5 in. of DBH required to be replaced	1 in. DBH per in. of DBH required to be replaced
Special Trees Between 8 and 20 in. DBH	10 or more	25% of DBH removed		
Other Significant Trees	20 or more	10% of DBH removed		

- (b) Removal of special tree species over 20 inches diameter at breast height (DBH) is prohibited unless any of the following applies:
 - (i) The city forester determines that the tree is dead, dying, diseased or a threat to public health or safety;
 - (ii) The city engineer determines that the tree interferes with the provision of public services or is a hazard to traffic;
 - (iii) The land use supervisor determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree;
- (c) When ten or more replacement trees are required, not more than 30 percent shall be the same species without approval from the city forester;

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(d) Replacement trees provided pursuant to this Section 50-25.9 shall count towards landscaping required under other portions of this Section 50-25.9 if they meet the size, type and location standards for the type of landscaping required;

(e) Replacement trees shall be considered significant trees in any future tree replacement plan;

(f) If any part of the property is permanently protected from development by a conservation easement or by transfer to a city park or other natural area or a private conservation organization, the combined diameter of the protected trees that meet the size requirement for a significant tree will count toward the replacement requirement;

(g) With the approval of the appropriate city staff (land use supervisor or city forester), developers should have the option of meeting the tree replacement requirements by putting equivalent funds into a dedicated city tree account. The amount of funds should be calculated based on the cost to the city of hiring contractors to plant the number of required replacement trees;

3. Calculation.

(a) If you meet the removal threshold:

$$\frac{\text{Inches removed(DBH)}}{\% \text{ DBH}} \times \text{\%} = \text{replacement requirement in inches}$$

(b) If replacing with special trees:

$$\text{Replacement requirement} \div 1.5 = \text{Total inches required}$$

(c) If replacing with other trees:

$$\text{Replacement requirement} = \text{Total inches required};$$

4. Example.

Step 1: Removal of 12 10- in. special trees = Total of 120 in. DBH

Step 2: 120 in. DBH x 25% = 30 in. replacement requirement

Step 3: If replacing with special tree species:

$$30 \text{ in.} \div 1.5 = 20 \text{ in. total inches required to be planted};$$

5. Tree replacement plans.

Where this replacement requirement applies, the applicant shall submit a tree replacement plan prepared and certified by a certified forester, arborist or landscape architect. The tree replacement plan shall be part of an integrated with the landscaping plan for the site. No replacement shall occur until the city forester has approved the tree replacement plan, and all replacement shall be consistent with that approved plan. The plan shall meet all applicable requirements in the UDC application manual;

6. Calculation for developments exceeding five acres.

For development of forested acres over five acres, with the approval of the

appropriate city staff, the total diameter of trees removed should be able to be estimated based on measuring the diameter of trees in representative sample plots. The plots should be scattered throughout the area to be cleared and should cover no less than ten percent of the entire area. All special tree species in the forest must be measured.

Section 36. That Section 50-26.1 of Chapter 50 be amended as follows:

50-26.1. Screening of mechanical equipment.

A. Applicability.

The standards of this section shall apply to all of the following uses that contain a primary structure in all zones, except I-G and I-W: a multi-family, mixed use, commercial, institutional, industrial, or parking principle use, when any of the following conditions occur:

1. A new primary structure is constructed;
2. The floor area in an existing primary structure(s), taken collectively, is increased by more than 25 percent;
3. An existing primary structure is relocated on the lot or parcel;
4. The primary structure is renovated or redeveloped (including but not limited to reconstruction after fire, flood or other damage), and the value of that renovation or redevelopment, as indicated by building permits, is more than 25 percent of the market value of the land and buildings, as indicated by tax assessor's records.

The following exterior mechanical features shall be screened: (i) electrical and gas-powered mechanical equipment and power systems equipment; (ii) heating, ventilating and air conditioning equipment ductwork, and lines; and (iii) power systems equipment. Roof or wall-mounted antennas and vent openings shall not be considered mechanical equipment for purposes of these screening standards.

The standards of this section shall not apply if the only feasible location for mechanical screening would impede the functioning of solar, wind or geothermal energy equipment or systems if such systems are otherwise in compliance with applicable building codes and zoning requirements;

B. Screening standards.

1. Roof-mounted mechanical equipment.
Roof-mounted mechanical equipment shall be screened by a parapet wall or similar feature that is an integral part of the building's architectural design. The parapet wall or similar feature shall be sufficient to screen the mechanical equipment from ground view of a person on the other side of the public right-of-way on which the structure fronts, as illustrated in Figure 50-26.1-A;

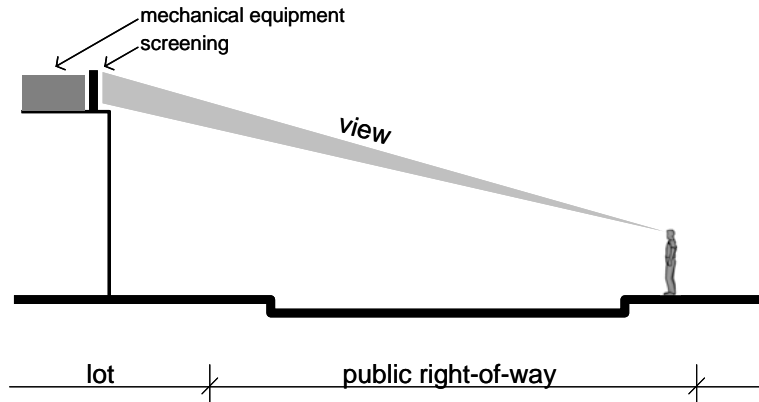


Figure 50-26.1-A: Screening for roof-mounted mechanical equipment

2. Ground-mounted mechanical equipment.

Ground-mounted mechanical equipment shall be screened from view from ground view of adjoining properties and public right-of-way by landscaping or by a decorative wall that incorporates at least one of the primary materials and colors of the nearest wall of the primary structure. The wall shall be of a height equal to or greater than the height of the mechanical equipment being screened. If landscaping is used for screening, the screening material shall be designed to provide 75 percent opacity one year after planting along the full required height and length of the screening buffer.

Section 37. That Section 50-26.4 of Chapter 50 be amended as follows:

50-26.4. Fences and walls.

Unless otherwise expressly provided for in this Chapter, or unless expressly provided for in conjunction with the approval of a special use permit, fences and walls shall comply with the following general standards:

A. Fence/wall height.

1. General front yard standards.

- (a) No fence or wall located between the principal structure on a lot and the front property line shall exceed four feet in height;
- (b) Chain link fences, fences that are electrically charged, fences constructed of barbed or razor wire and fences constructed of temporary plastic fencing (snow fences) are prohibited;
- (c) Prohibitions on electrically charged fences shall not apply to fences used to protect gardens and landscaping on residential lots. Prohibitions on electrically charged fences and fences constructed of barbed or razor wire shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes;

2. General side and rear yard standards.

Fences that are electrically charged, and those constructed of barbed or razor wire shall be prohibited.

(a) This prohibition shall not apply to electrically charged fences used to protect gardens and landscaping on residential lots;

(b) This prohibition shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes;

3. Residential zone districts.

The maximum height of a fence or wall within required side and rear yard area is eight feet. The maximum height for fences and walls for entry gates at the residential subdivision entrance shall be eight feet;

4. Mixed use and special purpose zone districts.

The maximum height of a fence or wall within required side and rear yard area is eight feet, but the land use supervisor may approve a fence or wall up to 12 feet in height where additional height is needed to provide adequate security because of topography or the nature of the material or equipment stored in the area;

5. Form districts.

The maximum height of a fence or wall within required side and rear yard area is eight feet, but the land use supervisor may approve a fence or wall up to 12 feet in height where additional height is to provide adequate security because of topography or the nature of the material or equipment stored in the area. Fences and walls are not permitted in required front yard areas, except for wrought iron fences used to enclose outdoor patio or dining areas, in which case the maximum height of the fence shall be three feet;



Figure 50-26.4-A: Form district front setback wall height

6. Vacant property.

As an exception to other fence height limits, vacant property may be fenced with chain-link fencing not to exceed six feet in height when the purpose of such fencing is to prevent unauthorized dumping or soil disturbance that results in fugitive dust or nuisance conditions. Such fencing of vacant property shall not be construed to allow use of the property for outdoor storage;

B. Retaining walls.

1. Applicability.

The requirements of this Section apply to construction of new retaining walls in all districts, except for (a) retaining walls on proper-ties containing only one-family and two-family dwellings, and (b) retaining walls that will not be visible from neighboring sites or from a public street frontage;

2. Design standards.

All retaining walls shall comply with the following standards:

(a) Retaining walls more than six feet tall shall be terraced to minimize visual impacts on residents, neighboring properties and the public realm;

(b) Terracing shall be limited to three tiers;

(c) A terrace at least four feet wide, with a maximum slope of 3:1, shall be provided between each tier to create pockets for landscaping.

Reduced terrace depths may be administratively approved by the building official where site constraints limit the amount of space available to accommodate the minimum required width;

(d) Terraces between retaining wall tiers shall be vegetated with permanent landscaping to screen retaining walls and provide visual interest unless soil conditions are determined by a licensed engineer to be unsuitable due to geologic hazards;

(e) Retaining walls shall be stacked natural stone or faced with stone or earth-colored materials, textured and colored Mechanically Stabilized Earth (MSE) blocks or other material compatible with the primary building materials;

(f) Retaining walls constructed of railroad ties, timber and gabion-type materials are not allowed;



Figure 50-26.4-B: Retaining wall terracing and articulation

C. Materials and signs.

No fence, wall or retaining wall shall be constructed of scrap or waste materials unless those materials have been recycled or reprocessed into building materials for sale to the public. No sign may be posted on any fence, wall or retaining wall except for a property identification/management sign not exceeding one square foot in size;

D. Alternate screening.

In lieu of compliance with the specific requirements of this section an owner may propose to the land use supervisor an alternative approach consistent with the intent of this Section. An alternative compliance approach is designed to provide flexibility in order to respond to unique site conditions or abutting or surrounding uses, and must not result in reductions in the amount or quality of required screening. The building official may approve a proposal under this Section only if it is determined that the proposed alternative compliance achieves required screening to the same degree or better than the provisions of this Section.

Section 38. That Section 50-27.5 of Chapter 50 be amended as follows:

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50.27.5 Sign schedule for specific zone districts.

Specific types of signs permitted in each zone district, and the conditions that apply to that type of sign, are shown in Table 50-27-2 below.

Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
Residential Districts		
All residential districts	Construction contractor sign	Residential: 1 sign with maximum size 20 sq. ft. Non-residential: 1 sign with maximum size of 32 sq. ft. plus 16 sq. ft. to identify architects, engineers, or subcontractors. Not permitted in required front, side, or rear yard areas. Indirect illumination only. Must be removed 7 days after construction is complete.
	Home occupation sign	Maximum size: 20 sq. ft. in RC, RR-1 and RR-2. 1 sq. ft. in R-1 and R-2. Must be set back 20 ft. from front property line in RC, RR-1 and RR-2. Must be attached to building in R-1 and R-2. May not be illuminated.
	Nameplate	1 per dwelling. Maximum size: 2 sq. ft. in RC, RR-1, RR-2 and R-1. Indirect illumination only.
	Political sign or property owner opinion sign	Minimum setback from property lines and street or sidewalk improvements: 3 ft. If illuminated must comply with Section 50-31. Building permit required if more than 6 ft. tall.
	Property identification/management sign	Maximum size: 3 sq. ft. in RC, RR-1, RR-2 and R-1. 6 sq. ft. in R-2. No illumination or animation.
	Public assembly bulletin board	Maximum size: 25 sq. ft. Minimum setback from property lines: 10 ft. Indirect illumination.
	Real estate sign	Maximum size: 32 sq. ft. in RC, RR-1, and RR-2. 6 sq. ft. in R-1. In R-2, may contain name of building and/or management firm. Minimum setback from property lines: 10 ft, unless attached to a building. Must be removed within 7 days after sale, lease, or rental. No illumination.
	Recreational field sign	Directional sign: Maximum size: 20 ft. Maximum Height 10 ft. Building mounted sign: Maximum size 10 ft. Each scoreboard sign may contain up to 10 sq. ft. of advertising. Indirect illumination only.
	Residential complex sign	In R-2 district only. 1 monument sign constructed of individual letters and numbers attached to a structure that is similar in color, texture and material to the primary exterior of the complex buildings. Maximum height of 4 ft., maximum width of 8 ft., maximum depth of 1 ft. Minimum setback from property lines: 10 ft. Indirect illumination only.
	School (grades K-12) sign	1 wall identification sign not exceeding 32 sq. ft. Maximum height of wall identification sign shall be 16 ft. or top of wall, whichever is less. Corner lots limited to 2 wall identification signs per building. 1 freestanding monument sign not exceeding 32 sq. ft. in area and 8 ft. in height also allowed. Either the wall sign or the monument sign, but not both, may be illuminated. Flashing, animated and revolving signs are not permitted.
	Temporary sign	May not advertise on-going business activity. Maximum size: 6 sq. ft. Minimum setback from property lines and street and sidewalk improvements: 3 ft. Maximum length of use: 2 days.

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Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
		No illumination.
	Off-premises sign	Not permitted.
Mixed Use and Form Districts		
All residential uses	All signs permitted for residential uses in the R-2 district	
MU-N (formerly R-4 and C-1), MU-W, F-1, F-2, F-3, F-4, F-5, F-6 and F-9 Zones		
Non-residential uses	Awning sign	Permitted on first floor awnings only. Indirect illumination only, but no lighting apparatus shall be attached to the awning itself.
	Marquee signs	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Permanent signage shall be included. Changeable copy shall be limited to no more than 2/3 of the sign face.
	Pole sign	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Maximum height: 15 ft. Minimum height of sign face base above ground: 8 ft. (decorative planters without advertising and not more than 3 ft. above ground are permitted) for signs 8 ft. total in height and no more than 8 sq. ft. per sign face, no minimum clearance required. Maximum thickness: 30 in. (except spherical signs). Maximum sign area: 1 sign per pole, maximum 40 sq. ft. per sign face. The area of a double or triple faced pole sign shall be the area of the largest face. Location: If pole signs are located in the required front, side, or rear yards they shall not be closer than 100 ft. from any residential structure located in a residential zone. Not permitted on or projecting into or over any public street or utility easement. In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Direct and indirect illumination permitted.
	Wall sign	Maximum aggregate sign size: 40 sq. ft. or 2 times the number of lineal ft. of the length the building wall where it is mounted, whichever is greater. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Direct and indirect illumination permitted.
	Portable A-frame sign	1 per street frontage.
	Monument	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Maximum height of 6 ft., maximum area 48 sq. ft. per sign face. Setback from corners and driveways for vehicular site triangles. In the form districts, this type is limited for use with the corridor, cottage commercial and iconic building types. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Direct and indirect illumination permitted. Landscape at base of sign shall not be taller than 18 in. at mature height.
	Projecting sign	1 per each building façade facing a street, alley, or sidewalk. Maximum sign area: 150 sq. ft. or 1.5 times the number of lineal ft. of the wall where the sign is located, whichever is less. The area of a double faced projecting sign shall be the area of the largest face. Minimum height above sidewalk: 10 ft.; for signs projecting 2 ft. or less, 7 ft. Minimum height above street or alley: 16 ft. Shall not extend closer than 1 ft. to back of any curb or over any alley. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Direct and indirect illumination permitted.

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Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
	Window sign	Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image. Materials: Painted directly on the window, mounted neon on inside of window, or mounted sign on a wall inside the window area.
	Off-premises sign	Not permitted
MU-C (formerly C-5), F-7 and F-8 Zones		
	Awning sign Marquee sign Wall sign Portable A-frame sign	Same as for MU-N, MU-W, F-1, F-2, F-3, F-4, F-5, F-6 and F-9 zones.
	Projecting sign	1 per each building façade facing a street, alley, or sidewalk. Maximum sign area: 150 sq. ft. or 1.5 times the number of lineal ft. of the wall where the sign is located, whichever is less. The area of a double faced projecting sign shall be the area of the largest face. Minimum height above sidewalk: 10 ft.; for signs projecting less than 2 ft., 7 ft. Shall not extend closer than 1 ft. to back of any curb or over any alley. Materials: Solid or composite finished wood, metal, masonry, neon, glass. <u>Direct and indirect illumination permitted.</u>
	Window sign	Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image. Materials: Painted directly on the window, mounted neon on inside of window, or mounted on a wall inside the window area.
	Pole sign	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Maximum height: 25 ft. Minimum height of sign face base above ground: 8 ft. (decorative planters without advertising and not more than 3 ft. above ground are permitted). For signs 8 ft. total in height and no more than 8 sq. ft. per sign face, no minimum clearance required. Maximum thickness: 30 in. (except spherical signs). Maximum sign area: 1 sign per pole, maximum area not exceeding 30 percent of the lineal street frontage on the street nearest the sign. The area of a double or triple faced pole sign shall be the area of the largest face. Location: If pole signs are located in the required front, side, or rear yards they shall not be closer than 100 ft. from any residential structure located in a residential zone. Not permitted on or projecting into or over any public street or utility easement. In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types. Materials: Solid or composite finished wood, metal, masonry, neon, glass. <u>Direct and indirect illumination permitted.</u>
	Off-premises sign	Off-premises wall signs prohibited. All other off-premises signs subject to approval under Section 50-15.3.D
	Monument sign	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Maximum height: 18 ft. Maximum sign area: 144 sq. ft. Location: Sign may not be located in defined sight triangles for streets and driveways. In the Form Districts, limited for use with the Corridor, Cottage Commercial, and Iconic building types. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Direct and indirect illumination permitted. Landscape at base of sign shall not be taller than 18 in. at mature height.
MU-I District		
	All signs permitted in the MU-N district	Maximum sign area on any wall: Number of sq. ft. equal to the number of lineal ft. of the wall. All signs, including public signs, shall be approved by staff based on the consistency of the size, texture, and scale of signs with the character and scale of signs and development in the surrounding area. However, review and permits shall not be required for (a) property information/management signs less than 4 sq. ft., (b) political signs, and (c) property owner opinion signs.
MU-B District		

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Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
	Wall signs, projecting signs, and monument signs	Maximum sign size of wall and projecting signs: 5% of the total sq. ft. area of building façade on which they are placed. All wall signs attached to the building shall be flush mounted and shall not extend above the roof line. All monument signs must be architecturally designed and located directly at grade, shall be limited to 1 sign on each street frontage, shall be limited to 60 sq. ft. in area and eight ft. in height and shall be located no closer than 15 ft. from the property lines. Neon signs are not permitted. Direct and indirect illumination is permitted. Spotlighting of signs is permissible if the lighting is shielded so as to direct light to the sign only and the light source is not visible from the property lines. Flashing and animated signs are not permitted.
	Property identification/management sign	Maximum size: 4 sq. ft. Maximum height: 5 ft. No illumination, animation, or flashing.
	Off-premises signs	Not permitted.
Special Purpose Districts		
I-G and I-W Districts	All signs permitted in the MU-C district	On-premises signs only.
P-1 District	Construction contractor sign	Non-residential: 1 sign with maximum size of 32 sq. ft. plus 16 sq. ft. to identify architects, engineers, or subcontractors. No illumination or animation Must be removed 7 days after construction is complete
	Property identification/management sign	Maximum size: 6 sq. ft. in R-2 No illumination or animation
	Public assembly bulletin board	Maximum size: 25 sq. ft. Minimum setback from property lines: 10 ft Indirect illumination
	Recreational field sign	Directional sign: Maximum size: 20 ft. Maximum Height 10 ft. Building mounted sign: Maximum size 10 ft. Each scoreboard sign may contain up to 10 sq. ft. of advertising. Indirect illumination only
	Temporary sign	May not advertise on-going business activity. Maximum size: 6 sq. ft. Minimum setback from property lines and street and sidewalk improvements: 3 ft. Maximum length of use: 30 days. No illumination or animation.
	Off-premises sign	Not permitted

Section 39. That Section 50-30 of Chapter 50 be amended as follows:

50-30 Design standards.

The design standards of this Section 50-30 apply to all new development and all redevelopment or renovation of existing structures where the redevelopment or renovation expands the building gross square footage by more than 50 percent.

Section 40. That Section 50-30.1 of Chapter 50 be amended as follows:

50.30.1 Multi-family residential design standards.

Each principle structure or development in which a majority of the gross floor area is occupied by multi-family dwellings must comply with the standards set out in this Section, unless the provisions of Section 50-30.3, *Mixed Use Development*, apply:

A. Accessibility.

Multi-family dwelling developments containing more than one principle structure on a single lot or parcel must include an unobstructed walkway or pathway providing access between the principle structures for persons with disabilities. The walkway or pathway must be at least 5 ft. wide, and, if curb ramps are necessary to provide such access, the curb ramps must comply with the slope and design requirements of the city;

B. Façade length and articulation.

Total length of any multi-family structure façade shall not exceed 200 feet and no façade wall shall extend more than 80 horizontal feet without projections or recesses. Each facade greater than 100 horizontal feet in length shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade and extending at least 20 percent of the length of the façade;

C. Roof design.

Rooflines longer than 100 horizontal feet shall include at least one vertical elevation change of at least two feet. All sloped roofs shall have overhanging eaves of at least one foot, and roofs with a pitch of less than 2:12 shall be screened by a parapet wall;

D. Four-sided design.

All sides of a structure open to view by the public, whether viewed from public or private property, shall display a similar level of quality and architectural interest.

E. Parking structures and carports.

To the maximum extent feasible, parking structures and carports shall not be located between the front or primary façade of a multi-family building and the street frontage adjacent to the front lot line, but shall instead be internalized within building groups so as not to be directly visible from the street frontage;

F. Design features.

At least three of the following design features shall be provided for visual relief along all facades of each primary multi-family building:

1. Roof dormers;
2. Gables;
3. Recessed entries;
4. Covered porches;
5. Cupolas;
6. Pillars, pilasters or posts;
7. Bay windows;
8. Eaves of at least 12 inches beyond the building wall or a parapet wall with an articulated design (decorative cornice, etc.);
9. Multiple windows with minimum four inches trim;
10. Recesses/shadow lines;
11. Building foundation areas that face streets or public areas shall be landscaped to a minimum width of five feet with a minimum of three shrubs per 20 lineal feet of foundation;

G. Visibility of common areas.

To promote public safety, primary multi-family dwelling structures and landscaping must be located and designed so that clear sight lines are provided to and between common open spaces, circulation paths and access points into the development, where applicable.

Section 41. That Section 50-30.2 of Chapter 50 be amended as follows:

50-30.2. Commercial and institutional design standards.

A. Applicability.

1. The standards of this Section 50-30.2 shall apply to each principal building or development in which a majority of the gross floor area is occupied by uses categorized in Table 50-19.8 as commercial and institutional, except for:
 - (a) Any building or development located in one of the form districts;
 - (b) Any building or development located on a lot smaller than 10,000 square feet;
 - (c) Any building or development containing less than 10,000 square feet of gross floor area;
2. If a building or development containing less than 10,000 square feet of gross floor area is later expanded so that it contains 10,000 square feet of gross floor area or more, it shall be subject to these requirements;

B. Facades and articulation.

Each commercial or institutional principle structures, other than large retail structures addressed in Section 50-30.2.D below, shall meet the transparency requirement described in subsection 1 below, and shall also comply with two of the remaining options listed in subsections 2 through 5 below, with the choice of those standards to be at the option of the owner:

1. Transparency requirement.
A minimum of ten percent of each facade area that faces a street shall be composed of transparent materials. At least 1/2 of this amount shall be

provided so that the lowest edge of the transparent materials is no higher than four feet above the street level;

2. Wall plane articulation option.

Each facade greater than 100 feet in length abutting a street shall incorporate architectural features such as wall plane projections, recesses, or other building material treatments and textures that visually interrupt the wall plane. No uninterrupted length of any facade shall exceed 100 horizontal feet;

3. Vertical articulation option.

Each principal building taller than 30 feet in height must be designed so that the massing or façade articulation of the building presents a clear base, middle and top when viewed from the abutting street;

4. Roof articulation option.

Where sloping roofs are used, at least one projecting gable, hip feature, or other break in the horizontal line of the roof ridgeline shall be incorporated for each 60 lineal feet of roof. Where flat roofs are used, the design or height of the parapet shall include at least one change in setback or height of at least three feet along each 60 lineal feet of façade;

5. Foundation landscaping option.

Building foundation areas that face streets or public areas shall be landscaped to a minimum width of five feet with a minimum of three shrubs per 20 lineal feet of foundation;

C. Entryway design and location.

Each principal building shall have clearly defined, highly visible main entrances for occupants and customers with features designed to emphasize the importance of the entrance, which must include at least two of the following features, with the choice of the features to be at the option of the owner:

1. A canopy or portico;
2. A roof overhang;
3. A horizontal recess or projection;
4. An arcade or arch;
5. A peaked roof form;
6. An outside patio;
7. A display window;
8. Architectural tilework or moldings integrated into the building design;
9. Integrated planters or wing walls that incorporate landscaped areas or seating areas;
10. Another architectural feature not found on the remainder of that building façade;

D. Additional standards for large commercial retail buildings.

In addition to meeting the standards in subsection A above, single-story retail buildings containing 65,000 square feet or more of gross floor area, in which one user or tenant occupies more than 75 percent of the gross floor area, shall meet the following additional standards:

1. Facade articulation.

Each building facade longer than 100 feet shall incorporate wall plane projections or recesses at least two feet deep, and extending at least 20 percent of the length of the façade. At least one of those wall plane projections or recesses shall repeat horizontally at an interval of no more than 30 feet;

2. Facade design.

Each building façade must have a repeating pattern that includes at least two instances of at least one of the following:

- (a) Color change;
- (b) Texture change;
- (c) Material module change;
- (d) Expression of an architectural or structural bay through a change in plane no less than 12 inches wide, such as an offset, reveal or projecting rib;

3. Pedestrian oriented design features.

Ground-floor façades that face public streets or accessory parking areas shall have arcades, display windows, entry areas, awnings or other such features along no less than 60 percent of their horizontal length;

4. Pedestrian connections.

All principal entrances of principal buildings shall have direct access (i.e., access without having to cross a public street) to a sidewalk, walkway, path or pathway that leads to a public street. Each such sidewalk, walkway, path or pathway must be a minimum of five feet wide. If a sidewalk does not currently exist, and there is a sidewalk system in place, sidewalks on the property shall connect to the existing sidewalk system;

5. Bicycle access.

Bicycle access shall be provided between public bicycle lanes, paths, or routes on adjacent streets and on-site bicycle parking areas. Sites should be designed to avoid or minimize all conflicting bicycle/motor vehicle and bicycle/pedestrian movements;

E. Special provisions for MU-B district.

Not less than 30 percent of the exterior walls of all buildings shall be covered with finish grade brick, stone, concrete or masonry. No metal roofing materials shall be visible;

F. Alternate commercial and institutional design.

In lieu of compliance with the specific requirements of this Section 50-30.2, an owner may propose to the land use supervisor an alternative approach consistent with the intent of this Section. The land use supervisor may approve a proposal under this Section only if the proposed alternative achieves required façade design and articulation, entryway design and location, pedestrian oriented design features, pedestrian connections and bicycle access to the same degree or better than the provisions of this Section.

Section 42. That Section 50-30.5 of Chapter 50 be amended as follows:

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50-30.5. Parking structure design standards.

Each primary use or accessory parking garage shall comply with the following requirements:

- A. Each façade of the parking structure that faces a public street shall contain horizontal rather than sloped floor planes and shall not reveal interior ramps;
- B. All sides of the structure not occupied by retail, office or residential uses must be articulated through the applicant's choice of at least three of the following:
 - 1. Windows or window shaped openings;
 - 2. Decorative wall insets or projections;
 - 3. Awnings;
 - 4. Changes in color or texture of materials;
 - 5. Public art approved by the Duluth public arts commission pursuant to its established review and approval criteria;
 - 6. Integrated landscape planters;
 - 7. Pedestrian-scaled lighting;
 - 8. Benches, plazas, or other pedestrian areas;
 - 9. Other features as approved by the land use supervisor as providing an equivalent degree of architectural articulation, visual interest or pedestrian amenity;
- C. Openings in the podium or tuck under parking areas shall be screened with architectural screens.

Section 43. That Section 50-31.1 of Chapter 50 be amended as follows:

50-31.1. Applicability.

A. General.

Unless excepted in subsection B below, all exterior lighting on lots and parcels in any zone district that contain a primary structure with a multi-family, mixed use, commercial, institutional, industrial, or parking principal use, when any of the following conditions occur shall comply with the standards of this Section 50-31:

- 1. A new primary structure is constructed;
- 2. The floor area in an existing primary structure(s), taken collectively, is increased by more than 25 percent;
- 3. An existing primary structure is relocated on the lot or parcel;
- 4. The primary structure is renovated or redeveloped (including but not limited to reconstruction after fire, flood or other damage), and the value of that renovation or redevelopment, as indicated by building permits, is more than 25 percent of the market value of the land and buildings, as indicated by tax assessor's records;

B. Exceptions.

The following types of lighting are not subject to the requirements of this Section 50-31:

- 1. Public street and right-of-way lighting;
- 2. Temporary decorative seasonal lighting;
- 3. Temporary lighting for emergency or nighttime work and construction;
- 4. Temporary lighting for theatrical, television and performance areas, or for

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special public events;

5. Lighting for a special district, street or building that, according to an adopted city plan or ordinance, is determined to require special lighting aesthetics as part of its physical character;

6. Lighting required and regulated by the FAA;

7. Lighting for outdoor recreational uses such as ball diamonds, playing fields, tennis courts and similar uses, provided that (a) light poles are not more than 80 feet tall, (b) maximum illumination at the property line is not brighter than two footcandles, and exterior lighting is extinguished no later than 11:00 p.m.

Section 44. That Section 50-33.2 of Chapter 50 be amended as follows:

50-33.2 Site design.

A. The site design process shall begin with an analysis of site constraints and natural resources, and shall avoid both to the degree practicable;

B. In addition, the site design process shall include a pre-submittal evaluation of storm drainage to ensure that the proposed design will comply with the storm drainage and erosion control standards in Section 50-18.1.E. This study shall be submitted prior to submission of a preliminary plat of the property;

C. The site design process shall include an evaluation of minimal impact development and low impact development methods;

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

1. Section 50-18.1 Natural Resources Overlay District, which identifies areas subject to flood plain, shorelands and wetland constraints, and stormwater and erosion control;

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

E. Shore and bluff impact zones shall be included in common open space. Wetlands, floodplains, wildlife areas, steep slopes, rock outcrops, tree stands and areas in their natural state that are unsuitable for development shall be included in common open space if possible;

F. Whenever a portion of a tract is proposed for platting and it is intended to enlarge such platted portion in the future, a tentative plan for the entire tract shall be submitted;

G. To ensure a harmonious development in areas not subject to any zoning ordinance the subdivider may be required to place upon such plats restrictions comparable to those of this Chapter for similar areas.

Section 45. That Section 50-33.4 of Chapter 50 be amended as follows:

50-33.4. General lot design and layout.

A. All lots shall have frontage on a public street unless that is impracticable due to

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topography and the city engineer approved an alternative layout base on considerations of public safety and land use efficiency;

B. Where practicable, side lot lines shall be at approximately right angles to the street on which the lot fronts.

C. Where practicable, adjacent lots shall not be platted so that their long axes are at right angles to each other.

D. No strips of land shall be platted for private ownership that control access to public streets or that are untaxable for special improvements.

E. Where practicable, lots shall be oriented so that the long axis of the lot is within 15 degrees of east-west in order to increase solar orientation;

F. Flag lots are prohibited in R-1, R-2, and MU-N zone districts.

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Section 46. That Section 50-35 of Chapter 50 be amended as follows:

50-35. Summary table.

TABLE 50-35-1: PROCEDURES SUMMARY TABLE								
Type of Application	Review, Decision, & Appeal Authority							
R = Review D = Decision A = Appeal <> = Hearing N = Newspaper Notice S = Sign Notice M = Mail Notice RES = Resolution ORD = Ordinance AL=Action Letter COA = Certificate of Appropriateness	Public Notice Required	Pre-Application Required	Staff	Land Use Supervisor	Historic preservation commission	Planning Commission	Council	Final Action
Comprehensive Land Use Plan Amendment	N			R		<R>	D	<u>RES</u>
UDC Text or Zoning Map Amendment								
Text Amendment	N			R		<R>	D	<u>ORD</u>
Map Amendment	N, S, M*	✓		R		<R>	D	<u>ORD</u>
District Plan Adoption/Amendment	S	✓		R		<D>	<A>	
Subdivision Plat Approval								
Concept Plan		✓		R				**
Preliminary Plat	S			R		<D>		<u>AL</u>
Final Plat				R		<D>		<u>AL***</u>
Quick Plat/Registered Land Survey				R		D		<u>AL</u>
Vacation of Street	S, M	✓		R		<R>	D	<u>RES</u>
Concurrent Use of Streets Permit	S	✓		R		<R>	D	<u>ORD</u>
Historic Resource Designation	M				<R>	R	D	<u>ORD</u>
Variance	S, M		R			<D>	<A>	<u>AL</u>
Special Use Permit	S, M	✓		R		<D>	<A>	<u>AL</u>
Interim Use Permit	S, M	✓		R		<R>	D	<u>ORD</u>
Planning Review								
General				D		<A>		<u>AL</u>
When required in R-2 and Mixed Use Districts	S, M	✓		R		<D>	<A>	<u>AL</u>
Temporary and Sidewalk Use Permit				D		<A>		<u>AL</u>
Zoning Permit****			D			<A>		<u>AL</u>
Historic Construction/Demolition Permit	S				<D>		<A>	<u>COA</u>
Wetland/WCA Permits			<u>D</u>			<A>		<u>AL</u>

* Mailed notice is required to affected property owners within 350 feet when the amendment involves changes in district boundaries affecting an area of five acres or less.

** Planning staff will provide applicant with a pre-application verification.

*** Applicant must provide documentation that the final plat has been recorded with the county recorder.

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

Section 47. That Section 50-36.3 of Chapter 50 be amended as follows:

50-36.3. Historic preservation commission.

H. Creation.

Pursuant to Minnesota Statute 471.193, there is hereby created and established a city of Duluth historical preservation commission, hereinafter called the "commission." The commission shall have the responsibility of recommending to the city council the adoption of ordinances designating areas, places, building structures, works of art or

other objects having special historical, cultural or architectural interest for the community as historical preservation landmarks or districts;

I. Membership and terms.

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

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

J. Powers.

The historic preservation commission shall have the following powers:

1. Recommendation of historic preservation sites and districts to the city council;
2. Approve, approve with conditions or deny applications for historic construction and demolition permits pursuant to Section 50-37.14;
3. Recommend historic preservation guidelines specific to a landmark or district;
4. Make an annual report to the state historic preservation officer by October 31 of each year;
5. Conduct continuing survey of all areas, places, buildings, structures or similar objects in the city that the commission, on the basis of information available or presented to it, has reason to believe are or will be eligible for designation as historic preservation landmarks or districts;
6. Work for the continuing education of the citizens of the city with respect to the historic and architectural heritage of the city and keep current and public an official list of designated historic preservation landmarks and districts;
7. The commission may retain the services, on a permanent or part-time basis, of technical experts and other persons as may be required to perform the commission's duties;
8. The commission shall have authority to solicit gifts and contributions to be made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purpose of historic preservation;
9. The commission may recommend to the council that certain properties eligible for designation as historic preservation landmarks or districts be acquired by gift, by negotiation or other legal means;
10. Upon final designation of a historic preservation landmark or district, adopt historic preservation guidelines specific to the landmark or district. Such guidelines shall detail allowable architectural and/or site modifications, essential features to be retained and any other criteria by which future proposals for

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modifications shall be judged. The United States Secretary of the Interior Standards for Treatment of Historic Properties shall be among the standards used to create such a program. These guidelines are intended to provide assurance to owners of properties within historic preservation landmarks or districts that any permit review process will be based on clear and objective standards rather than the taste of individual commission members;

11. The commission may nominate a historic preservation landmark or district to the national register of historic places, but only with the consent of the council.

Section 48. That Section 50-36.4 of Chapter 50 be amended as follows:

50-36.4. Land use supervisor.

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

A. Planning review.

To approve, approve with modifications or deny applications for planning review pursuant to Section 50-37.11;

B. Temporary and sidewalk use permit.

To approve, approve with modifications or deny applications for approval of a temporary or sidewalk use permit pursuant to Section 50-37.12;

C. Review and recommendation.

To review and comment on any application for which a review role for the land use supervisor is shown in Table 50-35-1;

D. Application manual and administrative procedure.

To prepare an applications manual and adopt administrative procedures to implement this Chapter.

Section 49. That Section 50-37.1 of Chapter 50 be amended as follows:

50-37.1. Common procedures and requirements.

A. Pre-application meetings.

A pre-application meeting is an informal discussion between a potential applicant, interested citizen, city staff and the historic preservation commission (if applicable)

regarding a possible project subject to this Chapter. The purpose of the pre-application meeting is to assist the applicant by identifying the types of approval needed to complete the project, application material and impact studies required, applicable comprehensive plan provisions and applicable review criteria. A pre-application meeting may include a site visit at the request of the city. Pre-application meetings are required for the following types of applications:

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

B. Authority to file applications.

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

C. Application materials and fees.

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

6. All fees are non-refundable regardless of whether the applicant withdraws the application prior to a decision or whether the application is approved, approved with conditions or denied;

D. Determination of completeness.

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

E. Inactive complete applications.

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

F. Withdrawal of applications.

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

G. Successive applications.

If an application pursuant to this Chapter has been denied by the city, an application requesting the same or essentially the same approval shall not be accepted during the next 12 months;

H. Public notice.

1. Types of notice.

The city uses one or more of the following methods to notify the public about pending applications where there is an opportunity for public comment on the application. The type(s) of notice provided for different types of applications are shown in Table 50-35-1.

(a) Newspaper notice means the publication of one notice in a newspaper of general circulation within the city at least ten days before the date of the public hearing, except in the case of amendments to the text of this Chapter or zoning map, in which case the notice shall be published at least once each week for three successive weeks before the date of the public hearing;

(b) Mailed notice means a letter mailed by first class mail to property owners within 350 feet of the applicant's parcel at least ten days prior to the date of the public hearing. In the case of an application for vacation of a street, the notice shall be mailed to the owners of all properties abutting (a) the portion of the street proposed to be vacated, and (b) the portion of that street extending 350 feet from the ends of the portion proposed to be

vacated. In the case of an application for rezoning an area of five acres or less, the notice shall be mailed to each property owner in the area to be rezoned and each owner of property located partly or entirely within 350 feet of the area to be rezoned. Failure to give mailed notice as required by this Section or any defect in the notice given shall not invalidate any action of the planning commission or council, provided that a bona fide attempt to comply with this Section has been made;

(c) Sign notice means a sign with minimum dimensions of 24 inches by 30 inches posted as close as reasonably possible to each street frontage on the applicant's property with the text between three and five feet above grade level, with a title line reading "Zoning Notice" in letters at least three inches tall, and with the remainder of the text in letters at least 1/2 inch tall. Each sign must be posted at least two weeks before the date of the public hearing, and must remain in place and legible through the date of the public hearing as shown on the sign. If the sign will not be legible at the stated height due to snow accumulations it may be placed higher, but at the lowest elevation that will be legible to the public. If snow obscures the sign during the posting period, the snow shall be removed and/or the sign shall be relocated so as to be legible within 24 hours after snowfall ends. Evidence produced at or before the public hearing that one or more of the required signs were not in place or legible throughout that period shall be grounds for postponement of the public hearing and a requirement to repost the property. Required signs may not be posted in any portion of the public right-of-way;

2. Content of notice.

Each required notice shall include the following information:

- (a) The name of the applicant;
- (b) The address of the property;
- (c) A narrative description of the project including the proposed land uses, size (in square feet) and height (in feet and stories) of any proposed buildings or building expansions;
- (d) The type of permit or approval being sought;
- (e) Contact information where additional information can be obtained from the applicant (which may be an address, telephone number, web site, or e-mail address or other electronic site or method);
- (f) Contact information for the assigned city staff member;
- (g) The date, time and place of the public hearing;

3. Special notice provision for appeals.

In the case of an appeal to the planning commission or council pursuant to Section 50-37.1.O, mailed notice shall be provided to any interested parties that were notified of the original application and the right to receive notice of any appeal, and who have notified the city in writing that they would like to receive notice of the appeal;

I. Public hearings.

1. Public hearings before the planning commission and public hearings before the council on matters related to this Chapter shall be conducted pursuant

to rules and practices established by each of those bodies and in compliance with state law;

2. Attendance shall be open to the public;
3. All hearing and decision timeframes shall comply with MSA 15.99;

J. Review criteria.

1. The planning commission shall approve or recommend approval of an application if it makes a written finding that:

- (a) The application is consistent with the adopted comprehensive land use plan, as that plan may have been amended after adoption;
- (b) The application complies with all applicable requirements of this Chapter, as those requirements may have been varied through a variance approved pursuant to Section 50-37.9;
- (c) The application complies with all additional approval criteria listed in Section 50-37.2 below;

2. If the planning commission determines that the criteria in subsection 1 have not been met, the commission shall deny or recommend denial of the application or approve it with conditions to bring the application into conformance with the above criteria;

3. The council is encouraged, but not required, to make decisions on applications under this Chapter pursuant to the criteria listed in subsection 1. In no case may the city's final action result in the approval of a use variance;

4. The applicant bears the burden of proof that an application complies with all applicable standards and criteria in this Chapter;

K. Conditions on approval.

1. As an alternative to denying an application, the building official and the land use supervisor are authorized to approve applications with conditions necessary to bring them into compliance with the requirements of this Chapter or with any previously approved district plan for the property;

2. As an alternative to denying an application, the planning commission is authorized to recommend or impose conditions on approvals that it determines are necessary to (a) bring the application into compliance with the requirements of this Chapter, the purposes of the zone district where the property is located or any previously approved district plan for the property, or (b) prevent or minimize adverse effects upon surrounding areas or upon public facilities and services;

3. All conditions imposed on approved applications shall be reasonably related to the anticipated impacts of the proposed development or land use and to the purposes of this Chapter;

4. In the case of decisions made by the planning commission or council, where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any condition imposed shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts;

5. Any conditions on approved applications shall be listed in or attached to the approval document, and violation of any approved condition shall be a violation of this Chapter;

L. Administrative adjustments.

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

1. The front, side or rear setbacks of a new structure or modified building are no more than one foot smaller than the minimum setbacks required by this Chapter;
2. The height of a new or modified structure is no more than two feet taller than the maximum required by this Chapter;
3. For properties where Section 50-24 requires more than three off street parking spaces, and the property does not contain a single-family residential structure (regardless of the use of that structure) the site contains one less parking space than is required;
4. Accessibility structures can encroach into the yard setbacks;
5. For properties where 50.21.2 requires improved street frontage, exceptions limiting the street improvement to no more than 50 feet in length may be granted if the land use supervisor determines that further extension of the street is not anticipated due to topography, comprehensive land use plan or utility availability;

M. Modifications of approvals.

1. Application.

An applicant who has received a permit or approval from the city pursuant to this Chapter may apply to modify that approval pursuant to this Section 50-37.1. An application for a modification shall be made to the building official, who shall determine whether it requests a minor or major modification pursuant to the criteria in subsections 2 or 3, as applicable;

2. Minor modifications.

Minor modifications are those that (a) relate to redevelopment of a single building on one or more existing platted lot(s), (b) qualify as administrative adjustments pursuant to subsection 50-37.1.L or (c) that the city determines are otherwise consistent with any district plan approved for the zone district where the property is located. Applications for minor modifications may be approved by the city if it determines that the applicant would have practical difficulties designing or constructing the project without the minor modification. However, the city may require that an application meeting the criteria for a minor modification be treated as an application for a major modification if it determines that the application raises a significant public controversy on which numerous parties other than the owner of the property may want to offer testimony;

3. Major modifications.

Major modifications are those that do not qualify as administrative adjustments pursuant to subsection 50-37.1.L or minor modifications pursuant to subsection 2

above. Applications for major modifications shall be treated as a new application for an approval of the same type being modified. However, if the city determines that an application for modification is not consistent with a district plan applicable to the property, and that the inconsistency may materially and adversely affect other property owners subject to the same district plan, the city may require that the applicant obtain approval of a revised district plan instead of a major modification. In the case of a major modification involving a natural resources permit, the city may require additional reports and data necessary to evaluate the impacts of the modification;

N. Lapsing of approvals.

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

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

O. Appeals.

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

1. General provisions for appeal to planning commission.

(a) Except as noted in subsection 2, any person aggrieved by, or any department of the city affected by, any decision of any city official engaged in the administration or enforcement of this Chapter may appeal that decision to the planning commission. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the commission and specifying the grounds of the appeal;

(b) If the appeal relates to a decision regarding the zoning of an airport or the Airport Overlay district, any person aggrieved by the decision, any taxpayer affected by the decision and any governing body of a municipality, county or airport zoning board, that believes the decision is an improper application of this Chapter as it concerns that governing body or board may appeal that decision to the airport board of adjustment. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the board and specifying the grounds of the appeal. If the appellant is a person aggrieved or a taxpayer affected by the decision regarding the zoning of an airport or the Airport Overlay district, the applicant shall submit an appeal to the city clerk in the manner set forth in Minnesota Statutes 360.068, Subdivision 2. All appeals shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;

(c) The building official shall promptly transmit to the commission, or to the airport board of adjustment, as applicable, the documents and records related to the decision being appealed;

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

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

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

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

2. Exceptions.

(a) An appeal from any decision regarding the interpretation or application of sign regulations in subsections 50-27.1.I, *No safety*

- obstructions, 50-27.1.L, Attachment to buildings, 50-27.1.M, Wind pressure design, 50-27.1.N, Electrical wiring, or 50-27.1, Certification of structural engineer, must be taken to the state building official as provided in the State Building Code;*
- (b) An appeal from a decision regarding a building permit must be taken to the building appeals board created in Article IV of Section 10 of the City Code or to the state building official;
- (c) An appeal from any decision under the housing code provisions in Section 50-32 of this Chapter must be taken to the building appeals board;
- (d) If an applicant believes that the decision of staff regarding compliance with the requirements of the SP-O zone district is incorrect or deprives the applicant of the reasonable use of his or her property, or is unreasonable given the size and shape of the property and its orientation to the protected views, the applicant may request review of the decision by the planning commission. The planning commission's review shall be based on the purpose and standards of this Section, but may authorize variations to those standards, in accordance with the procedures in Article V of this Chapter, if unusual site conditions not generally shared along Skyline Parkway make compliance with the standards unreasonable or ineffective to protect the intended views of Lake Superior, the St Louis River and the harbor;
3. Powers of planning commission on appeal.
- (a) The planning commission shall consider the record of the application and any testimony presented at the hearing regarding the application of this Chapter to the application and shall affirm, modify or reverse the decision appealed, and may make any orders, requirements, decisions or determinations that the building official or land use supervisor could have made regarding the application;
- (b) In hearing permitted appeals of decisions regarding the sign regulations in Section 50-27, the planning commission shall have only the power to affirm, reverse or modify the decision of the building official;
- (c) In the case of an appeal regarding the application of the NR-O Natural Resources Overlay district, no relief shall be granted that violates the limitations on variances applicable to that district;
- (d) The decision of the planning commission shall be final unless a further appeal is filed pursuant to subsection 4 below;
4. Appeals of planning commission decisions to council.
- (a) Except as provided in subsection 5 below, any person aggrieved by, or any department of the city affected by, any decision of the planning commission on an appeal pursuant to subsection 1 above may appeal that decision to the council;
- (b) Any appeal must be filed within ten days after the planning commission's decision by filing with the city clerk a written notice of appeal addressed to the council and specifying the grounds for the additional appeal;
- (c) The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. However, if the building official

notifies the council in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the council may order that proceedings not be stayed pending appeal;

(d) The council shall hear the appeal at the next scheduled meeting with time available, and may affirm, modify or reverse the board's decision, and may make any orders, requirements, decisions, or determinations it deems appropriate regarding the appeal;

(e) No decision on an appeal or variance shall have the effect of allowing a use that is not a permitted or special use in the zone district where the property is located;

(f) If the appeal is regarding an application in any district where the approval of a district plan is required or requested prior to development, the council shall only approve development plans if it finds that the requirements for the district plan in that district will be satisfied;

5. Appeal of planning commission decisions to the courts.

(a) In the case of an appeal regarding the zoning of an airport or an Airport Overlay district, the appeal shall proceed pursuant to applicable state law and shall be perfected within 60 days after the decision appealed from is filed in the office of the planning commission;

(b) In case of decisions appealable to the district court pursuant to MSA 462.361, the appeal shall be perfected in 60 days after the decision appealed from is filed in the office of the planning commission;

(c) All other appeals not otherwise provided for above shall be pursuant to MSA 606.01;

6. Appeals of historic preservation commission decisions to council.

Where applicable, Section 50-37.1.O.4 shall apply of historic commissions decisions, when appealable to city council;

P. Security for improvements.

1. If the provisions of this Chapter or conditions attached to a permit or approval under this Chapter require the applicant to construct or make improvements to the property, to protect the city or adjacent property owners from injury or damage, or to return the property to a stated condition following the completion of operations or construction, and those actions have not been completed, then the city shall require the applicant to post security to ensure that those improvements are made in a timely manner, and that if the applicant fails to make those improvements the city will have adequate funds on hand to complete the improvements at the applicant's expense;

2. Security shall be posted in a form acceptable to the city, which may include but are not limited to cash, a promissory note, a letter of credit issued by a financial institution acceptable to the city, or a performance bond issued by a financial institution acceptable to the city. The security shall be in an amount equal to 110 percent of the estimated cost for the city to complete the improvements;

3. The city shall release posted financial security upon confirmation by the building official that the required improvements have been constructed in accordance with all applicable design and construction standards. In the case of

any improvements to be dedicated to the city, the city shall release posted financial security upon acceptance of the improvements by the city. At the discretion of the building official, partial releases of financial security may be made after construction or dedication of some but not all of the required improvements, but financial security equal to 110 percent of the estimated cost of for the city to complete the improvements shall be retained;

4. As an alternative to requiring the posting of financial security, the city may authorize the issuance of a temporary certificate of occupancy for the property, provided that the applicant signs a development agreement with the city agreeing to pay the city a specific financial penalty per month if the required improvements are not constructed by a certain date. The amount of the penalty shall be calculated so that if the applicant does not construct the improvements within one year after the required date the penalties will equal at least 110 percent of the estimated cost for the city to complete the improvements.

Section 50. That Section 50-37.4 of Chapter 50 be amended as follows:

50-37.4. District plan adoption or amendment.

The MU-I zone districts described in Article 2 of this Chapter includes a district plan option. Projects described in an approved district plan may be approved without the need for additional hearings once the plan is approved. Following the approval or amendment of a district plan, no UDC approval, permit or building permit shall be issued for a project, structure or land use that is inconsistent with the adopted or amended plan.

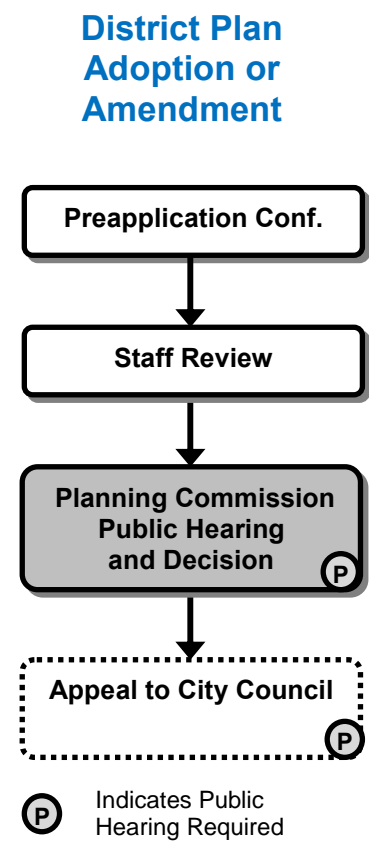
A. Application.

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

B. Procedure.

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

C. Criteria.



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

1. Is consistent with the comprehensive land use plan;
2. Is consistent with the purpose of the zone district and the plan approval requirements and criteria for the zone where the plan is proposed, as stated in Article 2 of this Chapter;
3. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

Section 51. That Section 50-37.7 of Chapter 50 be amended as follows:

50-37.7. Concurrent use of streets permit.

This Section applies to all applications for construction of a skywalk and to any other application requesting that the city approve the concurrent use of the street surface, right-of-way, or the air rights above the street or the land beneath the street, but shall not apply to applications for concurrent use of a portion of a public sidewalk for a café, eating area, transit shelter or bench, or bicycle parking area.

A. Application.

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

B. Procedure.

1. Review and recommendation.

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

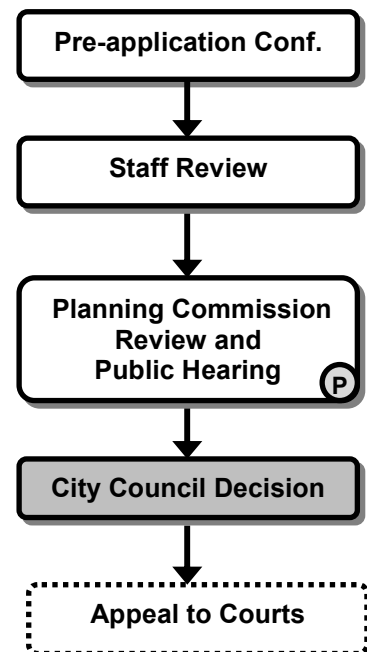
2. Council decision.

Upon receipt of the planning commission recommendation, the council shall make a decision to approve, approve with modifications or deny the application, in whole or part, based on the criteria in subsection C below. The council action shall be by ordinance.

C. Criteria.

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

Concurrent Use of Street Permit



(P) Indicates Public Hearing Required

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

1. The proposed concurrent use will not harm or inconvenience the health, safety and general welfare of the city;
2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.

Section 52. That Section 50-37.10 of Chapter 50 be amended as follows:

50-37.10. Special use or interim use permit.

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

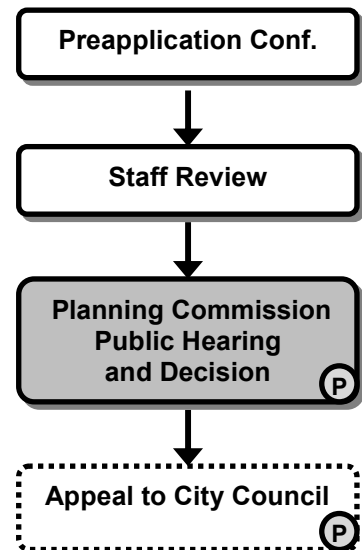
A. Applications.

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

B. Procedure.

1. The planning commission shall review the application, shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H. In the case of a special use permit, planning commission shall make, and in the case of an interim use permit, council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The commission or council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.1.P, a development agreement regarding the design, construction, and operation of the special use, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to met;
2. If the permit is approved or approved with modifications, all future use of the land and structures erected on the land pursuant to the permit shall comply with its terms and conditions. The city may require that some or all of the documents presented by the applicant in support of the application, including without limitation any site plan, landscape plan, building elevation drawings, or development agreement, be recorded as a city public document prior to the issuance of any building permit. A decision not to require recording of some or all of those documents shall not relieve the applicant or any successors or assigns in title to the property from the duty to comply with all terms and conditions of the

Special Use Permit



(P) Indicates Public Hearing Required

permit. Constructing any improvement or beginning any activity authorized by the permit shall constitute the applicant's agreement to conform to all terms and conditions of the permit;

3. The city may approve an application or approve it with modifications, with a condition that if a structure authorized by the permit is not constructed by a specified date, or if an activity authorized by the permit is not begun by a specified date, the permit shall terminate. If that condition is attached, the city shall notify the applicant and the property owner when a permit has lapsed, and that decision may be appealed pursuant to Section 50-37.1.O;

4. The city may approve an application or approve it with modifications, with a condition that abandonment of an activity authorized by a permit longer than a stated period terminates the permit, and any future reactivation of the use will require the filing and approval of a new permit application;

5. The commission may not approve or approve with modifications, a special use permit valid only for a specific period of time, but must instead recommend to council an interim use permit pursuant to subsection D below for that purpose;

6. Any approved permit shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the city;

C. Criteria for special use permits.

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

1. The application is consistent with the comprehensive land use plan;

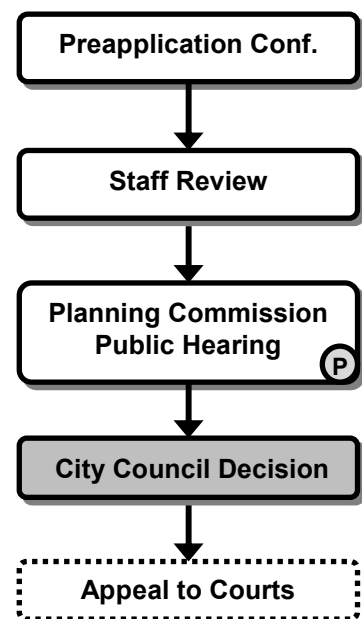
2. The application complies with all applicable provisions of this Chapter, including without limitation any use-specific standards applicable to the proposed use, development or redevelopment, and is consistent with any approved district plan for the area;

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

D. Interim use permit.

1. As an alternative to a special use permit, MSA 462.3597 authorizes the city to issue an interim use permit that authorizes a special use to exist until a specified date or until an amendment to this Chapter authorizes or prohibits that use. An applicant may apply for an interim use permit,

Interim Use Permit



(P) Indicates Public Hearing Required

and the commission may decide to recommend an interim use permit even if the application is for a special use permit;

2. An application for an interim use, or a decision to approve an interim use, shall be subject to the same procedures used for special uses, and the commission shall have all the powers described in Section 50-37.10.B.1 except that the commission shall forward a recommendation to council for action, and final approval of an interim use shall be by council resolution rather than commission action. The council may require financial security pursuant to Section 50-37.1.P to ensure that any improvements related to the interim use will be removed at the end of the interim use period;

3. An application to extend the period of an interim use permit shall be treated as major modifications of the initial permit and shall be processed pursuant to Section 50-37.1.M;

E. Criteria for interim use permits.

In addition to the criteria in subsection 50-37.10.C, the council shall only approve an interim use permit, or approve it with conditions, if it determines that:

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

2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a nonconforming use and no rights to compensation for termination of the use or for the value of any structures or improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.

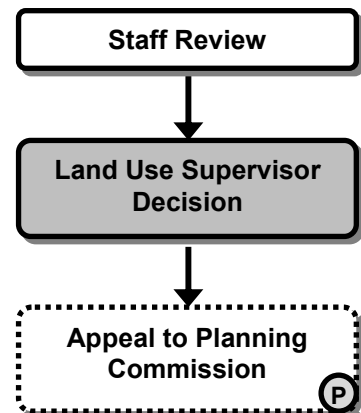
Section 53. That Section 50-37.11 of Chapter 50 be amended as follows:

50-37.11. Planning review.

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

A. Applications.

**Planning Review
General**



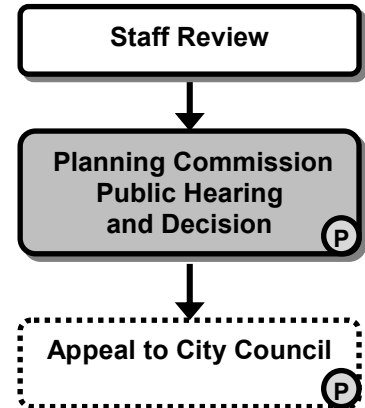
(P) Indicates Public Hearing Required

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

B. Procedure.

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

Planning Review in R-2, MU-N, MU-C, MU-I, or MU-W



(P) Indicates Public Hearing Required

C. Criteria.

The land use supervisor or planning commission shall approve the planning review or approve it with modifications, if it is determined that the application complies with all applicable provisions of this Chapter.

Section 54. That Section 50-37.12 of Chapter 50 be amended as follows:

50-37.12. Temporary or sidewalk use permit.

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

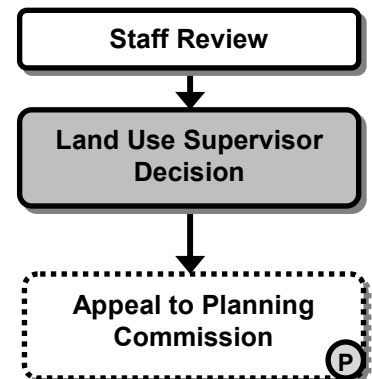
A. Application.

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

B. Procedure.

The land use supervisor shall refer the application to the city engineer for a recommendation as to whether the proposed design and location of the temporary or

Temporary or Sidewalk Use Permit



(P) Indicates Public Hearing Required

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

C. Criteria.

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

1. The city engineer has confirmed that the proposed use or structure will not hinder the safety of pedestrians, bicyclists and motor vehicle drivers near the proposed use or structure;
2. The proposed use or structure will not encroach into drive aisles, loading zones, fire lanes or parking lots;
3. The proposed use or structure will not encroach into any area located directly between any operating building entrance and the street curb (other than a building entrance intended only to serve patrons of an outside eating area);
4. The proposed use or structure will be set back at least five feet from the curb and at least five feet from all street trees and street furniture in order to allow for the free passage of pedestrians;
5. The applicant has signed an agreement with the city (a) to keep the sidewalk and street within 20 feet of the proposed use or structure free from any litter generated by the use or activity, (b) accepting all liability resulting from the proposed use or structure and holding the city harmless for any and all such liability, (c) providing liability insurance meeting city standards, and (d) determining the period of use.

Section 55. That Section 50-37.13 of Chapter 50 be amended as follows:

50-37.13. Zoning permit.

This Section applies to a variety of permits covering development, redevelopment, and natural resources protection where the land use is a permitted use and the city must confirm whether the application complies with all other applicable provisions of this Chapter. The specific permits included in this Section are summarized in Table 50-37.2-2 below.

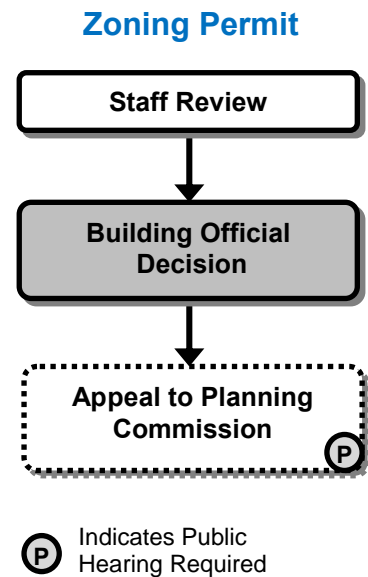
Table 50-37.13-1: Types of Zoning Permits	
Type of Permit	Primary Compliance Requirement
Shoreland Permit	Shorelands (Section 50-18.1.D)
Erosion and Sediment Control Permit	Temporary Soil and Erosion Control (Section 50-18.1.E)
Sign Permit	Signs (Section 50-27)
Fence Permit	Fences and Walls (Section 50-26.4)
Airport Environs Permit	A-O Airport Environs Overlay district (Section 50-18.2)

A. Application.

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

B. Procedure.

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



C. General criteria.

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

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

1. Shoreland permit.
No zoning permit for land containing any shoreland shown on the Natural Resources Overlay map in Section 50-18.1 may be issued until the building official has confirmed that the application complies with all applicable requirements of Section 50-18.1.D;
2. Erosion and sediment control permit (ESCP).
No land disturbance activity that requires an erosion and sediment control permit (ESCP) as indicated in Table 50-18.1.E-1 may be begin until a permit has been obtained. The building official shall refer the application to the city engineer, who shall review the plan to ensure that it complies with the requirements of section 50-18.1.E. The city engineer may require additional information and may require that any information submitted be verified by a licensed engineer, licensed surveyor or other technical professional. If the application is denied, the applicant shall be given a summary of the plan's deficiencies. The ESCP permit shall be considered expired only after all construction activities are completed and the entire site is fully stabilized with 70 percent successful establishment of vegetation;
3. Airport environs permit.
No airport environs permit shall be issued unless all of the requirements of Section 50-18.2 have been met. A permit for a tree or structure of less than 75 feet of vertical height above the ground shall not be required in the horizontal and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour or topographic features, would violate the provisions of Section 50-18.2.

Section 56. That Section 50-38.5 of Chapter 50 be amended as follows:

50-38.5. Nonconforming lots.

A. A lot that existed on November 18, 2010, and was held in separate ownership from adjoining lots on that date and does not meet the minimum lot area or frontage requirements for the zone district in which it is located may nevertheless be used for the construction of a primary structure permitted in that zone district. All other applicable dimensional standards in Article 2 and Section 50-21 apply unless the applicant obtains a variance from those dimensional standards pursuant to Section 50-37.9;

B. Nonconforming lots that are not provided with public sewer shall comply with county individual sewage treatment systems ordinance and standards. However a lot or parcel of record that was lawful as to lot area requirements and under separate ownership from any adjoining lot or parcel on May 23, 1993, shall not be deemed nonconforming as to lot area requirements unless subdivided after that date.

Section 57. That Section 50-39.2 of Chapter 50 be amended as follows:

50-39.2. Enforcement.

A. Responsibility.

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

B. Authorization for inspections.

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

1. At any time when in the opinion of the building official an actual emergency tending to create an immediate danger to public health and safety exists;

2. At any time when an inspection is requested by the owner or occupant;

C. Enforcement tools.

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

1. Order requiring compliance.
 - (a) The city may issue a written order identifying the violation(s) of this Chapter and requiring that the property owner or occupant bring the property into compliance with this Chapter, at the owner or occupant's expense, within a specified time. The notice shall state what actions are necessary to bring the property into compliance;
 - (b) The time allowed for correction shall be not less than 30 days, except that (i) if the order identifies a threat to public health or safety then a compliance shorter than 30 days may be required, and (ii) if the order involves a violation of the provisions of the Airport Overlay District or the sign regulations in Section 50-27, the time for compliance shall be ten days. In determining a reasonable time for performance the building official shall consider the nature and extent of the work involved, the season of the year, the existence of any immediate danger to public health and safety, and any other pertinent factors. The building official may extend the time for compliance in writing for good cause shown;
 - (c) The property may continue to be used for occupancy or habitation pending compliance with the order unless the notice identifies an imminent threat to public health or safety and requires that occupancy or habitation be limited or end by a certain date;
 - (d) When an order to correct a violation of this Chapter has been issued, the building official is authorized to enter and re-inspect the property subject to the order for the purpose of determining compliance with the order. The owner or occupant of the property, or the person in charge of the property, shall give free access to the property for the purpose of the inspection;
 - (e) Every occupant of property shall give the owner of the property, or his agent or employee, access to any part of the property at all reasonable times for the purpose of making repairs or alterations required to comply with the order;
 - (f) The city shall not charge a fee for inspections made in response to complaints or to confirm compliance with an order;
2. Enforcement of wireless telecommunications facility violations.
 - (a) If the city determines that the wireless telecommunication facility is a public nuisance, the building official shall notify the holder of the special use permit in writing and order the correction of the violation or removal of the facility;
 - (b) If the order requires removal of the wireless telecommunication facility the holder of the special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and facilities, from the site and restore the site to as close to its original

condition as is possible, such restoration being limited only by physical or commercial impracticability, within the deadline provided for in the order to remove. If the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so if the land use supervisor determines that the retention of those access roads would promote the purposes of this Chapter;

(c) Notwithstanding anything in this subsection to the contrary, the building official may approve a temporary extension of the order, for no more 90 days, during which time a suitable plan for the repair, sale, removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the city, and an agreement to such plan shall be executed by the holder of the special use permit and the city. If such a plan is not developed, approved and executed within the 90 day time period, then the city may exercise all available legal rights;

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

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

3. Withholding permits or approvals.

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

4. Prevention of violation.

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

5. Abatement.

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

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

documented costs of the abatement or removal with 30 days;

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

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

6. Administrative citations.

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

7. Court actions.

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

8. Nuisance abatement.

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

9. Other enforcement powers.

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

D. Notices and orders.

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

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

(a) Served personally; or

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

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

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

3. Any notice served pursuant to subsection 1 shall automatically become an

order if a written petition for a hearing is not filed with the building official within 15 days after the notice is served. An order is final unless an appeal is filed pursuant Section 50.37.1.O:

4. If the building official finds that an emergency exists that requires immediate action to protect the public health and safety, the building official may, without notice or hearing, issue an order declaring that emergency and requiring those actions that the building official deems necessary to meet the emergency notwithstanding the other provisions of this Chapter, and that order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but may file with the building official a request for a hearing following compliance with the order.

Section 58. That Section 50-41 of Chapter 50 be amended as follows:

50-41. Definitions.

Accessory agriculture roadside stand. A structure erected for the display and sale of agriculture products grown on the premises and that is subordinate to the primary residential or agricultural use of the premises.

Accessory bed and breakfast. An owner-occupied building designed as a one-family dwelling that provides no more than five guest rooms for lodging accommodations by prior arrangements for compensation. The primary residence in the building or a separate, lawfully existing building located on the same site must be occupied by the building owner on a permanent basis. It may or may not include serving of meals to guests.

Accessory boat dock, residential. A personal use boating structure, subordinate to a primary residential use of property, that is built over or floats upon the water of a lake, river, or stream, and that serves one property owner for mooring boats or as a landing place for marine transport.

Accessory caretaker quarters. A subordinate dwelling unit intended for an employee or owner who looks after or takes charge of goods or property. The unit shall be either inside or attached to a main structure by a common wall. The unit is a complete, independent living facility with provisions for cooking, eating, sanitation and sleeping.

Accessory communications tower for private use. Any structure, subordinate to a primary use of land, that is designed and constructed primarily for the purpose of supporting one or more wireless analog or digital telecommunication facilities, that is located on the ground or anchored to the ground and exceeds 24 feet in height. Such a tower may have a variety of configurations, including a monopole, a lattice tower or a guyed tower.

Accessory day care facility. A private or public establishment licensed by the state that regularly provides one or more dependents with care, training, supervision, rehabilitation or developmental guidance on a regular basis, for periods less than 24 hours a day, for gain or otherwise, as a secondary and subordinate activity to a permitted or approved special use of the property.

Accessory dwelling unit. A subordinate dwelling unit added to, created within, or detached from a single-family residence, but located on the same lot or parcel as a primary residential structure, that provides basic requirements for living, sleeping, cooking and sanitation.

Accessory heliport. An area used or intended to be used for the landing and takeoff of helicopters that is secondary and incidental to, and is operated in support of, a permitted or

approved special use on the same property, including operations facilities, such as maintenance, loading, and unloading, storage, fueling or terminal facilities.

Accessory home occupation. A business or occupation incidental and subordinate to the principal residential use. All home occupations must comply with the conditions in Section 50-20.5.F. Examples include but are not limited to: artist's studio; dressmaking; accessory beauty salon or barber shop, office of a physician or dentist for consultation or emergency treatment but not for general professional practice, lawyer, engineer, architect or accountant; teaching, with musical instruction limited to not more than two pupils at the same time. A home occupation shall not be interpreted to include accessory bed and breakfast, restaurants or tea rooms.

Accessory recycling collection point. A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper or clothing for recycling purposes conducted totally within an enclosed structure or container, and that is accessory to a permitted or approved special use in the zone district. This definition does not include processing except for can banks that crush cans as they are deposited.

Accessory sidewalk dining area. An outdoor eating and drinking area that is generally associated with and subordinate to a permitted or approved special use on the same property and that is, located on a public sidewalk. This use may include removable tables, chairs, planters, or similar features and equipment.

Accessory solar or geothermal power equipment. Accessory uses and structures that are clearly subordinate in size and use to the primary use and structure on the property, and that are used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. These structures and uses may include but are not limited to the following, and may be located at ground level or above or below ground unless specifically limited in this Chapter, provided that they meet all other applicable requirements of this Chapter: solar photovoltaic modules, solar thermal hot water collectors, solar arrays; and geothermal heat pumps, earth tubes, or downhole heat exchangers.

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

Accessory wind power equipment. A small scale accessory wind power generating or distribution system, that is clearly subordinate in size and use to the primary use and structure on the property, and that is used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. Accessory wind power equipment is designed to generate no more than 10Kw of energy.

Accessory wireless antenna attached to existing structure. Any wireless service antenna located in or on the roof or upper facade of a structure that is not a telecommunications tower, such as a building, water tower, steeple, silo or utility pole.

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Adjacent developed lots facing the same street. Where a dimensional standard is related to dimensions on “adjacent developed lots facing the same street” the measurement shall only include those lots that contain a primary structure and that share a side lot line with the subject property and shall not include corner lots where the primary structure faces a different street. If there is only one adjacent developed lot that fronts the same street, the measure shall refer only to the dimension on that lot. For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot, not as separate platted lots.

Adult entertainment establishment. See definition in Chapter 5 of the City Code.

Adult book store. See definition in Chapter 5 of the City Code.

Agriculture, general. The production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, or bees and apiary products primarily for distribution and consumption beyond the Duluth/Superior area. This use also includes wetlands, pasture, forest land, wildlife land, and other uses that depend on the inherent productivity of the land, but not include a use meeting the definition of “agriculture, urban.”

Agriculture, urban. The raising of crops and small livestock primarily for local sustenance, rather than commercial purposes, for sale and consumption within the immediate Duluth/Superior area.

Airport boundary. Those lands including the property owned by the city, state, and the United States, and their respective political subdivisions, that are used for aeronautical purposes and are contiguous with the runway and building area facilities. The Duluth International Airport boundaries are illustrated on Sheet 3, airport property map, of the approved set of airport layout plans on file in the offices of the Duluth Airport Authority. The Sky Harbor Municipal Airport boundaries are illustrated on Exhibit 50-18.2-2.

Airport elevation. The established elevation of the highest point on the usable landing area, which elevation is established to be 1,438 feet above mean sea level for Duluth International Airport and 610 feet above mean sea level for Sky Harbor Municipal Airport.

Airport hazard. Any structure, tree, or use of land that obstructs the air space required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land that is hazardous to persons or property because of its proximity to the airport.

Airport and related facilities. An area of land that is used or intended for the landing and takeoff of aircraft, and includes its buildings and facilities, if any. Accessory uses may include but are not limited to: car rental, aircraft servicing, fueling, or leasing, private aviation clubs or associations, and hotels.

Alley. A dedicated public right-of-way not more than 30 feet wide affording a secondary means of access to abutting property and not intended for general traffic circulation.

Alley line. The established side line of an alley easement.

Antenna. A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

Apartment. A part of a building consisting of a room or suite of rooms intended, designed or used as a residence by an individual or a one-family, including full cooking and bathroom facilities for individual use.

Apartment hotel. A building designed for or containing not less than 20 apartments, individual guest rooms or suites and in which may be furnished services ordinarily furnished by hotels, such as drugstores, tea room, barbershop, cigar and newsstands when such uses are

located entirely within the building with no separate entrance from the street, and having no sign or display visible from the outside of the building indicating the existence of such use.

Automobile and light vehicle sales, rental, or storage. The sale, display, lease, rental, or storage of light motor vehicles, including automobiles, vans, light trucks, light trailers, boats, and recreational vehicles. This shall not include salvage operations, scrap operations, vehicle impound yards, or commercial parking lots available for short-term use.

Automobile and light vehicle repair and service. Any building, structure, or lot used for the business of repairing automobiles and small engines or the sale and installation of tires, batteries, and other minor accessories and services for automobiles and small engines. This shall not include car washes, retail sale of automotive supplies, tires, or parts unrelated to repairs being performed on the premises, the retreading or vulcanizing of tires, filling stations, or convenience stores that sell gasoline or lubricating oil, but not other automotive accessories or services.

Average lot depth. The average of the lengths of the two side lot lines of a platted lot. In the case of flag lots (lots where the buildable portion of the lot is connected to a public street by an access or driveway 20 feet wide or less), the length of the access or driveway portion of the lot shall be ignored in measuring either side lot line.

Bank. An establishment that provides retail banking, mortgage lending, and financial services to individuals and businesses, and including check-cashing facilities. Accessory uses may include automatic teller machines, offices, and parking.

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

Bed and breakfast. A building designed as a one-family dwelling and operated as a primary use of land containing habitable units providing up to 12 guest rooms of lodging accommodations by prior arrangements, for compensation. It may or may not include serving of meals to guests and the general public, and the operator need not live inside the dwelling.

Block. An area of land enclosed by four public or dedicated private streets, or by a combination of public or dedicated private streets and a railroad right-of-way or a natural feature such as a lake shore, riverfront or stream.

Block face. All lots abutting both sides of a street (street A) between the nearest two streets that intersect street A.

Bluff. A topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

- A. Part or all of the feature is located in a shoreland area;
- B. The slope rises at least 25 feet above the Ordinary High Water level of the water body or bottom of the bluff;
- C. The grade of the slope from the toe of the bluff to the top of the bluff averages 30 percent or greater.

Bluff, bottom of. The ordinary high water level or the lower point of a horizontal ten foot segment with an average slope exceeding 18 percent.

Bluff, top of. The higher point of a horizontal ten feet segment with an average slope exceeding 18 percent.

Bluff impact zone. A bluff and land located within 20 feet of a bluff.

Bluff line. The designation of a line to administratively divide the city as above or below the escarpment for purposes of requiring stormwater detention for future development.

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Boathouse. A structure designed and used solely for the storage of boats or boating equipment and that is not used for human habitation. Any door or opening exceeding 40 inches in width in a boathouse shall face the water.

Buffer area. A strip of land with natural or planted vegetation located between a structure and a side or rear property line intended to separate and partially obstruct the view of two adjacent land uses or properties from one another. A buffer area may include any required screening for the site.

Buffer, naturally vegetative. Land that is used to protect adjacent lands and waters from development and more intensive land uses. The land is kept in a natural state of trees, shrubs, and low ground cover and understory of plants and functions to filter runoff, control sediment and nutrient movement, and protect fish and wildlife habitat.

Build-to zone. The maximum horizontal distance, or a range of maximum horizontal distances, between a front lot line and a building or structure required by this Chapter.

Building. Any structure designed or built for the support, enclosure, shelter or protection of persons, animals, chattels or property of any kind, and when separated by party or division walls without openings, each portion of such building so separated shall be deemed a separate building.

Building material sales. An establishment engaged in the storage, distribution, and sale of building materials such as lumber, brick, tile, cement, insulation, floor covering, lighting, plumbing supplies, electrical supplies, cabinetry and roofing materials. Accessory uses may include repair or delivery services and outside sale of plants and gardening supplies.

Bulk storage not listed elsewhere. An establishment engaged in the storage of oils, lubricants, grains, mineral products or other commodities not listed separately as specific types of warehousing, wholesaling or storage.

Bus or rail transit station. A facility or structure where bus transit or rail transit vehicles stop to provide transportation services to the public. Accessory uses can include convenience retail or restaurants.

Business, art, or vocational school. A school, other than a college, that provides specialized training and education beyond the high school level, principally in the business, commercial or vocational arts, that does not provide lodging or dwelling units for students or faculty, and that has programs that typically result in the awarding of a certificate.

Business park support activities. An establishment primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing, consulting services, protective services, equipment rental, leasing and financial services. Uses must be incidental to and supportive of business park uses and shall not include activities that are primarily retail in nature and devoted to the sale of consumer goods.

Cemetery or mausoleum. Land used or dedicated to the burial of the dead or the storage of cremated remains in a columbaria, and including necessary sales and maintenance facilities.

Channel. A natural or artificial depression of perceptible extent with a definite bed and banks to confine and conduct flowing water either continuously or periodically.

Club or lodge (private). A building or portion of a building or premises owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit or to render a service that is customarily carried on as a business. This category includes fraternities and sororities.

Co-housing facility. A residential development that combines individual owned dwelling units with smaller or partial kitchens and a larger community kitchen and dining room intended

for communal use on a regular basis, and in which all residents agree to share in the provision of regular communal services such as cooking meals or providing child care.

Co-location. The use of an existing tower or structure to support antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonably short time frame after the new tower is constructed.

Coldwater river. Rivers including trout streams and their tributaries.

Commercial impracticability or commercially impracticable. The inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercial impracticable and shall not render an act or the terms of an agreement commercially impracticable.

Common open space. A portion of a development permanently set aside to preserve elements of the natural landscape for public or private use, which will not be developed or subdivided and is either owned in common by the individual owners in the development or by a permanently established management entity. Common open space does not include the area within 25 feet of any structure, any impervious surface, or the area between buildings within an individual cluster of buildings when the development is designed using clustered compact lots or clustered units or sites to create and preserve green space, such as in a conservation subdivision, planned unit development, or resort.

Common plan of development or sale. A contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan. For redevelopment projects, contiguous includes parcels separated by a right-of-way.

Composting. The controlled microbial degradation of organic waste to yield a humus-like product.

Confined animal feeding operation. A facility, area, or place where the feeding of livestock, poultry, pigs, or small animals takes place for commercial purposes in lots, pens, ponds, sheds or buildings where food is supplied primarily by means other than grazing, foraging, or other natural means.

Construction debris. Waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition of buildings and roads.

Contractor's shop and storage yard. A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials and facilities customarily required in the building trade by a construction contractor. This definition includes architects, engineers, surveyors' construction offices and shops, real estate sign placement service, and showroom and shops for the display and sale of electrical, plumbing, heating, air conditioning, sheet metal and other material in connection with contracting services.

Convention or event center. A facility specially designed to host conferences, exhibitions, events, large meetings, seminars and training facilities, which may be associated with a hotel or motel.

Critical root radius. An area around a tree measured with a radius of one foot for every in. diameter of the tree, which is generally the area of soil that must remain undisturbed to ensure long-term viability of the tree.

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Cutoff angle. For purposes of exterior lighting regulations, the angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from the light source above from which no light is emitted.

Data center. An establishment primarily involved in the compiling, storage, conversion or analysis and maintenance of documents, records, and other types of information in digital form.

Day care facility. A facility that provides accommodations for persons of any age who receive custodial care for less than 24 hours by individual other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for.

Decorative fence. A powder coated steel fence, solid core ornamental fence, decorative wood fence, or fence of similar construction or appearance, but not including a snow fence, chain link or highway guard rail.

Demolition debris. Solid waste resulting from the demolition of buildings, roads and other man-made structures including concrete, brick, bituminous concrete, untreated wood, masonry, glass, trees, rock and plastic building parts. It does not include asbestos wastes, appliances, furniture or household refuse.

Dense urban screen. Continuous screening wall, berm, fence, or row of planting at least six feet tall, with screening material designed to provide 75 percent opacity one year after planting along the full required height and length of the screening buffer.

Design storm. A rainfall event used in the analysis and design of drainage facilities.

Detention. The temporary storage of drainage water.

Deteriorated. A building or component of a building shall be deemed to have deteriorated when its function has been so impaired by natural forces including but not limited to weathering or decay that it needs to be replaced to restore its functionality.

Developable area. All land within a zone district not occupied by streets and public rights-of-way.

Development. The construction of a building or structure, any clearing, grading, excavation or other movement of land, or the division of a parcel of land into two or more parcels.

Diameter at breast height (DBH). The primary method of measuring the diameter of a tree trunk. Diameter is measured in inches 54 inches above the ground. If the tree splits into multiple trunks at a height below 54 inches, but above the ground, the diameter is measured at the highest point beneath the split.

Direct illumination. Illumination by light sources that are effectively visible, either directly or through a translucent material, as a part of the sign and illuminating outward.

Discharge. The discharge of any pollutant into the waters of the state from any point source.

Discharge rate. The rate at which drainage water is released from a specific site and expressed as a volume per unit of time, such as cubic feet per second.

District. Any section of the city within which the zoning regulations are uniform.

DNR. Minnesota department of natural resources.

Drainage basin. The tributary area through which drainage water is collected, regulated, transported and discharged to receiving waters.

Drainage system. Any system that conveys stormwater or surface water including sewers culverts, ditches, and swales.

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Drainage water. Stormwater, snow melt, surface and irrigation water, water from footing drains and sump pumps or other drains approved by the city.

Drip line. A vertical line extending from the outermost edge of a tree's canopy to the ground.

Dry cleaning or laundry plant. An establishment where laundry or dry cleaning is performed in bulk and primarily for commercial and institutional customers. This use does not include facilities where the public drops off or picks up dry cleaning or laundry that is cleaned off-site.

Dwelling. Any building or portion of a building that is designed for or used for residential purposes and that either (a) has a minimum width of 20 feet, or (b) has a principal entrance facing the front lot line.

Dwelling unit. A habitable unit in a dwelling providing sleeping, cooking, eating, living and sanitation facilities designed for and occupied by one family only, occupied by the owner or by another family for periods of occupancy exceeding one week, and that is physically separated from any other habitable unit that may be located in the same building.

Dwelling unit, efficiency. A dwelling unit consisting of one principal room, exclusive of bathroom, kitchen, hallway, closets or dining alcove directly off the principal room, providing that such dining alcove does not exceed 125 square feet in area.

Dwelling, live-work. A dwelling unit containing an integrated living and working space that is intended to function predominately as business workspace with incidental residential use. The unit typically has a store-front, with the workspace, public display area, or showroom on the ground floor of the unit and the majority of the residence located either on the upper floor if there are two floors, or the back of the unit if there is only one floor.

Dwelling, multi-family. A building containing three or more dwelling units that is not a townhouse.

Dwelling, one-family. A building containing one dwelling unit designed for exclusive occupancy by one family and occupied exclusively by one family, having a minimum outside width of 20 feet measured at its narrowest point and placed on a permanent foundation that complies with the State Building Code. This definition includes a manufactured or modular home that meets this definition and the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sections 5401 et. seq.).

Dwelling, townhouse. A structure containing three to eight dwelling units each sharing two vertical party or division walls, except that each end unit will have a single party or division wall, with no dwelling units sharing a common horizontal surface.

Dwelling, two-family. A building containing two dwelling units designed for exclusive occupancy by two families and occupied exclusively by two families.

Electric power or heat generation plant. A facility or area that generates electricity from mechanical power produced by the firing of fossil fuels, or that produces heat or steam for space heating and other similar uses.

Electric power transmission line or substation. A conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of more than 46 kilovolts and less than 200 kilovolts. Associated facilities shall include insulators, towers and terminals operating at a nominal voltage greater than 46 kilovolts and less than 200 kilovolts, as well as substations related to those facilities.

Elevation (flood). In the context of flood related regulation, that elevation above mean sea level referenced in the National Geodetic Datum of 1929.

Encroachment lines. In the context of flood related regulation, the lateral limits or lines drawn along each side and generally parallel to a stream or another body of water, which delineates the floodway and within which the flood carrying capacity of the stream or other body of water is to be preserved. Their location, if along a stream, should be such that the floodway between them will effectively carry and discharge a flood not less than the regional flood.

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

Erosion. Any process that wears away the surface of the land by the action of water, wind, ice or gravity. Erosion can be accelerated by the activities of man and nature.

Erosion and sediment control plan. A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

Erosion and sedimentation practice specifications, or practice. The management procedures, techniques and methods adopted by the city to adequately and effectively control soil erosion and sedimentation incident to land disturbing activity within the city. The specifications are primarily based upon the MPCA handbook entitled *Protecting Water Quality in Urban Areas*, published in October of 1989, but may be varied on a case by case basis to effectively control erosion and sedimentation.

Established residential neighborhood in a built up urban area (ERN BUUA). In the context of airport regulation, an area that, if it existed on or before January 1, 1978 (for low density structures and lots) and an area that, if it existed on or before July 2, 1979 (for all other land uses) shall be considered a conforming use that shall not be prohibited except as provided in this Chapter. The following criteria shall be applied and considered in determining what constitutes an ERN BUUA:

- A. Location of the airport;
- B. Nature of the terrain within safety zones A and B;
- C. Existing land uses and character of the neighborhood around the airport;
- D. Population of the community;
- E. That the average population density in all areas within one mile of any point on a runway shall be equal to or greater than one dwelling unit per acre;
- F. Population density near the airport compared with population density in other areas of the community;
- G. The age, and the economic, political, and social stability of the neighborhood and the community as a whole;
- H. The proximity of supporting school, commercial, religious, transportation and other facilities, and their degree of integration with residential land uses;
- I. Presence or absence of public utilities including, but not limited to, public sanitary sewer system, electric service and gas mains;
- J. Whether or not the factors listed in subparagraphs H and I above tend to make the community surrounding the airport a self sufficient unit;
- K. Whether the areas within one mile of the perimeter of the airport property would be considered primarily residential in character;
- L. Other material factors deemed relevant in distinguishing the area in question as established, residential, urban, and built up.

Excepted parcel (airport overlay). In the context of airport regulation, any parcel of land exempted from any or all of the regulations imposed by Section 50-18.2, Airport Overlay, because the joint airport zoning board determines that the otherwise applicable requirements or proscriptions are not reasonably necessary to effectuate the purposes of Section 50-18.2 by reason of flying operations expected to be conducted, the location of the airport, the nature of the terrain within the airport hazard area, existing land uses and character of the neighborhood around the airport, the uses to which the property to be zoned are planned and adaptable and the social and economic costs of restricting land uses versus benefits derived from application of Section 50-18.2, as authorized by MSA 360.066, subd. 1.

Expression line. A decorative, three-dimensional, linear element, horizontal or vertical, protruding or indented at least one inch from the exterior facade of a building and extending the length or height of the building with minimal interruptions from doors and windows. This element typically delineates the floors or stories of a building.

FAA. The federal aviation administration or its duly designated and authorized successor agency.

Family. One or more persons related by blood, marriage or adoption, including foster children, and in addition to and including five other unrelated persons occupying a dwelling and living as a single housekeeping unit.

FCC. The federal communications commission or its duly designated and authorized successor agency.

Filling station. A building, structure or land used primarily for the dispensing, sale or offering for sale at retail of any automobile fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories but not including major repair work such as motor replacement, body and fender repair or spray painting. This use may include the retail sales of convenience goods.

Flood. A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

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

Flood fringe. That portion of the flood plain outside of the floodway. Flood fringe is synonymous with "floodway fringe."

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

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

Flood plain. The beds proper and the areas adjoining a wetland, lake, or watercourse that have been or may in the future be covered by a regional flood.

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

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

Flood protection elevation. An elevation corresponding with a point not less than two feet above the water surface profile associated with the regional flood plus any increases in flood stages attributable to encroachments on the flood plain.

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Floodway. The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain that are reasonably required to carry and store the regional flood discharge.

Food processing. The sorting, treatment, or preparation of food products for sale or as inputs to further processing, but not including the slaughtering of small or large livestock or confined animal feeding operations. Examples include: creamery operations and poultry processing.

Forest management. Tree removal from a predominantly forested area with the intent of maintaining forest cover and not resulting in conversion to non-forest, such as grassy fields or pavement. Clearcuts constitute forest management as long as tree cover returns by planting or natural regeneration.

Frontage. All the property on one side of a street between two streets that intersect such street (crossing or terminating), measured along the line of the street, or if the street is dead ended, then all of the property abutting on one between a street that intersects such street and the dead end of the street.

Funeral home or crematorium. An establishment providing services such as preparing the human dead for burial, cremating human remains, and arranging and managing funerals. This use does not include cemeteries and columbaria.

Garage, private. An accessory building designed or used for the storage only of not more than four motor driven vehicles. Not more than one of the vehicles may be a commercial vehicle, and that vehicle shall not exceed a two ton capacity.

Garden material sales. An establishment engaged in the storage, distribution, and sale of garden materials, including a green house used to raise flowers, shrubs and plant for sale. Accessory uses may include delivery services.

General development waters. Includes lakes that are generally large, deep lakes or lakes of varying sizes and depths with high levels and mixes of existing development at the time of the original classification. These lakes often are extensively used for recreation. General development rivers include agriculture and urban rivers. This class has a wide variety of existing land and recreational land use characteristics.

General flood plain. The area within a flood plain that is not in a floodway or flood fringe.

Golf course. A tract of land laid out with at least 9 holes for playing the game of golf and improved with tees, greens, fairways and hazards. This use does not include a miniature golf course. A golf course may include a driving range, clubhouse, restaurant, putting and chipping greens, maintenance facilities, and shelters as accessory uses.

Government building or public safety facility. A building or facility housing the offices or operations of a department or agency of the city, county, state, or federal government, or a quasi-governmental, including but not limited to a building or facility that provides fire protection, police protection, or emergency medical services (not including a hospital or medical or dental clinic), together with incidental storage and maintenance of necessary vehicles.

Grade. A. For buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street;

B. For buildings having walls adjoining more than one street, the average of the elevations of the sidewalk at the centers of all walls adjoining the streets;

C. For buildings having no wall adjoining a street, the average level of the finished surface of the ground adjacent to the exterior walls of the building;

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D. Any wall approximately parallel to and not more than 15 feet from a street line is to be considered as adjoining the street. Where sidewalks do not exist the grade shall be as established by the office of the city engineer.

Grocery store. A retail sales establishment selling primarily food and beverages for off-site preparation and consumption that maintains a sizable inventory of fresh fruits, vegetables, fresh-cut meats, or fresh seafood or specialize in the sale of one type of food item. This use may also include sales of personal convenience and small household goods.

A. A small grocery store is one that contains less than 50,000 square feet of gross floor area;

B. A large grocery store is one that contains 50,000 square feet or more of gross floor area.

Groundwater management area. A geographically defined area that may be particularly sensitive in terms of groundwater quantity or quality by nature of the use or movement of groundwater, or the relationship between groundwater and surface water, and where special management measures are deemed necessary to protect groundwater and surface water resources.

Groundwater recharge volume. The portion of the water quality volume used to maintain groundwater recharge rates at development sites.

Habitable room. Any room used or intended to be used for sleeping, cooking, living or eating purposes, excluding such enclosed spaces as closets, pantries, bath or toilet facilities, service rooms, corridors, laundries, unfinished attics, foyers, storage space, utility rooms or similar spaces.

Habitable unit. Any habitable room or group of habitable rooms that provide sleeping facilities alone or in combination with required cooking, eating or living facilities.

Hardship. The property in question cannot be put to reasonable use under existing regulations and the plight of the landowner is due to circumstances unique to the property and not created by the landowner. Economic considerations alone shall not constitute a hardship.

Hazardous waste. Any refuse, sludge or other waste material or combinations of refuse, sludge or other waste material in solid, semisolid, liquid or contained gaseous form that because of its quality, concentration, or chemical, physical or infectious characteristics may:

A. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

B. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants and corrosives. Hazardous waste does not include: source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Height of building. The vertical distance at the center of the principal front of a building, measured from the grade on that front to the highest point of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable or of a mean height level between eaves and hip or gambrel roof.

Height of tower or structure. The vertical distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.

Height of wall or fence. The vertical distance measured from finished grade on the highest side of the fence or wall to the top of the fence or wall.

Historic preservation district. A contiguous collection or group of lands, parcels, sites, structures, buildings or objects that is determined to be historically, culturally or architecturally significant as a whole and has been locally designated as a historic preservation district pursuant to Section 50-18.3 of this Chapter.

Historic preservation guidelines. The established criteria by which any proposed changes, including architectural or site modifications to a designated historic preservation district or landmark shall be judged.

Historic preservation landmark. Any individual property, parcel, place, building, structure, work of art or other object that has been determined to be historically, culturally or architecturally significant and has been locally designated as a historic preservation landmark pursuant to Section 50-18.3 of this Chapter.

Hotel or motel. A building or series of buildings operated as a commercial establishment providing accommodations to the transient traveling public in habitable units for compensation, and including both short-stay and extended stay facilities, and that may offer customarily incidental services.

Hospital. An institution or place where sick or injured in-patients are given medical or surgical care, at either public or private expense, but excluding a nursing home and excluding institutions where persons suffering from permanent types of illness, injury, deformity or deficiency or age are given care and treatment on a prolonged or permanent basis.

Impaired waters. Those streams, rivers and lakes that currently do not meet their designated use classification and associated water quality standards under the federal Clean Water Act.

Impervious surface. A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities or at an increased rate than prior to development. Examples include but are not limited to: conventional roofs, concrete/bituminous surfaces, stone pavers and gravel surfaces.

Indirect illumination. Illumination that is derived from light sources that are not visible to intended viewers of the sign but which illuminate the sign by being directed at the sign's reflective face.

Indoor entertainment facility. A facility providing entertainment or recreation activities where all activities take place within enclosed structures, but not including a theater or a convention or event center. Examples include but are not limited to: bowling alleys, trampoline centers, video arcades, climbing wall centers, paintball or laser tag centers.

Industrial services. A facility or area where industrial services such as heating, ventilation, cooking and refrigeration supplies, motion picture production, plumbing supplies, printing and photocopying, publishing, engraving, exposition building or center, and other uses designed to support industrial or heavy commercial activities in the vicinity, provided that such services are not listed separately as a permitted of special use in this Chapter.

Industrial stormwater permit. A national pollutant discharge elimination system (NPDES) permit issued to a commercial industry or group of industries that regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

Industrial use. The use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities or other wholesale items.

Infill development. Land development that occurs within designated areas based on local land use, watershed, or utility plans where the surrounding area is generally developed, and where the site or area is either vacant or has previously been used for another purpose.

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Infiltration. The process of percolating stormwater into the subsoil.

Infiltration facility. Any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

Institution. An established organization or foundation, especially one dedicated to education, medicine, public service, or culture, or an organization founded for a specific purpose, such as a hospital, synagogue, college, service club, or charitable entity.

Institutional support use. An establishment primarily engaged in rendering services to institutions on a fee or contract basis, such as advertising and mailing, consulting services, protective services, equipment rental, leasing and financial services. Uses must be incidental to and supportive of institutional uses and shall not include activities that are primarily retail in nature and devoted to the sale of consumer goods.

Junk or salvage service. A facility or area for storing, keeping, selling, dismantling or salvaging scrap or discarded material or equipment, including ore and elevators. The term "scrap or discarded materials" includes but is not limited to metal, paper, rags, tires, bottles or inoperable or wrecked motor vehicles, motor vehicle parts, machinery, structural steel, equipment and appliances. This definition includes indoor facilities for recycling recoverable resources, such as newspapers, magazines, books and other paper products, glass, metal cans and other products, to return such products to a condition in which they may again be used for production.

Jurisdictional wetland. An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Kennel. Any facility, public or private, where domesticated animals are temporarily boarded, groomed, and sold for compensation, including animal day care/spa facilities, but not including zoos or veterinary hospitals. This use also includes public facilities for the temporary impoundment of animals.

Land development. A human-made change to, or construction on, the land surface that changes its runoff characteristics.

Land disturbing activity. Land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands of or downstream of the city, including clearing, grading, excavating, transporting and filling of land. Land disturbing activity does not include:

A. Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

B. Construction, installation and maintenance of electric, telephone and cable television utility lines or individual service connection to these utilities;

C. Installation of septic tank lines or drainage fields unless included in an overall plan for a land disturbance activity relating to construction of a building to be served by the septic tank system;

D. Tilling, planting or harvesting of agricultural, horticultural or silviculture crops;

E. Installation of fence, sign, telephone and electric poles and other kinds of posts or poles;

F. Emergency work to protect life, limb or property and emergency repairs, except if the land disturbing activity would have required an approved erosion and sediment

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control plan except for the emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of Section 50-18.1.E.

Landing area. The area of the airport used for the landing, taking off, or taxiing of aircraft.

Land owner. The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Landscape plan. An accurate scale drawing that indicates the major natural features of a site and all proposed buildings, structures and site improvements in sufficient detail to allow the evaluation of impacts on natural systems and other aspects of the development.

Laundromat. An establishment providing home type (large institutional or commercial type) washing, drying or ironing machines for use on the premises.

Link. For purposes of the connectivity index described in Section 50-23.3, links are stretches of road that connect "nodes" as defined below. Street stub-outs are considered as links, but temporary dead-end streets internal to a development, private streets in gated sections or alleys shall not be counted as links. Every road segment that connects a node in the development to the external street network shall be counted as a link in the index calculation.

Loading space. A space within the principal building or on the same lot as the principal, providing for the off street standing, loading or unloading of trucks and trailers.

Local watershed. All the water that drains to a natural waterway located primarily within the city.

Lot. Land occupied or intended for occupancy by a use permitted in this Chapter, including one main building together with its accessory buildings, and the yards and parking spaces required by this Chapter, and having its principal frontage upon a street or upon an officially approved place. For the purposes of this Chapter, the term "lot" may include two or more lots of record that are contiguous or separated only by a public easement not exceeding 25 feet in width, are owned by the same owner and where none of the parcels can be severed or legally sold, conveyed or used without the other parcels by virtues of a legally binding agreement that runs with the land and is recorded in the office of the county recorder. If at any time any parcel that had been recognized as part of any lot by reason of such proximity, ownership and agreement are severed, legally sold, conveyed or used separately from the other parcel or parcels making up said lot, the parcel so severed, legally sold, conveyed or used shall henceforth not be considered part of the lot, any uses relying on its status as part of the lot shall become nonconforming and the provision of Section 50-39 shall not be applicable to any such use.

Lot, corner. A lot abutting upon two or more streets at their intersection.

Lot, double frontage. A lot having a frontage on two streets as distinguished from a corner lot.

Lot, flag. A lot so shaped and designed that the main building site is setback from the street and that portion of the lot providing access has a width less than 25 percent of the lot width at its greatest point.

Lot, front. The area of a lot that abuts a public street is the front of the lot. For corner lots, the shortest side fronting upon a street shall be considered the front of the lot unless structures exist on the lot. In that case, the frontage shall be established by the orientation of the buildings, or of the principle entrance if building orientation does not clearly indicate lot frontage. For corner lots, where no other method determines conclusively the front of a lot, the

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city engineer shall select one frontage on the basis of traffic flow on adjacent streets, so that the lot is considered to front on the street with the greatest traffic flow.

Lot frontage. Frontage shall be the dimension of the lot line at the street, except where the lot line at the street is not straight, in which case the frontage shall be the dimension across the lot at the required front yard line.

Lot of record. A parcel of land that is part of a subdivision, the map of which has been recorded by the county recorder or a parcel of land described by metes and bounds the description of which has been recorded by the county recorder.

Lots on the block face. When a dimensional standard is calculated based on a dimension measured for "lots on the block face" the measurement shall apply only to (a) developed lots on the same side of the street between the next two intervening side streets, and (b) lots that face developed streets (not to streets shown on a plat or map that have not been constructed). For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot (not as separate platted lots).

Low density residential lot. A single lot located in an area that is zoned for one-family or two-family residences and in which the predominant land use is such type of residences.

Low density residential structure. A one-family or two-family home.

Lowest floor. The lowermost floor of the lowest enclosed area, including basement and crawl space. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement or crawl space area, is not considered a building's lowest floor.

Maintenance agreement. A legally recorded document that acts as a property deed restriction, and that provides for long-term maintenance of stormwater BMPs.

Major system. In the context of stormwater management, one of the 42 major watercourses, or tributaries, as described by the Urban Study for Duluth Area Stormwater Flooding March 1976. Includes Lester/Amity Creeks, Tischer Creek, Brewery, Oregon, Miller, Coffee, Kingsbury, Knowlton, Stewart, Sargent, Mission, Buckingham, Chester and other systems as designated by the city.

Manufacturing, light. A facility or area used for the assembly, fabrication, or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outside operations or storage of goods and materials used in the assembly, fabrication, or processing does not exceed 25 percent of the floor area of buildings on the lot. Examples include but are not limited to: food processing, electronic equipment assembly and manufacturing and assembly from finished products.

Manufacturing, heavy. An establishment or use of land that includes the assembly, fabrication, or processing of goods and materials using processes that ordinarily have impacts on the environment or significant impacts on the use and enjoyment of surrounding properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards, or any use where the area occupied by outside storage of goods and materials used in the assembly, fabrication, or processing exceeds 25 percent of the floor area of buildings on the lot. Examples include but are not limited to: battery, chemicals, machinery, and plastics manufacture; mushroom plant; batching plant; beverage bottling and distribution, packaging plant; slaughterhouse; and rendering plant. This use does not include any use that meets the definition of "light manufacturing" or "hazardous or special manufacturing", or a solid waste disposal site, or a yard waste compost facility, and does not include any use that constitutes a public nuisance.

Manufacturing, hazardous or special. An establishment or business that uses hazardous inputs or creates hazardous by-products in the course of manufacturing, assembly, fabrication, or materials treatment, or that uses manufacturing, assembly, fabrication, or treatment processes that create potentially hazardous impacts on the environment or surrounding areas. Examples include but are not limited to: acid manufacture; acid bulk storage; cement, lime, gypsum or plaster of paris manufacture; central concrete mixing or concrete proportioning plant; distillation, manufacture or refining of bones, coal or tar asphalt; explosives, manufacture or storage; fat, grease, lard or tallow rendering or refining; fertilizer manufacture from organic matter; glue or size manufacture; paper manufacture; petroleum or asphalt refining or storage; smelting of tin, copper, zinc or iron ores; storage or processing raw hides or fur; and stockyards or slaughter of animals other than poultry.

Marina or yacht club. A facility or area for storing, servicing, fueling, berthing, securing, and launching of private pleasure craft that may include the sale of fuel and incidental supplies for the boat owners, crews and guests. Accessory uses may include restaurants and bars.

Maximum extent practicable (MEP). The statutory standard (33 U.S.C. 1342(p)(3)(B)(iii)) that establishes the level of pollutant reductions that an Owner or Operator of Regulated MS4s must achieve. The USEPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent MEP may be different for each Small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies. Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The USEPA envisions application of the MEP standard as an iterative process.

Medical or dental clinic. An establishment where patients who are not lodged overnight are admitted for examination and treatment by a group of licensed health care practitioners, dentists, or licensed health care practitioners and dentists in practice together.

Migratory bird flight path. The zone of jurisdictional land located from the Lake Superior and Saint Louis River shorelines to no less than two miles inland or where Skyline Parkway runs parallel to the shoreline, an area from the shoreline to Skyline Parkway or two miles inland, whichever is greater.

Mining, extraction and storage. The extraction, removal or the processing of sand, clay, loam, gravel, rock, top soil or fill materials (exclusive of sod) for commercial purposes, except as a necessary incident to any construction on the premises.

Mini-storage facility. A building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual, compartmentalized and controlled access units or lockers.

Minor system. Those other city drainage systems that empty into the major system, which mainly consists of storm sewer, culverts and smaller open channel sections such as swales and small ditches.

Minor utilities. A piece or system of service equipment or infrastructure that is necessary to support development within the immediate vicinity and that involves only small structures. Employees typically are not located at the site on an ongoing basis. Examples include but are not limited to: electric transformer stations, gas regulator stations, telephone exchange buildings, cable equipment boxes, district power distribution lines, electric utility boxes, and well, water and sewer pumping stations.

Modify or modification. When used in the context of wireless telecommunications facility, the addition, removal or change of any of the physical and visually discernable

components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access and parking. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co-location is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything, nor does it include upgrades or changeouts of equipment or antennas where the replacement is of similar size and appearance.

Motor vehicle. Any self propelled vehicle designed primarily for transportation of person or goods. It does not include an electric personal wheelchair.

Municipal separate storm sewer system (MS4). A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains):

A. Owned or operated by a state, city, town, borough, county, parish, district, association or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial water, stormwater or other wastes. Including special district, or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under Section 208 of the CWA (33 U. S. C.1288) that discharges to waters of the United States;

B. Designed or used for collecting or conveying stormwater;

C. That is not a combined sewer; and

D. That is not part of a publicly owned treatment works (POTW) as defined in 40 CFR 122.2.

MPCA. Minnesota pollution control agency.

Museum, library, or art gallery. A facility or area that is open to the public and is intended for the acquisition, preservation, study, and exhibition of works of artistic, historical or scientific value.

Nameplate. An accessory sign containing only the name of the occupant of a dwelling and an occupation permitted in that zone district.

National register of historic places. The nation's official list of properties worthy of preservation designated by the United States department of the interior, national park service.

Natural environment waters. Include rivers that are forest previously classified remote, forest, transitional river segments, and tributary river segments that flow into natural environment lakes. The types and intensities of recreational uses within this class vary widely.

Natural resource inventory. An inventory that identifies and maps the critical natural resources on a site, including the following resources: existing land cover of vegetative types; streams; wetlands; lakes; significant, sensitive, threatened, or endangered species; critical wildlife habitat; soil types; geologic hazards (floodplains, unstable slopes, highly erodible soils); and mineral resources.

Natural state. Where vegetation exists in a wild state, where the condition of the ground and shrub layers and floristic composition of the plant community is substantially unaltered by humans, where restoration has been consistent with Commissioner 525 Guidelines or local government approved plans, or where the vegetation has been unaltered for at least one growing season.

Navigable airspace. Airspace at and above the minimum flight altitudes prescribed in the FARs including airspace needed for safe takeoff and landing (refer to FAR Part 77 and 91).

NIER. Non-ionizing electromagnetic radiation.

Node. For purposes of the connectivity index described in Section 50-23.3, a node exists at each street intersection and cul-de-sac head within the development subject to the connectivity index.

Nonconforming use. Any building or land lawfully occupied by a use at the time of passage of this Chapter or an amendment to this Chapter that does not conform after the passage of this Chapter or amendment to this Chapter with the use regulations of the district in which it is situated.

Nonpoint source pollution. Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include but not be limited to pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Nonprecision instrument runway. A runway having an existing or planned straight-in instrument approach procedure utilizing air navigation facilities with only horizontal guidance, and for which no precision approach facilities are planned or indicated on an approved planning document.

Non-structural measure. When used in the context of stormwater control, a stormwater control and treatment technique that uses natural processes, restoration or enhancement of natural systems, or design approaches to control runoff or reduce pollutant levels. Such measures are used in lieu of or to supplement structural practices on a land development site. Non-structural measures include but are not limited to: minimization or disconnection of impervious surfaces; development design that reduces the rate and volume of runoff; restoration or enhancement of natural areas such as riparian areas, wetlands, and forests; and on-lot practices such as rain barrels, cisterns, and vegetated areas that intercept roof and driveway runoff.

NPDES. National pollution discharge elimination system.

Nursing home. Licensed facilities primarily engaged in providing shelter, food and intermediate or long term nursing and health related care for individuals, including assisted living facilities, but not including hospitals, clinics or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured.

Obstruction. In the context of flood protection, any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure or matter in, along, across or projecting into any channel, watercourse or regulatory flood plain that may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

Office. A facility where business or philanthropic activities are conducted in an office environment. Examples include but are not limited to: administration of business, civic, religious, or charitable organizations, financial services processing, and radio or television broadcasting stations or studio.

Off-site facility. As used in stormwater management, a stormwater best management practice located outside the subject property boundary described in the permit application for land development activity.

On-site facility. As used in stormwater management, a stormwater best management practice located within the subject property boundary described in the permit application for land development activity.

Ordinary high water mark. A mark delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary

high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

Outdoor entertainment or recreation use. An outdoor facility whose main purpose is to provide entertainment or recreation, with or without charge, including amusement parks, batting cages, drive-in theatres, golf driving ranges, miniature golf courses, go-cart tracks, target sport ranges, skating rinks, skateboard parks, swimming pools, tennis courts, sports courts, water parks, zoological parks and similar uses, but not including auto or horse race tracks.

Owner. In the context of stormwater management, the owner or owners of the freehold or a lesser estate of a premises, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a piece of land. Owner also refers to, in the appropriate context: (a) any other person authorized to act as the agent for the owner, (b) any person who submits a stormwater management concept or design plan for approval or requests issuance of a permit, when required, authorizing land development to commence, and (c) any person responsible for complying with an approved stormwater management design plan.

Park, playground or forest reserve. A facility or area for recreational, cultural, or aesthetic use owned or operated by a public or quasi-public agency and available to the general public. This definition may include but is not limited to: parks, public lawns, active and passive recreation areas, playgrounds, water courses and wooded areas. Facilities may also include fountains, swimming pools, pavilions and similar public facilities within their boundaries.

Parking area. An open unoccupied space used or required for use for parking of motor vehicles exclusively and in which no gasoline or vehicular accessories are sold or no other business is conducted and no fees are charged.

Parking structure. A structure designed to accommodate vehicular parking spaces that are fully or partially enclosed or located on the deck surface of a building. This definition includes parking garages, deck parking, and underground or under-building parking areas.

Parking lot. An off-street area used for the temporary storage of operable and street legal motor vehicles. Includes parking spaces, aisles, drives and landscaped areas, and provides vehicular access to public street.

Parking space. An off-street space available for the parking of one motor vehicle.

Patterned wall. Walls with a patterned or textured look to mimic stone or similar design or patterned to create reveals and shadow lines. No blank concrete or wood timber walls shall be permitted.

Permanent stormwater best management practice (BMP). A stormwater best management practice (BMP) that will be operational after the construction phase of a project and that is designed to become a permanent part of the site for the purposes of managing stormwater runoff.

Personal services and repair (small). An establishment containing less than 10,000 square feet of gross floor area and generally having no more than ten employees on site at one time, that is engaged in the provision of informational, instructional, personal improvement, personal care, and similar services. Examples include but are not limited to: catering establishments, custom dressmaking, film processing, garment printing and embroidering, licensed massage salons, optical and optician services, real estate sign placement service, service and repair establishments, sun tan centers, bicycle rental, small craft rental, tailor shops, and laundromats.

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Personal services and repair (large). An establishment, containing 10,000 square feet of gross floor area and generally having more than 10 employees on site at one time, that is engaged in the provision of informational, instructional, personal improvement, personal care, and similar services.

Personal wireless facility. See wireless telecommunications facilities.

Personal wireless service or PWS. This term, which is sometimes also referred to as "personal telecommunications service" or "PCS," shall have the same meaning as defined and used in the 1996 Federal Telecommunications Act.

Place. An open, unoccupied space or thoroughfare other than a street or alley permanently reserved as a principal means of access to abutting property.

Place of public or semi-public assembly. A place of public or semi-public assembly is defined as a building or portions of a building used for the gathering of persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, dining or awaiting transportation.

Planned future airport improvement. As used in Section 50-18.2, Airport Overlay, those proposed future airport developments that are indicated on a planning document having the approval of the federal aviation administration, Minnesota department of transportation, office of aeronautics, and Duluth airport authority.

Power transmission line. A conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of more than 46 kilovolts and less than 200 kilovolts. Associated facilities shall include insulators, towers and terminals operating at a nominal voltage greater than 46 kilovolts and less than 200 kilovolts.

Precision instrument runway. A runway having an existing instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR), or a runway for which a precision instrument approach system is planned and is so indicated on an approved planning document.

Premises. A lot together with all buildings and structures existing on the lot.

Preschool. An establishment licensed by the state to provide a systematic organization or arrangement of activities, personnel, materials, and equipment in a facility to promote the physical, intellectual, social, and emotional development of a child, who is at least 33 months old but who has not yet attended the first day of kindergarten, in the absence of the parent for a period of less than 24 hours a day.

Principle use or structure. All uses or structures that are not accessory uses or structures.

Public assembly bulletin board. A bulletin board accessory to and located on the same property as a religious assembly or educational use listed in Table 50-19.8 that identifies the name of the institution and the dates and times of events related to that institution to which some or all of the public are invited.

Pylon. A decorative extension above the roof line of a building that is designed as an integral part of the building and that is constructed of masonry or is completely enclosed by the same material as the main exterior walls of the building.

R-district parking area. The area on a lot in a residential district where vehicles may be parked, unless a front yard parking variance has been approved pursuant to Section 50-37.9. The parking area shall be limited to an area that may include one side yard, the rear yard, and the following additional areas of the lot:

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A. On a lot, other than a corner lot, containing a dwelling unit without garage, the parking area also includes the area between one side lot line and the nearest wall of the dwelling unit and its extension to the improved street abutting the front yard;

B. On a lot, other than a corner lot, containing a dwelling unit with a detached garage, the parking area also includes the area between the closest side lot line to the side wall of the dwelling unit nearest the garage and its extension to the improved street abutting the front yard;

C. On a lot, other than a corner lot, containing a dwelling unit with attached garage, the parking area also includes the area between the closest side lot line and the common wall separating the dwelling unit and the garage and its extension to the improved street abutting the front yard;

D. On any corner lot, any parking area in addition to the rear yard and one side yard may be granted by variance as provided in Section 50-37.9.

Radio or television broadcasting tower. A structure that is designed and constructed primarily for the purpose of supporting one or more antennae that transmit information (audio, video, data, but not personal wireless communications) in the form of electromagnetic signals to one or more receivers without the use of a physical connection between the transmitting and receiving source. The term includes but is not limited to: lattice towers, guyed towers, and monopole towers. The term does not include a wireless communication tower, clock tower, bell tower, steeple, light pole, power pole, water tower, or similar structure that incidentally supports antennae.

Railroad yard or shipyard and related facilities. An area of land, a portion of which is covered by a system of tracks, that provides for the making up of trains by one or more railroads or private industry concerns including roadhouses and repair and overhaul shops. Necessary functions of a railroad yard include but are not limited to the classifying, switching, storing, assembling, distributing, consolidating, repairing, weighing, or transferring of cars, trains, engines, locomotives, and rolling stock. In addition, this use includes a facility or area containing wharves, docks, or other facilities used in connection with water transportation or navigation, and for the repair, service, sales or storage of boats.

Rainfall events. The design storm definitions for Duluth from "Bulletin – 71" 1992, Rainfall Frequency Atlas of the Midwest.

	Design Year	Inches
100 year 24 hour rainfall	100	5.2
50 year 24 hour rainfall	50	4.64
10 year 24 hour rainfall	10	3.36
5 year 24 hour rainfall	5	2.88
2 year 24 hour rainfall	2	2.31

Reach. As used in the context of flood prevention, the hydraulic engineering term used to describe longitudinal segments of a stream or river influenced by a natural or manmade obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would typically constitute a reach.

Readerboard. A sign or portion of a sign face that allows for the creation of messages by physical manipulation of simple block letters, but not including a changeable message sign (MCS) or electronic sign (ES).

Receiving stream or channel. The body of water or conveyance into which stormwater runoff is discharged.

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Receiving waters. Lake Superior, St. Louis River and St. Louis Bay, which are the major receivers of city drainage.

Recharge. The replenishment of underground water reserves.

Recycling collection point (primary use). A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper or clothing for recycling purposes conducted totally within an enclosed structure or container. This definition does not include processing except for can banks that crush cans as they are deposited.

Redevelopment. A change to previously existing, improved property, including but not limited to the demolition or building of structures, filling, grading, paving or excavating, but excluding ordinary maintenance activities. For purposes of the erosion and stormwater controls in Section 50-18.1.E, redevelopment does not include remodeling of buildings on the existing footprint, resurfacing of paved areas, and exterior changes or improvements that do not result in the disturbance of equal to or greater than one acre of land.

Regional flood. A flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a 100-year recurrence interval.

Regional stormwater. Stormwater BMPs designed to control stormwater runoff from multiple properties or a particular land use district, and where the owners or developers of the individual properties may participate in the provision of land, financing, design, construction or maintenance of the facility.

Religious assembly. A facility or area for people to gather together for public worship, religious training or other religious activities including a church, temple, mosque, synagogue, convent, monastery or other structure, together with its accessory structures, including a parsonage or rectory. This use does not include home meetings or other religious activities conducted in a privately occupied residence. Accessory uses may include meeting rooms and childcare provided for persons while they are attending assembly functions.

Repairs and maintenance. When used in the context of wireless telecommunications, the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

Research laboratory. A facility or area for conducting scientific research, investigation, testing, or experimentation, but not including facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory. This definition also includes labs for the manufacture of dentures and prostheses.

Residential care facility/assisted living facility. A building that houses persons, on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This classification shall include, but not be limited to, the following: residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers, and convalescent facilities.

Responsible party. In the context of stormwater regulations, any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representatives, agents or assigns,

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that is named on a stormwater maintenance agreement as responsible for long-term operation and maintenance of one or more stormwater BMPs.

Restaurant (no drive-in/drive-through). A commercial establishment, including but not limited to taverns and brewpubs, where food and beverages are prepared, served, and consumed primarily within the principal building.

Restaurant (with drive-in/drive-through). A commercial establishment, including but not limited to taverns and brewpubs, where customers order and are served their food and beverages at a walk-up counter or in a motor vehicle to be consumed on or off the site.

Retail store. A facility or area for the retail sale of general merchandise or food to the general public for direct consumption and not for wholesale. Typical general merchandise includes clothing and other apparel, equipment for hobbies or sports, gifts, flowers and household plants, dry goods, convenience and specialty foods, toys, furniture, books and stationery, pets, drugs, hardware and similar consumer goods. This definition does not include retail uses defined elsewhere in this Chapter.

A. A small retail store is one that contains less than 15,000 square feet of gross floor area;

B. A large retail store is one that contains 15,000 square feet or more of gross floor area.

Riding stable. An establishment or area for keeping horses or other domestic animals other than for the property owner's personal use, for compensation, hire, boarding, riding or show.

Rooming house. A building containing habitable units and that provide sleeping or living accommodations by prior arrangements, regardless of whether those accommodations are offered for compensation or not, and for definite time periods. Some or all bathroom and/or kitchen facilities, where provided, are for use on a communal basis. Individual habitable units are not owned by occupants, except that a habitable unit may be occupied by the owner of the building.

Runway. Any existing or planned paved surface or turf covered area of the airport that is specifically designated and used or planned to be used for the landing or taking off of aircraft.

School, elementary. An public or private establishment providing educational services from kindergarten or Grade 1 through Grade 5, or from kindergarten or first grade through Grade 8, or some combination of those included years, together with incidental sports and outdoor activity areas.

School, middle or high. A public or private establishment providing educational services from Grade 6 through Grade 12, or from Grade 6 through 8, or from Grade 9 through Grade 12, or some combination of those included years, together with incidental sports and outdoor activity areas.

Seasonal camp or cabin. A facility containing one or more tent sites or cabins that is offered for use on short-term during defined seasons of the year, for compensation, and that may include accessory facilities such as showers, laundries or cooking and dining facilities.

Sediment. Solid mineral or organic material that, in suspension, is being transported, or has been moved from its original site by air, water, gravity or ice and has been deposited at another location.

Sedimentation. The process or action of depositing sediment that is determined to have been caused by erosion.

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Setback. The minimum horizontal distance between a lot line and a building or structure required by this Chapter.

Shore impact zone. Land located between the ordinary high water level of public waters and a line parallel to it at a setback of 50 percent of the required structure setback, but not less than 50 feet.

Shoreland. Lands within 1,000 feet of a lake or within 300 feet of a river and its floodplain, as shown on the NR-O map. The limits of shorelands may be less than the above limits whenever the waters involved are bounded by topographic divides that extend landward from the waters for lesser distances and when approved by the commissioner.

Sidewalk. A paved surface located in the public right of way and used as a pedestrian walkway.

Sidewalk café. An outdoor dining area located within the public right of way in front or adjoining a restaurant or other eating and drinking establishment.

Sign. Any letter, word, symbol, model, printed, projected or affixed device, poster, picture, reading matter or representation in the nature of an advertisement, announcement, direction or informative device including its structure or component parts, which is located outdoors, when more than one square foot in area; but shall not be deemed to include (a) temporary parks and recreation signs permitted pursuant to Chapter 35 of the City Code, or (b) overhead banners and devices regulated under Article III of Chapter 45 of the City Code, or (c) any street name sign, public directional, utility or transportation sign, or motor vehicle traffic signs of any kind when officially placed, or to advertising or other information affixed to any motor vehicle, provided that such vehicle's primary use is not as a stationary advertising device, or (d) any inscription on any publicly owned building when the inscription is incorporated into the architectural design as a permanent feature.

Sign, animated. An animated sign is one that has any moving, rotating or otherwise physically animated part, as distinguished from lights that give the appearance of animation by flashing, blinking or fluctuating, but does not include changeable message signs that are stationary for a continuous time period of at least four seconds in each eight second period.

Sign, awning. Any sign affixed to an awning, as that term is defined in Section 4506 of the Uniform Building Code, 1982 Edition.

Sign, changeable message (CMS). Any off-premises advertising sign, display or device that changes the message or copy on the sign by means of electronic rotation or panels or slats. CMSs are outdoor advertising signs and must comply with all requirements applicable to outdoor advertising signs. This includes a flashing sign that is off-premises.

Sign, construction contractor. An accessory sign informing the public that construction or remodeling is taking place on the property and identifying the architect(s), engineer(s), prime contractor(s) and subcontractor(s) working on the project.

Sign, double or triple faced. A double or triple faced sign is any sign having displays on an integral structure that has two or three faces that are either back to back or "V" or triangular shaped with no internal angle of more than 60 degrees.

Sign, electronic. An off-premise advertising sign, display or device that changes the message copy on the sign by means of light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices with the display area.

Sign, home occupation. An accessory sign identifying a home occupation that is permitted in the zone district where the property is located and the individual or entity performing the home occupation.

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Sign, flashing. A sign that has direct illumination that is not kept constant in intensity at all times when in use, or that exhibits sudden or marked changes in lighting effects. Signs with direct illumination that indicate the time, temperature, date or other public service information shall not be considered flashing signs.

Sign, marquee. Any sign affixed to a marquee, as that term is defined in Section 414 of the Uniform Building Code, 1982 Edition.

Sign, mobile. Any sign so constructed as to permit movement from place to place, whether on wheels or otherwise.

Sign, monument. A permanent sign in which all or substantially all of the bottom of the sign is affixed to the ground or to a base structure, not to a post, pole or portion of a building.

Sign, off-premises. A sign that directs attention to a business, product, service or entertainment not conducted, sold or offered upon the premises where the sign is located.

Sign, on-premises. A sign that directs attention to the name of the building or the name of the building management firm or to a business, principal product, service or entertainment conducted, sold or offered upon the premises where such sign is located.

Sign, pole. Any free standing, elevated sign erected on a pole or poles connected to the ground and that is less than 60 square feet in area.

Sign, political. Any sign that directs attention to an issue in an election or to either the name of a candidate running for election to a public office or the name of the office for which he is a candidate, or both.

Sign, projecting. An accessory sign that is affixed to the outside of an exterior wall of any building and that extends more than 18 inches from the building wall face.

Sign, property identification/management. An accessory sign containing only messages related to the identification or management of the property where the sign is located, including but not limited to signs identifying entrances, exits, parking areas or hazardous areas, prohibiting trespassing, or information about limits on property use.

Sign, property owner opinion. A sign that conveys a noncommercial message.

Sign, readerboard. A sign, including a portable or temporary sign, where all or substantially all of at least one sign face is a readerboard.

Sign, recreational field. Recreational field complex signs include no more than one directional sign identifying the entrance to the complex, no more than one building mounted sign identifying the complex, and up to one scoreboard sign for each play area.

Sign, real estate. An accessory sign advertising property for sale, lease or rent, or informing that property has been sold, leased or rented.

Sign, residential complex. An accessory sign identifying a multi-building residential complex that identifies the name of the complex or the property management company.

Sign, roof. Any sign erected, constructed or maintained above and connected to the roof of any building. For purposes of this definition a penthouse, elevator housing or any structure housing mechanical equipment of any kind shall not be deemed a part of the roof of any building.

Sign, temporary. A sign usually made of a relatively lightweight and inexpensive material, that is easily moved, and generally is displayed only until the event advertised by the sign is completed. Examples include but are not limited to: balloons or other inflatable devices, flags, streamers, sandwich signs, banners, posters, sidewalk or curb signs.

Sign, wall. A sign that is affixed to the outside of an exterior wall of any building when such sign extends no more than four feet above the top of such exterior wall and is parallel to that wall, and when such sign projects no more than 18 inches from the building wall face or

from a parapet constructed on the wall face. Signs painted directly on the surface material of a building shall be considered a wall sign only if limited in content to the name of the principal firm or establishment located in such building or the name of the building's management firm.

Sign area. The space inside a continuous line drawn around and enclosing all letters, designs and background material, except that the area of a double or triple faced sign shall be the area of the largest face, and the area of a spherical sign shall be the area of the outline against the horizon formed by the largest dimension of the sphere.

Sign height. The vertical distance from the average finished grade directly below the sign to the uppermost point on the sign or sign structure, whichever is higher.

Significant tree. All trees of more than ten inches DBH, and all special tree species of more than six inches DBH shall be considered significant, unless they are under power lines or deemed hazardous by a certified arborist or landscape architect or professional forester. In addition, any replacement tree planted as part of a tree replacement plan shall be considered significant, even if it does not meet the size definition above.

Site. A parcel or several adjoining parcels of land under common ownership. For purposes of the natural resources overlay district, this definition is limited to apply to any parcel of land upon which work requiring a permit under this Chapter is to be performed, and includes any adjacent lands owned by the owner of the subject parcel on the date of application for any permit and any lands adjacent to the subject parcel that were owned by the same person owning the subject parcel as of January 1, 1980.

Site plan. An accurate scale drawing that indicates the major features of a proposed development in sufficient detail to allow the evaluation of the land planning, building design and other aspects of the development, and meeting all requirements of the UDC application manual.

Slope. An incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude (e.g., slope = 3:1 = 3 feet horizontal to 1 feet vertical).

Solar, geothermal or biomass power facility (primary use). Uses and structures that are used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. These structures and uses may include but are not limited to the following: solar panels (photovoltaic and hot water), heat exchanges, biomass firing equipment, piping, and other transfer mechanisms, controls and related structural support for transporting and storing collected energy from solar, geothermal, or biomass energy systems. These structures and uses may be located at ground level or above or below ground unless specifically limited in this Chapter, provided that they meet all other applicable requirements of this Chapter.

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

Solid waste. As defined in MSA 116.06, Subd. 22, and also including medical wastes and petroleum contaminated soils.

Solid waste disposal or processing facility. Any tract or parcel of land, including any constructed facility that is designed or operated for the purpose of disposing of solid waste on or in the land, at which solid waste is disposed of in or on the land or processed for disposal or reuse, together with any appurtenant facilities needed to process solid waste for disposal or for transfer to another solid waste facility, and that is not listed as a separate use in this Chapter.

Special tree species. White pines, red (Norway) pines, white cedars, white spruces, eastern hemlocks, sugar maples, American basswoods, American elms, yellow birches and all oak species.

Special use. A specific type of structure or land use listed in Table 50-19.8 that may be allowed only after review and evaluation of potential impacts on surrounding properties and the attachment of any conditions necessary to mitigate those impacts.

Stealth or stealth technology. When used in the context of wireless telecommunications, to minimize adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

Steep slope. Land having average slopes over 12 percent, as measured over horizontal distances 50 feet or more, and that are not bluffs.

Storage warehouse. A structure containing an area available for storing raw materials, produce, goods or property, but not including mini-storage facilities.

Stormwater. Stormwater runoff, snowmelt runoff, surface runoff and drainage.

Stormwater management. The use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

Stormwater pollution prevention plan. A plan, usually required by a permit, to manage stormwater associated with industrial, commercial, public, institutional, civic or other land use activities, including construction. The plan commonly describes and ensures the implementation of practices that are to be used to reduce pollutants in stormwater and non-stormwater discharges

Stormwater pollution prevention program (MS4 program). A compilation of best management practices (BMPs) to address the six minimum control measures and other provisions of the MS4 permit, that is designed and managed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable as appropriate to the community.

Stormwater best management practice (BMP). A measure, either structural or nonstructural, that is determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies. Non-structural BMPs are those practices that require modified or additional operational or behavioral practices, such as sweeping or having spill response equipment on site. Structural BMPs are those that require the construction of a structure or other physical modification on the site.

Stormwater retrofit. A stormwater BMP designed for an existing development site that previously had either no stormwater BMP in place or a practice inadequate to meet the stormwater management requirements of the site.

Stormwater runoff. Flow on the surface of the ground resulting from precipitation.

Story. That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

Story, half. A partial story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than 4 feet above the floor of such story, except that any partial story used for residence purposes, other than for a janitor or caretaker or his family, or by a family occupying the floor immediately below it, shall be deemed a full story.

Stream buffer. An area of land at or near a stream bank, wetland or water body that has intrinsic water quality value due to the ecological and biological processes it performs or is

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otherwise sensitive to changes that may result in significant degradation to water quality.

Street. A public dedicated right-of-way, other than an alley, which affords the principal means of access to abutting property.

Street line. The established side line of a street easement or right-of-way.

Structure. Anything constructed or erected, the use of which requires a location on the ground, or attached to some thing having a location on the ground. Examples include but are not limited to: backstops for tennis courts, fences or pergolas.

Structural alteration. Any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any substantial changes in the roofs or exterior walls but not including openings in bearing walls as permitted by existing ordinances.

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

Sustainable development. Development that maintains or enhances economic opportunity and community well being while protecting and restoring the natural environment upon which people and economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs.

Telecommunications. The transmission or reception of audio, video, data, and other information by wire, radio frequency, light and other electronic or electromagnetic systems.

Telecommunications site. See *wireless telecommunications facilities*.

Telecommunications structure. A structure used in the provision of services described in the definition of wireless telecommunications facilities.

Temporary. A fixed period of time not to exceed 180 days. For the purposes of wireless telecommunications, temporary means not more than 90 days.

Temporary construction office or yard. A facility or area used as a temporary field construction office, temporary outdoor storage of construction equipment and materials associated with an active permit to demolish or construct buildings, structures or infrastructure.

Temporary event or sales. A temporary outdoor use of land for the purposes of an event or sale including but not limited to: a circus, carnival, fair, part, or celebration that reasonably may be expected to attract more than 100 persons at any one time; or any sale made by a person, firm or corporation engaging in the temporary business of selling goods, wares or merchandise from a tent, truck, vending cart or other area outside of a permanent structure on property owned or leased by the person, firm or corporation. The temporary event or sale must be secondary to or incidental to the permitted use or structure existing on the property and not incompatible with the intent of the zone district.

Temporary moveable storage container. A container designed for the storage of personal property that is typically rented to owners or occupants of property for their temporary use, and that customarily is delivered and removed by truck.

Temporary real estate sales office. A facility or area used as a temporary office to sell land or buildings within a specified area or subdivision.

Theater. A building, structure or part of a building devoted to showing motion pictures, or for dramatic, dance, musical, or other live performances.

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Tourist or trailer camp. Any park, trailer park, trailer court, camp, site, lot, parcel or tract of land designed, maintained or intended for the purpose of supplying a location or accommodations for any trailer coach or trailer coaches or upon which any trailer coach or trailer coaches are parked, and shall include all buildings used or intended for use as part of the equipment or establishment, whether or not a charge is made for the use of the trailer camp and its facilities. Trailer camp shall not include automobile or trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.

Tower. In the context of wireless telecommunications, any structure designed primarily to support an antenna for receiving or transmitting a wireless signal.

Trailer. Any vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term shall include trailers whose wheels or axles have been removed.

Truck. Every motor vehicle designed, used or maintained primarily for the transportation of property.

Truck freight or transfer terminal. A facility in which goods shipped by truck are loaded, unloaded, or transferred between trucks for shipping or distribution, together with incidental truck storage, maintenance, and administrative offices.

Truck or heavy vehicle sales, rental, repair or storage. A facility that is engaged in the sales, rental, repair or storage of heavy equipment typically used in agricultural, commercial or industrial operations, including tractors, trucks with a gross vehicle weight of over 10,000 pounds, semi trucks or trailers, harvesters, loaders and tracked vehicles as well as sales of parts, whether new or used, for heavy equipment.

University or college. An educational institution authorized by the state to award associate, baccalaureate or higher degrees.

Useable open space. Open space, other than required building setback areas, that is utilized exclusively for active recreational purposes such as softball, tennis or playgrounds or for passive recreational purposes such as pedestrian walkways or trails that have been preserved in their natural setting or landscaped. Areas with slopes of 15 percent or greater, and areas of wet, spongy land saturated and partially or intermittently covered with water shall not be considered useable open space. Useable open space shall not include streets or other vehicular access not used exclusively for the maintenance of such open space. Land on which buildings or other facilities are located may be considered useable open space if those buildings or other facilities are used for noncommercial, recreational or cultural purposes that are compatible with useable open space objectives and have been specifically approved as part of the development plan.

Utility, major. A facility providing an important regional utility service, such as water, sewer, or drainage, that normally entails construction of new buildings or structures, and that typically has employees on the site on an ongoing basis. Examples include but are not limited to: water works, sewage treatment plants, reservoirs, regional stormwater detention ponds and other similar facilities.

Utility, minor. Equipment necessary to support utility services to development within the immediate vicinity and that involves only minor accessory structures. Employees typically are not located at the site on an ongoing basis. Examples include but are not limited to: electric transformer stations and service boxes, gas regulator stations, telephone service boxes, and well, water and sewer pumping stations, and related underground and aboveground pipes and wires, but excluding those that meet the definition of an electric power transmission line.

Utility runway. A runway that is constructed for and intended to be used by propeller

driven aircraft of 12,500 pounds maximum gross weight and less.

Veterinarian or animal hospital. A facility for the diagnosis, treatment or hospitalization of animals, and including the incidental boarding or breeding of animals.

Visual runway. A runway intended solely for the operation of aircraft using visual approach procedures, with no straight in instrument approach procedure and no instrument designation indicated on an approved planning document.

Watercourse. A channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

Water-dependent bulk storage or wholesaling not listed elsewhere. A bulk storage or wholesaling use as defined by this Chapter, but not separately defined, that must be located near water because of the nature of the goods being stored or wholesaled or the means by which they are being transferred to or from the site, or because the establishment's suppliers or customers must be located near water

Water dependent manufacturing, light or heavy. A light or heavy manufacturing use, as defined by this Chapter, that must be located near water because of the nature of the goods being manufactured, assembled, fabricated, or treated or the means by which they or their inputs are being transferred to or from the site, or because the establishment's suppliers or customers must be located near water

Water management district. Land that by definition is in a flood plain district, a shoreland district, or a wetland.

Water or sewer pumping station/reservoir. Facilities to collect or distribute water or wastewater from a defined service area, and that typically does not have employees at the site, including but not limited to water-pumping stations, water reservoirs and sewage pumping stations.

Water or sewer treatment facility. An establishment to treat water or wastewater from a defined service area, and that typically has employees at the site, including but not limited to water treatment plants, sewage treatment plants and sewage disposal plants.

Waters of the state. All streams lakes ponds, marshes, water course, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, that are contained within, flow through or border upon the state or any portion of the state. Constructed wetlands designed for wastewater treatment are not waters of the state.

Wetland. Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands must have the following attributes:

- A. A predominance of hydric soils;
- B. Inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition;
- C. Under normal circumstances support a prevalence of such vegetation.

Wholesaling. A use engaged in enclosed wholesale of manufactured products, supplies, and equipment, including accessory offices and showrooms. Products may be picked up on-site or delivered to the customer. This use does not include sales to the public at large or to consumers who are members or a club or association, regardless of whether the

name of the business includes some version of the word "wholesale."

Wind power facility (primary use). A primary use of land including an aggregation of parts including the base, tower, generator, rotor, blades, supports, guy wires and accessory equipment such as utility interconnect and battery banks, in a configuration necessary to convert the power of wind into mechanical or electrical energy. Examples include but are not limited to: wind charger, windmill and wind turbine.

Wireless telecommunications facilities. A structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures, including but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of antennas. It also includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC. This term also includes a telecommunications site and personal wireless facility.

Yard. An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

Yard depth or width. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

Yard, front. A yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the street line and the primary building, but ignoring projections permitted by this Chapter.

Yard, rear. A yard extending across the rear of a lot between the side lot lines and being the minimum horizontal distance between the rear of the primary building, but ignoring projections permitted by this Chapter. On all lots the rear yard shall be at the opposite end of the lot from the front yard.

Yard, side. A yard between the main building and the side line of the lot, and extending from the front yard to the rear yard, and being the minimum horizontal distance between a side lot line and the side of the primary building, but ignoring projections permitted by this Chapter.

Yard waste. The garden wastes, leaves, lawn cuttings, weeds and prunings generated at residential or commercial properties.

Yard waste compost facility. A site used to compost or co-compost yard waste that originates off of the site including all structures or processing equipment used to control drainage, collect and treat leachate, and storage area for the incoming yard waste, the final product and residual resulting from the composting process.

Section 59. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: August 19, 2011)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 11, 2011
Approved July 11, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, August 15, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Stauber and President Gardner -- 8

Absent: Councilor Hartman -- 1

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0815-01 Barbara Brooks communication regarding the proposed reclassification of property along the north side of Arrowhead Road from 1413 West Arrowhead Road to the extended line (northerly) of Myers Avenue (11-018-O). -- Received

11-0815-02 The following communications regarding the proposed sale of property in the West Hillside (11-032-O): (a) Carol Carlson; (b) Mark Jennings. -- Received

11-0815-30 The following communications regarding the proposed regulating of loitering in public places with the intent to engage in prostitution or the sale of illegal drugs (11-026-O): (a) Mike Flaherty; (b) Linda Riddle. -- Received

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REPORTS FROM OTHER OFFICERS

11-0815-03 Clerk applications for exempt permits to the Minnesota gambling control board for raffles from: (a) Animal Allies Humane Society on October 8, 2011; (b) Duluth East Athletic Association on June 7, 2012. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-0815-04 Duluth economic development authority minutes of June 22, 2011, meeting. -- Received

11-0815-05 Duluth public utilities commission minutes of June 8, 2011, meeting. -- Received

11-0815-06 Duluth transit authority: (a) Minutes of May 25, 2011, meeting; (b) April 2011 income statement. -- Received

11-0815-07 Seaway port authority of Duluth minutes of: (a) March 24; (b) April 28; (c) June 23, 2011, meetings. -- Received

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REPORTS OF COUNCIL OPEN ISSUES

11-0815-08 City council tourism tax task force minutes of: (a) June 14; (b) June 23; (c) July 5; (d) July 12; (e) July 19; (f) July 26; (g) August 2; (h) August 9, 2011, meetings. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell stated the city council is doing a good job and is the most democratic body in Duluth, and that is why there were not many challengers in this year's council election. He voiced concern that the Duluth School Board signed a contract with Johnson Controls with

no guarantees in the performance clauses for energy savings to protect the public with the red plan.

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**MOTIONS AND RESOLUTIONS
CONSENT AGENDA**

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

Councilor Fedora moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the proper city officials are hereby authorized to execute and implement a collective bargaining agreement with the Duluth Police Union, Local 807, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as that on file in the office of the city clerk as Public Document No. 11-0815-09, covering the year 2011.

Resolution 11-0410 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll on file in the office of the city clerk as Public Document No. 11-0815-10, which is levied to collect delinquent stormwater utility fees payable during the period of January 1, 2010, to December 31, 2010, as provided for in Article XI of Chapter 43 of the Duluth City Code, is hereby confirmed.

Resolution 11-0422 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED:

(a) On July 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the 3.2 percent malt liquor license of Sammy's Pizza of Duluth, Inc., d/b/a Sammy's Pizza and Restaurant, 4011 Woodland Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0815-11;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on August 15, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0815-11 regarding any suspension, revocation and/or civil penalty relating to the on sale 3.2 percent malt liquor license of Sammy's Pizza of Duluth, Inc., d/b/a Sammy's Pizza and Restaurant, 4011 Woodland Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty reducing the penalty to \$300 payable within 30 days of final council action.

Resolution 11-0398 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On July 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the on sale wine and 3.2 percent malt liquor license of Loy Krathong, Inc., d/b/a Sala Thai Restaurant, 4023 Woodland Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0815-12;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on August 15, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0815-12 regarding any suspension, revocation and/or civil penalty relating to the on sale wine and 3.2 percent malt liquor license of Loy Krathong, Inc., d/b/a Sala Thai Restaurant, 4023 Woodland Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within with \$300 payable within 30 days of final council action, and \$200 of the penalty by stayed for a period of one year on the condition that the Licensee have no same or similar violations.

Resolution 11-0399 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On July 6, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Curly's Bar, Inc., (Curly's Bar), 2013 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-0815-13;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on August 15, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-0815-13 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Curly's Bar, Inc., (Curly's Bar), 2013 West Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 penalty for first violation on June 28, 2010, and a \$750 penalty and one day suspension for the second violation on November 20, 2010, with the one day suspension stayed for one year pending no same or similar violations, and that payment of the \$1,250 penalty be made within 60 days of final council action.

Resolution 11-0400 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor licenses, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Northland Country Club, 3901 East Superior Street, for August 24, 2011, with Joe O'Connor, manager.

Duluth Superior GLBT Pride, Inc, Bayfront Park, with Carolyn Reisberg, manager, for September 3, 2011, from 11:00 a.m. to 7:00 p.m.

Resolution 11-0406 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following 3.2 percent malt liquor license for the period ending April 30, 2012, and approves issuance of the following on sale wine license for the period beginning September 1, 2011, ending August 31, 2012, subject to departmental approvals, payment of sales and property taxes, and further subject to approval of the liquor control commissioner:

Fernando's, LLC (Jalapeno Express), 220 West Superior Street, with Felipe A. Mata, 100 percent owner.

Resolution 11-0407 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals, with any specific restrictions:

Rose Garden Ent, LLC (Valentini's Vicino Lago), 1400 London Road, for September 3, 2011, from 3:00 p.m. to 8:00 p.m.

C W Chips Grill & Bar (Twins Bar), 501 East Fourth Street, for September 17, 2011, from 3:00 p.m. to 11:00 p.m.

Resolution 11-0408 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Belknap Electric, Inc., for the purchase and installation of LED (light emitting diode) lighting fixtures to replace existing and obsolete fixtures at the main library (Depot) and Coney Island ramps in accordance with approved specifications prepared by the city's consultant Architectural Resources, Inc., and the vendor's total combined low bid of \$57,890, payable from Capital Improvements Fund 450, Department./Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2011-1108B.

Resolution 11-0412 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that Change Order One (\$30,196) and Change Order Two (\$514,669) to Contract 21231 with Superior Glass, Inc., are hereby approved for additional work associated with the replacement of Duluth City Hall windows, a total increase of \$544,865, payable from the Capital Improvements Fund 450, Department./Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2011-1104B.

Resolution 11-0416 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved August 15, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of support analyst, which were approved by the civil service board on 8/2/2011 and which are filed with the city clerk as Public Document No. 11-0815-14, are approved. This classification shall remain subject to the city's collective bargaining agreement with its BASIC unit employees and compensated at Pay Range 131.

Resolution 11-0417 was unanimously adopted.

Approved August 15, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of engineering technician, which were approved by the civil service board on August 2, 2011, and which are filed with the city clerk as Public Document No. 11-0815-15, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 28.

Resolution 11-0423 was unanimously adopted.

Approved August 15, 2011
DON NESS, Mayor

- - -

RESOLVED, that the city council makes the following findings:

(a) The city council adopted the Duluth comprehensive land use plan on June 26, 2006, via Resolution 06-0491, which outlined the desired arrangement of land uses for the next 20 years; and

(b) Independent School District 709 is closing Lincoln Park School in 2011 as part of its long range facilities plan; and

(c) The Lincoln Park School site will no longer be used for school purposes and therefore the future land use map designation as institutional is no longer necessary; and

(d) The city community development division held a public meeting on May 24, 2011, on the proposed amendment to the comprehensive land use plan - future land use map, to discuss the opportunities for the Lincoln Park School site and to gather feedback from the community; and

(e) Based on public comments received and the review of the area completed by community development staff, the city planning division recommended to the city planning commission that the future land use map be amended for the Lincoln Park School site from Institutional to Neighborhood Mixed Use; and

(f) The city planning commission has reviewed the future land use amendment, conducted a public hearing on July 12, 2011 at their regular planning commission meeting and recommends adoption of the proposed future land use map amendment; and

(g) The city council action shall be by resolution, with the affirmative votes of at least two-thirds of those members constituting a quorum required to take action.

BE IT FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map, is amended as identified in Public Document No. 11-0815-16.

Resolution 11-0393 was unanimously adopted.

Approved August 15, 2011
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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RESOLVED, that:

(a) The city council finds that a sufficient petition was filed with the city for the vacation of a portion of South 25th Avenue West lying southeasterly of the southeasterly right-of-way line of Superior Street and lying northwesterly of the northwesterly right-of-way line of Michigan Street, abutting Lot 400, Block 41, and Lot 402, Block 42, Duluth Proper Second Division;

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing (FN 11-067) and the city planning commission found that the petition for the vacation of a street does meet the standard of uselessness for vehicles and pedestrians, but that the street is still needed for utility purposes; and

(c) The planning commission, at its July 12, 2011, regular meeting did unanimously recommend approval vacating the petitioned for street, but that a utility easement be retained over the full length and width of the street petitioned for vacation.

RESOLVED FURTHER, that the city council of the city of Duluth approves the petition for the vacation of the street described in paragraph (a) above and depicted on Public Document No. 11-0815-17; with the condition that a utility easement be retained over the full length and width of the street petitioned for vacation.

Resolution 11-0414 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds that a sufficient petition was filed with the city for the vacation of that portion of Tenth Street South abutting Lots 180 and 182 and lying westerly of the westerly right-of-way line of Minnesota Avenue and easterly of a straight line connecting the northwest corner of Lot 180 and the southwest corner of Lot 182, all in Upper Duluth Minnesota Avenue; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing (FN 11-079) and the city planning commission found that the petition for the vacation of a street does meet the standard of uselessness as a street and the street is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services; and

(c) The planning commission, at its July 12, 2011, regular meeting, did unanimously recommend approval vacating the petitioned for street.

RESOLVED FURTHER, that the city council of the city of Duluth approves the vacation of the street described in paragraph (a) above and depicted on Public Document No. 11-0815-18.

Resolution 11-0415 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that pursuant to Minnesota Statutes 204B.21, the following persons are hereby appointed as election judges in the respective precincts for the September 13, 2011, municipal and school primary election and the November 8, 2011, municipal and school board general election, as listed in Public Document No. 11-0815-19.

RESOLVED FURTHER, that pursuant to Minnesota Statute, 204B.31(d), election judges shall be compensated at the rate of \$8 per hour and chairman election judges shall be also compensated \$15 for election day hours. In addition, election judges carrying supply returns shall be compensated for mileage at the rate of \$.50 per mile; payable from General Fund 110, Department 121 (public administration), Organization 1211 (city clerk), Object 5441 (other services and charges).

RESOLVED FURTHER, if any person who is name on the list as a judge is unable to serve, the clerk is empowered to substitute the name of a qualified legal voter for the one who is unable to serve.

Resolution 11-0411 was unanimously adopted.
Approved August 18, 2011
DON NESS, Mayor

- - -

RESOLVED, that the city council approves settlement in the amount of \$18,000 of all claims or causes of actions asserted by the city of Duluth in that matter venued in the District Court of Minnesota, Sixth Judicial District, and identified as *City of Duluth v. George D. Foote and Dianne T. Foote*, Court File No. 69DU-CV-10-3801, and further authorizes the proper city officials to execute an assessment agreement substantially the same as that on file in the office of the city clerk as Public Document No. 11-0815-20 and all other documents necessary to conclude this matter on a full, final and complete basis.

Resolution 11-0432 was unanimously adopted.
Approved August 15, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Duluth-Superior Erection, Inc., for the 2011 city-wide street maintenance project in the amount of \$261,810, payable out of Permanent Improvement Fund 411, Department/Agency 035 (capital projects accounts), Object 5530 (improvements other than buildings), City Project No. 1020.

Resolution 11-0409 was unanimously adopted.
Approved August 15, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to apply, in substantially the form of that application on file in the office of the city clerk as Public Document No. 11-0815-21, to the Minnesota state department of natural resources for road and bridge easements for the Riverside utility and street improvement project over and on property related to the Munger Trail at a cost of \$4,000, payable from the Street Improvement Fund 440, Department 038 Special Assessment Contracts, Object 5530, Project No. 0699SN/TR.

Resolution 11-0420 was unanimously adopted.
Approved August 15, 2011
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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RESOLVED, that city council Resolution No. 10-0484 accepting on behalf of the general public the dedication of an easement for parking purposes from St. Mary's Medical Center, a Minnesota corporation, is hereby amended by deleting therefrom Public Document No. 10-0913-19 and by substituting therefore Public Document No. 11-0815-22 on file in the office of the city clerk, reducing the width thereof from 11 feet to 10.42 feet.

Resolution 11-0425 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that city council Resolution No. 10-0485 accepting on behalf of the general public the dedication of an easement for parking purposes from the Benedictine Sisters Benevolent Association and St. Mary's Medical Center, a Minnesota corporation, is hereby amended by deleting therefrom Public Document No. 10-0913-20 and by substituting therefore Public Document No. 11-0815-23 on file in the office of the city clerk, reducing the width thereof from 11 feet to 10.42 feet.

Resolution 11-0428 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Duluth Superior Erection, Inc., for the sidewalk vault repair project at 114 West Fourth Street in the amount of \$17,000.00, payable out of Special Assessment Fund 410, Department/Agency 038, Object 5530, City Project No. 0878TR.

Resolution 11-0435 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following Accessible Parking Zone is established:

2415 West Second Street

Resolution 11-0396 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on Fourth Street between Fifth and Seventh avenues East on September 17, 2011, between 3:00 p.m. and 11:00 p.m. to coincide with Neighborhood Housing Services of Duluth special events license, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 11-0421 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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RESOLVED, that the city of Duluth gives to Officer Kelly Greenwalt of the city of Duluth police department, the police canine named Rego, in recognition of the completion of Rego's 44 months of service to the city.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to execute any documents necessary to transfer ownership of Rego to Kelly Greenwalt.

Resolution 11-0429 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to apply for and accept a grant from the Lloyd K. Johnson Foundation in the amount of \$1,250.00 and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0815-25, for the purpose of supporting the parks and recreation Chester Creek Music in the Park concert series, funds to be deposited in Fund 110-121-1219-4270 (general, public administration, parks and recreation, other grants).

Resolution 11-0413 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Crystal Taylor, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0815-26 for the planning, coordinating and promoting of events related to the restoration of Enger Park for an amount not to exceed \$20,000, payable from Fund 110-700-1407-5441 (general, transfers and other functions, miscellaneous, other services and charges).

Resolution 11-0430 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that the proper city officials are hereby authorized to enter into a sponsorship agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0815-24, with Kernz and Kompany, Inc., and Duluth Air and Aviation Expo (both hereinafter referred to as Kernz) pursuant to which the city will provide in-kind traffic control and police services with respect to the Duluth airshow.

Resolution 11-0397 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Stauber and President Gardner -- 7

Nays: None - 0

Abstention: Councilor Halberg -- 1

Absent: Councilor Hartman -- 1

Approved August 15, 2011

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0424, transferring monies to street improvement debt service fund from the community investment trust [CIT] fund to cancel 2012 debt service tax levy, was introduced by Councilor Fedora.

Councilor Stauber reviewed the purpose of the CIT fund and reviewed how the fund has been drawn down and the revenue generated by interest on the principal has gone down so the principal is being used for street improvements. He stated that spending money out of the CIT fund for other projects beside streets is a big mistake.

Chief Administrative Officer David Montgomery reviewed that the council approved to draw down the fund to pay off old debt and use the interest earnings and some of the principal to finance the street program as a pay-as-you-go program. He continued saying the casino litigation has caused the stoppage of influx of money from the casino into the fund and has stopped the further work on the street program until there is resolution of the casino litigation and the review on how to fund the street program at that time.

Resolution 11-0424 was adopted as follows:

WHEREAS, the city of Duluth, Minnesota (the "city"), has issued several series of general obligation street improvement bonds (the "bonds") to finance the city's street improvement program, with a portion of the principal of and interest on the bonds being payable from special assessments on benefitted property and a portion being payable from a debt service tax levy; and

WHEREAS, the city administration has proposed to cancel a portion of the 2012 debt service tax levy with a transfer of monies from the community investment trust fund (Fund 256) (the "CIT fund").

NOW, THEREFORE, BE IT RESOLVED, by the city council of the city, as follows:

The council hereby transfers \$2,860,348 from the CIT fund to the bond accounts within the street improvement debt service fund (the "debt service fund") for payment of a portion of the principal of and interest on the bonds due on August 1, 2012, and February 1, 2013. The monies hereby appropriated shall be transferred to the debt service fund within 30 days of passage and approval of this resolution.

Resolution 11-0424 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Hartman -- 1

Approved August 15, 2011

DON NESS, Mayor

- - -

Resolution 11-0427, awarding a contract to Duluth Superior Erection, Inc., for Phase II construction of an accessible baseball field at Harrison Community Center for a total amount of \$124,504, was introduced by Councilor Cuneo.

The rules were suspended upon a unanimous vote to hear from speakers on the resolution.

Sherri Hutton stated that this ball field is a dream come true for players who want to play baseball but cannot move or are in wheelchairs. She added that this field makes it possible for those individuals to play.

Eddie Gleeson thanked the council and community for their due diligence in getting the field finished as it will serve children with disabilities in Duluth. He went on to say that there

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

are currently 100 kids in the league and they hope to get 300. Mr. Gleeson added that they anticipate joining ten other fields throughout Minnesota.

Resolution 11-0427 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Duluth Superior Erection, Inc., for Phase II construction of an accessible baseball field at Harrison Community Center, 3002 West Superior Street, Duluth, Minnesota, in accordance with approved specifications prepared by the city's consultant SAS + Associates and the vendor's negotiated bid of \$124,504, payable from the General Fund 110, Department/Agency 700 (transfers and other functions), Division 1420 (capital program), Object 5530 (improvements other than buildings), Project CM100-0913 buddy ball fields.

Resolution 11-0427 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of credit and collections administrator, which were approved by the civil service board on 06/07/2011 and which are filed with the city clerk as Public Document No. 11-0815-27, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that pay range for said classification shall be Range 135. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with the resolution.

Resolution 11-0418 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of CMMS administrator, which were approved by the civil service board on June 7, 2011, and which are filed with the city clerk as Public Document No. 11-0815-28, are approved; that said classification shall be subject to the city's collective bargaining unit with its basic unit employees; and that the pay range for said classification shall be Range 131. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0419 was unanimously adopted.

Approved August 15, 2011

DON NESS, Mayor

- - -

Resolution 11-0426, by councilors Stauber and Fosle, amending guidelines for the private sewer service grant program, was introduced.

Councilor Stauber moved to remove the resolution from the agenda, which motion was seconded and unanimously carried.

- - -

Resolution 11-0434, amending Resolution 09-0007, as amended, retaining Maki and Overom, Chartered, increasing the amount by \$300,000 for a new total amount not to exceed \$1,060,000, was introduced by President Gardner.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Fedora moved to table the resolution, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Hartman -- 1

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INTRODUCED AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR STAUBER

11-018 (10097) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO R-2, RESIDENTIAL-URBAN, THE PROPERTY ALONG THE NORTH SIDE OF ARROWHEAD ROAD FROM 1413 WEST ARROWHEAD ROAD TO THE EXTENDED LINE (NORTHERLY) MYERS AVENUE (CITY OF DULUTH).

Councilor Stauber moved to remove the ordinance from the table, which motion was seconded and unanimously carried.

Councilor Boyle voiced concern that plans for the potential assisted living center have not be started which leaves the neighborhood open to a zoning change and getting a development that does not fit the area.

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Cuneo, Fedora, Fosle, Halberg, Stauber and President Gardner -- 6

Nays: Councilors Anderson and Boyle -- 2

Absent: Councilor Hartman -- 1

- - -

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

11-028 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MIXED USE NEIGHBORHOOD (MU-N) AND MIXED USE BUSINESS PARK (MU-B) TO FORM DISTRICT 5 (F-5), MID-RISE COMMUNITY SHOPPING AND OFFICE, THE PROPERTY ALONG WEST SUPERIOR STREET FROM GARFIELD AVENUE TO 22ND AVENUE WEST IN THE LINCOLN PARK BUSINESS DISTRICT (CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER

11-029 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST HILLSIDE AREA TO ANDREW J. AND CATHERINE E. SILL FOR \$50,000.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-030 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO DIANNA L. HUNTER AND DEBORAH M. ANDERSON FOR \$55,000.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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INTRODUCED BY COUNCILOR STAUBER
11-031 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO DIANNA L. HUNTER AND DEBORAH M. ANDERSON FOR \$30,000.

- - -

INTRODUCED BY COUNCILOR STAUBER
11-032 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST HILLSIDE AREA TO FRANK T. HENNESSEY AND STEPHANIE L. HENNESSEY FOR \$20,000.

- - -

The following entitled ordinance was read for the second time:

BY COUNCILOR ANDERSON
11-026 - AN ORDINANCE ADDING A NEW SECTION 34-26 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING LOITERING IN PUBLIC PLACES WITH THE INTENT TO ENGAGE IN PROSTITUTION OR THE SALE OF ILLEGAL DRUGS.

The rules were suspended upon a unanimous vote to hear from speakers on the ordinance.

Doug Happy explained that he works Downtown and is familiar with the problems of loitering. He stated that the same people hang around the area because of the connections to drugs and prostitution and urged support of the ordinance as it is very specific in defining loitering activities.

Scott Yeazole, chair of the Duluth human rights commission, stated that he has talked to the human rights officer and Deputy Police Chief Tusken about this ordinance and noted that the commission would want to be a part of the conversation on this ordinance and requested the council table the ordinance for the commission's review.

Councilor Anderson moved to table the ordinance for the commission's review, which motion was seconded and unanimously carried.

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The meeting was adjourned at 7:48 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10097

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO R-2, RESIDENTIAL-URBAN, THE PROPERTY ALONG THE NORTH SIDE OF ARROWHEAD ROAD FROM 1413 WEST ARROWHEAD ROAD TO THE EXTENDED LINE (NORTHERLY) MYERS AVENUE (CITY OF DULUTH).

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, August 29, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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The minutes of council meetings held on June 9, 13, 27, July 11 and 18, 2011, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0829-01 Daniel Murphy, et al. (11 signatures), petition for paving of Plum Street from Eighth Avenue East to Skywood Lane. -- Assessor

11-0829-02 Rory and Katelyn Blazevek appeal of planning commission decision regarding the denial to construct a 26 by 32 foot garage in a flood fringe area at 102 131st Avenue West. -- Committee 2 (planning and economic development)

11-0829-26 Guihua Fei (supported by 25 signatures) communication regarding the proposed improvement of a portion of Oxford Street, Livingston Avenue and Glenwood Street (11-0411R). -- Received

11-0829-27 Ken Fracassi communication regarding the proposed construction of a 26 by 32 foot garage at 102 131st Avenue West (11-0444R and 11-0446R). -- Received

11-0829-28 The following communications regarding the tourism tax task force report and recommendations (11-0443R): (a) Doug Britton; (b) William Burns; (c) Andrew Goldfine. -- Received

11-0829-30 The following communications regarding the proposed sale of property in the West Hillside (11-032-O): (a) Robert Fulton; (b) TR Smith. -- Received

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REPORTS FROM THE ADMINISTRATION

11-0829-29 Mayor: (a) 2012 budget address; (b) 2012 proposed general fund budget. -- Received

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REPORTS FROM OTHER OFFICERS

11-0829-03 Assessor letter of sufficiency for petition to pave Plum Street from Eighth Avenue East to Skywood Lane. -- Received

11-0829-04 Clerk application for exempt permit to the Minnesota gambling control board from March of Dimes MN Chapter for raffle on October 27, 2011. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-0829-05 Commission on disabilities minutes of June 1, 2011, meeting. -- Received

11-0829-06 Duluth airport authority: (a) Minutes of June 21, 2011, meeting; (b) May 31, 2011, unaudited balance sheet. -- Received

11-0829-07 Duluth public utilities commission minutes of July 13, 2011, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

11-0829-08 Duluth transit authority: (a) Minutes of June 29, 2011, meeting; (b) May 2011 income statement. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Joseph Balach expressed his concerns on how he felt that the Gary dump site has not been properly regulated.

- - -

Loren Martel expressed his concerns regarding some Independent School District #709 board members who have stated that the reason for their proposed property tax levy questions is due to cuts in state aid, which he feels is totally false. He also felt that deferred payments from the state do not cause deficits, that the district should not have taken funds out of the reserves and that the state is not a reason for the district's fiscal mess.

- - -

Jerry Schlafer felt that \$.03 a day from 60, 000 residents could go a long way to keep the branch libraries open and that this should be a priority.

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RESOLUTIONS TABLED

Councilor Anderson moved to remove Resolution 11-0352, authorizing long term loan agreement with the St. Louis County historical society for display and preservation of the two city-owned stained glass Tiffany windows, from the table, which motion was seconded and unanimously carried.

Councilor Hartman stated that he will not be discussing or voting on this resolution.

Resolution 11-0352 was adopted as follows:

RESOLVED, that the city council hereby authorizes the proper city officials to execute a long term loan agreement with the St. Louis County historical society, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0829-09, for the display and preservation of the city-owned stained glass Weston-Tiffany Minnehaha window and the Weston-Tiffany Greysolon Du Lhut window.

Resolution 11-0352 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Hartman -- 1

Approved August 29, 2011

DON NESS, Mayor

- - -

President Gardner moved to remove Resolution 11-0434, amending Resolution 09-0007, as amended, retaining Maki and Overom, Chartered, increasing the amount by \$300,000 for a new total amount not to exceed \$1,060,000, from the table, which motion was seconded and unanimously carried.

Councilor Stauber expressed his concerns that: there is no cap on what the law firm can receive; the council did not approve the contract of what they charge us, provided they make more than the winning settlement; this is a hundred fold increase from the initial resolution and does not include the attorney fees from this last year. He also objected to the secrecy of this issue - to conceal the actual costs.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilors Fedora and Fosle supported the resolution for reasons of: there is \$150 million at stake here; we use the dollars from the community investment trust fund, which is money from the casino, not general fund dollars here; whenever there is litigation, the city does not let out certain information; this firm represented the city when this agreement originally was signed; this is a very large and complicated case; the band initiated this case and the city had to respond; and this fund also pays for street improvements.

Resolution 11-0434 was adopted as follows:

RESOLVED, that the city council hereby amends Resolution 09-0007, as amended, retaining Maki and Overom, Chartered, to provide legal services to the city related to a gaming matter, increasing the amount by \$300,000 for a new total amount not to exceed \$1,060,000, payable from Fund 256-030-5304 (community investment trust fund, finance, legal services), and authorizes the proper city officials to execute a fifth amendment to professional services agreement substantially the same as that on file in the office of the city clerk as Public Document No. 11-0829-10.

Resolution 11-0434 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilor Stauber -- 1

Abstention: Councilor Boyle -- 1

Approved August 29, 2011

DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the proper city officials are hereby authorized to execute an implement a collective bargaining agreement with Law Enforcement Labor Services, Local 363, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as that on file in the office of the city clerk as Public Document No. 11-0829-11, covering the year 2011.

Resolution 11-0447 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an implement a collective bargaining agreement with the Confidential Unit of the city of Duluth, represented by Chicago and Midwest Regional Joint Board, affiliated with Workers United/SEIU, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as that on file in the office of the city clerk as Public Document No. 11-0829-12, covering the year 2011.

Resolution 11-0456 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves the renewal and issuance of 80 on sale intoxicating liquor, 82 on sale Sunday intoxicating liquor, six additional bar, 13 on sale dancing, and 34 2:00 a.m. beverage licenses, for the period beginning September 1, 2011, and ending August 31, 2012, subject to departmental approvals and the payment of sales and property taxes, as provided in the Duluth City Code, as listed on Public Document No. 11-0829-13.

Resolution 11-0401 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of 15 on sale wine licenses for the period beginning September 1, 2011, and ending August 31, 2012, for issuance by the liquor control commissioner and further subject to departmental approvals, the payment of sales and property taxes, as provided for in the Duluth City Code, as listed on Public Document No. 11-0829-14.

Resolution 11-0402 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of seven on sale club liquor licenses for the period beginning September 1, 2011, and ending August 31, 2012, for issuance by the liquor control commissioner and further subject to departmental approvals, the payment of sales and property taxes, as provided for in the Duluth City Code, as listed on Public Document No. 11-0829-15.

Resolution 11-0403 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of 20 off sale intoxicating liquor licenses for the period beginning September 1, 2011, and ending August 31, 2012, for issuance by the liquor control commissioner and further subject to departmental approvals, the payment of sales and property taxes, as provided for in the Duluth City Code, as listed on Public Document No. 11-0829-16.

Resolution 11-0404 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of three brewery malt liquor off sale intoxicating liquor licenses for the period beginning September 1, 2011, and ending August 31, 2012, for issuance by the liquor control commissioner and further subject to departmental approvals, the payment of sales and property taxes, as provided for in the Duluth City Code, as listed on Public Document No. 11-0829-17.

Resolution 11-0405 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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RESOLVED, that Change Order One (\$25,337) and Change Order Two (\$14,238) to Contract 21293 with Viele Contracting, Inc., are hereby authorized for additional work associated with bituminous paving improvements at Duluth city fire halls 4 and 7, for a total increase of \$39,575, payable from Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5530 (improvements other than buildings), Project No. CP2008-OT-0806.

Resolution 11-0440 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with RJS Construction Group, LLC, for the replacement of siding for Duluth Fire Station No. 2, located at 2627 West Superior Street in Duluth, Minnesota, in accordance with approved specifications prepared by the city's consultant John Ivey Thomas Associations, Inc., and the vendor's low bid of \$77,274, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2011-1114b.

Resolution 11-0448 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a program signature form, on file in the office of the city clerk as Public Document No. 11-0829-18(a), agreeing to the terms and conditions of the documents listed below, to execute the Microsoft enterprise agreement amendment, a copy of which is on file in the office of the city clerk as Public Document No. 11-0829-18(b) and to be bound by the enterprise enrollment state and local supplemental enterprise agreement terms and conditions, a copy of which is on file in the office of the city clerk as Public Document No. 11-0829-18(c) and by the Microsoft licensing product use rights document dated March, 2011, and the Microsoft product list dated June 1, 2011, all with Microsoft Licensing GP ("Microsoft") providing for the use by the city of various software products, to execute the electronic document submission authorization, a copy of which is on file in the office of the city clerk as Public Document No. 11-0829-18(d), from Software House International ("SHI"), Microsoft's reseller, and to pay to SHI, in accordance with SHI's "Microsoft Enterprise Agreement-Governing Pricing" document, a copy of which is on file in the office of the city clerk as Public Document No. 11-0829-18(e), as required by the aforesaid documents and in accordance with agreements between Microsoft and SHI, a total amount of not to exceed \$1,207,598.70, of which the first year's payment amount of \$207,184.67 shall be payable from Fund 250-015-2010-5580 CE250-E1004 (capital equipment, administrative services, fiscal year-2010) with the annual payments thereafter for years 2012 through 2016 in the amount of \$200,082.82 per year payable from Fund 110-117-1107-5201 (general, management information services, MIS):

DOCUMENT	PUBLIC DOCUMENT NO.
State of Minnesota Enterprise Enrollment Volume Licensing Custom Enrollment State and Local	11-0829-18(f)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Volume Licensing Online Services Supplemental Terms and Conditions

11-0829-18(g)

Resolution 11-0450 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

- - -

RESOLVED, that the city council makes the following findings:

(a) The city council adopted the Duluth comprehensive land use plan on June 26, 2006, via Resolution 06-0491, which outlined the desired arrangement of land uses for the next 20 years; and

(b) Independent School District 709 is closing the Kenwood/Edison School in 2011 as part of its long range facilities plan; and

(c) The Kenwood/Edison School site will no longer be used for school purposes; and

(d) The city planning division held a public meeting on June 22, 2011, on the proposed amendment to explain the change to the comprehensive land use plan - future land use map process, discuss the opportunities for future use of the Kenwood/Edison School site and to gather feedback from the community; and

(e) Based on public comments received and the review of the area completed by the planning staff, the city planning division recommended to the city planning commission that the future land use map be amended for the Kenwood/Edison School site from Traditional Neighborhood/Recreation to Traditional Neighborhood; and

(f) The city planning commission has reviewed the future land use amendment, conducted a public hearing on August 9, 2011, at their regular planning commission meeting, and recommends adoption of the proposed future land use map amendment; and

(g) The city council action shall be by resolution, with the affirmative votes of at least two-thirds of those members constituting a quorum required to take action.

BE IT FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map, is amended as identified in Public Document No. 11-0829-19.

Resolution 11-0436 was unanimously adopted.
Approved August 29, 2011
DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds that a sufficient petition was filed with the city for the vacation of a that part of the alley in Block 28, Gary First Division, lying westerly of the westerly right-of-way line of 98th Avenue West and easterly of the southerly extension of the westerly line of Lot 22, Block 28, Gary First Division;

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of the Duluth City Code, 1959 as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing (FN 11-095) and the city planning commission found that the petition for the vacation of this portion of the alley does meet the standard of uselessness for vehicular and pedestrian purposes, but is needed for utility purposes;

(c) The planning commission, at its August 9, 2011, regular meeting did recommend approval, unanimously, of the petitioned for the alley vacation with the condition that the full

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

length and width of the portion to be vacated be retained as a utility easement.

RESOLVED FURTHER, that the city council of the city of Duluth approves the petitioned for alley vacation described in paragraph (a) above and depicted on Public Document No. 11-0829-20; with the condition that the full length and width of the portion to be vacated be retained as a utility easement.

Resolution 11-0437 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept \$14,820 in cooperative agreement funding from the U.S. department of housing and urban development under the authority of City Contract No. 20095 in award funds providing for enforcement of federal fair housing laws and processing of related complaints by the city human rights office and other related matters, a copy of which is on file with the city clerk as Public Document No. 11-0829-21, funds to be deposited in Fund 110-110-1104-4209-02 (general, legislative and executive, attorney and human rights).

Resolution 11-0438 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to execute an agreement to accept the grant of easements filed with the city clerk as Public Document No. 11-0829-22 from the Spirit Valley Land Company, LLC, at no cost to the city.

Resolution 11-0451 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Check Diversion Program, LLC, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0829-23, for the administration of the worthless check diversion program for the city of Duluth, said program established by Minn. Stat. § 628.69.

Resolution 11-0439 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept a grant from the Minnesota board of firefighter training and education in the amount of \$7,904.16, said funds to be deposited in Fund 210, Agency, 030, Organization 3178, Revenue Source 4220-02 (special projects, finance, fire training grant, state of Minnesota), for the purpose of supporting the Duluth fire department personnel training.

Resolution 11-0449 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the proper city officials are hereby authorized to enter into a three-year agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0829-24, with the Chester Bowl Improvement Club for the continued operation of the Chester Bowl Chalet, alpine ski area and other programming for compensation of \$60,000; payment to be made from Fund 110-121-1219-5319 (general, public administration, parks and recreation).

Resolution 11-0445 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolutions 11-0444 and 11-0446, by Councilor Stauber, affirming and reversing, respectively, the decision of the planning commission to deny the application for a variance by Rory Blazevic from the floodproofing and flood protection requirements of Section 50-18.1.c of the Duluth City Code, were introduced.

Resolution 11-0444, affirming the planning commission decision, failed upon a unanimous vote (Public Document No. 11-0829-25).

- - -

Resolution 11-0446, reversing the planning commission decision, was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the city council finds as follows:

(a) Rory Blazevic's property is located at 102 131st Avenue West and is within a flood fringe district of a flood plain;

(b) On July 1, 2011, Mr. Blazevic applied for a variance that would allow him to construct an 832 square foot garage without elevating the lowest floor of the structure above the regulatory flood protection elevation (Planning File No. 11-102);

(c) A public hearing was held by the planning commission at its August 9, 2011, meeting. The commission voted to deny the request. The basis for the commission's decision was its conclusion that:

(1) Section 50-37.9.K(2)(a) of the City Code prohibits the granting of a variance that authorizes a lesser degree of floodproofing and flood protection than is required by Section 50-18.1.C of the City Code;

(2) Sections 50-18.1.C(3)(a)(i)&(iii) of the City Code provide floodproofing and flood protection standards and require the lowest floor of a structure exceeding 500 square feet to be elevated above the regulatory flood protection elevation;

(3) If the city granted the requested variance it would have the effect of authorizing a lesser degree of floodproofing and flood protection than is required by Section 50-18.1.C of the City Code;

(4) Such a variance is prohibited by Section 50-37.9.K(2)(a) of the City Code;

(d) Mr. Blazevic was provided written notice of the commission's action on August 17, 2011;

(e) Mr. Blazevic filed an appeal of the commission's decision to the city council on August 15, 2011, and pursuant to Section 50-37.1.O(4) of the City Code;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(f) The city council heard the appeal at its August 29, 2011, meeting of the planning and economic development committee and the matter was considered at the August 29, 2011, meeting.

RESOLVED FURTHER, that the decision of the planning commission to deny the application for variance is reversed on the following grounds:

(a) Mr. Blazevic's property located at 102 131st Avenue West is within a flood fringe district of a flood plain;

(b) Mr. Blazevic seeks a variance that would authorize the construction of a garage larger than 500 square feet without providing for elevation of the lowest floor above the regulatory flood protection elevation as required by Section 50-18.1.C(3)(a)(i);

(c) The following sections of the City Code are applicable to construction within a flood fringe district of a flood plain and relevant to this matter:

(1) Section 50-37.9.K provides as follows: "Variances to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the limitations in this subsection K";

(2) Section 50-37.9.K(2)(a) provides as follows: "No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C";

(3) Section 50-37.9.K(2)(b) provides as follows: "Variances shall not produce any adverse effects to the flood capacity or efficiency of the watercourse";

(4) Section 50-18.1.C addresses the standards for construction within a flood plain and in Section 50-18.1.C(3)(a)(i) provides as follows: "All structures, including accessory structures, shall be elevated so that a structure's lowest floor is above the regulatory flood protection elevation. The structure's design and as-built condition in relation to the regulatory flood protection elevation must be certified by a professional engineer or architect licensed in Minnesota";

(5) Section 50-18.1.C(3)(a)(iii) provides as follows: "As an alternative to elevation, accessory structures that constitute a minimal investment and that do not exceed 500 square feet may be internally floodproofed in accordance with Section 18.1.C(2)(c)(iv) and (v) above";

(d) In addition to meeting the standards applicable to construction within a flood fringe as identified in paragraph c, above, the city code requires an applicant for a variance to demonstrate the requirements for a variance provided in Section 50-37.9.C of the City Code;

(e) Granting a variance that allows for the construction of an 832 square foot garage without requiring the lowest floor to be constructed at an elevation above the regulatory flood protection elevation will not produce adverse effects to the flood capacity or efficiency of the watercourse if the structure is internally floodproofed as required by Section 50-18.1.C(3)(a)(iii);

(f) Mr. Blazevic has demonstrated the existence of a hardship and the standards necessary to support a variance as provided in Section 50-37.9.C of the City Code;

(g) Therefore, pursuant to the authority to grant variances as provided in Section 50-37.9.K the application for a variance by Rory Blazevic is granted subject to the following conditions:

(1) The garage structure is limited to 832 square feet;

(2) The structure shall be internally floodproofed as required by Section 50-18.1.C(3)(a)(iii) of the City Code;

(3) Mr. Blazevic shall comply with all applicable zoning and building code regulations;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(4) The authority to issue a building permit for the construction of a garage pursuant to this variance shall expire one year from the date of the approval of this resolution.

Resolution 11-0446 was unanimously adopted.

Approved August 29, 2011

DON NESS, Mayor

- - -

Resolution 11-0442, authorizing one-time expenditure of not to exceed \$75,000 in addition to previously authorized five year annual expenditure of \$80,000 to CBIZ Benefits and Insurance Services, Inc., for a market-competitive city employee compensation evaluation analysis pursuant to current professional services agreement, was introduced by President Gardner for discussion

President Gardner felt that with tight budgets and library closings and shorter hours that this resolution is not a greater priority.

Resolution 11-0442 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to expend an additional one-time amount of not to exceed \$75,000 to CBIZ Benefits and Insurance Services, Inc., under the current professional services agreement approved by city council Resolution 09-0615 and on file in the office of the city auditor as Contract No. 20985 (which agreement authorized an annual payment amount of \$80,000 over a five year period), to provide a market-competitive city employee compensation evaluation analysis, funds payable from Fund 110-700-1431-5310 (general, transfers and other functions, benefits administration/citywide human resources).

Resolution 11-0442 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle and Hartman -- 6

Nays: Councilors Halberg, Stauber and President Gardner -- 3

Approved August 29, 2011

DON NESS, Mayor

- - -

Resolution 11-0443, by President Gardner, of support for the tourism tax task force report and recommendations, was introduced for discussion.

Councilor Hartman moved to amend the resolution as follows:

(a) In the first paragraph, add the following language: "with an amendment to Recommendation No. 4 to provide for a review of all organizations receiving hospitality taxes over \$100,000 as follows:

Each organization that receives more than \$100,000 in hospitality taxes annually shall undergo an initial independent organizational performance review conducted by a qualified consultant selected by the city. Thereafter, one organization a year shall be selected for review, dependent on available funding for such review. Funds for specified reviews shall be derived from surplus hospitality tax funds. The review selection process shall be established by city administration";

(b) In the second paragraph, after the phrase "task force recommendation and findings," insert the phrase "supported by the city council," which motion was seconded and discussed.

Councilor Hartman moved to suspend the rules to hear speakers on the amendment, which was seconded and unanimously carried.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Todd Torvinon and Linda Krug, members of the tourism tax task force, spoke in opposition to all amendments to the resolution for the reasons of: that the councilor proposing the amendment was the council liaison to the task force and the time for amendment considerations was during the task force deliberations; the task force looked at what entities already have as a independent review; this process has been filled with all kinds of unrelated issues; in other sectors it is a common practice that all programs are reviewed; this report is about the entire hospitality industry, not just one entity and the task force put together their very best thinking on this issue.

Councilor Hartman reviewed at length and in detail the rational for his amendment relative to the findings stated in the report and emphasizing the need for performance measurements.

Councilor Fedora and President Gardner opposed the amendment for the reasons of: many of the entities that receive this funding already have the state auditor auditing them; this amendment is attempting to amend a nonbinding resolution; there is a 120 day cancelation clause for Visit Duluth, which makes a longer term contract not effective; the task force put an extreme amount of time and due diligence into this report and if a task force member did not agree with any aspect of the report, there could have been a minority report.

Councilors debated issues associated with the amendment at length.

The amendment failed as follows:

Yeas: Councilors Fosle, Hartman and Stauber -- 3

Nays: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg and President Gardner -- 6

William Burns, Lisa Augustine, general manager of the Holiday Suites, Brian Daugherty, Grandma's Restaurants; Tony Bronson, chair of Visit Duluth and Grandma's Restaurants; Doug Britton, citizen member of the task force, felt that: this industry has kept the city together by spending millions of dollars; this is just a task force recommendation to the administration; appreciated the diligent and thorough work of the task force; this is incredibly important and complicated work; tourism tax dollars need to be invested properly; Visit Duluth supported the task force intent and goals, and just wanted a "seat at the table" and is open to changes; there are some issues that need to be resolved if Visit Duluth is to move into a new era; there has been a lack of oversight in the past and a collaborative effort with no assurance of change is not the way to go.

Councilors Fosle and Stauber raised concerns of: tourism dollars have been increasing, we are kicking a gift horse in the mouth; this will come back with some teeth and they will be going after Visit Duluth; there is no problems with Visit Duluth, events have been increasing; the city is one of the large recipients of the tourism tax, and this report does not have any recommendations or guidelines on this aspect and this has become a divisive issue.

Councilors supporting the resolution commented at length.

Resolution 11-0443 was adopted as follows:

BY PRESIDENT GARDNER:

RESOLVED, that the city council hereby supports the findings and recommendations of the tourism tax task force contained in their report presented to the council on August 15, 2011.

RESOLVED FURTHER, that the council requests that city administration consider the task force recommendations and findings in future tourism tax distributions and related agreements.

RESOLVED FURTHER, that the council hereby thanks the task force industry and citizen representatives for their time and attention on this issue.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0443 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg and President Gardner -- 6

Nays: Councilors Fosle, Hartman and Stauber -- 3

Approved August 29, 2011

DON NESS, Mayor

- - -

Resolution 11-0454, calling for an advisory referendum pertaining to the sale of the city-owned steam system, was introduced by President Gardner for discussion.

Councilor Boyle moved to table the resolution for further review, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

- - -

Resolution 11-0455, submitting a proposed ordinance creating a parks fund and authorizing a special levy of \$2,600,000 to support it to the voters at a special election on November 8, 2011, was introduced by President Gardner for discussion.

Councilor Fedora moved to table the resolution for further review, which motion was seconded and carried unanimously.

- - -

Resolution 11-0441, of intent to improve a portion of Oxford Street, Livingston Avenue and Glenwood Street and to assess a portion of the costs thereof, was introduced by Councilor Hartman for discussion.

Councilor Fedora moved to amend the resolution as follows:

(a) In the first paragraph, after the phrase "specifications and estimates therefor," insert the phrase "subject to the following design limitations,";

(b) Add the following paragraph at the end of the resolution:

"RESOLVED FURTHER, that the plans, specifications and estimates referred to above shall not include a boulevard along the described portion of Glenwood Street and any sidewalk to be constructed adjacent to Glenwood Street shall be located immediately adjacent to the curb of said street,"

which motion was seconded and discussed.

Councilor Fedora moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Laura Johnson and Guihua Fei supported: no boulevards on Glenwood and that it not be narrowed; that if there is sidewalks, that they be adjacent to the curb; that Glenwood not be changed to "no parking"; most of the houses adjacent to Glenwood Street do not face Glenwood, but are very close to Glenwood Street; sidewalks adjacent to Glenwood Street would be a natural extension of the Snively Road sidewalks; Glenwood is used as an emergency route and should not be narrowed and 26 families have signed a petition supporting the amendment (Public Document No. 11-0829-26).

Chief Administrative Officer David Montgomery noted that: this is very much a pedestrian sidewalk neighborhood; there is a very active church, all throughout the week, at the intersection of Glenwood and Snively; the scope of the project; in order to connect this whole neighborhood a sidewalk is needed on Glenwood; having a sidewalk set back is a safety aspect and cost savings to the city and by narrowing the street, it reduces private property encroachment.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Fedora's amendment carried upon the following vote:

Yeas: Councilors Anderson, Fedora, Fosle, Halberg, Hartman and Stauber -- 6

Nays: Councilors Boyle, Cuneo and President Gardner -- 3

Resolution 11-0441, as amended, was adopted as follows:

RESOLVED, that pursuant to Section 61 of the City Charter, the council hereby expresses its intent to cause the following portion of the streets named below to be improved as part of the city's 2012 municipal state aid project and hereby requests that the mayor prepare or cause to have prepared plans, specifications and estimates therefor, subject to the following design limitations, and file such plans and estimates with the special assessment board, together with a recommendation as to what portion of the cost shall be paid by special assessment and what part, if any, should be a general obligation of the city, the number of installments in which assessments may be paid, and the lands which should include the special assessments:

Oxford Street from Woodland Avenue to Livingston Avenue;

Livingston Avenue from Oxford Street to Glenwood Street;

Glenwood Street from Livingston Avenue to Jean Duluth Road.

RESOLVED FURTHER, that the plans, specifications and estimates referred to above shall not include a boulevard along the described portion of Glenwood Street and any sidewalk to be constructed adjacent to Glenwood Street shall be located immediately adjacent to the curb of said street.

Resolution 11-0441, as amended, was unanimously adopted.

Approved August 29, 2011, pursuant to Section 12 of the Duluth City Charter.

[Editor's Note: Resolution 11-0441 was reconsidered and tabled at the September 12 council meeting; and amended again and approved at the September 26 council meeting.]

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

11-033 - AN ORDINANCE MODIFYING CONDITIONS FOR DEFERRAL OF ASSESSMENTS, AMENDING SECTION 45.83 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

INTRODUCED BY COUNCILOR FEDORA

11-039 - AN ORDINANCE CREATING THE PARKS FUND, AMENDING CHAPTER 20 OF THE DULUTH CITY CODE, 1959, AS AMENDED, LEVYING A TAX AS PROVIDED FOR IN LAWS OF MINNESOTA, 1953, CHAPTER 560, SECTION 1, TO FUND IT AND SETTING FORTH THE PROCESS APPLICABLE THERETO, SUBJECT TO REFERENDUM.

- - -

INTRODUCED BY COUNCILOR CUNEO

11-009 - AN ORDINANCE AMENDING CHAPTER 8, SECTIONS 8-9, 8-13, 8-25, 8-40, 8-45, 8-50, 8-52, 8-54, 8-56, 8-57, 8-58, 8-62 AND 8-68 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-034 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-N, MIXED USE NEIGHBORHOOD, TO MU-C, MIXED USE COMMERCIAL, THE ENTIRE PARCEL AT THE SOUTHEASTERN CORNER OF COMMONWEALTH AVENUE AND EAST GARY STREET (CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER

11-035 - AN ORDINANCE GRANTING TO GRANDMA'S SPORTS BAR AND GRILL A CONCURRENT USE PERMIT FOR THE INSTALLATION OF METAL CORNICES, CANOPY/MARQUEE AND AWNINGS TO PROJECT INTO THE LAKE AVENUE SOUTH RIGHT-OF-WAY.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-036 - AN ORDINANCE REPEALING CHAPTER 45, ARTICLE IV OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE VACATION OF HIGHWAYS.

- - -

BY PRESIDENT GARDNER AND COUNCILOR BOYLE

11-037 - AN ORDINANCE PROVIDING FOR POSTING AND MAILING OF NOTICE OF A PROPOSED SALE OF CITY PROPERTY BY AUCTION, AMENDING SECTION 2-177.2 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

INTRODUCED BY COUNCILOR HARTMAN

11-038 - AN ORDINANCE AMENDING SECTION 26-37 AND REPEALING SECTION 26-39 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE NUMBER OF REQUIRED ON-DUTY BRIDGE TENDERS.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-028 (10098) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MIXED USE NEIGHBORHOOD (MU-N) AND MIXED USE BUSINESS PARK (MU-B) TO FORM DISTRICT 5 (F-5), MID-RISE COMMUNITY SHOPPING AND OFFICE, THE PROPERTY ALONG WEST SUPERIOR STREET FROM GARFIELD AVENUE TO 22ND AVENUE WEST IN THE LINCOLN PARK BUSINESS DISTRICT (CITY OF DULUTH).

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-029 (10099) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST HILLSIDE AREA TO ANDREW J. AND CATHERINE E. SILL FOR \$50,000.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-030 (10100) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO DIANNA L. HUNTER AND DEBORAH M. ANDERSON FOR \$55,000.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-031 (10101) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO DIANNA L. HUNTER AND DEBORAH M. ANDERSON FOR \$30,000.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-032 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST HILLSIDE AREA TO FRANK T. HENNESSEY AND STEPHANIE L. HENNESSEY FOR \$20,000.

Councilor Stauber moved to suspend the rules to hear a speaker on the ordinance, which motion was seconded and unanimously carried.

Mark Jennings spoke in opposition to the ordinance for reasons of this is a proposal to sell half of the real estate of very unique viewpoints, from one of the oldest sections of the historical Skyline Parkway, and the public policy should be considered here as to selling this. In addition, he felt that the neighbors along the parkway have been helping the city, at no cost, to maintain the trees and cut the brush and thus should have received personal notification of the city's intent to sell this property.

Councilors reviewed with the administration details of the procedures that were followed.

Councilor Fosle expressed concern that if this ordinance does not pass, the council needs to be prepared to answer the questions as why the council did not let Mr. Hennessey buy the property, if he met the requirements and minimum bid.

President Gardner expressed concern that she did believe that the assessor's fair market value is too low.

The ordinance failed upon the following vote (Public Document No. 11-0829-31):

Yeas: Councilor Fosle -- 1

Nays: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

- - -

The meeting was adjourned at 10:03 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10098

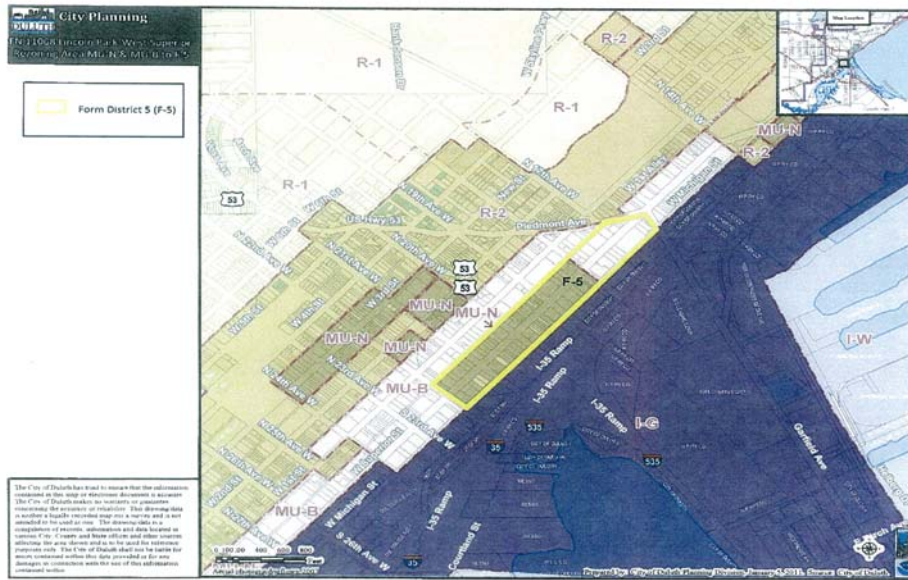
AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MIXED USE NEIGHBORHOOD (MU-N) AND MIXED USE BUSINESS PARK (MU-B) TO FORM DISTRICT 5 (F-5), MID-RISE COMMUNITY SHOPPING AND OFFICE, THE PROPERTY ALONG WEST SUPERIOR STREET FROM GARFIELD AVENUE TO 22ND

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

AVENUE WEST IN THE LINCOLN PARK BUSINESS DISTRICT
(CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the subject property, located in Lincoln Park Business District, described above, and as more particularly described in Exhibit A, be reclassified from its current designation as Mixed Use-Neighborhood (MU-N) and Mixed-Use Business Park (MU-B) to Form District 5 (F-5), Mid-Rise Community Shopping and Office, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: September 30, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9
Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 29, 2011
Approved August 29, 2011
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

ORDINANCE NO. 10099

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST HILLSIDE AREA TO ANDREW J. AND CATHERINE E. SILL FOR \$50,000.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the Code), the manager of the city's physical planning division has reviewed this proposed conveyance and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Code, the city assessor has provided an estimate of the market value to be \$50,000 which estimated market value is hereby established as the minimum acceptable bid or reserve;

(c) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale and pursuant to Article XXXIII of Chapter 2 of the Code;

(d) As per sections 2-177.1 and 2-177.2 of the Code, the property described in Section 2 below was advertised three times in the Duluth News Tribune during the 30 days prior to being offered at public auction on July 9, 2011, at the minimum bid price or reserve of \$50,000. The purchasers named in Section 2 below presented the highest bid at said auction which meets the minimum acceptable bid or reserve of \$50,000 for the property proposed to be sold.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Andrew J. And Catherine E. Sill, husband and wife, as joint tenants, for the amount of \$50,000 to be deposited into Fund 110 (general), Agency 700 (transfers and other functions), Organization 1420 (capital programs), Object 4640 (sale of land), and further to execute all documents necessary with regard to said conveyance:

Lots 209, 211, 213, 215 and the easterly half of Lot 217, all in Block 137, DULUTH PROPER SECOND DIVISION.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: September 30, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 29, 2011
Approved August 29, 2011
DON NESS, Mayor

- - -

ORDINANCE NO. 10100

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO DIANNA L. HUNTER AND DEBORAH M. ANDERSON FOR \$55,000.

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the Code), the manager of the city's physical planning division has reviewed this proposed conveyance and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Code, the city assessor has provided an estimate of the market value to be \$55,000 which estimated market value is hereby established as the minimum acceptable bid or reserve;

(c) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale and pursuant to Article XXXIII of Chapter 2 of the Code;

(d) As per sections 2-177.1 and 2-177.2 of the Code, the property described in Section 2 below was advertised three times in the Duluth News Tribune during the 30 days prior to being offered at public auction on July 9, 2011, at the minimum bid price or reserve of \$45,000. The purchasers named in Section 2 below presented the highest bid of \$55,000 at said auction which exceeded the minimum bid or reserve for the property proposed to be sold.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Dianna L. Hunter and Deborah M. Anderson, as joint tenants, for the amount of \$55,000 to be deposited into Fund 110 (general), Agency 700 (transfers and other functions), Organization 1420 (capital program), Object 4640 (sale of land), and further to execute all documents necessary with regard to said conveyance:

Lots 33, 35, 37, 39 and 41, except that part in boulevard, Block 113, DULUTH PROPER THIRD DIVISION.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: September 30, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed August 29, 2011
Approved August 29, 2011
DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10101

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO DIANNA L. HUNTER AND DEBORAH M. ANDERSON FOR \$30,000.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the Code), the manager of the city's physical planning division has reviewed this proposed conveyance and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Code, the city assessor has provided an estimate of the market value to be \$30,000 which estimated market value is hereby established as the minimum acceptable bid or reserve;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(c) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale and pursuant to Article XXXIII of Chapter 2 of the Code;

(d) As per sections 2-177.1 and 2-177.2 of the Code, the property described in Section 2 below was advertised three times in the Duluth News Tribune during the 30 days prior to being offered at public auction on July 9, 2011, at the minimum bid price or reserve of \$30,000. The purchasers named in Section 2 below presented the highest bid at said auction which meets the minimum acceptable bid or reserve of \$30,000 for the property proposed to be sold.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Dianna L. Hunter and Deborah M. Anderson, as joint tenants, for the amount of \$30,000 to be deposited into Fund 110 (general), Agency 700 (transfers and other functions), Organization 1420 (capital program), Object 4640 (sale of land), and further to execute all documents necessary with regard to said conveyance:

Lots 22, 24, and 26, except south ten feet for alley, Block 91, DULUTH PROPER THIRD DIVISION.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: September 30, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 29, 2011
Approved August 29, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 12, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0912-12 Debra Filipovich communication regarding the proposed agreement with neighbors of Lower Chester Park (11-0477R). -- Received

11-0912-13 Dan O'Neill communication regarding calling for an advisory referendum pertaining to the sale of the city-owned steam system (11-0454R). -- Received

11-0912-01 The following communications regarding the proposed number of required on duty bridge tenders (11-038-O): (a) Paula Hanela; (b) Stephen J. Hughes; (c) Steve Johnson; (d) Dexter Nelson. -- Received

11-0912-14 The following communications regarding the proposed 2012 budget (11-0468R): (a) Linda and Norm Herron; (b) Wayne Lindberg. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-0912-02 Building appeal board minutes of July 31, 2011, meeting. -- Received

11-0912-03 Duluth Seaway Port authority financial statement of July 2011. -- Received

11-0912-04 Housing and redevelopment authority minutes of: (a) June 28; (b) July 26, 2011, meetings. -- Received

11-0912-05 Spirit mountain recreation area authority minutes of: (a) May 25; (b) June 7; (c) July 21, 2011, meetings. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Randall Tigue, attorney representing The Last Place on Earth, expressed concerns that he felt that his client has experienced a disturbing pattern of conduct by the police department with respect to his customers being questioned and interrogated. He cited examples of his accusations.

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Jim Carlson, owner of The Last Place on Earth, commented on what he believed is a problem with the Duluth police stopping their customers.

--

Loren Martell expressed concerns about Independent School District No. 709 expenditure levels at the new schools.

--

RESOLUTION RECONSIDERED

Councilor Anderson moved to reconsider Resolution 11-0441, of intent to improve a portion of Oxford Street, Livingston Avenue and Glenwood Street and to assess a portion of the costs thereof, which motion was seconded carried upon the following vote:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Councilor Anderson moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Guihua Fei felt that if sidewalks have to be put in they should be adjacent to the curb because: it would be a natural extension of the existing sidewalks on Snively Road; it would meet the residents' and city's needs; not one resident supports having a boulevard between the street and sidewalk and 26 residents signed a petition not wanting a boulevard.

Councilor Anderson noted that he made an error on his vote and supports complete streets and would further support tabling, to allow others to comment, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fedora -- 1

- - -

RESOLUTIONS TABLED

President Gardner moved to remove Resolution 11-0454, calling for an advisory referendum pertaining to the sale of the city-owned steam system, from the table, which motion was seconded and unanimously carried.

Councilor Fosle moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Tom Karas, Brad Clifford, executive director of North Star Community Development Corporation, and Carla Schneider, board member of the Duluth Steam Cooperative, made the following comments on the resolution of: the city should hold on to an entity that has to do with energy because it will be the most important subject that will be dealt with in the future; residents should be given the opportunity to understand and be educated about energy; we cannot possibly understand what is profitable for our land at this time, in reference to the steam district; we need to have ecologically conscious, stable rates with safe and reliable service; there is a total estimated value to all the businesses in this district of \$330 million; a long term study of the options for the district is needed before a sale is contemplated; if the council supports going to a voter referendum on this, it will give a good opportunity for a healthy conversation about the advantages and disadvantages of going forward with a sale; there should be a very specific laid out process of the operational reliability of the system moving forward, the capital investment opportunities for a purchaser or the city, environmental stewardship and rates and that a specific time be laid out, if the decision to sell proceeds.

Ms. Schneider responded to various councilor questions.

Mayor Don Ness spoke in support of the resolution for reasons of: so voters in Duluth could have their voice heard on this potential sale; a final sale decision will have to come back to the council after details of the concerns have been resolved; the ownership of the steam system is clearly not a core service of city government; over \$6 million of debt could be paid off; it would remove a serious liability from high pressure steam; the city is not looking to increase its debt to invest in the capital to responsibly own this system; with any potential sale, the city would be protecting the interests of the public and users of the system, and a sale would insure an investment to upgrade the operation, which would put local trades to work and fund the city's energy plan.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Cuneo felt that there should be a higher monetary bar set and moved to amend the resolution by changing the amount in the proposed question from "\$1"million to "\$2" million, which motion was seconded and carried unanimously.

Councilors supporting the issue commented at length.

Councilors Halberg, Boyle, Anderson, Hartman and President Gardner expressed concerns of: the need for assurances that a contract includes protection for the employees and the consumers; there is not enough time before the election for adequate public discussion; it has been a year since this was last rushed before the council and now the council is again being rushed into making this decision, along with all the other major issues before it; in the future the city would not be able to protect rates for good customers; there is still the legal uncertainty that this is a "public utility," needing a 66 percent voter approval of binding referendum; a purchaser would have responsibility to shareholders, not the taxpayers; by keeping it in public ownership the city would retain the final say over the destiny of the Downtown businesses that use the utility; the question is not fairly worded and should not state what the proceeds would be used for; the 1979 statute states that the Duluth Steam Cooperative is a utility; in the cooperative the users have a say in the operations and rates that they would not have with private ownership; this should not be proposed as a nonbinding referendum and should be approved by a 2/3 vote.

Councilors Fedora and Fosle supported the resolution for reasons of: this is not a utility, but a cooperative; in 1979, the city helped the cooperative from failing and thus will need to do it again in the future and, if it is sold to a private entity, it knows what they are doing and has economies of scale in their whole operations.

Resolution 11-0454 failed upon the following vote (Public Document No. 11-0912-06):

Yeas: Councilors Cuneo, Fedora, Fosle and Stauber -- 4

Nays: Councilors Anderson, Boyle, Halberg, Hartman and President Gardner -- 5

- - -

Councilor Boyle moved to remove Resolution 11-0455, submitting a proposed ordinance creating a parks fund and authorizing a special levy of \$2,600,000 to support it to the voters at a special election on November 8, 2011, from the table, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

Councilor Fedora moved to suspend the rules to consider Ordinance 11-039 at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR FEDORA

11-039 (10102) - AN ORDINANCE CREATING THE PARKS FUND, AMENDING CHAPTER 20 OF THE DULUTH CITY CODE, 1959, AS AMENDED, LEVYING A TAX AS PROVIDED FOR IN LAWS OF MINNESOTA, 1953, CHAPTER 560, SECTION 1, TO FUND IT AND SETTING FORTH THE PROCESS APPLICABLE THERETO, SUBJECT TO REFERENDUM.

Councilor Fedora moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0455 was adopted as follows:

RESOLVED, that the city council hereby submits the following proposed ordinance to the qualified voters of the city of Duluth at the special municipal election to be held on Tuesday, November 8, 2011, for their approval or rejection in the manner provided for by law.

RESOLVED FURTHER, that the city clerk shall place upon the ballot at such general election the proposition hereinafter set forth.

To vote for the proposition, completely fill in the oval next to the word "YES" for that question.

To vote against the proposition, completely fill in the oval next to the word "NO" for that question.

PROPOSITION

Should Chapter 2 of the Duluth City Code, 1959, as amended, be amended to create a fund denominated as the "Parks Fund" and should the city levy a special levy in the amount of \$2,600,000 on the referendum market value of all real property in the city, said levy being 0.0472654% of said referendum market value, for the purpose of providing a dedicated funding source for parks and recreation facilities, recreation activities, and for implementation of the concepts addressed in the Duluth Parks and Recreation Master Plan dated December 2010, in accordance with the authority contained in Laws of Minnesota, 1953, Chapter 560, Section 1?

YES _____ NO _____

A "YES" vote is in favor of creating the Parks Fund and authorizing a special levy for the purpose of providing a dedicated funding source for parks and recreation facilities, recreation activities, and for implementation of the concepts addressed in the Duluth Parks and Recreation Master Plan dated December 2010. **BY VOTING "YES" ON THIS BALLOT QUESTION YOU ARE VOTING FOR A PROPERTY TAX INCREASE.**

A "NO" vote is a vote against creating the Parks Fund and against a special levy to support it.

Resolution 11-0455 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that city officials are hereby authorized to enter into a contract with InfoSend, Inc., for mailing services (\$15,500) and postage (\$51,000) through December 31, 2011, in accordance with city approved specifications and the vendor's bid, for a total estimated amount of \$66,500, terms net 30, and payable as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(a) Mailing Services \$15,500				
Amount	Fund	Department/Agency (Public Works and Utilities)	Division/Cost Ctr. (Customer Services/Customer Accounts)	Object (Control Services)
\$ 4,030	510 Water	500	1940-2400	5310
\$ 6,045	520 Gas	500	1940-2400	5310
\$ 3,565	530 Sewer	500	1940-2400	5310
\$ 1,860	535 Stormwater	500	1940-2400	5310
(b) Postage \$51,000				
Amount	Fund	Department/Agency (Public Works and Utilities)	Division/Cost Ctr. (Customer Services/Customer Accounts)	Object (Postage)
\$13,260	510 Water	500	1940-2400	5322
\$19,890	520 Gas	500	1940-2400	5322
\$11,730	530 Sewer	500	1940-2400	5322
\$ 6,120	535 Stormwater	500	1940-2400	5322

Resolution 11-0463 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor licenses, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

St. Louis River Citizens Action Committee (St. Louis River Alliance), Lake Superior and Mississippi Railroad Company railroad cars, for October 2, 2011, with Julene Boe, manager.

Resolution 11-0469 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale 3.2 percent malt liquor license for the period ending April 30, 2012, subject to departmental approvals and the payment of sales and property taxes:

RPK Baseball, Inc. (Duluth Huskies), 101 North 35th Avenue West, with Michael Rosenweig, 50 percent owner and Andy Karon, 50 percent owner, transferred from RWM Baseball, Inc. (Duluth Huskies), same address.

Resolution 11-0470 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale intoxicating liquor license, on sale Sunday license, dancing license, additional bar license, and approval of a 2:00 a.m. beverage license for the period ending August 31, 2012, subject to departmental approvals and the payment of sales and property taxes:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Just Take Action, Inc. (Tycoon's Alehouse & Eatery), 132 East Superior Street, with Tim Nelson, 50 percent owner and Rod Raymond, 50 percent owner.

Resolution 11-0471 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following temporary on sale 3.2 percent malt liquor license, subject to departmental approvals with any specific restrictions:

College of St. Scholastica, 1200 Kenwood Avenue, for October 15, 2011, with Carrie Emslander, manager.

Resolution 11-0472 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to UMD Ducks Unlimited and Life House, Inc., and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0475 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0912-07, with AECOM Technical Services, Inc., for contamination investigation and preparation of a remedial action plan related to the Duluth Dump #5 Site in an amount not to exceed \$66,667, payable from Fund 255 (economic development fund), Department 020 (planning), Organization No. 5319 (other professional services).

Resolution 11-0453 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to enter into a Minnesota historical and cultural grant agreement with the Minnesota historical society, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0912-08, accepting a grant in the amount of \$18,750, related to a historic resources survey of the East End residential area – Phase III, payable into special projects fund, Finance Department 210-030-3150-4210-02 (miscellaneous federal grants).

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a Minnesota historical and cultural subgrant agreement with Summit EnviroSolutions, Inc., substantially in the form of that on file in the office the city clerk as Public Document No. 11-0912-08, to implement the Historic resources survey of the East End residential area – Phase III, in the total amount of \$21,863. The sum of \$18,750 payable from special projects

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

fund, Finance Department 210-030-3150-5441 (other services and charges) and \$3,113 payable from Community Development Fund 265-020-5441 (miscellaneous).

Resolution 11-0473 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Insituform Technologies USA, Inc., for the cured-in-place pipe (CIPP) rehabilitation of sanitary sewers in Sewer Basin No. 2 in the amount of \$1,324,517.10, with \$264,903.42 payable from the Clean Water Fund 532, Department 500 (public works and utilities), Object 5532 (capital improvements - bond), City Project No. 0893SN. The remaining \$1,059,613.68 will be reimbursed with a WIF grant and CWRP principal forgiveness from the PFA.

Resolution 11-0457 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

WHEREAS, it would be mutually beneficial for both the city of Duluth and St. Louis County to allow the transfer of federal funds from the city of Duluth Project SP 118-198-003 to St. Louis County Project SP 69-613-032; and

WHEREAS, St. Louis County would allow the transfer from its regular state aid construction account in an amount equal to the transfer of city of Duluth federal funds to St. Louis County; and

WHEREAS, the 2011-2014 state transportation improvement plan has been approved by the FHWA; and

WHEREAS, the city of Duluth has an approved Project SP 118-198-003, Sequence Number 39, in Federal Fiscal Year 2011; and

WHEREAS, the federal funded portion of this project is \$1,218,000; and

WHEREAS, St. Louis County has an approved Project SP 69-613-032, Sequence Number A2154, in Federal Fiscal Year 2011; and

WHEREAS, the federal funded portion of this project is \$2,200,076.57; and

WHEREAS, the St. Louis County Project SP 69-613-032 initially had insufficient federal funds towards meeting 80 percent federal participation.

NOW, THEREFORE, BE IT RESOLVED, by the city council of Duluth, that the city of Duluth agrees to the reallocation by STIP amendment of \$1,218,000 in 2011 STP federal funds from Project SP 118-198-003 to St. Louis County Project SP 69-613-032.

FURTHER RESOLVED, that St. Louis County shall agree to the reallocation from its 2011 regular state aid construction account \$1,218,000 to the city of Duluth.

FURTHER RESOLVED, that the city of Duluth shall accept the St. Louis County regular state aid construction reallocation of \$1,218,000 for construction of SP 118-198-003.

Resolution 11-0474 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that pursuant to Minnesota Statutes, Section 469.033, subdivision 6, the city council adopts the following proposed property tax levy:

Section 1. The sum to be raised by taxation for the year 2012 for the housing and redevelopment authority taxing district's operation is hereby determined to be the sum of \$779,100 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts as set forth in the following sections, viz:

Section 2. That pursuant to Minnesota Statute 469.033, subdivision 6, there will be levied for the purpose of providing for the housing and redevelopment authority special taxing district the sum of \$779,100.

Resolution 11-0465 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

Resolution 11-0466, proposing the sum to be raised by taxation for general purposes for the year 2012, was introduced by Councilor Fedora for discussion.

Councilors Fedora, Fosle and Stauber opposed the resolution for reasons of: the city has historically increased their levy limit and that the general public is not getting salary increases like this; the Housing and Redevelopment Authority and transit authority held their levy flat with no increases; Minneapolis is not increasing their levy; with the elimination of the Homestead Tax Credit, taxes will already be going up; when the police building levy was proposed last year, other alternatives were not given so there is another increase and with the city increasing property values, property taxes went up.

Resolution 11-0466 was adopted as follows:

RESOLVED, that pursuant to Minnesota Statutes, Section 275.065, the city council adopts the following proposed tax levy:

Section 1. The sum to be raised by taxation for the year 2012 for general operations is hereby determined to be the sum of \$18,804,700 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts of the city, as set forth in the following sections, viz:

Section 2. There will be levied for the support of the general fund the sum of \$12,057,700.

Section 3. For the payment of debt, there will be levied for the general obligation debt fund the sum of \$6,604,900.

Section 4. That pursuant to Laws of Minnesota 1971, Chapter 824, to pay for the portion of the cost of local improvements which will not sustain a special assessment, there will be levied for the permanent improvement fund the sum of \$142,100.

Resolution 11-0466 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved September 12, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Minnesota Statutes, Sec. 275.065, the city council adopts the following proposed tax levy:

Section 1. The sum to be raised by taxation for the year 2012 for Duluth transit authority special taxing district's operations is hereby determined to be the sum of \$1,316,900

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts as set forth in the following section, viz:

Section 2. That pursuant to Minnesota Statutes, Sec. 485A.31, subd. 1, there will be levied for transit operations the sum of \$1,316,900.

Resolution 11-0467 was unanimously adopted.

Approved September 12, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with Minnesota Statutes, Sec. 275.065, the city council hereby adopts the following proposed budget for the fiscal year beginning January 1 and ending December 31, 2012.

GENERAL		
010	Total legislative and executive	3,591,400
117	Total management information systems	2,647,400
121	Total public administration	17,866,100
125	Total finance	3,321,600
132	Total planning and construction services	2,171,100
135	Total business and community development	678,800
150	Total fire	12,908,400
160	Total police	18,288,000
500	Total public works	1,689,300
700	Total transfers	10,694,900
110	General fund total	73,857,000

Resolution 11-0468 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved September 12, 2011

DON NESS, Mayor

- - -

RESOLVED, that Resolution 11-0186 is hereby amended, thereby increasing the city's fine hot mix contract with Northland Constructors of Duluth, LLC, by \$250,000, payable from the Street Improvement Fund 440, Department/Agency 038 (special assessment contracts), Object 5222 (blacktop), Project SIP2011-roads.

Resolution 11-0464 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved September 12, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to execute and implement an agreement, containing substantially the terms of that on file with the city clerk as Public Document No. 11-0912-09, with WLSSD for the collection of its capacity availability fee in exchange for payment of a commission to be deposited in Fund 110-132-1304-4359 (general, planning and construction services, construction services and inspection, CAF administration fee).

Resolution 11-0462 was unanimously adopted.
Approved September 12, 2011
DON NESS, Mayor

- - -

Resolution 11-0477, authorizing the city to enter into an agreement with Neighbors of Lower Chester Park, a Minnesota nonprofit, for the operation of the Lower Chester Community Recreation Area, was introduced by Councilor Halberg for discussion.

Councilor Halberg moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Joann Chesser, Susie Darley-Hill and Debra Filipovich expressed support for the resolution for reasons of: there is a need for youth to play safely in their neighborhood; families are starting to move back into this neighborhood; the neighbors representing this entity will be turning this into a vibrant community area again and the organization will be partnering with other groups for activities at the center.

Resolution 11-0477 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-0912-10, with Neighbors of Lower Chester Park, a Minnesota nonprofit, for the operation of the Lower Chester Community Recreation Area.

Resolution 11-0477 was unanimously adopted.
Approved September 12, 2011
DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

BY COUNCILOR ANDERSON

11-026 - AN ORDINANCE ADDING A NEW SECTION 34-26 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING LOITERING IN PUBLIC PLACES WITH THE INTENT TO ENGAGE IN PROSTITUTION OR THE SALE OF ILLEGAL DRUGS.

Councilor Anderson moved to remove the ordinance from the table, which motion was seconded and unanimously carried.

Councilor Anderson moved to remove the ordinance from the agenda and refer it to the administration for further study, which motion was seconded and unanimously carried.

- - -

The following entitled ordinances were read for the first time:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

INTRODUCED BY COUNCILOR FEDORA

11-040 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AGGREGATE AMOUNT OF \$1,505,000 FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

- - -

INTRODUCED BY COUNCILOR FEDORA

11-041 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,650,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL WATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

- - -

INTRODUCED BY COUNCILOR FEDORA

11-042 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION AIRPORT IMPROVEMENT BONDS IN THE MAXIMUM AMOUNT OF \$7,650,000 OF THE CITY OF DULUTH UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTIONS OF THE CITY COUNCIL AND LEVYING TAXES FOR THE PAYMENT THEREOF.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

11-033 (10103) - AN ORDINANCE MODIFYING CONDITIONS FOR DEFERRAL OF ASSESSMENTS, AMENDING SECTION 45.83 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

Councilor Fedora moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR CUNEO

11-009 (10104) - AN ORDINANCE AMENDING CHAPTER 8, SECTIONS 8-9, 8-13, 8-25, 8-40, 8-45, 8-50, 8-52, 8-54, 8-56, 8-57, 8-58, 8-62 AND 8-68 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

Councilor Cuneo moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-034 (10105) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-N, MIXED USE NEIGHBORHOOD, TO MU-C, MIXED USE COMMERCIAL, THE ENTIRE PARCEL AT THE SOUTHEASTERN CORNER OF COMMONWEALTH AVENUE AND EAST GARY STREET (CITY OF DULUTH).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-035 (10106) - AN ORDINANCE GRANTING TO GRANDMA'S SPORTS BAR AND GRILL A CONCURRENT USE PERMIT FOR THE INSTALLATION OF METAL CORNICES, CANOPY/MARQUEE AND AWNINGS TO PROJECT INTO THE LAKE AVENUE SOUTH RIGHT-OF-WAY.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-036-O - AN ORDINANCE REPEALING CHAPTER 45, ARTICLE IV OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE VACATION OF HIGHWAYS.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

BY PRESIDENT GARDNER AND COUNCILOR BOYLE

11-037 (10108) - AN ORDINANCE PROVIDING FOR POSTING AND MAILING OF NOTICE OF A PROPOSED SALE OF CITY PROPERTY BY AUCTION, AMENDING SECTION 2-177.2 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

President Gardner moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR HARTMAN

11-038 (10109) - AN ORDINANCE AMENDING SECTION 26-37 AND REPEALING SECTION 26-39 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE NUMBER OF REQUIRED ON-DUTY BRIDGE TENDERS.

The rules were suspended to hear from speakers on the ordinance, which motion was seconded and unanimously carried.

Richard Shaul, Paula Hanela, Dale Mitchell, David Ceryes, George Flaim and David Lennzal spoke in opposition to the ordinance for reasons of: automobile, pedestrian, small craft and large vessels make this bridge a different animal; this is too much for one operator to handle in a safe and timely manner; cutting four of nine operators is a 44 percent cut in staffing; even with camera technology, there are still blind spots that are not covered; sleep apnea is also a very serious issue that there needs to be concern about; the danger of working alone increases the chance of violence from the public or an intruder; a sudden illness could be dangerous to everyone; this kind of shift work, in itself, has an adverse affect on an individual; Canal Park area traffic has substantially increased with Park Point resident and tourists and a second operator is needed to safely watch; when the original ordinance was adopted, the Park Point area was mostly zoned industrial/commercial; this change could adversely affect the safety of Park Point residents; having a second person on duty is like an insurance policy; there is already only one operator between January 15 and March 15 during the afternoon and evening shift doing maintenance; other bridges across the country with one operator have two tenders or spotters to assist the operator; there has been a serious accident with a bridge in southern Ontario that had one operator, where the bridge sheared off the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

bridge of a freighter and caused a fire and bridge damage; studies have shown that 30-50 percent of night shift workers have fallen asleep and there are no washroom facilities in the pilot house, one has to go down below the bridge, which is not safe during the night.

The administration responded at length to councilors' questions, noting that there are open positions in the public works division where these individuals would likely be able to fill in and that safety is taken seriously.

Councilors Fosle, Halberg and President Gardner opposed the ordinance for reasons of: there is a huge responsibility here that should not be taken lightly; sleep deprivation is a serious problem; it takes a great deal of time to slow down a vessel if there is an emergency and a concern that individuals laid off from the bridge would not be qualified for other positions.

Councilor Hartman moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Hartman and Stauber -- 6

Nays: Councilors Fosle, Halberg and President Gardner -- 3

- - -

The meeting was adjourned at 10:02 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10102

AN ORDINANCE CREATING THE PARKS FUND, AMENDING CHAPTER 20 OF THE DULUTH CITY CODE, 1959, AS AMENDED, LEVYING A TAX AS PROVIDED FOR IN LAWS OF MINNESOTA, 1953, CHAPTER 560, SECTION 1, TO FUND IT AND SETTING FORTH THE PROCESS APPLICABLE THERETO, SUBJECT TO REFERENDUM.

The city of Duluth does ordain:

Section 1. That Chapter 20 of the Duluth City Code, 1959 as amended, is hereby amended by adding a new Division 9 which reads as follows:

Division 9. Parks Fund.

Sec. 20-29. Parks fund created.

There is hereby established in the treasury of the city of Duluth a special fund designated as the parks fund for the purpose of providing a dedicated funding source for parks and recreation facilities, recreation activities, and implementation of the concepts addressed in the Duluth parks and recreation master plan dated December 2010. Into said fund the following monies shall be appropriated: all proceeds from the operation of various parks and recreation facilities and programs, monies appropriated to it from time to time by the council; gifts and grants from public or private agencies intended or designated to be used for the aforesaid park purposes; and proceeds of any special levy against the referendum market value of real property in the city authorized pursuant to the authority contained in Laws of Minnesota, 1953, Chapter 560, Section 1.

Section 2. That pursuant to the authority contained in Laws of Minnesota, 1953, Chapter 560, Section 1, there is hereby established a special levy against the referendum market value of all real property in the city of Duluth subject to the following:

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(a) The amount of said levy shall be \$2,600,000 per year for each year commencing with the first tax levy adopted after this ordinance becomes effective;

(b) The proceeds of said levy shall be used for the purpose of providing a dedicated funding source for parks and recreation facilities, recreation activities, and implementation of the concepts addressed in the Duluth parks and recreation master plan dated December 2010;

(c) Said levy shall be certified to the St. Louis County auditor for collection with other taxes levied against said property and shall be collected by the county auditor in the same manner as other general taxes levied against such property;

(d) The proceeds of said levy shall be allocated and distributed for allowable purposes within the parks fund by the city council in the manner prescribed for other expenditures of city funds;

(e) Any proceeds of said levy determined to have been erroneously paid shall be refunded to the taxpayer who paid them.

Section 3. This ordinance shall not take effect until its passage and publication and until approved by a majority of electors voting in the general election of November 8, 2011. If this ordinance is so approved, it shall become effective on November 9, 2011. If this ordinance is not so approved, it shall not go into effect and shall be null and void. (Effective date: November 9, 2011, pursuant to the results of the November 8, 2011, general municipal election)

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed September 12, 2011
Approved September 12, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10103

AN ORDINANCE MODIFYING CONDITIONS FOR DEFERRAL OF ASSESSMENTS, AMENDING SECTION 45-83 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 45.83 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-83. Deferral of assessment in certain cases.

Pursuant to authority contained in Minnesota Statutes, Sections 435.193 through 435.195, and in Section 1 of the City Charter, the special assessment board is hereby authorized to defer the payment of special assessments for local improvements made against homestead property owned by persons for whom it would be a hardship to make such payment who are either 65 years of age or older or retired by virtue of a permanent and total disability or who are members of the Minnesota National Guard or other military reserves who are ordered into active military service, as defined by M.S. Section 190.05, subd. 5b or 5c, as stated in such person's military orders. The special assessment board shall establish, and as necessary amend, specific guidelines to cover the exercise of

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its responsibilities under this Section. The interest rate on such deferred assessments shall be the same as the rate applicable to assessments for the same local improvement paid by installments pursuant to Section 68 of the City Charter.

All amounts deferred, and interest due thereon, shall become due upon the occurrence of any of the following events:

(a) The death of the owner, provided that the spouse is not otherwise eligible for deferment hereunder;

(b) The sale, transfer or subdivision of the homestead property, or any part thereof;

(c) The loss for any reason of homestead status of the benefitting property;

(d) If for any reason the council determines that there would be no hardship to require immediate or partial payment of the amount deferred.

Section 2. This amendment shall apply to all applications for deferral made after August 1, 2011.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 15, 2011)

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed September 12, 2011

Approved September 12, 2011

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10104

AN ORDINANCE AMENDING CHAPTER 8, SECTIONS 8-9, 8-13, 8-25, 8-40, 8-45, 8-50, 8-52, 8-54, 8-56, 8-57, 8-58, 8-62 AND 8-68 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

The city of Duluth does ordain:

Section 1. That Section 8-9 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-9. Suspension and revocation of licenses; civil penalty; presumptive penalties.

(a) When it comes to the attention of the alcohol, gambling and tobacco commission that any establishment licensed pursuant to this Chapter may have violated the provisions of this Chapter or any other law relating to the operation of a liquor establishment, or that such establishment may be engaging in other conduct that may constitute good cause for the suspension or revocation of its liquor license, the alcohol, gambling and tobacco commission may call for a hearing to determine the validity of the allegations and to determine what, if any, disciplinary measures shall be recommended to the city council for their implementation against the licensee;

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(1) Any hearing called pursuant to the provisions of this Section shall be held before the alcohol, gambling and tobacco commission and shall be held pursuant to the procedural and evidentiary provisions of Minnesota Statutes, sections 14.57 to 14.69, and rules promulgated thereunder. At such hearing, the commission shall hear all relevant evidence and arguments from all parties. After due deliberation, the commission shall determine the validity of the allegations and what, if any, corrective or punitive measures will be recommended to the city council;

(2) At the completion of the hearing and deliberations, the commission shall direct the city clerk to prepare a report to the city council which shall consist of the commission's findings of fact, conclusions and recommendation to the city council. The report shall be filed with the city council and served personally or by first class mail upon the parties to the hearing. The council shall also receive a copy of the transcript of the commission's hearing and any exhibits introduced as evidence;

(3) The city council shall not render a decision on the matter until at least ten days after it has received the report of the alcohol, gambling and tobacco commission. During this ten day period, either party to the hearing may present written exceptions to the report of the alcohol, gambling and tobacco commission or make arrangements to be placed on the agenda of the city council to present oral argument to the city council concerning the matter;

(4) The city council's decision on the matter shall be in the form of a written resolution which shall contain findings of fact and conclusions on all material issues and shall set forth any punitive action taken against the license. A copy of the resolution shall be served upon the licensee personally or by first class mail;

(b) Without limiting other grounds for suspension or revocation, the following shall be deemed to be good cause for suspension or revocation of a liquor license:

(1) Violation of any law relating to the operation of a liquor establishment, including, but not limited to, state, federal and local laws on liquor, gambling, prostitution, health and fire safety;

(2) The establishment is operated in such a way as to constitute a public nuisance;

(3) The establishment has failed to pay license fees or city or state sales tax or that property taxes on the building have not been paid;

(4) The establishment has failed to file or maintain any insurance or bond required by law;

(5) The establishment is insolvent, bankrupt or otherwise financially unable to continue business;

(6) Refusal to cooperate with the board or the police in any investigation and the refusal to admit police officers into the establishment at any time when people are in the establishment;

(7) Failure to follow the procedures set forth in this Chapter with respect to change of ownership, change of location or changes in serving area of the establishment;

(8) Nonuse of the license;

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(9) The filing of a license application containing information or statements known by the applicant to be false;

(10) The failure to follow the procedures applicable to the use of a caterer's permit issued by the state;

(c) The city council may, for the causes enumerated above, revoke a license, suspend a license for up to 60 days, or impose a civil penalty, not to exceed \$2,000 for each violation, or any combination of these sanctions. No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action. Absent aggravating or mitigating circumstances, the presumptive penalties for violations shall be as follows:

(1) First offense - \$500 civil penalty;

(2) Second offense within one year of the occurrence of the first offense - \$1,000 civil penalty and one day license suspension;

(3) Third offense within two years of the occurrence of the first offense - \$2,000 civil penalty and five day license suspension;

(4) Fourth offense within three years of the occurrence of the first offense - \$2,000 civil penalty and 30 day license suspension;

(5) Fifth offense within four years of the occurrence of the first offense - license revocation;

(d) The city council may request that the alcohol, gambling and tobacco commission conduct a hearing concerning the operation of any establishment licensed pursuant to this Chapter. The commission shall conduct any hearings so requested.

Section 2. That Section 8-13 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

Sec. 8-13. Definitions.

For the purposes of this Division, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

(a) Alcoholic beverages. Distilled, fermented, spirituous, vinous, and malt beverages containing .5 percent or more of ethyl alcohol by weight which are potable for consumption by human beings;

(b) At retail. Such term means for use or consumption by the purchaser and not for resale;

(c) Bed and breakfast establishment. Any bed and breakfast inn authorized by Section 50-35 of this Code or other residential, owner occupied, historically or architecturally unique, overnight lodging facility that serves meals to its guests and which is authorized or allowed by local law and is found by the alcoholic beverage board to be the functional equivalent of a bed and breakfast inn;

(d) Club. Any corporation duly organized under the laws of the state for civic, fraternal, social or business purposes, or for intellectual improvement, or for the promotion of sports, or a congressionally chartered veterans' organization which shall have more than 50 members and which shall, for more than a year, have owned, hired or leased a building or space in a building of such extent and

character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, whose affairs and management are conducted by a board of directors, executive committee or other similar body chosen by the members at a meeting held for that purpose, none of whose members, officers, agents or employees is paid directly or indirectly any compensation by way of profit from the distribution or sale of beverages to the members of the club, or to its guests, beyond the amount of such reasonable salary or wages as may be fixed and voted each year by the directors or other governing body;

(e) Exclusive liquor store. An establishment used exclusively for the sale of intoxicating liquor for consumption off or away from the licensed premises where sold, and the sale of ice, soft drinks and cigarettes;

(f) Hotel. Any establishment having a resident proprietor or manager, where, in consideration of payment therefor, food and lodging are regularly furnished to transients, which maintains not less than 50 guest rooms with bedding and other suitable and necessary furnishings in each room, which is provided with a suitable lobby, desk and office for the registration of its guests at the main entrance and on the ground floor, which employs an adequate staff to provide suitable and the usual service and which maintains, under the same management and control as the rest of the establishment and has as an integral part thereof, a dining room with appropriate facilities for seating not less than 30 guests at one time and where the general public is, in consideration of payment therefor, served with meals at tables;

(g) Intoxicating liquor. Ethyl alcohol and distilled, fermented, spirituous, vinous and malt beverages containing in excess of 3.2 percent of alcohol by weight;

(h) Manufacturer. Every person who, by any process of manufacture, fermenting, brewing, distilling, refining, rectifying, blending or by the combination of different materials, prepares or produces intoxicating liquors for sale;

(i) Malt liquor. Any beer, ale or other beverage made from malt by fermentation and containing not less than one-half of one percent alcohol by volume;

(j) Theater. A building containing an auditorium in which live dramatic, musical, dance or literary performances are regularly presented to holders of tickets purchased for those performances. A theater shall not include an adult entertainment establishment as defined by Section 5-17(b) of this Code;

(k) 3.2 percent malt liquor. Any malt liquor containing not less than one-half of one percent alcohol by volume nor more than 3.2 percent alcohol by weight;

(l) Off sale. The sale of alcoholic beverages in original packages in retail stores for consumption off or away from the premises where sold;

(m) On sale. The sale of alcoholic beverages by the glass for consumption on the premises only;

(n) Package or original package. Any container or receptacle holding alcoholic beverages, which container or receptacle is corked or sealed;

(o) Public place. Any place that the general public can occupy as a matter of right or any place that is open to the general public by invitation, either for business purposes or otherwise;

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(p) Restaurant. Any establishment, other than a hotel, under the control of a single proprietor or manager, having appropriate facilities for the serving of meals and for seating not less than 25 guests at one time and where, in consideration of payment therefor, meals are regularly served at tables to the general public, which employs an adequate staff to provide the usual and suitable service to its guests and a principal part of the business of which is the serving of foods. One or more bowling alleys maybe included in the licensed premises of a restaurant if table service is available throughout the licensed premises;

(q) Sale, sell, dispense or sold. All barbers and all manners or means of furnishing alcoholic beverages for a consideration. Such term shall include all transactions, whether for cash, credit or other considerations and shall include transactions where the consideration for the alcoholic beverage is included or combined with another transaction or where the consideration is called a "donation" or used to purchase any ticket, token or other object redeemable for alcoholic beverages;

(r) Security personnel. Any person licensed by the state as a protective agent or the employees of a protective agent providing protective agent services in compliance with state law, or persons licensed as peace officers by the state and employed by the city as police officers;

(s) Wholesaler. Any person engaged in the business of selling alcoholic beverages to retail dealers;

(t) Wine. The product made from the normal alcoholic fermentation of grapes, including still wine, sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake, in each instance containing not less than one-half of one percent nor more than 24 percent alcohol by volume for nonindustrial use. Wine does not include distilled spirits as defined by Minnesota Statutes, Chapter 340A.101, Subd. 9.

Section 3. That Section 8-25 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-25. Music, dancing and entertainment restrictions.

Except as provided in this Section, on sale establishments may permit music, theatrics, floor shows or entertainment upon the licensed premises. Adult entertainment, late hours entertainment and dancing participated in by the public are prohibited except as authorized pursuant to Section 8-40 and Chapter 5, Article IV of this Code.

Section 4. That Section 8-40 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-40. Dancing and late hours entertainment licenses for liquor establishments.

(a) No person licensed to sell alcoholic or 3.2 malt liquor beverages on sale shall allow dancing participated in by the public or late hours entertainment on the licensed premises unless a license has been issued pursuant to this Section;

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(b) A dance license, whether an annual, seasonal or a one day license, shall entitle the on sale licensee to have dancing participated in by the public on the licensed premises;

(1) Notwithstanding any provision of this Section or Chapter to the contrary, clubs and congressionally chartered veterans organizations that are open only to members and bona fide guests of members may have dancing participated in by members and guests, without securing a dance license;

(2) The term of the annual dance license shall be the same as the term of the on sale license. The term of the seasonal license is limited to the months of May through August;

(3) The fee for any dance license shall be set in accordance with Section 8-56(d). The fee for the annual license shall be prorated in the same manner as on sale licenses;

(4) The procedures and standards applicable to the issuance of the late hours entertainment license, where applicable, shall apply to the issuance of the annual or seasonal dance license;

(5) The city clerk is authorized to issue the one day dance license. The following procedures and standards are applicable to the issuance of the one day dance license:

(A) No license shall be issued unless an application for the license is received by the city clerk at least sixty (60) days prior to the event date;

(B) The license is subject to approval by the police and fire departments. Such approval is subject to, but not limited to, the following standards:

1. No license shall be issued in an area or under circumstances that would result in the disturbance of adjoining properties or the surrounding neighborhood;

2. The police and fire departments shall apply the same considerations applicable to the late hours entertainment license;

3. The license may contain conditions and limitations concerning security for the event and the hours during which the dancing event may be held; however, the license shall not authorize dancing after the time authorized for the sale of alcohol;

4. The city clerk shall notify the licensee in writing of the action taken on the application by any reasonable means, including but not limited to, the United States mail or electronic transmission. The licensee may appeal the action of the city clerk to the alcohol, gambling and tobacco commission. The appeal is subject to the following procedures:

(i) The appeal shall be made in writing within seven days after written notice of the action is issued and filed with the city clerk. The issues on appeal shall be limited to the issues presented in the written appeal;

(ii) In deciding the appeal the commission shall apply the same criteria required of the city clerk;

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(iii) The decision of the commission shall be the final decision of the city subject to appeal to the Minnesota Court of Appeals pursuant to Minnesota Statutes Section 606.01;

(iv) The failure of the applicant to submit an application sufficiently in advance of the proposed dance event to allow for an appeal is the sole responsibility of the applicant;

(c) Notwithstanding any provision of this Section or Chapter to the contrary, late hours entertainment licenses may be issued to establishments holding on sale alcoholic beverage licenses or 3.2 malt liquor beverages if they meet the criteria set forth in Section 8-40(d). The late hours entertainment license shall allow the establishment to have music and entertainment, including dancing by patrons, after the hours when sales of alcoholic beverages are required to cease. The fee for such license shall be set in accordance with Section 8-56(d);

(d) The annual and seasonal dance license and the late hours entertainment license shall be subject to the following procedures and standards:

(1) Every application shall be investigated by the police and fire departments and alcohol, gambling and tobacco commission;

(2) No license shall be issued in an area or under circumstances where the dancing or late hours entertainment would disturb adjoining properties or the surrounding neighborhood;

(3) In their investigation and recommendations, the police and fire departments and the alcohol, gambling and tobacco commission shall consider, without limitation:

(A) The proximity of the establishment to residences and residentially zoned property;

(B) The character of the neighborhood surrounding the establishment;

(C) Parking facilities at the establishment;

(D) The acoustic properties of the building housing the establishment;

(E) The past record of the establishment; and

(F) Any past complaints from adjoining property owners;

(4) The license may contain conditions and limitations concerning types of entertainment and hours of entertainment or dancing;

(5) No entertainment or dancing shall be allowed after 3:00 a.m.;

(6) All establishments allowing late hours dancing must have a dancing license as required by paragraphs (a) and (d) of this Section;

(7) During all times when dancing or late hours entertainment is conducted on the licensed premise the licensee shall provide adequate security personnel. The chief of police shall approve the security personnel plan. The licensee is responsible for all fees or expenses of such security personnel.

Section 5. That Section 8-45 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-45. Same--same--Duluth Entertainment Convention Center.

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(a) Except as provided in Minnesota Statutes Section 340A.404, Subd. 4a(a), an on sale intoxicating liquor license may be issued for the premises known as the Duluth Entertainment Convention Center. Such license shall be issued in accordance with the statutes and ordinances applicable to the issuance of on sale intoxicating liquor licenses in the city of Duluth and shall limit the sale of intoxicating liquor to members and guests of any person or organization leasing space in the Duluth Entertainment Convention Center for the purpose of conducting any convention, banquet, conference, meeting or social affair, and shall prohibit the sale of intoxicating liquor to the public or to any persons attending or participating in any amateur hockey game, or elementary or secondary school or college athletic event being held on the Duluth Entertainment Convention Center premises;

(b) Such license may only be used on the premises known as the Duluth Entertainment Convention Center and may be issued to the Duluth state convention center administrative board or to any person having an agreement with the Duluth state convention center administrative board for the operation of the food and/or beverage concession therein. Notwithstanding any ordinance to the contrary, the holder of such license may subcontract with an independent contractor to operate the liquor concession in any part or all of the arena-auditorium facilities. The annual fee for such license shall be as set forth in Section 8-56.

Section 6. That Section 8-50 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-50. To whom licenses issued--temporary 3.2 percent malt liquor.

(a) For purposes of this Section, the following words and phrases shall have the following meanings:

(1) Charitable organization. An association or corporation which is registered and in good standing with the Minnesota secretary of state, and which engages in solicitation of funds, on a permanent basis, for any charitable, benevolent, philanthropic, patriotic or eleemosynary purposes;

(2) Religious organization. An association or corporation which is affiliated with a national or regional religious denomination, registered and in good standing with the Minnesota secretary of state and which maintains an established church and congregation in the city;

(3) Nonprofit organization. An association or corporation which is registered and in good standing with the Minnesota secretary of state, and which is neither designed for nor results in any private pecuniary gain, either directly or indirectly, for any of its members;

(b) Notwithstanding any provisions of the Duluth City Code to the contrary, temporary on sale 3.2 percent malt liquor licenses may be issued to clubs, charitable organizations, religious organizations and other nonprofit organizations permitting such club or organization to sell 3.2 percent malt beverage on sale. The license shall be issued for a limited length of time, not to exceed 14 days, and shall identify the effective dates and the precise premises where such 3.2 percent malt liquor is to be sold. The fee for such license shall be set in accordance with Section 31-6(a) of this Code;

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(c) All applications for licenses issued pursuant to this Section are subject to the following requirements:

(1) Applications shall be made to and filed with the city clerk on forms provided by the city clerk;

(2) The application shall specifically identify the precise premises where 3.2 percent malt liquor is to be sold;

(3) If the licensed premises are to be located outdoors, the application shall include a fencing and signage plan designed to clearly identify the outdoors area of the licensed premise;

(4) If insurance is required under the provisions of Minnesota Statutes, Chapter 340A, the license application shall be accompanied by proof of insurance on a form acceptable to the city;

(5) The license fee shall be paid to the city clerk at the time the application is filed;

(d) All licenses issued pursuant to this Section are subject to the following conditions:

(1) The license shall not be transferable;

(2) No license shall be issued under this Section if it appears that the issuance of the license will endanger the health, safety or morals of the public, violate applicable zoning regulations or disturb the neighborhood;

(3) Licensed premises located outdoors shall be clearly identified with fencing and signage. The fencing and signage plan shall be approved by the chief of police;

(4) When 3.2 percent malt liquor is sold the licensee shall provide adequate security personnel. The chief of police shall approve the security personnel plan. The licensee is responsible for all fees or expenses of such security personnel.

Section 7. That Section 8-52 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

Sec. 8-52. Terms and conditions of on sale licenses.

On sale intoxicating and 3.2 percent malt liquor licenses shall be issued subject to the following terms and conditions:

(a) No on sale license shall be granted to any applicant or for any premises if, in the judgment of the city council, the operations of the proposed establishment are likely to become a public nuisance or detrimental to public morals;

(b) No dancing shall be conducted on the licensed premises unless the establishment has been granted a license under the provisions of Section 8-40.

Section 8. That Section 8-54 of the Duluth City Code, 1959, is hereby amended to read as follows:

Sec. 8-54. License not effective beyond space for which granted; exceptions-sidewalk use permit.

(a) Licensed premises. No license shall be effective beyond the compact and contiguous space named therein for which the same was granted. In addition, the following standards and procedures apply:

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(1) If any part of the serving area of the licensed premises is outside of a fully enclosed building, that part must comply with all the conditions set out in Section 8-54(b) or (c) or (d) that apply to the area;

(2) At the time of application or at any time an outdoor area is licensed, its operation is subject to the power of the chief of police to approve the operation, set hours of operation, set days of operation, based upon an administration review and application of uniform regulatory criteria established by the police department, which pertains to public safety, convenience, compliance with laws, neighborhood conditions, noise, parking and health;

(3) Licensed premises shall include the entire parcel of land on which the establishment is located; however, no sales or service shall take place outside the designated serving areas approved by the city council in the licensing procedure unless such sales and/or service is authorized on a temporary basis for a special event by city council resolution and shall be subject to any conditions and limitations the council deems appropriate;

(4) Before any temporary service area is authorized, the licensee shall make application to the city clerk. The application shall include the following:

- (A) Payment of the appropriate fee;
- (B) A diagram of the proposed area;
- (C) Specification of the time and date of the event; and
- (D) Fencing, signage and security measures proposed to

be taken;

(5) The alcohol, gambling and tobacco commission shall review the application for temporary service area and make any recommendation(s) it deems appropriate to the city council;

(6) The fee for temporary expansions shall be set in accordance with Section 31-6(a) of this Code for the first day of the event and for each day thereafter. If the application is denied, all but a portion of the fee, set in accordance with Section 31-6(a) of this Code, shall be refunded to the applicant;

(7) No temporary expansion of service area shall be granted for a period of time greater than three consecutive days;

(b) Sidewalk use permit for licensed premises. The licensed premise shall not include those areas of the business premise for which a sidewalk use permit has been issued pursuant to Section 50-37.12 unless the licensee complies with the following:

(1) The area may be part of the licensed premises only if no privately-owned property is reasonably available to the licensee that could be used, instead, as an outdoor licensed premises;

(2) The licensee has a food and beverage service establishment license under M.S.A. Sec. 157.16, subd. 3(d)(3)(i) or (ii), or subd. 3(d)(4) and subd. 3(d)(6) or (7), and whatever food service is available anywhere else in the licensed premises is available in the permitted area;

(3) No alcoholic beverage can be served, consumed or possessed in the permitted area by any person unless he or she is seated at a table;

(4) The permitted area shall not exceed 500 square feet in area, must have an impervious surface, must, when in use, have an approved continuous perimeter barrier or fence. The fence must be approved by the police chief and the building official as meeting administrative criteria as to safety, security, regulated access and restricted means to transfer alcoholic beverages on or off the premises. The design, appearance, lighting, decoration, signage and use of the facility shall be reasonably compatible with the surrounding area, as determined by the land use supervisor;

(5) The permitted area shall be capable of being constantly observed by serving or security personnel of the licensee. Licensee shall furnish a minimum staff of one person for a permitted area of up to 20 patron capacity and one additional staff for each additional unit of up to 20 patron capacity;

(6) The permitted area shall leave at least a six foot wide area of sidewalk that is not subject to the sidewalk use permit;

(c) Licensed premises outdoors on private property. If any part of the licensed premises is on privately-owned property that is not subject to an ownership or easement interest of the city of Duluth, or any other government, and that part of the licensed premises is not an "indoor area" as defined in M.S.A. Sec. 144.413, subd. 1(a), or its successor, then the use of that part of the licensed premises shall comply with all of the following:

(1) Any condition or limitation imposed by any law, ordinance, government regulation, code, license or permit, including restrictions on configuration or use that are set by the city council by ordinance or resolution;

(2) That part of the licensed premises shall not exceed in area the area of the rest of serving area of the licensed premises;

(3) That part of the licensed premises shall have an improved surface suitable for all weather pedestrian traffic, must, when in use, have a continuous perimeter barrier or fence. The barrier or fence must be approved by city clerk, police chief and the building official as meeting administrative criteria as to safety, security, regulated access and restricted means to transfer alcoholic beverages on or off the premises. The appearance, lighting, signage, visual barriers of the facility shall be reasonably compatible with the surrounding area, as determined by the chief administrative officer or his/her designee;

(4) Any food service available anywhere in the licensed premises shall be available in that part of the licensed premises. Every type of seating for dining anywhere on the licensed premises shall be available on that part of the licensed premises. In that part of the licensed premises, no alcoholic beverage shall be served, consumed or possessed by any person unless he or she is seated at a table;

(d) Pre-existing uses. Outdoor areas that were included in a licensed premises on January 1, 2008, shall be allowed to continue as a nonconforming use under, and subject to, Section 50-38, to remain in the same configuration and subject to the same restrictions of use, including hours of operation, as existed at that date, subject, however, at all times to the government's police power to control a license and sanction activities at establishments that dispense alcoholic beverages, as provided by any law, including (a) above.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 9. That Section 8-56 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-56. Fees.

(a) The license fee for off sale and on sale 3.2 percent malt liquor licenses shall be paid to the city clerk not later than March 15 of each year;

(b) The license fee for off sale intoxicating liquor licenses shall be paid to the city clerk not later than July 15 of each year;

(c) The license fee for on sale intoxicating liquor licenses may, at the option of the licensed applicant, be paid to the city clerk either in one lump sum not later than July 15 in each year, or in four equal installments, which shall be paid not later than July 15, October 15, January 15 and April 15, respectively;

(d) In any case where any payment for any alcoholic beverage license is not made when due, a penalty fee, which shall be set in accordance with Section 31-6(a) of this Code, shall be added to the fee. In any case where any payment for any alcoholic beverage license is more than 30 days in arrears, an additional penalty fee which is double the base penalty fee shall be added to the fee. Nonpayment of fees shall constitute good cause for suspension or revocation of any license;

(e) Payment for license fees shall be made by certified check payable to the city treasurer of the city or in lawful money of the United States of America and when such fees are received by the city clerk they shall be transmitted to the city treasurer. Upon the granting of a license as provided in this Article the amount of fee for such license shall be paid into the general fund;

(f) Whenever any licensee holding an on sale intoxicating liquor license shall at any time for any purpose operate more than one permanent bar, such licensee shall pay an additional annual license fee, which shall be set in accordance with Section 8-56(g), for each such additional permanent bar. A so-called service bar which is used solely by employees of the licensee shall not be considered a bar for purposes of this Section;

(g) The annual fees for all licenses and permits provided for in this Chapter shall be set in accordance with Section 31-6(a) of this Code.

Section 10. That Section 8-57 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-57. Operating period after death of licensee.

Upon the death of an individual issued a license pursuant to this Chapter or of an individual owning all shares of a corporation issued a license pursuant to this Chapter, the personal representative of such individual is authorized to continue operation of the licensed business for not more than 90 days after the death of such individual.

Section 11. That Section 8-58 of the Duluth City code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-58. Applications for intoxicating liquor licenses.

(a) Applications for intoxicating liquor licenses shall be made to and filed with the city clerk. On sale applications shall be made on forms provided by the city clerk. Off sale applications shall be made on forms prescribed by the liquor control commissioner. The council or alcohol, gambling and tobacco commission may require applicants to furnish information in addition to that

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

contained in the written forms. If required under the provisions of Minnesota Statutes, Chapter 340A, proof of liability insurance in a form acceptable to the city, shall accompany each application;

(b) The application for an off sale intoxicating liquor license is subject to approval by the state department of public safety. Before the off sale license shall become effective, the application, together with the required proof of insurance, shall be approved by the liquor control commissioner.

Section 12. That Section 8-62 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-62. Issuance--generally.

(a) Except as provided in this Section, the city clerk shall not issue any license under this Division unless directed to do so by resolution duly adopted by the city council. Where a license is made available by revocation, abandonment, surrender, cancellation or for some other cause, such available license may, upon application to the city council, be reissued by the city council as determined by a resolution adopted for such purpose. Any resolution granting a license may be conditioned on final departmental approvals, payment of taxes or any other condition the council deems appropriate. The city clerk shall not issue any license until all such conditions are met;

(b) Except as provided in this Section, the alcohol, gambling and tobacco commission shall cause an investigation to be made of all of the representations set forth in the applications. Opportunity shall be given at a meeting of the alcohol, gambling and tobacco commission to any person to be heard on an application. After such investigation, the city council shall grant or refuse such license in its discretion; provided, that no off sale intoxicating liquor license shall become effective until it, together with any required proof of insurance, has the approval of the liquor control commissioner of the state;

(c) The licensed premises shall have the license posted in a conspicuous place;

(d) The city clerk may issue a one day or seasonal dance license to any on sale licensee as provided in Section 8-40(d).

Section 13. That Section 8-68 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-68. Licenses not to be issued in certain areas.

(a) Except for the district from Third Avenue East to Seventh Avenue East on Fourth Street; from Sixth Avenue West to Third Avenue East on Michigan Street, Superior Street and First Street; on London Road west of 26th Avenue East; on Central Entrance east of Basswood Avenue, and except for clubs and general food stores, no licenses shall be granted to authorize the sale of alcoholic beverages in any establishment, the main entrance of which is situated within 400 feet of the main entrance of any church or of the grounds of any public or private elementary or secondary school; said distance to be measured by the shortest route along or across the public way;

(b) Establishments in which the sale of alcoholic beverages was licensed on January 1, 1967, shall not be subject to the provisions of this Section. Establishments which exist at the time a church or school locates within 400 feet of the establishment may continue to operate and are eligible for license

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

renewal and transfer unless the establishment's license is revoked for causes unrelated to this Section.

Section 14. That Chapter 8 of the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 8-71 to read as follows:

Sec. 8-71. Liquor caterer's registration and event permits.

(a) The holder of a state caterer's permit issued under the provisions of Minnesota Statutes, Section 340A.404(12), in order to provide catering services in the city, shall register to operate under such caterer's permit using a form approved by the police chief and provided by the city clerk. An annual liquor caterer's permit registration fee shall be established in accordance with Section 31-6(a);

(1) Registration of a liquor caterer's permit must be approved by the police chief and may be denied, or an approved registration may be suspended or revoked by the police chief without refund, for any of the following reasons:

- (A) Any violation of the laws relating to the sale or service of alcoholic beverages;
- (B) Licensee's refusal to supply books of account and contracts pertaining to an event as set forth in this Section;
- (C) Any violation of the terms of this Section;
- (D) Any other good cause related to the operation of the business or venue;

(b) Events that are catered in the city in accordance with Minnesota Statutes Section 340A.404(12) shall comply with the following provisions:

(1) Each catered event must be approved by the police chief. A liquor caterer shall apply for event approval to the city clerk at least five business days prior to the catered event and provide pertinent information about the event using a form provided by the city clerk. An event approval fee shall be established in accordance with Section 31-6(a);

(2) The police chief may deny approval for any of the following reasons:

- (A) The liquor caterer failed to apply for event approval as required by this Section;
- (B) The operation of the event will unreasonably disturb the peace, quiet or repose of surrounding residential or commercial areas;
- (C) The operation of the event will contribute to crime, disorderly behavior, noise, traffic, litter or parking problems in the area near the event's location;
- (D) The licensee is in arrears in the payment of any city sales or property taxes, city fees, or city penalties;
- (E) The failure to provide for adequate security personnel;

(3) Liquor caterers shall submit to and facilitate any site inspections by police, fire or other regulatory agency;

(4) Liquor caterers shall maintain adequate security at catered events in the city. The caterer may coordinate this with the host facility;

(5) If an event is to be held outside, the applicant shall indicate how the alcohol will be confined to a particular area. Exclusive outdoor events

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

must provide portable toilets and comply with all applicable county health regulations related to such toilets;

(6) No sale of alcohol shall occur after 1:00 a.m.;

(7) All servers of alcohol at a catered event must be at least 18 years of age and employees of the liquor caterer;

(8) The liquor caterer shall staff the event with at least one employee from the original licensed establishment;

(9) No single location in the city shall have a single liquor catered event lasting more than three days, unless the event is a civic event or community festival as designated by the mayor;

(10) Both state and city permits/licenses must be available for display upon request of any law enforcement officer or investigator;

(c) A liquor caterer shall keep a record of each event that they cater in the city. The record shall include the location of the event, the date and time, the event contact name(s) and phone number(s), and shall provide this register to city staff upon request;

(d) The city council may by resolution establish a list of premises for which a liquor caterer may not provide services at an event without explicit approval of city council;

(e) Any violation of the provisions set forth in this Chapter or Chapter 340A of the Minnesota Statutes by a licensee or the licensee's employees, agent or servants, while operating under a liquor caterer's permit which occurs on the premises being catered, shall cause the licensee and the licensee's employees, agents or servants to be subject to civil, criminal or administrative action;

(f) Holders of a liquor caterer's permit shall comply with all provisions of the statutes, ordinances and rules governing the retail sale of alcoholic beverages;

(g) Registration under this Section shall expire on August 31 of each year;

(h) The liquor caterer may appeal the decisions of the police chief as follows:

(1) The denial or suspension of permit registration may be appealed to the alcohol, gambling and tobacco commission within ten days after notice of the action is issued. The appeal shall be in writing on a form provided by the city clerk and shall specify the grounds and factual basis of the appeal. The appeal shall be accompanied by an appeal fee which shall be established by city council pursuant to Section 31-6(a). The commission shall hear the appeal at its first meeting following receipt of the appeal and the appeal fee, unless the appeal was received after the commission's agenda deadline. Any appeals filed after the commission's agenda deadline shall be heard at the following meeting. The commission's actions are limited to affirming or reversing the decision of the police chief. The commission shall specify the basis for its decision by motion. The decision of the commission is the final action of the city and is subject to appeal to the Minnesota court of appeals pursuant to Minnesota Statutes Section 606.01;

(2) The denial of an event permit may be appealed to the chief administrative officer within seven days after notice of the action is issued. The

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appeal shall be in writing on a form provided by the city clerk and shall specify the grounds and factual basis for the appeal. The appeal shall be accompanied by an appeal fee which shall be established by city council pursuant to Section 31-6(a). The chief administrative officer or designee, who shall not be the police chief or any employee of the police department, shall hear the appeal within ten business days. The chief administrative officer's decision shall be issued in writing and shall specify the basis for decision. The decision of the chief administrative officer is the final action of the city and is subject to appeal to the Minnesota court of appeals pursuant to Minnesota Statutes Section 606.01.

Section 15. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 15, 2011)

Councilor Cuneo moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed September 12, 2011
Approved September 12, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

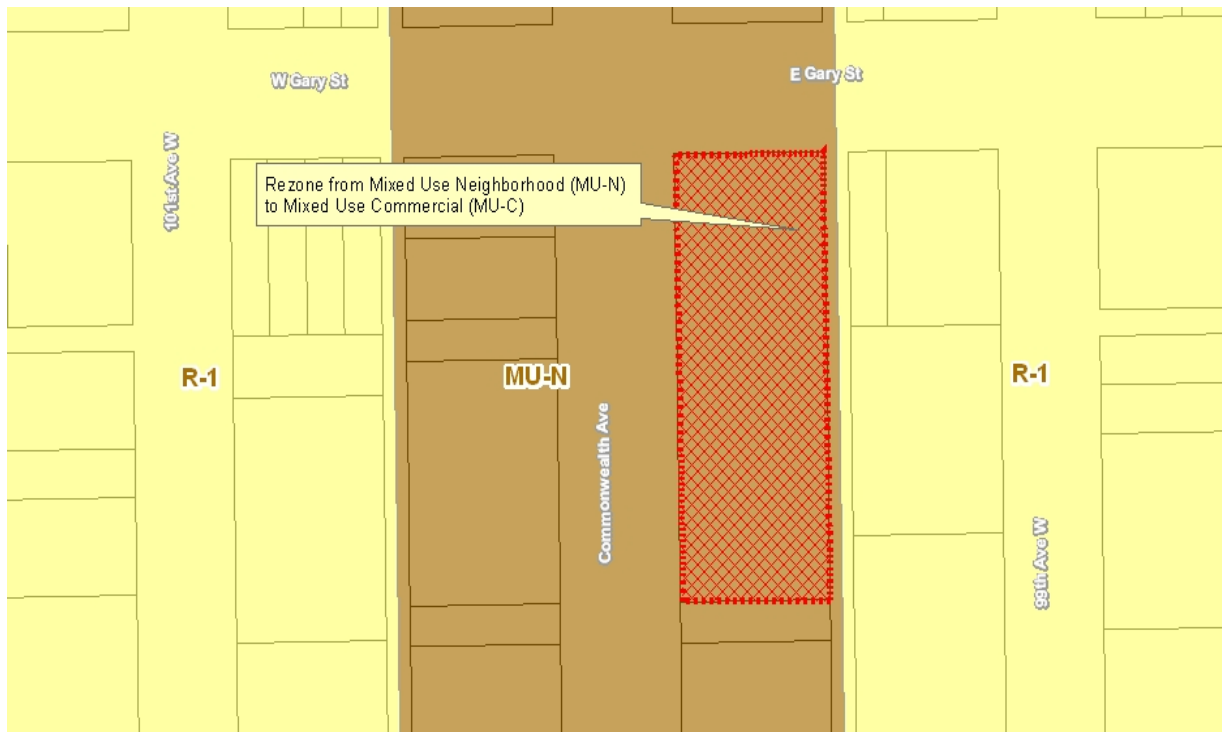
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ORDINANCE NO. 10105

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-N, MIXED USE NEIGHBORHOOD, TO MU-C, MIXED USE COMMERCIAL, THE ENTIRE PARCEL AT THE SOUTHEASTERN CORNER OF COMMONWEALTH AVENUE AND EAST GARY STREET (CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the subject property, located on the southeast corner of the intersection of Commonwealth Avenue and East Gary Street and as more particularly described as Lots 8-18, Block 35, Gary First Division (Parcel ID: 010-1800-08700), be reclassified from MU-N, Mixed Use Neighborhood, to MU-C, Mixed Use Commercial, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



(Ref. File No. 11-090)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: October 15, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 12, 2011
Approved September 12, 2011
DON NESS, Mayor

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ORDINANCE NO. 10106

AN ORDINANCE GRANTING TO GRANDMA'S SPORTS BAR AND GRILL A CONCURRENT USE PERMIT FOR THE INSTALLATION OF METAL CORNICES, CANOPY/MARQUEE AND AWNINGS TO PROJECT INTO THE LAKE AVENUE SOUTH RIGHT-OF-WAY.

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to Grandma's Sports Bar and Grill and its

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) Metal cornices constructed on existing parapet walls, area described as from an elevation of 32 feet to 44 feet measured above the existing sidewalk and in an area from the northeast corner of Lot 296 to the southeast corner of Lot 289 and extending 1'4" east of the easterly property lines of Lots 296, 294, 292 and 290, Lake Avenue, Upper Division; and

(b) A canopy/marquee within the boundaries of an area defined as from an elevation of 11'8" to 18'6" measured above the existing sidewalk and in an area from a point 12 feet south of the northeast corner of Lot 296, to a point 51 feet south of the northeast corner of Lot 296 and extending 8'0" east of the easterly property lines of Lots 296 and 294, Lake Avenue, Upper Division; and

(c) Awnings on existing east facade defined as an area from an elevation of 8'10" to 19'2" measured above the existing sidewalk and in an area from a point 66' south of the northeast corner of Lot 296, to a point 94 feet south of the northeast corner of Lot 296 and extending 2'0" east of the easterly lines of Lots 294 and 292, Lake Avenue, Upper Duluth, as shown in Public Document No. 11-0912-11.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance and a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in the amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its employees, agents or contractors; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that may not be cancelled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be pre-2004 edition.

Permittee shall cause a current version of the required insurance certificate to be filed with the city clerk while permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage

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caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to save harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engage in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3, above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3 above.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public easement shall be limited to the designated area described in Section 1 above and further shown on (Public Document No. 11-0912-11); and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file acceptance of this ordinance as specified in Section 2 within 30 days after this ordinance takes effect; or

(b) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(c) The failure of the permittee to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: October 15, 2011)

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Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 12, 2011
Approved September 12, 2011
DON NESS, Mayor

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ORDINANCE NO. 10107

AN ORDINANCE REPEALING CHAPTER 45, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE VACATION OF HIGHWAYS.

The city of Duluth does ordain:

Section 1. That Chapter 45, Article IV, of the Duluth City Code, 1959, as amended, relating to the vacation of highways is hereby repealed in its entirety.

Section 2. This ordinance shall take effect 30 days after its passage and publication. (Effective date: October 15, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 12, 2011
Approved September 12, 2011
DON NESS, Mayor

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ORDINANCE NO. 10108

BY PRESIDENT GARDNER AND COUNCILOR BOYLE:

AN ORDINANCE PROVIDING FOR POSTING AND MAILING OF NOTICE OF A PROPOSED SALE OF CITY PROPERTY BY AUCTION, AMENDING SECTION 2-177.2 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 2-177.2 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 2-177.2. Conveyance by auction.

(a) The city may, by ordinance, determine to convey any property to the highest bidder as determined by a public auction which may include internet auction. The ordinance shall establish any minimum acceptable price or reserve for the property and any conditions on the conveyance or the use of the property to be conveyed and shall authorize the conveyance to the responsible bidder bidding the highest amount for such property at the bid amount;

(b) Any proposed auction of city property shall be advertized on the city's website, if any, and at least once in a newspaper of general circulation in the city during the 30 days prior to the date of the proposed auction and by placing a sign on the property to be sold stating that the property is to be sold at

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auction and the date of the proposed auction. In addition notice of the proposed sale of such property by auction and the proposed date, time and place thereof shall be sent by regular United States mail to the owners of all properties located within 200 feet of the property proposed to be sold at the addresses for such owners which appear in the records of the city assessor at least ten days prior to the date of such auction.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 15, 2011)

President Gardner moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed September 12, 2011
Approved September 12, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10109

AN ORDINANCE AMENDING SECTION 26-37 AND REPEALING SECTION 26-39 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE NUMBER OF REQUIRED ON-DUTY BRIDGE TENDERS.

The city of Duluth does ordain:

Section 1. That Section 26-37 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 26-37. One bridge tender to be on duty at all times during navigation season.

During the season of navigation, there shall be at least one bridge tender, who shall be constantly on duty.

Section 2. That Section 26-39 of the Duluth City Code, 1959, as amended, is hereby repealed in its entirety.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 15, 2011)

Councilor Hartman moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Hartman and Stauber -- 6

Nays: Councilors Fosle, Halberg and President Gardner -- 3

Passed September 12, 2011
Approved September 12, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 26, 2011, 7:05 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-0926-17 The following communications regarding the intent to improve a portion of Oxford Street, Livingston Avenue and Glenwood Street (11-0441R): (a) Guihua Fei; (b) Mark Wick. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-0926-01 Duluth economic development authority minutes of July 27, 2011, meeting. -- Received

11-0926-02 Duluth public utilities commission minutes of August 10, 2011, meeting. -- Received

11-0926-03 Entertainment and convention center authority minutes of: (a) April 26; (b) May 31; (c) June 28; (d) July 15; (e) July 26, 2011, meetings. -- Received

11-0926-04 Library board minutes of June 28, 2011, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell felt that: school district financing is extremely complex; the recent school closings and new buildings is the largest consolidation in the state; the school board completely abdicated all authority for detail to the administration and did not safe guard the public interest.

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Stacy Nyland requested that Resolution 10-0600, regarding the repairing of private sewer lines, be amended to stop her utility from being shut off. She noted that part of complying with the consent decree regarding repairing the lining of private sewer lines has shifted the responsibility to 1,400 private residents. Ms. Nyland noted that: city engineering has confirmed that these 1,400 lines are not contributing any more excess waste water than any other private lines; recently repaired sewer lines that have been inspected have shown to have been contributing excess waste water; that some of the cameras being used have been shown to have failed to reflect the excess water contribution properly.

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RESOLUTION TABLED

Councilor Anderson moved to remove Resolution 11-0441, of intent to improve a portion of Oxford Street, Livingston Avenue and Glenwood Street and to assess a portion of the costs thereof, from the table, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fedora -- 1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Anderson moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Laura Johnson, Guihua Fei, Julie Anderson, Geraldine Peterson and Dick Anderson expressed concerns of: this issue was already approved with sidewalks and no boulevards; the street is a cross over street for emergency vehicles and thus should not be narrowed from 36 to 28 feet; while the residents did not want sidewalks, they compromised, if the sidewalks would be adjacent to the street; this proposal will lower the cost to the project; this is a very busy steep-sloped street that should be kept at 36 feet to reduce accidents when it is slippery; with boulevards, if the snow is not removed in a timely fashion, individuals would be forced to walk on a dangerous street; residents were told at the public meetings that they could decide what they prefer about boulevards and sidewalks; a wider street is needed for parking on both sides of the street with the large amount of individuals attending church at the corner of Glenwood and Snively; and Woodland and Snively were reconstructed without boulevards, and they have more traffic than Glenwood and thus that should be followed here.

James Gittemeier, Duluth-Superior Metropolitan Interstate Council (MIC) transportation planner, and Matt Ryan, LHB consultant, reviewed that: there is a critical difference in sidewalk placement in the winter, with sidewalks adjacent to the street: where you will get splashed as cars drive by; there will be an ice and snow build up, even after city crews have plowed the sidewalk and the "complete streets" policy advocates for sidewalks and the separation of pedestrians and vehicle traffic.

Councilor Anderson moved to amend the resolution by removing the language that was previously amended in, which motion was seconded and discussed.

Councilors Fedora, Fosle, Halberg and Stauber opposed the amendment and felt that: why hold neighborhood meetings and ask for their input if the city is not going to listen to the citizens' input; there are many unique neighborhoods and to apply the complete streets methodology is not always applicable; the neighbors are not opposed to sidewalks, as long as they are adjacent to the curb; sidewalks are already adjacent to the curb in this neighborhood and other busy streets; the MIC has advised that, on streets busier than this one, to have the sidewalks adjacent to the curb; if it is not safe to have sidewalks adjacent to the curb, it should not be presented to residents as an option at the neighborhood meetings and almost every day there are cars parked on Glenwood by the church and that would not be allowed under this proposal.

Chief Administrative Officer David Montgomery reviewed that: the neighborhood meetings are not for taking votes - just input; the improvements are for the current residents, future residents and others who use the street; there are two different and distinct questions, those being: first, "What is the appropriate design?" then secondly, "Who do you want to have shovel it?"; the decision of the appropriate design should not be made based on who shovels the sidewalk and, given that all the sidewalks in this neighborhood, it make sense to have the sidewalks connecting.

Councilors comment at length on the merits of the issues raised.

Councilor Anderson's amendment carried as follows:

Yeas: Councilors Anderson, Boyle, Cuneo, Hartman and President Gardner -- 5

Nays: Councilors Fedora, Fosle, Halberg and Stauber -- 4

Councilor Fosle moved to amend the resolution by removing sidewalks totally on Glenwood Street and keeping the width as it is now, which motion was seconded and failed by the following vote:

Yeas: Councilors Fedora, Fosle and Stauber -- 3

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Nays: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Resolution 11-0441, as amended, was adopted as follows:

RESOLVED, that pursuant to Section 61 of the City Charter, the council hereby expresses its intent to cause the following portion of the streets named below to be improved as part of the city's 2012 municipal state aid project and hereby requests that the mayor prepare or cause to have prepared plans, specifications and estimates therefor, and file such plans and estimates with the special assessment board, together with a recommendation as to what portion of the cost shall be paid by special assessment and what part, if any, should be a general obligation of the city, the number of installments in which assessments may be paid, and the lands which should include the special assessments:

Oxford Street from Woodland Avenue to Livingston Avenue;

Livingston Avenue from Oxford Street to Glenwood Street;

Glenwood Street from Livingston Avenue to Jean Duluth Road.

Resolution 11-0441, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Hartman and President Gardner -- 6

Nays: Councilors Fosle, Halberg and Stauber -- 3

Approved September 26, 2011

DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the assessment roll levied for reassessment of canceled permanent street assessments at the following locations is set forth below:

(a) Permanent street assessment - Plat 3350, Parcel 00950 (Contract #7015 - Fund 110), assessable amount: \$750;

(b) SIP99 Lincoln Park Central - Plat 1820, Parcel 00140 (Contract #7036 - Fund 110), assessable amount: \$1,039.95.

The total assessable amount is \$1,789.95 and this assessment roll is hereby confirmed.

Resolution 11-0483 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

BY COUNCILOR FEDORA:

RESOLVED, that pursuant to Section 33-84 of the Duluth City Code, 1959, as amended, the parking areas on the north side of Superior Street between 42nd and 43rd avenues East and on the south side of Regent Street between 42nd and 43rd avenues East shall be limited to two hour parking during school hours.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, that all no parking zones and any other parking restrictions previously established by the city council in the areas described above shall remain in full force and effect.

Resolution 11-0485 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that an increase not to exceed \$24,475 in the city's proprietary contract with All Computer Service is hereby authorized for consulting services in the mainframe operations and support and business licensing and rental housing for the time period from September 6, 2011, through November 30, 2011, payable from General Fund 110, Department/Agency 117 (management information services), Division 1107 (MIS), Object 5319 (other professional services).

Resolution 11-0481 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of construction inspection leadworker, which were approved by the civil service board on August 2, 2011, and which are filed with the city clerk as Public Document No. 11-0926-05, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that pay range for said classification shall be Range 36. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0458 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of animal control officer, which were approved by the civil service board on July 5, 2011, and which are filed with the city clerk as Public Document No. 11-0926-06, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 24.

Resolution 11-0476 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of deputy fire marshal, which were approved by the civil service board on September 6, 2011, and which are filed with the city clerk as Public Document No. 11-0926-07, are approved. This classification shall remain subject to the city's collective bargaining agreement with its fire unit employees and compensated at Pay Range 230.

Resolution 11-0478 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the proposed amendments to the specifications for the civil service of criminal intelligence analyst, including a title change to crime and intelligence analyst, which were approved by the civil service board on September 6, 2011, and which are filed with the city clerk as Public Document No. 11-0926-08, are approved; that said classification shall be subject to the city’s collective bargaining unit with its basic unit employees; and that the pay range for said classification shall be Range 131. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0479 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of paralegal-confidential, which were approved by the civil service board on September 6, 2011, and which are filed with the city clerk as Public Document No. 11-0926-09, are approved; that said classification shall be subject to the city’s collective bargaining unit with its confidential unit employees; and that the pay range for said classification shall be Range 9. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0480 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth’s appointments by Mayor Ness to the St. Louis County homeless leadership council of the following individuals are confirmed:

NAME	TERM EXPIRATION DATE
Durbin Keeney (veterans’ representative)	3/31/2013
Kathryn Jo King (Fond du Lac Reservation Business Council representative)	3/31/2014
Scott Yeazle (formerly homeless representative)	3/31/2014
Eric Blomstrom (at large representative)	3/31/2015
Fred Lund (faith community representative)	3/31/2015

Resolution 11-0484 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that Public Document No. 11-0627-20 of Resolution No. 11-0344 is replaced by Public Document No. 11-0926-10.

Resolution 11-0494 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council hereby finds that:

- (a) A sufficient petition was filed with the city requesting the vacation of a portion of the utility easement located on the vacated right-of-way of Birch Avenue adjacent Goodwill Industries on Block 27 of Rice’s Point; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that the petitioned utility easement is useless for the initial intended purpose; and

(c) The city planning commission, at its Tuesday, September 13, 2011, regular meeting, recommended approval of the easement vacation petition, with a condition.

FURTHER RESOLVED, that the city council of the city of Duluth approves the vacation of the following described easement described below and as described and depicted on Public Document No. 11-0926-11, subject to the condition below:

The westerly 20.00 feet of the northerly 37.40 feet of the southerly 37.50 feet Birch Avenue in the plat RICE'S POINT which lies between the extended westerly line of Garfield Avenue, formerly known as Third Street and the extended westerly line of the vacated alley lying between Blocks 25 and 27 of RICE'S POINT.

FURTHER RESOLVED, that the following condition to be satisfied before recording of the vacation by the city clerk:

The easement vacation be conditioned upon the relocation of existing city utilities to be impacted by the easement vacation, the location, construction and design of which to be approved by the city engineer and in a manner approved by the city engineer.

FURTHER RESOLVED, that, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, the city clerk is authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-0926-11 showing the utility easement to be vacated.

Resolution 11-0495 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the city council hereby requests that administration provide internet access at each councilor terminal located within the Council Chamber.

Resolution 11-0497 was unanimously adopted.

Approved September 26, 2011, pursuant to Section 12 of the Duluth City Charter.

- - -

The council finds as follows:

(a) On September 13, 2011, there was held in the city of Duluth, pursuant to the provisions of Laws of Minnesota, 1973, Chapter 281, a primary municipal election for the purpose of electing certain city officers;

(b) The judges of the election districts in the city have made their returns of said election and the city council, acting as a canvassing board, has duly canvassed said returns (Public Document No. 11-0926-12) at 7:00 p.m., September 26, 2011, and ascertained the number of ballots cast at said election and thereby declared that at said election there were 6,620 cast votes, said votes having been cast in the following manner:

City Councilor at Large	
Gareth W. Bates	442
Eric Edwardson	446
Linda Krug	4,860
Emily Larson	4,918

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Tim Riley	947
Chad Smith	645
City Councilor - Fourth District	
Jacqueline Halberg	695
Garry Krause	649
Ryan Miles	134
Wallace Newquist	59
Travis Silvers	29

NOW, THEREFORE, BE IT RESOLVED, that Linda Krug, Emily Larson, Tim Riley and Chad Smith, having received the four largest numbers of the votes cast at said election for councilor at large, are hereby certified to have their names placed on the general municipal election ballot and the city clerk is hereby directed to place their names on the general municipal election ballot.

BE IT FURTHER RESOLVED, that Jacqueline Halberg and Garry Krause, having the two largest numbers of the votes cast at said election for councilor - fourth district, are hereby certified to have their names placed on the general municipal election ballot and the city clerk is hereby directed to place their names on the general municipal election ballot.

Resolution 11-0482 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 11-0926-13, with the Edmunds Smith Capital Partners, LLC, granting a utility easement over a portion of the following-described property in St. Louis County, Minnesota, to the city at no cost:

The easterly 15 feet of the southerly 30 feet of Lot 20, Block 8, MOTOR LINE DIVISION OF DULUTH.

Resolution 11-0491 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Fluid Interiors, LLC, for the purchase and installation of private office and systems furniture for the new public safety building in accordance with approved specifications prepared by the city's consultant, LHB, Inc., and the vendor's low bid of \$206,521.75 plus \$14,198.37 sales tax for a total combined amount of \$220,720.12, payable from Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2009-0928B.

Resolution 11-0460 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Northern Business Products, Inc., for the purchase and installation of task and conference room seating for the new Duluth public safety building in accordance with approved

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

specifications prepared by the city's consultant, LHB, Inc., and the vendor's low bid of \$98,099.36 plus \$6,744.33 sales tax for a total amount of \$104,843.69, payable from Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2009-0928B.

Resolution 11-0461 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 33-84 of the Duluth City Code, 1959, as amended, the parking areas on the south side of Fourth Street between Seventh Avenue East and Wallace Avenue shall have the current no parking 2 a.m. to 6 a.m. November 1 to May 31 restriction removed.

RESOLVED FURTHER, that all no parking zones and any other parking restrictions previously established by the city council which pertain to any part of the street described above shall remain in full force and effect.

Resolution 11-0486 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a grant agreement with St. Louis County as fiscal agent for the northeast regional radio board, a copy of which agreement is on file in the office of the city clerk as Public Document No. 11-0926-14, for 50 percent of the cost of purchasing radio tower, other equipment and software compatible with the ARMER system in the amount of \$334,800, said funds to be deposited in Fund 210-030-3179-4220-02 (special projects, finance, ARMER infrastructure grant).

Resolution 11-0487 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following no parking zone is hereby established on the following street:

The south side of Superior Street between the addresses of 3830 and 3860 East Superior Street.

Resolution 11-0489 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following accessible parking zone is established: 1510 East Fifth Street.

Resolution 11-0492 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with System Planning Corporation (TriData Division), substantially in the form of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

that on file in the office of the city clerk as Public Document No. 11-0926-15 for professional services in the review, evaluation and reporting of management and operations of the Duluth fire department for a total amount of \$78,610, payable from General Fund 110, Department/Agency 700 (transfers and other functions), Division 1407 (miscellaneous), and Object 5441 (other services and charges).

Resolution 11-0493 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota in the amount of \$320,000, such funds to be used to support the operation of the Lake Superior Zoo, and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-0926-16, funds to be deposited in Fund 200-130-4220-02 (zoo, community resources).

Resolution 11-0490 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR ANDERSON:

WHEREAS, the United States postmaster general has indicated that the Duluth mail processing and distribution plant and three Duluth branch post offices are under consideration for closure March 1, 2012, as part of the United States postal service plan to close 212 plants; and

WHEREAS, Duluth would stand to lose 50 to 60 jobs from the closure; and

WHEREAS, mail delivery times for Duluth to Duluth mail would slow from the current overnight delivery to three to five days for delivery; and

WHEREAS, these proposed closures would have a significant impact on local business and commerce.

THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby urges the postmaster general and United States postal service to reconsider and re-evaluate the potential closure of the Duluth mail processing and distribution plant and three Duluth branch post offices.

Resolution 11-0500 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

BY COUNCILORS ANDERSON AND HARTMAN AND PRESIDENT GARDNER:

RESOLVED, that the city council hereby requests the administration review the feasibility of rescinding the one-way street designations of First, Second and Third avenues West, effectively changing those thoroughfares from one-way traffic to two-way traffic.

Resolution 11-0499 was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0488, authorizing agreement with Motorola Solutions, Inc., to purchase equipment and software as part of ARMER Radio System in the amount of \$523,131 plus tax, was introduced by Councilor Fosle for discussion.

Councilor Fosle, upon a request of the administration, moved to amend the resolution by deleting the phrase "50 percent of" from the second paragraph, which motion was seconded and unanimously carried.

Resolution 11-0488, as amended, was adopted as follows:

RESOLVED, based on information provided by staff and the city purchasing agent, the council has determined that Motorola Solutions, Inc., is the sole source of equipment and software available that is compatible with the state of Minnesota Statewide Public Safety Radio and Communications System ("ARMER") and therefore such equipment and software must be purchased from said company.

RESOLVED, that the proper city officials are authorized to enter into an agreement with Motorola Solutions, Inc., for the cost of purchasing radio tower equipment, and other equipment and required software compatible with the state-wide ARMER system in the amount of \$559,085.57, \$279,542.79 of which shall be payable from Fund 450-030-2011-5520-CP2011-1116b (capital improvements, finance) and \$279,542.78 of which shall be payable from Fund 210-030-3179-5540 (special projects, finance, ARMER infrastructure grant).

Resolution 11-0488, as amended, was unanimously adopted.

Approved September 26, 2011

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

11-043 - AN ORDINANCE AMENDING ORDINANCE NO. 10084 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE MAP AND LEGAL DESCRIPTION.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-044 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO MARY JO JUKICH FOR \$10,000.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-046 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO R-2, RESIDENTIAL-URBAN, ON THE PROPERTIES LOCATED AT 1303 AND 1315 WEST ARROWHEAD ROAD (CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER

11-047 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-B, MIXED USE-BUSINESS PARK, TO I-G, INDUSTRIAL-GENERAL, OF THE PROPERTY LOCATED AT 306 SOUTH CENTRAL AVENUE (D.M.A. & ASSOCIATES).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- - -

INTRODUCED BY COUNCILOR STAUBER

11-048-O - AN ORDINANCE AMENDING ORDINANCE 10087 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE LEGAL DESCRIPTION OF THE PLAZA AND LONDON ROAD FORM DISTRICTS.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

11-040 (10110) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AGGREGATE AMOUNT OF \$1,505,000 FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

- - -

INTRODUCED BY COUNCILOR FEDORA

11-041 (10111) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,650,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL WATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

- - -

INTRODUCED BY COUNCILOR FEDORA

11-042 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION AIRPORT IMPROVEMENT BONDS IN THE MAXIMUM AMOUNT OF \$7,650,000 OF THE CITY OF DULUTH UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTIONS OF THE CITY COUNCIL AND LEVYING TAXES FOR THE PAYMENT THEREOF.

Councilor Fedora moved to table the ordinance, as requested by the administration, which motion was seconded and unanimously carried.

- - -

The meeting was adjourned at 9:30 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10110

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AGGREGATE AMOUNT OF \$1,505,000 FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

The city of Duluth does ordain:

Section 1. BOND PURPOSE AND AUTHORIZATION.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Section 444.075 and Chapter 475 of Minnesota Statutes and other pertinent provisions of said Charter and Statutes, the city is authorized to issue its general obligation bonds to provide funds for the improvement of the municipal sewer utility plant, which bonds shall be a specific lien upon such plant and are payable primarily from net revenues, as hereinafter defined, to be derived from operation of the municipal sewer utility pledged for their payment. The city has applied for and received commitments from the Minnesota public facilities authority (the "authority") for loans and grants for the following projects:

- (i) CIPP lining rehabilitation of sanitary sewers for Sewer Basin No. 2 (amount of loan \$630,000);
 - (ii) Lift Station No. 45 pumping and forcemain improvements (amount of loan \$452,300); and
 - (iii) Improvements to the sanitary sewer system as part of the Riverside community utility and street improvement project (amount of loan \$420,732);
- (collectively, the "projects"), as identified in the city's applications to the Authority.

1.02 The city council hereby determines that it is in the best interest of the city and it is necessary to improve the municipal sewer utility for the Projects, and determines that it is necessary to issue general obligation sewer utility revenue bonds or notes, in one or more series, in the maximum aggregate amount of \$1,505,000 for the purpose of paying costs of the projects.

1.03 The city has heretofore issued and sold the following: general obligation sewer utility revenue note dated December 12, 2003, now outstanding in the amount of \$626,000; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$2,690,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,580,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$745,000; general obligation sewer utility revenue note dated July 12, 2007, now outstanding in the amount of \$1,629,000; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount of \$1,795,000; general obligation water and sewer utility revenue refunding bonds dated December 13, 2007, the sewer utility portion of such bonds now outstanding in the amount of \$825,000; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,290,000; general obligation sewer utility revenue note dated August 3, 2009, now outstanding in the amount of \$516,073; general obligation sewer utility revenue note dated December 16, 2009, now outstanding in the amount of \$2,239,000; general obligation utilities revenue bonds dated December 17, 2009, the sewer utility portion of such bonds now

outstanding in the amount of \$1,479,186; general obligation sewer utility revenue notes dated September 14, 2010, now outstanding in the amounts of \$5,090,781 and \$20,758; and general obligation utilities revenue bonds dated November 23, 2010, the sewer utility portion of such bonds now outstanding in the amount of \$2,025,000. Under the provisions of the ordinances authorizing said bonds and notes, the city reserved the privilege of issuing additional bonds and notes payable from said net revenues on a parity with the bonds and notes dated December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, August 3, 2009, December 16, 2009, December 17, 2009, September 14, 2010, and November 23, 2010.

1.04 Pursuant to the authority herein recited, the city council hereby authorizes and directs the issuance and sale of general obligation sewer utility revenue bonds or notes, in one or more series, of the city of Duluth in the maximum amount of \$1,505,000, and pledges the full faith and credit and taxing powers of the city irrevocably for the payment of the principal and interest when due on such bonds, and also pledges and appropriates irrevocably, to the amounts required for the payment of the principal and interest on the bonds and the maintenance of a reserve, any and all net revenues to be derived from time to time from the operation of the municipal sewer utility. Net revenues are defined as sums from time to time within the sewer utility operating account within the sewer utility fund maintained under Section 54 of the City Charter, in excess of sums required to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility and to maintain such reasonable reserves for such expenses as the director of public works and utilities shall determine to be necessary from time to time in accordance with the policies established by the city council.

1.05 The city reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the municipal sewer utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the city council to be necessary for the improvement of the municipal sewer utility or for the refunding of indebtedness payable from said net revenues, provided that no such pledge shall constitute a lien upon the net revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

Section 2. TERMS OF BONDS.

2.01 The city council shall, by resolution or resolutions, provide for the issuance and sale of such bonds in one or more series and shall fix the precise maturities, interest rates, redemption provisions and other terms and conditions of such bonds, and prescribe the form thereof, and offer to sell such bonds in such a manner and at such time or times as shall be deemed in the public interest, all in accordance with the authority recited in Section 1.01 of this ordinance.

Section 3. REVENUES AND ACCOUNTS.

3.01 The city council shall, by resolution or resolutions, provide for the method of imposing and collecting just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and amounts required to pay the normal, reasonable and current operating expenses and to maintain the municipal sewer utility and also produce net revenues at least adequate at all times to pay the principal and interest due on the bonds issued hereunder and on all other bonds heretofore and hereafter issued and made payable from said net revenues.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

3.02 The city council shall, by further resolution or resolutions, establish appropriate accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. CERTIFICATE OF PROCEEDINGS.

4.01 The city clerk is directed to file with the county auditor of St. Louis County a certified copy of this ordinance, and such other information as the county may require, and to obtain from the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

4.02 The officers of the city and the county auditor are authorized and directed to prepare and furnish to the purchasers of the bonds, and to bond counsel, certified copies of all proceedings and records of the city relating to the authorization and issuance of the bonds and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the bonds as such facts appear from the official books and records in the officers' custody or are otherwise known to them. All such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 5. EFFECTIVE DATE.

5.01 This ordinance shall take effect and be in force 30 days from and after its passage and publication. This ordinance shall be published one time on the city's official website and remain on such website for a period of at least 30 days. (Effective date: October 27, 2011)

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

Passed September 26, 2011
Approved September 26, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10111

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,650,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL WATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

The city of Duluth does ordain:

Section 1. BOND PURPOSE AND AUTHORIZATION.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Section 444.075 and Chapter 475 of Minnesota Statutes and other pertinent provisions of said Charter and Statutes, the city is authorized to issue its general obligation bonds to provide funds for the improvement of the municipal water utility plant, which bonds shall be a specific lien upon such plant and are payable primarily from net revenues, as hereinafter defined, to be derived from

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

operation of the municipal water utility pledged for their payment. The city has applied for and received a commitment from the Minnesota public facilities authority (the "authority") for a loan for the improvements to the water utility system as part of the Riverside community utility and street improvement project (the "project") as identified in the city's application to the authority.

1.02 The city council hereby determines that it is in the best interest of the city and it is necessary to improve the municipal water utility for the Project, and determines that it is necessary to issue general obligation water utility revenue bonds or a note in the amount of \$1,650,000 for the purpose of paying costs of the project.

1.03 The city has heretofore issued and sold the following: general obligation water utility revenue note dated August 25, 2003, now outstanding in the amount of \$511,000; general obligation water utility revenue note dated July 23, 2004, now outstanding in the amount of \$1,027,000; general obligation utilities revenue bonds dated December 19, 2006, the water utility portion of such bonds now outstanding in the amount of \$885,000; general obligation water and sewer utility revenue refunding bonds dated December 13, 2007, the water utility portion of such bonds now outstanding in the amount of \$630,000; general obligation utilities revenue bonds dated February 19, 2009, the water utility portion of such bonds now outstanding in the amount of \$175,000; general obligation water utility revenue note dated November 23, 2009, now outstanding in the amount of \$1,344,363; general obligation water utility revenue note dated September 14, 2010, now outstanding in the amount of \$1,083,318; general obligation utilities revenue refunding bonds dated November 23, 2010, the water utility portion of such bonds now outstanding in the amount of \$1,625,000; and general obligation water utility revenue note dated December 14, 2010, now outstanding in the amount of \$1,805,278. Under the provisions of the ordinances authorizing said bonds and notes, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds and notes dated August 25, 2003, July 23, 2004, December 19, 2006, December 13, 2007, February 19, 2009, November 23, 2009, September 14, 2010, November 23, 2010, and December 14, 2010.

1.04 Pursuant to the authority herein recited, the city council hereby authorizes and directs the issuance and sale of general obligation water utility revenue bonds or a note of the city of Duluth in the amount of \$1,650,000, and pledges the full faith and credit and taxing powers of the city irrevocably for the payment of the principal and interest when due on such bonds, and also pledges and appropriates irrevocably, to the amounts required for the payment of the principal and interest on the bonds and the maintenance of a reserve, any and all net revenues to be derived from time to time from the operation of the municipal water utility. Net revenues are defined as sums from time to time within the water utility operating account within the water utility fund maintained under Section 54 of the City Charter, in excess of sums required to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal water utility and to maintain such reasonable reserves for such expenses as the director of public works and utilities shall determine to be necessary from time to time in accordance with the policies established by the city council.

1.05 The city reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the municipal water utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the city council to be necessary for the improvement of the municipal water utility or for the refunding of indebtedness payable from said net revenues, provided that no such pledge shall

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

constitute a lien upon the net revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

Section 2. TERMS OF BONDS.

2.01 The city council shall, by resolution or resolutions, provide for the issuance and sale of such bonds in one or more series and shall fix the precise maturities, interest rates, redemption provisions and other terms and conditions of such bonds, and prescribe the form thereof, and offer to sell such bonds in such a manner and at such time or times as shall be deemed in the public interest, all in accordance with the authority recited in Section 1.01 of this ordinance.

Section 3. REVENUES AND ACCOUNTS.

3.01 The city council shall, by resolution or resolutions, provide for the method of imposing and collecting just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and amounts required to pay the normal, reasonable and current operating expenses and to maintain the municipal water utility and also produce net revenues at least adequate at all times to pay the principal and interest due on the bonds issued hereunder and on all other bonds heretofore and hereafter issued and made payable from said net revenues.

3.02 The city council shall, by further resolution or resolutions, establish appropriate accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. CERTIFICATE OF PROCEEDINGS.

4.01 The city clerk is directed to file with the county auditor of St. Louis County a certified copy of this ordinance, and such other information as the county may require, and to obtain from the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

4.02 The officers of the city and the county auditor are authorized and directed to prepare and furnish to the purchasers of the bonds, and to bond counsel, certified copies of all proceedings and records of the city relating to the authorization and issuance of the bonds and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the bonds as such facts appear from the official books and records in the officers' custody or are otherwise known to them. All such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 5. EFFECTIVE DATE.

5.01 This ordinance shall take effect and be in force 30 days from and after its passage and publication. This ordinance shall be published one time on the city's official website and remain on such website for a period of at least 30 days. (Effective date: October 27, 2011)

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 26, 2011
Approved September 26, 2011
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, October 10, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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The minutes of the council meeting held on August 15, 2011, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-1010-22 D.M.A. and Associates, by William Burns, attorney, communication regarding the proposed permit for a junk and salvage service at 306 South Central Avenue (11-0529R and 11-047-O). -- Received

11-1010-01 Grandma's Sports Bar and Grill, Inc., acceptance of terms conditions and provisions of concurrent use permit granted by Ordinance 10106 on September 12, 2011. -- Received

11-1010-02 Odyssey Development acceptance of terms, conditions and provisions of concurrent use permit granted by Ordinance 10095 on July 11, 2011. -- Received

11-1010-03 Brad Rauzi appeal of planning commission decision regarding the approval of an AT&T telecommunications tower on 2120 Jean Duluth Road. -- Committee 2 (planning and economic development)

11-1010-23 Amy Westbrook communication regarding parking around East High School (11-0528R). -- Received

11-1010-24 The following communications regarding the proposed AT&T cell tower on 2120 Jean Duluth Road (11-0530R and 11-0531R): (a) Jim & Eve'y Frazier; (b) Deb Lafleur; (c) Brad Rauzi; (d) Ann Seppo. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-1010-25 Alcohol, gambling and tobacco commission minutes of: (a) May 4; (b) June 1; (c) July 6; (d) August 3, 2011, meetings. -- Received

11-1010-04 Duluth airport authority minutes of August 16, 2011, meeting. -- Received

11-1010-05 Duluth economic development authority minutes of September 13, 2011, meeting. -- Received

11-1010-06 Duluth transit authority: (a) Minutes of July 27, 2011, meeting; (b) June 2011 income statement. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell questioned where did the contingent money that the school board had in their budget go so that they now have to spend \$34 million more putting a huge tax burden on the public.

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MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the proper city officers are hereby authorized to accept a Minnesota cross country trail assistance program grant, a copy of which is on file in the office of the city clerk as Public Document No. 11-1010-07, with the Minnesota department of natural resources for the maintenance of the Duluth cross country trails for the 2011-2012 season in the amount of \$11,000; said funds to be deposited in the General Fund-110, Public Administration-121, Maintenance Operations/Buildings and Grounds-1217-2150, Ski Trail Reimbursement-4225.

Resolution 11-0517 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to execute the Minnesota snowmobile trails assistance program grant agreement, a copy of which is on file in the office of the city clerk as Public Document No. 11-1010-08, with the Minnesota department of natural resources for the maintenance of the Duluth snowmobile trails for the 2011-2012 season in the amount of \$13,925; said funds to be deposited in the General Fund-110, Public Administration-121, Maintenance Operations/Building and Grounds-1217-2150, Snowmobile Trail Grants-4226.

Resolution 11-0518 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On August 3, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of ROTO of Duluth, LLC (University Liquor), 1603 Woodland Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-1010-09;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on October 10, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-1010-09 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of ROTO of Duluth, LLC (University Liquor), 1603 Woodland Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action.

Resolution 11-0501 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth makes the following findings

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

of fact:

(a) On August 3, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Grandma's Sports Bar/Grill, Inc. (Bellisios Italian Restaurant), 405 Lake Avenue South, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-1010-10;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on October 10, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-1010-10 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Grandma's Sports Bar/Grill, Inc. (Bellisios Italian Restaurant), 405 Lake Avenue South, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty; and that payment of \$300 of the penalty be payable within 30 days of final council action, and \$200 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar offenses with the one year.

Resolution 11-0502 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On August 3, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Hospitality Associates of Duluth, LLC (Aces on First), 113 West First Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-1010-11;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on October 10, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-1010-11 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Hospitality Associates of Duluth, LLC (Aces on First), 113 West First Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty; and that payment of \$300 of the penalty be payable within 30 days of final council action, and \$200 of the penalty be stayed for a period of one year on the condition that the licensee have no same or similar offenses with the one year.

Resolution 11-0503 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing lawful gambling exemptions to St. Mary's Medical Center, SMDC Medical Center, and St. Michael's Church and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0509 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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BE IT RESOLVED, that the Duluth City Council approves of the Minnesota gambling control board issuing a premise permit to the following organization.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Licensee	Gambling site
Duluth Curling Club	327 Harbor Drive

Resolution 11-0510 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with North American Salt Company for the purchase and delivery of 13,800 tons of road salt for years 2011 and 2012 in accordance with Minnesota State Contract 445156, Release S-803(5), specifications and pricing at \$59.16 per ton in the amount of \$816,408 plus 6.875 percent sales tax of \$56,128.05, for a combined total of \$872,536.05, terms net 30, FOB destination, payable from General Fund 110, Department/Agency 121 (public administration), Organization 1217 (maintenance operations), Cost Center 2140 (street maintenance), Object 5223-01 (salt and sand salt):

(a) \$37,936.35 for 600 tons in budget year 2011 (The city council was not required to approve Purchase Order 2011-0475 issued August 17, 2011, under \$50,000);

(b) \$333,839.88 for 5,280 tons in budget year 2011 (October - December);

(c) \$500,759.82 for 7,920 tons in budget year 2012 (January - April).

Resolution 11-0519 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the appointments by Mayor Ness of Mark Emmel and Jennifer Ryan to the Duluth legacy endowment fund advisory board for terms expiring on March 31, 2012, replacing Rob Karwath and Nancy Norr who resigned, are confirmed.

Resolution 11-0505 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a brownfield hazardous materials assessment grant from the U.S. environmental protection agency (EPA), Region 5, in the amount of \$200,000 into Fund 255 (economic development fund), Agency 020 (planning), Revenue Source Code 4210-02 (pass through federal grant operating) and to execute Assistance Agreement No. BF-00E00899-0, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1010-12, in connection therewith.

Resolution 11-0523 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, substantially in the form and containing substantially the term of that draft contract on file in the office of the city clerk as Public Document No. 11-1010-13, with St. Louis County to provide supported work services to Minnesota family investment program (MFIP) participants for the period July 1, 2011, through June 30, 2012, in an amount expected to be \$80,102.40 and not to exceed \$240,307.50. Monies received under this agreement will be deposited in Fund 268 (workforce development), Agency 031 (grants division), Organization 6228 (miscellaneous workforce development grants).

Resolution 11-0496 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with the state of Minnesota, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1010-14 for the lease of space in City Hall for a four year period from October 1, 2011, through September 30, 2015, in the total amount of \$58,677.72 to be deposited in Fund 110-121-1217-2120-4622 (general, public administration, maintenance operations, architecture and facilities maintenance, rent of buildings).

Resolution 11-0511 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to amend a contract, in substantially the form and containing substantially the terms of that contract on file in the office of the city clerk as Public Document No. 11-1010-15, with, and accept funds from, St. Louis County to provide Minnesota family investment program and diversionary work program employment and training services in an amount not less than \$968,601 for the period January 1, 2011, through December 31, 2011. Monies received under this agreement will be deposited in Fund 268 (workforce development), Agency 031 (grants division), Organization 6235 (MFIP) and 6236 (DWP).

Resolution 11-0513 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that City Council Resolution No. 11-0153 authorizing advanced home energy audits under the advance home energy audit program is hereby amended by increasing the number of audits authorized under the program from 200 to 400 and by increasing the authorized cost thereof from \$40,000 to \$80,000, the increased amount to be payable from Fund 555-500-5441 (home energy conservation, public works and utilities).

Resolution 11-0506 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with LHB, Inc., for the inspection of the Brewery Creek storm sewer in the amount of \$48,550,

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payable out of Stormwater Fund 535, Agency 500 (public works and utilities), Organization 1905 (capital), Object 5535 (noncapital improvements), City Project No. 0036ST.

Resolution 11-0514 was unanimously adopted.
Approved October 10, 2011
DON NESS, Mayor

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THE CITY COUNCIL FINDS:

(a) That the city of Duluth is proposing to construct the Cross City Trail (Phase 1) from Pulaski Street to approximately 37th Avenue West; and

(b) That the city of Duluth will secure and guarantee the local share of costs associated with this project and responsibility for seeing this project through to its completion, with compliance with all applicable laws, rules and regulations; and

(c) That the Mn/DOT cultural resources unit has identified the need for a cultural resources survey/National Register of Historic Places evaluation of two railroad corridors within the area of potential effects (APE) in order to assess impacts and to complete environmental documentation for the proposed project; and

(d) That the proposed budget amount for the aforementioned cultural resources survey/evaluation is \$16,205; and

(e) That the local share of the budget is 20 percent.

RESOLVED, that the city of Duluth does hereby agree to provide the local share of the proposed budget for the stated cultural resources survey/evaluation, currently estimated at \$3,241, payable out of Capital Improvement Fund 450, Agency 030 (finance), Object 5530 (improvements other than buildings), City Project No. 0568TR.

FURTHER RESOLVED, that the city engineer is hereby authorized and directed for, and on behalf of, the city to execute and enter into an agreement with the commissioner of transportation.

Resolution 11-0521 was unanimously adopted.
Approved October 10, 2011
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with LHB, Inc., to perform professional engineering services for design engineering of the Oxford Street - Livingston Avenue - Glenwood Street reconstruction project (Woodland Avenue to Jean Duluth Road) in the amount of \$163,889, payable from Permanent Improvement Fund 411, Department 035 (capital projects), Object 5530 (improvements other than buildings), City Project No. 0439TR.

Resolution 11-0524 was unanimously adopted.
Approved October 10, 2011
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1010-16, for the state fiscal year of 2012 with the Minnesota department of public safety, office of justice programs, crime victim services, for an \$800 grant for a program entitled *Emergency Fund for Crime Victims*; funds received by the city under such grant agreement shall be deposited in Fund 210 (special projects), Agency 030 (finance), Organiza-

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tion 3126 (crime victims grant), Revenue Source 4220.

Resolution 11-0504 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, department of public safety, homeland security and emergency management, in the amount of \$85,000 and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1010-17, for the purpose of enhancing and repairing the microwave tower on Park Point, funds to be deposited in fund number 215-200-2202-4209-02 (Duluth police grant programs, police department, 2010 port security grant, direct federal grants - operating).

Resolution 11-0507 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the state of Minnesota, department of public safety, bureau of criminal apprehension, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1010-18, under which the city attorney's office shall have access to the Criminal Justice Data Communication Network and providing terms and conditions therefore, at no cost to city.

Resolution 11-0512 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a grant in the amount of \$196,500 from the U.S. department of justice office of violence against women to be used for the Blueprint for Safety adaptation demonstration project, and to execute the grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1010-19(a), funds to be deposited in Fund 210-030-3180-4209-02 (special projects fund, finance department, Blueprint for Safety grant, direct federal grants - operating).

FURTHER RESOLVED, that the proper city officials are authorized to enter into agreements, substantially the same as those on file in the office of the city clerk as Public Document Nos. 11-1010-19(b), 11-1010-19(c), 11-1010-19(d), 11-1010-19(e) with the Domestic Abuse Intervention Project, Program for Aid to Victims of Sexual Assault, Safe Haven Shelter for Battered Women and the Dabinoo'igan Shelter for services to be conducted in accordance with the terms of and conditions of the grant application and grant agreement, funds to be paid from Fund 210-030-3180-5319 (special projects fund, finance department, Blueprint for Safety grant, other professional services).

Resolution 11-0516 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that in accordance with the provisions of Section 33-125 of the Duluth City Code, 1959, as amended, the following resident permit parking zone is rescinded:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The area around Lincoln Park Elementary School located at 2424 West Fifth Street.

All resident permit parking signs shall be removed and, where possible, salvaged. Resolution 11-0520 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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RESOLVED, that in accordance with the provisions of Section 33.88-2 of the Duluth City Code, 1959, as amended, the following accessible parking zones are hereby established:

Two spaces on the east side of 46th Avenue East between McCulloch Street and Gladstone Street.

Resolution 11-0526 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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THE CITY COUNCIL FINDS:

(a) That the Minnesota department of natural resources (Mn/DNR) has grant monies available through the parks and trails legacy grant program that are intended to accelerate the acquisition and development of recreational trails; and

(b) That to receive these monies the city must submit the regional trail legacy grant application to the Mn/DNR.

RESOLVED, that the proper city officials are hereby authorized to submit the following applications for these monies:

(a) The Cross City Trail Phase II (Munger Trail extension);

(b) The Cross City Trail Phase III (Munger Trail extension); and

(c) The Duluth Traverse Trail System (bike trail extension throughout the city).

FURTHER RESOLVED, that the city of Duluth estimates the grant amounts to be \$288,000, \$288,000 and \$500,000, respectively, and are available on a 90 percent/10 percent local matching basis.

FURTHER RESOLVED, that matching funds will be paid from Capital Improvement Fund 450 for the Munger Trail projects and from Special Projects Fund 0210 expected from COGGS (Cyclists of the Gitchee Gummee Shores).

Resolution 11-0525 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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The following resolutions were also considered:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following temporary on sale intoxicating liquor license and one day dance license, subject to departmental approvals with any further restrictions and further subject to approval of the liquor control commissioner:

Nifty 50 Cruisers Car Club (Haunted Hanger on the Hill), Duluth International Airport Hanger 103, for October 29, 2011, with Ryan Kern, manager.

Resolution 11-0508 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Abstention: Councilor Halberg -- 1
Approved October 10, 2011
DON NESS, Mayor

- - -

Resolution 11-0527, of support for naming the miracle field at Harrison Community Center in honor of Terry Mattson, was introduced by Councilor Halberg.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Sherri Hutton urged the council to support the resolution as her brother passed away last year and had a dream to have a field where anyone with a disability could play.

Resolution 11-0527 was adopted as follows:

WHEREAS, the Miracle Field gives children and adults with physical and developmental challenges an opportunity to play baseball; and

WHEREAS, Terry Mattson was a Twin Ports Miracle League player and advocate for the Miracle Field at Harrison Community Center in Duluth's Lincoln Park neighborhood; and

WHEREAS, a group of supporters desire to have the Miracle Field named for Terry Mattson.

THEREFORE, BE IT RESOLVED, that the city council, in recognition of the advocacy Terry Mattson provided to the Miracle Field at Harrison Community Center, hereby supports the naming of the field for Terry Mattson and requests that the proper city officials take the necessary steps to initiate the process of naming.

Resolution 11-0527 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

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Resolution 11-0529, granting an interim use permit to D.M.A. & Associates for a junk and salvage service at 306 South Central Avenue, was introduced by Councilor Stauber for discussion.

President Gardner moved to consider Ordinance 11-047 at this time, which motion was seconded and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-047 (10116) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-B, MIXED USE-BUSINESS PARK, TO I-G, INDUSTRIAL-GENERAL, OF THE PROPERTY LOCATED AT 306 SOUTH CENTRAL AVENUE (D.M.A. & ASSOCIATES).

The rules were suspended upon a unanimous vote to hear from speakers on the issue.

Diane Anderson, owner of business, reviewed that she has owned this business for ten years and employs nine people and has made several improvements to make the neighborhood better. She requested the council to approve a special use permit so she does not have to come back to the city every three years for another interim use permit to continue her business. Ms. Anderson also explained that her business is controlled by the Minnesota

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pollution control agency (MPCA) and has received no complaints from them or the Western Lake Superior Sanitary District (WLSSD).

Bill Burns, attorney for the owner, explained that the issue at the planning commission meeting was whether the property along side this business should be rezoned, but the neighbors were opposed so they conceded that point so that the only issue now is whether it should be a special use or interim use permit.

Councilor Fosle introduced an amendment to give the applicant a special use permit instead of an interim use permit, which motion was seconded and unanimously carried.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

Resolution 11-0529, as amended, was adopted as follows:

RESOLVED, that:

(a) The city council grants D.M.A. & Associates a special use permit to operate a junk and salvage service on Tax Parcel No. 010-0130-00190, located at 306 South Central Avenue and as described as subject property:

All that part of Outlot 1, Rearrangement of Auditor's Plat of West Duluth Outlots, lying south of line parallel to and 807 feet south of the south line of Blocks 51, 50, 49, 48 West Duluth, First Division and Blocks 218, 219, and 249 West Duluth, Third Division, extended, including easterly 40 feet vacated Central Avenue abutting thereon, according to the recorded plat thereof;

(b) Pursuant to Section 50-20.4.D and Section 50-37.10 of the Duluth City Code, 1959, as amended, the applicant applied for a special use permit and the application was duly referred to the city planning commission (File No. 11-110). The commission gave due notice of public hearing and considered the application during a public hearing occurring on September 13, 2011;

(c) As an alternative to a special use permit, Minnesota Statutes Section 462.3597 authorizes the city to issue an interim use permit that authorizes a special use to exist until a specified date or until an amendment to this Chapter authorizes or prohibits that use. Section 50-37.10.D of the Duluth City Code, 1959, as amended, grants to the city the authority to issue an interim use permit as an alternative to a special use permit. The commission may recommend to the city council an interim use permit even if the application is for a special use permit;

(d) The city planning commission, at their regular meeting on September 13, 2011, considered the application's consistency with the comprehensive land use plan and voted to recommend approval of an interim use permit for a junk and salvage service with conditions;

(e) The city council finds that a time limit is not needed to protect the public health, safety and welfare from potential longer term impacts of the requested use location.

FURTHER RESOLVED, that a special use permit for the subject property, is approved subject to the following conditions:

(a) The special use permit is effective only on the subject parcel; and

(b) The special use permit shall not issue until the subject parcel is rezoned to I-G;

and

(c) The project shall be limited to, constructed, and maintained according to the site plan entitled "Site Survey for DMA & Associates" dated August 22, 2011, for Parcel 010-1300-00190; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(d) The applicant shall obtain and maintain all licenses required by applicable city, state and federal law for operation of the facility.

Resolution 11-0529, as amended, was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

- - -

BY COUNCILOR FEDORA:

RESOLVED, that the city council hereby requests that a public meeting be conducted, the purpose of which is to discuss parking concerns in the vicinity of the new East High School. City staff, school staff, residents and other stakeholders will gather input, discuss options and listen to concerns.

Resolution 11-0528 was unanimously adopted.

Approved October 10, 2011

DON NESS, Mayor

- - -

Resolutions 11-0530 and 11-0531, affirming and reversing, respectively, the decision of the planning commission to grant the application for a special use permit by AT&T/New Cingular Wireless for a wireless telecommunications facility, were introduced by Councilor Stauber.

Councilor Stauber moved to table the resolutions, which motion was seconded and unanimously carried.

- - -

Resolution 11-0522, authorizing application for and acceptance of, if offered, a parks and trails legacy grant of \$500,000 for improvements to Indian Point Campground and committing the \$50,000 local share, was introduced by Councilor Halberg for discussion.

The rules were suspended upon a unanimous vote to hear from speakers on the resolution.

Barb Hegg explained that the premise is all wrong for this park as the area has always been a campground and not a public park. She added that while the campground certainly needs improvement, the biggest concern is the cement that will be replacing trees and shrubs for a parking lot.

Drew Digby stated that the legacy grant is good as it can be used for upgrades in parks, but he is concerned about the process in this grant application. He continued saying that this grant will make this area the major park in West Duluth, but it is taking an area of nature and turning it into a cement area.

Will Munger voiced concern that a regional park designation needs to have 100 acres, which this area does not have. He also pointed out that the plan calls for a 40 car parking lot which means taking out trees and the neighborhood is concerned with the environmental impact on the neighborhood.

Councilor Stauber stated that this park does not work and the city should be looking at another site as does the neighborhood.

Councilor Halberg voiced concern on the proposed project and the changes that goes with it and questioned if there was enough public input on this.

Councilor Fosle moved to table the resolution for two weeks, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle and President Stauber -- 6

Nays: Councilors Halberg, Hartman and Stauber -- 3

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR FEDORA

11-042 (10112) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION AIRPORT IMPROVEMENT BONDS IN THE MAXIMUM AMOUNT OF \$7,650,000 OF THE CITY OF DULUTH UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTIONS OF THE CITY COUNCIL AND LEVYING TAXES FOR THE PAYMENT THEREOF.

Councilor Fedora moved to remove the ordinance from the table, which motion was seconded and unanimously carried.

Councilor Fedora moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

11-043 (10113) - AN ORDINANCE AMENDING ORDINANCE NO. 10084 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE MAP AND LEGAL DESCRIPTION.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-044 (10114) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO MARY JO JUKICH FOR \$10,000.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-046 (10115) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO R-2, RESIDENTIAL-URBAN, ON THE PROPERTIES LOCATED AT 1303 AND 1315 WEST ARROWHEAD ROAD (CITY OF DULUTH).

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-048 (10117) - AN ORDINANCE AMENDING ORDINANCE 10087 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE LEGAL DESCRIPTION OF THE PLAZA AND LONDON ROAD FORM DISTRICTS.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The meeting was adjourned at 8:05 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10112

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION AIRPORT IMPROVEMENT BONDS IN THE MAXIMUM AMOUNT OF \$7,650,000 OF THE CITY OF DULUTH UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTIONS OF THE CITY COUNCIL AND LEVYING TAXES FOR THE PAYMENT THEREOF.

The city of Duluth does ordain:

Section 1. BOND PURPOSE AND AUTHORIZATION.

1.01 Pursuant to Minnesota Laws 1969, Chapter 577, as amended, the City was authorized to and did organize the Duluth Airport Authority (the "Authority") to administer, promote, control, direct, manage and operate all airports of the City. The Authority is in the process of constructing a new terminal facility at the Duluth International Airport, including a new parking ramp, access road and aprons (the "Project").

1.02 The City has received grants from the State of Minnesota in the amount of \$16,600,000 for the Project, and the Authority has received grants for the Project from the Federal Aviation Administration and TSA in the amount of \$48,088,363 and from the State of Minnesota in the amount of \$4,500,000.

1.03 The Authority needs additional matching funds in an amount not to exceed \$7,650,000 for completion of the Project, costs of issuance and capitalized interest.

1.04 Under the provisions of Minnesota Laws 1974, Chapter 130, the City Council may by ordinance provide for the issuance of general obligation bonds to provide the funds necessary to match state, private or federal grant funds for projects within the City's boundaries, which bonds are to be supported by the full faith and credit of the City and are to be issued subject to the provisions of Minnesota Statutes, Section 475, except that they may exceed the limitations in Minnesota Statutes, Section 475.53, by an amount not to exceed \$2,000,000, and they may not be issued if the City's contribution to the project, including the proceeds of the bonds, exceeds 60% of the total project cost where such contribution is used to match state or federal grants, or 70% where it is used to match government and private grants, or 80% where it is used to match private grants alone. The Project is of the nature contemplated by said law. The City and the Authority have been awarded grants of state and federal funds and other funds for the Project, and it is estimated that such funds, together with the proceeds of bonds issued by the City in an amount not to exceed \$7,650,000, will be sufficient to pay the total project costs estimated at \$75,465,821, and that the amount of the City's contribution, from the proceeds of the bonds or otherwise, will not exceed the limitations set forth in said law.

1.05 Pursuant to the authority herein recited, the City Council hereby authorizes and directs the issuance and sale of General Obligation Airport Improvement Bonds of the City in an amount not to exceed \$7,650,000, and pledges the full faith and credit and taxing powers of the City irrevocably for the payment of the principal and interest when due on such bonds.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 2. TERMS OF BONDS.

2.01 The City Council shall, by resolution or resolutions, provide for the issuance and sale of such bonds in one or more series and shall fix the precise maturities, interest rates, redemption provisions and other terms and conditions of such bonds, and prescribe the form thereof, and offer to sell such bonds in such a manner and at such time or times as shall be deemed in the public interest, all in accordance with the provisions of Minnesota Statutes, Chapter 475 and of Minnesota Laws 1974, Chapter 130, and of other applicable laws.

Section 3. REVENUES AND ACCOUNTS.

3.01 The City has created and maintains the airport construction fund to which there shall be credited all or a portion of the proceeds of the bonds, as provided by Council resolution, together with any additional funds which may be available and are appropriated for the Project or which may be advanced to such fund on condition that such amounts be reimbursed from bond proceeds.

3.02 The City Council may, by resolution or resolutions, establish such further accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. TAX LEVY.

4.01 There shall be and is hereby levied a direct, annual, ad valorem tax upon all taxable property within the City, which shall be extended upon the tax rolls for the years and in amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on such bonds as such principal and interest respectively become due. Until the bonds to be issued hereunder are fully paid or duly called for redemption, the City will also maintain a separate 2011 airport improvement bond debt service account within the debt service fund created by Section 54 of the City Charter, to be used solely for the payment of the interest and the principal, respectively, as such principal and interest become due and payable, on the bonds issued hereunder and on any other bonds which have been or may be issued and made payable from said account. If the balance is ever insufficient to pay all principal and interest then due on the bonds issued hereunder, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from such debt service account when the balance therein is sufficient. All proceeds of said taxes are hereby appropriated and shall be paid when collected into such account. Said taxes shall be irrevocable until the bonds and interest are fully paid, except that if the City Council in any year shall make an irrevocable appropriation to said account of monies actually on hand, the City clerk shall certify to the county auditor of St. Louis county the fact and amount thereof, and the county auditor shall reduce by the amount so certified the amount otherwise to be included in the rolls next thereafter prepared. After this ordinance has been published and becomes effective, the City Council shall by resolution fix the precise amounts of such tax levies to be placed upon the tax rolls for each of the respective years required to comply with the provisions of this ordinance.

Section 5. CERTIFICATE OF PROCEEDINGS.

5.01 The City clerk is directed to file with the county auditor of St. Louis county a certified copy of this ordinance, and such other information as the county may require, and to obtain from the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

5.02 The officers of the City and the county auditor are authorized and directed to prepare and furnish to the purchasers of the bonds, and to bond counsel, certified copies of all proceedings and records of the City relating to the authorization and issuance of the bonds

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the bonds as such facts appear from the official books and records in the officers' custody or are otherwise known to them. All such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 6. EFFECTIVE DATE.

6.01 This ordinance shall take effect and be in force 30 days from and after its passage and publication. This ordinance shall be published one time on the City's official website and remain on such website for a period of at least 30 days. (Effective date: November 12, 2011)

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed October 10, 2011
Approved October 10, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

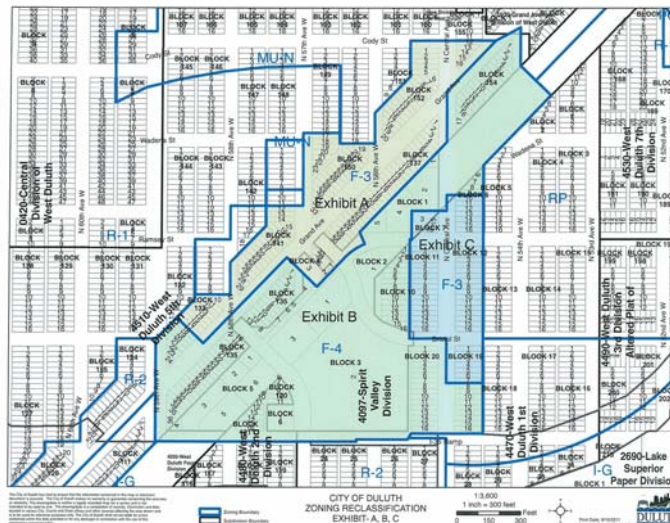
ORDINANCE NO. 10113

AN ORDINANCE AMENDING ORDINANCE NO. 10084 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE MAP AND LEGAL DESCRIPTION.

The city of Duluth does ordain:

Section 1. That Exhibit A to Ordinance No. 10084 (Public Document No.11-0425-18) is replaced by exhibits A, B and C (Public Document No. 11-1010-20).

Section 2. That the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, and made a part of Ordinance No. 10084 is replaced by the following:



PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 3. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 12, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed October 10, 2011
Approved October 10, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10114

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE CENTRAL HILLSIDE AREA TO MARY JO JUKICH FOR \$10,000.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the Code), the manager of the city's physical planning division has reviewed this proposed conveyance and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Code, the city assessor has provided an estimate of the market value to be \$10,000 which estimated market value is hereby established as the minimum acceptable bid or reserve;

(c) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale pursuant to Article XXXIII of Chapter 2 of the Code;

(d) As per sections 2-177.1 and 2-177.2 of the Code, the property described in Section 2 below was advertised three times in the Duluth News Tribune during the 30 days prior to being offered at public auction on July 9, 2011, at the minimum bid price or reserve of \$10,000. The purchaser named in Section 2 below presented the highest bid which meets the minimum acceptable bid or reserve of \$10,000 for the property proposed to be sold.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Mary Jo Jukich, a single person, for the amount of \$10,000 to be deposited into Fund 110 (general), Agency 700 (transfers and other functions), Organization 1420 (capital programs), Object 4640 (sale of land), and further to execute all documents necessary with regard to said conveyance:

Lots 45-48, Block 133, DULUTH PROPER THIRD DIVISION.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 12, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed October 10, 2011
Approved October 10, 2011
DON NESS, Mayor

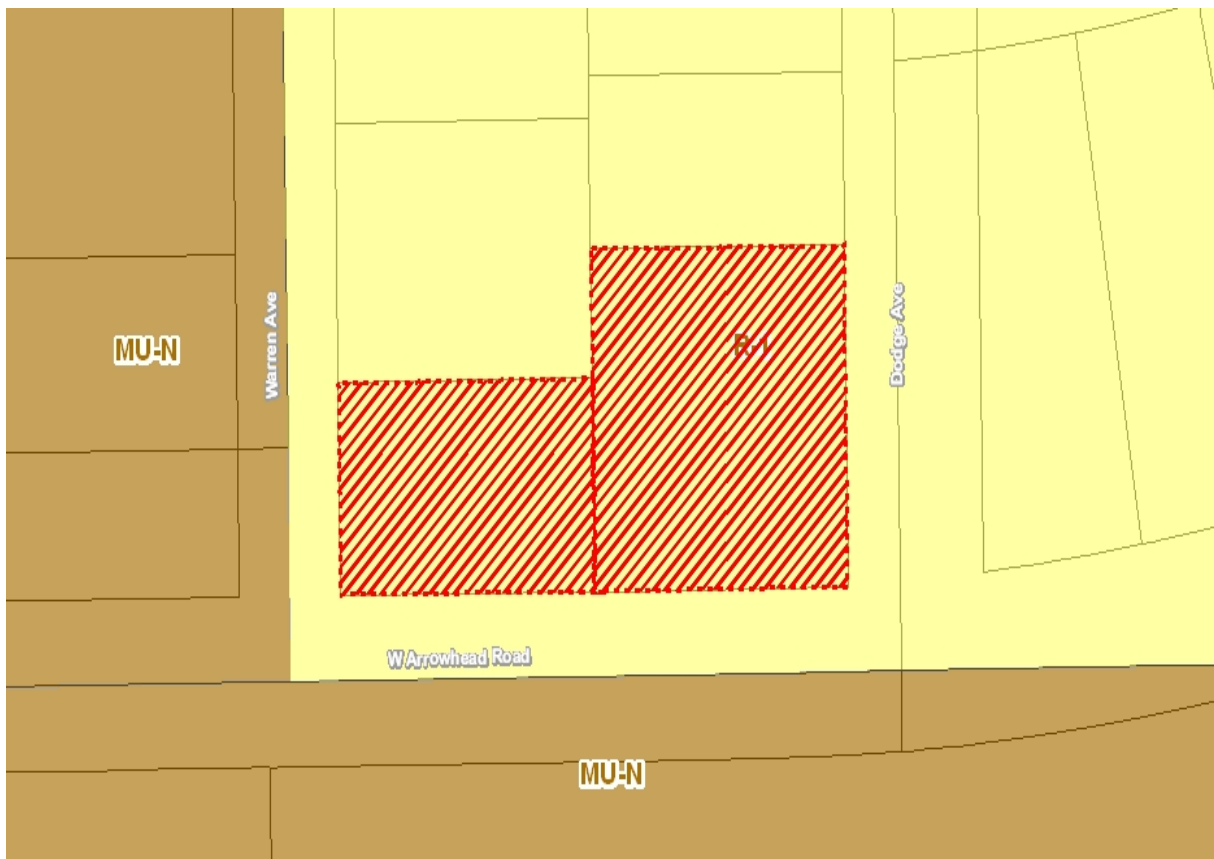
ATTEST:
JEFFREY J. COX, City Clerk

ORDINANCE NO. 10115

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50, OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1, RESIDENTIAL-TRADITIONAL, TO R-2, RESIDENTIAL-URBAN, ON THE PROPERTIES LOCATED AT 1303 AND 1315 WEST ARROWHEAD ROAD (CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the subject properties, Tax Parcel No. 010-1560-02210, being Lots 20, 21 and 22, Farrell & Culvers Addition to Kenwood, 1303 West Arrowhead Road, and Tax Parcel No. 010-1560-02190, being Lots 18 and 19, Farrell & Culvers Addition to Kenwood, 1315 West Arrowhead Road, be reclassified from R-1, Residential-Traditional, to R-2, Urban-Residential, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



(Ref. File No. 11-105)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 12, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed October 10, 2011

Approved October 10, 2011

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10116

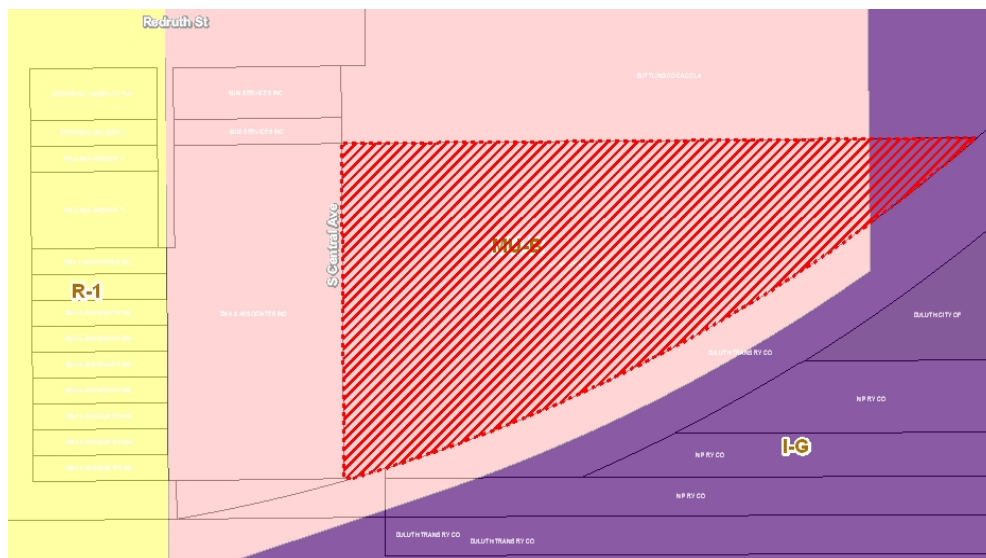
AN ORDINANCE AN AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM MU-B, MIXED USE-BUSINESS PARK, TO I-G, INDUSTRIAL-GENERAL, OF THE PROPERTY LOCATED AT 306 SOUTH CENTRAL AVENUE (D.M.A. & ASSOCIATES).

The city of Duluth does ordain:

Section 1. That the subject property, Tax Parcel No. 010-0130-00190, located at 306 South Central Avenue and as described as:

All that part of OUTLOT 1, REARRANGEMENT OF AUDITOR'S PLAT OF WEST DULUTH OUTLOTS, lying south of line parallel to and 807 feet south of the south line of Blocks 51, 50, 49, 48, West Duluth, First Division, and Blocks 218, 219 and 249, West Duluth, Third Division, extended, including easterly 40 feet vacated Central Avenue abutting thereon, according to the recorded plat thereof;

be reclassified from MU-B, Mixed Use-Business Park, to I-G, Industrial-General, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 12, 2011)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed October 10, 2011
Approved October 10, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10117

AN ORDINANCE AMENDING ORDINANCE 10087 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE LEGAL DESCRIPTION OF THE PLAZA AND LONDON ROAD FORM DISTRICTS.

The city of Duluth does ordain:

Section 1. That Exhibit A to Ordinance No. 10087 (Public Document No. 11-0509-19) is replaced by Public Document No. 11-1010-21.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 12, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed October 10, 2011
Approved October 10, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, October 24, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

- - -

The minutes of the council meeting held on August 29, 2011, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-1024-01 The following communications regarding the proposed improvements to Indian Point Campground (11-0522R): (a) Alison Clarke; (b) Friends of the St. Louis River, by Connie Moeller; (c) Richard and Charlene Harms; (d) Rachel Kostelic; (e) Jan and Larry Kraemer; (f) Ed and Linda Whitman. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-1024-02 Charter commission minutes of October 13, 2010, meeting. -- Received

11-1024-03 Duluth human rights commission minutes of: (a) August 10; (b) August 25, 2011, meetings. -- Received

11-1024-04 Duluth public utilities commission minutes of September 14, 2011, meeting. -- Received

11-1024-05 Library board minutes of August 23, 2011, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell expressed concerns about School District No. 709 of where he felt that: the red plan has led to a treacherous financial condition; Johnson Controls' involvement, if not against the law, was against the spirit of the law; citizens were denied the right to vote on the biggest investment in the history of Duluth; citizens' communications to the school board poured in and were not put in the public file and citizens wanting accountability were claimed as being against the children.

- - -

Jennifer Cummings and Jesse Peterson, participants in the Occupy Duluth camp in the civic center, expressed concerns of: that there are many different ways changes can be made, due to the beauty of our system of checks and balances and processes; communities can be changed to function and thrive that work well for everyone; decisions made every day decide how well our communities function; these decisions need to be talked over to see that the decisions do not impair people from accessing a clean, happy and healthy environment; city councils can make decisions on how wealth is distributed and there are fair opportunities people can have to participate in their local economy and one percent make decisions affecting 99 percent of the population.

- - -

RESOLUTION TABLED

Councilor Halberg moved to remove Resolution 11-0522, authorizing application for and acceptance of, if offered, a parks and trails legacy grant of \$500,000 for improvements to Indian Point Campground and committing the \$50,000 local share, from the table, which motion was seconded and unanimously carried.

Councilor Halberg moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Judy McGaffey, Barb Hegg, Rachel Kostelic, Bill Majewski and Julene Boe expressed concerns of: a campground like this in the city is unique - it's close to everything, brings in income and is quiet; it needs upgrades to the showers and bath, office, a camp store, dumpster location, road blacktopping, drainage and ground leveling for the tent area; in the second phase of the development the planning needs to be slowed down and studied in more detail; many other concerned entities have not been involved in the planning, nor seen the new versions; this grant is introducing non-campground activities on a too small campground already; campers are used to leaving their gear out and, with other non-campers there, it will not be secure and popular group camping will be removed under this plan.

Chief Administrative Officer David Montgomery reviewed in detail: the improvements scheduled in the first phase; the concerns that everyone is supportive of and while there are funds available now, there is no guarantee about next year. He also noted that other improvements will be discussed further.

Councilors and the administration discussed at length the concerns that were raised and the rush for this at this time.

Councilor Fosle suggested that councilors hold off and apply for this grant in 2012, that there be more planning and discussion first and to wait and see if the parks levy ballot question passes.

Councilor Fedora moved to amend the resolution by adding the following paragraph:

"FURTHER RESOLVED, that any grant proceeds received from the park legacy application will be used for the full reconstruction of the restroom facilities including compliance with the Americans with Disabilities Act,"

which motion was seconded and unanimously carried.

Resolution 11-0522, as amended, was adopted as follows:

RESOLVED, that city act as legal sponsor for the project contained in the park legacy application to be submitted on or before October 31, 2011, and that the city's chief administrative officer is hereby authorized to apply to the Minnesota department of natural resources (MnDNR) for funding of this project on behalf of city.

FURTHER RESOLVED, that city has the legal authority to apply for financial assistance, and financial capability to meet the match requirement and ensure adequate construction, operation, maintenance and replacement of the proposed project for its design life.

FURTHER RESOLVED, that city has not incurred any development costs or entered into a written purchase agreement to acquire the property in connection with the project.

FURTHER RESOLVED, that if the aforesaid grant is offered, the proper city officials are authorized to enter into a grant agreement with MnDNR substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1024-23 agreeing to the project and to provide the city's \$50,000 local share of the project cost payable from Fund 110-700-1420-5530 (general fund, transfers and other functions, capital program, improvements other than buildings).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, that any grant proceeds received from the park legacy application will be used for the full reconstruction of the restroom facilities including compliance with the Americans with Disabilities Act.

Resolution 11-0522, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

Approved October 24, 2011

DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that Resolution 10-0579 adopting license, permit and fee charges for 2011 be amended by adding the following fees, pursuant to Section 31-6(a) of the Duluth City Code:

Clerk		2011 Fee
Liquor caterer		
Event permit - per event		\$50.00
Appeal to chief administrative officer		\$100.00
Registration permit - annual		\$100.00
Appeal to alcohol, gambling and tobacco commission		\$150.00

Resolution 11-0515 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council of the City of Duluth, Minnesota, as follows:

(a) Authorization of bonds. It is hereby found, determined, and declared to be necessary, and in the best interests of the city and its residents, that the city should issue its approximately \$3,215,000 general obligation gas utility revenue refunding bonds, Series 2011C (the "bonds"), pursuant to Minnesota Statutes, Chapter 475, and Section 55 of the Home Rule Charter of the city for the purpose of refunding a portion of the city's general obligation gas utility revenue bonds, Series 2003G, dated December 1, 2003;

(b) Issuance and sale of bonds. The terms and conditions of the bonds and the sale thereof are set forth in the official terms of offering on file with the city clerk as Public Document No. 11-1024-06. Each and all of the terms and provisions set forth in the official terms of offering are adopted and confirmed as the terms and conditions of the bonds and the sale thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the bonds;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(c) Competitive sale of bonds. Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sale of the bonds in accordance with Minnesota Statutes, Section 475.60, subdivision 3, and in accordance with the official terms of offering;

(d) Subsequent resolution. The form, specifications and provisions for repayment of the bonds shall be set forth in a subsequent resolution of this city council.

Resolution 11-0549 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the City council of the City of Duluth, Minnesota, as follows:

(a) Authorization of bonds. It is hereby found, determined, and declared to be necessary, and in the best interests of the city and its residents, that the city should issue its approximately \$2,260,000 general obligation sewer utility revenue refunding bonds, Series 2011D (the "bonds"), pursuant to Minnesota Statutes, Chapter 475, and Section 115.46 and 444.075, and Section 55 of the Home Rule Charter of the city for the purpose of refunding the 2014 through 2020 maturities of the city's general obligation sewer utility revenue bonds, Series 2004D, dated December 1, 2004;

(b) Issuance and sale of bonds. The terms and conditions of the bonds and the sale thereof are set forth in the official terms of offering on file with the city clerk as Public Document No. 11-1024-07. Each and all of the terms and provisions set forth in the official terms of offering are adopted and confirmed as the terms and conditions of the bonds and the sale thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the bonds;

(c) Competitive sale of bonds. Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sale of the bonds in accordance with Minnesota Statutes, Section 475.60, subdivision 3, and in accordance with the official terms of offering;

(d) Subsequent resolution. The form, specifications and provisions for repayment of the bonds shall be set forth in a subsequent resolution of this city council.

Resolution 11-0550 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of the sidewalk vault (Contract #5442, Fund 325) at 114 West Fourth Street (Plat 1000 Parcel 00440) is set. The total amount assessable is \$13,122.75 and this assessment roll is hereby confirmed.

Resolution 11-0551 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the Duluth City Council hereby approves of the Minnesota department of commerce issuing a 2012 currency exchange license to Pawn America Minnesota, LLC, 339 East Central Entrance.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0534 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale intoxicating dancing liquor license for the period ending August 31, 2012, subject to departmental approvals:

The Lake Effect Restaurant, Inc. (Lake Avenue Café), 394 Lake Avenue South.

Resolution 11-0544 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to enter into a 48-month contract with Nordic Waste Services, Inc., for garbage/refuse removal and recycling pickup services in accordance with city-approved specifications and vendor fees, beginning November 1, 2011, at an estimated \$14,000 per month, for a total estimated amount of \$28,000 for year 2011, terms net 30, FOB job sites, and payable from various funds, agencies, organizations and objects.

Resolution 11-0560 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale intoxicating liquor license and on sale Sunday license for the period ending August 31, 2012, subject to departmental approvals and the payment of sales and property taxes:

Azteca's Mexican Grill, Inc. (Azteca's Mexican Grill), 2224 Mountain Shadow Drive, with Juan Banales Vasquez, president and 100 percent stockholder.

Resolution 11-0562 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness of Zandra Zwiebel to the planning commission for a term expiring on March 31, 2014, replacing Rebecca Covington who resigned, is confirmed.

Resolution 11-0533 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth ("city") act as the legal sponsor for the Rohlfing distribution expansion project as contained in the contamination cleanup grant program application to be submitted on November 1, 2011, and that the mayor and clerk are hereby authorized to apply to the department of employment and economic development (DEED) for a grant in the amount of \$360,687 for funding of this project.

FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, that the city hereby commits to provide 25 percent of the project costs, up to \$120,228 in a qualified match contribution, said match to be provided by Rohlifing of Duluth, Inc.

FURTHER RESOLVED, that the city has not violated any federal, state or local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices.

Resolution 11-0558 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to execute an agreement, substantially the same as that on file with the city clerk as Public Document No. 11-1024-08, with the state of Minnesota, department of natural resources, authorizing the city to perform certain maintenance for three consecutive years at the Clyde Avenue (Munger Access) and Rice's Point boat launch sites, in consideration of \$1,500 per summer for a total agreement amount of \$4,500 to be paid by the department of natural resources to the city. Reimbursements received shall be deposited into public administration department, maintenance operations division, General Fund 110, Department 121, Division 1217-2140, Revenue Source 4654-02.

Resolution 11-0542 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council approves settlement in the amount of \$5,000 of all claims or causes of actions asserted by the city of Duluth in that matter venued in the District Court of Minnesota, Sixth Judicial District, and identified as *City of Duluth v Kristin Rae Shallow and Jeanne Marie Shallow*, File No. 69DU-CV-10-2358, and further authorizes the proper city officials to execute all documents necessary to conclude this matter on a full, final and complete basis, funds to be deposited in Fund 610-036-1651-4680 (self insurance fund, insurance general city, damages or losses recovered).

Resolution 11-0555 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1024-09 with the National Guard Bureau on behalf of the Minnesota Air National Guard for the reconstruction/reclamation of Ridgeview Road from Rice Lake Road to the guard base. Ridgeview Road will serve as a secondary access road to the MnANG base at Duluth International Airport. This resolution authorizes receipt of payments of approximately \$1,440,000, to be deposited in 411-035-4210-01 (permanent improvement fund, capital projects accounts, pass-through federal grants capital), City Project No. 1055.

Resolution 11-0540 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The city council finds:

(a) It is deemed necessary for the public conveyance and safety that Minnesota Bridge Number L6007 and its approaches on West Skyline Parkway over Stewart Creek (City Project No. 1016) be rehabilitated; and

(b) This project will not be eligible for state transportation funds unless it is constructed to state aid standards for new bridge, bridge replacement or bridge rehabilitation projects and approach roadways on rural or suburban undivided roadways that are not on the state-aid system for an existing average daily traffic count between 150 and 400 vehicles, or unless a variance is granted; and

(c) Practical limitations require tighter horizontal curves, narrower lane, shoulder and recovery area widths, and a steeper recovery area inslope than dictated by standards be used. This results in a 14 mph design speed in lieu of a 30 mph design speed which requires variance from the commissioner of transportation in accordance with Minnesota Rules Chapter 8820.3300.

RESOLVED, that the city of Duluth requests the commissioner of transportation for a variance from Minnesota Rules for State Aid Operations 8820.9922, whereby the minimum design standards for new bridge, bridge replacement or bridge rehabilitation projects and approach roadways on rural and suburban undivided roadways that are not on the state-aid system be reduced for this project, allowing for an 85' radius (-0.02 superelevation) curve at the south approach and a 195' radius (-0.02 superelevation) curve at the north approach in lieu of a 215' radius (0.06 superelevation) horizontal curve; a 10' lane and 1' shoulder in lieu of a 12' lane and 4' shoulder; and a 6' recovery area at 1:3 inslope in lieu of a 10' recovery area at 1:4 inslope; and further agrees to indemnify, save and hold harmless the state of Minnesota and agents and employees from any and all claims, demands, actions or causes of action arising out of or by reason of the rehabilitation of Minnesota Bridge Number L6007 on West Skyline Parkway over Stewart Creek in the city of Duluth in any manner other than in accordance with Minnesota Rule 8820.9922, and further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claim whatsoever arising as a result of the granting of this variance.

Resolution 11-0545 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with A-1 Excavating, Inc. for the Riverside community utility and street improvements project. The working fund is Street Improvement Fund 440, with \$3,407,996.02 payable from Street Improvement Fund 440, Department 038 (special assessments), Object 5530 (improvements other than buildings), and of these costs \$557,460 will be assessed to benefitting properties; with \$1,424,972.05 payable from Sanitary Sewer Bond Fund 531, Department 500 (public works and utilities), Object 5532 (capital improvements - bond), and of these costs \$1,139,978 will be reimbursed with WIF grant and principal forgiveness monies administered by the PFA; with \$1,337,266.50 payable from Water Bond Fund 511, Department 500, Object 5532; with \$183,303 payable from Stormwater Fund 535, Department 500, Division 1905 (capital), Object 5533 (capital improvements - revenue); and with \$273,569.70 payable from Gas Fund 520, Department 500, Division 1905, Object 5533; City Project No. 0699SN/TR; Requisition No. 11-0512.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0546 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that resolutions 10-0081 and 09-0471 awarding a contract to Salo Engineering, Inc., for professional engineering services for the reconstruction of Glenwood Street from 43rd Avenue East to 60th Avenue East be amended by an amount of \$50,540.77 for a new total of \$564,228.87, payable from Permanent Improvement Fund 411, Agency 038 (special assessments), Object 5530 (improvements other than buildings), City Project No. 0647TR.

Resolution 11-0554 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a license agreement, a copy of which is on file in the office of the city clerk as Public Document No. 11-1024-10, with the Duluth Seaway Port Authority for the placement of a SCADA antenna on authority property for use in conjunction with Sewer Lift Station No. 40 at no cost to city.

Resolution 11-0565 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into Amendment No. 2 to City Contract No. 20454 (State Contract No. B02328) with the state of Minnesota through its commissioner of public safety, division of homeland security and emergency management, for providing services as a hazardous materials chemical assessment team extending the term thereof through June 30, 2012, and increasing the compensation payable to the city by an additional \$45,000, said sum to be payable to Fund 110-150-1505-4210-02 (general fund, fire, hazardous materials, pass through grant).

Resolution 11-0532 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1024-11, with the Duluth Airport Authority (DAA), to allow police training in emergency vehicle operations on Taxiway Bravo at the Duluth International Airport.

Resolution 11-0535 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept an amended grant from the state of Minnesota, commissioner of public safety, office of justice programs in the amount of \$143,313 and to execute an amended grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1024-12, for the purpose of supporting the operations of the Lake Superior drug and gang task force for the period beginning July 1, 2011, and ending December 31, 2011, funds to be deposited in Fund 215-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

200-2263-4210-02 (Duluth police grant programs, police, narcotic/gang task force-state), and authorizing said officials to execute all documents necessary thereto.

Resolution 11-0536 was unanimously adopted.
Approved October 24, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a joint powers agreement with the state of Minnesota, department of public safety, bureau of criminal apprehension providing for the continued access by the city of Duluth police department to the Minnesota criminal justice data communications network systems and tools for a period of five years at a total cost of \$46,200. Said joint powers agreement to be substantially in the form of Public Document No. 11-1024-13 on file in the office of the city clerk and fees to be paid from Fund 110-160-1610-5404 (general, police, administration and investigation).

Resolution 11-0537 was unanimously adopted.
Approved October 24, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into Amendment No. 1 to Grant Agreement No. 2008-PSGP-00799 from the Minnesota department of public safety, homeland security and emergency management division, a copy of which agreement is on file in the office of the city clerk as Public Document No. 11-1024-14, extending the term of said grant through July 31, 2012.

Resolution 11-0538 was unanimously adopted.
Approved October 24, 2011
DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following accessible parking zones are established:

604 East 11th Street;
308 East Seventh Street;
26 East Fifth Street.

Resolution 11-0539 was unanimously adopted.
Approved October 24, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a FY2011 Edward Byrne memorial justice assistance grant program award from the United States department of justice, bureau of justice assistance, office of justice programs, in the amount of \$55,239, to be used for state and local initiatives including the first witness program, St. Louis County drug and DUI court, and to help fund technical assistance, training, personnel, equipment, supplies, contractual support and criminal justice information systems; and further are authorized to execute any documents required to be executed to accept said grant, funds to be deposited in Fund 215-200-2298-4209-02 (police grants fund, police department, 2011 JAG, direct federal grants - operating) and expenses to be paid from Fund 215-200-2298-5241 (police grants fund, police department, 2011 JAG, small equipment).

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Document No.11-1024-15, with the St. Louis County sheriff's office, who is a partner of the city under this grant, all reimbursement payments to St. Louis County pursuant to this agreement shall be paid from Fund 215-200-2298-5241 (police grants fund, police department, 2011 JAG, small equipment).

Resolution 11-0541 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a supplemental grant, substantially the same as that on file with the city clerk as Public Document No. 11-1024-16, in the amount of \$389,085 from the U.S. department of justice, office on violence against women, to be used as part of that office's grants to encourage arrest policies and enforcement of protection orders program as set forth in a memorandum of understanding between the collaborative partners to the program (the Duluth police department, Program for Aid to Victims of Sexual Assault, Mending the Sacred Hoop, Inc., the St. Louis County attorney's office and the Domestic Abuse Intervention Project), increasing the total amount accepted thereunder to \$1,187,876 (less a five percent hold-back related to HIV testing) and extending the termination date to October 31, 2013, for the project entitled *Community Response to Co-occurrence of Sexual & Domestic Violence*, funds to be deposited into Fund No. 215-200-2280-4209-02 (Duluth police grant programs, police, Violence Against Women Act 07-09) and to execute grant documents in connection therewith.

Resolution 11-0553 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1024-17, with the organized crime drug enforcement task forces program, Great Lakes region, under the direction of the United States bureau of alcohol, tobacco, firearms and explosives enforcement (ATF) to reimburse the city for its costs in providing criminal investigative services from October 1, 2011, through September 30, 2012, in an amount not to exceed \$25,000, funds received payable to Fund 110-160-1610-4209-02 (general, police, administration and investigation).

Resolution 11-0559 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR FOSLE:

WHEREAS, the Duluth Angel of Hope group is working to bring an Angel of Hope memorial to the city of Duluth as a place for parents to memorialize the loss of a child; and

WHEREAS, the city has indicated that there is space available in Lake Place Park for the memorial; and

WHEREAS, the city council desires to express it's support for the Angel of Hope memorial.

THEREFORE, BE IT RESOLVED, that the city council hereby supports the Duluth Angel of Hope group and the desire to construct an Angel of Hope memorial, it further supports

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

locating such memorial in Lake Place Park and requests that appropriate space be reserved for this purpose.

Resolution 11-0564 was unanimously adopted.
Approved October 24, 2011
DON NESS, Mayor

- - -

Resolution 11-0547, authorizing the issuance and providing for the sale of general obligation capital improvement bonds, Series 2011A, was introduced by Councilor Fedora for discussion.

Councilor Stauber raised his concerns that, even though the city can borrow at a lower rate, the city is still borrowing and that with the upcoming levy over 1/3 of it is for past debt.

Resolution 11-0547 was adopted as follows:

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota, as follows:

(a) Authorization of bonds. The city council adopted Resolution No. 11-0001 on January 10, 2011, declaring its intent to issue capital improvement bonds in 2011 in an amount not to exceed \$2,275,000. It is hereby found, determined, and declared to be necessary, and in the best interests of the city and its residents, that the city should issue general obligation capital improvement bonds, Series 2011A, in the approximate amount of \$1,855,000 (the "bonds"), pursuant to Minnesota Statutes, Section 475.521 and Chapter 475, and the City Charter, for the purpose providing funds for capital improvements projects pursuant to an approved capital improvement plan;

(b) Issuance and sale of bonds. The terms and conditions of the bonds and the sale thereof are set forth in the official terms of offering on file with the city clerk as Public Document No. 11-1024-18. Each and all of the terms and provisions set forth in the official terms of offering are adopted and confirmed as the terms and conditions of the bonds and the sale thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the bonds. Due to changes in the municipal bond market, the city administrator, with the advice of the city's financial consultant, may modify the official terms of offering regarding the maturity schedule, the minimum bid and the maximum bid prior to the sale of the bonds;

(c) Competitive sale of bonds. Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sale for the bonds in accordance with Minnesota Statutes, Section 475.60, subdivision 3, and in accordance with the official terms of offering;

(d) Subsequent resolutions. The form, specifications and provisions for repayment of the bonds shall be set forth in a subsequent resolution of this city council.

Resolution 11-0547 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman and President Gardner -- 7

Nays: Councilors Fosle and Stauber -- 2

Approved October 24, 2011
DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota, as follows:

(a) Authorization of notes. The city council adopted Resolution No. 10-0599 on December 6, 2010, declaring its intent to issue general obligation capital equipment notes in 2011 in an amount up to \$4,380,000 plus costs of issuance and discount. It is hereby found,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

determined, and declared to be necessary, and in the best interests of the city and its residents, that the city should issue general obligation capital equipment notes, Series 2011B, in the approximate amount of \$3,045,000 (the "notes"), pursuant to Minnesota Statutes, Sections 410.32 and 412.301 (the "act"), and Minnesota Statutes, Chapter 475, and the City Charter, for the purpose of providing funds to purchase capital equipment, as permitted by the act, having an expected useful life at least as long as the term of the notes;

(b) Issuance and sale of notes. The terms and conditions of the notes and the sale thereof are set forth in the official terms of offering on file with the city clerk as Public Document No. 11-1024-19. Each and all of the terms and provisions set forth in the official terms of offering are adopted and confirmed as the terms and conditions of the notes and the sale thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the notes. Due to changes in the municipal bond market, the city administrator, with the advice of the city's financial consultant, may modify the official terms of offering regarding the maturity schedule, the minimum bid and the maximum bid prior to the sale of the notes;

(c) Competitive sale of notes. Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sale for the notes in accordance with Minnesota Statutes, Section 475.60, subdivision 3, and in accordance with the official terms of offering;

(d) Subsequent resolutions. The form, specifications and provisions for repayment of the notes shall be set forth in a subsequent resolution of this city council.

Resolution 11-0548 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman and President Gardner -- 7

Nays: Councilors Fosle and Stauber -- 2

Approved October 24, 2011

DON NESS, Mayor

- - -

Resolution 11-0563, by President Gardner, authorizing additional software purchase to implement immediate internet access for city councilors in the Council Chamber, was introduced for discussion.

Councilor Hartman moved to suspend the rules to hear a speaker on the resolution, which motion was seconded unanimously carried.

Joel Sipress expressed his opposition to the resolution because this amount is not currently in the budget, councilors should wait until next year and one of the obligations of leadership is to lead by example.

Councilors expressed their concerns that while this software is desired it is more important to send the message that this unbudgeted amount not be spent at this time.

Resolution 11-0563 failed unanimously (Public Document No. 11-1024-20).

- - -

Resolution 11-0556, by President Gardner and councilors Hartman and Halberg, adopting guidelines for council member internet usage and use of electronic communications during council meetings, was introduced for discussion.

Councilor Anderson moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Joel Sipress expressed his concerns regarding the council having an internet council policy. He stated that the council should just use common sense and if you are in a

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

professional setting, that you do not use the internet for anything not directly related to the business at hand.

Councilors expressed their opinions that: this has come about because of a perception that something wrong has been done, not because of the real reason, that technology has changed how meetings are conducted; that the attempt was only to set ethical guidelines and unless this is a rule versus a policy, it is not needed and that the intent was that the council be transparent on how the internet is used during council meetings.

To councilor questions, Assistant City Attorney Joan Christensen stated that after researching this issue of city council internet use policy, it is a "cutting edge" issue that has very little definitive answers.

Councilor Hartman moved to table the resolution in order to address the concerns mentioned, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

- - -

RESOLVED, that the proper city officials are hereby authorized to enter in an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 11-1024-21, with BP Canada Marketing Corporation for professional services relating to asset management of the city's underutilized gas pipeline and gas storage capacity with receipts therefrom to be paid to 520-500-1900-4805 (gas fund, public works and utilities, public works director's office, reimbursements).

Resolution 11-0557 was unanimously adopted.

Approved October 24, 2011

DON NESS, Mayor

- - -

Resolution 11-0552, adopting the parks and recreation trail and bikeway master plan, was introduced by Councilor Halberg for discussion.

Councilor Boyle moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

Carol Burns and Judy Gordon expressed their concerns that: the plan should not commit the city to a course of action that could have serious negative effects on the environmental quality of the shoreline and the natural beauty; there needs to be discussion with the residents of Water Street on the issue of the Lakewalk connection between the Beacon Point termination to The Ledges natural surface trail and then to the eastward extension of the Lakewalk and bicycle/rollerblade use on Water Street is a safety issue with all the driveways and cars backing out.

Resolution 11-0552 was adopted as follows:

RESOLVED, that the trail and bikeway master plan is a plan of a comprehensive system of easily accessed and connected trails and bikeways and a plan for conserving key corridors for future sustainable trail and bikeway development.

FURTHER RESOLVED, the trail and bikeway master plan will help Duluth achieve its goal of becoming the top trail destination center in the Midwest.

FURTHER RESOLVED, that the city council finds the following:

(a) It is in the best interest of the city to adopt the trail and bikeway master plan;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) The city parks and recreation division along with other city staff, park and recreation commissioners and park planning consultants have developed, reviewed and recommended adoption of this trail and bikeway master plan;

(c) The city parks and recreation division has, after due public notice, conducted public hearings about this trail and bikeway master plan on the following dates: September 14, 2011, September 19, 2011, and September 21, 2011;

(d) The parks and recreation commission, at its October 12, 2011, regular meeting, did recommend, unanimously, to adopt the trail and bikeway master plan, on file with the city clerk as Public Document No. 11-1024-22.

THEREFORE, BE IT RESOLVED, that the document on file with the city clerk as Public Document No. 11-1024-22 is adopted as the trail and bikeway master plan for the city of Duluth.

Resolution 11-0552 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

Approved October 24, 2011

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR CUNEO

11-050 - AN ORDINANCE AMENDING SECTION 47-17.5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO IDENTIFICATION MEDALLIONS AND NUMBERS REGARDING TAXICAB LICENSES.

- - -

INTRODUCED BY COUNCILOR CUNEO

11-052 - AN ORDINANCE AMENDING SECTION 8-41 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-051 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE LINCOLN PARK AREA TO LINDA J. ZIMM FOR \$350.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-053 - AN ORDINANCE AMENDING ORDINANCE 10117 AMENDING ORDINANCE 10087 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE LEGAL DESCRIPTION OF THE PLAZA AND LONDON ROAD FORM DISTRICTS.

- - -

INTRODUCED BY COUNCILOR FOSLE

11-049 - AN ORDINANCE AMENDING ARTICLE IX, SECTION 6-97, AND ADDING A NEW SECTION 6-98, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

- - -

The meeting was adjourned at 9:18 p.m.

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 14, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Absent: Councilor Fedora -- 1

- - -

The minutes of the council meetings held on September 12, 26 and October 10, 2011, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-1114-33 Anne Seppo, by Steve Stulz, agent for AT&T, communication regarding the proposed AT&T cell tower on 2120 Jean Duluth Road (11-0530R and 11-0531R). -- Received

11-1114-41 Tom Boman communication regarding parking around East High School (11-0528R). -- Received

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REPORTS FROM OTHER OFFICERS

11-1114-01 Clerk application for exempt permit to the Minnesota gambling control board from Ridgeview Country Club for raffle on April 14, 2012. -- Received

11-1114-02 Engineer acceptance of construction of street, water, natural gas, sanitary sewer and storm sewer system improvements, pursuant to Section 45-89 of the Duluth City Code, in:

(a) Coffee Creek Park Development (City Project No. 0573TR);

(b) Hawk Ridge Estates (City Project No. 0395TR). -- Received

11-1114-03 Purchasing agent emergency repair notice awarded to Terrazzo and Concrete Restoration, Inc., for library/depot ramp repair in the amount not to exceed \$100,000, pursuant to Section 41-27 of the Duluth City Code. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-1114-04 Duluth airport authority minutes of September 26, 2011, meeting. -- Received

11-1114-05 Duluth human rights commission minutes of September 14, 2011, meeting. -- Received

11-1114-06 Duluth transit authority: (a) Minutes of August 24, 2011, meeting; (b) July 2011 income statement. -- Received

11-1114-07 Housing and redevelopment authority of Duluth minutes of: (a) August 23; (b) September 27, 2011, meetings. -- Received

11-1114-08 Library board minutes of September 27, 2011, meeting. -- Received

11-1114-09 Seaway Port authority financial statement of September 2011. -- Received

11-1114-10 Spirit Mountain recreation area authority minutes of April 21, 2011, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Jonathan Manchester spoke of his perspective of the Occupy Duluth movement of which he is a participant, noting that they will restore the Civic Center grounds to their original state.

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RESOLUTIONS TABLED

Councilor Stauber moved to remove resolutions 11-0530 and 11-0531, affirming and reversing, respectively, the decision of the planning commission to grant the application for a special use permit by AT&T/New Cingular Wireless for a wireless telecommunications facility, from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to hear speakers on the resolutions, which motion was seconded and unanimously carried.

Anne Seppo spoke of her support for Resolution 11-0530 for reasons of: this is needed for cell phone service in this area; financially it will assist in caring for her mother; a petition with 100 signatures wanting this location over any other location (see Public Document No 11-1114-33); AT&T has done everything that has been required; a contract with AT&T has been signed and with putting a large cell tower in the Morningside pit area, it is thought that the city would expand the area by going back to that late 1980 plan to build a sand/salt and equipment storage building, which is opposed by residents in that area.

Ken Butler, representing Anne Seppo, reviewed that: the cell tower proposed will resemble a 70 foot flag pole; Ms. Seppo and AT&T have been working on this proposal for over three years; the planning commission has approved this location; as required by law, there has to be substantial evidence by the council to deny the recommendation of the planning commission; the permitting process has been followed and the general land value loss argument is not sufficient to deny the permit.

Brad Rauzi supported Resolution 11-0531 for reasons of: nine immediate and surrounding neighbors of this proposed location oppose it (see Public Document No. 11-1010-24(c)); the standards of the United Development Chapter (UDC) have not been upheld; land management personnel have been disingenuous to the citizens; the city land location is the best location available and would bring revenue to the city.

Chief Administrative Officer David Montgomery answered various councilor questions, noting that the city of Duluth did not have a preferred site location.

After some council discussion, Councilor Cuneo moved to retable the resolutions so that Councilor Fedora, that district's councilor, could be present for the discussion and vote, which motion was seconded and carried upon the following vote:

Yeas: Councilors Boyle, Cuneo, Halberg, Hartman, Stauber and President Gardner -- 6

Nays: Councilors Anderson and Fosle -- 2

Absent: Councilor Fedora -- 1

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At this time, 7:28 p.m., President Gardner declared the public hearing on the Northstar Aerospace loan agreement and note amendments would begin.

Kevin Snyder, executive vice president of Northstar Aerospace, thanked the council for their prior support and reviewed the scope of this current request.

At this time, 7:30 p.m., President Gardner declared the public hearing closed and the regular order of business resumed.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

President Gardner moved to remove resolution 11-0556, adopting guidelines for council member internet usage and use of electronic communications during council meetings, from the table, which motion was seconded and unanimously carried.

President Gardner reported that councilors Halberg and Hartman and herself would prefer to recommend that the guidelines be incorporated into the standing rules and at this time moved to remove this resolution from agenda, which motion was seconded and unanimously carried.

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MOTIONS AND RESOLUTIONS CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that city officials are hereby authorized to enter into a contract with Terrazzo and Concrete Restoration, Inc., for the renovation of the library parking ramp at 600 Block West Michigan Street in accordance with specifications prepared by the city's consultant, Northland Consulting Engineers, LLP, and the contractor's low bid of \$384,920.20, consisting of Phase I emergency repairs of \$100,000, and Phase II construction of \$284,920.20, payable from the from the Parking Fund 505, Department/Agency 015 (administrative services), Division 1480 (parking ramps), Cost Center 2513 (library and Coney Island ramps), Object 5405 (parking lot maintenance).

Resolution 11-0577 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Lincoln Park Business Group and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemption.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0592 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proposed amendments to the specifications for the civil service classification of master plumber, which were approved by the civil service board on October 4, 2011, and which are filed with the city clerk as Public Document No. 11-1114-11, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 31.

Resolution 11-0576 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a sixth amendment to the MIF loan agreement and a sixth promissory note modification agreement

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

substantially in the form of those on file in the office of the city clerk as Public Document No. 11-1114-12 with Northstar Machine and Tool, Inc., d.b.a. Northstar Aerospace (Northstar), allowing Northstar to make payments of interest plus an amount equal to 1/2 of the principal payment provided for under the note for a five month period, from December 1, 2011, through April 30, 2012.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute a sixth amendment to the grant agreement with the state of Minnesota, such amendment to reflect the sixth amendment to the MIF loan agreement and sixth promissory modification agreement with Northstar.

Resolution 11-0596 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to enter into a lease agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-13 with A&L Partnership, LLP, for the leasing of approximately 23,000 square feet of space in the Duluth Athletic Club building at 402 West First Street in Duluth, Minnesota, for an amount estimated not to exceed \$357,650 per year, payable from the Fund 268-031-6251-5412 (workforce development fund, grants division, office support, building rental).

Resolution 11-0605 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to enter into sublease agreements substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-14 with the state of Minnesota, department of administration, acting on behalf of the Minnesota department of employment and economic development, northeast Minnesota office of job training, and Arrowhead Economic Opportunity Agency for the subleasing of space in the Duluth Athletic Club building at 402 West First Street in Duluth, Minnesota, for the joint workforce center, sublease payment to be deposited in Fund 268-031-6251-4622 (workforce development fund, grants division, office support, rent of building).

Resolution 11-0606 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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WHEREAS, on November 8, 2011, there was held in the city of Duluth, pursuant to the provisions of Laws of Minnesota, 1973, Chapter 281, a general municipal election for the purpose of electing certain city officers; and

WHEREAS, the judges of the election precincts in the city have made their returns of said election, and the city council, acting as a canvassing board, has duly canvassed said returns (Public Document No. 11-1114-15) at 7:00 p.m., November 14, 2011, and ascertained the number of ballots cast at said election and thereby declared that at said election there were cast 20,731 votes, said votes having been cast in the following manner:

(a) That for the office of mayor, Don Ness received 17,689 votes and 976 candidates received write-in votes;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) That for the offices of councilor at large, Linda Krug received 12,186 votes, Emily Larson received 13,216 votes, Tim Riley received 4,459 votes, Chad Smith received 3,920 votes and 142 candidates received write-in votes;

(c) That for the office of councilor, first district, Todd Fedora received 3,006 votes, Jennifer Julsrud received 3,024 votes and 10 candidates received write-in votes;

(d) That for the office of councilor, third district, Sharla Gardner received 2,212 votes and 126 candidates received write-in votes;

(d) That for the office of councilor, fourth district, Jacqueline Halberg received 2,043 votes, Garry Krause received 2,220 votes and 10 candidates received write-in votes;

(e) That for the office of councilor, fifth district, Jay Fosle received 2,702 votes and 68 candidates received write-in votes;

(f) That for the city ballot question - *Should Chapter 2 of the Duluth City Code, 1959, as amended, be amended to create a fund denominated as the "Parks Fund" and should the city levy a special levy in the amount of \$2,600,000 on the referendum market value of all real property in the city, said levy being 0.0472654% of said referendum market value, for the purpose of providing a dedicated funding source for parks and recreation facilities, recreation activities, and for implementation of the concepts addressed in the Duluth Parks and Recreation Master Plan dated December 2010, in accordance with the authority contained in Laws of Minnesota, 1953, Chapter 560, Section 1?* - there were 11,691 "yes" votes and 8,812 "no" votes.

NOW, THEREFORE, BE IT RESOLVED, that Don Ness, having received the majority of all votes cast at said election for the office of mayor is hereby declared duly elected for terms of four years.

FURTHER RESOLVED, that Linda Krug and Emily Larson, having received the highest numbers of the votes cast at said election for the offices of councilor at large, are hereby duly elected for a term of four years.

FURTHER RESOLVED, that Jennifer Julsrud, having received the majority of all votes cast at said election for the office of councilor, first district, is hereby duly elected for a term of four years.

FURTHER RESOLVED, that Sharla Gardner, having received the majority of all votes cast at said election for the office of councilor, third district, is hereby duly elected for a term of four years.

FURTHER RESOLVED, that Garry Krause, having received the majority of all votes cast at said election for the office of councilor, fourth district, is hereby duly elected for a term of four years.

FURTHER RESOLVED, that Jay Fosle, having received the majority of all votes cast at said election for the office of councilor, fifth district, is hereby duly elected for a term of four years.

RESOLVED FURTHER, that the city ballot question received a majority of positive responses and is hereby declared to be approved by the electors voting upon such question and is hereby declared to be operative and in full force, pursuant to the provisions of Section 51 of the Duluth City Charter.

Resolution 11-0600 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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The city council finds as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

- (a) The municipality of Duluth implemented municipal state aid LBRP in 2011; and
- (b) Said municipality is proceeding with the construction of said project with bridge bonding funds and proposes to complete said project through the use of an advance from the state aid regular/municipal construction account to supplement the available funds in its permanent improvement fund; and
- (c) The city of Duluth MSAS account balance as of August 2, 2011, is \$0; and
- (d) The advance is based upon the estimated expenditure of \$547,081.92; and
- (e) Repayment of the funds so advanced with be made in accordance with the provisions of Minnesota Statutes 162.08, subd. 7, and Minnesota Rules, Chapter 8820.1500, subp. 8; and
- (f) The municipality acknowledges that advance funds are released on a first-come, first-serve basis, and that this resolution does not guarantee the availability of funds.

RESOLVED, that the commissioner of transportation be and hereby is requested to approve this advance for financing approved municipal state aid projects of the municipality of Duluth in an amount up to \$547,081.92. The city of Duluth hereby authorizes payments from subsequent accruals. Repayment from entire future year allocation until fully repaid will be \$547,081.92, paid from year 2012.

Resolution 11-0561 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

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RESOLVED, that plans for Project 069-603-011 showing proposed alignments, profiles, grades and cross sections for the construction, reconstruction or improvement of County State Aid Highway No. 3 (Becks Road) within the limits of the city as a state aid project have been prepared and presented to the city, and that said plans be in all things approved.

Resolution 11-0566 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into the below-listed pipeline license agreements, copies of which are on file in the office of the city clerk with the public document numbers listed appurtenant thereto, with BNSF Railway Company for water, sanitary sewer and natural gas lines under BNSF railroad trackage as part of the Riverside utility and street improvement project at a total cost for the licenses of \$4,500, \$1,500 of which is payable from the Water Fund 510, Department 500, Division 1905, Object 5536, Project No. 0699SN/TR (water, public works and utilities, capital-incl deprec/debtsvc), \$1,500 payable from the Sanitary Sewer Fund 530, Department 500, Division 1905, Object 5536, Project No. 0699SN/TR (sewer, public works and utilities, capital-incl deprec/debtsvc), and \$1,500 payable from the Gas Fund 520, Department 500, Division 1905, Object 5533, Project No. 0699SN/TR (gas, public works and utilities, capital-incl deprec/debt svc):

<u>BNSF Tracking No.</u>	<u>Utility</u>	<u>Public Document No.</u>
11-42413	water	11-1114-16(a)
11-42200	sanitary sewer	11-1114-16(b)
11-42690	natural gas	11-1114-16(c)

Resolution 11-0567 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

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THE CITY COUNCIL FINDS:

(a) The city of Duluth is under consent decree to eliminate sanitary sewer overflows;
and

(b) Sanitary Sewer Basin No. 24 contributes to one of the overflow points that the city is mandated to eliminate; and

(c) The estimated cost to rehabilitate sanitary sewers in Basin No. 24 by CIPP lining is estimated to be \$3,500,000, and the public facilities authority may have loan and grant monies available to finance the project costs; and

(d) To receive this money, the city must submit required information to enter into a loan/grant agreement with the Minnesota public facilities authority.

RESOLVED, that the proper city officials are hereby authorized to submit an application to enter into a loan/grant agreement with the Minnesota public facilities authority for funding to rehabilitate sanitary sewers in Basin No. 24 as described in the application.

FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for the money, and the financial, technical and managerial capacity to ensure proper construction, operation and maintenance of the project for its design life.

FURTHER RESOLVED, that the city of Duluth estimates the loan/grant amount to be \$3,500,000 or the as-bid costs of the project, payable from Fund 532, Department 500, Object 5532 (clean water fund, public works and utilities, capital improvements - bond), City Project No. 0983SN.

FURTHER RESOLVED, that the city hereby expresses its official intent to use proceeds of this loan to reimburse engineering and construction expenditures made prior to the issuance of its general obligation bond to the public facilities authority.

Resolution 11-0572 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the city of Duluth requests from Mn/DOT an access to Trunk Highway 61 at Chase Avenue, the approximate location of which is shown on Public Document No. 11-1114-17.

Resolution 11-0580 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a grant from Minnesota's Lake Superior coastal program through the department of natural resources in the amount of \$3,100 for the project entitled *Stormwater Pond Sediment Evaluation* and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-18, funds to be deposited in Fund 535-500-1900-4210-02 (stormwater, public works and utilities, public works director's office, state of Minnesota operating).

Resolution 11-0589 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The city council finds:

- (a) That the city of Duluth desires to hire professional consulting firms for field and laboratory testing services in fiscal year 2011;
- (b) That EPC Engineering and Testing has submitted a fee schedule for field and laboratory testing services in connection with this work;
- (c) That the purchasing agent and city administration authorized a one year extension on June 15, 2011, for Contract 20595, not to exceed \$15,000;
- (d) That the engineering division is now requesting an estimated increase of \$25,000 and total contract amount of \$40,000 for fiscal year 2011.

RESOLVED, that the requested increase of \$25,000 to C20595 with EPC Engineering and Testing is hereby approved and that the cost of such field and laboratory services for fiscal year 2011, will be paid from various appropriate project funds, departments, agencies and objects.

Resolution 11-0590 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

- - -

The city council finds:

- (a) That the city of Duluth desires to hire professional consulting firms for field and laboratory testing services in fiscal year 2011;
- (b) That American Engineering & Testing, Inc., has submitted a fee schedule for field and laboratory testing services in connection with this work;
- (c) That the purchasing agent and city administration authorized a one year extension on June 15, 2011, for Contract 20716, not to exceed \$15,000;
- (d) That the engineering division is now requesting an estimated increase of \$25,000 and total contract amount of \$40,000 for fiscal year 2011.

RESOLVED, that the requested increase of \$25,000 to C20716 with American Engineering & Testing, Inc., is hereby approved and that the cost of such field and laboratory services for fiscal year 2011 will be paid from various appropriate project funds, departments, agencies and objects.

Resolution 11-0591 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a 50-year license agreement, a copy of which is on file in the office of the city clerk as Public Document No. 11-1114-19, with the Minnesota department of natural resources for construction, maintenance and operation of high pressure gas mains under Amity Creek for a consideration of \$826, payable out of Gas Fund 520, Department/Agency 500 (public works and utilities), Division 1905 (capital), Object 5533 (capital improvements - revenue), City Project No. 0904GS.

Resolution 11-0597 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that Resolution 09-0269 to LHB, Inc., for professional engineering services for the Aerial Lift Bridge painting and structural rehabilitation, Phase 3, be amended by an amount of \$80,021 for a new total of \$384,193. The increase will be payable from Permanent Improvement Fund 411.

Resolution 11-0598 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Minnesota Statute Section 161.36, the commissioner of transportation be appointed as agent of the city of Duluth to accept, as its agent, federal aid funds which may be made available for eligible transportation related projects.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the commissioner of transportation, a copy of which is on file in the office of the city clerk as Public Document No. 11-1114-20, prescribing the terms and conditions of said federal aid participation as set forth and contained in Minnesota Department of Transportation Agency Agreement No. 99887.

Resolution 11-0599 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-21 with the St. Louis and Lake counties regional railroad authority for the construction, operation and maintenance of a replacement sanitary sewer force main crossing St. Louis and Lake counties regional railroad authority's lakefront line right-of-way at a location in the vicinity of McCullough Street in Lakeside at a cost of \$500, payable from Sanitary Fund 530, Department 500, Division 1905, Object 5536 (sanitary sewer fund, public works and utilities, capital, utility infrastructure replacement), Project No. 0892SN.

Resolution 11-0604 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with JMF Construction, Inc., for the CDBG-ARRA sidewalk replacement project for the low bid of \$87,492.25, with \$81,788.25 payable out of CDBG Fund 262, Agency 025 (workforce development - ARRA), Object 5434 (grants and awards), and \$5,704 payable out of Permanent Improvement Fund 411, Agency 035 (capital projects accounts), Object 5530 (improvements other than buildings), City Project No. 0936TR.

Resolution 11-0607 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-22, with Domestic Abuse Intervention Programs, a private nonprofit corporation under the laws of the state of Minnesota, for services related to the project entitled, "Community Response to Co-occurrence of Sexual & Domestic Violence" funded by a grant

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

from the U.S. department of justice, office of violence against women, with the city of Duluth as fiscal agent, in an amount not to exceed \$62,953.65, inclusive of a five percent hold back, payable from Fund 215-200-2280-5310 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0570 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-23, with Program for Aid to Victims of Sexual Assault, a private nonprofit corporation under the laws of the state of Minnesota, for services related to the project entitled, "Community Response to Co-occurrence of Sexual & Domestic Violence" funded by a grant from the U.S. department of justice, office of violence against women, with the city of Duluth as fiscal agent, in an amount not to exceed \$137,642.65, inclusive of a five percent hold back, payable from Fund 215-200-2280-5310 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0571 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-24, with Mending the Sacred Hoop, Inc., a private nonprofit corporation under the laws of the state of Minnesota, for services related to the project entitled, "Community Response to Co-occurrence of Sexual & Domestic Violence" funded by a grant from the U.S. department of justice, office of violence against women, with the city of Duluth as fiscal agent, in an amount not to exceed \$3,312.65, inclusive of a five percent hold back, payable from Fund 215-200-2280-5310 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0573 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-25, with the St. Louis County attorney's office, for services related to the project entitled, "Community Response to Co-occurrence of Sexual & Domestic Violence" funded by a grant from the U.S. department of justice, office of violence against women, with the city of Duluth as fiscal agent, in an amount not to exceed \$9,500, inclusive of a five percent hold back, payable from Fund 215-200-2280-5447 (Duluth police grant programs, police, Violence Against Women Act 07-09).

Resolution 11-0574 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, the city council hereby approves waiving parking fees for the medical district parking ramp facility and the tech village parking ramp facility from 5:00 p.m. until 12:00 a.m. on November 18, 2011, during the Christmas City of the North parade, and from 5:00 p.m. until 12:00 a.m. on November 19, 2011, through December 26, 2011, during Bentleyville Tour of Lights 2011.

FURTHER RESOLVED, that the city council hereby approves waiving parking meter fees at all Downtown parking meters from 5:30 p.m. until 12:00 a.m. on November 18, 2011, during the Christmas City of the North parade, and from 5:30 p.m. until 12:00 a.m. on November 19, 2011, through December 26, 2011, during Bentleyville Tour of Lights 2011.

Resolution 11-0575 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that city officials re hereby authorized to contract with MAVO Systems, Inc., for the abatement/disposal of asbestos, lead and miscellaneous hazardous waste on demolition properties in accordance with specifications prepared by the city's consultant, Carlson McCain, Inc., and the vendor's low bid of \$53,460, payable as follows:

Amount	Fund	Department/Agency	Division	Object
\$31,460	110 general	132 (planning and construction services)	1304 (construction services/inspection)	5453 (building demolition)
\$22,000	110 general	150 (fire)	1503 (Life safety)	5441 (other services/charges)

Resolution 11-0578 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Viele Contracting, Inc., for the demolition of six structures at various city locations for the building safety office in accordance with approved specifications and the vendor's low bid of \$51,681, payable from General Fund 110, Department/Agency 132 (planning and construction services), Organization 1304 (construction services and inspection), Object 5453 (building demolition).

Resolution 11-0579 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into Amendment No. 1 to Grant Agreement No. 2008-PSGP-00802 from the Minnesota department of public safety, homeland security and emergency management division, a copy of which grant agreement amendment is on file in the office of the city clerk as Public Document No. 11-1114-26, extending the term of said grant through July 31, 2012.

Resolution 11-0581 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-27, with St. Louis County pursuant to a FY 2010 operation stone garden grant from the United States department of homeland security, bureau of customs and border protection, under which grant agreement the city shall perform services to protect and secure the international border and port of entry between St. Louis County and Canada from March 7, 2011, through July 31, 2013.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept reimbursement from St. Louis County for stated services in an amount not to exceed \$30,810.25, funds to be deposited in Fund Number 215-200-2297-4210-02 (Duluth police grant programs, police, 2009 Operation Stone Garden).

Resolution 11-0582 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, department of commerce, in the amount of \$97,456, such funds to be used to employ an auto theft investigator within the Duluth police department, and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-28, funds to be deposited in Fund No. 215-200-2266-4220-02 (Duluth police grant programs, police, Minnesota auto theft grant).

Resolution 11-0583 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, department of public safety, in the amount of \$91,000, such funds to be used to reimburse the Duluth police department and other Lake Superior traffic enforcement team participants for overtime reimbursement for traffic enforcement of speed, distracted and impaired driving and passenger safety, and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1114-29, funds to be deposited in Fund 215-200-2292-4210-02 (Duluth police grant programs, police, 2010 pilot enforcement project), all reimbursement payments shall be paid from Fund 215-200-2292-5447 (Duluth police grant programs, police, 2010 pilot enforcement project).

Resolution 11-0588 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with Section 33-125 of the Duluth City Code, 1959, as amended, the city council hereby indicates that on Monday, November 28, 2011 at 7:00 PM in the council chamber on the third floor of City Hall, the council will conduct a public hearing regarding whether to add various streets in the vicinity of the new Duluth East High School to the existing residential permit parking zone, as manifested by the map on Public Document No. 11-1114-30.

FURTHER RESOLVED, that the city clerk is hereby directed to mail notice of such hearing by addressing such notice to the occupant at each address within or abutting the parking areas of the street proposed to be so designated.

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Resolution 11-0609 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 33-84 of the Duluth City Code, 1959, as amended, the parking area on the north side of Superior Street between 42nd and 43rd avenues East be posted no parking 2 AM to 6 AM.

Resolution 11-0610 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a three year agreement with the John Beargrease Sled Dog Marathon, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-31, for the use of the Riley Road location for the start of the John Beargrease Sled Dog Marathon.

Resolution 11-0569 was unanimously adopted.

Approved November 14, 2011

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 11-0584, providing for the issuance, sale and delivery of \$1,870,000 general obligation capital improvement bonds, Series 2011A; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof, was introduced.

Councilor Stauber stated that he would be opposing all the bonding resolutions because he did not feel the city should be borrowing money.

Resolution 11-0584 was adopted as follows:

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Purpose and Authorization.

1.01 Under and pursuant to the provisions of Minnesota Statutes, Section 475.521 (the "Act") and Chapter 475, the City is authorized to issue its general obligation bonds to fund capital improvements pursuant to an approved capital improvement plan.

1.02 (a) Pursuant to the Act, the City Council has authorized preparation of a capital improvement plan for the years 2011 through 2015 (the "Plan").

(b) The City Council held a public hearing on the proposed Plan and approved the Plan on December 6, 2010.

1.03 (a) On January 10, 2011, the City Council held a public hearing on the issuance of bonds in an amount not to exceed \$2,275,000 to provide funds for the following projects: for improvements to eligible facilities under the Act, to buildings citywide including furnace and boilers, a storage building, security and entry systems and facility needs priorities related to energy improvements; improvements to city hall including remodeling projects and window replacements; improvements to fire department facilities including remodeling and window replacements; a new public safety communications system; an upgrade of the library's mechanical systems (collectively, the "Project"). Each element of the Project is a capital improvement within the meaning of the Act.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) Pursuant to resolution of the City Council adopted on January 10, 2011, the City Council has determined that it is necessary and expedient to issue general obligation capital improvement bonds in an amount not to exceed \$2,275,000 of the City to provide funds to finance the Project and for payment of the costs of issuing such bonds.

(c) A notice of intent to issue such bonds was published in accordance with the Act on January 13, 2011.

(d) No petition calling for a vote on the proposed issuance of such bonds, as permitted by the Act, has been filed with the city clerk.

(e) The City Council has determined that it is necessary and expedient to issue \$1,870,000 General Obligation Capital Improvement Bonds, Series 2011A, of the City (the "Bonds") pursuant to the above-described authority, to provide funds to finance the Project and for payment of the costs of issuing the Bonds.

(f) The maximum amount of principal and interest to become due in any year on the Bonds and all the outstanding bonds issued by the City pursuant to Section 475.521, subd. 4 of the Act will not exceed \$8,851,502, which is an amount equal to 0.16% of taxable market value of property in the City for taxes payable in 2011.

(g) Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile, electronic data transmission or other form of communication common to the municipal bond trade to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds.

1.04 Pursuant to such solicitation for bids for the sale of the Bonds, the City Council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Robert W. Baird & Co., Inc. of Milwaukee, Wisconsin (the "Purchaser"), to purchase the Bonds at a cash price of \$1,924,566.85, and upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. Upon receipt of the good faith deposit, the mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder. In the event the Purchaser fails to provide the good faith deposit in accordance with the Official Terms of Offering, the mayor shall reject the Purchaser's bid and may award the sale of the Bonds to the bidder with the next best bid, or if such next best bidder fails to enter into a contract for sale of the Bonds and fails to satisfy such deposit requirements, the mayor is authorized to schedule a sale of the Bonds in substantial conformance with the Official Terms of Offering. All actions of the mayor and the clerk and Public Financial Management, Inc., independent financial advisor to the City, taken with regard to the sale of the Bonds are hereby ratified and approved.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate
2013	\$155,000	3.00%
2014	170,000	3.00%

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2015	175,000	3.00%
2016	180,000	3.00%
2017	185,000	3.00%
2018	190,000	3.00%
2019	195,000	3.00%
2020	200,000	3.00%
2021	205,000	3.00%
2022	215,000	3.00%

2.02 The Bonds are not subject to optional redemption and prepayment before maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2012. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and deliver, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new bond in Book-Entry Form in exchange for a previous bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

(i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be

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maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this Resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS
CITY OF DULUTH

GENERAL OBLIGATION CAPITAL IMPROVEMENT BOND, SERIES 2011A

R-_____ \$_____

Rate	Maturity	Date of Original Issue	CUSIP
%	February 1, _____	November __, 2011	

REGISTERED OWNER: CEDE & CO.
PRINCIPAL AMOUNT: _____ DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City Council. The

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Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$1,870,000, all of like date and tenor, except as to number, amount, maturity date, redemption privilege and interest rate, pursuant to the authority contained in Minnesota Statutes, Section 475.521 and Chapter 475, the City's approved Capital Improvement Plan for the years 2011 through 2015 (the "Plan") and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 14, 2011 (the "Resolution"). This Bond is issued for the purpose of providing funds for capital improvement projects designated by the City Council and pursuant to the Plan and the costs of issuing the Bonds, as more fully set forth in the Plan and the Resolution and for the payment of part of the interest cost of the Bonds. The City has levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls for the years and in the amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Bonds, as such principal and interest respectively come due.

The Bonds are not subject to optional redemption and prepayment before maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and the Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of

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Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its City Council, has caused this Bond to be executed in its name by the manual or facsimile signatures of the Mayor and the City Clerk.

Attest:

City Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of the Bond registered in the name of the owner named above in the principal amount and maturing on the date stated above and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Minneapolis, Minnesota

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing

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thereon is registered on the books of Wells Fargo Bank, National Association, as Bond Registrar, in the name of the registered owner last noted below.

Date 11/__/2011	Registered Owner Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	Signature of Bond Registrar _____
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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto _____

(Name and Address of Assignee)

	Social Security or other Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

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Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Revenues, Accounts and Covenants.

3.01 The City has created a separate account designated the 2011 Capital Improvement Bonds Construction Account (the “Construction Account”) within its Capital Improvement Project Fund 450, Agency 030, to which there shall be credited the proceeds of the Bonds, less discount, together with any additional funds, which may be available and are appropriated for the Project. This account shall be used to pay, or reimburse, expenses duly approved and allowed, which, under generally accepted accounting principles, constitute capital expenditures for the Project and to pay the costs of issuance for the Bonds.

3.02 A separate debt service account is hereby created and designated as the “2011 Capital Improvement Bonds Debt Service Account” (the “Debt Service Fund”) within the City’s Debt Service Fund. The money in the Debt Service Fund shall be used for no purpose other than the payment of principal and interest on the Bonds; provided, however, that if any payment of principal or interest shall become due when there is not sufficient money in the Debt Service Fund, the treasurer shall pay the same from any other funds of the City and said funds shall be reimbursed for such advance out of the proceeds of the taxes hereinafter levied when collected. Into the Debt Service Fund shall be credited the rounding amount of \$4,166.85, the amount of accrued interest paid by the Purchaser upon closing and delivery of the Bonds, if any, and the ad valorem taxes levied pursuant to Section 3.03 hereof.

3.03 (a) The full faith and credit and taxing power of the City are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Bonds, as such principal and interest respectively become due. To provide monies for the payment of the principal and interest on the Bonds, there is hereby levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls and collected with and part of the other general property taxes of the City for the years and in the amounts as follows:

Levy Year	Collection Year	Tax Levy
2011	2012	\$231,800
2012	2013	232,523
2013	2014	232,418
2014	2015	232,155
2015	2016	231,735
2016	2017	231,158
2017	2018	230,423
2018	2019	229,530
2019	2020	228,480
2020	2021	232,523

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Said levies are such that if collected in full they will produce at least five percent in excess of the amount needed to meet when due the principal and interest on the Bonds.

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that prior to approval of its budget each year (approximately December 1) while any Bonds issued hereunder remain outstanding, the city council shall reduce or cancel the above levies to the extent of an irrevocable appropriation to the Debt Service Fund of monies actually on hand for payment of the principal and interest payable in the ensuing year and shall direct the county auditor to reduce the levy for such calendar year by that amount.

(b) If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balance therein is sufficient.

3.04 Proceeds of the Bonds on deposit in the Construction Account and in the Debt Service Fund may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the improvement program and/or payment of the principal and interest on the Bonds when due.

Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

4.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the Bonds and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 (a) Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby represents that with respect to the gross proceeds of the Bonds, the following schedule is expected to be met: (i) at least 15% of the gross proceeds of the Bonds will be allocated to expenditures for the governmental purpose of the Bonds within six months of the date of issue of the Bonds; (ii) at least 60% of such proceeds will be allocated for such purposes within the one year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Bonds, and that 100% of the available proceeds of the Bonds will be allocated within 30 months from the date of issue of the Bonds.

(b) The City shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

4.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Equipment Notes, Series 2011B (the "Notes"), General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Series 2010C Bonds"), and General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D (the "Series 2011D Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2011C Bonds and the Series 2011D Bonds; consequently, the Bonds will not be combined with them for a single issue. However, the Bonds and the Notes are expected to be paid from substantially the same source of funds and are an issue under Treasury Regulations Section 1.150-1(c).

Section 5. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 11-1114-32.

Section 6. Certificate of Proceedings.

6.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds herein authorized have been duly entered on his register.

6.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the

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Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 11-0584 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Notes Purpose and Authorization.

1.01 Under and pursuant to the provisions of Minnesota Statutes, Sections 410.32 and 412.301 and Minnesota Statutes, Chapter 475 (collectively, the "Act"), and the City Charter, the City is authorized to issue its general obligation capital equipment notes to provide funds to purchase capital equipment having an expected useful life at least as long as the term of the capital equipment notes.

1.02 The city council adopted Resolution No. 10-0599 on December 6, 2010 (the "Intent Resolution"), declaring the intention of the City to issue such capital equipment notes in the amount of approximately \$4,390,000 to finance the purchase of capital equipment authorized by the Act and to pay for costs of issuance of such capital equipment notes. It is hereby certified that the amount of the capital equipment notes to be issued by the City pursuant to this resolution is less than 0.25% of the market value of the taxable property of the City.

1.03 The city council hereby determines that it is necessary and expedient to issue \$3,095,000 General Obligation Capital Equipment Notes, Series 2011B, of the City (the "Notes") to provide funds to purchase capital equipment authorized by the Act, to pay certain expenses incurred in the issuance of the Notes and to pay a portion of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56. The capital equipment to be purchased with the proceeds of the Notes will have a useful life of more than the term of the Notes.

1.04 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Notes at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Notes.

1.05 Pursuant to such solicitation for bids for the sale of the Notes, the city council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Hutchinson, Shockey, Erley & Co. of Chicago, Illinois (the "Purchaser"), to purchase the Notes at a cash price of \$3,134,542.72, upon condition that the Notes mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such bid reasonable and proper and the bid of the Purchaser is hereby accepted. Upon receipt of the good faith deposit, the mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Notes in accordance with the Purchaser's bid. The city treasurer is directed to

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deposit the good faith check of the successful bidder. In the event the Purchaser fails to provide the good faith deposit in accordance with the Official Terms of Offering, the mayor shall reject the Purchaser's bid and may award the sale of the Notes to the bidder with the next best bid, or if such next best bidder fails to enter into a contract for sale of the Notes and fails to satisfy such deposit requirements, the mayor is authorized to schedule a sale of the Notes in substantial conformance with the Official Terms of Offering. All actions of the mayor and the clerk and Public Financial Management, Inc., independent financial advisor to the City, taken with regard to the sale of the Notes are hereby ratified and approved.

Section 2. Terms, Execution and Delivery of the Notes.

2.01 The Notes to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Notes shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2013	\$585,000	2.00%
2014	610,000	2.00%
2015	620,000	2.00%
2016	635,000	2.00%
2017	645,000	2.00%

2.02 The Notes are not subject to redemption and prepayment before maturity.

2.03 The interest shall be payable semiannually on February 1 and August 1 and in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2012. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The Bond Registrar designated below shall make all interest payments with respect to the Notes by check or draft mailed to the registered owners of the Notes shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 The Notes shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Notes shall cease to be an officer before delivery of the Notes, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery. The city clerk is authorized and directed to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota, which is to be complete and cause the opinion to be attached to each Note.

2.05 The city council hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Notes (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Note shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate

on such Note, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Notes need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Note shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Notes eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Notes shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Notes shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Notes which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Notes of such stated maturity of any Notes in Book-Entry Form shall be issued and remain in a single note certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Notes of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and deliver, Notes of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Notes.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Note in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new note in Book-Entry Form in exchange for a previous note, the Bond Registrar shall designate thereon the principal balance remaining on such note according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Note in Book-Entry Form or entitled to receive any note certificate. The beneficial ownership interest in any Note in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Notes of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Note, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

- (i) with respect to notices of redemption; and
- (ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Note.

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All notices of any nature required or permitted hereunder to be delivered to a holder of a Note in Book-Entry Form shall be transmitted to beneficial owners of such Notes at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Notes in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Notes and the registration of transfers of the Notes entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Note at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Notes of the like aggregate principal amount, as requested by the transferor.

2.08 Each Note delivered upon transfer of or in exchange for or in lieu of any other Note shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Note. Each Note shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Notes called for redemption or to make any such exchange or transfer of the Notes during the 15 days next preceding the date of the first publication of the notice of redemption in the case of a proposed redemption of the Notes.

2.09 The City and the Bond Registrar may treat the person in whose name any Note is registered as the owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Notes shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 The Notes shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS
CITY OF DULUTH
GENERAL OBLIGATION CAPITAL EQUIPMENT NOTE, SERIES 2011B

R-__ \$_____

Interest			
Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1,	November __,	
	_____	2011	

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REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the city council. The Bond Registrar shall make the interest payment with respect to this Note on the Interest Payment Date directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Note, the presentation or surrender of this Note, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Note to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Note is one of a series issued by the City in the aggregate amount of \$3,095,000, all of like date and tenor, except as to number, amount, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Sections 410.32 and 412.301 and Chapter 475, the City Charter and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 14, 2011 (the "Resolution"), and is issued for the purpose of providing money, together with other available funds, for the purchase of capital equipment. The City has levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls for the years and in the amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Notes, as such principal and interest respectively come due. The Notes are not subject to redemption and prepayment before maturity.

The Notes of this series are issued as fully registered obligations without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject

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to limitations set forth in the Resolution, this Note is transferable by the registered owner hereof upon surrender of this Note for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and this Resolution, and deliver, in exchange for this Note, one or more new fully registered Notes in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Note, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Constitution and laws of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Note in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest thereon when due, without limitation as to rate or amount; and that the issuance of this Note does not cause the indebtedness of the City to exceed any constitutional or statutory limitation.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the city of Duluth, by its city council, has caused this Note to be executed in its name by the facsimile signatures of the mayor and the city clerk.

Attest:

City Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of a Note registered in the name of the owner named above, in the principal amount stated above, and this Note is one of the Notes of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Bond Registrar

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By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Note must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, as Bond Registrar. No transfer of this Note shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Note and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association, as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
11/___/2011	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto _____

(Name and Address of Assignee)

Social Security or Other
Identifying Number of Assignee

the within Note and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of National Securities Exchange)

Unless this Note is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any Note issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Covenants, Accounts and Representations.

3.01 The City has created a separate acquisition account within the Capital Equipment Fund 250 to which there shall be credited \$3,133,000 from the proceeds for the Notes, together with any additional funds which may be available and are appropriated for the capital equipment purchase program. This account shall be used only to pay or reimburse other City funds or accounts for "capital equipment," as described in Minnesota Statutes, Section 412.301, with an expected useful life of at least the term of the Notes, and costs of issuance of the Notes, as such payments become due. The City's intent is to acquire and finance the capital equipment listed in the Intent Resolution with the proceeds of the Notes.

3.02 (a) There shall be and is hereby levied a direct, annual, ad valorem tax upon all taxable property within the City, which shall be extended upon the tax rolls for the years and in amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Notes as such principal and interest respectively become due as follows:

Levy Year	Collection Year	Tax Levy
2011	2012	\$690,439
2012	2013	693,210
2013	2014	690,900
2014	2015	693,630
2015	2016	690,795

(b) A separate debt service account is hereby created and designated as the "2011 G.O. Capital Equipment Notes Debt Service Account" (the "Debt Service Fund") within the City's debt service fund. The money in the Debt Service Fund shall be used for no purpose other than the payment of principal and interest on the Notes; provided, however, that if any payment of principal or interest shall become due when there is not sufficient money in the Debt Service Fund, the treasurer shall pay the same from any other funds of the City and

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said funds shall be reimbursed for such advance out of the proceeds of the taxes hereinafter levied when collected. Into the Debt Service Fund shall be credited the amount of accrued interest, if any, and the rounding amount (\$1,542.72) paid by the Purchaser upon closing and delivery of the Notes.

3.03 If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Notes, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balance therein is sufficient. All proceeds of said taxes will be appropriated and paid when collected into the Debt Service Fund. Said taxes shall be irrevocable until the Notes and interest are fully paid, except that if the City in any year shall make an irrevocable appropriation to said accounts of monies actually on hand, the city clerk shall certify to the county auditor of St. Louis County the fact and the amount thereof, and the county auditor shall reduce by the amount so certified the amount otherwise to be included in the rolls next thereafter prepared.

3.04 The full faith and credit and taxing power of the City are irrevocably pledged for the prompt and full payment of the Notes and the interest thereon, in accordance with the terms set forth in this resolution.

3.05 Proceeds of the Notes on deposit in the acquisition account created in Section 3.01 and in the Debt Service Fund may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Section 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the equipment purchases and/or payment of the principal and interest on the Notes when due.

Section 4. Tax Covenants.

4.01 The City covenants and agrees with the holders of the Notes that the City will (i) take all action on its part necessary to assure that the interest on the Notes will be excluded from gross income for federal income taxes including, without limitations, restricting, to the extent necessary, the yield on investments made with the proceeds of the Notes and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Notes to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Notes and investment earnings thereon on certain specified purposes.

4.02 (a) No portion of the proceeds of the Notes shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Notes were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Notes or \$100,000. To this effect, any proceeds of the Notes and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Notes) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the Notes and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such

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investment would cause the Notes to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Notes, or to cause or permit them to be used, in such a manner as to cause the Notes to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 (a) Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby represents that with respect to the gross proceeds of the Notes, the following schedule is expected to be met: (i) at least 15% of the gross proceeds of the Notes will be allocated to expenditures for the governmental purpose of the Notes within six months of the date of issue of the Notes; (ii) at least 60% of such proceeds will be allocated for such purposes within the one year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18 month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Notes, and that 100% of the available proceeds of the Notes will be allocated within 30 months from the date of issue of the Notes.

(b) The City shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

4.04 In addition to the Notes, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Improvement Bonds, Series 2011A (the "Series 2011A Bonds"), General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Series 2010C Bonds"), and General Obligation Sewer Utility Revenue Refunding Bonds, Series 2010D (the "Series 2011D Bonds"). The Notes will not be paid out of substantially the same source of funds as the Series 2011C Bonds and the Series 2011D Bonds; consequently, the Notes will not be combined with them for a single issue. However, the Notes and the Series 2011A Bonds are expected to be paid from substantially the same source of funds and are an issue under Treasury Regulations Section 1.150-1(c).

Section 5. Continuing Disclosure. The City acknowledges that the Notes are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Notes. To provide for the public availability of certain information relating to the Notes and the security therefor and to permit underwriters of the Notes to comply with the Rule, which will enhance the marketability of the Notes, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate on file in the office of the city clerk as Public Document No. 11-1114-33.

Section 6. Certificate of Proceedings.

6.01 The city clerk is directed to file in the office of the county auditor of St. Louis County a certified copy of this resolution, and such other information as the county auditor may require, and to obtain from the county auditor and provide to bond counsel a certificate stating that the Notes herein authorized have been duly entered on the county auditor's register.

6.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City pertaining to the authorization, issuance, and sale of the Notes and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and

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marketability of the Notes, as such facts appear from the official books and records of the officers' custody or are otherwise known. All such certified copies, certificates, and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The mayor and the city clerk are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the issuance and sale of the Notes and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as for the date of the official statement.

6.04 In the event of the absence or disability of the mayor or the city clerk, such officers as in the opinion of the City attorney, may act in their behalf, shall without further act or authorization, execute and deliver the Notes, and do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers.

Resolution 11-0585 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 The City has previously issued its \$6,090,000 General Obligation Gas Utility Revenue Bonds, Series 2003G, dated December 1, 2003 (the "2003 Bonds"). The 2003 Bonds were authorized and issued pursuant to the City Charter, Minnesota Statutes, Chapter 475 and other pertinent provisions of Minnesota Statutes.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 4 of the Act, the City is authorized to issue and sell its general obligation bonds to refund obligations and the interest thereon six months or less before the due date or the redemption date of the obligations, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 It is necessary and desirable that the City issue \$3,125,000 General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Bonds"), in order to (i) reduce debt service costs, to refund the outstanding 2003 Bonds maturing on and after February 1, 2013 (the "Refunded Bonds"), of which \$3,305,000 in principal amount is outstanding, and (ii) pay the costs of issuance of the Bonds. The 2003 Bonds maturing on and after February 1, 2013, are subject to prepayment and redemption on February 1, 2012 (February 1, 2012 is herein referred to as the "Redemption Date").

1.04 The City has heretofore issued and sold the following gas utility bonds: general obligation gas utility revenue bonds dated December 1, 2003, now outstanding in the amount of \$3,700,000; general obligation utilities revenue bonds dated December 19, 2006, the gas utility portion of such bonds now outstanding in the amount of \$945,000; and general obligation utilities revenue bonds dated December 17, 2009, the gas utility portion of such bonds now

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outstanding in the amount of \$2,470,814. Under the provisions of the ordinance authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds dated December 1, 2003, December 19, 2006, and December 17, 2009.

The City reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the municipal gas utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the City Council to be necessary for the improvement of the municipal gas utility or for the refunding of indebtedness payable from said net revenues, provided that no such pledge shall constitute a lien upon the net revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

1.05 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile, electronic data transmission or other form of communication common to the municipal bond trade to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.06 Pursuant to such solicitation for bids for the sale of the Bonds, the City Council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Hutchinson, Shockey, Erley & Co. of Chicago, Illinois (the "Purchaser"), to purchase the Bonds at a cash price of \$3,339,514.04, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Total	Interest Rate
2013	\$380,000	3.00%
2014	415,000	3.00%
2015	430,000	3.00%
2016	445,000	3.00%
2017	470,000	4.00%
2018	480,000	4.00%
2019	505,000	4.00%

2.02 The Bonds are not subject to optional redemption and prepayment before maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1,

2012. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.12 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single Bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and delivery, Bonds of

such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new Bond in Book-Entry Form in exchange for a previous Bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

- (i) with respect to notices of redemption; and
- (ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the City Council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of

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and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the treasurer to the Purchaser upon receipt of the purchase price plus accrued interest.

2.12 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS
CITY OF DULUTH
GENERAL OBLIGATION GAS UTILITY REVENUE BOND, SERIES 2011C
R-__ \$ _____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	November __, 2011	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City Council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration

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records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$3,125,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 475.67, Subdivisions 1 through 4, and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to a resolution adopted on November 14, 2011, by the governing body of the City (the "Resolution"), and is issued to refund on a current refunding basis the outstanding principal amount of the City's \$6,090,000 General Obligation Gas Utility Revenue Bonds, Series 2003G, dated December 1, 2003.

The Bonds are payable from the net revenues to be derived from the operation of the municipal gas utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal gas utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the Bonds, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal gas utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds.

The Bonds are not subject to optional redemption and prepayment before maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and the Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done and to exist precedent to and in the issuance of this Bond,

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in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the Mayor and the City Clerk.

Attest:

Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of a Bond registered in the name of the owner named above, in the principal amount stated above, and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Bond Registrar

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

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Date	Registered Owner	Signature of Bond Registrar
11/___/2011	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto _____

(Name and Address of Assignee)

_____ Social Security or Other Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is

registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Escrow Agreement; Escrow Agent.

3.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the outstanding 2003 Bonds.

3.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as Public Document No. 11-1114-34. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 4. Revenues, Accounts and Covenants.

4.01 (a) The City Council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal gas utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the municipal gas utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal gas utility in a separate Gas Utility Operating Account within the Public Utility Gas Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal gas utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the City Council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all gas utility bonds when due.

(b) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Debt Service Fund") in the Public Utility Gas Fund to be used solely for the payment of the principal

and interest, as such principal and interest become due and payable, on the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the gas utility. Unless deposited in the Escrow Account, the treasurer shall credit to the Debt Service Fund unused discount (\$2,514.04) and the amount of accrued interest on the Bonds. The treasurer shall transfer from the Gas Utility Operating Account to the Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Bonds, and all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the City Council.

(c) Surplus utility revenues from time to time received in the Gas Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Gas Utility Operating Account and in the Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal gas utility, for the prepayment and redemption of bonds constituting a lien on the municipal gas utility, and for any other proper municipal purpose consistent with policies established by resolutions of the City Council.

4.02 Escrow account.

(a) The City hereby creates an Escrow Account for payment of the 2003 Bonds. To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (a) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (b) Accrued Interest, if any; (c) Additional Interest [amounts referenced in clauses (a), (b) and (c) are herein referred to as the "Proceeds"]; (d) funds of the City in an amount sufficient to pay the principal due on the 2003 Bonds on February 1, 2012, to pay the interest due on the 2003 Bonds on February 1, 2012, and to meet the other requirements of the Escrow Account (the "Funds"); and (e) investment earnings on such monies referenced in clauses (a), (b), (c) and (d), for the payment of principal and interest due on the 2003 Bonds on the Redemption Date and the principal of the Refunded Bonds called for prepayment and redemption on the Redemption Date.

(b) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance with the Act, the Escrow Agreement and this Section, in securities specified in Section 475.67, Subdivision 8(a) of the Act.

(c) From the Escrow Account there shall be paid: (a) all principal of and interest to be paid on the 2003 Bonds on the Redemption Date; and (b) the principal of the Refunded Bonds due by reason of prepayment and redemption on the Redemption Date.

(d) The Escrow Account for the 2003 Bonds is irrevocably appropriated to the payment of the principal of and interest due on the 2003 Bonds on the Redemption Date and to the prepayment and redemption of the Refunded Bonds due by reason of redemption on the Redemption Date. The monies to be deposited in the Escrow Account for the 2003 Bonds and the Refunded Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement for the 2003 Bonds shall be deposited in the Debt Service Fund.

(e) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

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(f) The construction fund created for the 2003 Bonds have previously been terminated and all bond proceeds therein have been expended.

4.03 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the 2003 Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3(g) of the Act and the clerk is hereby authorized and directed to certify such fact to and request the county auditor to cancel any and all tax levies made by the Council resolution authorizing the 2003 Bonds for collection in the year 2012 and thereafter.

4.04 If the balances in either Debt Service Fund are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from such Debt Service Fund when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to said Debt Service Fund will be received at the times and in amounts not less than five percent in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

Section 5. Refunding, Findings, Prepayment of Refunded Bonds.

5.01 It is hereby found and determined that based upon information presently available from the City's financial advisers, the issuance of the Bonds is consistent with covenants in the Council's resolution authorizing the 2003 Bonds (the "Prior Resolution") and is necessary and desirable for the reduction of debt service cost to the City.

5.02 It is hereby found and determined that the Proceeds and other available funds appropriated to the Escrow Account will be sufficient to pay all of the principal of and interest on the 2003 Bonds due on February 1, 2012, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

5.03 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the form of notice of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The Escrow Agent is hereby authorized and directed to forthwith, no later than 30 days prior to the Redemption Date, to send written notice of call to the registered owners and paying agent and to the bond insurance company, if any, of the Refunded Bonds.

5.04 When the principal of the 2003 Bonds and all interest thereon have been discharged as provided in this section, all pledges, covenants and other rights granted by the Prior Resolution to the holders of the 2003 Bonds shall cease, except that the pledge of the full faith and credit of the City for the prompt and full payment of the principal and interest on the 2003 Bonds shall remain in full force and effect.

Section 6. Tax Covenants; Miscellaneous.

6.01 The City covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to assure that the interest on the Bonds will be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and

maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

6.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of 5% of the proceeds of the Bonds or \$100,000. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the Bonds and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

6.03 The proceeds of the 2003 Bonds have been totally expended for the governmental purpose for which they were issued; the gross proceeds of the Bonds will be totally expended for the purpose of refunding the outstanding principal amount of the Refunded Bonds and paying the costs of issuance of the Bonds within six months of the date of issuance of the Bonds. Therefore, no rebate of arbitrage profit is required for the refunding portion of the Bonds under the Code pursuant to Section 148(f)(4)(B) of the Code under Regulation Section 1.148-9(h).

6.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Improvement Bonds, Series 2011A (the "Series 2011A Bonds"), General Obligation Capital Equipment Notes, Series 2011B (the "Notes"), and General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D (the "Series 2011D Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2011A Bonds, the Notes and the Series 2011D Bonds; consequently, the Bonds will not be combined with them for a single issue.

Section 7. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor

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and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 11-1114-34.

Section 8. Certificate of Proceedings.

8.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds herein authorized have been duly entered on his register.

8.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

8.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 11-0586 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

Absent: Councilor Fedora --1

Approved November 14, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond purpose and authorization.

1.01 The City previously issued \$4,045,000 General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004 (the "2004 Bonds"). The 2004 Bonds were authorized and issued pursuant to Section 55 of the City Charter, Minnesota Statutes, Section 115.46 and 444.075 and Chapter 475 and other pertinent provisions of Minnesota Statutes.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and, specifically, Section 475.67, Subdivisions 1 through 12 of the Act, the City is authorized to issue and sell its general obligation bonds to refund certain maturities of the 2004 Bonds in advance of their scheduled maturities, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 The City Council hereby determines that it is necessary, expedient and in the best interest of the City's residents that the City issue, sell and deliver its \$2,265,000 General Obligation Sewer Utility Revenue Refunding Bonds, Series 2011D (the "Bonds"), to refund the outstanding 2004 Bonds maturing on and after February 1, 2014, of which \$2,170,000 in

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principal amount is outstanding (the "Refunded Bonds"), in order to reduce debt service cost to the City. The 2004 Bonds maturing on and after February 1, 2014, are subject to prepayment and redemption on February 1, 2013. (February 1, 2013 is herein referred to as the "Redemption Date.") The 2004 Bonds maturing on February 1, 2012 and February 1, 2013, are not being prepaid or defeased (the "Unrefunded Portion of the 2004 Bonds").

1.04 The City's plan of finance for the payment and prepayment of the 2004 Bonds is as follows:

(a) The February 1, 2012 and the February 1, 2013 maturities of the 2004 Bonds shall remain outstanding and interest thereon on February 1, 2012, on August 1, 2012, and on February 1, 2013, shall not be defeased pursuant to this Resolution and the Escrow Agreement. The City will pay from the debt service account for the 2004 Bonds the principal of and interest due on the Unrefunded Portion of the 2004 Bonds when due. Proceeds of the Bonds shall be deposited in the Escrow Account held under the Escrow Agreement described in Section 4 and Section 5.04, which together with investment earnings thereon, will be sufficient to pay (i) interest on the Refunded Bonds due on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (ii) the redemption and prepayment of the Refunded Bonds on the Redemption Date.

(b) Proceeds of the Bonds will provide the funds to pay the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and to prepay and redeem the principal of the Refunded Bonds on the Redemption Date.

1.05 The city has heretofore issued and sold the following: general obligation sewer utility revenue note dated December 12, 2003, now outstanding in the amount of \$626,000; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$2,690,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,580,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$745,000; general obligation sewer utility revenue note dated July 12, 2007, now outstanding in the amount of \$1,629,000; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount of \$1,795,000; general obligation water and sewer utility revenue refunding bonds dated December 13, 2007, the sewer utility portion of such bonds now outstanding in the amount of \$825,000; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,290,000; general obligation sewer utility revenue note dated August 3, 2009, now outstanding in the amount of \$516,073; general obligation sewer utility revenue note dated December 16, 2009, now outstanding in the amount of \$2,239,000; general obligation utilities revenue bonds dated December 17, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,479,186; general obligation sewer utility revenue notes dated September 14, 2010, now outstanding in the amounts of \$5,090,781 and \$20,758; and general obligation utilities revenue bonds dated November 23, 2010, the sewer utility portion of such bonds now outstanding in the amount of \$2,025,000.

Under the provisions of the ordinances authorizing said bonds and notes, the city reserved the privilege of issuing additional bonds and notes payable from said net revenues on a parity with the bonds and notes dated December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, August 3, 2009, December 16, 2009, December 17, 2009, September 14, 2010, and November 23, 2010.

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1.06 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.07 Pursuant to such solicitation for bids for the sale of the Bonds, the City Council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Hutchinson, Shockey, Erley & Co. of Chicago, Illinois (the "Purchaser"), to purchase the Bonds at a cash price of \$2,289,436.30, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of the Bonds.

2.01 The Bonds shall be dated as of the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate
2013	\$ 20,000	1.00%
2014	305,000	1.00%
2015	305,000	2.00%
2016	310,000	2.00%
2017	320,000	2.00%
2018	325,000	2.00%
2019	335,000	3.00%
2020	345,000	3.00%

2.02 The Bonds are not subject to optional redemption and prepayment prior to maturity.

2.03 The interest shall be payable semiannually on February 1 and August 1 in each year (each herein referred to as an "Interest Payment Date") commencing on August 1, 2012. Interest will be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The Bond Registrar appointed below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not on a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the clerk. The corporate seal of the City may

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be omitted as permitted by law. In case any officer whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The clerk is authorized to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 3.01 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single Bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and delivery, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new Bond in Book-Entry Form in exchange for a previous Bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The

beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

- (i) with respect to notices of redemption; and
- (ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this Resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the

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direction of the treasurer to the Purchaser upon receipt of the purchase price plus accrued interest.

Section 3. Form of the Bonds.

3.01 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS
CITY OF DULUTH
GENERAL OBLIGATION SEWER UTILITY REVENUE REFUNDING BOND
SERIES 2011D

R-__ \$_____

Interest

Rate Maturity Date Date of Original Issue CUSIP
February 1, ____ November __, 2011

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the interest rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2012. Both principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft at the main office of Wells Fargo Bank, National Association of Minneapolis, Minnesota, as registrar, paying agent, authenticating agent and transfer agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City. The Bond Registrar shall make all interest payments with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day) at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

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This Bond is one of a series issued by the City in the aggregate amount of \$2,265,000, all of like original issue date and tenor, except as to number, maturity date, denomination and interest rate, pursuant to: (i) the authority contained in Minnesota Statutes, Chapter 475, Section 475.67, Subdivisions 1 through 12 and all other laws thereunto enabling; and (ii) an authorizing resolution adopted by the governing body of the City on November 14, 2011 (the "Resolution"), for the purpose of providing money to refund in advance of maturity the outstanding principal amount of the City's General Obligation Sewer Utility Revenue Bonds, Series 2004D, dated December 1, 2004, maturing on and after February 1, 2014.

The Bonds are payable from the net revenues to be derived from the operation of the municipal sewer utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal sewer utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the Bonds, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds.

The Bonds are not subject to optional redemption and prepayment prior to maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate and deliver, in exchange for this Bond, one or more new fully registered Bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the principal amount of this Bond, of the same maturity, and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and

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manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, in St. Louis County, Minnesota, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the mayor and the clerk.

ATTEST:

Clerk
Date of Authentication: _____

Mayor

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of the Bond registered in the name of the owner named above in the principal amount and maturity date stated above and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Bond Registrar

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
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11/___/2011 Cede & Co. _____
 c/o The Depository Trust
 Company
 55 Water Street
 New York, NY 10041
 Federal Taxpayer I.D. No.: 13-
 2555119

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers
unto _____

(Name and Address of Assignee)

_____ Social Security or Other
_____ Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute
and appoint _____
_____ attorney to
transfer the said Bond on the books kept for registration thereof with full power of
substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is

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registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 4. Escrow Agreement; Escrow Agent.

4.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the Refunded Bonds.

4.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as Public Document No. 11-1114-35. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 5. Covenants, revenues, accounts and tax levies.

5.01 (a) The City Council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the municipal sewer utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate Sewer Utility Operating Account within the Public Utility Sewer Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the City Council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds when due.

(b) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Debt

Service Fund”) in the Public Utility Sewer Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the sewer utility. Unless deposited in the Escrow Account, the treasurer shall credit to the Debt Service Fund unused discount (\$466.43) and the amount of accrued interest on the Bonds. The treasurer shall transfer from the Sewer Utility Operating Account to the Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Bonds, and all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the City Council.

(c) Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the City Council.

5.02 It is hereby determined that upon the receipt of proceeds of the Bonds (the “Proceeds”) for payment of the principal and interest on the Refunded Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3(g) of the Act and the clerk is hereby authorized and directed to certify such fact to and request the county auditor to cancel any and all tax levies made by the Council resolution authorizing the Refunded Bonds for collection in the year 2012 and thereafter.

5.03 If the balances in either Debt Service Fund are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from such Debt Service Fund when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to said Debt Service Fund will be received at the times and in amounts not less than five percent in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

5.04 Escrow account.

(a) The City hereby creates an Escrow Account for the Refunded Bonds. To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (i) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (ii) Accrued Interest; (iii) Additional Interest [amounts referenced in clauses (i), (ii) and (iii) are herein referred to as the “Proceeds”](the “Funds”); and (iv) investment earnings on such monies referenced in clauses (i), (ii) and (iii), for the payment of (A) interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (B) the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(b) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance

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with the Act, the Escrow Agreement and this Section, in securities specified in Section 475.67, Subdivision 8(a) of the Act, which investments will provide sufficient funds together with any cash or other funds retained in the Escrow Account for the Refunded Bonds for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(c) From the Escrow Account there shall be paid: (i) interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013; and (ii) the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(d) The Escrow Account for the Refunded Bonds as set forth above for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and to prepayment and redemption of the Refunded Bonds due by reason of redemption and prepayment on the Redemption Date. The monies in the Escrow Account for the Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(e) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

5.05 The construction funds created for the 2004 Bonds have previously been terminated and all bond proceeds therein have been expended.

Section 6. Refunding; findings; redemption of Refunded Bonds.

6.01 (a) It is hereby found and determined, based upon information presently available from the City's financial advisers, that as of the date of issuance of the Bonds, the issuance of the Bonds will result in a reduction of debt service cost to the City. In accordance with Section 475.67, Subdivision 12 of the Act, as of the date of issuance of the Bonds, the present value of the dollar amount of the debt service on the Bonds, computed to their stated maturity dates, after deducting any premium, is lower by at least three percent than the present value of the dollar amount of debt service on the Refunded Bonds, exclusive of any premium, computed to their stated maturity dates.

(b) It is hereby found and determined that the Proceeds available and appropriated to the Escrow Account for the Refunded Bonds, together with investment funds thereon is sufficient for the payment of the interest on the Refunded Bonds on February 1, 2012, on August 1, 2012, and on February 1, 2013, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

6.02 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the forms of notices of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The Escrow Agent is hereby authorized and directed to send written notice of the call for redemption to the paying agent or bond registrar, as the case may be, and bond insurance company (if any), for the Refunded Bonds in accordance with their terms and the Escrow Agreement.

6.03 The Escrow Agent is authorized and directed to cause to be provided a material event notice regarding the defeasance of the Refunded Bonds in accordance with the continuing disclosure certificates of the City dated December 1, 2004, and delivered in connection with the 2004 Bonds.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 7. Certificate of proceedings.

7.01 The clerk is directed to file with the county auditor a certified copy of this Resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds have been duly entered on his register.

7.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

7.03 The mayor and clerk are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the issuance and sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Section 8. Tax covenants.

8.01 The City covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

8.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Bonds or \$100,000. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

(b) The proceeds of the Bonds and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

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8.03 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Improvement Bonds, Series 2011A (the "Series 2011A Bonds"), General Obligation Capital Equipment Notes, Series 2011B (the "Notes"), and General Obligation Gas Utility Revenue Refunding Bonds, Series 2011C (the "Series 2011C Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2011A Bonds, the Notes and the 2011C Bonds; consequently, the Bonds will not be combined with any of them for a single issue under Treasury Regulations Section 1.150-1(c).

8.04 (a) The City covenants and certifies to and for the benefit of the owners of the Bonds that no use will be made of the proceeds of the Bonds, which will cause the Bonds to be arbitrage bonds within the meaning of Section 148(a) of the Code and the Treasury Regulations promulgated thereunder. Pursuant to such covenant, the City hereby agrees to comply throughout the term of the issue of the Bonds with the requirements of Section 148 of the Code and any Treasury Regulations promulgated thereunder; to this end, the City shall:

(i) maintain records identifying all "gross proceeds" (as defined in Section 148(f)(6)(B) of the Code) attributable to the Bonds, the yield at which such gross proceeds are invested, any arbitrage profit derived therefrom (earnings in excess of the yield on the Bonds) and any earnings derived from the investment of such arbitrage profit;

(ii) make, or cause to be made as of the end of each Bond Year, the annual determinations of the amount, if any, of excess arbitrage required to be paid to the United States by the City (hereinafter, the "Rebate Amount");

(iii) pay, or cause to be paid, to the United States at least once every five Bond Years the amount, if any, which is required to be paid to the United States, including the last installment which shall be made no later than 60 days after the day on which the Bonds are paid in full;

(iv) not invest, or permit to be invested, "gross proceeds" in any acquired non-purpose obligations so as to deflect arbitrage otherwise payable to the United States as a "prohibited payment" to a third party;

(v) retain all records of the annual determinations of the foregoing amounts until six years after the Bonds have been fully paid; and

(vi) in order to comply with the foregoing paragraph, the City shall determine the Rebate Amount within 30 days after the close of each Bond Year and upon payment in full of the Bonds; upon each such determination, the City shall deposit in the Rebate Fund the Rebate Amount so determined; the City shall separately account for the earnings from the investment of the Rebate Amount and such earnings shall become part of the Rebate Amount.

(b) For purposes of this section, "Bond Year" shall mean the 12-month period beginning on the date of issuance of the Bonds or such other 12-month period designated by the Board which is permitted by the Code or any Treasury Regulation promulgated thereunder.

Section 9. Continuing disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate

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substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 11-1114-35.

Resolution 11-0587 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fosle and Stauber -- 2

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

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BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Note Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the City is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal sewer utility, which bonds or notes shall be a specific lien upon the sewer utility and are payable primarily from net revenues to be derived from the operation of the municipal sewer utility and pledged for their payment. The City has applied for and received a commitment from the Minnesota Public Facilities Authority (the "PFA") for a loan for the Project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10110 adopted September 26, 2011 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$1,505,000 of the City for three projects, one of which is the following project: CIPP lining rehabilitation of sanitary sewers for Sewer Basin No. 2 in an estimated amount of \$630,000 (the "Project") as identified in the City's application to the PFA, and for the payment of part of the interest cost of the bond or note.

1.03 The City has applied for and received a grant from the State of Minnesota's Wastewater Infrastructure Fund in the amount of \$61,914 and principal forgiveness in the amount of \$1,050,680 granted under Minnesota's Clean Water Fund Project to pay a portion of the costs of the Project. The general obligation sewer utility revenue note to be issued under the Ordinance for the Project shall be issued in the principal amount of \$278,149 (the "Note") to pay the portion of the costs of the Project, not paid by such grant funds.

1.04 The council hereby determines that the Project is a project for the purpose of designing, constructing, repairing or replacing structures or facilities, including sanitary sewage overflow storage and for the purpose of attaining compliance with federal or state inflow and infiltration standards, within the meaning of City Code Section 43-11.1(7), and thus the costs of the Project and debt service of the Note which paid costs of the Project are eligible costs to be paid from the Clean Water Fund created under City Code Section 43-11.1 (the "Clean Water Fund").

1.05 The City hereby authorizes the issuance and sale of the Note, in substantially the form on file in the office of the clerk as Public Document No. 11-1114-36 for the Project to the PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated September 14, 2011, between the PFA and the City, in substantially the form presented to the Council and on file in the office of the clerk (the "Loan Agreement"), as Public Document No. 11-1114-36 which is hereby authorized, ratified and approved.

Section 2. Execution and Delivery of Note and Loan Agreement.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

2.01 The Note to be issued hereunder shall be dated as of the date of delivery to PFA, shall be issued in the principal amount of \$278,149, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 1.00% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the Note, subject to adjustment as provided in the Loan Agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the Note, such payment shall be mailed by the City at least five business days prior to the payment date.

2.02 The Note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the Mayor and attested by the manual signature of the Clerk. In case any officer whose signature shall appear on the Note shall cease to be an officer before delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the City regarding the Loan Agreement, including but not limited to, the officers of the City executing the Loan Agreement, are ratified, confirmed and approved as of the date of the Loan Agreement.

2.03. The City will cause to be kept at its offices a register in which, subject to such reasonable regulations as the City may prescribe, the City shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the Note, together with a written instrument of transfer satisfactory to the Clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the Note shall be made at a place mutually satisfactory to the City and the PFA. The Note shall be furnished by the City without cost to the PFA. The Note, when prepared in accordance with this Resolution and executed, shall be delivered to the PFA by and under the direction of the Treasurer. Disbursement of the proceeds of the Note shall be made pursuant to the Loan Agreement.

2.05. In the event of an inconsistency between a provision of this Resolution and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern.

Section 3. Revenues, Accounts and Covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Note and on all other bonds and notes heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate Sewer Utility Operating Account within the Public Utility Sewer Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the proper City official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the

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net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds or notes when due.

3.02 The City hereby creates a separate construction account (the "2011A Construction Account") within the Public Utility Sewer Fund to which there shall be credited the proceeds of the Note as received, together with investment income thereon, all grant funds for the Project and any additional funds which may be available and are appropriated for improvements to the Project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the Project and costs of the issuance of the Note.

3.03 Until the Note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Sewer Debt Service Fund") in the Public Utility Sewer Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the sewer utility. The council further authorizes the use of monies on deposit in the Clean Water Fund to pay the principal of and interest on the Note. All investment income on funds in the Sewer Debt Service Fund are pledged to payment of the Note and other bonds and notes payable from the Sewer Debt Service Fund. The treasurer shall transfer from the Sewer Utility Operating Account and the Clean Water Fund to the Sewer Debt Service Fund amounts of the net revenues and monies from the Clean Water Fund sufficient for the payment of all interest and principal then due on the Note. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the Sewer Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the Sewer Debt Service Fund are insufficient to pay principal of and interest on the Note and the other bonds and notes payable from such fund as the same become due, the City is required by law and by contract with the holders of the Note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the Note.

B. The full faith and credit and taxing powers of the City are irrevocably pledged for the prompt and full payment of the principal of and interest on the Note, as such principal and interest respectively become due. However, the net revenues of the sewer utility appropriated to the Sewer Debt Service Fund are estimated to be not less than five percent in excess of the principal of and interest on the Note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the 2011A Construction Account and the Sewer Debt Service Fund may, at the discretion of the City, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit payment of the Project costs and/or the principal and

interest on the Note and bonds or notes payable from the Sewer Debt Service Fund when due, as applicable.

Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Note that the City will (i) take all action on its part necessary to cause the interest on the Note to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Note to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Note and investment earnings thereon on certain specified purposes.

4.02 A. No portion of the proceeds of the Note shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Note was issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Note or \$100,000. To this effect, any proceeds of the Note and any sums from time to time held in the Sewer Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Note) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

B. In addition, the proceeds of the Note and money in the Sewer Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Note to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1996, as amended (the "Code").

C. The City hereby covenants not to use the proceeds of the Note, or to cause or permit them to be used, in such a manner as to cause the Note to be a "private activity bond" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 If the City determines that the Note does not qualify for exemption from the federal arbitrage rebate requirements under Section 148(f) of the Code, the City agrees to cause the calculations and payments to the United States to be made pursuant to Section 148 of the Code and Treasury Regulations relating thereto.

Section 5. Certificate of Proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Note herein authorized has been duly entered on his register.

5.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 11-0593 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

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BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Note Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the City is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal sewer utility, which bonds or notes shall be a specific lien upon the sewer utility and are payable primarily from net revenues to be derived from the operation of the municipal sewer utility and pledged for their payment. The City has applied for and received a commitment from the Minnesota Public Facilities Authority (the "PFA") for a loan for the Project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10110 adopted September 26, 2011 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$1,505,000 of the City for three projects, one of which is the following project: improvements to the sanitary sewer system (the "Project") as part of the Riverside community utility and street improvement project in an estimated amount of \$420,732, as identified in the City's application to the PFA, and for the payment of part of the interest cost of the bond or note.

1.03 The City has applied for and received a grant from the State of Minnesota's Wastewater Infrastructure Fund in the amount of \$1,418,205 to pay a portion of the costs of the Project. The general obligation sewer utility revenue note to be issued under the Ordinance for the Project shall be issued in the principal amount of \$354,551 (the "Note") to pay the portion of the costs of the Project, not paid by such grant funds.

1.04 The City hereby authorizes the issuance and sale of the Note, in substantially the form on file in the office of the clerk as Public Document No. 11-1114-37, for the Project to the PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated October 21, 2011, between the PFA and the City, in substantially the form presented to the Council and on file in the office of the clerk (the "Loan Agreement"), as Public Document No. 11-1114-37 which is hereby authorized, ratified and approved.

Section 2. Execution and Delivery of Note and Loan Agreement.

2.01 The Note to be issued hereunder shall be dated as of the date of delivery to PFA, shall be issued in the principal amount of \$354,551, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 1.00% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the Note, subject to adjustment as provided in the Loan Agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the Note, such payment shall be mailed by the City at least five business days prior to the payment date.

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2.02 The Note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the Mayor and attested by the manual signature of the Clerk. In case any officer whose signature shall appear on the Note shall cease to be an officer before delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the City regarding the Loan Agreement, including but not limited to, the officers of the City executing the Loan Agreement, are ratified, confirmed and approved as of the date of the Loan Agreement.

2.03. The City will cause to be kept at its offices a register in which, subject to such reasonable regulations as the City may prescribe, the City shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the Note, together with a written instrument of transfer satisfactory to the Clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the Note shall be made at a place mutually satisfactory to the City and the PFA. The Note shall be furnished by the City without cost to the PFA. The Note, when prepared in accordance with this Resolution and executed, shall be delivered to the PFA by and under the direction of the Treasurer. Disbursement of the proceeds of the Note shall be made pursuant to the Loan Agreement.

2.05. In the event of an inconsistency between a provision of this Resolution and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern.

Section 3. Revenues, Accounts and Covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Note and on all other bonds and notes heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate Sewer Utility Operating Account within the Public Utility Sewer Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the proper City official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds or notes when due.

3.02 The City hereby creates a separate construction account (the "2011B Construction Account") within the Public Utility Sewer Fund to which there shall be credited the proceeds of the Note as received, together with investment income thereon, all grant funds for the Project and any additional funds which may be available and are appropriated for improvements to the Project. This account shall be used only to pay expenses duly approved

and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the Project and costs of the issuance of the Note.

3.03 Until the Note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Sewer Debt Service Fund") in the Public Utility Sewer Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the sewer utility. All investment income on funds in the Sewer Debt Service Fund are pledged to payment of the Note and other bonds and notes payable from the Sewer Debt Service Fund. The treasurer shall transfer from the Sewer Utility Operating Account to the Sewer Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Note. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the Sewer Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the Sewer Debt Service Fund are insufficient to pay principal of and interest on the Note and the other bonds and notes payable from such fund as the same become due, the City is required by law and by contract with the holders of the Note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the Note.

B. The full faith and credit and taxing powers of the City are irrevocably pledged for the prompt and full payment of the principal of and interest on the Note, as such principal and interest respectively become due. However, the net revenues of the sewer utility appropriated to the Sewer Debt Service Fund are estimated to be not less than five percent in excess of the principal of and interest on the Note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the 2011B Construction Account and the Sewer Debt Service Fund may, at the discretion of the City, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit payment of the Project costs and/or the principal and interest on the Note and bonds or notes payable from the Sewer Debt Service Fund when due, as applicable.

Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Note that the City will (i) take all action on its part necessary to cause the interest on the Note to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Note to be subject to federal income taxes, including, without limitation,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

refraining from spending the proceeds of the Note and investment earnings thereon on certain specified purposes.

4.02 A. No portion of the proceeds of the Note shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Note was issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Note or \$100,000. To this effect, any proceeds of the Note and any sums from time to time held in the Sewer Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Note) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

B. In addition, the proceeds of the Note and money in the Sewer Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Note to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1996, as amended (the "Code").

C. The City hereby covenants not to use the proceeds of the Note, or to cause or permit them to be used, in such a manner as to cause the Note to be a "private activity bond" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 If the City determines that the Note does not qualify for exemption from the federal arbitrage rebate requirements under Section 148(f) of the Code, the City agrees to cause the calculations and payments to the United States to be made pursuant to Section 148 of the Code and Treasury Regulations relating thereto.

Section 5. Certificate of Proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Note herein authorized has been duly entered on his register.

5.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 11-0594 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "City"), as follows:

Section 1. Note Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the City is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal water utility, which bonds or notes shall be a specific lien upon the water utility and are payable primarily from net revenues to be derived from the operation of the municipal water utility and pledged for their payment. The City has applied for and received a commitment from the Minnesota Public Facilities Authority (the "PFA") for a loan for the Project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10111 adopted September 26, 2011 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation water utility revenue note, in one or more series, in the amount of \$1,650,000 of the City, for the payment of improvements to the water utility system (the "Project") as part of the Riverside Community Utility and Street Improvement project.

1.03 The general obligation water utility revenue note to be issued under the Ordinance shall be issued in the principal amount of \$1,605,655 (the "Note") to pay the costs of the Project.

1.04 The City hereby authorizes the issuance and sale of the Note, in substantially the form on file in the office of the clerk as Public Document No. 11-1114-38, for the Project to the PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated October 21, 2011, between the PFA and the City, in substantially the form presented to the Council and on file in the office of the clerk (the "Loan Agreement"), as Public Document No. 11-1114-38 which is hereby authorized, ratified and approved.

Section 2. Execution and Delivery of Note and Loan Agreement.

2.01 The Note to be issued hereunder shall be dated as of the date of delivery to PFA, shall be issued in the principal amount of \$1,605,655, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 1.221% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the Note, subject to adjustment as provided in the Loan Agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the Note, such payment shall be mailed by the City at least five business days prior to the payment date.

2.02 The Note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the Mayor and attested by the manual signature of the Clerk. In case any officer whose signature shall appear on the Note shall cease to be an officer before delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the City regarding the Loan Agreement, including but not limited to, the officers of the City executing the Loan Agreement, are ratified, confirmed and approved as of the date of the Loan Agreement.

2.03. The City will cause to be kept at its offices a register in which, subject to such reasonable regulations as the City may prescribe, the City shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the Note, together with a written instrument of transfer satisfactory to the Clerk, duly executed by the PFA or its duly authorized agent.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

2.04. Delivery of the Note shall be made at a place mutually satisfactory to the City and the PFA. The Note shall be furnished by the City without cost to the PFA. The Note, when prepared in accordance with this Resolution and executed, shall be delivered to the PFA by and under the direction of the Treasurer. Disbursement of the proceeds of the Note shall be made pursuant to the Loan Agreement.

2.05. In the event of an inconsistency between a provision of this Resolution and a provision of the Loan Agreement, the provision of the Loan Agreement shall govern.

Section 3. Revenues, Accounts and Covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Note and on all other bonds and notes heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal water utility in a separate Water Utility Operating Account within the Public Utility Water Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal water utility, and to maintain such reasonable reserves for such expenses as the proper City official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all water utility bonds or notes when due.

3.02 The City hereby creates a separate construction account (the "Construction Account") within the Public Utility Water Fund to which there shall be credited the proceeds of the Note as received, together with investment income thereon and any additional funds which may be available and are appropriated for improvements to the Project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the Project and costs of the issuance of the Note.

3.03 Until the Note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Water Debt Service Fund") in the Public Utility Water Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the water utility. All investment income on funds in the Water Debt Service Fund are pledged to payment of the Note and other bonds and notes payable from the Water Debt Service Fund. The treasurer shall transfer from the Water Utility Operating Account to the Water Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Note and other bonds and notes payable from the Water Debt Service Fund. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the Water Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Water Utility Operating Account and in the Water Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal water utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal water utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the Water Debt Service Fund are insufficient to pay principal of and interest on the Note and the bonds and notes payable from such fund as the same become due, the City is required by law and by contract with the holders of the Note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the Note.

B. The full faith and credit and taxing powers of the City are irrevocably pledged for the prompt and full payment of the principal of and interest on the Note, as such principal and interest respectively become due. However, the net revenues of the water utility appropriated to the Water Debt Service Fund are estimated to be not less than five percent in excess of the principal of and interest on the Note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the Construction Account and the Water Debt Service Fund may, at the discretion of the City, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit payment of the Project costs and/or the principal and interest on the Note and bonds or notes payable from the Water Debt Service Fund when due, as applicable.

Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Note that the City will (i) take all action on its part necessary to cause the interest on the Note to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Note to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Note and investment earnings thereon on certain specified purposes.

4.02 A. No portion of the proceeds of the Note shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Note was issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Note or \$100,000. To this effect, any proceeds of the Note and any sums from time to time held in the Water Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Note) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

B. In addition, the proceeds of the Note and money in the Water Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Note to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1996, as amended (the "Code").

C. The City hereby covenants not to use the proceeds of the Note, or to cause or permit them to be used, in such a manner as to cause the Note to be a "private activity bond" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 A. Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby reasonably expects that with respect to the gross proceeds of the Note, the following schedule will be met: (i) at least 15% of the gross proceeds of the Note will be allocated to expenditures for the governmental purpose of the Note within six months of the date of issue of the Note; (ii) at least 60% of such proceeds will be allocated for such purposes within the one-year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Note, and that 100% of the available proceeds of the Note will be allocated within 30 months from the date of issue of the Note.

B. The City shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

Section 5. Certificate of Proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Note herein authorized has been duly entered on his register.

5.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 11-0595 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Fedora -- 1

Approved November 14, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1114-39, with the Duluth economic development authority (DEDA), to allow the city to dispose of snow from street plowing operations on certain DEDA-owned property known as DEDA Lot D located west of Bayfront Park.

Resolution 11-0568 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman and President Gardner -- 7

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Nays: Councilor Stauber -- 1
Absent: Councilor Fedora -- 1
Approved November 14, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Enventis Telecom, Inc., a subsidiary of HickoryTech, for the purchase and installation of CISCO phones and network equipment necessary to operate the city's voice and data network at the new Duluth police headquarters facility in accordance with city-approved specifications and the vendor's low bid of \$413,683.34 plus \$1,755.18 net adjustment for equipment plus \$26,871.03 sales tax (on taxable portion) for a combined total of \$442,309.55, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures).

Resolution 11-0601 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Software House International (SHI), Inc., for the purchase and delivery of 119 Citon Q series desktop computer workstations to the new Duluth police headquarters in fiscal year 2011 in accordance with Minnesota State Contract 436392, Release C816-(5), specifications and pricing, terms net 30, FOB destination, in the amount of \$106,386 plus \$7,314.04 sales tax for a combined total of \$113,700.04, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures).

Resolution 11-0602 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

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RESOLVED, that the original Purchase Order 11-0494 issued to Fluid Interiors, LLC, for the purchase and installation of private office and systems furniture for the new public safety building is hereby increased by a total of \$226,551.77, payable from payable from Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. CP2009-0928B.

Resolution 11-0603 was unanimously adopted.
Approved November 14, 2011
DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR CUNEO

11-055 - AN ORDINANCE AMENDING SECTION 8-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-056 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST DULUTH/ SPIRIT VALLEY AREA TO DEDA FOR \$1,126.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

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INTRODUCED BY COUNCILOR FOSLE

11-054-O - AN ORDINANCE REPEALING AND REPLACING CHAPTER 33, ARTICLE VI, AND AMENDING SECTIONS 33-101, 33-108, 33-110, 33-111.1 AND 33-221 OF THE DULUTH CITY CODE, 1959, AS AMENDED, CREATING A NEW DULUTH PARKING COMMISSION.

- - -

INTRODUCED BY COUNCILOR FOSLE

11-057 - AN ORDINANCE AMENDING SECTION 10-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE BUILDING APPEAL BOARD.

- - -

INTRODUCED BY COUNCILOR FOSLE

11-058 - AN ORDINANCE AMENDING SECTIONS 40-4 AND 40-10 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO ABANDONED PROPERTY.

- - -

The following entitled ordinances are to be read for the second time:

INTRODUCED BY COUNICLOR CUNEO

11-050 (10118) - AN ORDINANCE AMENDING SECTION 47-17.5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO IDENTIFICATION MEDALLIONS AND NUMBERS REGARDING TAXICAB LICENSES.

Councilor Cuneo moved passage of the ordinance and the same was adopted upon a unanimous vote.

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INTRODUCED BY COUNICLOR CUNEO

11-052 (10119) - AN ORDINANCE AMENDING SECTION 8-41 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

Councilor Cuneo moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNICLOR STAUBER

11-051 (10120) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE LINCOLN PARK AREA TO LINDA J. ZIMM FOR \$350.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

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INTRODUCED BY COUNICLOR STAUBER

11-053 (10121) - AN ORDINANCE AMENDING ORDINANCE 10117 AMENDING ORDINANCE 10087 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE LEGAL DESCRIPTION OF THE PLAZA AND LONDON ROAD FORM DISTRICTS.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

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INTRODUCED BY COUNICLOR FOSLE

11-049 (10122) - AN ORDINANCE AMENDING ARTICLE IX, SECTION 6-97, AND ADDING A NEW SECTION 6-98, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Fosle moved passage of the ordinance and the same was adopted upon a unanimous vote.

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The meeting was adjourned at 8:12 p.m.

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10118

AN ORDINANCE AMENDING SECTION 47-17.5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO IDENTIFICATION MEDALLIONS AND NUMBERS REGARDING TAXICAB LICENSES.

The city of Duluth does ordain:

Section 1. That Section 47-17.5 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 47-17.5. Same—Identification medallions and numbers.

The city clerk shall assign an identification number to each taxicab vehicle license, and the licensee shall display such number on each side and the rear of the licensed taxicab at all times while in operation by figures at least four inches high which contrast with the color of the taxicab.

The city clerk shall also assign one identification medallion to each taxicab license, and each such medallion shall bear the identification number assigned to such license by the city clerk. Such medallion shall be made of durable material, and shall be of such size and design so as to be readily recognizable. No person shall operate a taxicab within the city unless such medallion is affixed to the rear exterior of such vehicle, at a location approved by the chief of police, so as to be readily observable. Any such medallion assigned to and possessed by any licensee in accordance with the provisions of this Article may be used by such licensee on any vehicle for which he possesses a taxicab vehicle license. Any such medallion shall remain the property of the city and shall be returned to the city clerk upon the expiration, suspension, revocation or transfer of the taxicab license to which it was assigned. Any such medallion which is damaged, destroyed or lost shall be replaced by the city clerk upon payment by the taxicab licensee of a fee. The medallion replacement fee shall be set in accordance with Section 31-6(a) of this Code.

Any identification number or medallion required to be displayed by this Section shall be kept free of dirt and shall be maintained so as to be legible at all times.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Cuneo moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

Passed November 14, 2011
Approved November 14, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10119

AN ORDINANCE AMENDING SECTION 8-41 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

The city of Duluth does ordain:

Section 1. That Section 8-41 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-41. Types generally.

(a) With respect to intoxicating liquor, there shall be the following types of licenses: on sale, on sale club, on sale wine, on sale culinary class, on sale theater, on sale brewer taproom, temporary on sale, off sale and a brewery malt liquor off sale;

(b) On sale licenses shall permit the licensee to sell intoxicating liquor at retail for consumption on the licensed premises only;

(c) On sale culinary class licenses shall permit the licensee to sell intoxicating liquor subject to the restrictions of Section 8-44(d) of this Chapter and Minnesota Statutes Section 340A.4041, or its successor;

(d) The on sale theater license authorizes sales on all days of the week to persons attending events at the theater;

(e) The on sale brewer taproom license authorizes on sale of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer, subject to the restrictions of this Chapter and Minnesota Statutes Section 340A.301, subd. 6(b), or its successor;

(f) Temporary on sale licenses shall permit the licensee to sell intoxicating liquor on sale temporarily in connection with a social event sponsored by the licensee;

(g) Except as provided herein, off sale licenses shall permit the licensee to sell intoxicating liquor at retail in original packages for consumption off the licensed premises only;

(h) Brewery malt liquor off sale licenses shall permit breweries holding on sale licenses or a brewer who manufactures fewer than 3,500 barrels of malt liquor in a year to sell malt liquor off sale in 64-ounce containers commonly known as growlers, subject to the restrictions in Minnesota Statutes, Section 340A.301, subd. 7(b), or its successor, and this Chapter;

(i) Notwithstanding the provisions of sections 8-21 and 8-22 of this Chapter, it shall be lawful for the holder of an off sale intoxicating liquor license or

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

a brewery malt liquor off sale license to provide samples as provided in Minnesota Statutes, Section 340A.510, or its successor;

(j) With respect to 3.2 percent malt liquor, there shall be three types of licenses: on sale, off sale and temporary on sale;

(1) On sale licenses shall permit the licensee to sell 3.2 percent malt liquor at retail for consumption on the licensed premises only;

(2) Off sale licenses shall permit the licensee to sell 3.2 percent malt liquor at retail in original packages for consumption off the licensed premises only;

(3) A temporary on sale license shall permit the licensee to sell 3.2 percent malt liquor at retail for a limited period of time at a designated licensed premise only;

(k) No alcoholic beverage license of any type shall be granted to any elective, executive or administrative officer of the city, nor to any employee holding a position in the classified service of the city and working as a licensed peace officer in the police department or as a fire marshal or assistant fire marshal, nor shall any such officer or employee engage in the business, except that employees in the classified service not working as a licensed peace officer in the police department or as a fire marshal or assistant fire marshal may work in any licensed establishment if they do not participate in the management of the business.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

Councilor Cuneo moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

Passed November 14, 2011
Approved November 14, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10120

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE LINCOLN PARK AREA TO LINDA J. ZIMM FOR \$350.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the Code), the manager of the city's physical planning division has reviewed this proposed conveyance and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Code, the city assessor has provided an estimate of the market value to be \$350;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(c) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale pursuant to Article XXXIII of Chapter 2 of the Code;

(d) As per Section 2-178 of the Code, the property described in Section 2 below, because of its size, no building can legally be constructed on said property, and therefore can be sold to the adjacent owner and without competitive bidding.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Linda J. Zimm, a single person, for the amount of \$350 to be deposited into Fund 110 (general), Agency 700 (transfers and other functions), Organization 1420 (capital programs), Object 4640 (sale of land), and further to execute all documents necessary with regard to said conveyance:

All that part of the following described tract:

The southerly 25 feet of Lot 318, Block 92, DULUTH PROPER SECOND DIVISION, according to the plat thereof on file and of record in the office of the county recorder in and for St. Louis County, Minnesota;

which lies northeasterly of the following described line:

Beginning at a point on the northeasterly line of Lot 318, distant 105 feet southeasterly of the most northerly corner thereof; thence run southerly to a point on the southeasterly line of said Lot 318, distant 20 feet southwesterly of the most easterly corner thereof and there terminating.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

Passed November 14, 2011
Approved November 14, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10121

AN ORDINANCE AMENDING ORDINANCE 10117 AMENDING ORDINANCE 10087 AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO CORRECT THE LEGAL DESCRIPTION OF THE PLAZA AND LONDON ROAD FORM DISTRICTS.

The city of Duluth does ordain:

Section 1. That Public Document No. 11-1010-21 of Ordinance No. 10117 is replaced by Public Document No. 11-1114-40.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8
Nays: None -- 0
Absent: Councilor Fedora -- 1

Passed November 14, 2011
Approved November 14, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

ORDINANCE NO. 10122

AN ORDINANCE AMENDING ARTICLE IX, SECTION 6-97, AND ADDING A NEW SECTION 6-98, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

The city of Duluth does ordain:

Section 1. That Article IX, Section 6-97, of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-97. Authority to order euthanasia; procedure.

(a) A dog may be euthanized by the animal control authority if:

(1) The dog is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or

(2) The owner, if known, of the dangerous dog has demonstrated an inability or unwillingness to control the dog in order to prevent injury to persons or other animals;

(b) The animal control authority may not euthanize the dog until the dog owner has had the opportunity for a hearing before an administrative hearing officer as set forth in Section 6-98;

(c) If no appeal is filed, the orders issued will stand and the animal control authority may euthanize the dangerous dog;

(d) Nothing in this Section shall prevent the animal control authority from ordering the immediate euthanizing of a rabies-suspected animal pursuant to Chapter 6, Article III, of the Duluth City Code.

Section 2. That Section 6-98 of the Duluth City Code is hereby created to read as follows:

Sec. 6-98. Appeal of potentially dangerous or dangerous dog designations; euthanasia.

The owner of any dog declared potentially dangerous or dangerous or seized for euthanasia, other than a rabies-suspected dog subject to immediate euthanizing pursuant to Article III of this Code, has the right to a hearing by the administrative hearing officer as follows:

(a) The animal control authority shall give notice of this Section by delivering or mailing the notice to one owner of the dog, if known, or by posting a copy of the notice at the place where the dog is kept, or by delivering it to a person of suitable age and discretion residing on the property or by delivering the notice by electronic means. The notice must include:

(1) A description of the dog, the authority for and purpose of the potentially dangerous or dangerous dog designation or seizure; the time, place and circumstances under which the dog was declared or seized; and the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

telephone number and contact person for the entity having custody and control of the dog;

(2) A statement that the owner of the dog may request a hearing concerning the declaration or seizure and that the request for a hearing must be in writing and must specify the grounds relied upon for the appeal. The written request for a hearing must be received by the office identified in the notice within 14 days of the date of the notice. Failure to comply with these requirements and to pay the required appeal fee within the 14-day time period will terminate the owner's right to a hearing;

(3) A statement that if the hearing officer affirms the potentially dangerous or dangerous dog designation, the owner will have 14 days from receipt of that decision to comply with all requirements of this Article, Chapter 347 of the Minnesota Statutes and other requirements as ordered, if any;

(4) A form to request a hearing; and

(5) A statement that all actual costs of the care, keeping, and disposition of the dog are the responsibility of the owner, except to the extent that a court or hearing officer finds that the seizure or impoundment was not substantially justified by law;

(b) The owner must pay a fee, as established by the city council, in order to file the request for an appeal hearing;

(c) The appeal hearing will be held within 14 days of the filing of the appeal. The hearing officer must be an impartial person retained by the city to conduct the hearing. If the hearing officer upholds the declaration or seizure of the dog, actual expenses of the hearing will be the responsibility of the dog's owner. The hearing officer will issue a decision on the matter within ten days after the hearing. The decision shall be provided to the dog's owner by U.S. mail at the address listed on the appeal notice. A copy of the decision shall also be provided to the animal control authority. The decision of the hearing officer is final, subject only to appeal to the appellate courts, pursuant to Minnesota Statutes Section 606.01;

(d) An owner's right to appeal or otherwise contest a declaration or seizure by the animal control authority shall be deemed waived if the owner fails to timely file an appeal, as set forth herein, or fails to appear at any scheduled hearing date.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 17, 2011)

Councilor Fosle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Fedora -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 14, 2011
Approved November 14, 2011
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 28, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 8

Absent: Councilor Halberg -- 1

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-1128-01 The following communications regarding the proposed AT&T cell tower on 2120 Jean Duluth Road (11-0530R and 11-0531R): (a) Jon Bollman; (b) Jerry Fryberger; (c) Gary W. Jones; (d) Deb La Fleur; (e) Brad Rauzi; (f) Roy Tollefson. -- Received

11-1128-02 The following communications regarding the proposed new East High School resident permit parking zone (11-0624R): (a) Amy Bennett; (b) Luke Boynton; (c) Tim and Lori Bradshaw; (d) Barbara and Ed Buchanan; (e) Sharon Dawson; (f) Sue Finstick and Dale Smith; (g) Barbara and Paul Gustad; (h) Natalie Hanson; (i) Karl and Lynne Howg; (j) Marilyn Krueger; (k) Beatrice Larson; (l) Steve and Gail Marshik; (m) Matt Maurer; (n) Deb Musick; (o) Virginia Pfau; (p) Larry and Lynn Rappana; (q) Kathy and Jim Skoog; (r) Kristi Slick; (s) Lynn Slordal; (t) Joetta Snow; (u) Ann Wasson. -- Received

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REPORTS FROM OTHER OFFICERS

11-1128-03 Assessor submitting reassessment of canceled assessment for delinquent garbage (Contract Nos. 2011020 and 2011420; reassessment amount \$264,638.87). -- Received

11-1128-18 Attorney decision on retiree health insurance by the Minnesota Supreme Court. -- Received

11-1128-17 Clerk recount waiver of Todd Fedora regarding the recount of votes for the First Council District, pursuant to Minnesota Statutes 204C.36, subd. 2(b). -- Received

11-1128-04 Engineer acceptance of local improvements by private parties, pursuant to Section 45-89 of the Duluth City Code, in:

- (a) Technology Drive (City Project No. 0693);
- (b) 45th Avenue West (City Project No. 0951);
- (c) DECC Amsoil Arena sanitary sewer (City Project No. 0776SN);
- (d) Oneota Business Park (City Project No. 0963SN);
- (e) Summit Ridge Development (City Project No. 0213SN). - Received

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REPORTS OF BOARDS AND COMMISSIONS

11-1128-05 Duluth economic development authority minutes of October 26, 2011, meeting. -- Received

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At this time, 7:05 p.m., the public hearing regarding the proposed East High School resident permit parking zone was called to order.

Betty Greene, Sue Finstick and Craig Ward voiced support for the expanded parking zone as there are no sidewalks along 40th Avenue East; the street is narrow with parked cars on one side; there are no outlets in Rockview Court or controlled intersections on 40th Avenue

East and with increased traffic there is a safety issue with parked cars on 40th Avenue East and also small children getting onto buses.

Karen Pagel stated that the new zone going as far east as Gladstone is too far and kids would not walk that far to school.

Don Michels spoke against expanding the zone by explaining that by making the east side of 40th no parking all year round and allowing parking on the west side only, it would solve the problem without expanding the area. He also suggested that the Duluth Transit Authority should give free rides to high school students like it does for the University of Minnesota-Duluth.

Brian Ronstrom questioned why the school district, which put the high school on this site and caused the problem, is not finding safe, secure parking on the site instead of the surrounding residents having to pay for parking permits.

Laurie Korich stated that the school board pushed the new school through in such a rush and now the residents have to be the ones to solve the problem and pay to park on the street.

Byron Johnson stated the parking zone at Denfeld is very small compared to East and it should not be the residents' responsibility to pay for the parking permits. He further stated that the school district should solve the problem and be responsible for the signage and permits instead of passing the cost on to the residents.

At this time, 7:18 p.m., the public hearing was closed and the regular order of business was resumed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlafter stated that the Fond du Luth Casino benefits from the city's infrastructure but does not want to pay for it, so the city should impose a toll on all streets and sidewalks that lead to the casino.

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RESOLUTIONS TABLED

Councilor Stauber moved to remove resolutions 11-0530 and 11-0531, affirming and reversing, respectively, the decision of the planning commission to grant the application for a special use permit by AT&T/New Cingular Wireless for a wireless telecommunications facility, from the table, which motion was seconded and unanimously carried.

The rules were suspended upon a unanimous vote to hear from speakers on the issue.

Anne Seppo urged the council to support the placement of the tower on her property as it will be set back far on her property, it is not in the bird migration path, most neighbors will not be able to see the tower and a tower in the Morningside Pit area would be a detriment to the city as it is a wildlife area.

John Bollman, Evelyn Frasier, Gary Jones, Roy Tollefson, Sandy Smith and Brad Rauzi requested the council support the appeal and move the tower to the Morningside Pit for the following reasons: concerned about the aesthetics and quality of property; reduced property value of the neighborhood; public perception is that no one wants the tower in their yard; the planning commission failed to correctly apply the provisions of the unified development chapter (UDC) to the application; it will take away from the green space and invade the environment; concern about the diesel generator running all the time as a backup and better coverage will come from the Morningside Pit site.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Ken Butler urged passage of the permit and explained that the stealth tower height will not be intrusive to the neighborhood and AT&T has spent some time getting through the city planning process. He also stated that without backup information on the property values, it cannot be a consideration for denial of the permit.

John Koralia favored support of the cell tower at the proposed location as this location would have the least obtrusive view of the cell tower and the planning commission has looked at the issue and followed the process according to City Code.

City Attorney Gunnar Johnson reviewed with the council that they can only affirm or reverse the decision of the planning commission and that they cannot decide on a site for the cell tower. He stated that the decision is whether AT&T complied with the requirements of the City Code regulating the issuance of a special use permit for the Seppo site. Mr. Johnson continued saying that if the council reverses the decision, they need to have found substantial evidence that the location of the tower will harm health, safety and the welfare of the city and its inhabitants and in the resolution set the evidence it is using for the basis of its reversal.

Resolution 11-0530, affirming the planning commission decision, was adopted as follows:

RESOLVED, that the city council finds as follows:

(a) On July 12, 2011, AT&T/New Cingular Wireless (applicant) applied for a special use permit to construct a telecommunications facility consisting in principal part of a 75 foot monopole for cellular antennas and a 12 foot by 28 foot ground equipment shelter;

(b) Pursuant to Minnesota Statutes Section 15.99 the applicant waived the final action deadline mandated by the statute;

(c) The proposed facility will be located at 2120 Jean Duluth Road. This location is zoned RR-1 and presently includes residential and commercial use. The commercial use is the Amity Valley Kennels;

(d) A public hearing was held by the planning commission at its September 13, 2011, meeting. The commission voted to approve the location of a 70 foot tower at the site rather than the 75 foot applied for and concluded that the applicant had satisfied the use specific standards provided in Section 50-20.4.E of the City Code. In reaching its decision the planning commission reviewed the city consultant's report. The consultant reviewed the application pursuant to Section 50-20.4.E.5 of the City Code. The consultant issued a report dated September 1, 2011, a copy of which is on file with the city clerk as Public Document No. 11-1128-06;

(e) On September 23, 2011, Brad Rauzi (Rauzi) filed an appeal of the planning commission action to the city council pursuant to Section 50-37.1.O.4 of the City Code. The appeal asserts four objections to the planning commission action. They are:

(1) The applicant did not satisfy the location priority standards of Section 50-20.4.E.3(e) of the City Code;

(2) The subject parcel is partly designated preservation land in the comprehensive plan;

(3) Placement of the tower, a commercial venture, will have a negative effect on the nature and character of the neighborhood and on the area of wildlife; and

(4) The applicant has not established a need for the facility at the proposed location;

(f) The appeal was heard at the October 10, 2011, meeting of the planning and economic development committee, and the matter was considered at the city council's October 10, 2011, meeting.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED FURTHER, that the decision of the planning commission to approve the application for special use permit is affirmed on the following grounds:

(a) The consultant's report contained the following information that is relevant to the four grounds asserted as the basis for this appeal:

(1) Location priority. Rauzi objects to the use of the subject site and asserts that the proposal does not meet the standard provided for in Section 50-20.4E-3(e);

(A) The site location is a lowest priority site as provided in Section 50-20.4.E.3(a). The consultant identified an alternative city-owned site that would satisfy the applicant's operational needs; however, the city rejected the proposal to locate the facility at the city location. The Code does not require the city to allow placement of a wireless telecommunications facility on a city-owned site. The applicant provided sufficient information that no other site with a higher priority and located within their search ring was available;

(B) Pursuant to 47 U.S.C. §332(c)(7)(B)(iii), "any decision by a state or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." No evidence has been offered that satisfies the substantial evidence standard mandated by the federal law and demonstrates that the location of the telecommunications facility at the proposed location will harm the health, safety and welfare of the city and its inhabitants and will have a deleterious effect on the nature and character of the community and neighborhood;

(C) Pursuant to 47 U.S.C. §332(c)(7)(B)(iv), "[n]o state or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the commission's regulation concerning such emissions." Rauzi has not identified the nature of the health effects allegedly negatively impacted by the proposed facility;

(b) Compliance with the comprehensive plan. Planning staff concluded in the report to the planning commission that the proposed use was consistent with the comprehensive land use plan. Pursuant to Duluth City Code Section 50-19.8 (permitted use table) a telecommunications facility is an allowable special use in the RR-1 zone. Zoning of land takes priority over the provisions of a comprehensive plan;

(c) Negative neighborhood effects. No evidence has been offered that satisfies the substantial evidence standard and demonstrates that the location of the telecommunications facility at the proposed location, presently used, in part, for commercial activity, will have a negative effect on the neighborhood or the area wildlife;

(d) Demonstration of need. The consultant reviewed the applicant's proof of need and reported to the planning commission that the applicant provided sufficient propagation studies indicating a loss of coverage of critical areas that will be targeted by the proposed site. No evidence has been offered that satisfies the substantial evidence standard and demonstrates that the consultant's evaluation of the propagation studies is inaccurate.

Resolution 11-0530 was adopted upon the following vote:

Yeas: Councilors Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 6

Nays: Councilors Anderson and Boyle -- 2

Absent: Councilor Halberg -- 1

Approved November 28, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0531, reversing the planning commission decision, failed upon the following vote (Public Document No. 11-1128-19):

Yeas: Councilors Anderson and Boyle -- 2

Nays: Councilors Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 6

Absent: Councilor Halberg -- 1

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MOTIONS AND RESOLUTIONS

The following entitled resolution was read for the first time, pursuant to City Council Stand Rule No. 15:

BY PRESIDENT GARDNER AND COUNCILORS HALBERG AND HARTMAN
11-0649 - RESOLUTION AMENDING THE STANDING RULES ADDING A NEW RULE 18 -
USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS.

- - -

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

Councilor Boyle moved passage of the consent agenda, which motion was seconded and unanimously carried.

BE IT RESOLVED, that the city council of the city of Duluth makes the following findings of fact:

(a) On September 7, 2011, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Super One Liquor, LLC, d/b/a Super One Liquor, 210 North Central Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 11-1128-07;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on November 28, 2011, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 11-1128-07 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Super One Liquor, LLC, d/b/a Super One Liquor, 210 North Central Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty payable within 30 days of final council action, and payment of \$250 of the penalty by stayed for a period of one year on the condition that the licensee have no same or similar violations.

Resolution 11-0612 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

WHEREAS, the city and state services for the blind, business enterprises program entered into an agreement on or about November 29, 2010, (the "original agreement") under which a legally blind program participant operates coin operated vending machines for the retail sale of various products in City Hall; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

WHEREAS, due to certain economic conditions, state services for the blind has requested modifications to the original agreement; and

WHEREAS, the city and state services for the blind desire to terminate the original agreement and enter into an amended and restated agreement.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an amended and restated agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1128-08, with the state services for the blind, business enterprises program, to authorize operation of vending machines in City Hall by a program participant.

Resolution 11-0613 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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RESOLVED, that the original purchase order to MacQueen Equipment, Inc., for the purchase and delivery of OEM (original equipment manufacturer) replacement parts for Elgin and Vactor equipment is hereby approved and increased by \$16,000, terms net 30, discount ten percent current price list, FOB destination, payable from Fleet Services Fund 660, Department/Agency 015 (administrative services), Object 5221 (equipment repair supplies).

Resolution 11-0619 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the increase to contract 20352 with Inter-City Oil Company, Inc., for both bulk and service station fuels as needed in 2011 is hereby approved for the amount \$40,000 (delivered bulk fuels) plus \$300,000 (service station fuels) for a total amount of \$340,000, payable from the Fleet Services Fund 660, Department/Agency 015 (administrative services), Object 5212 (motor fuels).

Resolution 11-0620 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to St. John's Church and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemption.

RESOLVED FURTHER, that the city clerk is hereby authorized and directed to send a copy of this resolution to the Minnesota gambling control board immediately after its passage.

Resolution 11-0628 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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RESOLVED, that the proposed specifications for the new civil service classification of police records and technology manager, which were approved by the civil service board on October 4, 2011 and which are filed with the city clerk as Public Document No.11-1128-09, are

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

approved; this classification shall remain subject to the city's collective bargaining agreement with its supervisory unit employees and compensated at pay ranges 1075-1090.

Resolution 11-0622 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

BE IT RESOLVED, by the governing body of the city of Duluth, St. Louis County, Minnesota, as follows:

Section 1. Recitals.

1.01 The city of Duluth, the town of Duluth and the town of Lakewood, all in St. Louis County, Minnesota, in 1999 submitted a petition to the Minnesota pollution control agency (the "MPCA") requesting creation of the Duluth/North Shore Sanitary District (the "sanitary district") pursuant to Minnesota Statutes, Sections 115.18 through 115.37 (the "act"). (The city of Duluth, the town of Duluth and the town of Lakewood are herein referred to collectively as the "municipalities.")

1.02 On January 25, 2000, the MPCA issued an order approving creation of the sanitary district (the "order"). The order was published in the *State Register* on January 31, 2000.

1.03 On March 1, 2000, the time for appeal of the order having expired, a certified copy of the order was duly filed with the Minnesota Secretary of state, and creation of the sanitary district was thereupon deemed complete under the act.

1.04 The act requires that the municipalities elect a board of managers for the sanitary district (the "board of managers") as soon as practicable after creation of the sanitary district.

1.05 Pursuant to Section 115.23, subdivision 7 of the act, the municipalities may elect a board member or members by resolutions adopted by all of them separately, concurring in the election of the same person or persons.

Section 2. Findings. It is in the best interests of the municipalities and of the sanitary district that the following person, who is a voter residing in the area of the sanitary district, be nominated for election to the board of managers for the term indicated:

Scott Smith, of the city of Duluth, Minnesota, whose term shall commence upon the first business day of January, 2012 and shall expire on the first business day of January, 2015.

Section 3. Election of board of managers. Election of the above-named person to the board of managers of the sanitary district is approved and such person is elected for the terms indicated.

Section 4. Authorization and direction to clerk. Upon receipt of concurring resolutions from the town of Duluth and the town of Lakewood, the clerk is directed to certify the results of this election to the secretary of the MPCA and to the auditor of St. Louis County and make and transmit to the board member elected a certificate of the board member's election.

Resolution 11-0631 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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RESOLVED, that the city of Duluth's appointments by Mayor Ness to the St. Louis County homeless leadership council of the following individuals are confirmed:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

NAME	TERM EXPIRATION DATE
Lynn Gerlach-Collard (affordable housing coalition representative)	3/31/2013
Deborah Wagner (at large representative)	3/31/2015

Resolution 11-0634 was unanimously adopted.
 Approved November 28, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the Duluth city council hereby expresses its support for One Roof Community Housing’s (formerly NHS of Duluth and Northern Communities Land Trust) request for funding to the Minnesota housing finance agency for funding from the rental rehabilitation deferred loan program (RRDL).

Resolution 11-0630 was unanimously adopted.
 Approved November 28, 2011
 DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city planning division requesting the vacation of two segments of 129th Avenue West located near First Street in Fond du Lac; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (PL11-121) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petitioned streets are useless for vehicular, utility and pedestrian purposes; and

(c) The city planning commission, at its November 8, 2011, regular meeting, recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the following-described streets and depicted on Public Document No. 11-1128-10:

That part of 129th Avenue West in the recorded plat of Fond du Lac, Saint Louis County, Minnesota, lying southerly of the southerly of Second Street (formerly known as Cherokee) and northerly of the northerly line of First Street (formerly known as Miles); and

That part of 129th Avenue West in the recorded plat of Fond du Lac, Saint Louis County, Minnesota, lying southerly of the southerly line of First Street (formerly known as Miles) and northerly of the northerly line of Itasca Street.

RESOLVED FURTHER, that the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, is authorized to record with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-1128-10 showing the rights-of-way to be vacated.

Resolution 11-0635 was unanimously adopted.
 Approved November 28, 2011
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the Salvation Army, under which the Salvation Army would administer an emergency energy assistance program using \$16,086 in funds that the city has received from the Ordean Foundation for such purpose, which agreement is on file in the office of the city

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

clerk as Public Document No. 11-1128-11; payment by the city will be made from the General Fund 110, Agency 700, Organization 1407, Object 5407.

Resolution 11-0629 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1128-12, with Duluth-Superior Public Access Community Television, Inc., (PACT) for providing cablecasting, training and production and administrative services in 2012 relating to public access television in the net amount of \$162,000, to be paid from 110-700-1414-5441 (general, transfers and other functions, public access television).

Resolution 11-0627 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a consultant agreement with SAIC Energy, Environment & Infrastructure, LLC, substantially the same as that on file with the city clerk as Public Document No. 11-1128-13, for professional services in conducting a cost of service study and rate design for the city's public works and utilities department in accordance with the consultant's statement of qualifications and proposal both dated October 31, 2011, for a total amount not to exceed \$44,800, payable from Gas Fund 520, Department/Agency 500 (public works and utilities), Organization 1915 (utility general expense), Object 5319 (other professional services).

Resolution 11-0615 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with RJS Construction Group, LLC, for Lift Station No. 45 Pumping and forcemain improvements in the amount of \$1,192,000, payable from Clean Water Fund 532, Department 500 (public works and utilities), Object 5532 (capital improvements - bond), and of these costs, \$953,600 will be reimbursed with WIF grant and principal forgiveness monies administered by the PFA; City Project No. 0892SN.

Resolution 11-0616 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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RESOLVED, that Resolution 10-0423 awarding a contract for professional engineering services to Salo Engineering, Inc., be amended by an amount of \$14,136.58 for a new total of \$143,848.09. The increase will be payable from Street Improvement Fund 440, Department 038 (special assessment), Object 5530 (improvements other than buildings), City Project No. 0356TR.

Resolution 11-0618 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The city council finds:

(a) That it is deemed necessary for the public conveyance and safety that East Oxford Street, Livingston Avenue and Glenwood Street between Woodland Avenue and Snively Road (City Project No. 0439TR) be reconstructed; and

(b) That this project will not be eligible for municipal state aid funds unless it is constructed to state aid standards for arterial roadways of urban (new or reconstruction) projects, or unless a variance is granted; and

(c) Practical limitations require that tighter horizontal curves than dictated by standards be used. This results in a 16 mph design speed in lieu of a 30 mph design speed, which requires a variance from the commissioner of transportation in accordance with Minnesota Rules Chapter 8820.3300.

RESOLVED, that the city of Duluth requests the commissioner of transportation for a variance from Minnesota Rules for State Aid Operations 8820.9936, whereby the minimum design standards for urban (new or reconstruction) projects be reduced for this project, allowing for a 65' radius (-0.02 superelevation) curve at the intersection of Livingston Avenue and Glenwood Street, and a 90' radius (-0.02 superelevation) curve at the intersection of East Oxford Street and Roslyn Avenue, in lieu of 215' radius (0.06 superelevation) horizontal curves, and further agrees to indemnify, save, and hold harmless the causes of action arising out of or by reason of the reconstruction of East Oxford Street, Livingston Avenue and Glenwood Street in the city of Duluth in any manner other than in accordance with Minnesota Rule 8820.9936, and further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claim whatsoever arising as a result of the granting of this variance.

Resolution 11-0633 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept funds from the United States marshals service (USMS), pursuant to the terms of the regional fugitive task force agreement between the USMS and the city of Duluth approved by the city council on August 16, 2010 (Contract Number 21199), for reimbursement of expenses incurred in support of the regional fugitive task force, said funds to be deposited in Fund 110-160-1610-4209-02 (general fund, police department, administration and investigation, direct federal grants operating).

Resolution 11-0608 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to enter into an agreement with the Duluth Public Arts Fund, Inc., for the placement of a bronze sculpture entitled "Cooperation, Safety, Honor" at the new public safety building adjacent to the St. Louis County sheriff's department.

Resolution 11-0611 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with St. Louis County, the University of Minnesota-Duluth police department, the city of Hermantown, the city of Proctor and the city of Floodwood, substantially the same as that on file in the office clerk as Public Document No. 11-1128-14, for services provided under 2012 toward zero deaths law enforcement grant from the Minnesota department of public safety, all reimbursement payments pursuant to the agreement shall be paid from Fund 215-200-2292-5447 (Duluth police grant program, police, 2010 pilot enforcement project, payment to other government agencies).

Resolution 11-0614 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1128-15, with the city of Superior to participate in the 2011 child sexual predator program and to accept grant monies in the amount of \$103,000 to be used to support the work of the Lake Superior forensic technology and Internet crimes against children task force, funds to be deposited in Fund 215-200-2203-4210-02 (Duluth police grant programs, police, sexual predator program grant).

Resolution 11-0621 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following accessible parking zones are established:

One accessible space in front of 344 Leicester Avenue;

One accessible space in front of 422 North 13th Avenue East.

Resolution 11-0625 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

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RESOLVED, that in accordance with Section 45-25 of the Duluth City Code, 1959, as amended, Lincoln Park Drive shall be closed between Fifth Street and Tenth Street, and access to Lincoln Park Drive will be blocked on Seventh Street. The closure will be from November 1 through April 15 each year.

Resolution 11-0626 was unanimously adopted.

Approved November 28, 2011

DON NESS, Mayor

- - -

The following resolution was also considered:

Resolution 11-0624, to expand the existing resident permit parking zone around East High School, was introduced by Councilor Fosle for discussion.

The rules were suspended upon a unanimous vote to hear from speakers on the resolution.

Betty Greene stated that until the school district finds a better long term solution, an extension of the zone is necessary.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Byron Johnson questioned if there was a lack of planning when the new zone goes 13 blocks north to 43rd Avenue East and Dodge Street but only goes six blocks east to 45th Avenue East and Regent Street.

Brian Rohstrom voiced concern that the football stadium increased its seating which took away parking for the students.

Councilor Hartman moved to amend the resolution's public document to eliminate Dodge Street from 43rd to 44th avenues East, which motion was seconded and unanimously carried.

Councilor Fosle stated the question is how far away from the school are the students willing to park and walk to school. He suggested that parking restrictions be implemented one street at a time to see if the students will keep moving above the zone to park.

Councilor Fosle moved to amend the resolution to post one street at a time, one week at a time, which motion failed for lack of a second.

Resolution 11-0624, as amended, was adopted as follows:

RESOLVED, that pursuant to Section 33-125 of the Duluth City Code, 1959, as amended, the area lying within that portion of the city shown on that map on file in the office of the city clerk as Public Document No. 11-1128-16 is hereby designated as a resident permit parking zone during each period from and including September 1 of any year to June 15 of the following year between the times of 8:00 AM and 4:00 PM, on any Monday through Friday therein.

FURTHER RESOLVED, that all no parking zones and other parking restrictions previously established by the city council within the resident permit parking zone established by this resolution shall remain in effect.

Resolution 11-0624, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Hartman, Stauber and President Gardner -- 7

Nays: Councilor Fosle -- 1

Absent: Councilor Halberg -- 1

Approved November 28, 2011

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR BOYLE

11-060 - AN ORDINANCE AMENDING CHAPTER 13, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CIVIL SERVICE.

The rules were suspended upon a unanimous vote to hear from speakers on the ordinance.

David Leonzal, representing the AFSCME union, Eric Simonson, representing the fire union, and Tom Maida, representing the police union, urged the council to send the ordinance back to the administration for the following reasons: the unions need time to review the ordinance with the proposed changes; the ordinance strips the power from the civil service board and gives it to the human resources director, which eliminates the checks and balances of the hiring process; the Civil Service Code needs to be updated but does not need to be overhauled and thrown out; recommendations from the task force which did meet with the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

unions are not implemented in the new ordinance and the council should hear from the civil service board to get their opinion on the ordinance.

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INTRODUCED BY COUNCILOR HARTMAN

11-059 - AN ORDINANCE PROHIBITING WORK WHICH DAMAGES CITY UTILITIES AND PROVIDING FOR PENALTIES FOR VIOLATION THEREOF, AMENDING CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED, BY ADDING A NEW ARTICLE XIII THERETO.

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The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR CUNEO

11-055 (10123) - AN ORDINANCE AMENDING SECTION 8-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

Councilor Cuneo moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR STAUBER

11-056 (10124) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST DULUTH/ SPIRIT VALLEY AREA TO DEDA FOR \$1,126.

Councilor Stauber moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR FOSLE

11-054 - AN ORDINANCE REPEALING AND REPLACING CHAPTER 33, ARTICLE VI, AND AMENDING SECTIONS 33-101, 33-108, 33-110, 33-111.1 AND 33-221 OF THE DULUTH CITY CODE, 1959, AS AMENDED, CREATING A NEW DULUTH PARKING COMMISSION.

The rules were suspended upon a unanimous vote to hear from speakers on the ordinance.

John Simpson, Bill Bennett and Rick Heimbach urged support of the new parking commission ordinance as it is a good step forward to give the parking commission other duties, the council will value their input and it will help change the community and business environment for the better.

Kristi Stokes, representing the Greater Downtown Council, stated they are pleased to partner with the city for improving the parking in the Downtown and revising the parking commission is a good first step. She further stated that the parking study that was completed has a broad vision and strategic, proactive approach which will help both customers and businesses Downtown.

President Gardner moved to amend Section 33-75(b) of the ordinance as follows:

(a) Insert after the phrase "subject to council approval," the phrase "except the councilor member who shall be appointed by the council president subject to council approval";

(b) Delete the phrase "innovative and open minded,"

which motion was seconded and unanimously carried.

Mr. Johnson stated that the amendment to the ordinance is substantial so the ordinance would need a second reading at the next council meeting.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

INTRODUCED BY COUNCILOR FOSLE

11-057 (10125) - AN ORDINANCE AMENDING SECTION 10-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE BUILDING APPEAL BOARD.

Councilor Fosle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR FOSLE

11-058 (10126) - AN ORDINANCE AMENDING SECTIONS 40-4 AND 40-10 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO ABANDONED PROPERTY.

Councilor Fosle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 9:20 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10123

AN ORDINANCE AMENDING SECTION 8-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE ALCOHOLIC BEVERAGE CODE.

The city of Duluth does ordain:

Section 1. That Section 8-40 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-40. Dancing and late hours entertainment licenses for liquor establishments.

(a) No person licensed to sell alcoholic or 3.2 malt liquor beverages on sale shall allow dancing participated in by the public or late hours entertainment on the licensed premises unless a license has been issued pursuant to this Section;

(b) A dance license, whether an annual, seasonal or a one day license, shall entitle the on sale licensee to have dancing participated in by the public on the licensed premises;

(1) Notwithstanding any provision of this Section or Chapter to the contrary, clubs and congressionally chartered veterans organizations that are open only to members and bona fide guests of members may have dancing participated in by members and guests, without securing a dance license;

(2) The term of the annual dance license shall be the same as the term of the on sale license. The term of the seasonal license is limited to the months of May through August;

(3) The fee for any dance license shall be set in accordance with Section 8-56(d). The fee for the annual license shall be prorated in the same manner as on sale licenses;

(4) The procedures and standards applicable to the issuance of the late hours entertainment license, where applicable, shall apply to the issuance of the annual or seasonal dance license;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(5) The city clerk is authorized to issue the one day dance license. The following procedures and standards are applicable to the issuance of the one day dance license:

(A) No license shall be issued unless an application for the license is received by the city clerk at least 60 days prior to the event date;

(B) The license is subject to approval by the police and fire departments. Such approval is subject to, but not limited to, the following standards:

1. No license shall be issued in an area or under circumstances that would result in the disturbance of adjoining properties or the surrounding neighborhood;

2. The police and fire departments shall apply the same considerations applicable to the late hours entertainment license;

3. The license may contain conditions and limitations concerning security for the event and the hours during which the dancing event may be held; however, the license shall not authorize dancing after the time authorized for the sale of alcohol;

4. The city clerk shall notify the licensee in writing of the action taken on the application by any reasonable means, including but not limited to, the United States mail or electronic transmission. The licensee may appeal the action of the city clerk to the alcohol, gambling and tobacco commission. The appeal is subject to the following procedures:

(i) The appeal shall be made in writing within seven days after written notice of the action is issued, on a form provided by the city clerk, and filed with the city clerk. The appeal shall be accompanied by an appeal fee which shall be established by the city council pursuant to Section 31-6(a). The issues on appeal shall be limited to the issues presented in the written appeal;

(ii) In deciding the appeal the commission shall apply the same criteria required of the city clerk;

(iii) The decision of the commission shall be the final decision of the city subject to appeal to the Minnesota Court of Appeals pursuant to Minnesota Statutes Section 606.01;

(iv) The failure of the applicant to submit an application sufficiently in advance of the proposed dance event to allow for an appeal is the sole responsibility of the applicant;

(c) Notwithstanding any provision of this Section or Chapter to the contrary, late hours entertainment licenses may be issued to establishments holding on sale alcoholic beverage licenses or 3.2 malt liquor beverages if they meet the criteria set forth in Section 8-40(d). The late hours entertainment license shall allow the establishment to have music and entertainment, including dancing by patrons, after the hours when sales of alcoholic beverages are required to cease. The fee for such license shall be set in accordance with Section 8-56(d);

(d) The annual and seasonal dance license and the late hours entertainment license shall be subject to the following procedures and standards:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(1) Every application shall be investigated by the police and fire departments and alcohol, gambling and tobacco commission;

(2) No license shall be issued in an area or under circumstances where the dancing or late hours entertainment would disturb adjoining properties or the surrounding neighborhood;

(3) In their investigation and recommendations, the police and fire departments and the alcohol, gambling and tobacco commission shall consider, without limitation:

(A) The proximity of the establishment to residences and residentially zoned property;

(B) The character of the neighborhood surrounding the establishment;

(C) Parking facilities at the establishment;

(D) The acoustic properties of the building housing the establishment;

(E) The past record of the establishment; and

(F) Any past complaints from adjoining property owners;

(4) The license may contain conditions and limitations concerning types of entertainment and hours of entertainment or dancing;

(5) No entertainment or dancing shall be allowed after 3:00 a.m.;

(6) All establishments allowing late hours dancing must have a dancing license as required by paragraphs (a) and (d) of this Section;

(7) During all times when dancing or late hours entertainment is conducted on the licensed premise the licensee shall provide adequate security personnel. The chief of police shall approve the security personnel plan. The licensee is responsible for all fees or expenses of such security personnel.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 31, 2011)

Councilor Cuneo moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Halberg -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 28, 2011
Approved November 28, 2011
DON NESS, Mayor

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ORDINANCE NO. 10124

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST DULUTH/SPIRIT VALLEY AREA TO DEDA FOR \$1,126.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the Code), the manager of the city's physical planning division has reviewed this proposed conveyance and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Code, the city assessor has provided an estimate of the market value to be \$1,126;

(c) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale pursuant to Article XXXIII of Chapter 2 of the Code;

(d) As per Section 2-177.3 of the Code, the property described in section 2 below is being conveyed to the Duluth economic development authority (DEDA) at market value for the purpose of being conveyed to Irving School, LLC, in order to ameliorate conformity issues with UDC requirements, to foster the availability of multi-family housing in the neighborhood and because Irving School, LLC, is the only entity that can make practical use of this property.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to DEDA, for the amount of \$1,126 to be deposited into Fund 110 (general), Agency 700 (transfers and other functions), Organization 1420 (capital programs), Object 4640 (sale of land), and further to execute all documents necessary with regard to said conveyance:

All that part of the following described lot:

Lot 9, Block 25, West Duluth First Division, according to the plat thereof on file and of record in the office of the County Recorder in and for St. Louis County, Minnesota;

which lies northeasterly of the following described line:

beginning at a point on the east line of said Lot 9, distant 15 feet south of the northeast corner thereof, thence run northwesterly to a point on the north line of said Lot 9, distant 75 feet west of the northeast corner thereof and there terminating.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 31, 2011)

Councilor Stauber moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Halberg -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 28, 2011
Approved November 28, 2011
DON NESS, Mayor

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ORDINANCE NO. 10125

AN ORDINANCE AMENDING SECTION 10-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE BUILDING APPEAL BOARD.

The city of Duluth does ordain:

Section 1. That Section 10-5 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 10-5. Building appeal board.

(a) There is hereby established a building appeal board, which shall hear and determine appeals under the state building and fire codes and Duluth Housing Code. Such board shall consist of 12 members who shall be appointed by the mayor, subject to the approval of the city council and who shall serve without compensation. The Duluth fire chief and building official shall be appointed as ex officio members of the board. The building official shall have no vote on any matter before the board and shall act as secretary of the board. One member of the board shall work in the area of finance; one member shall be a registered architect; one member shall be a registered engineer working in the area of building construction design; one member shall be engaged in the business of residential building construction; one member shall be engaged in the business of commercial building construction; one member shall work in the area of building materials supply; one member shall be a member of a building trade union; one member shall be a realtor or real estate manager; and two members shall be appointed from the general citizenry of the city of Duluth. Of the first persons appointed for membership on the board, four shall be appointed for three years, four shall be appointed for two years, and three shall be appointed for one year. Thereafter, all appointments shall be for a term of three years, except that vacancies caused by death, resignation or otherwise may be filled for the remaining unexpired term;

(b) Within 30 days after the initial appointments, the board shall meet and elect a chairman and vice chairman. Thereafter, the board shall meet at stated intervals fixed by resolution of the board, or at the call of the chairman or of any three members of the board. The board may adopt reasonable rules and regulations for conducting its investigations and hearings;

(c) The board shall have jurisdiction to perform the following functions:

(1) To hear appeals from decisions made by the building official interpreting the State Building Code where such interpretation involves points not clearly covered by said Code, the appropriateness of alternate methods of construction, or the appropriateness of the use of alternate materials;

(2) To hear appeals from decisions made by the building official in enforcing or interpreting the Duluth Housing Code, Chapter 29A, of the Duluth City Code;

(3) To hear appeals from decisions of the fire chief which arise under Chapter 21 of the Duluth City Code;

(4) To hear appeals from an order of the building official which applies Article II or III of Chapter 10 of Duluth City Code, as amended, or its

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

successor, which includes orders for demolition or other decisions under Article II or III of Chapter 10, Duluth City Code;

(d) Any owner or occupant who wishes to appeal a decision of the building official or fire marshal shall serve written notice of appeal upon the building official within 15 days after receiving notice of such decision and pay the appeal fee. The appeal fee shall be set in accordance with Section 31-6(a) of this Code. The notice of appeal shall contain a complete statement of the matter in controversy and relief requested. If the appeal is from a refusal to grant a permit authorizing the use of an alternate material or method of construction, the notice of appeal shall contain a guarantee of payment of all expenses of any tests made or ordered by the board. If the appeal is from a decision of the fire chief, the building official shall forward a copy of the notice of appeal to the fire chief. The building official shall notify the appellant of the time and place of the hearing. If the appellant withdraws his or her appeal in writing prior to the date and time set therefore, the building official shall refund the aforesaid fee. At the hearing, the board shall hear all relevant evidence and arguments. After due deliberation, the board shall render its decision in writing and notify the appellant of its decision by U.S. mail, electronic means or personal service. Decisions involving the State Building Code shall be mailed to the state building inspector within 15 days after they are rendered. The building official shall keep an indexed record of decisions of the board. If the board grants an appellant an extension of time to do an act, then, at the next meeting after expiration of that period of time, the matter shall be set on the meeting agenda for the board's review and action;

(e) In making its decisions, the board shall use the following criteria:

(1) Building code appeals. The board shall approve alternate materials or methods of construction only if reasonable proof is presented that such material or method is at least equivalent to State Building Code standards in quality, strength, effectiveness, durability, fire resistance and safety;

(2) Housing code appeals and appeals of demolition or other orders. The board may remedy any error it has found the building official has made in the interpretation of the housing code or of Article II or III of Chapter 10, Duluth City Code, or their successors. The board may also grant such relief as it deems reasonable from strict compliance with each provision of these parts of Duluth City Code, but no relief shall be granted unless it is found that:

(A) There is substantial compliance with the provisions of the Code;

(B) No detriment to public health or safety will result from granting such relief;

(C) The intent of the Code is not compromised;

(D) The relief granted will not result in increased cost expense to the city;

(3) Variances from the minimum requirements of the fire code may be recommended to the state fire marshal only if:

(A) There is substantial compliance with the provisions of the fire code;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(B) The safety of the building occupants and general public will not be jeopardized;

(C) Undue hardship will result to the applicant if relief is not granted;

(f) Any owner or occupant aggrieved by a decision of the board which involves a housing code matter, except a demolition matter under Section 10-3 of this Code, or its successor, may appeal such decision to the city council by filing a notice of appeal with the building official within 15 days after receiving notice of the board's decision. Such notice of appeal shall be addressed to the city council and shall state the grounds upon which the appeal is taken. The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. The building official shall file all appeal notices with the city council. The city council shall hear the appeal within 30 days after the notice of appeal is filed and shall affirm, modify or reverse the decision of the board. The board's decision on demolition orders or any matter arising under Section 10-3 of this Code, or its successor, shall be appealed to the appellate courts pursuant to Minnesota Statutes Section 606.01.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 31, 2011)

Councilor Fosle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Halberg -- 1

Passed November 28, 2011
Approved November 28, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10126

AN ORDINANCE AMENDING SECTIONS 40-4 AND 40-10 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO ABANDONED PROPERTY.

The city of Duluth does ordain:

Section 1. That Section 40-4 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 40-4. Abandoned property defined.

For the purposes of this Article, property shall be deemed to be abandoned if it has been in the possession of the city or any officer or agent thereof or remains in a building condemned for demolition for more than 30 days from the date of the mailing of a written notice by the city to such owner to appear and present proof of his or her ownership.

Section 2. That Section 40-10 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 40-10. Definitions.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

For the purpose of this Chapter, the terms defined in this Section shall have the meanings ascribed to them:

Nuisance event. An event requiring special security assignment in order to protect the public peace, health, safety and welfare. A nuisance event includes, but is not limited to, the following:

- (a) Unlawful sale, possession, storage, delivering, giving, manufacture, cultivation or use of controlled substance;
- (b) Prostitution or prostitution-related activity;
- (c) Illegal gambling or gambling-related activity;
- (d) Unlicensed sales of alcoholic beverages or unlawful sales or gifts of alcoholic beverages by an unlicensed person or underage consumption at a specific location;
- (e) Loud and boisterous conduct, noises and activities that disturb the peace;
- (f) Events between 11:00 p.m. and sunrise which disturb the peace and tranquility of the neighborhood;
- (g) Congregating in a tumultuous, noisy or rowdy crowd;
- (h) Fighting or use of obscene or inflammatory language;
- (i) Loud music constituting a nuisance or disturbing the peace;
- (j) Activities causing excessive pedestrian or vehicular traffic and parking problems and congestion;
- (k) Indecent exposure or lewd conduct.

For the purposes of this Article, the term nuisance event shall not include an event of domestic abuse as that term is defined in Minnesota Statutes Section 518B.01 Subdivision 2(a).

Owner. A person or persons shown to be owner or owners of property on the property tax records of St. Louis County, Minnesota.

Personal service. Service by personally handing a copy to the intended recipient or by leaving a copy at the intended recipient's residence or place of business with a person of suitable age and discretion.

Police services fee. A fee imposed for law enforcement services associated with a special security assignment. Such fee shall be set in accordance with Section 31-6(a) of this Code and may be based on, but not limited to, salaries of police officers while responding to or remaining at the nuisance event, the pro rata cost of equipment, the cost of repairing city equipment and property and the cost of any medical treatment of injured police officers.

Responsible person. A person who owns the property where the nuisance event takes place, and/or a person in charge of the premises, and/or a person who organized or served as a host of the nuisance event. If the responsible person is a minor, then the parents or guardians of that minor will also be considered responsible persons.

Special security assignment. The assignment of police officers, services and/or equipment during a second or subsequent response to a nuisance event at a particular location after the service of a written notice to the responsible persons that a police services fee may be imposed for costs incurred by the city for any subsequent police response at such location.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 31, 2011)

Councilor Fosle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Hartman, Stauber and President Gardner -- 8

Nays: None -- 0

Absent: Councilor Halberg -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 28, 2011
Approved November 28, 2011
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, December 5, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-1205-14 Grandma's Restaurant Company appeal of planning commission denial of a variance for an illuminated marquee. -- Committee 2 (planning and economic development)

11-1205-11 Tom Johns submitting communication regarding the proposed 2012 budget (11-062-O). -- Received

11-1205-13 Peter Stauber communication regarding the proposed ordinance amending Chapter 13 of the Duluth City Code relating to civil service (11-060-O). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

11-1205-10 Civil service board minutes of November 1, 2011, meeting. -- Received

11-1205-12 Community development committee minutes of October 11, 2011, meeting. -- Received

11-1205-01 Duluth transit authority: (a) Minutes of September 28, 2011, meeting; (b) August 2011 income statement. -- Received

11-1205-02 Library board minutes of October 25, 2011, meeting. -- Received

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At this time, 7:04 p.m., the public hearing regarding the 2012 budget was opened.

Dan D'Allaird, Edith Bogue and Richard Haney thanked the council for allowing the citizens to vote on a parks fund and to help get the information out that the future of the parks and libraries in Duluth was in the hands of the citizens.

No one else appeared who wished to be heard and the public hearing was closed at 7:14 p.m.

- - -

At this time, 7:15 p.m., the public hearing regarding general obligation capital improvement bonds was opened.

No one appeared who wished to be heard and the public hearing was closed at 7:16 p.m.

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlafer stated the voter ID system would maintain the integrity of elections by ensuring everyone who votes has a proper ID.

- - -

Hugo Leider requested the city to review the no parking signs in his neighborhood as the neighborhood was misrepresented when the signs went up.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Cheryl Skafte and Paul Manny, representing a group of students from the YMCA, explained they are a youth group interested in government and have traveled to the state capitol to debate and discuss different bills and would like to talk to councilors about local issues as well.

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UNFINISHED BUSINESS

Resolution 11-0649, by President Gardner and councilors Halberg and Hartman, amending the Standing Rules adding a new Rule 18 - use of the internet and electronic communications, was introduced for discussion.

Councilor Stauber reviewed that this issue was being pushed because of the concern for the open meeting law, but the open meeting law was intended to prevent councilors from discussing issues and deliberations when a quorum is present and nothing to do with councilors and how they get their information or whom they talk to for information. He continued saying that by requiring a councilor to announce what internet site, email or who they talked to during the meeting will prevent people from contacting their councilor for fear of their name being announced at the meeting and makes an additional administrative requirement which will be time consuming during a meeting. Councilor Stauber also stated that he has not had a complaint from the public on this issue since emails and the internet have become a research tool.

Councilor Hartman explained that the proposed amendment to the standing rules is a way to be transparent as a city body. He stated that if a councilor accesses the internet or receives an email during a discussion at a council meeting, and a councilor uses an important piece of information as part of the debate, the rest of the council should know where the information came from so it has some validity to it.

President Gardner explained that if a councilor opens an email during a council meeting and if it is not relevant to the discussion at the meeting, a councilor does not need to disclose the email, but if the email is pertinent to an issue the council is discussing and a councilor chooses to include that information in the discussion, then it would be appropriate to disclose the email to the council.

Resolution 11-0649 failed upon the following vote (Public Document No. 11-1205-03):

Yeas: Councilors Anderson, Boyle, Halberg, Hartman and President Gardner -- 5

Nays: Councilors Cuneo, Fedora, Fosle and Stauber -- 4

[Editor's note: Standing rule amendments need a 6/9ths vote to pass.]

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, that the 2012 tourism taxes of hotel-motel and food and beverages, as estimated, be distributed in the following manner:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

	3% Hotel-Motel	1% Hotel-Motel	2.25% Food & Beverage	Add'l 2.5% Hotel-Motel	Total
DECC Amsoil Arena debt service	1,092,400		1,438,600		\$2,531,000
Visit Duluth	588,200	196,100	631,700	184,000	\$1,600,000
Other promotional programs			6,000		\$6,000
Transfer to general fund	88,500	260,100	292,500	96,800	\$737,900
DECC expansion debt service			542,800		\$542,800
Lake Superior Zoo fund			413,800	106,200	\$520,000
Spirit Mountain debt/capital				500,000	\$500,000
Great Lakes Aquarium		16,800	184,000	99,200	\$300,000
Business improvement district			200,000		\$200,000
Lake Superior Center Debt service				149,700	\$149,700
Heritage and Arts Center		81,500	56,100	14,200	\$151,800
Capital projects			77,300	22,700	\$100,000
DECC - Bayfront Park		35,200	14,800		\$50,000
Undesignated fund balance			11,900	33,200	\$45,100
Rail alliance				30,900	\$30,900
Duluth public arts commission			20,000	10,000	\$30,000
Sister cities			10,000	10,000	\$20,000
TOTALS	1,769,100	589,700	3,899,500	1,256,900	\$7,515,200

FURTHER RESOLVED, that \$231,900 in additional funds be allocated to DECC expansion debt and Lake Superior Center debt service; this source coming from reserve for debt service, which is excess revenue from the dedicated five percent food and beverage tax and five percent hotel/motel tax.

Resolution 11-0637 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

- - -

RESOLVED, that the operation budget for the fiscal year January 1, 2012, to December 31, 2012, in the amount of \$13,488,790 for the Duluth transit authority is hereby approved.

FURTHER RESOLVED, that the authority included in the resolution shall submit to the city council its proposed budget in a prescribed format on or before November 15 of each year.

Resolution 11-0638 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

- - -

RESOLVED, that the operation budget for the fiscal year January 1, 2012, to December 31, 2012, in the amount of \$4,167,000 for the Duluth airport authority is hereby approved.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, that the authority included in the resolution shall submit to the city council its proposed budget in a prescribed format on or before November 15 of each year.

Resolution 11-0639 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

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RESOLVED, that Resolution 11-0182 is amended by changing the date when the line of credit is to be repaid in full (to a zero balance) from October 31 to December 31 to better match the seasonal cash flow needs of the authority. The existing \$350,000 line of credit is available as needed to assist in the management of cash flow within the approved budget. Interest at a rate of four percent per annum is charged on drawn funds.

Resolution 11-0648 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a contract with Enventis Telecom, Inc., for the purchase and delivery of data equipment racks and related power equipment for the city's backup data center for a total of \$53,389.92 plus \$3,670.56 sales tax for a total amount of \$57,060.48, payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project CP 2009-0928B.

Resolution 11-0646 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

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WHEREAS, city entered into a loan agreement with Greater Minnesota housing fund ("GMHF") on October 3, 2006, ("original agreement") pursuant to which GMHF extended a \$200,000 loan to city ("funds") and city executed a promissory note ("note") in favor of GMHF with a maturity date of November 6, 2016, for the purpose of establishing a revolving maintenance fund to be used for city's tenant remedies action to help attain compliance with applicable housing and safety codes for affordable housing; and

WHEREAS, GMHF desires to change the structure of the loan so that funds are no longer held in the city's account but instead are held by GMHF in a revolving line of credit; and WHEREAS, in order to implement the loan structure change: (i) city and GMHF will terminate the original agreement; (ii) city will return the loan funds held in the city account to GMHF; (iii) upon receipt of the loan funds, GMHF will provide a loan repayment receipt to the city; (iv) city and GMHF will enter into a new loan agreement establishing a \$200,000 revolving line of credit to be used for the city's tenant remedies actions; and (v) city will enter into a new promissory note evidencing such loan.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to enter into a termination of loan agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1205-04, with Greater Minnesota Housing Fund pursuant to which the city will return the loan funds held in the city's account to GMHF, payable from Fund 230 GMHF revolving fund.

FURTHER RESOLVED, that the proper city officials are authorized to enter into a loan agreement and execute the promissory note attached thereto as Exhibit A, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1205-04, with

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Greater Minnesota housing fund in the amount of \$200,000 for the purpose of establishing a revolving line of credit to be used for the city's tenant remedies action to help attain compliance with applicable housing and safety codes for affordable housing, monies received from the line of credit payable into Fund 230 GMHF revolving fund.

Resolution 11-0650 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

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RESOLVED, that the city of Duluth ("city") act as the legal sponsor for the intermodal improvements and rehabilitation of the Skyline Parkway project as contained in the grant program application to be submitted prior to December 19, 2011, and that the mayor and clerk are hereby authorized to apply to the U.S. department of transportation, federal highway administration, for a grant in the amount of \$1,160,000 for funding of this project.

FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

FURTHER RESOLVED, that the city hereby commits to provide no less than \$290,000 (or 20 percent of the \$1,450,000 project cost) in a qualified match contribution to be provided by the city of Duluth.

FURTHER RESOLVED, that the city has not violated any federal, state and local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices.

FURTHER RESOLVED, that upon approval of its application by the state, the mayor and clerk may enter into a grant agreement with the state of Minnesota for the above referenced project and receive said grant payable into Permanent Improvement Fund 411, Department 035 (capital project accounts), Object 4210-01 (pass-through federal grants - capital), and that the city certifies that it will comply with all applicable laws and regulations.

FURTHER RESOLVED, the mayor and clerk are hereby authorized to execute such documents as are necessary to implement the project on behalf of the city.

Resolution 11-0652 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

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RESOLVED, that the city of Duluth ("city") act as the legal sponsor for the Safety, shoulder and rehabilitation improvements to North Shore Scenic Drive as contained in the grant program application to be submitted prior to December 19, 2011, and that the mayor and clerk are hereby authorized to apply to the U.S. department of transportation, federal highway administration, for a grant in the amount of \$2,360,000 for funding of this project.

FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

FURTHER RESOLVED, that the city hereby commits to provide no less than \$590,000 (or 20 percent of the \$2,950,000 project cost) in a qualified match contribution to be provided by the city of Duluth.

FURTHER RESOLVED, that the city has not violated any federal, state and local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

FURTHER RESOLVED, that upon approval of its application by the state, the mayor and clerk may enter into a grant agreement with the state of Minnesota for the above referenced project and receive said grant payable into Permanent Improvement Fund 411, Department 035 (capital project accounts), Object 4210-01 (pass-through federal grants - capital), and that the city certifies that it will comply with all applicable laws and regulations.

FURTHER RESOLVED, the mayor and clerk are hereby authorized to execute such documents as are necessary to implement the project on behalf of the city.

Resolution 11-0653 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a three-year agreement with an option for two additional three-year terms with the Arrowhead Zoological Society, Inc., substantially the same as that on file in the office of the city clerk as Public Document No. 11-1205-05, to continue the management and operations of the Lake Superior Zoological Gardens; payment by the city will be made from Fund 200-130-5310, (zoo, community resources, contract services).

Resolution 11-0623 was unanimously adopted.

Approved December 5, 2011

DON NESS, Mayor

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The following resolutions were also considered:

BE IT RESOLVED, by the city council (the "council") of the city of Duluth, Minnesota (the "city"), as follows:

Section 1. Under and pursuant to the provisions of Minnesota Statutes, sections 410.32 and 412.301 (the "act"), and Minnesota Statutes, Chapter 475, and the City Charter, the city is authorized to issue its general obligation capital equipment notes to provide funds to purchase capital equipment having an expected useful life at least as long as the term of the capital equipment notes.

Section 2. The council declares the intent of the city to issue capital equipment notes in 2012 in an amount up to \$4,598,000 to finance the purchase of capital equipment authorized by the act, together with an additional amount to pay costs of issuance of the capital equipment notes and discount in an amount estimated to be not more than \$152,000.

Section 3. The capital equipment to be financed includes those items of equipment set forth on the list (Public Document No. 11-1205-06), which list of equipment is hereby approved for purchase in 2012.

Section 4. The terms and conditions of the capital equipment notes and the sale thereof shall be established by further resolution of the council.

Section 5. This resolution constitutes a declaration of official intent under Treasury Regulations Section 1.150-2. The city reasonably expects to acquire all or a portion of the capital equipment prior to the issuance of the capital equipment notes and to reimburse expenditures incurred with respect to such capital equipment purchase program with the proceeds of the capital equipment notes.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0640 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved December 5, 2011

DON NESS, Mayor

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BE IT RESOLVED, by the city council of the city of Duluth, Minnesota (the "city"), as follows:

Section 1. Note Purpose and authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the city is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal sewer utility, which bonds or notes shall be a specific lien upon the sewer utility and are payable primarily from net revenues to be derived from the operation of the municipal sewer utility and pledged for their payment. The city has applied for and received a commitment from the Minnesota public facilities authority (the "PFA") for a loan for the Project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10110 adopted September 26, 2011 (the "ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$1,505,000 of the city for three projects, one of which is the following project: Lift Station No. 45 pumping and forcemain improvements in an estimated amount of \$452,300 (the "project") as identified in the city's application to the PFA, and for the payment of part of the interest cost of the bond or note.

1.03 The city has applied for and received a grant from the state of Minnesota's wastewater infrastructure fund in the amount of \$1,130,480 to pay a portion of the costs of the project. The general obligation sewer utility revenue note to be issued under the ordinance for the project shall be issued in the principal amount of \$282,620 (the "note") to pay the portion of the costs of the project, not paid by such grant funds.

1.04 The council hereby determines that the project is a project for the purpose of designing, constructing, repairing or replacing structures or facilities, including sanitary sewage overflow storage and for the purpose of attaining compliance with federal or state inflow and infiltration standards, within the meaning of City Code Section 43-11.1(7), and thus the costs of the project and debt service of the note which paid costs of the project are eligible costs to be paid from the clean water fund created under City Code Section 43-11.1 (the "clean water fund").

1.05 The city hereby authorizes the issuance and sale of the note, in substantially the form on file in the office of the clerk as Public Document No. 11-1205-07, for the project to the PFA pursuant to a Minnesota public facilities authority bond purchase and project loan agreement dated November 16, 2011, between the PFA and the city, in substantially the form presented to the council and on file in the office of the clerk (the "loan agreement"), as Public Document No. 11-1205-07 which is hereby authorized, ratified and approved.

Section 2. Execution and delivery of note and loan agreement.

2.01 The Note to be issued hereunder shall be dated as of the date of delivery to PFA, shall be issued in the principal amount of \$282,620, in fully registered form and lettered and numbered R-1. Interest on the note shall be at the rate of 1.00% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to

the note, subject to adjustment as provided in the loan agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the note, such payment shall be mailed by the city at least five business days prior to the payment date.

2.02 The note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the mayor and attested by the manual signature of the clerk. In case any officer whose signature shall appear on the note shall cease to be an officer before delivery of the note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the city regarding the loan agreement, including but not limited to, the officers of the city executing the loan agreement, are ratified, confirmed and approved as of the date of the loan agreement.

2.03. The city will cause to be kept at its offices a register in which, subject to such reasonable regulations as the city may prescribe, the city shall provide for the registration of transfers of ownership of the note. The note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the note, together with a written instrument of transfer satisfactory to the clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the note shall be made at a place mutually satisfactory to the city and the PFA. The note shall be furnished by the city without cost to the PFA. The note, when prepared in accordance with this resolution and executed, shall be delivered to the PFA by and under the direction of the treasurer. Disbursement of the proceeds of the note shall be made pursuant to the loan agreement.

2.05. In the event of an inconsistency between a provision of this resolution and a provision of the loan agreement, the provision of the loan agreement shall govern.

Section 3. Revenues, accounts and covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the note and on all other bonds and notes heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The city will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate sewer utility operating account within the public utility sewer fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the proper city official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds or notes when due.

3.02 The city hereby creates a separate construction account (the "2011D construction account") within the public utility sewer fund to which there shall be credited the

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proceeds of the note as received, together with investment income thereon, all grant funds for the project and any additional funds which may be available and are appropriated for improvements to the project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the project and costs of the issuance of the note.

3.03 Until the note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the city will also maintain a separate debt service account (the "sewer debt service fund") in the public utility sewer fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the sewer utility. The council further authorizes the use of monies on deposit in the clean water fund to pay the principal of and interest on the note. All investment income on funds in the sewer debt service fund are pledged to payment of the note and other bonds and notes payable from the sewer debt service fund. The treasurer shall transfer from the sewer utility operating account and the clean water fund to the sewer debt service fund amounts of the net revenues and monies from the clean water fund sufficient for the payment of all interest and principal then due on the note. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the Sewer utility operating account, in excess of payments due from and reserves required to be maintained in the sewer utility operating account and in the sewer debt service fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the Sewer debt service fund are insufficient to pay principal of and interest on the note and the other bonds and notes payable from such fund as the same become due, the city is required by law and by contract with the holders of the note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the note.

B. The full faith and credit and taxing powers of the city are irrevocably pledged for the prompt and full payment of the principal of and interest on the note, as such principal and interest respectively become due. However, the net revenues of the sewer utility appropriated to the sewer debt service fund are estimated to be not less than five percent in excess of the principal of and interest on the note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the 2011D construction account and the sewer debt service fund may, at the discretion of the city, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit payment of the project costs and/or the principal and interest on the note and bonds or notes payable from the sewer debt service fund when due, as applicable.

Section 4. Tax covenants; miscellaneous.

4.01 The city council covenants and agrees with the holders of the note that the city will (i) take all action on its part necessary to cause the interest on the note to be exempt from

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federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the note to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the note and investment earnings thereon on certain specified purposes.

4.02 A. No portion of the proceeds of the note shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the note was issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the note or \$100,000. To this effect, any proceeds of the note and any sums from time to time held in the sewer debt service fund (or any other city account which will be used to pay principal and interest to become due on the note) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

B. In addition, the proceeds of the note and money in the sewer debt service fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the note to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1996, as amended (the "code").

C. The city hereby covenants not to use the proceeds of the note, or to cause or permit them to be used, in such a manner as to cause the note to be a "private activity bond" within the meaning of sections 103 and 141 through 150 of the code.

4.03 If the city determines that the note does not qualify for exemption from the federal arbitrage rebate requirements under Section 148(f) of the code, the city agrees to cause the calculations and payments to the United States to be made pursuant to Section 148 of the code and treasury regulations relating thereto.

Section 5. Certificate of proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the note herein authorized has been duly entered on his register.

5.02 The officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0641 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber -- 1

Approved December 5, 2011

DON NESS, Mayor

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BE IT RESOLVED, by the city council (the "council") of the city of Duluth, Minnesota (the "city"), as follows:

Section 1. Capital improvement plan.

1.01 (a) Under and pursuant to Minnesota Statutes, Section 475.521 (the "act"), the council has authorized preparation of a capital improvement plan for the years 2012 through 2016 which has been presented to the council in the section entitled "capital improvement bond summary" in the document entitled "2012-2016 capital improvement plan-capital budget and plan" (the "plan");

(b) A notice of public hearings has been published in accordance with the act, and the council has held on December 5, 2011, a public hearing as required by the act, to provide an opportunity for residents to express their views on the plan;

(c) The council has considered the following for each project discussed in the plan and for the overall plan:

(1) The condition of the city's existing infrastructure, including the projected need for repair or replacement;

(2) The likely demand for the improvement;

(3) The estimated cost of the improvement;

(4) The available public resources;

(5) The level of overlapping debt in the city;

(6) The relative benefits and costs of alternative uses of the funds;

(7) Operating costs of the proposed improvements; and

(8) Alternatives for providing services more efficiently through shared facilities with other cities or local government units.

1.02 (a) Based on the considerations set forth in the plan and Section 1.01(c) hereof, the council finds that the plan is desirable and beneficial to the city and its residents;

(b) The council finds that the proposed improvements under the plan will result in no unnecessary duplication of public facilities provided by other units of government in the region.

1.03 The plan is approved.

Section 2. (a) Under and pursuant to the authority contained in the act and Minnesota Statutes, Chapter 475, the city is authorized to issue capital improvement bonds to provide funds for capital improvements pursuant to the plan;

(b) The council also held a public hearing on December 5, 2011, after notice of public hearing required by the act, on the city's intention to issue general obligation capital improvement bonds, in an amount not to exceed \$1,475,000 for the purposes set forth in the notice of public hearing. All persons who desired to speak at the public hearing were heard and written comments were considered;

(c) The council hereby finds and determines that it is necessary, expedient and in the best interests of the city's residents that the city issue, sell and deliver general obligation capital improvement bonds in the maximum amount of \$1,475,000 (the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

"bonds"), for the purpose of providing funds for the following capital improvements under the plan: improvements to the city hall, libraries, public safety facilities and public works facilities, citywide, including masonry repair and facility needs priorities; improvements to city hall including cooling of new switch closets (elevators), modernization/remodeling and window replacement; and improvements to the library, including an upgrade of the mechanical system; and for the payment of costs of issuance of the bonds;

(d) If, within 30 days after December 5, 2011, a valid petition is filed with the city clerk calling for a vote on the proposition of issuing the bonds, signed by voters residing within the boundaries of the city equal to five percent of the votes cast in the city in the last general election, the bonds shall not be issued until the question of their issuance has been authorized by a majority of the voters voting on the question at the next general or special election called to decide the question;

(e) This resolution constitutes a declaration of official intent under Treasury Regulations Section 1.150-2. The city reasonably expects to acquire or construct all or a portion of the capital improvements prior to the issuance of the capital improvement bonds and to reimburse expenditures incurred with respect to such capital improvement program with the proceeds of the capital improvement bonds.

Section 3. (a) The city previously issued its \$11,905,000 general obligation capital improvement bonds (build America bonds - direct pay), Series 2009C, dated December 17, 2009 (the "Series 2009 bonds"). Up to \$2,500,000 of the proceeds from the Series 2009 bonds allocated to the new law enforcement center shall be reallocated to improvements to City Hall, including remodeling of the former law enforcement space;

(b) The council also held a public hearing on December 5, 2011, after notice of public hearing required by the act, on the city's reallocation of proceeds of the Series 2009 bonds. All persons who desired to speak at the public hearing were heard and written comments were considered;

(c) The city will reallocate up to \$2,500,000 of the proceeds of the Series 2009 bonds if no petition requesting a vote on the reallocation of the Series 2009 bonds signed by voters equal to five percent of votes cast in the city in the last general election is filed with the city clerk within 30 days after the date of the public hearing described in Section 3(b) of this resolution.

Resolution 11-0642 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved December 5, 2011

DON NESS, Mayor

- - -

Resolution 11-0647, establishing annual bonding plan for 2012, was introduced by Councilor Fedora for discussion.

Councilor Stauber stated he could not support this resolution as it reduces the capital investment trust (CIT) fund once again. He continued saying that the trust fund has been depleted so much that the interest alone cannot support the street improvement program which is why the fund was set up.

Resolution 11-0647 was adopted as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that, pursuant to Section 20-33 of the Duluth City Code, 1959, as amended, the following is hereby established as the annual, ordinary course general obligation bonding plan for the city of Duluth for the year 2012:

General obligation bonds and notes to be issued in 2012	\$10,973,000
General obligation bonds and notes to be retired in 2012	
Scheduled general obligation bonds anticipated to mature and be retired	\$16,216,805
General obligation bonds anticipated to be called and retired with CIT funds	<u> \$ 0</u>
Total anticipated general obligation bond retirements for 2012	<u>\$16,216,805</u>
Net anticipated increase (decrease) in general obligation bonding for 2012	<u>(\$5,243,805)</u>

Resolution 11-0647 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman and President Gardner -- 7

Nays: Councilors Fosle and Stauber -- 2

Approved December 5, 2011

DON NESS, Mayor

- - -

RESOLVED, that the DEDA operating fund, debt service fund, capital project fund, storefront loan funds and NWA maintenance facility fund budgets on file in the office of the city clerk as Public Document No. 11-1205-08 are hereby approved.

Resolution 11-0645 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

Approved December 5, 2011

DON NESS, Mayor

- - -

Resolutions 11-0643 and 11-0644, affirming and reversing, respectively, the decision of the planning commission to grant in part the application for a variance from sign regulations by Grandma's Sports Bar & Grill, Inc., were introduced by Councilor Stauber.

Resolution 11-0643, affirming the planning commission decision, failed upon a unanimous vote (Public Document No. 11-1205-09).

- - -

Resolution 11-0644, reversing the planning commission decision, was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the city council finds as follows:

(a) On September 21, 2011, Grandma's Sports Bar & Grill, Inc., submitted an application for a variance from the city's sign regulations. The applicant's place of business is located in the Canal Park district of Duluth and its address is 425 Lake Avenue South;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(b) The applicant seeks to install an illuminated marquee sign, which is an allowable sign in the Canal Park district; however, it seeks a variance from the restrictions applicable to the marquee sign. The type of relief requested is:

(1) A variance to allow installation of a marquee sign with lettering that would project above the marquee's fascia; and

(2) A variance to allow lettering height to exceed the ten inch height restriction as follows:

(A) The word "Grandmas" in 36 inch letters;

(B) The word "Sports" in 24 inch lettering;

(C) The word "Garden" in 24 inch lettering; and

(D) The phrase "Event Center" in 12 inch lettering;

(c) Pursuant to Minnesota Statutes Section 15.99 the deadline for the city's decision is January 19, 2012;

(d) A public hearing was held by the planning commission during its November 8, 2011, meeting. The commission considered the recommendation of the city's planning staff. The planning staff recommendation included the following conclusions:

(1) Section 50-27.4.C of the City Code provides the standards applicable to a marquee sign and requires that:

(A) The sign be structurally integrated into the fascia of a marquee and prohibits projection beyond the fascia; and

(B) Limited lettering height to ten inches;

(2) Section 50-37.9.C of the City Code provides the standards that must be satisfied to support the granting of a variance and in relevant part mandates that:

(A) The applicant demonstrate that exceptional conditions related to the property exist, and that strict application of the Code "would result in peculiar and exceptional practical difficulties or exceptional or undue hardship to the property owner";

(B) "The special circumstances or conditions that create the need for relief were not directly or indirectly created by the action or inaction of the property owner or applicant";

(C) "The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity";

(D) "The relief is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant";

(E) "The relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety or public welfare of the inhabitants of the city";

(F) "The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map";

(7) "The relief does not allow any type of sign that is not allowed in the zone district where the property is located, pursuant to Section 50-27";

(3) Two other marquees signs are located in the Canal Park district. The Adventure Zone sign contains lettering that is 48 inches in height, but the lettering does not project beyond the fascia. The Waterfront Plaza sign has lettering that projects above the fascia, but the lettering is 24 inches in height and is not illuminated;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(4) The applicant's request for illuminated sign lettering height up to 36 inches, which projecting beyond the fascia, exceeds the size and exposure of existing marquee signs in the Canal Park district;

(5) Limiting any variance in lettering height to 24 inches and either non-illuminated if projected beyond the fascia, or illuminated if not projected would be consistent with the character of the other marquee signs in the district;

(6) Granting the applicant's variance would encourage other businesses in Canal Park to seek larger signs to compete with the applicant's sign;

(7) The applicant's proposed sign, given its size, location and illumination would impact the visibility of other signs in the district and detract from the goal of creating an attractive business environment;

(8) The applicant's proposal does not meet the variance standards provided in Section 50-37.9.C because the proposed sign is out of scale with existing marquee signs in the Canal Park district and is not consistent with the intent of the UDC;

(9) The ten inch height restriction for lettering does present an exceptional practical difficulty for the applicant because it would limit the site visibility due to the proximity of other businesses and the applicant's location near the edge of the district;

(e) Based upon their conclusions, the planning staff made the following recommendations:

(1) That the applicant be granted an alternative variance that authorizes lettering up to 24 inches in height;

(2) Non-illuminated letters may project beyond the fascia;

(3) All letters projecting beyond the fascia must be unilluminated;

(f) The planning commission granted the applicant a variance from the sign regulations authorizing the installation of a marquee sign with the following restrictions:

(1) Lettering height limited to 24 inches;

(2) Letters may project beyond the fascia;

(3) All letters projecting beyond the fascia must be unilluminated;

(g) On November 17, 2011, the applicant filed an appeal of the planning commission action. The applicant asserts that it has met the standard for a variance as requested for the following reasons:

(1) The Teatro Zuccone and Zinema Theater, located in the adjacent Downtown district have similar signage;

(2) The size of the building facade of the Sport's Garden and Event Center requires a strong attention-getting focal point to identify the entrance;

(3) The signage needs to be identifiable from many distant view corridors;

(4) Canal Park is an entertainment district and an appropriate place to locate the proposed sign.

RESOLVED FURTHER, based upon the record before the council, the decision of the planning commission is reversed on the following grounds:

(a) The planning commission's conclusion that a hardship exists is supported by the record;

(b) The sign proposed by the applicant is necessary to preserve the applicant's need for visibility;

(c) The sign proposed by the applicant would not have an adverse impact on the Canal Park district.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED FURTHER, the applicant's request for a variance as applied for is granted.
Resolution 11-0644 was unanimously adopted.
Approved December 5, 2011
DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

11-061 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2012.

- - -

INTRODUCED BY COUNCILOR FEDORA

11-062 - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2012 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

- - -

INTRODUCED BY COUNCILOR FEDORA

11-063 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2012.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR BOYLE

11-060 - AN ORDINANCE AMENDING CHAPTER 13 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CIVIL SERVICE.

The rules were suspended upon a unanimous vote to hear from speakers on the ordinance.

Erik Simonson, president of the firefighters' union, David Leonzal, second chair or AFSCME, and Tom Maida, president of police union, expressed concerns with the ordinance for the reasons of: this ordinance goes far deeper than it needs to go; each union will have to have attorneys look over the ordinance to determine the repercussions, which will be expensive, since there is no line-in line-out version to compare the proposed code with the current one and they requested that the ordinance be sent back to the administration so that the unions and the civil service board can study and report on the proposed changes.

Councilor Boyle moved to table the ordinance for the civil service board to review it at their next meeting, which motion was seconded.

Chief Administrative Officer David Montgomery stated that the administration replaced the current Civil Service Chapter using the same procedure as it did with the Unified Development Chapter and that line-by-line changes will be provided in the near future.

Councilor Boyle's amendment carried upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fosle, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fedora -- 1

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INTRODUCED BY COUNCILOR HARTMAN

11-059 (10127) - AN ORDINANCE PROHIBITING WORK WHICH DAMAGES CITY

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

UTILITIES AND PROVIDING FOR PENALTIES FOR VIOLATION THEREOF, AMENDING CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED, BY ADDING A NEW ARTICLE XIII THERETO.

Councilor Hartman moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR FOSLE

11-054 (10128) - AN ORDINANCE REPEALING AND REPLACING CHAPTER 33, ARTICLE VI, AND AMENDING SECTIONS 33-101, 33-108, 33-110, 33-111.1 AND 33-221 OF THE DULUTH CITY CODE, 1959, AS AMENDED, CREATING A NEW DULUTH PARKING COMMISSION.

Councilor Fosle moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

- - -

The meeting was adjourned at 8:13 p.m.

MARTHA A. OSWALD, Assistant City Clerk, for
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10127

AN ORDINANCE PROHIBITING WORK WHICH DAMAGES CITY UTILITIES AND PROVIDING FOR PENALTIES FOR VIOLATION THEREOF, AMENDING CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED, BY ADDING A NEW ARTICLE XIII THERETO.

The city of Duluth does ordain:

Section 1. That Chapter 48 of the Duluth City Code, 1959, as amended, is hereby amended to add a new Article XIII which reads as follows:

Article XIII Damage to Underground Utilities.

Sec. 48-224. Definitions.

For the purposes of this Article, the following terms and phrases shall have the meanings hereinafter ascribed to them:

(a) Damage to utilities: shall mean an event which results in any damage to or destruction of any facilities of the utility which may include but does not necessarily include escape of any quantity of water, natural gas, sewage or storm water from the utility;

(b) Excavation: shall mean any activity that moves, removes or otherwise disturbs any earthen material of any kind, including but not limited to an "excavation" as defined in Minnesota Statutes Section 216D.01, Subd. 5;

(c) Person: shall mean any individual, partnership, corporation, company, association, and any governmental entity of any kind or level, any other business, organization and public entity of any kind whatsoever and a trustee, receiver, assignee or personal representative of any of them;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(d) State one-call statute: shall mean the provisions of Minnesota Statutes Chapter 216D, and as the same may from time to time be amended or renumbered;

(e) Utility: shall mean any pipe of any kind or size owned by the city and connected to the city's water, natural gas, sanitary sewer and storm sewer utilities and used by the city's water, natural gas, sanitary sewer and storm sewer utilities for the conveyance of water, natural gas, sanitary sewage or storm water as part of the city's water distribution system or the city's natural gas distribution system or the collection of sanitary sewage or storm water as part of the city's sewer systems, and any equipment, machinery any facilities of any kind whatsoever used by the city to facilitate the distribution of water or natural gas through said distribution systems or the collection of sanitary sewage or storm water as part of the city's sewer systems, whether or not located on public or private property or easements.

Sec. 48-225. Excavations causing damage to utilities.

No person shall cause or allow any excavation to be made which results in damage to utilities, whether intentional or unintentional, in violation of any of the following provisions:

(a) Such person fails to request identification of the physical locations of all elements of the utility in the vicinity of the excavation in conformance with the requirements of the state one-call statute;

(b) Damage to the utility results from failing to exercise the necessary level of care when excavating in close proximity to any element of the utility, the location of which is properly identified as provided for in the state one-call statute;

(c) The manner in which such excavation is performed violates the provisions of Section 48-25 of this Code.

Sec. 48-226. Damages.

City shall be entitled to collect damages flowing from any violation of this Article from any person violating said provisions which shall include but not be limited to the following:

(a) Costs of repairing the damage to the utility, including direct and indirect labor costs, equipment costs, cost of materials, cost of supervision and other overhead, legal costs, attorney's fees and any other costs attributable to the damage to the utility. Such costs shall be the higher of actual, out-of-pocket cost or attributable costs based on reasonable market value;

(b) Value of water or natural gas which escaped from the utility as a result of the damage to the utility;

(c) The value of any damage to any real or personal property owned or controlled by the city or for which the city is responsible;

(d) Any costs incurred by city as a result of claims of third parties alleging that they were damaged as a direct or indirect result of the damage to the utility;

(e) The amount of any fines, penalties or other charges assessed against the city by any governmental or regulatory agency resulting from the escape of any water or natural gas;

(f) Any other loss or cost incurred by city as a result of the damage to the utility.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Sec. 48-227. Penalties.

In addition to damages as described in Section 48-226 above and other remedies as described in Section 48-228 below, any person violating the provisions of this Article shall be subject to the issuance of a citation for such violation under Chapter 12 of this Code, subject to the following:

(a) The city engineer and his or her designees are authorized to issue citations for violation of this Article;

(b) The penalty to be assessed to the violator for violation of the provisions of this Article shall be established by the city council by resolution;

(c) The provisions of 12-3(b) shall not be deemed to limit the city's rights to enforce the provisions of Section 48-226 or of Section 48-228.

Sec. 48-228. Other enforcement.

In addition to the provisions of Section 48-226 and 48-27 above, in the event that a person has violated the term of this Article more than twice in the immediately preceding twelve month period:

(a) The city engineer may refuse to issue an excavation or obstruction permit under Article II of Chapter 45 of this Code to such person and for any project where such person is identified as a contractor or subcontractor or with regard to which such person is reasonably anticipated to perform any excavation;

(b) The city purchasing agent may reject the bid of such person to perform any work for the city or of any other person where the violating person is identified as the bidder or a contractor or subcontractor of the bidder or with regard to which the violating person is reasonably anticipated to perform any excavation.

Sec. 48-229. Vicarious liability.

Any person responsible for the supervision of any person violating the requirements of this Article or contracting with such violating person to perform the excavation which gives rise to the damage to utilities shall be jointly and severally liable for such violation and for all penalties, damages and consequences flowing therefrom as set forth in this Article.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: January 7, 2012)

Councilor Hartman moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed December 5, 2011
Approved December 5, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10128

AN ORDINANCE REPEALING AND REPLACING CHAPTER 33, ARTICLE VI, AND AMENDING SECTIONS 33-101, 33-108, 33-110, 33-111.1 AND 33-221 OF THE DULUTH CITY CODE, 1959,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

AS AMENDED, CREATING A NEW DULUTH PARKING COMMISSION.

The city of Duluth does ordain:

Section 1. That Chapter 33, Article VI, of the Duluth City Code, 1959, as amended, is hereby repealed and replaced as follows:

Article VI. Duluth Parking Commission.

Sec. 33-74. Establishment.

There is hereby established a commission which shall be known as the Duluth parking commission.

Sec. 33-75. Membership.

(a) The commission shall consist of seven members. No member shall serve more than two consecutive full three year terms on the commission plus any partial term pursuant to the provisions of this Article VI;

(1) One member shall be a city councilor appointed to a three year term, provided, however that such councilor shall serve only as long as they continue to hold such office or, unless removed from membership on the commission by the affirmative vote of a majority of the city councilors then serving on the city council, excluding the subject councilor;

(2) Of the remaining six members, two shall be appointed for a one year term, two shall be appointed for a two year term, and two shall be appointed to a three year term. Thereafter, all commissioners shall be appointed for three year terms;

(b) All members shall be residents of Duluth, shall be appointed by the mayor subject to council approval, except the councilor member who shall be appointed by the council president subject to council approval, and shall be chosen on the basis of their broad based ability to understand the variety of parking issues in the city and provide appropriate solutions;

(c) When a vacancy occurs on the commission for any reason, such vacancy shall be filled for the unexpired term;

(d) If a commissioner shall be found to have failed or neglected to perform the duties of a commissioner, the mayor, with the approval of the city council, may remove such commissioner from office and the vacancy created shall be filled for the unexpired term;

(e) Commissioners shall serve without compensation.

Sec. 33-76. Commission organization.

(a) Within 30 days after all commissioners have been appointed, the commission shall meet and elect from among their membership a president and vice president. Thereafter, the commission shall meet at stated intervals fixed by resolution of the commission or at the call of any three members of the commission;

(b) The commissioners shall organize and adopt, and thereafter may amend, such bylaws, rules and regulations for the conduct and operation of the commission as the commission shall deem to be in the public interest and most likely to enhance, foster and promote the purposes of this Article VI. Five commissioners shall constitute a quorum for the transaction of business of the commission;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(c) The parking manager shall serve as an ex-officio non-voting member of the commission and shall act as secretary of the commission.

Sec. 33-77. Powers and duties.

The Duluth parking commission shall have the following powers and duties:

(a) To provide strategic oversight and guidance to the operations of the city's parking operations and functions;

(b) To investigate and study on and off street parking problems of broad significance occurring in the city of Duluth and to make recommendations to the administration and city council concerning the solution of such problems;

(c) To facilitate the implementation of recommendations of earlier parking problem study groups if such recommendations have not been implemented but remain valid and desirable after the parking commission is formed;

(d) To establish rates to be charged for parking meters and for city owned parking lots and ramps;

(e) To establish the following parking rates and regulations for parking meters and for city owned parking lots and ramps:

(1) Parking times and limits;

(2) Parking meter locations;

(3) Establishment of no parking, loading or drop-off zones;

(4) Establishment of seasonal parking regulations and times;

(f) To perform any functions, duties and/or studies concerning parking problems that it is requested to perform by the administration or the city council;

(g) Work toward improving the availability, ease and perception of parking throughout the city;

(h) To review and recommend to city administration the annual budgets for the city's parking operations.

Sec. 33-78. City council review and veto.

Before any parking rates or parking regulations approved by the Duluth parking commission pursuant to Section 33-77 above shall take effect, a full, true and correct copy of the commission's resolution approving such rates or regulations shall be filed in the office of the city clerk and remain on file as a public document for at least one week before the holding of a regular meeting of the city council. It is hereby made the duty of the city clerk to report to the council at any regular meeting thereof concerning the filing of said resolution. The city council may, by resolution adopted by a majority vote of the council, veto the rates or regulations proposed by the Duluth parking commission. If the council votes to veto the proposed rates or regulations, the last approved shall continue in force and effect until modified in accordance with the provisions of this Article. If such proposal is not vetoed, the commission's proposed rates or regulations shall go into effect on the date specified in the commission's resolution or the date after such council meeting, whichever is later.

Section 2. That Section 33-101 of the Duluth City Code, 1959, as amended is hereby amended as follows:

Sec. 33-101. Definitions.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

For the purpose of this Division, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Fee. The payment in the amount established by the Duluth parking commission by resolution, subject to city council veto as set forth in Section 33-78, for the privilege of parking in a parking meter space and paid by means of lawful currency or coinage of the United States, by a token or tokens purchased from the city for that purpose or by means of a credit or debit card recognized by a parking meter for the purpose.

Operator. Every individual who shall operate a vehicle as the owner thereof, as the agent, employee or permittee of the owner or who is in actual physical control of a vehicle.

Parking monitor. A person authorized by the city to issue traffic summons for parking violations.

Park or parking. The standing of a vehicle, whether occupied or not, upon a street, other than temporarily for purpose of and while actually engaged in receiving or discharging passengers, loading or unloading merchandise, in obedience to traffic regulations, signs or signals or an involuntary stopping of the vehicle by reason of causes beyond the control of the operator of the vehicle and the standing of any vehicle in any public parking lot.

Parking meter. Any device, not inconsistent with this Division, placed or erected for the authorization of and regulation of parking in any parking meter zone in exchange for the fee by authority of this Division.

Parking meter space. Any space within a parking meter zone which is duly designated for the parking of a single vehicle.

Parking meter zone. Any area on a street or in a public parking lot designated as such by resolution of the Duluth parking commission whereupon vehicular parking is authorized by a means of a parking meter.

Public parking lot. Any property in the city owned or operated by the city or any political subdivision of the state of Minnesota held out for use as vehicular parking upon the payment of fee.

Street. Any public street, avenue, road, alley, highway, lane, path or other public place located in the city and established for the use of vehicles.

Vehicle. Any device in, upon or by which any person or property is or may be transported upon a highway, except a device which is operated upon rails or tracks.

Section 3. That Section 33-108 of the Duluth City Code, 1959, as amended is hereby amended as follows:

Sec. 33-108. Parking meter zones.

The Duluth parking commission may, by resolution subject to city council veto as set forth in Section 33-78, designate certain streets or public parking lots or portions thereof as parking meter zones and may establish time limits and rates for such parking meter zones, and the parking or standing of vehicles in parking meter spaces within such zones shall be lawful at the rates established.

Section 4. That Section 33-110 of the Duluth City Code, 1959, as amended is hereby amended as follows:

Sec. 33-110. Hours of operation.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Parking meters shall regulate parking in parking meter spaces and persons parking vehicles in parking meter spaces shall be required to pay the appropriate fee therefore on such days and during such hours as the Duluth parking commission shall establish by resolution, subject to city council veto as set forth in Section 33-78, for each parking meter zone.

Section 5. That Section 33-111.1 of the Duluth City Code, 1959, as amended is hereby amended as follows:

Sec. 33-111.1. Exemption of taxicabs from regulations in certain zones.

The Duluth parking commission may, by resolution subject to city council veto as set forth in Section 33-78, exempt taxicabs from the parking meter regulations of this Division in certain zones of the city while such taxicabs are occupied by the licensed operators of such taxicabs and are available for business. Notwithstanding the provisions of Section 47-35 of the City Code, a taxicab is permitted to stand or park in a metered parking space while in service in a zone where taxicabs are exempt from parking meter regulations.

Section 6. That Section 33-221 of the Duluth City Code, 1959, as amended is hereby amended as follows:

Sec. 33-221. Authority to designate.

The Duluth parking commission may from time to time, by resolution subject to city council veto as set forth in Section 33-78, designate and set aside property owned or leased by the city for off street parking.

Section 7. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: January 7, 2012)

Councilor Fosle moved passage of the ordinance, as amended, and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Halberg, Hartman, Stauber and President Gardner -- 8

Nays: Councilor Fosle -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed December 5, 2011
Approved December 5, 2011
DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, December 15, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR BOYLE

11-060 - AN ORDINANCE AMENDING CHAPTER 13, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CIVIL SERVICE.

Chief Administrative Officer David Montgomery reviewed in detail, the changes that the administration agreed to at the request of the civil service board and the unions.

- - -

Councilor Stauber left the meeting at this time.

- - -

Councilor Boyle moved to suspend the rules to hear speakers on the ordinance, which motion was second and unanimously carried.

Erik Simonson, Pete Johnson, Tom Maida, Tim Helwig and Deb Strom noted that: while the administration has had this before them for six months, the unions have had less than a month to review a massive change like this; time is needed to review the material and meeting with union attorneys and revisions keep coming, so it is difficult to keep up on the changes.

Councilors felt that while there is general support for the concepts proposed in the ordinance, more discussion needs to happen and this should be tabled.

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The meeting was adjourned at 8:10 p.m.

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, December 19, 2011, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

11-1219-06 The following communications regarding the proposed ordinance amending Chapter 13 of the Duluth City Code relating to civil service (11-060-O): (a) Carrie Brown; (b) Valerie Clark; (c) Thomas Constantini; (d) Frank Holappa; (e) Fletcher Koos; (f) Edie Michalski; (g) Kimberly Nerhaugen. -- Received

11-1219-22 The following communications regarding the proposed recognition of marriage constitutional amendment (11-0689R): (a) Kay Allen; (b) Gary J. Boelhower; (c) Bernadette Burnham; (d) Cynthia Coffin-Langdon; (e) Janice Crede; (f) Barbara Crow; (g) Bill DeRoche; (h) Gregory Frahm; (i) Dan Hass; (j) Sandy Maturi; (k) Pamela Mittlefehldt; (l) Jessica Nemec; (m) Patty Sampson; (n) Mary Ann Starus; (o) Greg and JoEllen Travis; (p) DaneYoungblom; (q) Lynn Youngblom. -- Received

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REPORTS FROM OTHER OFFICERS

11-1219-01 Clerk application for exempt permit to the Minnesota gambling control board from Lake Superior Marine Museum Association for raffle on November 3, 2012. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

11-1219-19 Commission on disabilities minutes of November 2, 2011, meeting. -- Received

11-1219-20 Duluth public utilities commission minutes of November 9, 2011, meeting. -- Received

11-1219-21 Entertainment and convention center authority minutes of: (a) August 30; (b) September 27; (c) October 25; (d) November 29, 2011, meetings. -- Received

11-1219-02 Spirit Mountain recreation area authority minutes of November 17, 2011, meeting. -- Received

- - -

At this time, 7: 08 p.m., President Gardner announced that the public hearing on business subsidy policy would begin.

Dan O'Neill, president of the Duluth AFL-CIO Central Labor Body and representing the Duluth Building Trades, expressed support for a strong prevailing wage policy, with no exceptions or loopholes.

At this time, 7:10 p.m., President Gardner declared the public hearing closed and the regular council meeting resumed.

- - -

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

(All matters listed under the consent agenda were considered routine and/or noncontroversial and were enacted by one unanimous motion.)

President Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

RESOLVED, pursuant to Section 31-6(a) of the Duluth City Code, 1959, as amended and the authority otherwise granted in said Code and the Duluth City Charter, the charges for those permits, licenses and other charges listed in Public Document No. 11-1219-03 are hereby established as those set forth in said public document, effective as of January 1, 2012.

RESOLVED FURTHER, that any fees established by any prior resolution inconsistent or conflicting with those set forth in said Public Document are hereby superseded as of January 1, 2012, and of no future effect.

Resolution 11-0632 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a supplemental agreement with the city of Duluth Supervisory Association, substantially the same as that on file in the office of the city clerk as Public Document No. 11-1219-04, which sets forth the terms and conditions of employment for the individual appointed as a grant funded assistant city attorney (community prosecutor), for the purpose of the grant funded project entitled *Blight and Nuisance Crimes, A Project to Improve Public Safety* (supplemental grant approved by Resolution 11-0213).

Resolution 11-0687 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that an increase not to exceed \$23,000 is hereby approved for the city's proprietary contract with All Computer Service for consulting services in mainframe operations and support through December 31, 2011, payable from General Fund 110, Department/Agency 117 (management information services), Division 1107 (MIS), Object 5319 (other professional services).

Resolution 11-0666 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Evolving Solutions, Inc., for the purchase and delivery of NetApp storage equipment/devices in accordance with city-approved specifications and the vendor's low bid of \$138,189.06 plus \$8,210.32 sales tax (includes tax on 20 percent of five year maintenance) for a total amount of \$146,399.38, terms net 30, FOB destination, and payable from the Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project #CP2009-0928B.

Resolution 11-0671 was unanimously adopted.

Approved December 19, 2011

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. 11-1219-05, with the Northeast Minnesota Cooperative for the construction, installation and maintenance of fiber optic cable connections between city facilities in the monthly estimated amount of \$9,762 and a one-time installation cost of \$120,172, \$63,434 of which shall be payable from Fund 250-015-2010-5580 CE250-E1004 (capital equipment, administrative services, 2010) and the remainder of which shall be payable from Fund 110-117-1107-5319 (general, management information services, MIS).

Resolution 11-0688 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the appointment to the Duluth airport authority by Mayor Ness of Kenneth J. Stromquist, replacing Roy Niemi, for term expiring on July 1, 2013, is confirmed.

Resolution 11-0657 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness to the parks and recreation commission of Erica Erickson (commission on disabilities representative) for a term expiring on March 31, 2012, replacing Patti Nadeau who resigned, is confirmed.

Resolution 11-0674 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that an increase of \$20,000 in year 2011 to Agreement No. 21296 with Duluth Clinic, Ltd., is hereby approved, for administering a variety of occupational medical tests and services for city employees, payable from General Fund 110, Department/Agency 700 (transfers and other functions), Organization 1431 (benefits administration/citywide HR), Object 5310 (contract services).

Resolution 11-0683 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with DEDA, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1219-07, which allows DEDA to participate in the city's self insurance fund program during 2012; DEDA funds in the amount of \$6,500 to be deposited into self insurance fund Fund 610 (self insurance liabilities fund), Agency 036 (insurance accounts), Organization 1656 (DEDA), Object 4904 (liabilities insurance charges).

Resolution 11-0655 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

RESOLVED, that the city of Duluth does hereby authorize reimbursement to the Duluth economic development authority (DEDA) for a professional services agreement with Bay West, Inc., related to supplemental Phase II subsurface assessment at Bayfront in an amount not to exceed \$70,000, payable from Fund 255 (economic development), Agency 020 (planning), Organization 5319 (other professional services) the source of which are two U. S. environmental protection agency assessment grants.

Resolution 11-0660 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the city council hereby makes the following findings:

(a) That Resolution 11-0040 was approved by the city contingent upon the relocation of utilities and dedication of an alley easement connecting the remaining portion of the alley to East Second Street near 11th Avenue East to provide for vehicular and pedestrian circulation; and

(b) The city has received an easement agreement and easement sketch for the relocation of utilities and to provide for access purposes; and

(c) The city council of the city of Duluth accepts, on behalf of the general public, the dedication of those easements described in Public Document No. 11-1219-08.

FURTHER RESOLVED, that the city clerk is, pursuant to Section 100 (b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-1219-08 showing access purpose and utility easements retained.

Resolution 11-0670 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city planning division requesting the vacation of an unimproved portion of South Tenth Avenue West south of Railroad Street; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (PL11-124) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petitioned streets are useless for vehicular, utility and pedestrian purposes; and

(c) The city planning commission, at its December 13, 2011, regular meeting, recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the following-described street and depicted on Public Document No. 11-1219-09;

South 10th Avenue West adjacent to said Blocks 13, 14, 15 and 16 south of the southeasterly line of Railroad Street in the recorded plat of Bayfront Division of Duluth, First Re-Arrangement, Saint Louis County, Minnesota.

RESOLVED FURTHER, that the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, is authorized to record with the register

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 11-1219-09 showing the rights-of-way to be vacated.

Resolution 11-0675 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city planning division requesting the vacation of a utility and pedestrian easement of the following:

(1) That part of vacated Eighth Avenue East and vacated East 11th Street, all in LAKE VIEW DIVISION of Duluth Minnesota described as follows:

Beginning at the most southerly corner of Lot 1, Block 30, said LAKE VIEW DIVISION; thence south 48°21'17" east, assumed bearing along the southwesterly line of said Lot 1, a distance of 21.50 feet; thence north 41°37'07" east 150.21 feet; thence south 48°21'24" east 15.00 feet; thence south 41°37'07" west 150.21 feet; thence south 48°21'17" east 76.81 feet along the northeasterly line of vacated Eighth Avenue East; thence south 41°38'43" west 66.00 feet to the southwesterly line of said vacated Eighth Avenue East; thence north 48°21'17" west 169.12 feet along the southwesterly line of said vacated Eighth Avenue East; thence north 53°01'36" east 67.32 feet to the southwesterly line of said Lot 1, Block 30; thence south 48°21'17" east 42.53 feet along the southwesterly line of said Lot 1 to the point of beginning;

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (PL11-024) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petition to vacate and accept the utility and pedestrian easements preserve the intent of pedestrian movement and access to buried city infrastructure;

(c) The city has received the following grants of easement, in trust for the general public, from the following persons and entities: an easement for utility and pedestrian purposes from Independent School District 709:

(1) That part of Lots 14, 15, 16, Block 26, that part of Lots 1, 2, 3, Block 30, and that part of vacated East 11th Street, all in LAKE VIEW DIVISION of Duluth Minnesota described as follows: commencing at the most southerly corner of said Lot 1, Block 30; thence north 48°21'17" west, assumed bearing along the southwesterly line of said Lot 1, a distance of 42.53 feet; thence north 00°23'04" east 3.75 feet along the east line of Kenwood Avenue to the point of beginning of the tract to be described; thence continuing north 00°23'04" east 53.10 feet along the east line of said Kenwood Avenue; thence north 41°37'07" east 65.27 feet; thence S. 48°21'17" E. 88.00 feet; thence north 41°37'07" east 42.21 feet; thence south 48°21'17" east 20.00 feet; thence south 09°11'39" west 50.03 feet; thence south 48°21'17" east 30.93 feet; thence south 11°41'46" west 124.64 feet to the southwesterly line of said Lot 16, Block 26; thence north 48°21'17" west 34.62 feet along the southwesterly line of said Lot 16; thence north 11°41'46" east 84.25 feet; thence north 48°21'17" west 116.28 feet; thence south 41°37'07" west 70.18 feet to the point of beginning;

(d) The city planning commission, at its December 13, 2011, regular meeting, recommended approval of the vacation and acceptance of easements petition;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(e) The city council of the city of Duluth approves the vacation and acceptance of the following-described utility and pedestrian easements and depicted on Public Documents No. 11-1219-10(a) and No. 11-1219-10(b).

RESOLVED FURTHER, that the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document Nos. 12-1219-10(a) and 12-1219-10(b) showing the portions of utility and pedestrian easements to be vacated and the acceptance of dedication of new easements, all as authorized hereunder.

Resolution 11-0677 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, That the proper city officials are authorized to make the following fund transfers within the 2007, 2008 and 2010 CDBG programs thereby increasing the Federal Program Fund 262, Agency 020, Object 5434, 2012 HUD-funded community development account by \$343,659 from accounts as set forth below:

2007 CDBG Program – Fund 262 – Project CD07CD

Sub-project	Activity	Project	Amount	New Grant	Difference
PFAC	PF-01	Central Hillside accessibility	\$113,083	\$98,684	(\$14,399)

2008 CDBG Program – Fund 262 – Project CD08CD

Sub-project	Activity	Project	Amount	New Grant	Difference
ECDV	2412	SOAR Duluth@Work	\$150,000	\$144,000	(\$6,000)
ECDV	1244	CHUM employ. svcs	\$112,500	\$103,000	(\$9,500)

2010 CDBG Program – Fund 262 – Project CD10CD

Sub-project	Activity	Project	Amount	New Grant	Difference
ADMC		Contingency account	\$10,698	\$0	(\$10,698)
Balance Sheet #2220		Program income	\$213,062	\$0	(\$213,062)

Fund 263 – Economic Development RLF

Sub-project	Activity	Project	Amount	New Grant	Difference
		Program income	\$90,000	\$0	(\$90,000)

Resolution 11-0679 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a consultant agreement with Camiros, Ltd., substantially the same as that on file with the city clerk as Public Document No. 11-1219-11, for professional services in comprehensively rewriting the city’s Sign Code and creating new sign standards for the planning division in accordance with the consultants proposal dated November 4, 2011, for a total amount not to exceed \$45,000, payable from General Fund 110, Department/Agency 132 (planning and construction services), Division 1301 (planning and development), Object 5319 (other professional services).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Resolution 11-0685 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into agreements, substantially in the form of those agreements on file in the office of the city clerk as Public Document Nos. 11-1219-12(a) and 11-1219-12(b), with Kurtis and Yonhui Martin and Scott Solem respectively pursuant to which said parties will convey the existing private sewer line serving their properties and easements necessary thereto to the city at no cost and in addition, pay to the city the amounts set forth below which shall be payable to Fund No. 410-038-5530 (special assessment fund, special assessment contracts, improvements other than buildings) and the city will cause said private main to be replaced with a public sewer main serving said properties:

Kurtis and Yonhui Martin	\$17,500;
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Scott Solem	\$12,500.
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Resolution 11-0658 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to State Farm Insurance, as subrogee of Jason and Amanda Easty, the sum of \$25,495.43 in full and final settlement of the claim which arose out of a failure of a city sanitary sewer main occurring near 5012 Colorado Street on June 8, 2010; payment to be made from the Self Insurance Fund 610-036-1653-5841 (self insurance-liabilities, insurance accounts, insurance - sewer).

Resolution 11-0662 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with LHB, Inc., for professional engineering services related to the design of the Skyline Parkway Bridge at Stewart Creek, Bridge No. L6007, rehabilitation and Snively Memorial reconstruction in an amount not to exceed \$89,862, payable from Permanent Improvement Fund 411, Department/Agency 035 (capital projects accounts), Object 5530 (improvements other than Buildings), City Project No. 1016, S.P. 118-090-010, Requisition No. 11-0592.

Resolution 11-0663 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that Resolution 11-0221 awarding a contract to NPL Construction Company for construction of high pressure gas mains and services in various locations be amended to increase the amount by \$220,000 for a new total of \$680,739.82, payable out of Gas Fund 520, Department/Agency 500 (public works and utilities), Division 1905 (capital), Object 5533 (capital improvements - revenue), City Project No. 0904GS.

Resolution 11-0678 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that Purchase Order 2011-00000552 awarding a contract to Hanco Utilities, Inc., for supplemental construction of gas mains and services at various locations be amended to increase the amount by \$11,532.37 for a new total of \$52,301.37, payable out of Gas Fund 520, Department/Agency 500 (public works and utilities), Division 1905 (Capital), Object 5533 (capital improvements - revenue), City Project No. 1059.

Resolution 11-0682 was unanimously adopted.

Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1219-13, with Lexipol, LLC, for a three-year subscription to the Lexipol Knowledge Management System, which will provide the Duluth police department with access to policy manuals, daily on-line training bulletins, on-line training and testing of officers and updates, payment to be made from Fund 110-160-1640-2232-5441 (general, police, police special accounts, auction proceeds, other services and charges).

Resolution 11-0636 was unanimously adopted.

Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following accessible parking spaces are established:

In front of 1827 East Tenth Street;

In front of 924 East Eighth Street;

In front of 605 North 11th Avenue East.

Resolution 11-0654 was unanimously adopted.

Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with L-3 Communications Mobile Vision, Inc., for the tax exempt purchase and delivery of eight Flashback 2 in-car camera video systems for the Duluth police department in accordance with Minnesota State Contract No. 443021, Release I-57(5), specifications and pricing in the amount of \$78,039.10, terms net 30, FOB destination, payable from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2011 (fiscal year - 2011), Object 5580 (capital equipment), Project No. CE250-V1102.

Resolution 11-0664 was unanimously adopted.

Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a \$2,500 Met Life Award awarded to the Duluth police department in recognition of the police department's outstanding work on community policing and city-wide crime prevention meetings, funds to be

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

deposited in Fund 110-160-1610-4660 (general, police, administration and investigation, gifts and donations).

Resolution 11-0665 was unanimously adopted.
Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 33-82 of the Duluth City Code, 1959, as amended, the no parking restriction in the cul-de-sac on the north end of Butternut Avenue be removed.

FURTHER RESOLVED, that all other parking restrictions previously established by the city council which pertain to any part of the street described above shall remain in effect.

Resolution 11-0667 was unanimously adopted.
Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 33-97.8 of the Duluth City Code, 1959, as amended, the alternate side parking restriction on 23rd Avenue West between Superior Street and First Street be changed to alternate side parking from 1:00 AM to 7:00 AM.

FURTHER RESOLVED, that all other parking restrictions previously established by the city council which pertain to any part of the street described above shall remain in effect.

Resolution 11-0673 was unanimously adopted.
Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that an increase to the city's contract with Viele Contracting, Inc., for the demolition of six structures at various locations is hereby approved for a total amount of \$6,000, payable from General Fund 110, Department/Agency 132 (planning and construction services), Organization 1304 (construction services and inspection), Object 5441 (other services and charges).

Resolution 11-0680 was unanimously adopted.
Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a grant agreement with St. Louis County, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1219-14, for the joint occupancy, maintenance and use of the new public safety building by the city's police department along with the St. Louis County sheriff's department, with the city's share of costs therefore to be payable from Fund 110-160-1610-5460 (general, police, administration and investigation).

Resolution 11-0684 was unanimously adopted.
Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a first amendment to license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1219-15, with the Duluth economic development authority

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

(DEDA), to provide additional available dates for police training in emergency vehicle operations on the ramp of the northwest airlines airbus maintenance base.

Resolution 11-0686 was unanimously adopted.
Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1219-16, with the Minnesota Children's Museum which provides for the city to host a traveling exhibit at the main library in October and November of 2012 which is entitled *Storyland: A Trip through Childhood Favorites*, the cost of procuring insurance to cover the exhibition in an amount not to exceed \$1,500, payable from Fund 240-300-50-5319 (library special gifts, library, Friends of the Library).

Resolution 11-0659 was unanimously adopted.
Approved December 19, 2011
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an addendum to the Violation Processing Service Agreement 20732 with Complus Data Innovations, Inc, (Complus) substantially in the form of that on file in the office of the city clerk as Public Document No. 11-1219-17, for the continued use of Complus software and hardware to process, track and collect parking and administrative fines, with said funds to be deposited into and paid from General Fund 110, Finance Department 125, Auditors Office 1214, Administrative Fines 4472.

Resolution 11-0669 was unanimously adopted.
Approved December 19, 2011
DON NESS, Mayor

- - -

At this time, Councilor Boyle moved to suspend the rules to consider Ordinance 11-060, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR BOYLE

11-060 - AN ORDINANCE AMENDING CHAPTER 13, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CIVIL SERVICE.

Councilor Boyle moved suspend the rules to hear speakers on the ordinance, which motion was seconded and unanimously carried.

Marshall Stenersen, incoming chair for 2012 of the civil service board, David Leonzal and David Wiezen expressed concerns of: that this has just been before the council since before Thanksgiving; the Civil Service Code needs to be updated, but it needs to be done thoughtfully; all parties need to work together and the civil service board needs to stay in place with these changes.

Councilor Boyle moved to table the ordinance, which motion was seconded and unanimously carried.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

The following resolutions were also considered:

Resolution 11-0651, transferring \$750,000 from the community investment trust fund for the 2012 pothole reduction program, was introduced by Councilor Fedora for discussion.

Councilor Stauber reviewed in detail the amounts of proceeds and investment earnings added and the depletion of funds to the trust, noting his concerns that shortly the one time balance of over \$70,000,000 would be going to below \$20,000,000.

Chief Administrative Officer David Montgomery reviewed the specific projects that have been funded by doing those projects through the community investment trust fund and how interest rates overall have been very low.

Resolution 11-0651 was adopted as follows:

WHEREAS, the city of Duluth, Minnesota (the city), annually establishes a street reconstruction, preservation and maintenance program; and

WHEREAS, the purpose of the resolution is to transfer monies for the 2012 pothole reduction program from the community investment trust fund (Fund 256) (the CIT fund).

NOW, THEREFORE, BE IT RESOLVED, by the city council of the city, as follows:

The city council hereby transfers \$750,000 from the CIT fund (fund 256) to the general fund (Fund 110) to provide monies for the 2012 pothole reduction program. The transfers authorized in Section 1 above shall be made quarterly over 2012 but in no event later than needed to pay program costs.

Resolution 11-0651 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman and President Gardner -- 8

Nays: Councilor Stauber - 1

Approved December 19, 2011

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of parking manager, which were approved by the civil service board on July 5, 2011, and which are filed with the city clerk as Public Document No. 11-1219-18, are approved; that said classification shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that pay range for said classification shall be Range 1095 - 1100. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 11-0661 was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

Resolution 11-0690, by Councilor Boyle, appointing _____ to the Duluth public utilities commission, was introduced for discussion.

Councilor Boyle moved to amend the resolution by inserting the name Robert Prusak, which motion was seconded and discussed.

Councilor Boyle moved to suspend the rules to hear a speaker on the resolution, which motion was seconded and unanimously carried.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Tom Karas reviewed that he submitted his application before the position was advertized for and expressed the concern of how a sanitary sewer board member could be considered for this position.

The amendment carried unanimously.

Resolution 11-0690, as amended, was adopted as follows:

BY COUNCILOR BOYLE:

RESOLVED, that the city council hereby appoints Robert Prusak (at large), replacing Jennifer Julsrud, to the Duluth public utilities commission for a term expiring on March 31, 2012.

Resolution 11-0690, as amended, was unanimously adopted.

Approved December 19, 2011

DON NESS, Mayor

- - -

Resolution 11-0668, adopting business subsidy policy, was introduced by Councilor Stauber for discussion.

Councilor Anderson moved to return this resolution to the administration for more discussion with the Duluth economic development authority, which motion was seconded and unanimously carried.

- - -

At this time, Councilor Fedora moved suspend the rules to consider resolutions 11-0689 and 11-0691 to the end of the agenda after the consideration of ordinances, which motion was seconded and unanimously carried.

- - -

Resolution 11-0681, authorizing the city to enter into a joint powers agreement with Independent School District 709, Duluth Public Schools, to provide for community education and recreation programs through collaboration and coordination of resources, was introduced by Councilor Halberg.

Councilor Halberg moved table the resolution until there is a joint meeting with the school board, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

11-061 (10129) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2012.

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: None -- Councilors Fedora, Fosle and Stauber -- 3

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

INTRODUCED BY COUNCILOR FEDORA

11-062 (10130) - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2012 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: None -- Councilors Fedora, Fosle and Stauber -- 3

- - -

INTRODUCED BY COUNCILOR FEDORA

11-063 (10131) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2012.

Councilor Fedora moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

At this time, Councilor Fosle left his seat.

- - -

MOTIONS AND RESOLUTIONS

Resolution 11-0689, by President Gardner and Councilor Anderson, in opposition to proposed "recognition of marriage" constitutional amendment, was introduced for discussion.

Councilor Anderson moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried.

Karen Lewis, Gary Boelhower, Lynn Youngblom, Rev. Kathy Nelson, Dane Youngblom, Andrea Gelb, Scott Yeazle, chair of the Duluth human rights commission, and Jesse Peterson expressed support for the resolution for reasons of: that government has no business on interfering on this issue; symbolic actions by cities are needed; this would deny a basic right given to others; all persons in Duluth need to be respected; Duluth should be shown as a welcoming community; Peace United Church of Christ congregation council supports this resolution; GLBT Duluthians are valuable members of our community; this constitutional amendment is a form of bullying; Temple Israel supports this resolution; the Duluth human rights commission opposes this constitutional amendment; this amendment, if passed, would take away freedoms and businesses have denied health benefits based on this proposed constitutional amendment.

Councilors Anderson, Boyle, Cuneo, Halberg and President Gardner spoke at length noting their reasons for support.

Resolution 11-0689 was adopted as follows:

BY PRESIDENT GARDNER AND COUNCILOR ANDERSON:

WHEREAS, in 2011 the Minnesota State Legislature voted to include the following question on the election ballot in November 2012: "Shall the Minnesota Constitution be amended to provide that only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota?"; and

WHEREAS, the proposed amendment would add a new Section 13 to the Minnesota Constitution stating: "Only a union of one man and one woman shall be valid or recognized as a marriage in Minnesota."; and

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WHEREAS, in 2009 the Duluth City Council recognized the importance of equality for all citizens by passing the state of Minnesota's second Domestic Partnership Registry; and

WHEREAS, a broad coalition of organizations, community and business leaders; faith, labor, progressive and nonpartisan organizations; communities of color; and current and former elected officials have all joined to defeat this amendment.

THEREFORE, BE IT RESOLVED, that the Duluth City Council joins the broad coalition of organizations stated above in supporting Minnesota's United for All Families and hereby opposes the proposed constitutional amendment entitled "Recognition of Marriage Solely Between One Man and One Woman," and urges Minnesota citizens to vote "No" on Tuesday, November 6, 2012.

Resolution 11-0689 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora and Stauber -- 2

Absent: Councilor Fosle -- 1

Approved December 19, 2011

DON NESS, Mayor

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Resolution 11-0691, by Councilor Anderson, in opposition to the United States Supreme Court decision in *Citizens United* related to constitutional rights for corporate entities, was introduced for discussion.

Councilor Anderson moved to suspend the rules to hear speakers on the resolution, which motion was seconded and unanimously carried

Michael Linn and Jesse Peterson expressed support for the resolution for reasons of: corporations are not people; citizens are important and need a voice and by allowing this for corporate entities, it makes them a fictitious person, who cannot be prosecuted.

Councilor Anderson and President Gardner cited at length their reasons for support this resolution.

Resolution 11-0691 was adopted as follows:

BY COUNCILOR ANDERSON:

WHEREAS, there are several movements, both nationally and within the state of Minnesota to amend the respective Constitutions of each body relating to corporate personhood; and

WHEREAS, the Duluth City Council believes that the rights protected by the Constitution of the United States and the Constitution of the state of Minnesota are rights of natural persons only; and

WHEREAS, artificial entities such as corporations, limited liability companies, and other entities established by the laws of any State, the United States, or any foreign state are subject to regulation by the people through federal, state or local law; and

WHEREAS, the privileges of artificial entities should be determined by the people and should not be construed to be inherent or inalienable; and

WHEREAS, federal, state or local government should regulate, limit, or prohibit contributions and expenditures of candidates for public office, including a candidate's own contributions and expenditures, to prohibit the influencing of an election of any candidate for public office or any ballot measure; and

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WHEREAS, government should require that any permissible contributions and expenditures be publicly disclosed; and

WHEREAS, the judiciary should not construe the spending of money to influence elections to be speech under the First Amendment.

THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby supports the efforts to reject the United States Supreme Court ruling in *Citizens United v. Federal Election Commission* (130 S.Ct. 876 (2010)), and expresses its support to amend our state and national Constitutions to firmly establish that money is not speech, that human beings, not corporations, are persons entitled to constitutional rights, and that whenever the word "person" is used in the constitution it means a natural person.

Resolution 11-0691 was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora and Stauber -- 2

Absent: Councilor Fosle -- 1

Approved December 19, 2011

DON NESS, Mayor

COUNCILOR QUESTIONS AND COMMENTS

Councilor Hartman stated that it is his intent to run for city council president in 2012.

Councilor Boyle stated that it is his intent to run for city council vice president in 2012.

Councilors Anderson, Cuneo, Fedora and Halberg thanked their fellow councilors for working with them as councilors, as this was their last meeting.

The meeting was adjourned at 8:46 p.m.

JEFFREY J. COX, City Clerk

ORDINANCE NO. 10129

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2012.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2012 for general operations is hereby determined to be the sum of \$18,804,700 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts of the city, as set forth in the following sections.

Section 2. There will be levied for the support of the general fund the sum of \$12,057,700.

Section 3. For the pay of debt, there will be levied for the general obligation debt fund the sum of \$6,604,900.

Section 4. That pursuant to laws of Minnesota 1971, Chapter 824, to pay for the portion of the cost of local improvements which will not sustain a special assessment, there will be levied for the permanent improvement fund the sum of \$142,100.

Section 5. That this ordinance shall take effect January 1, 2012.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: None -- Councilors Fedora, Fosle and Stauber -- 3

Passed December 19, 2011

Approved December 19, 2011

ATTEST:

JEFFREY J. COX, City Clerk

DON NESS, Mayor

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ORDINANCE NO. 10130

AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2012 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

The city of Duluth does ordain:

Section 1. That in accordance with Section 58 of the 1912 Home Rule Charter of the city of Duluth, and all amendments thereof and laws supplementary thereto, and for the fiscal year beginning January 1 and ending December 31, 2012, the city council hereby budgets, determines and states the amount of money required to meet the principal and interest of maturing obligations comprising the outstanding indebtedness of such city; the amounts of money necessary to be provided for each such fund and each department of such city; and estimates the amount of income from all other sources and revenues, exclusive of taxes upon property, together with the probable amount required to be levied and raised by taxation to defray all expenses and obligations of such city during such fiscal year.

That the monies as so budgeted and hereinafter set forth shall be paid upon the presentation of properly verified vouchers bearing thereon the budget distribution for which such expenditures are to be charged in accordance with the detailed classification of accounts and the explanatory information of such as set forth in ordinance in effect governing same, excepting, however, payments for interest and sinking funds, which shall be paid in the manner set forth in Section 53 of the City Charter.

That any monies received by the several city departments as reimbursement for damages or repairs to city property or work done for others and not anticipated in the original budget may be credited to and added to the appropriate budget item upon approval by the chief administrative officer or their designee.

That use of general fund balance that has been designated for a specific purpose in a prior year, must be approved by the city council if used for a purpose other than what has been specified.

That grants which have been approved by the appropriate state or federal agency and accepted by resolution of the city council may be added to the respective budget items upon approval of the city auditor.

Section 2. That the city auditor be authorized to approve the payments of \$3,046,000 from the gas and steam public utility funds to the general fund for administrative services; comprised of \$2,900,000 or seven percent of the gross revenues of the gas utility fund to the general fund; and \$146,000 from public utility steam fund to the general fund.

Section 3. That the mayor or the chief administrative officer or their designees may make transfers from budget item to budget item as may be considered necessary for the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

proper administration of the city government for the year. However, the total of any transfers to or from any budget item in excess of ten percent of the appropriation therefore as herein made shall be made only upon approval of the city council. For the purpose of the Section, the term budget item shall mean the amount appropriated to the various funds delineated as fixed charges in the budget summary, the accounts numbered 110 through the 700 series shall each be considered budget items within the general fund, as defined in Chapter 8, Section 54 of the City Charter, and the accounts numbered 510 in the water division, 520 in the gas division, 530 and 532 in the sewer division, 535 in the stormwater division, 540 in the steam division, 550 in the street light division, 503 in the golf division, and 505 in the parking division.

Section 4. That the salaries shall be in accordance with the pay plan in effect as provided by Section 22 of the City Charter, as amended.

Section 5. That the city auditor may create or abolish an accounting fund when required by law or proper accounting procedures.

Section 6. That the city auditor be authorized to make temporary loans to and from the city's various funds as needed in the conduction of the day-to-day operations of the city.

Section 7. That the appropriations as set forth in this section constitutes the budget of the city of Duluth for the calendar year of 2012.

GENERAL FUND		
110	Legislative and executive - total	\$3,589,200
117	Management information systems - total	2,571,600
121	Public administration - total	17,880,900
125	Finance - total	3,443,900
132	Planning and construction services - total	2,138,600
135	Business and development resources - total	692,000
150	Fire - total	13,107,600
160	Police - total	18,544,800
500	Public works - total	1,744,500
700	Transfers and other functions - total	11,116,900
	Total general fund	\$74,830,000
PUBLIC ENTERPRISE		
503	Golf fund - total	\$2,094,700
505	Parking fund - total	3,416,100
PUBLIC UTILITIES		
510	Water fund - total	\$11,691,800
520	Gas fund - total	44,107,500

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GENERAL FUND		
530 and 532	Sewer and clean water fund - total	18,567,900
535	Stormwater fund - total	4,617,500
540	Steam fund - total	7,749,022
550	Street lighting - total	1,994,500

Section 8. That the chief administrative officer or their designee shall provide the council with a final budget report within three months of the end of the budget year setting forth the original approved and the modified budgets for each line item included in this ordinance and explaining in narrative form the reasons for any significant differences between the original approved and the modified budgets.

Section 9. That the city will review all state and federal grants prior to acceptance to determine the program's funding status. A statement should be included on each grant resolution outlining items such as whether the grant represents a one time revenue, an ongoing funding source, or a partial funding source with a local match required. The future fiscal impact of the program on the budget will be discussed prior to acceptance of the grant.

The programs funded by state and federal grants shall be reduced or eliminated accordingly if state or federal revenues are reduced or eliminated and another funding source is not secure. Local funding will be available after a full review to determine whether the program should be continued.

Section 10. That this ordinance shall take effect January 1, 2012.

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Halberg, Hartman and President Gardner -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Passed December 19, 2011
Approved December 19, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

ORDINANCE NO. 10131

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2012.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2012 for Duluth Transit Authority taxing district's operations is hereby determined to be the sum of \$1,316,900 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts as set forth in the following sections, viz:

Section 2. That pursuant to Minnesota Statutes, Section 458A.31, Subd.1, there will be levied for transit operations the sum of \$1,316,900.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2011

Section 3. That this ordinance shall take effect January 1, 2012.

Councilor Fedora moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Boyle, Cuneo, Fedora, Fosle, Halberg, Hartman, Stauber and President Gardner -- 9

Nays: None -- 0

Passed December 19, 2011
Approved December 19, 2011
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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